

Re: Request for Information Concerning Representation Case Procedures

I represent labor organizations and employees in matters before the National Labor Relations Board. I write to provide information concerning the Board's representation case procedures in response to your request.

The amendments to the procedures adopted in December 2014 represent modest and common-sense changes in the processing of petitions for an election that were long overdue. The earlier process was rife with unnecessary delay and was fertile ground for abuse. For example, I was involved in a case under the old rules where there was a three day hearing spread over the course of two weeks for a bargaining unit consisting of fourteen (14) employees who worked in a distinct department. The employer's witnesses consumed over two of those hearing days. Meanwhile, the employer committed numerous unfair labor practices (as proven in the related C case) designed to dilute the support for the union including, remedying grievances, transferring employees into and out of the department and removing an unpopular manager. While such actions were found to be unlawful, the harm to the organizing campaign could not be remedied. If that case had occurred under the amended rules, the delay from the hearing would have been much less. Even if a hearing had been required, it would have been completed within three consecutive days, rather than spread out over two full weeks.

In a different case under the old rules, a different employer also argued that a hearing was required because the petitioned-for bargaining unit was inappropriate. As was often the case under the old rules, the employer claimed that certain other employees had to be included, and the employer was prepared to proceed to a time-consuming hearing on that issue. When the union agreed to the employer's proposed bargaining unit, the employer claimed the unit it proposed was inappropriate and was prepared to proceed to a hearing on that issue. Please read the previous sentence again. To be clear, in the course of a couple of hours the employer claimed that both the petitioned-for unit and its proposed unit were inappropriate (there was no third alternative). The employer's desire to delay the election became even more obvious when it raised new issues after the scope of the unit had been agreed upon and when it refused to agree to an election date that was closer than the maximum permitted under the time targets in effect under the old procedures. Under the amended rules, the employer would have been required to set forth its position prior to the start of the hearing and could not have raised new issues at the hearing. The amended rules also would have reduced the unnecessary delay between the filing of the petition and the election.

In light of my experiences, I urge the Board not to alter the amended representation case procedures that are currently in effect.

Under the amended rules:

1. Unnecessary litigation has been reduced and the time required for the Board to process representation petitions has been shortened.
2. The opportunities for gamesmanship and abuse have been decreased.

3. The rules have been made simpler and easier for union representatives and employees to understand.
4. Board practice has been brought more into line with judicial practice and thus made participation in representation cases easier for counsel.
5. All parties have been accorded due process.
6. Employers who wish to mount vigorous campaigns can still effectively do so by conveying the same types of information and using the same methods that existed prior to the amendments.
7. Employees have been better able to exercise their right to petition and to make a free choice of whether to be represented.

Thank you for your attention to this matter.