

## CLIENT ALERT

### NLRB Issues Final Rule On "Quickie" Elections

**Dec.22.2011**

The National Labor Relations Board ("Board") has just issued, and published in the Federal Register, its "Final Rule" substantially reducing the time frame for the holding of union representation elections after the filing of the petition for election. The Final Rule is to become effective April 30, 2012.

The changes contained in the Final Rule are identical to the changes described in the "Resolution" adopted by the Board on November 30, which are set forth in our [Alert of December 6](#). As we informed in the Alert, under the Final Rule, union representation elections will, except in the rarest of circumstances, be required no later than twenty-five days after the filing of the petition, and could be as soon as fifteen days after the filing.

Issuance of the Final Rule at this time was expected, as enactment required approval of a majority of the Board (two of the three members) prior to the end of the year when Member Craig Becker's interim appointment expires and the Board loses the three-member quorum necessary for it to act.

Republican Board Member Brian Hayes, who has strongly opposed any election rule changes, did not vote on the Final Rule. He has until the implementation date of April 30, 2012 to issue his dissent.

On December 20, the U.S. Chamber of Commerce and the Coalition for a Democratic Workplace filed an action in the U.S. District Court for the District of Columbia contesting the constitutionality of the Final Rule and seeking to enjoin its implementation. The lawsuit asserts that the Final Rule violates the National Labor Relations Act, exceeds the Board's statutory authority, and is contrary to the First and Fifth Amendments to the U.S. Constitution, which guarantee the rights to free speech and due process.

Also, Senator Mike Enzi (R-Wyo), the ranking member of the Senate Health, Education, Labor and Pensions Committee, vowed that he will use the Congressional Review Act to challenge the Final Rule, characterizing it as the "Ambush Election Rule" and a "gift to union bosses." In this same regard, Congressman John Kline (R-Minn.), Chairman of the House Education and the Workforce Committee, has sponsored legislation – the Workforce Democracy and Fairness Act – to overturn the Final Rule. He, too, characterized the Final Rule as the "Ambush Election Rule," designed "to advance an activist pro-union agenda at any cost."

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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