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rsmedsker@JonesDay.com

July 15, 2011

Please hand deliver the following facsimile to:

- | | | |
|--|----------------|----------------|
| Name/Company: | Facsimile No.: | Telephone No.: |
| 1. Lester A. Heltzer, Executive Secretary, NLRB | (202) 273-4270 | |
| 2. Jacqueline A. Young, General Counsel FOIA Officer, NLRB | (202) 273-4275 | |

Copies distributed Operator's initials

From: R. Scott Medsker Direct Telephone No.: (202) 879-3837

JP No.: JP008786 CAM No.: 649649-605004

Send Copies To: Number of pages (including this page): 5

Re: Notice of Proposed Rulemaking regarding Representation Case Procedures, 76 FR 36812 (June 22, 2011)

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Message:

Mr. Heltzer and Ms. Young:

Please find attached a FOIA request submitted to the Board on behalf of the identified requesting parties. Please do not hesitate to contact me if you have any questions or would like to discuss the request.

Best regards,
R. Scott Medsker
JONES DAY

Please call us immediately if the facsimile you receive is incomplete or illegible. Please ask for the facsimile operator.

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002/005

JONES DAY

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July 15, 2011

VIA FACSIMILE

Lester A. Heltzer
Executive Secretary
Board FOIA Officer
Facsimile: (202) 273-4270

Jacqueline A. Young
General Counsel FOIA Officer
Facsimile: (202) 273-4275

National Labor Relations Board
1099 14th Street, NW, Room 11602
Washington, D.C. 20570-0001



Re: Notice of Proposed Rulemaking regarding Representation Case Procedures, 76 FR 36812 (June 22, 2011)

Dear Mr. Heltzer and Ms. Young:

Jones Day represents the Society for Human Resource Management ("SHRM"), the American Hospital Association ("the AHA"), and HR Policy Association regarding the above-referenced rulemaking proceeding. Additionally, Morgan, Lewis & Bockius LLP represents Coalition for a Democratic Workplace ("CDW") and Proskauer represents the United States Chamber of Commerce in the above-reference rulemaking proceeding. Finally, Benesch, Friedlander, Coplan & Aronoff represents the National Association of Manufacturers ("NAM"). In an effort to address the issues identified by the National Labor Relations Board ("NLRB" or "the Board") in its Notice of Proposed Rulemaking, 76 FR 36812 (June 22, 2011) ("NPRM"), SHRM, the AHA, HR Policy Association, CDW, the United States Chamber of Commerce, and NAM (collectively, "the requesting parties"), submit this request for documentation pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

The Notice of Proposed Rulemaking published by the Board indicates that the proposed rule is needed to avoid unnecessary delays and accelerate the holding of elections. See 76 FR 36812. As the Board noted in the NPRM, "[n]o party possesses greater knowledge of the Board's own procedures than the Board itself." *Id.* at 36829. Accordingly, the requesting parties believe that it is incumbent upon the Board to carefully and transparently review and analyze the information in the Board's possession that forms the basis of the Board's expertise. To better

JONES DAY

Mr. Lester A. Heltzer
Ms. Jacqueline A. Young
July 15, 2011
Page 2

educate themselves on the Board's procedures and be able to submit meaningful comment on the NPRM, the requesting parties submit the following FOIA requests. To the extent that the information exists in a readily available format, the requesting parties ask for such information. If the information does not exist in a readily available format, the requesting parties ask the NLRB to provide the agency records containing such information.

