NLRB Finalizes Rule Amendments for Union Election Procedures

By Kevin Levine / Apr 01, 2020

The National Labor Relations Board ("NLRB") finalized three amendments to its rules and regulations governing union elections under the National Labor Relations Act ("NLRA"). These amendments cover three topics and will take effect on May 31, 2020.

Elimination of "Blocking Charge" Policy

The amendments eliminate the "blocking charge" policy, under which the employees or the employer could block holding an election by filing an unfair labor practice charge. Under the new rule, elections are not blocked but results will be "impounded" for 60 days by the NLRB. This "vote-and-impound" procedure applies only to certain types of unfair labor practice charges, including those challenging the employees' petition or the employees' free and fair choice concerning their representation. If a complaint is issued in those 60 days, the ballots will continue to be impounded until there is a final determination by the NLRB. Otherwise, the ballots will be opened and counted after the 60 days. For all other unfair labor practices charges, "vote-and-impound" does not apply and the ballots will be opened and counted after the election.

Immediate Challenges to Unions Voluntarily Recognized by the Employer

The rule amendments also provide that, after an employer's voluntary recognition of a union as an exclusive bargaining representative under Section 9(a) of the NLRA, the employees can quickly petition for representation by a different union. In *Lamons Gasket Co.*, 357 NLRB 739 (2011), the NLRB reinstated a previous rule that an employer's voluntary recognition of a union would immediately bar the filing of an election petition for a reasonable time. The new amendments overturn this rule and provide that an employer that has voluntarily recognized a union under Section 9(a) must provide the impacted employees with notice of that recognition and that the employees will then have a 45-day window to petition the NLRB to recognize a different union.

Construction Industry Precedent Overturned

Section 8(f) of the NLRA permits construction industry employers to enter into an agreement with construction industry unions to cover workers without a majority of worker support. In *Staunton Fuel & Material*, 335 NLRB 717 (2001), the NLRB held that such bargaining relationships, based on contract alone, constituted voluntary recognition of the union under Section 9(a). This was significant because, as described above, voluntary recognition barred worker petitions for representation by a different union. The new amendments overturn Staunton and provide that "positive evidence" of a showing of support from a majority of employees is required for voluntary recognition under Section 9(a) and the new 45-day window for workers to file a petition.

The April 1, 2020, Federal Register containing the full text of these amendments can be viewed here. If you have any questions about these amendments, you may contact Kevin Levine or another member of Clark Hill's Labor and Employment Practice Group.

 |