



## Legal Alert: NLRB Approves Changes to Speed Up Election Process

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**Executive Summary:** The National Labor Relations Board (NLRB) has announced that it will approve six amendments to the NLRB election process, which will ultimately result in a shorter time period between the filing of an election petition and the date of the election. With union membership in the U.S. private sector at an all-time low of 6.9%, this action by the Board majority is an attempt to give Big Labor what it wants: quicker elections so employers are denied a meaningful opportunity to educate employees on the risks and disadvantages of union representation. Companies can expect unions to seek to take advantage of these new election processes.

On December 1, 2011, the NLRB announced that it has voted 2-1 to proceed with some, but not all, of the amendments to its election procedure that were published in the *Federal Register* on June 22, 2011. As a result of the vote, the Board will draft a final rule containing the six amendments, which the Board claims will "reduce delays and unnecessary litigation in the pre-election process."

Although the final language of the rule has not been drafted, the amendments make the following changes:

- Give the hearing officer authority to limit pre-election hearings to the issue of whether a question of representation exists that should be resolved by an election. Issues such as the eligibility of voters will be determined after the election. Additionally, under the new rule, post-hearing briefs, which are currently permitted, will be allowed only at the discretion of the hearing officer.
- Eliminate pre-election appeals by consolidating pre- and post-election appeals into a single post-election procedure. The amendments also narrow the circumstances in which a request for special permission to appeal to the Board prior to the election will be granted. Such permission will be granted only in extraordinary circumstances when it appears that the issue addressed in the appeal would otherwise evade review. (Board review will remain available following the election on all issues for which permission to appeal was denied or not sought.)
- Provide that the Board's review of a regional director's or judge's disposition of post-election disputes is discretionary in both stipulated and directed elections.
- Eliminate the procedure of not scheduling a vote until 25 days after a

Direction of Election to permit the Board to rule on any requests for review.

***Amendments Not Included in the Board's Action***

The Board did not vote on some of the more controversial proposed amendments, including:

- permitting the electronic filing of petitions,
- requiring that a hearing be set for seven days after service of the notice of hearing,
- requiring that the employer file a statement of position no later than the date of the hearing and precluding the employer from raising any issues omitted from the position statement,
- requiring that e-mail addresses and telephone numbers be included on the voter list, and
- changing the period for filing the voter list from seven to two days.

An *Explanation of Resolution* posted on the Board's web site at <https://www.nlr.gov/publications/rules-regulations/notice-proposed-rulemaking/proposed-amendments-nlr-election-rules-an>, states that the possibility that the Board will lose a quorum at the end of the current congressional session prompted the Chairman to propose a vote on the scaled-back version of the proposed amendments. However, the *Explanation* also states that the remaining proposed amendments will remain under consideration for possible future action.

***Employers' Bottom Line:***

The Board's recent action makes it more important than ever for employers to take steps now to become aware of and address any workplace issues that could result in employee unrest and make the employer vulnerable to union organizing attempts. Ford & Harrison attorneys and F&H Solutions group consultants can assist you in "taking the temperature" of your workplace and developing a plan of action to address any issues that may be causing employee dissatisfaction.

If you have any questions regarding this Alert or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work.