New Rules Favor Unions

New rules on union organizing campaigns issued by the National Labor Relations Board went into effect April 30, 2012. For employers who wish to avoid a union organizing campaign, they are all bad. The timetable of union organization, from the filing of a petition to the election, has been significantly reduced and compromises employers’ ability to properly inform and educate their employees to resist a union campaign. New rules require posting of employer labor rights and permit unions to target chosen segments of a workforce at work facilities. It is important for employers that might be vulnerable to union organization to be aware of these changes, prepare themselves and have a strategy to deal with it. Resources and an informative discussion on this topic are available from Permanent Solutions Labor Consultants, which advises employers on ways to deal with the threat of union organization, and may be accessed through the following links:

http://www.pslabor.com/
http://www.youtube.com/watch?v=5NuA-HtD3oM

You should take time to review the discussion and your organization’s present position and vulnerability to union organization. You might want to take the information and inform your management of the new rules and circumstances and review your strategy for dealing with unions.

- Lewis Cheney, BSHRM Legislative and Legal Affairs Committee

NOTES

Three Changes

1. Expedited election process
2. Posting Rule
3. Micro Union Rule

No drastic change in labor organizing federal laws since Landrum Griffin in 1959
Process and timetable of petitions, campaign and elections has been in place for some time
Effectively, from petition filing to election date is about a 42 to 46 day process
That timetable is important to enable employer to educate employees about implications and considerations of unionization
But it is about to change

After 4/30/2012, new changes in process and timetable:

- No hearings with the NLRB
- No briefs to be submitted
- No 25 day waiting period as before
- The local regional director makes determination and can order an election within 5 to 15 days of the petition filing

Rick: unions like to work on employees before filing petition with NLRB
Unions use an emotional appeal on employee, based less on facts
Unions depend on “ignorant workers” and lie to employees
They can and do misrepresent facts and try to get employees upset and agitated
They always take a subtle approach where the company does not know what is happening
They use sneaky and fraudulent tactics like false EEOC charges and poison relationships between company supervisors and employees. Employers need a chance to respond.

The reduced timetable greatly compromises employer ability to deal with the union. The U.S. Chamber of Commerce termed the changes a “union ambush”, harming employer due process rights.

Posting Rule goes into effect 4/30/2012. NLRB requires employers to post Labor Rights to employees of their organizing and bargaining rights.

Micro Union rule
Unions can organize smaller separate employee groups in one work facility instead of one common group.
Greatly advantageous to unions and reverses previous ruling
Unions are more successful at organizing smaller worker units.
They can “cherry pick” who they want to organize and avoid conflicts of interest between worker groups.
It makes it much more difficult for employers to challenge the drive and educate employees.
The prospect of multiple unions in one facility would make it much harder for the company to manage.

Unions may consolidate to target particular industries or regions, as well as individual employers.
Can anticipate increase in union organizing activity.
It will be easier and less expensive for unions to organize.
It will build on itself as unions gain power, earn more dues.

Companies should anticipate these changes and prepare to deal with them as best they can.
Unions can hold companies “hostage” because a campaign against them can be costly.
Companies do not know where they will be targeted and must defend themselves everywhere.
Now it will be that much tougher.
In tough economic times, companies may not have the resources to fight and may just give in.
Unions deliberately time their organizing campaigns when employers are struggling financially and vulnerable.
Rick suggests unions are willing to go so far as to put a company out of business, to make them an example to other resistant employers.
To hell with the employees of the company forced to go under.
That is not the union’s ultimate concern or purpose.

Companies cannot rely on internal supervisory support.
They may not be educated and may have contributed to the problems.
Questions and challenges to union organizing campaigns, addressed through briefs and hearings, now are addressed only after the election, not before.
Union victories in smaller worker units could lead to larger campaign activity.

Advice for Employers on Dealing with New Unionization Challenges

Companies must establish new practices now.
Establish and maintain a labor relations position
Understand and communicate the financial consequences of unionization
Educate management on their vulnerability to unions, their rights under NLRA, their role and responsibilities

Companies must quit denying the possibility of unions targeting them
They should have a clear understanding what they can say and do and cannot say and do in fighting a union organizing campaign
They should have a union avoidance team, which should have a goal as directed by management and a message for employees
Companies must have a clear and consistent message and communicate to their employees
They must properly educate employees on what is good about the non union status quo and why they would not want a union
It must be a positive message and relate positive aspects of the company's labor relations position
Employees must be persuaded of the purpose and benefit of remaining union free
The company must provide facts, be professional and respectful not vindictive against union sympathetic employees
The company message must include facts, opinions and experiences, which employees are most receptive to, particularly from front line supervisors
Company management must never TIPSD: threaten, interrogate, promise, spy or discriminate

