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## **\*\* EMPLOYMENT LAW ALERT \*\***

More News From The National Labor Relations Board

By: S. Whitney Rahman

### **NLRB Adopts Changes To Shorten Election Period**

As expected, the National Labor Relations Board has adopted a final rule implementing changes to the election procedure. The final rule was adopted on December 22, 2011, and is effective as of April 30, 2012. The Board had proposed a rule with numerous changes to the election procedures, as we reported to you in an Employment Law Alert dated July 1, 2011. In November, the Board approved limited changes, so that a final rule could be implemented prior to the end of the year. At that time, it was not clear whether the Board would continue to have a quorum after December 31, 2011.

The final rule, while not as sweeping as the proposed rule, still will make it more difficult for employers to be able to mount effective campaigns to counter union election campaigns. The major components of the final regulation are: (1) limiting the purpose of the pre-election hearing to determining if a question of representation exists; (2) allowing hearing officers to limit the presentation of evidence at pre-election hearings; (3) giving hearing officers at pre-election hearing discretion as to whether matters should be briefed, what matters may be briefed, and the time for filing briefs; (4) eliminating the recommendation in the current regulations that an election ordinarily should not be scheduled sooner than 25 days after the decision in the pre-election hearing, in order to given the Board the opportunity to rule on a pre-election request for review; (5) narrowing the circumstances in which appeal to the Board will be granted from the pre-election decision; (6) creating a uniform procedure to resolve election objections, and making Board review discretionary only.

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The final rule does not address certain items that were present in the proposed rule, including: (1) a requirement for electronic filing of petitions; (2) a requirement that hearings be set for 7 days after service of the notice of hearing; (3) the requirement of a statement of position filing; (4) the inclusion of e-mail addresses and telephone numbers in the voter list; and (5) changing the time to file the voter list from 7 to 2 work days.

Board Chairman Mark Gaston Pearce describes the rule as being “about giving all employees who have petitioned for an election the right to vote in a timely manner and without the impediment of needless litigation.” Employer groups disagree, indicating that the rule is designed to shorten election periods in order to stifle employers from mounting campaigns against the union seeking an election, and therefore paving an easier path for union success during elections.

### **NLRB Postpones Date To Post Rights**

On December 23, 2011, the Board agreed to postpone the effective date to post the notice of employee rights. We previously reported to you about posting the notice of rights under the National Labor Relations Act in Employment Law Alerts dated September 16, 2011 and October 6, 2011. Prior to the new postponement, the effective date was to be January 31, 2011. This postponement pushes that date back to April 30, 2012. The postponement came about because of pending legislation challenging the rule.

***\*\* This alert should neither be construed as legal advice, nor as lobbying of any sort for or against these Board rules and decisions. \*\****