

# THE NATIONAL LABOR RELATIONS BOARD ADOPTS NEW ELECTION RULES

*Labor & Employment Alert*  
February 17, 2012

In December 2011, a bitterly divided National Labor Relations Board (NLRB) amended its election procedures. The NLRB announced that the new procedures will eliminate “unnecessary, expensive, and time-consuming litigation for the Board and all parties.” But as some observers have recognized, the new procedures will effectively reduce the amount of information available to employees prior to an election, the time available for employees to make an informed choice, and an employer’s ability to express legitimate views regarding collective bargaining.

The new procedures substantially limit the issues that can be litigated during the pre-election stage. Under present election rules, the scope of the bargaining unit and voter-eligibility issues, such as the status of supervisory employees, may be resolved through a pre-election hearing. Resolution of these issues before the election is critical to employers because it establishes the status of employees as either employees or supervisors, thereby enabling the employer to openly strategize and communicate with its supervisors about the union’s campaign. Under the new procedures, these status issues will no longer be determined before the election, significantly impeding the ability of employers to communicate with their employees.

Several business groups have filed lawsuits challenging the legality of the amendments and have requested preliminary injunctions to bar enforcement of the new procedures. Those cases pending, the new election procedures remain scheduled to take effect on April 30, 2012. To prepare, employers should begin considering bargaining unit issues, educating supervisors about union organizing, and preparing pre and post-petition plans.

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