



[BILLING CODE 7545-01]

NATIONAL LABOR RELATIONS BOARD

29 CFR Parts 101, 102, 103

RIN 3142-AA08

Representation-Case Procedures

AGENCY: National Labor Relations Board

ACTION: Proposed Rule; Notice of Meeting

SUMMARY: The National Labor Relations Board (NLRB or Board) invites interested persons to attend a public meeting of the Board on April 10 and 11. The Board meeting will start at 9:30 a.m. on each day. The meeting will be held in the Margaret A. Browning Hearing Room (Room 11000), National Labor Relations Board, 1099 14th Street, NW, Washington, DC 20570. During the meeting, persons who have previously requested to speak may share their views on the proposed amendments to the Board's rules governing representation case procedures, published at 79 FR 7318, and make other proposals for improving representation case procedures.

DATES: The meeting will be held on April 10 and 11, 2014, starting at 9:30 a.m. on each day. Additional days of meeting may be scheduled for April 8 and/or 9. Those who wish to speak at the meeting must submit a Request to Speak, in the form described in the instructions below, which must be received by the Board no later than March 10, 2014. In addition, due to seating considerations, persons desiring to attend the meeting must submit a Request to Attend, which must be received by the Board no later than March 31, 2014. Those who Request to Speak need not also submit a Request to Attend.

ADDRESSES: The public meeting will be held in the Margaret A. Browning Hearing Room (Room 11000), National Labor Relations Board, 1099 14th Street, NW, Washington, DC 20570. Requests to Speak and Requests to Attend must be addressed to Gary Shinnars, Executive Secretary, 1099 14th Street, NW, Suite 11600, Washington, DC 20570. Alternatively, written requests may be submitted electronically to publicmeeting@nlrb.gov. All requests must include the following words on the Subject Line—"Request to Attend Public Meeting RIN 3142-AA08," or "Request to Speak at Public Meeting RIN 3142-AA08."

FOR FURTHER INFORMATION CONTACT:

Gary Shinnars, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Suite 11600, Washington, DC 20570, (202) 273-3737 (this is not a toll-free number), 1-866-315-6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

The National Labor Relations Board will hold an open public meeting on April 10 and 11, 2014 starting at 9:30 a.m. on each day. Additional days of meeting may be scheduled for April 8 and/or 9. Pursuant to 5 U.S.C. 553(c), the purpose of the meeting will be to allow interested persons to participate in the rulemaking through oral presentation on the proposed amendments to the Board's rules governing representation-case procedures and to make any other proposals for improving representation case procedures.

The Board intends to give members of the public a fair opportunity to address the issues listed below, subject to the Board's discretion to both ask questions of speakers and to avoid repetitious or cumulative subject matter. The hearing may be organized by

topic(s) into multiple sessions, as noted below. This may result in some oral presentations being split into multiple parts, possibly requiring participation in more than one session. Depending on Requests to Speak received by the Board (see below), some requests to address several issues at the same time may be granted. For any single session, it is anticipated that the initial time allotted to a particular presenter will be at least four minutes. Speakers who are to address several issues at the same session may be initially allotted substantially more time for their overall presentation, at the Board's discretion. (As noted above, in some cases such a presentation may be split into multiple parts, possibly requiring an appearance in more than one session.) Determinations to grant or deny Requests to Speak, and of the allotment of time for oral presentations shall be subject to the discretion of the Board.

On February 6, 2014, the NLRB published a Notice of Proposed Rulemaking, proposing to amend its rules and regulations governing the filing and processing of petitions relating to the representation of employees for purposes of collective bargaining with their employer. As stated in the NPRM, the NLRB is providing an opportunity for interested persons to request to provide their views to the Board on this important matter at a public meeting.

Persons desiring to attend the meeting must submit a Request to Attend, in writing, at the above-listed address or e-mail address, which must be received by the deadline posted in the DATES section above. In this request, potential attendees must specify (1) their full name, (2) their organizational affiliation (if any), and (3) contact information. Due to the potential space limitations in the meeting room, the NLRB will notify persons whether they will be able to attend prior to the meeting. Attendees are

reminded to bring a photo identification card with them to the public meeting in order to gain admittance to the building.