- A. Please provide the number of R Cases in each of Fiscal Years 2005, 2006, 2007, 2008, 2009, and 2010 in which blocking charges occurred and, for those cases, the average number of days and the median number of days between petition and election.
- B. Please provide all statistical analyses, surveys, reports or other data—if any—that the Board relied on in formulating its NPRM regarding the effect of blocking charges in delaying the holding of an election.
- C. Please provide the number of R Cases in each of Fiscal Years 2005, 2006, 2007, 2008, 2009, and 2010 in which an election was delayed by more than thirty (30) days because the Board lacked a sufficient number of Members to decide an open issue in the matter.
- D. Please provide all statistical analyses, surveys, reports or other data—if any—that the Board relied on in formulating its NPRM regarding the effect of Member turnover and Board vacancies in delaying the holding of an election.
- E. Please provide the number of cases in each of Fiscal Years 2005, 2006, 2007, 2008, 2009, and 2010 in which the Board reversed, in whole or in part, a regional director's resolution of pre-election hearing disputes.
- F. Please provide the number of cases in each of Fiscal Years 2005, 2006, 2007, 2008, 2009, and 2010 in which an election was delayed by thirty (30) days or more by pre-election hearing issues such as in *Kansas City Repertory Theatre*, 17-CA-12647, referenced in Member Hayes's dissent, 76 FR 36812, 36831 n. 76, and all documentation reflecting the reasons for the delay in such cases.
- G. Please provide all statistical analyses, surveys, reports or other data—if any—that the Board relied on in formulating its NPRM regarding cases that were delayed by thirty (30) days or more to resolve pre-election issues, such as in *Kansas City Repertory Theatre*, 17-CA-12647, referenced in Member Hayes's dissent, 76 FR 36812, 36831 n. 76.
- H. Please provide the number of cases in each of Fiscal Years 2005, 2006, 2007, 2008, 2009, and 2010 in which it took over one (1) year to resolve post-election

JONES DAY

Mr. Lester A. Heltzer
Ms. Jacqueline A. Young
July 15, 2011
Page 3

hearing issues such as *Manhattan Crowne Plaza*, 341 NLRB 619 (2004), referenced in the Board's NPRM, *see* 76 FR 36812, 36814 n. 22, and the cases cited in Member Hayes's dissent, *id.* at 36831 n. 77, and all documentation reflecting the reasons for the delay in such cases.

- I. Please provide all statistical analyses, surveys, reports or other data—if any—that the Board relied on in formulating its NPRM regarding cases in which it took more than one (1) year to resolve post-election hearing issues, such as *Manhattan Crowne Plaza*, 341 NLRB 619 (2004), referenced in the Board's NPRM, *see* 76 FR 36812, 36814 n. 22, and the cases cited in Member Hayes's dissent, *id.* at 36831 n.77.
- J. Please provide all statistical analyses, surveys, reports or other data—if any—that the Board relied on in formulating its NPRM regarding whether any internal Board practices, such as the ability of a dissenting Member to delay the issuing of an opinion, delayed the holding of an election.
- K. Please provide any other statistical analyses, surveys, reports or other data—if any—that the Board relied on in formulating its NPRM.

Please forward the requested information to all parties listed below, with an invoice directed to Roger King at the address below. Alternatively, if producing the information to multiple parties is too burdensome, please contact Mr. King to make alternative arrangements. Thank you in advance for your assistance.

Sincerely,

G. Roger King
JONES DAY
325 John H. McConnell Blvd.
Columbus, OH 43215
Ph: (614) 281.3874
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E-mail: rking@jonesday.com
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JONES DAY

Mr. Lester A. Heltzer
Ms. Jacqueline A. Young
July 15, 2011
Page 4

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Counsel for the United States Chamber of Commerce



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL

FREEDOM OF INFORMATION OFFICE
Washington, D.C. 20570

DATE: August 1, 2011

G. Roger King
Jones Day
325 John H. McConnell Blvd.
Columbus, OH 43215

Re: FOIA ID/LR-2011-0733

Dear Mr. King:

This is in response to your letter, dated July 15, 2011 and received in this Office on July 18, 2011, in which you request, pursuant to the Freedom of Information Act (FOIA), various statistics concerning R cases in Fiscal Years 2005 through 2010 and various statistical analyses, surveys, reports, or other data relied on by the Board in formulating its Notice of Proposed Rulemaking regarding representation case procedures.

A member of my staff left a phone message with your office on July 28, 2011, indicating that the fees to process your request could be approximately \$250.00.

Your request has been assigned a FOIA tracking number: LR-2011-0733. Your request is being processed.

Sincerely,

A handwritten signature in black ink that reads "Jacqueline A. Young".

