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****EMPLOYMENT LAW ALERT****

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NLRB's Proposed Regulations Change Union Election Landscape

By: S. Whitney Rahman

In a move sure to be cheered by unions, the National Labor Relations Board ("NLRB") has proposed sweeping changes to its processes for union elections.

The most important change may be that, under the proposed rules, most issues of voter eligibility would be deferred until after an election, rather than being litigated and decided prior to the election. The Board reasons that if a majority of employees vote against representation, the disputed eligibility questions are moot. If a majority of employees choose to be represented, the Board believes that either the parties will be able to resolve the resulting unit placement questions in the course of bargaining, or, if they cannot resolve the issues, either party can file a unit clarification petition to bring the issue back to the Board.

The Board proposes the following additional changes as well:

- Requiring employees to provide a voter list in 2 days rather than 7 days;
- Requiring the voter list to be provided electronically in most cases;
- Requiring that the voter list contain telephone numbers and e-mail addresses;

- Requiring that the voter list provide employees' work location, job classification and shift.
- Moving the pre-election hearing date up to begin seven days after a hearing notice has been served;
- Requiring all issues to be stated in a position statement by the start of the hearing or the issues will be waived;
- Eliminating the right to file post-hearing briefs;
- Eliminating pre-election review by the Board; and
- Making Board review of post-election decision discretionary rather than mandatory;

All of these changes are designed to streamline the election process. While elections typically take about 56 days under the current rules, the proposed regulations could trim that time by more than one month. It appears that the Board is trying to accomplish by rule-making what Congress was unable to do when it failed to pass the Employee Free Choice Act ("EFCA"). The lone Board member who dissented from the proposed rules stated: "In truth, the 'problem,' which my colleagues seek to address through these rule revisions, is not that the representation election process generally takes too long. It is that unions are not winning more elections."

The NLRB has produced a fact sheet outlining the proposed changes. This document is available at <http://www.nlr.gov/node/525>.

The Board is accepting comments on its proposed rules until August 22, 2011.

Comments can be submitted through <http://www.regulations.gov>. Search for "documents open for

comment” and use key words like “National Labor Relations Board” or “representation case procedures” to find documents accepting comments. Then follow the instructions for submitting comments.

WHAT THIS MEANS FOR YOU

If your company is not unionized, it will be more important than ever to be vigilant about pursuing employee best practices to avoid unionization. Employers simply will not have much time during an election campaign to ensure that employees understand the Company’s position on the issues.

If you have any questions about this or any other labor or employment matter, please call S. Whitney Rahman or John W. Roland at 610-372-5588.