Persons desiring to speak at the meeting must submit a Request to Speak, in writing, at the above-listed address or email address, which must be received by the deadline posted in the DATES section above. In addition to the information required of attendees, those who wish to speak must also follow the more detailed instructions below.

The primary source of input to be considered by the Board will be the extensive written comments submitted in response to the 2011 proposed rule regarding representation-case procedures, and the written comments submitted in response to the NPRM published in the Federal Register on February 6, 2014. Written comments submitted in response to the 2011 proposed rule, or in response to the more recent NPRM, will receive the same consideration without regard to whether the commenters make oral presentations during the public meetings described in this notice. Similarly, decisions regarding the allotment of time for particular oral presentations do not mean the Board will give greater or lesser consideration to particular speakers or commenters. The Board's intention is to structure the public meetings in a manner that will reflect multiple perspectives on relevant issues with a mix of shorter and longer presentations depending on the range of issues and views summarized in Requests to Speak received by the Board.

Instructions for Submitting a Request to Speak

1. A Request to Speak may be submitted on behalf of an individual or an organization. More than one person may submit a Request to Speak on behalf of the same organization. Each such request must be submitted separately.
2. You must designate which of the issues listed below ("Issues") you wish to address. Be as specific as possible in making your designation. Reference the letter, and, where applicable, the number(s), and sub-part(s) of the issues listed. If you designate issue H ("Other Issues"), you must identify the issue with a sentence or phrase.

3. If you designate more than one issue, please list your designations in order of priority. Begin by listing the issue you most wish to speak about, and continue in order of decreasing priority.
4. Immediately following the designation(s) of issue(s), please summarize for each issue what you wish to say. For your reference, a Sample Request to Speak is also included below.
5. For each issue, your summary is limited to 250 words. You are also limited to a cumulative total of 1,250 words in the document making your request. No motions to exceed this limit will be entertained. Requests to Speak must conform to these requirements to be considered. Note: written comments remain the primary means for expressing your views, and there is no word limit on written comments.

In the event that there are more Requests to Speak than there are available time slots, the Board will allocate the available time slots in an effort to insure that individuals and organizations are heard whose remarks appear most likely to be useful to the Board in its deliberations. This determination will be based on the summaries provided in the Requests to Speak. It is likely that not every requester will have the opportunity to speak on every issue requested. It is also anticipated that some issues will generate many substantially similar requests. For this reason, it is suggested that you focus your request on matters on which you possess relevant experience and expertise and about which you may have something unique to say. It is also possible, however, that the Board may ask for your views on matters that you do not designate in your request.

All speakers should be prepared to answer questions from members of the Board. Before the hearing, the Board may also choose to submit questions for discussion related to any of specific issues noted below.

The Board will notify you prior to the meeting whether you will be speaking, the issue(s) you will be called upon to address, the date(s) and time(s) of the session(s) at which you are to speak, and the amount of your initial allotment of speaking time for

each session. As noted above, it is anticipated at this time that initial allotments will be at least four minutes.

Issues:

A. Petitions and Pre-Hearing Issues. Whether or how procedures should be revised concerning the petition, electronic filing and service, the showing of interest, and employee notices.

1. Whether the petition may be filed electronically.
2. Whether the petitioner should be responsible for service of the petition.
3. Whether the petitioner should be responsible for serving an NLRB form explaining party rights and obligations together with the petition.
4. Whether the petitioner should be required to designate an individual representative for purposes of service.
5. Whether the petitioner should be required to file the showing of interest with the Board at the same time as the petition.
6. Whether electronic signatures should be permitted to satisfy the showing of interest.
7. Whether, upon service of the petition, the employer should be required to post an initial Board notice to the employees describing the petition and procedures.
8. Whether or how the rules should amend the final notice to employees regarding the election.
 - a. Whether the notice should issue simultaneously with the direction of election.
 - b. Whether the notice should be distributed electronically, either by the region or by the employer.
 - c. Whether the time period for posting the final notice should be at least two full working days before the election, three full working days as is the current practice, or some other length of time.
9. Whether the Board should electronically transmit documents to the parties.

