



NLRB To Issue Scaled-Back Changes to Rules Governing Union Elections; Changes Expected to Lead to Quicker Elections

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By: **Mark Wilkinson, Chris Johlle, Amy Zdravecky**

In June 2011, the National Labor Relations Board (NLRB) proposed new rules governing union elections under the National Labor Relations Act. The NLRB's proposed changes to its election procedures drew a tsunami of comments from the labor and business communities and led to a nasty public disagreement among NLRB members. Today, the NLRB announced that it will issue a scaled-down version of the hotly debated changes to its union election rules. The NLRB will officially publish the final version of the rules tomorrow and they will become effective on April 30, 2012.

Although not as sweeping as the rule proposed in June, the final rule announced today still makes several significant changes to the current procedure. For example, the final rule:

- Expressly limits pre-election hearings to whether a question over representation exists and gives hearing officers the authority to likewise limit the presentation of evidence and argument to that question;
- Eliminates the right to file pre-election requests for review of a regional director's decision and direction of election, and instead defers all requests for review until after the election at which time the request will be consolidated with any request for review of any post-election rulings;
- Eliminates the recommendation that regional directors should not schedule elections until at least 25 days after their decision to allow for sufficient time for review by the NLRB;
- Limits the bases upon which the NLRB will consider a request for special permission to appeal to those extraordinary circumstances when the issue addressed in the appeal would otherwise evade review; and
- Resolves election objections and potentially outcome-determinative challenges in stipulated and directed election cases by allowing discretionary NLRB review of regional directors' resolution of those questions.

The NLRB has not officially abandoned other proposed changes that were included in the earlier version of the rule. In light of the massive number of comments received by the NLRB during the comment period--more than 65,000 comments were submitted--the NLRB decided to deliberate further on other portions of the proposed rule before making a final decision.



The likely effect of these changes will be quicker union elections. Under the new rules, union elections likely will take place within 21 to 25 days of the filing of a petition, instead of the customary 42 days. As a result, employers will have less time and less opportunity once a petition for an election has been filed to communicate their opinions and views to employees concerning the potential impact of unionization, and employees will have less opportunity to become fully informed to make a choice in the representation election. To prepare for these changes, we recommend that employers spend more time educating their employees and their management teams in advance of a union petition about the potential impact and consequences of union representation.

Legislative challenges to the NLRB's new rule are already pending. Likewise, the U.S. Chamber of Commerce and other trade groups have already sued the NLRB to block enforcement of the new rules. We will continue to monitor these developments as they unfold

More Information

Christopher A. Johl
caj@franczek.com
312.786.6152

Mark S. Wilkinson
msw@franczek.com
312.786.6171

Amy J. Zdravecky
ajz@franczek.com
312.786.6501

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