

PUBLICATION

Give 'Em an Inch: NLRB Passes Election Resolution

December 2, 2011

On November 30, 2011, the National Labor Relations Board (NLRB or Board) took another step in the Board's effort to aid organized labor in union election/representation cases. The Board passed a resolution consisting of six procedural amendments that, according to NLRB Chairman Mark Pearce, will reduce "unnecessary litigation" in election cases before the Board which will, in turn, speed up union elections in some cases. A final Rule must still be published and voted on by the Board before any of the amendments become law.

What are the "Amendments"?

- Amendments 1 and 2 give the NLRB Hearing Officer authority to limit a pre-election hearing to matters relevant to the question of whether an election should be held and authorizes the Hearing Officer to decide whether to permit briefing on those matters.
- Amendments 3, 4 and 5 will prohibit most appeals of the pre-election hearing which will now be a single post-election procedure. This will effectively end the delay caused by pre-election appeals. Special permission to appeal a pre-election hearing issue may still be granted but only in extraordinary circumstances.
- Amendment 6 gives the Board discretion to hear and decide any appeals to the election process whether pre- or post-election.

Although the resolution is substantially narrower than what was proposed in June of 2011, there is no indication that the Board is giving up on its "speedy election" proposals. It has merely tabled those proposals for future consideration.

The lone Republican member of the Board, Brian Hayes, opposed the resolution, warning against issuing a final Rule without the support of at least three NLRB members (the full NLRB consists of five members). In addition, Hayes noted that currently the median time for an election is 38 days with 95% of elections held in 56 days or less. The remaining 5% of elections which exceed 56 days, according to statistics compiled by the NLRB's general counsel, are the result of union "blocking charges."

Nevertheless, with this resolution, the NLRB seeks to shorten the time between the filing of a petition by a union for a secret ballot election to the holding of an election, giving the employer less time to campaign. Thus, no longer can management ignore the causes of unionization thinking that the problems can be addressed once the company is aware that a union is trying to organize its employees.

The time to act is now.

For an employer to believe that it is aware of its employees' loyalty to and respect for its managers and supervisors may give an employer a false sense of security. That is why Baker Donelson recommends that a union vulnerability audit be conducted in your facilities before a union election petition is filed. Remaining union-free requires constant vigilance, now more than ever.

Questions for employers to consider.

- How well do you understand and appreciate the human relations environment at your facilities?
- What do employees feel are the positive aspects of working at your company? What are the most commonly heard complaints?
- What is the best thing about working at your facility and the most negative aspect of it?
- What issues would a union organizer use at your facility to achieve unionization?
- How do employees view your policies and practices? How comprehensive are your communications to employees? What is management's credibility?

These are all critical issues that can determine whether or not your facility is vulnerable to a union organizing attempt. As a result of the push to turn the passed resolution into a final Rule, management will not have much breathing room before an election in order to "fix the problems."

Baker Donelson recommends that the time to act is now.

Should you have any questions regarding how these amendments could potentially affect your company, or any other labor issue, please contact your Baker Donelson attorney.