B. Pre-Election Hearings. Whether or how pre-election litigation procedures should be revised.

1. When the pre-election hearing should be held.
2. Whether, when, or how written statements should be filed raising issues and providing initial disclosures of relevant information. Whether, when, or how written statements may be supplemented, corrected, or changed after they are filed or whether parties should be prohibited from changing the positions taken in their written statements. Whether issues not raised in the written statements should be considered waived.
3. Whether or how the rules should define the types of issues which should be litigated at the pre-election hearing.
 - a. Existence of a question of representation.
 - b. The appropriateness of the petitioned-for unit.
 - c. Eligibility issues impacting large groups of employees (the proposed “20% rule”).
 - d. Eligibility issues impacting individuals or small groups of employees.
 - e. Issues which raise special concerns (guard status, professional status, jurisdiction, etc.).
4. Whether or how the rules should describe the procedure for the hearing officer and regional director to follow in admitting and excluding evidence at the hearing.
5. What deadline should be set for filing subpoenas and motions to quash.
6. Whether or how the rules should specify the standard, form, and timing for presenting concluding statements and arguments, and post-hearing briefs.
7. Whether the rules should permit the direction of election to be issued before a pre-election decision is issued, with a decision to follow.

C. Voter Eligibility Lists. Whether or how the rules should address voter lists.

1. Whether the Board’s holding in *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966) and the cases that interpret it should be codified in the rules.
2. Service of voter lists.
 - a. What deadline should be set for an employer to submit voter lists.
 - b. Whether and how voter lists should be directly served on the parties by the employer.

3. What information the voter lists should contain, whether *Excelsior* should be updated with modern forms of contact information, and how to strike the correct balance of NLRA, privacy, and other interests.
 - a. Which types of contact information involve greater or lesser privacy concerns.
 - b. Whether or how restrictions on use of information should be imposed to address privacy concerns.
 - c. Whether specific alternatives to voter lists might better serve the interests of the Act, including:
 - i. Whether employees might be able to opt-out/opt-in to the inclusion of certain information on voter lists.
 - ii. Whether other means of communication might be created, such as government-hosted electronic forums or emails.

D. Requests for Review. Whether or how to amend the process for Board review of the decision and direction of election.

1. When the parties should be required to file a request for Board review of the direction of election.
2. Whether or how the rules should describe the standard the Board will apply in deciding whether to grant a stay of proceedings, and/or interlocutory Board review of the direction of election.
3. Whether a request for review which is not interlocutory should be consolidated with any request for review of post-election decisions by the regional director.
4. Whether the Board should eliminate the authority of regional directors to *sua sponte* transfer cases to the Board for issuance of an initial decision and direction of election.

E. Timing of Elections. Whether or how the rules should address the scheduling of the election.

1. Whether the election should be scheduled “as soon as practicable.”
 - a. If not, whether the rules should include a minimum or maximum time between the filing of the petition and the election, and if so, how long.
2. Whether the waiting period set forth in current Section 101.21(d) should be eliminated.

3. Whether the proposed rules adequately protect free speech interests.
 - a. If not, state specifically how the rules should be amended to accommodate those interests or which provisions of the proposed rule should be adopted or rejected.
4. Whether or how the rules should address “blocking charge” policy and the procedures used for placing a representation case in abeyance pending the outcome of unfair labor practice charges.
 - a. Whether current practice should be codified.
 - b. Whether procedures should be expanded to require an offer of proof and/or witnesses to be provided to the region when requesting an abeyance, and whether the regional director should continue processing the case if the offer is inadequate.
 - c. What process should be followed while the regional director is investigating a request to hold a representation case in abeyance.
 - d. Whether the standard should be amended to require the regional director to find probable cause to believe that an unfair labor practice was committed before placing a case in abeyance, or whether some other standard should apply. Whether the standard should be the same for different kinds of unfair labor practice allegations, such as those the Board currently describes Type I and Type II blocking charges.
 - e. Whether and under what circumstances the current procedure should be replaced with a procedure that does not delay the election, such as:
 - i. a vote-and-impound procedure, or
 - ii. reliance solely on other existing procedures, such as motions to dismiss the petition and/or post-election objections.

