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April 18, 2018

Electronically filed: www.nlrb.gov
Roxanne Rothschild, Deputy Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington D.C. 20570

Re: National Labor Relations Board
RIN 3142-AA12:
Representation-Case Procedures
Request for Information

Dear Ms. Rothschild:

The American Federation of State, County and Municipal Employees, AFL-CIO, (AFSCME), on behalf of itself and its affiliated subordinate bodies, joins in the response to the Request for Information (RFI), published in the Federal Register, 82 Fed. Reg. 58, 783 (December 14, 2017), submitted by the AFL-CIO. We supplement the AFL-CIO's response below to identify specific issues we believe should be addressed in reviewing the Election Rule, urging the Board to retain the Rule – for now – to promote efficiency, modernization, and decreased litigation which all further the purposes of the National Labor Relations Act.

AFSCME is an international labor organization with over 1.5 million members throughout the United States and Puerto Rico. Our members are represented by more than 4,000 affiliated district councils, local unions and chapters/districts which provide representational services to workers in both the public and private sector. AFSCME represents over a quarter of a million workers in the private sector. Since the Board plays a vital role in the lives of AFSCME members and all private sector employees, AFSCME submits its Response.

The RFI asks whether the 2014 Election Rule should be retained, retained with modification, or rescinded. AFSCME submits the Board should retain the Election Rule. Currently, no empirical data exists to justify rescission or modification of the Rule.

American Federation of State, County and Municipal Employees, AFL-CIO
Office of the General Counsel

TEL (202) 775-5900 FAX (202) 452-0556 WEB www.afscme.org 1101 17th Street, NW, Suite 900, Washington, DC 20036-5687

The Rule modernized Board procedures. Among other things, it provides for the use of electronic means for filing documents and for communications to the parties. Before and after the implementation of the Rule, many employer and employee organizations opposed it fearing that the Rule would shorten the time between the filing of an election petition and the election. They dubbed the Rule the "Ambush" or "Quickie" Election Rule. They filed comments, testified during the 2011 Rulemaking process, and facially challenged the Rule in the courts. Associated Builders and Contractors of Texas, Inc. v. NLRB 826 F.3d 215 (5th Cir. 2016); Chamber of Commerce of the United State of America v. NLRB, 118 F.Supp.3d 171 (D.D.C. 2015).

The courts denied their challenges holding that the Board thoroughly analyzed and addressed their comments and offered factual and legal support for its final conclusions. Chamber of Commerce, 118 F. Supp.3d at 220; Associated Builders, 826 F.3d at 220.

The NLRB FY 2017 Performance Accountability Report states that for Fiscal Year 2017, 98.5% of all initial elections were conducted within 56 days of the filing of the petition. www.nlr.gov/reports-guidance/reports. The Rule did result in increased efficiency for elections. Accordingly, some employer's parlance of "quickie" elections to describe the Rule does not contravene – but fulfills - the Board's mandate that "[T]he Board must adopt policies and promulgate regulations in order that employees' votes may be recorded accurately, efficiently, and speedily." NLRB v. A.J. Tower Co., 329 U.S. 324, 330-331 (1946)

The Rule has been in existence for almost three years and the Board has been collecting statistics charting its effects. Despite some employers' claims to the contrary, there is no data showing that employers have been harmed by quicker elections. No data exists to support their contention that the expedited time frame for elections prevents them from having fully informed communications with employees. In fact, the NLRB reports show otherwise.

The NLRB Quarterly FOIA Report 2016 comparing representation statistics from the Rule's effective date, April 14, 2015, through its first nine months with a comparable time period in the prior year before the Rule, shows that union representational win rates actually declined by 2 % after the Rule was implemented www.nlr.gov/reports-guidance/reports. Although Employers want more time before a representation election occurs - it is a want - not a need supported by any empirical evidence of employer harm.

In sum, AFSCME submits the Board should retain the Rule. No defensible reason exists for making modifications. The Rule modernized Board processes and

procedures. The Board should not entertain any retrenchment on its modernization by returning to 20th century procedures in this 21st century world.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Margaret A. McCann". The signature is written in a cursive style with a large initial "M".

Margaret A. McCann
Associate General Counsel