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## ALERT: NLRB Approves Rule Allowing for Quicker Union Elections

By John P. Rodgers

In a party-line vote, the National Labor Relations Board ("NLRB") approved a scaled-back measure Wednesday (November 30, 2011) to streamline the union election process, which will likely allow employees to unionize more quickly. The approved resolution, which still must receive a final vote before becoming a rule, was a fairly-tempered proposal compared to the sweeping changes put forward in the *Federal Register* this summer.

The text of the rule has yet to be finalized, but one of the more noteworthy changes is the elimination of pre-election appeals to the NLRB which would streamline the voting process. Also, the proposal limits the issues that can be argued before a pre-election hearing officer. Originally, the proposed rule required employers to provide the voter list within two days of filing the petition. That proposal was dropped, however, from the approved measure. The current seven-working-day rule is still in effect.

NLRB Chairman Mark Pearce, a Democrat, said his proposal would only apply to contested elections and would reduce unnecessary litigation by "limiting subjects that can be raised in a pre-election hearing to those that are directly relevant to the election." In addition, Pearce said his proposal would "postpon[e] any election-related appeals to the Board until after the election."

"The amendments would apply to the minority of elections which are held up by needless litigation and disputes which need not be resolved prior to an election," Pearce said in a prepared statement. "In these contested elections, employees have to wait an average of 101 days to cast a ballot. And as several employees testified at our hearing in July, that period can be disruptive and painful for all involved."

While Pearce says workers have to wait an average of 101 days in contested elections to vote and about 38 days in "agreed-to" elections, business groups and Congressional Republicans have stated that the resolution could leave only 10 days between the filing of the petition and the election. The proposal passed Wednesday was a revised, scaled-back measure that will *shorten* the time period from petition to election, but will make a period as brief as 10 days highly unlikely. The effects of the revised rule remain to be seen when final action is taken on the proposal, which is expected later this year while the NLRB still has a quorum of three members.

Specifically, the approved resolution would make the following changes, according to the NLRB:

- In a pre-election hearing to determine questions of representation to be resolved by an election, the proposal would give the hearing officer authority to restrict the hearing to questions relating to whether an election should be held. Currently, parties can raise issues that are not related to whether an election should be held.
- The resolution would give the hearing officer authority to limit post-hearing briefing. Currently, parties may file briefs after the hearing.
- The resolution would eliminate pre-election requests for review to the NLRB. Currently, appeals concerning pre-election issues have to be filed before the election. Under the new rule, appeals to the NLRB on pre-election issues and the conduct of the election are consolidated into one appeal after the votes have been cast.
- The resolution eliminates a 25-day waiting period for pre-election appeals to the NLRB.
- The resolution limits the "circumstances in which a request for special permission to appeal to the [NLRB] would be granted."
- The rule would give the NLRB "discretion to hear and decide any appeals to the election process, whether they concern pre-election or post-election issues."

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Previously proposed amendments that were excluded from the scaled-back proposal included the following requirements that:

- Petitions must be electronically filed;
- Hearings must be set for seven days after service of notice of the hearing;
- The employer must file a comprehensive "statement of position";
- Email addresses and phone numbers must be included in the voter list; and
- Voter lists must be filed within two working days after an election is granted.

The NLRB's sole Republican, Brian Hayes, had toyed with the idea of resigning from the NLRB, which would have prevented the panel from having a quorum and therefore stopped it from voting on the measure. In the end though, Hayes said he did not want to be "obstructionist." Hayes said the "net effect" of the new rule will be a condensed time period between petition to the NLRB and an election, a time period "in which many are deprived of the opportunity for a meaningful discussion on collective bargaining."

Echoing other business groups, the U.S. Chamber of Commerce says the new rule will cause "ambush elections" that would not allow employers adequate time to confer with their employees regarding unionization, according to a news report.

Labor groups were not overly pleased with the new rule, either. Elizabeth Bunn, organizing director of the AFL-CIO, said that the new rule will make "modest improvements." "It will not make the rules actually fair," Bunn said in a *Bloomberg News* report. "All it will do is reduce some of the most egregious tactics."

Nevertheless, Republicans in the U.S. House passed a bill Wednesday that would delay any vote on a union for at least 35 days after a petition for an election is filed. The bill, however, is not expected to get through the Democratically-controlled U.S. Senate.

If you have any questions regarding the NLRB's approved rule, please contact [John P. Rodgers](#) or any of the other attorneys in the [Labor and Employment Practice Group](#) at Bradley Arant Boult Cummings LLP.

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