

November 22, 2011

### *NLRB Vote Scheduled for Changes to Union Election Rules*

On November 30, 2011, the National Labor Relations Board (“NLRB” or “Board”) plans to vote on whether to adopt changes to union representation elections that were proposed earlier this year. Although the changes were initially proposed with the intent “to reduce unnecessary litigation, streamline pre- and post-election procedures, and facilitate the use of electronic communications and document filing,” the proposed final rule will be “limited to several provisions designed to reduce unnecessary litigation.” However, the Board has not disclosed which provisions of the proposed rule that may include.

In representation cases, the NLRB conducts an election whereby employees decide whether they want to be represented for purposes of collective bargaining with their employer. The process begins when an election petition is filed with the NLRB to form or join a union, or decertify an existing union. After the petition is filed, the NLRB conducts a hearing to determine whether a question of representation exists. If such a question exists, the NLRB conducts an election by secret ballot to answer the question.

The following proposed rules, which have been characterized as “an unprecedented and sweeping series of changes to the Board’s representation election procedures,” may be adopted, in some form, in the final rule:

- Disclosure of Employee Phone Numbers and E-mail Addresses

In addition to disclosing each bargaining unit employee’s name and home address to the NLRB regional director, employers would be required to disclose available telephone numbers and email addresses, work location, shift, and classification of each eligible voter.

- Defer Challenges to Eligibility and Inclusion Until After Election

Under the proposed rules, any dispute involving less than 20 percent of the bargaining unit would be deferred until after the election.

- Require Position Statements from Employers

The proposed rules would require an employer to complete a statement of position that includes the employer’s view on: the Board’s jurisdiction, the appropriateness of the proposed bargaining unit, challenges to voter eligibility, and any other issues the employer intends to raise at the hearing.

- Limit Board Review Until After Election

In addition to consolidating the Board’s review of a regional director’s determinations into a single, post-election proceeding, the proposed rules would make post-election Board review discretionary rather than mandatory.

Although the proposed rules do not establish firm timelines or election deadlines, one member of the Board estimates that the time from petition to election under the proposed rules will be reduced to 10 to 21 days. As a result, employers will have little time to conduct a campaign against union representation after a petition is filed.

The current composition of the Board suggests that a final rule will be approved by two members, over a strong dissenting vote by one member. Board Member Hayes dissented from the proposed rules on several grounds when they were initially issued. Also, in a letter addressed to the Chairman of the Committee on Education and the Workforce, Member Hayes alleged that the process by which the Board seeks to implement the rules “would contravene long-standing Board tradition and the Board’s own internal operating procedures.”

We will provide an update after the Board’s vote on November 30, 2011.

If you have any questions regarding the proposed rules, please contact your Butzel Long attorney or the authors of this Client Alert.

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