Jacqueline A. Young
Freedom of Information Officer

LGK/kmb
king3.lgk.doc

bc: Chron

AUG. 3. 2011 10:16AM

NIXON PEABODY

NO. 2107 P. 2

NIXON PEABODY
ATTORNEYS AT LAW

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(202) 585-8000
Fax: (202) 585-8080

John Raudabaugh
Direct Dial: (202) 585-8100
E-Mail: jraudabaugh@nixonpeabody.com

August 3, 2011

VIA FACSIMILE

Lester A. Heltzer
Executive Secretary
Board FOIA Officer
Facsimile: (202) 273-4270

Jacqueline A. Young
General Counsel FOIA Officer
Facsimile: (202) 273-4275

National Labor Relations Board
1099 14th Street, NW, Room 11602
Washington, D.C. 20570-0001

Re: FOIA Request Regarding Representation Case Procedures
Rulemaking, 76 FR 36812 (June 22, 2011)

Dear Mr. Heltzer and Ms. Young:

On July 15, 2011, the Society for Human Resource Management, the American Hospital Association, HR Policy Association, Coalition for a Democratic Workplace, the United States Chamber of Commerce, and the National Association of Manufacturers submitted a FOIA request for documentation related to the pending rulemaking regarding representation case procedures. Nixon Peabody represents the National Federation of Independent Business ("NFIB") with respect to the Board's election procedure rulemaking. In order that NFIB can review the information requested and submit more meaningful, thoughtful comments, NFIB joins the above-listed parties in requesting the documentation.

Accordingly, when the information is produced, please produce a copy to me at the address below. In the event that the Board reaches some other arrangement with Mr. King regarding the production of information, please let me know.

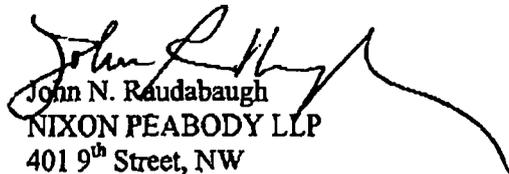


AUG. 3. 2011 10:16AM

NIXON PEABODY

NO. 2107 P. 3

Sincerely,



John N. Raudabaugh

NIXON PEABODY LLP

401 9th Street, NW

Suite 900

Washington, D.C. 20004

Ph: (202) 585.8100

Fax: (877) 568.8860

E-mail: jraudabaugh@nixonpeabody.com

Counsel for National Federation of Independent Business

VENABLE^{LLP}

575 SEVENTH STREET NW WASHINGTON, DC 20004
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August 4, 2011

Maurice Baskin

T 202-344-4823
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mbaskin@venable.com

VIA FACSIMILE

Lester A. Heltzer
Executive Secretary
Board FOIA Officer
Facsimile: (202) 273-4270

Jacqueline A. Young
General Counsel's Office
FOIA Officer
Facsimile: (202)273-4275

National Labor Relations Board
1099 14th Street, NW, Room 11602
Washington, D.C. 20570-0001



Re: FOIA Request Regarding Representation Case Procedures Rulemaking, 76 FR 36812 (June 22, 2011)

Dear Mr. Heltzer and Ms. Young:

On July 15, 2011, the Society for Human Resource Management, the American Hospital Association, HR Policy Association, Coalition for a Democratic Workplace, the United States Chamber of Commerce, and the National Association of Manufacturers submitted a FOIA request for documentation related to the pending rulemaking regarding representation case procedures. Venable LLP represents Associated Builders & Contractors, Inc., ("ABC") with respect to the Board's election procedure rulemaking. In order that ABC can review the information requested and submit more meaningful, thoughtful comments, ABC joins the above-listed parties in requesting the documentation.

Accordingly, when the information is produced, please produce a copy to me at the address below. Please advise in advance if the cost of production will exceed \$250. Also, in the event that the Board reaches some other arrangement with Mr. King regarding the production of information, please let me know.

Sincerely,

Maurice Baskin
VENABLE LLP
Counsel for Associated Builders & Contractors, Inc.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL

FREEDOM OF INFORMATION OFFICE
Washington, D.C. 20570

DATE: August 11, 2011

G. Roger King
Jones Day
325 John H. McConnell Blvd.
Columbus, OH 43215

VIA E-MAIL

Re: FOIA ID/LR-2011-0733

Dear Mr. King:

This is in response to your letter, dated July 15, 2011 and received in this Office on July 18, 2011, in which you request, pursuant to the Freedom of Information Act (FOIA), various statistics concerning R cases in Fiscal Years 2005 through 2010 and statistical analyses, surveys, reports, or other data relied on by the Board in formulating its Notice of Proposed Rulemaking regarding representation case procedures.

An interim reply was sent to you on August 1, 2011.

In response to your requests for statistics concerning R cases in Fiscal Years 2005 through 2010 (requests A, C, E, F, and H), I have attached four reports run from the Agency's Case Activity System (CATS) by the NLRB's Division of Operations-Management.

