

NLRB ELECTION RULE APPROVED EFFECTIVE APRIL 30, 2012

On December 21, 2011, the National Labor Relations Board adopted a final rule amending its election case procedures to reduce unnecessary litigation and delays. The rule will be published in the Federal Register on Thursday, December 22, 2011 and is due to take effect on **April 30, 2012**.

THE RULE WILL SPEED UP UNION ELECTIONS

This new rule will have the practical effect of shortening the time it takes from the filing of a petition to the actual date of the secret ballot election conducted by the NLRB. Private employers will be under a great deal of pressure to effectively get their message out prior to an election. All of this suggests that private employers should begin now to assess their vulnerability to possible union activity and to take action to educate management and supervision of their rights and responsibilities.

The rule is primarily focused on procedures followed by the NLRB in the minority of cases in which parties can't agree on issues such as whether the employees covered by the election petition are an appropriate voting group. In such cases, the matter goes to a hearing in a regional office and the NLRB Regional Director decides the question and sets the election.

Going forward, the regional hearings will be expressly limited to issues relevant to the question of whether an election should be conducted. The hearing officer will have the authority to limit testimony to relevant issues and to decide whether or not to accept post-hearing briefs.

Also, all appeals of regional director decisions to the Board will be consolidated into a single post-election request for review. Parties can currently appeal regional director decisions to the Board at multiple stages in the process.

In addition, the rule makes all Board review of Regional Directors' decisions discretionary, leaving more final decisions in the hands of career civil servants with long experience supervising elections.

The amendments to the election case procedures in the new rule were drawn from a more comprehensive [proposal](#) put forward by the Board in June. More than 65,000 comments were submitted following publication of the broader proposal in the Federal Register. In a discussion introducing the new rule, the Board majority explained that it was holding for further deliberation parts of that proposal that had generated the most debate while moving ahead with parts considered relatively "less controversial."

We will be providing further guidance as the **April 30, 2012** effective date approaches.

Click [here](#) to read the final rule and introduction and [here](#) to read a description of the amendments.

NLRB EMPLOYEE RIGHTS POSTER DELAYED AGAIN?

On another note, a hearing was held this past Monday in federal court in Washington D.C. on the legality of the NLRB's requirement that most private employers post a Notice of Employee Rights beginning January 31, 2012. At the conclusion of the hearing, the federal judge asked the NLRB to postpone the notice posting requirement as she took the case under advisement. It appears from that comment that private employers may not have to post the notice on January 31, 2012 after all. We will keep you up to date on this development as well.

Should you have questions, please contact your regular Hall Render attorney or a member of our Employment and Labor Section.