F. Post-Election Hearings. Whether or how post-election hearing procedures should be amended.

1. Whether to codify the existing practice of determining if the hearing is warranted by examining the offer(s) of proof.
2. Whether such offer(s) of proof in support of objections should be filed at the same time as the objection(s).
3. When the post-election evidentiary hearing should be held.

4. Whether the post-election hearing should open with statements of party positions, followed by the same joinder and offers of proof procedures as proposed for pre-election hearings. (See Issue B.2)

G. **Other Post-Election Procedures.** Whether or how post-election Board review procedures should be amended.

1. Whether stipulated elections should be subject to discretionary Board review of post-election decisions by the regional director.
2. Whether, in contested cases, regional directors should be required to issue a final decision and certification concerning the hearing officer's report and recommendation, or may instead choose to transfer the matter to the Board.
3. Whether the current discretionary standard for Board review of the regional director's certification in contested cases should be amended.

H. **Other Issues.**

(SAMPLE) REQUEST TO APPEAR

In the matter: Representation-Case Procedures Rulemaking

RIN 3142-AA08

Name: Your Name

Date: February 28, 2014

Organization (if applicable): Your Name & Associates, P.L.L.C.

Issues: B.6; A.1 & A.9; and G.1 & G.2 & G.3.

First Issue: B.6.

Summary: I strongly oppose the Board's proposal to eliminate the parties' right to file post hearing briefs to the Regional Director after the close of the pre-election hearing. Although the proposal grants hearing officers discretion to permit the filing of post-hearing briefs, it seems clear that the rule is intended to eliminate the right to file briefs in all but the most complicated cases. However, the pre-election hearing is extremely important in every case because that provides the basis for the regional director to decide what the appropriate unit is for purposes of conducting the election. When I file a brief, I point out the best evidence and cases that support my client's position. No matter how dedicated the people in the regional offices are, and no matter how "routine"

the case is, it is entirely possible that the regional offices will accidentally miss key testimony or fail to locate key cases that support my client's position. This, in turn, may lead the regional office to mistakenly reject my client's position and direct an election in the wrong unit. If that happens, my client will have to go through the hassle and expense of a second election. I firmly believe maintaining parties' right to file briefs will help eliminate mistakes. The old system worked well, and there is no reason to change it.

Second Issue: A.1 & A.9

Summary: I litigate cases and deal with a variety of agencies on behalf of clients. On a regular basis I file and receive documents electronically. I have never had a problem with electronic filing or service of a document. It makes good sense and saves my clients money. I no longer have to pay the cost of having to "overnight a document" so it can be filed by the deadline; instead, I can just electronically file the document with the push of a few buttons. This means I don't have to pass on those costs to my client. I also get documents quicker this way. It's a win win for all the parties and practitioners as well as the government. Accordingly, I strongly support the Board's proposal to allow parties and the Board to electronically file and transmit representation case documents.

Third Issue: G.1 & G.2 & G.3

Summary: I agree with the Board's proposal to require the regional director in contested cases to issue a final decision. In these cases it makes little sense for the Board to hear exceptions directly from the hearing officer, when, in my experience, the regional director is usually quite familiar with the case and the issues presented. And once the regional director has issued a decision, there is no problem with the Board having only discretionary review—as expressly stated in Section 3(b) of the Act. Stipulated cases, however, present an entirely different issue. In these cases, the parties have entered into an agreement predicated on their right to have the Board—not the regional director—decide post-election matters. If, as proposed, the Board eliminates that right, the parties will have less incentive to enter into stipulations. For these reasons, I support the Board's proposed changes to post-election review of contested cases, but not stipulated cases.

By direction of the Board.

Dated: Washington, DC February 20, 2014

William B. Cowen, Solicitor

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