NLRB Votes to Change Representation Election Proceedings by J. Mark Baird

Article published on December 19th 2011 | Business

In another significant, recent development, the National Labor Relations Board (NLRB) which keeps an eye on unfair labor practices has voted to change its rules regarding representation election proceedings. Representation election proceedings are elections in which employees of a company vote on whether or not they wish to be represented by a particular labor union. The NLRB is responsible for administering such proceedings. By making the changes outlined below, the NLRB voted to shorten the time frame between the filing of an election petition and the actual representation vote of the employees. The new rules will likely make it easier for unions to win representation elections and more difficult for employers to communicate with employees prior to the vote.

Specifically, the NLRB resolved to prepare a final rule to be published in the Federal Register that makes the following key changes to existing representation election procedures:

First, current procedures providing for pre-election appeals to the NLRB from the actions of the Regional Director on the election petition will be almost entirely eliminated. The new rules will provide for a single, discretionary appeal of pre-election and post-election issues after the votes are cast. Only a narrow avenue for pre-election appeals will remain: a pre-election appeal to the Board will be allowed on those issues that would otherwise escape Board review entirely if not raised at that time.

Second, current requirements that a representation vote by the employees cannot be held sooner than twenty-five (25) days after the Board's Regional Director issues a â€œDirection of Electionâ€• (an NLRB Order directing that the representation vote will occur and providing guidance regarding how it will occur) will be eliminated. This generally means that elections will be held sooner after the Direction of Election is issued than is typically the case under the old rules.

Third, the Board will clarify that pre-election hearings will be held only to determine whether a question concerning representation exists. At the hearing, the hearing officer has authority to exclude evidence that does not have relevance to a genuine issue of fact material to that issue. As a result, many issues of individual voter eligibility (as opposed to voting unit composition) may be deferred to the post-election procedures rather than litigated prior to the vote. The parties will only have a discretionary right to file a post-hearing brief.

Some of the more controversial provisions of the original proposed rule were not adopted â€“ for the time being. These include: (1) the requirement that a hearing be held within seven days of the filing of a union's representation petition; (2) permitting the union's petition to be filed electronically rather than filing by hand or regular mail; (3) the requirement that the employer prepare and file a comprehensive "statement of position" on the union's election petition no later than the date of the hearing, with any other issues being waived if omitted from the position statement; (4) the requirement that unions be given employees' email addresses and telephone numbers prior to the election (as opposed to merely a list of eligible voters with the employees' full name and residential address); and (5) the requirement that the voter eligibility list be given to the union within two work days of the Direction of Election instead of the current rule allowing seven work days.

Even though some of the more controversial provisions were omitted from the proposed rule, it is clear that elections will now be held more quickly after the election petition is filed, although the precise time frames will differ in each case.

The NLRB will proceed to draft a final rule and will "defer the remainder of the proposed rule for further consideration." This means that the more onerous parts of the proposed rule will likely be considered at a later time.

Article Source:
http://www.articleside.com/business-articles/nlrb-votes-to-change-representation-election-proceedings.htm - Article Side

J. Mark Baird - About Author:
J. Mark Baird and Beth Doherty Quinn, the a employment law attorneys at Baird Quinn, LLC have practiced law for more than 25 years and 15 years, respectively, with an emphasis on employment law and labor-management. They have extensive experience litigating employment law matters, including discrimination, harassment, a unlawful termination, wage and hour, retaliation, unfair labor practice, non-compete/employee loyalty, and breach of contract. They also litigate commercial fraud matters. Not only have they represented clients before a variety of administrative agencies and courts, Mr. Baird and Ms. Doherty Quinn have conducted numerous seminars, such as seminars on ADA compliance, and in-house training for clients regarding sexual and a employer harassment and other Title VII discrimination issues as well.

Article Keywords:
employment lawyer, employment law attorneys , employment discrimination lawyer, wrongful termination attorney, denver law firms

You can find more free articles on Article Side. Sign up today and share your knowledge to the community! It is completely FREE!