

# “What keeps you up at night?”

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## NLRB Adopts Limited “Quickie Election” Resolution

By Edward R. Levin

### SUMMARY

**At an unprecedented public hearing on November 30, the Board, by a 2-1 margin, with Republican Member Brian Hayes voting against the Resolution, approved the Chairman's proposed Resolution to shorten the time for the process on employee voting on union representation.**

After the Employee Free Choice Act (“EFCA”) failed to pass Congress, organized labor’s attempt to minimize employers’ ability to communicate fully with employees on the subject of unionization turned to its friendly majority on The National Labor Relations Board (“Board”). In June, the Board submitted a radical proposal to compress the union representation election process into a few days, with scant opportunity to resolve important legal issues before the election. That proposal drew heavy fire from the business community and Congress, so, last week, Board Chairman Mark Pearce offered a modified version of new regulations without some of the most controversial portions. The cumulative effect – and undoubtedly the goal – of these provisions is to shorten the time before a representation election is conducted following the filing of an election petition by a union seeking to represent a group of employees.

The Resolution provides as follows:

- Appeals to the Board pertaining to both pre-election and post-election issues are consolidating into one post-election “request for review,” resulting in a shortened period from petition filing to election.
- By eliminating the possibility of appealing pre-election matters, the time between the filing of an NLRB election petition and an election will be significantly reduced.
- The NLRB Hearing Officer will determine whether post-election hearing briefing is necessary.

**“What keeps you up at night?”**

- The Hearing Officer may reject an attempt by the parties to fully litigate issues not deemed to be related to a “Question Concerning Representation” (“QCR”). Although the Board has not yet defined that term for purposes of the rule, there are indications that the majority does not consider determination of an individual’s supervisory status to be relevant to the determination of a QCR. That often crucial initial question for employers would be put off until after the election, where long and drawn out hearings could defeat the majority’s articulated quest for speedy resolution.

The portions “left for future consideration” from the original proposal are:

- Electronic filing of election petitions;
- Mandatory scheduling of hearings seven days after the notice of hearing is served;
- Filing of position statements by the parties;
- Inclusion of telephone numbers and e-mail addresses on the Excelsior voting list; and
- Reducing an employer’s time to file an Excelsior voting list from seven to two working days.

The Resolution must still go through formal drafting procedures and a final vote followed by review by the Office of Management and Budget. However, since Member Becker’s appointment expires at the end of the year and the Board will be unable to act with only two members in place, it is expected that Board action will occur before December 31.

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