
The NLRB Now Allows the Filing of Authorization Cards Electronically

By William A. Moore / Sep 23, 2015

Proper evidence must be presented to the National Labor Relations Board ("NLRB") to demonstrate a sufficient "showing of interest" in order to establish there is necessary support as required by the National Labor Relations Act (the "Act") to proceed with a representation election. The purpose of the demonstration of an adequate showing of interest is to determine whether the conduct of an election will serve a useful purpose under the Act, i.e., whether there is sufficient employee interest to warrant the expenditure of the time, effort and resources of the NLRB in conducting an election for union representation. This requirement has been called an important safeguard against the potential for abuse of election procedures.

Traditionally, eligible workers in the suggested bargaining unit had to hand-sign an authorization card. These cards are then presented to the Board by the union. At least 30% of eligible employees had to physically sign authorization cards. This is no longer the case. On September 1, 2015, the Office of the General Counsel of the NLRB ("GC") issued a guidance memo on the use of electronic signatures to support a showing of interest.

Effective immediately, union representatives and employees may submit electronic signatures in support of a showing of interest. The authorization "card" can now be completed in an electronic form over the internet. The GC concludes that making new technology available in this manner will "benefit the public." While that is debatable, there is no question the new rules will ease union organizing efforts and potentially further speed up the process in favor of labor organizations.

There are several new requirements for the acceptance of electronic signatures that were not present with the old handwritten authorization cards. Submissions supported by electronic signatures must contain the following information:

- The signer's name;
- The signer's e-mail address (or other known contact information such as a social media account);
- The signer's telephone number;
- The language to which the signer has agreed (e.g., that the signer wishes to be represented by a certain labor organization for purposes of collective bargaining - or no longer wishes to be represented by a labor organization for purposes of collective bargaining);
- The name of the employer of the employee; and
- The date the electronic signature was submitted.

There are additional requirements for the party submitting electronic digital signatures (usually a union). A declaration must be submitted that identifies what electronic signature technology was used; an explanation as to how that technology ensures that the signature is that of the "signing" employee and that the employee actually "signed" the document. The declaration must also submit that the electronically transmitted information (regarding what and when the employee "signed" the "form") is the same information seen and signed by the employee. All electronic signature submissions received will be presumed to be valid.

Depending on the technology used, the submitting party may also have to submit evidence showing that after the electronic signature was obtained, the submitting party promptly transmitted a communication to the employee confirming all of the information set forth above. That transmission must be sent to the individual employee by e-mail, text message via mobile phone, social media account or other means provided by the signing employee. Any employee response made to the confirmation transmission must also be provided to the NLRB.

Submissions supported by electronic signature may include other employee information such as work location, job classification, home address and additional telephone numbers. The submissions **may not**, however, contain the dates of birth, social security numbers or other sensitive personal identifiers for any employees. Submissions with such sensitive personal identifiers are to be rejected by the NLRB and returned to the petitioner.

The combination of electronic authorization cards, the new "ambush" election rules, and the right of employees as conferred by the NLRB to use the employer's e-mail system during non-working hours to engage in union activities continues to work towards the overall effect to eliminate many checks and balances that have historically been part of the system of conducting unionization elections. Expect more union organizing efforts and more successful union elections.

Non-union employers must now recognize that current non-union status can change very quickly with little or no effective notice. It is suggested that employers who want to remain union-free, especially those in industries that are heavily unionized, should develop and maintain a union-free response plan. Recognize that among the biggest reasons that lead employees to organize is the feeling that the employer does not adequately communicate or act upon legitimate employee concerns. All employers should try to figure out ways to remain connected to employees, to understand their feelings and try to address concerns before they escalate into organizing efforts.

If you have any questions about the GC guidance memo or any other issues regarding union organizing and representation elections, please contact William Moore at (313) 965-8674, wmoore@clarkhill.com, or another member of Clark Hill's Labor & Employment Practice Group