The new rules are actually detrimental to employees and hinder them from getting full education on the situation, being properly informed and making an informed decision
The union will never give them the management side of the argument
It is ironic, as the new rules work against the very people the NLRB is supposed to protect
The NLRB position is employees cannot be legally misled by union propaganda before the petition
The union is "marketing" its service and not considered campaigning, even if it lies
Rick says it is criminal

The more informed and prepared a company and its employees are about unions, the less likely it will be targeted for organization by unions
Employees typically do not vote for unions, but against management
Unions are all about gaining power through money

The biggest cause of union organizing campaigns is not inadequate pay or benefits
It is poor communications, which results in frustration and anger, when workers do not understand or perceive the value of what they have and unions can slither in and poison the well
To remain union free, an employer must make communication to employees a priority and treat them with respect and consideration
Company loyal workers are the first line of defense against union organization
Loyal workers make it very difficult for unions to organize
BREAKING NEWS:

D.C. District Court Grants Injunction Temporarily Blocking Election Rule Changes

Late in the day on May 14, 2012, the U.S. District Court for the District of Columbia ruled that the National Labor Relations Board’s December 2011 decision to amend its election procedures is invalid because the Board did not have a statutorily required quorum in adopting the rule changes. See Chamber of Commerce v. NLRB (Dist. D.C., 05/14/2012). In enjoining the implementation of the rules changes, the Court stated:

According to Woody Allen, eighty percent of life is just showing up. When it comes to satisfying a quorum requirement, though, showing up is even more important than that. Indeed, it is the only thing that matters - even when the quorum is constituted electronically.

The Court went on to say that:

Two members of the Board participated in the decision to adopt the final rule, and two is simply not enough. Member Hayes cannot be counted toward the quorum merely because he held office, and his participation in earlier decisions relating to the drafting of the rule does not suffice. He need not necessarily have voted, but he had to at least show up. At the end of the day, while the Court's decision may seem unduly technical, the quorum requirement, as the Supreme Court has made clear, is no trifle.

. . . the Board lacked the authority to issue the [rule changes] and therefore, [the changes] cannot stand.

The early "line" on the Court's injunction is that it is a temporary reprieve, at best. In all probability, the Board will merely re-vote with its Democratic majority and implement the rule changes as proposed. Unless the courts strike the recess appointments to the Board, the election rule changes are here to stay.

NLRB's Quick Election Rule Struck Down by Federal Court
5/17/2012

On Tuesday, May 14, U.S. District Judge James Boasberg of the United States District Court for the District of Columbia invalidated the National Labor Relations Board’s (NLRB) recent rulemaking changing the procedures governing union elections. The rule, which became effective on April 30, has been commonly referred to as the “quick election” rule because its purpose is to shorten the period between the filing of a petition and the representation election in union organizing drives. Judge Boasberg ruled that the five-seat NLRB did not have a proper quorum when it approved the quick election rule in December 2011. In nullifying the quick election rule, union elections must proceed according to the old rules.

The Coalition for a Democratic Workplace (CDW), of which SHRM is a member, and the U.S. Chamber of Commerce brought the suit to the federal court. SHRM filed an amicus brief supporting the CDW and Chamber of Commerce challenge to the rule. SHRM has opposed the quick election rule because it would artificially and unnecessarily speed the union election process. The NLRB’s own Fiscal Year 2011 annual report revealed that the median time from a representation petition to an election was 38 days last year, and that over 91%
of all elections were conducted within 56 days of the filing of the petition. These reasonable amounts of time prior to union elections generally give employees a chance to gather the information they need to make an informed choice on representation by a labor organization.

SHRM is pleased with the court’s ruling, but the victory may be short-lived. While the NLRB must return to administering union elections according to the prior rules, it can vote to adopt the quick election rule again with a “properly constituted” quorum. The Board currently has a full contingent of five members, and thus could re-approve the rule soon.

WRITEUP

The U.S. District Court for the District of Columbia on May 14th struck down the ruling by the National Labor Relations Board which shortened the timetable of union elections. In December 2011 the NLRB issued a ruling which significantly reduced the time period from the union filing a petition to the election. This ruling was significant for its potential to compromise employer ability to contest a union organizing campaign. Now the new election timetable has been put on hold by the court ruling. The court ruled as the NLRB did not have all members present when it made its ruling, it did not have a quorum and the authority to rule as it did. This does not mean the issue is settled and the election timetable change is nullified. The NLRB may meet at a later time with full representation and issue a similar ruling, but for now employers who do not welcome the change have a reprieve.