



BREAKING NEWS

JOHN F. BOWEN LTD

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BOARD RE-ISSUES AMBUSH ELECTION RULES

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Earlier today, the National Labor Relations Board announced the re-publication of the Expedited Election Rules that would amend the Board's rules and regulations governing representation case procedures -- often referred to as the "Ambush Election Rules." The newly proposed amendments are substantively identical to the procedural changes the NLRB published on December 2, 2011 but were subsequently invalidated by the D.C. Circuit Court in United States Chamber of Commerce v. NLRB, in which the Court ruled the Board had improperly adopted the Final Rule without a validly constituted quorum. Although the Board appealed the District Court's ruling, the Board voluntarily withdrew its appeal on December 9, 2013 -- paving the way the Board to re-issue the Rules. According to a NLRB Press Release earlier today, Board Chairman Mark Gaston Pearce and Members Kent Hirozawa and Nancy Schiffer voted in favor of re-issuing the proposed rule; Board Members Philip Miscimarra and Harry Johnson dissented.

According to the NLRB, the proposed rules modify the Board's representation case procedures and are "aimed at modernizing processes, enhancing transparency and eliminating unnecessary litigation and delay" in order to enable the Board to "more effectively administer the National Labor Relations Act." The proposed changes would:

- Allow for electronic filing and transmission of election petitions and other documents;
- Ensure that employees, employers and unions receive and exchange timely information they need to understand and participate in the representation case process;
- Streamline pre- and post-election procedures to facilitate agreement and eliminate unnecessary litigation;
- Include telephone numbers and email addresses in voter lists to enable parties to the election to be able to communicate with voters using modern technology; and
- Consolidate all election-related appeals to the Board into a single post-election appeals process.

Notwithstanding the Board's professed intention to "modernize" the case representation procedures, the practical effect of the Ambush Election Rules will be to significantly shorten period between the filing of a petition and the NLRB election (to possibly as few as 10 days) - which will severely undermine the employer's ability to effectively communicate with workers regarding potential unionization.

Members of the public may submit comments on the proposed rule changes that the Board may consider when drafting and presenting its Final Rules prior to implementation. The deadline for public comments is April 7, 2014. Reply comments to the initial comments may be filed by April 14, 2014. In addition, the Board also announced that it will hold a public hearing during the week of April 7, at which members of the public may address the proposed amendments and make other suggestions for improving the Board's representation case procedures.