



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
April 8, 2020 Edition



NATIONAL LABOR RELATIONS BOARD DELAYS IMPLEMENTATION OF RULES DESIGNED TO WEAKEN WORKER REPRESENTATIONAL RIGHTS

On March 31, 2020, the National Labor Relations Board, which currently has no Democratic members, issued three wide ranging final rules which broadly serve to undermine worker rights. On April 8, 2020, the Board decided to delay implementation of the rules from May 1, 2020 to July 31, 2020.

While not changing the deleterious effects of the new rules, the effective date of these new rules is important because one of the key changes from the original rule published in August 2019 and the final rule published earlier this month, is that the changes to voluntary recognition requirements and 9(a) recognition in the construction industry apply only from the effective date and thereafter. Unlike other NLRB rules and NLRB decisions that may apply to retroactively, the three final election rules will not.

To review, the new rules served to amend:

1) the “blocking charge” rule so that elections can no longer be blocked by unfair labor charges brought by a Union. Instead, elections will proceed and votes will be counted. This is particularly important in the context of decertification elections;

2) the voluntary recognition bar so that, when an employer agrees to voluntarily recognize a union, it must notify the affected employees of the voluntary recognition and, in turn, the employees have 45 days to file a petition with the NLRB challenging the employer’s recognition of the union. In effect, if there is voluntary recognition, it can be challenged immediately; and

3) section 9(a) agreements in the construction trades so that “positive evidence of majority employee support” is now required for converting a Section 8(f) agreement into a Section 9(a) agreement in the construction industry. Accordingly, a Section 8(f) relationship cannot become a Section 9(a) relationship based solely on language in the parties’ collective bargaining agreements or a voluntary recognition. Instead, the majority of the affected employees must affirmatively indicate that they do, in fact, want the union to act as their legal representative for purposes of collective bargaining. In effect, the Union must have another card count with a majority of the unit signing.

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