

NLRB ANNOUNCES FOR PUBLIC COMMENT PROPOSAL TO STREAMLINE REPRESENTATION ELECTION CASE PROCEDURES

The National Labor Relations Board is proposing to change its rules that will permit the parties to representation case proceedings under the National Labor Relations Act to ensure the prompt conduct of union representation elections and resolution of questions concerning representation. As published July 27, 2004 in [69 Federal Register No. 143, pages 44612-44613](#), this proposed revision to Section 102.62 of the Board's Rules and Regulations will add a new subsection (c) allowing for voluntary, streamlined pre- and post-election hearing procedures to more promptly resolve issues raised in representation election cases. As proposed for public comment, Section 102.62(c) provides:

Where a petition has been duly filed, the employer and any individual or labor organizations representing a substantial number of the employees involved may, with the approval of the Regional Director, enter into an agreement providing for a hearing pursuant to sections 102.63, 102.64, 102.65, 102.66 and 102.67 to resolve any issue necessary to resolve the question concerning representation. Upon the conclusion of such a hearing, the Regional Director shall issue a Decision. The rulings and determinations by the Regional Director thereunder shall be final, with the same force and effect, in that case, as if issued by the Board. Any election ordered by the Regional Director shall be conducted under the direction and supervision of the Regional Director. The method of conducting such consent election shall be consistent with the method followed by the Regional Director in conducting elections pursuant to sections 102.69 and 102.70, except that the rulings and determinations by the Regional Director of the results thereof shall be final, and the Regional Director shall issue to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect, in that case, as if issued by the Board, provided further that rulings or determinations by the Regional Director in respect to any amendment of such certification shall also be final.

At present, where all parties to an election (employer, union(s), and, in some cases, an employee petitioner) decide that no pre-election hearing is necessary to resolve disputed issues necessary to conduct a representation election, the election is conducted pursuant to a signed "stipulated election" agreement as provided for under Section 102.62(b) of the Rules and Regulations. Historically, approximately 86 percent of all NLRB elections are promptly conducted under such agreements, with more than half of such elections conducted within 42 days and over 90 percent conducted within 56 days from when the petition was first filed. Under Section 102.62(a) the parties can execute a "consent election" agreement, stipulate to the election details and authorize the Regional Director to decide with finality objection and challenged ballot issues that arise post-election.

In the remaining cases, where consent agreements under Section 102.62(a) or (b) are not concluded, a formal hearing is conducted under Section 102.64 to resolve pre-election issues on which the parties cannot agree. In such cases, based on the evidence presented by the parties, the Regional Director issues a decision resolving those issues, and, where appropriate, directs an election. Currently, Regional Directors issue their decisions after a pre-election hearing in a median of 36 days following the filing of the petition. Under Section 102.67 the Regional Director's decision is subject to review by the Board. Due to the large number of cases that the Board must decide each year (both representation cases and unfair labor practice cases), a request for Board review may add substantial time to a final resolution of a question concerning representation.

Over the last 10 years, parties have filed Requests for Review with the Board with respect to slightly more than 48 percent of Regional Director Decisions and Orders or Decisions and Directions of Elections. Only 18 percent of those Requests for Review were granted by the Board and of the cases in which Requests for Review were granted, the Board affirmed the decision of the Regional Director 45 percent of the time. Thus, only 4.2 percent of Regional Director pre-election decisions issued during the last 10 years were reversed, modified or remanded by the Board upon review.

Under the voluntary "full consent" procedures in proposed Section 102.62(c), the parties may designate the Regional Director to serve as the final authority to resolve disputed matters arising from the filing of a representation petition to the issuance of a certification of representative or certification of results. The procedure allows the parties to avail themselves of the neutral, expert and prompt decision-making of authorities in matters of settled representation case law under the National Labor Relations Act. This will result in more certainty for the parties and a more prompt resolution of questions concerning representation, which, until finally resolved, can be unsettling for the employees involved, and for the employer and its business enterprise.

The Federal Register publication invites public comment on the proposed "full consent" procedures by August 26, 2004. Comments should be directed to Executive Secretary Lester A. Heltzer, Office of the Executive Secretary, National Labor Relations Board , Washington, DC 20570.