

MODERN MANAGEMENT

NLRB MAKING CHANGES IN TWO MAJOR AREAS AND SEEKING INPUT

NLRB Proposes Reduction of Time Period for Union Representation Elections

The National Labor Relations Board has proposed rule changes that would substantially limit the time between the filing of a petition asking for an employee election on union representation and the time the election is conducted.

The result of the proposed changes is that employers would have dramatically less time to educate their workforce once a union requests an election be held. This is clearly an effort by the three members of the NLRB appointed by President Obama to achieve at least some of what was not achieved by the failure of organized labor to convince Congress to pass the "Employee Free Choice Act (card check)." Adoption of the new rule would make it much easier for unions to organize employees.

Brian Hayes, the only Republican member of the Labor Board, does not think the elections process needs fixing. He said, "In truth, 'the problem' which my colleagues seek to address through these rules revisions is not that the representation election process takes too long. It is that the unions are not winning more elections."

Comments on the proposed rule changes may be submitted (for a 60-day period) electronically through <http://www.regulations.gov> beginning June 22nd.

Employment Arbitration Agreements for Union and Non-Union Employers may be Invalidated

The NLRB has invited interested organizations to submit briefs on whether the National Labor Relations Act is violated when an arbitration agreement prevents the arbitrator from making decisions on a class or collective action basis, a ruling that could invalidate many employer agreements.

The matter evolves from a case involving D.R. Horton, Inc. which had implemented a company-wide policy requiring its employees to sign a mutual arbitration agreement as a condition of employment.

Volume 5, Issue 7, July 2011

SUPREME COURT RULES IN WALMART CLASS ACTION

In an opinion with far reaching consequences, the U.S. Supreme Court reversed the 9th Circuit's decision that certified a massive sex discrimination class action against Walmart, ruling that the female plaintiffs failed to show common questions of law or fact affecting the class. The claimants alleged pervasive discrimination against women in pay and promotions nationwide. Justice Scalia wrote in the majority opinion that the plaintiffs failed to show that Walmart's alleged corporate policy of giving local supervisors discretion regarding pay and promotion decisions produced common factual or legal issues. He found the statistical and anecdotal evidence fell short in proving the "commonality" required to proceed as a class. The ruling does not preclude the plaintiffs from pursuing their individual claims but does clarify that plaintiffs have a high burden to show that they are legally entitled to file a viable class action lawsuit.

LOUISIANA JOINS THE E-VERIFY BANDWAGON

Gov. Jindal recently signed into law legislation ([H.B. 646](#)) that authorizes civil penalties or the suspension of business licenses for companies that hire illegal workers. The law penalizes employers who hire or employ illegal workers, but exempts from those penalties employers who use E-verify or require other appropriate documentation. Unlike laws recently enacted in other states (such as Alabama), the new Louisiana law does not require the use of E-verify.

NLRB RULE CHANGES, continued

The agreement provided that all employment disputes, with exceptions for workers' compensation and unemployment claims, were subject to exclusive and binding arbitration. It also excluded any class or collective action disputes from the arbitrator's purview. Amicus briefs are due to the NLRB by July 20, 2011.

BOEING UNFAIR LABOR PRACTICE SUBJECT OF HEARINGS - LITIGATION PENDING

In a matter being closely watched by most businesses, the National Labor Relations Board is prosecuting an unfair labor practices complaint alleging that Boeing unlawfully established a second aircraft assembly line at a nonunion plant in South Carolina in order to retaliate against workers in Washington State represented by the Machinists Union. An Administrative Law Judge opened a hearing on the unfair labor practice allegations in Seattle on June 14th that is expected to last six weeks.

At the same time, the U.S. House of Representatives convened a hearing covering the subject of "Unionization through Regulation: The NLRB's Holding Pattern on Free Enterprise" which is aimed at rectifying situations such as the Boeing case. Many in Congress believe that the Labor Board is simply pursuing a political agenda to prevent lawyers from transferring operations to Right to Work states such as South Carolina.

The controversy does not appear to be going away any time soon with the proceedings stretching through the summer. The Machinist Union's general counsel called the unfair labor practice case against the aircraft manufacturer "very simple" but "egregious," while Boeing condemned the Labor Board for overtly political tactics and abuse of power. Stay tuned...

GOVERNMENT FINES COMPANY FOR MISCLASSIFICATION OF EMPLOYEES

State and Federal Agencies are continuing to go after employers to ensure compliance with federal wage and hour laws. The Massachusetts Attorney General issued a citation against Lancaster Enterprises Inc. The Company and its owners supposedly misclassified 18 roofers as "independent contractors." In 2011 a total penalty of \$100,000 was assessed against the company for various violations including failure to pay the prevailing wage, willful failure to submit true and accurate payroll records, and willful misclassification of employees as independent contractors.

LEMLE & KELLEHER LABOR AND EMPLOYMENT ATTORNEYS

The labor and employment attorneys in our firm have a national and international practice representing union and non-union companies in almost every industry. Our labor attorneys have developed strong experience and hands-on knowledge of how business really works.

E. Fredrick Preis, Jr., epreis@lemle.com, 504.585.6371

Eve B. Masinter, emasinter@lemle.com, 504.584.9173

Joseph R. Hugg, jhugg@lemle.com, 504.584.9148

ABOUT LEMLE & KELLEHER, L.L.P.

Lemle & Kelleher offers responsive, innovative, and experienced legal representation covering a broad range of practice areas. For more information please visit www.lemle.com.

Baton Rouge

One American Place
301 Main St., Suite 1100
Baton Rouge, LA 70825
Phone: 225.387.5068
Fax: 225.387.4995

New Orleans

Pan-American Life Center
601 Poydras St., 21st Floor
New Orleans, LA 70130
Phone: 504.586.1241
Fax: 504.584.9142