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April 17, 2018

Executive Secretary  
National Labor Relations Board  
1015 Half Street SE  
Washington, D.C. 20570-0001

**Re: Inquiry regarding representation proceedings**

Dear Executive Secretary:

Pursuant to the Board's request for information regarding its current election rules, our office is providing the following information:

Our office has handled many representation cases both before the rule changed and after the rule change. Since the rule change, our office has handled approximately 348 representation matters.

We have the following comments regarding the processing of those cases since the new ruled went into effect:

- 1) We believe there has been a reduction in the time and effort of regional staff in processing the election petitions. Because the time lines and the requirement of the filing of the position statement, there has been less time spent by the regional office in working out stipulations and the other details of the election in advance of the statement of position. There has been less time spent on following up on election details because of the new rules and because the training that's been afforded the Regional staff.
- 2) We don't see a substantial change in the win rate of Unions in these representation matters. The Board's statistics seems to bear out that there has been no dramatic change in the win or loss ratio. We believe organizing efforts have been more strategic. While employers are complaining that the new rules slant in favor of unions, the reality is the new rules slant in favor of workers having a timely opportunity to voice their preference to be union or not. This, in turn, has saved employers substantial amounts of money as they no longer are paying for extended contracts with union avoidance consultants.
- 3) There have been very few occasions where employers are "ambushed" by a representation petition. Our organizers have reported that employers are well aware of the organizing effort. Employers sometimes choose to begin their anti-union campaign before the petition is filed and some wait for the petition. In any case, they always seem aware of the organizing activity.

- 4) The anti-union campaigns which we have seen launched by employers have been somewhat more focused and less destructive in the work place. We believe that the new rules resulted in focused campaigns on both sides which have led to fewer problems and less acrimony in the work place. The lengthier period under the old rules between the date the Petition was filed and the day of the election seem to have created more distrust, acrimony and bitterness in the workplace than the shorter period envisioned under the new rule. The longer period resulted in more unfair labor practices.
- 5) Of the units that have been stipulated to, we believe virtually all of them would have met the test under *PCC Structural*s, 365 NLRB No. 160 (2017). Most employers, if they thought they had a good argument that the unit was inappropriate, chose to litigate those issues even prior to the decision in *PCC Structural*s. We don't think that there was any radical shift caused by the new rules in terms of the units that were deemed appropriate for stipulation by the parties and approved by the Regions.
- 6) The processing of RM and RD cases was handled the same way. As a result, those elections have been quicker and under the same circumstances which were applied in RC cases.
- 7) We have not seen a proliferation of the so called "micro" units. Rather as noted above, the units seem to be traditional units which were deemed appropriate under the rules used by the Board before *Specialty Healthcare* 357 NLRB 934 (2011) and before the new rules went into effect regarding the processing of the representation cases. Unions understand that organizing a small unanchored unit does not lead to success in either the election or to a contract.
- 8) We believe the new rules were effective, helpful and led to a more streamlined process in representation petitions. There is no reason to change the rules.

We believe there are ways in which the rules could be improved but do not believe the current Board will take any action which would make the election process easier, quicker and more favorable to the rights of workers to express their choice of union representation. We see no need to change the current rules or to ask this Board do so.

Regardless of ideological slant, portions of the new rules that focus on technological advancement, such as electronic service of case documents, should be retained.

The Board's recent decision in *PCC Structural*s, 365 NLRB No 160 (2017) responds to management complaints about appropriate units and those issues should be dealt with under the current Board representation processing rules without affecting any change in those rules.

Sincerely,



David A. Rosenfeld

Sincerely,



Caren P. Sencer

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