As to your request A, the report entitled "Jones Day FOIA request A" contains a summary of the number of cases blocked, the average number of days from petition to election, and the median number of days from petition to election for Fiscal Years 2005 to 2010, as well as a list for each year of all R cases in which blocking charges were filed, including case name, number, date petition filed, election type, date election held, and days from petition to election.

As to your requests C and E, the report entitled "Jones Day FOIA requests C and E" contains a list for each year of all R cases in which a request for review was filed with the Board, including case name, case number, date petition filed, date of pre-election submission to the Board, reason for submission, pre-election submission to the Board, Board's action and date, whether ballots were impounded, date of election, date of election tally, date of case closing, and closing method. CATS does not capture the information you seek regarding cases in which an election was delayed because the Board lacked a sufficient number of members to decide an open issue. Nor does it capture the information you seek regarding cases in which the Board reversed a regional director's resolution of pre-election hearing disputes. This report, however, does indicate those cases in which a request for review of a regional director's decision was granted, and it highlights in yellow all cases that were pending before the Board

- 2 -

while there were only two members. Inasmuch as FOIA applies only to "records" maintained by federal agencies, and does not require an agency to create documents or to answer questions, to the extent that your request asks the Agency to create statistics or do research in response to requests C and E, your request is denied.

As to your request F, the report entitled "Jones Day FOIA request F" contains a summary of the number of cases each year in which a Decision and Direction of Election was issued, and a list for each year of all R cases in which a pre-election hearing was held and a Decision and Direction of Election was issued, including case name, case number, date petition was filed, type and date of regional director decision, and date of election. In every case in which a hearing was held, the election took place more than 30 days after the filing of the petition.

As to your request H, the report entitled "Jones Day FOIA request H" contains a summary of the number of cases in which more than 365 days elapsed between the filing of exceptions and Board decision, and a list for each year of all R cases in which exceptions were filed, including the date exceptions were filed and date of the Board decision.

To the extent that you need copies of the documents in any of the cases listed in the above reports, such documents are located in the Regions. Under § 102.117(c)(1) of the NLRB Rules and Regulations, requests for records should be made to the office in which the requested records are located. Accordingly, please contact the respective Region(s) should you need copies of any documents related to these cases.

In response to your requests for statistical analyses, surveys, reports, or other data relied on by the Board in formulating its Notice of Proposed Rulemaking (requests B, D, G, I, J, and K), I have attached the responsive documents, as provided by the Office of the Chairman of the Board. In addition, the Board relied on data contained in the NLRB's Annual Reports for 2001-2009. These reports are available online at www.nlr.gov/annual-reports.

For the purpose of assessing fees, we have placed you in Category A, commercial use requester. This category refers to requests "from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation." NLRB Rules and Regulations, Section 102.117(d)(1)(v). Consistent with this fee category, you "will be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought." NLRB Rules and Regulations, Section 102.117(d)(2)(ii)(A). Charges for all categories of requesters are: \$3.10 per quarter-hour or portion thereof of clerical time; \$9.25 per quarter-hour or portion thereof of professional time; and 12¢ per page of photoduplication. NLRB Rules and Regulations, Section 102.117(d)(2)(i).

- 3 -

Six hours of professional time were expended in searching for and reviewing and preparing for release the requested material. Accordingly, please remit \$222.00.

To pay this amount by check or money order (do not send cash) please submit your payment along with the invoice to the NLRB's Finance Branch at the address reflected at the top of the invoice. Please make the check or money order payable to the National Labor Relations Board and **note on your payment the invoice number to insure that your payment will be properly credited**. You may also submit your payment by credit or debit card over the internet by following the instructions I have attached.

The undersigned is responsible for the above determination. To the extent you wish to appeal the determination with respect to the reports produced by the Division of Operations-Management, you may, pursuant to the NLRB Rules and Regulations, Section 102.117(c)(2)(v), file an appeal with the General Counsel, Office of Appeals, National Labor Relations Board, Washington, D.C., 20570, within 28 calendar days of the date of this letter, such period beginning to run on the calendar day after the date of this letter. Thus, the appeal must be received by the close of business at 5:00 p.m. (ET) on September 8, 2011. Questions concerning an appeal of this determination should be directed to the Office of Appeals.

