

NLRB approves significant changes in union election procedures

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The resolution passed by the Board is vague at best, and does not contain specific guidance as to what the exact changes will be. Even so, we can anticipate that they will include speedier elections, fewer opportunities for objections about who is and who is not included in the voting group (including supervisors), no right to appeal before an election takes place, and authority within the Board after an election to decide what questions should be reviewed and what should not. These are significant erosions to the rights of both employers and employees.

Although these measures have been adopted in substance, the Board has not yet prepared final written rules, which will be subject to review and approval. Other rules previously proposed but not

included in the resolution remain under consideration and may be enacted at some future date.

The NLRB first announced proposed changes to its election rules on June 21 of this year and public comment was taken through Aug. 22. During this time, the Board received over 65,000 written comments, including those submitted by Ice Miller LLP, which is combining with SZD on Jan. 1, 2012. Yet less than three months later, the Board announced that it would hold a public vote on Nov. 30 on a "small number" of the proposed amendments. The total time between the close of the comment period and the vote was a mere 100 days.

The approval of a final rule will be equally rushed. As Member Hayes noted in his comments at the hearing, if he received the final rule tomorrow he would have only 20 working days to review and respond before the Board loses its quorum in December. He noted that, "This is not an emergency situation" in questioning the Board's haste in approving these changes.

The vote was not without controversy. It was purposefully rushed to take place while Member Craig Becker (a former SEIU

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union lawyer) was still able to vote. His absence will leave the Board with only two members and thus unable to conduct business without the required quorum of three members (out of five possible). On the day the vote was announced, lone Republican appointee Member Brian Hayes sent a letter to Congress stating that he had been summarily presented with a take it or leave it offer by Members Becker and Pearce and that he had been informed of the timeline for the vote on the same day they notified Congress that the date for a vote was "unknown." Member Hayes alleged that he had been left out of the process, had not been provided with summaries of the public comments and was denied an adequate opportunity to prepare a dissent. Rumors also circulated that Member Hayes might resign in order to prevent the vote from going forward, prompting additional inquiries from Congress.

The final rules will almost certainly be challenged in court, which may result in some form of stay on the effective date while the litigation proceeds. We will continue to monitor and update you on these and other significant developments.

If you have any questions regarding this issue, please contact Aaron Granger at 614.462.2312 or agranger@szd.com or any member of the Labor and Employment Practice Group.

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