



# Office of Congressional and Public Affairs

Contact: [publicinfo@nlrb.gov](mailto:publicinfo@nlrb.gov)  
202-273-1991

## NLRB Finalizes Rulemaking to Protect Employee Free Choice

**March 31, 2020 – Washington D.C.**- The National Labor Relations Board (NLRB) has finalized a series of amendments to Part 103 of its Rules and Regulations. The Board believes that these amendments better protect employees' statutory right of free choice on questions concerning representation. The final rule will be published in the Federal Register tomorrow, April 1, 2020.

The amendments, proposed by the Board on August 12, 2019 and as modified in the final rule, include:

- **Blocking Charge Policy**: The amendment replaces the current blocking charge policy with either a vote-and-count or a vote-and-impound procedure. Elections would no longer be blocked by pending unfair labor practice charges, but the ballots would be either counted or impounded—depending on the nature of the charges—until the charges are resolved. Regardless of the nature of the charge, the certification of results (including, where appropriate, a certification of representative) shall not issue until there is a final disposition of the charge and its effect, if any, on the election petition.
- **Voluntary Recognition Bar**: The amendment returns to the rule of *Dana Corp.*, 351 NLRB 434 (2007). For voluntary recognition under Section 9(a) of the Act to bar a subsequent representation petition—and for a post-recognition collective-bargaining agreement to have contract-bar effect—unit employees must receive notice that voluntary recognition has been granted and are given a 45-day open period within which to file an election petition. The amendment applies to a voluntary recognition on or after the effective date of the rule.
- **Section 9(a) Recognition in the Construction Industry**: The amendment states that in the construction industry, where bargaining relationships established under Section 8(f) cannot bar petitions for a Board election, proof of a Section 9(a) relationship will require positive evidence of majority employee support and cannot be based on contract language alone, overruling *Staunton Fuel*, 335 NLRB 717 (2001). The amendment applies to an employer's voluntary recognition extended on or after the effective date of the rule, and

to any collective-bargaining agreement entered into on or after the effective date of voluntary recognition extended on or after the effective date of the rule.

Chairman Ring was joined by Board Members Marvin E. Kaplan and William J. Emanuel in finalizing the amendments. A small-entity compliance guide to the final rule will be posted on the Board's website once the rule is published in the Federal Register which is anticipated to occur on April 1, 2020.

*Established in 1935, the National Labor Relations Board is an independent federal agency that protects employees and employers, and unions from unfair labor practices and protects the right of private sector employees to join together, with or without a union, to improve wages, benefits and working conditions. The NLRB conducts hundreds of workplace elections and investigates thousands of unfair labor practice charges each year.*

###