

NLRB Quickie Elections

January 9, 2012

The National Labor Relations Board has published its Final Rule on the “New” Representation Election Procedures, which deprives, in the minds of many, statutory rights under the National Labor Relations Act.

The Amendments, which appear below, show the shameless bias of this Agency against employers. The Amendments, with few minor exceptions, degrade rights and opportunities that Employers have utilized in the last 75 years to assure a fair resolution of issues in union representation elections. Simply put, the Amendments, which become a Final Rule to be implemented in April, 2012, were jammed through by the current Board members as a “Christmas gift” to unions.

Amendments contained in the Final Rule on Election Procedures, December 22, 2011

- Amend § 102.64 to expressly construe Section 9(c) of the Act and to state that the statutory purpose of a pre-election hearing is to determine if a question of representation exists.
- Amend § 102.66(a) and eliminate § 101.20(c) (along with all of Part 101, Subpart C) to ensure that hearing officers presiding over pre-election hearings have the authority to limit the presentation of evidence to that which supports a party’s contentions and is relevant to the existence of a question concerning representation.
- Amend § 102.66(d) to afford hearing officers presiding over pre-election hearings discretion over the filing of post-hearing briefs, including over the subjects to be addressed and the time for filing.
- Amend §§ 102.67 and 102.69 to eliminate the parties’ right to file a pre-election request for review of a regional director’s decision and direction of election, and instead to defer all requests for Board review until after the election, when any such request can be consolidated with a request for review of any post-election rulings.
- Eliminate the recommendation in § 101.21(d) (as stated, along with all of Part 101, Subpart C) that the regional director should ordinarily not schedule an election sooner than 25 days after the decision and direction of election in order to give the Board an opportunity to rule on a pre-election request for review.
- Amend § 102.65 to make explicit and narrow the circumstances under which a request for special permission to appeal to the Board will be granted.
- Amend §§ 102.62(b) and 102.69 to create a uniform procedure for resolving election objections and potentially outcome-determinative challenges in stipulated and directed election cases and to provide that Board review of regional directors’ resolution of such disputes is discretionary.
- Eliminate part 101, subpart C of Board regulations, which is redundant.
- The remainder of the amendments merely conform other sections of the Board’s Rules and Regulations to the eight amendments described above.

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Time will tell either via legislative action or judicial review whether or not this Final Rule will be implemented as anticipated. There is no doubt, though, the NLRB, as is typical with all other agencies under this Administration, has kicked the can down the road by virtually assuring that all decisions related to this subject will be decided via the U.S. Appellate Courts.

Best regards,



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