To the extent you wish to appeal the determination with respect to the documents provided by the Office of the Chairman, you may, pursuant to the NLRB Rules and Regulations, Section 102.117(c)(2)(v), file an appeal with the Chairman of the Board, National Labor Relations Board, Washington, D.C., 20570, within 28 calendar days of the date of this letter, that is, on or before September 8, 2011. Questions concerning an appeal of this determination should be directed to the Office of the Chairman.

Any appeal should contain a complete statement of the reasons upon which it is based. For questions concerning this letter, please call Diane Bridge, FOIA Supervisor, at (202) 273-3851.

Sincerely,



Jacqueline A. Young
NLRB Freedom of Information Officer

cc: Andrew M. Kramer
akramer@jonesday.com

Philip A. Miscimarra
pmiscimarra@morganlewis.com

F. Curt Kirschner Jr.
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**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD**

Headquarters - GC
Legal Research - Room 10600 1099 14th St, NW
Washington, DC-20570
Phone:202.273.3845, Fax:202.273.4275

FOIA INVOICE
Date:08/11/2011
FOIA Request ID#: LR-2011-0733

TO:

G. Roger King
Jones Day
325 John H. McConnell Blvd.
Columbus, OH-43215

DOCUMENTS REQUESTED:

the number of R Cases in each in FY's 2005 - 2010 in which blocking charges occurred and, for those cases, the average number of days and the median number of days between petition and election.

DESCRIPTION	QTY.	RATE	AMOUNT
Professional Hours	6.00 hour(s)	\$9.25 /qtr/hr	\$222.00
Clerical Hours	0.00 hour(s)	\$3.10 /qtr/hr	\$0.00
Duplication Costs	0 page(s)	\$0.12 /page	\$0.00
TOTAL:			\$222.00

Please pay by credit card or ACH (electronic debit/check) at WWW.PAY.GOV. Instructions on using this feature are enclosed with this invoice. If you are unable to pay by credit card or ACH, please submit payment by check or money order. Do not send cash.

Make all checks payable to the National Labor Relations Board.

Please include the FOIA REQUEST ID [LR-2011-0733] on your check or money order and return your payment with the enclosed invoice. Checks submitted without a FOIA Request ID [LR-2011-0733] may not be credited to the requestor's account.

The Agency may refuse to fulfill subsequent FOIA requests until payment of outstanding charges is verified.

**INSTRUCTIONS FOR PAYING FOIA FEES
BY CREDIT CARD OVER THE INTERNET**

Step 1. After you have been invoiced by the NLRB for your FOIA request go to www.pay.gov (a secure website provided by the US Treasury).

Step 2. Check the left side of the screen and find where it says, "Find Public Forms".

Step 3. Click on the link "by Agency Name".

Step 4. The next screen is an index. Click on the Letter "N" for National Labor Relations Board.

Step 5. Click on the agency name "National Labor Relations Board".

Step 6. Click on the link "FOIA Request Payment".

Step 7. Fill out the form shown on the screen and click the "Submit" button.

Note: The form on the screen has the ability to capture 20 invoice numbers, descriptions, and amounts. You can enter from one to twenty invoices on this screen. A running total is displayed at the bottom of the screen and will be carried forward to the credit card payment screen.

Step 8. Fill out credit card information and click the button "Continue with Plastic Card Payment".

Step 9. Fill out the e-mail confirmation receipt information.

Step 10. Be sure to authorize a charge to your credit card (check box at bottom of screen).

Step 11. Click on button, "Submit Payment" (an email receipt will be sent to the email address you provided. It will be from paygovadmin@mail.qa.twai.gov).

Step 12. The next screen will allow you to print out a receipt.

Step 13. Upon receipt of your credit card statement you will notice a charge for the amount of your FOIA payment. The originating organization will be "NLRB Finance" and the description will be "FOIA Chg".

If you have any questions, please contact NLRB Finance Branch (202) 273-4227 or (202) 273-4230.

The US Treasury can be contacted for assistance at 800-624-1373, between the hours of 6 am and 8 pm, eastern-time, Monday thru Friday.

**NOTICE FROM THE UNITED STATES TREASURY
PAPER CHECK CONVERSION PROCESS
Notice to Customers Making Payment by Check**

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours, and will be shown on your regular account statement. You will not receive your original check back. We will destroy your original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check.

Privacy Act – A Privacy Act Statement required by 5 U.S.C. 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from internet site, [Http://www.usdoj.gov/foia/privstat.htm](http://www.usdoj.gov/foia/privstat.htm) or call toll free at (202) 273-4230 to obtain a copy by mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method.