



NLRB Moves Toward Changes in Union Election Rules

On November 30, 2011, the National Labor Relations Board in a 2-to-1 vote approved a resolution to amend its union election process. The proposed changes are largely designed to speed up the election process. The Board is expected to issue a final rule along with an updated description of the Board's processes by year-end.

Background

Section 7 of the National Labor Relations Act (NLRA) gives employees the right to bargain collectively through their chosen representatives and to refrain from such activity. The NLRA authorizes the National Labor Relations Board (NLRB or Board) to resolve questions about union representation by conducting a secret ballot election. The NLRB has established standard procedures in representation cases through its issuance of rules, regulations, and internal policies.

On June 22, 2011, a divided NLRB proposed broad changes to the current election process. The changes put forward in a Notice of Proposed Rulemaking ([NPRM](#)) would alter the scheduling and scope of pre-election hearings, voter lists, resolution of eligibility and unit inclusion questions, and the Board's appeal process. The proposed changes also would accelerate the election timeline largely by deferring litigation of voter eligibility issues until after the election and eliminating pre-election requests for Board review of disputed issues. (See our August 24, 2011 [For Your Information](#).)

The Board Resolution

On November 30, 2011, the National Labor Relations Board in a 2-to-1 vote approved [Resolution No. 2011-1](#) to amend the NLRB election process by adopting some of the changes proposed in the NPRM. Before any changes can be implemented, the Board must draft, approve and publish a final rule containing final language detailing the amendments to the Board's election rules and regulations. Because the expiration of Board Member Craig Becker's recess appointment when the current Congress adjourns will leave the Board without a three-member quorum, the Board is expected to act quickly.

According to the Board's [explanation](#), the final rule will include six procedural amendments to the Board's rules and regulations. Aimed at reducing delays and unnecessary litigation in election cases, the amendments would:

- Authorize the NLRB hearing officer to limit pre-election hearings to matters relevant to the question of whether there is a "question of representation" to be resolved by an election;
- Authorize the NLRB hearing officer to decide whether to permit post-hearing briefs;

- Consolidate currently separate pre- and post-election appeals into a single post-election procedure;
- End the current practice of delaying the scheduling of elections to permit time for a pre-election appeal;
- Narrow the circumstances in which a request for special permission to appeal to the Board will be granted; and
- Make Board review of a regional director's or judge's disposition of post-election disputes discretionary after both stipulated and directed elections.

Although the amendments approved by the Board resolution reflect a scaled-back version of the changes proposed last June, the Board made clear that it would continue to consider other changes proposed in the NPRM for future action. Among the more controversial proposals the Board still may consider are:

- Allowing the electronic filing of representation petitions;
- Requiring pre-election hearings within seven days after service of the notice of hearing;
- Requiring the employer to file a statement of position by the hearing date and precluding the employer from raising any issues not in the position statement;
- Requiring employee email addresses and telephone numbers on the voter list; and
- Reducing the period to file the voter list from seven to two days.

BUCK COMMENT. *If, as expected, the Board issues a final rule that adopts the changes to the election rules set out in Resolution No. 2011-1 before it loses a quorum, the Board will not be able to make any further changes until at least three of its five seats are filled. When that may occur remains unclear.*

Conclusion

While not unexpected, the Board's adoption of many of the changes proposed earlier this year takes a significant step toward changing the representation election process for most private sector employers, employees, and labor organizations. If the procedural amendments to the Board's rules and regulations go into effect, union elections will be conducted more quickly in many cases and the time employers have to engage employees about unionization and bargaining prior to an election will be limited. Employers should continue to closely monitor the rulemaking process as it moves forward, and consider whether any adjustments in their labor, employee relations, or communications strategies may be appropriate.

Buck's consultants would be pleased to review with you the proposed changes to the election process, and will continue to update you on further developments.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.