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March 26, 2008

VIA FEDEX

Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, NW, Room 11600
Washington, DC 20570-0001
Attention: Lester A. Heltzer

Re: Comments to NLRB Proposed Rule-Making ("RJ" Petition)

Dear Mr. Heltzer:

Jackson Lewis LLP, one of the nation's largest labor and employment law firms, with over 50 years of experience representing the interests of employers before the National Labor Relations Board, respectfully submits these comments to the proposed amendments to 29 CFR parts 101 and 102.

Jackson Lewis supports efforts by the NLRB to promote and protect employee free choice through the use of secret ballot elections to determine the issue of union representation. Promoting the right of employees to make a free and informed choice through the secret ballot process has been an objective of the Board since its very inception. We believe the proposed RJ petition expands opportunities for employees to make such a free and informed choice consistent with the protections accorded by the National Labor Relations Act. Indeed, a government supervised secret ballot vote under laboratory conditions has always been the very hallmark of "workplace democracy" under the Act. We believe that the Board's proposal for an

RJ petition – filed jointly by a union and an employer – which provides employees with the option of a quick, NLRB-supervised secret ballot election helps further this objective.

We also believe that, where both the employer and the union agree that it is in their mutual best interest as well as in the interest of the employees involved, the proposed rules provide an appropriate procedure to accelerate secret ballot elections. As proposed, the RJ petition process would reduce the time for an election to 28 days from the filing of the petition – a full two weeks sooner than the current time target of 42 days under the existing process of Stipulated or Consent election agreements. Moreover, costly and time consuming pre-election litigation is avoided since the parties will be stipulating to the unit when they submit the new joint RJ petition.

Appropriate post-election dispute resolution is available if needed, but limited to proceedings before the Regional Director, in the same way as currently used in other NLRB Consent elections. The proposed new provisions relating to the joint RJ petition routinely would minimize the delay sometimes resulting from NLRB election litigation. Therefore, we believe the proposed RJ petition process appropriately balances the NLRB's obligation to determine election issues (e.g., that bargaining units are appropriate and that employee free choice has not been unlawfully inhibited) with the desire to minimize the time between a petition being filed, the election being held and the final results certified. Under the proposed rules for an RJ petition, a secret ballot election essentially can be proposed, planned, requested, and held and the results certified within about a month's time. A direct result of this procedure would be to accord the union all the many benefits that flow from NLRB certification.

However, a major departure from prior Board election practice would be the elimination of any "showing of interest" on the part of some minimum number of employees in

having a union represent them. In fact, it is possible under the proposal that the employer and the union could agree to an election without a single employee having expressed any interest in the union. The concept of an employee "showing of interest" was intended, in part, to avoid the unnecessary expenditure of limited NLRB resources when a true question concerning representation did not exist. It also was intended to eliminate company dominated in-house unions, or collusion between a union and a company, as it required a level of employee participation in requesting an election, thereby assuring some employee knowledge and participation in the process. Accordingly, a direct employee showing of interest (e.g., thirty percent to start the Board process for an election) has always been a non-statutory requirement of the Board.

We urge the Board to continue the showing of employee interest concept in the context of the proposed RJ petition by the use of a percentage (e.g., 20%) of the unit employees which allows employees, the union and the employer to start the secret ballot process, yet still allows an employee majority to decide the issue through the resulting NLRB secret ballot election.¹ To further protect the rights of employees and safeguard the process, we urge the Board to require the use of a standardized "RJ" election request authorization card which unambiguously expresses to employees that their signatures authorize only the request for an expedited RJ election and may not be used for any other purpose.²

¹ The Board might also consider applying the proposed RJ concept to "accretion" situations so as to insure employees get the chance to express a free choice through a NLRB supervised election, a right which is not currently accorded to them, in such situations as well.

² For example, the card might have language such as the following:

Request For An RJ Election Under the National Labor Relations Act

We also respectfully submit that the Board consider including some additional employee safeguards for the RJ process inasmuch as the period of time in which all employees may become informed about the union and the implications of union representation are being significantly shortened. Our suggestions are described below.

- Require that the RJ election certification be based on the union obtaining an affirmative vote from a majority of the employees in the unit (as opposed to the issue being decided only by a majority of the votes cast). This would further underscore the validity of the representation decision by all employees in the unit and would be consistent with the statutory language of Section 9 (a) of the Act which speaks of “[r]epresentatives designated or selected for the purposes of collective bargaining by the majority of the employee in a unit....”
- Immediately upon receipt of the RJ petition, the Board should publish the proposed terms on its website, allowing employees, interested intervenors and the public to have an effective opportunity to learn of the petition and be heard.
- To further protect employee rights, where there the employer or the union has reason to believe that at least 5% of the voters are not native English-speakers, the Board should mandate multilingual notices and ballots.

I request that my employer and the [Union] jointly request the National Labor Relations Board to conduct a secret ballot election to determine if a majority of the employees working at the [Company] want to be represented by the Union. I understand that this card will only be used for the purpose of obtaining an election and for no other purpose under the National Labor Relations Act. I understand that by signing this card I am not making any commitment to vote for or against representation by a union. If I choose to vote, the fact that I voted and the vote that I cast will be kept strictly confidential and will never be disclosed to my employer or the union.

Signature _____
Date _____

In conclusion, we support the expansion of employee access to government supervised secret ballot elections as proposed by the NLRB. We applaud the Board on its effort to do so through this rulemaking. If you have any questions regarding the comments in this submission, please do not hesitate to contact us.

Very truly yours,

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