



NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
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March 27, 2008

VIA Hand Delivery

Mr. Lester Heltzer, Executive Secretary
National Labor Relations Board
1099 14th Street, N. W.
Washington, D.C. 20570

Re: Comments concerning Joint Petitions for Certification Consenting to an Election,
Proposed Rulemaking of 29 CFR Parts 101 and 102.

Dear Mr. Heltzer:

On February 26, 2008, the National Labor Relations Board filed a Notice of Proposed Rulemaking concerning Joint Petitions for Certification Consenting to an Election. These comments in opposition to the proposed rules are submitted on behalf of the National Right to Work Legal Defense Foundation, Inc., and individual employees Clarice Atherholt, Sherwood Cox and Mike Ivey.

I. Parties: The National Right to Work Legal Defense Foundation, Inc. (“Foundation”) is a nonprofit, charitable organization providing free legal aid to employees whose human or civil rights have been violated by abuses of compulsory unionism. The Foundation was formed to protect the Right to Work, freedoms of association and speech, and other fundamental liberties of ordinary working men and women from infringement by compulsory unionism. As such, the Foundation aids employees who have been denied, or coerced in the exercise of, their right to refrain from collective activity.

The Foundation's staff attorneys have served as counsel for individual employees in many Supreme Court, federal court and NLRB cases involving employees' rights to refrain from joining or supporting labor organizations, and thereby helped to establish important precedents protecting employee rights in the workplace against the abuses of compulsory unionism. These cases include Communications Workers v. Beck, 487 U.S. 735 (1988); Lee v. NLRB, 393 F.3d 491 (4th Cir. 2005); Penrod v. NLRB, 203 F.3d 41 (D.C. Cir. 2000); Lucas v. NLRB, 333 F.3d 927 (9th Cir. 2003); Saint-Gobain Abrasives, 342 NLRB 434 (2004); and Dana Corp., 341 NLRB No. 150 (2004); further proceedings, 351 NLRB No. 28 (2007). The Foundation's legal aid program has been at the forefront of exposing the true nature of so-called "neutrality agreements." See Dana Corp., 341 NLRB No. 150 (2004); further proceedings, 351 NLRB No. 28 (2007); Patterson v. Heartland Industrial Partners, LLP, 225 F.R.D. 204 (N.D. Ohio 2004); Heartland Industrial Partners, 348 NLRB No. 72 (2006).

Clarice Atherholt was formerly an employee of Dana Corporation, an employer that entered into a neutrality agreement with the UAW. Ms. Atherholt was subjected to a coercive union organizing drive conducted under the auspices of a neutrality agreement, and was the Petitioner in Dana Corp., 341 NLRB No. 150 (2004); further proceedings, 351 NLRB No. 28 (2007). Ms. Atherholt has witnessed first hand the harassing and coercive conduct of union organizers armed with special powers provided by a neutrality agreement.

Sherwood Cox is a registered nurse employed by the Western Medical Center, Santa Ana, California. Western Medical Center entered into a neutrality agreement with the California Nurses Association (CNA). Mr. Cox filed a number of successful unfair labor practice charges and spearheaded employee opposition to this neutrality agreement and to representation by the CNA. Mr. Cox has also witnessed first hand the harassing and coercive conduct of union organizers, and has himself been subjected to harassment and coercion as a result of his views and activities.

Mike Ivey is an employee of Freightliner Custom Chassis Corp., a subsidiary of the Chrysler Corporation, in Gaffney, South Carolina. Mr. Ivey's employer entered into a neutrality agreement with the UAW. Mr. Ivey has filed a number of successful unfair labor practice charges and spearheaded employee opposition to this neutrality agreement and to representation by the UAW. Mr. Ivey has also witnessed first hand the harassing and coercive conduct of union organizers armed with special powers provided by a neutrality agreement, and has himself been subjected to harassment and coercion as a result of his views and activities.

II. Summary: The Foundation and employees Atherholt, Cox, and Ivey oppose the NLRB's proposed rules and object to both specific provisions of the rules and to the general effect that they will have on labor relations.

The proposed rules are objectionable because they give control over the election process to union officials and employers, and then apply a rubberstamp of federal

government approval. Employers and their preferred unions are given the power to jointly: (1) schedule rapid-fire elections at will, with no showing of interest that even a single employee desires the union's representation; (2) gerrymander the bargaining unit; (3) refrain from giving advance notice to employees that the election will be conducted, since the notice requirement is inherently unenforceable; and (4) engage in wrongful conduct to coerce employees to support the union, as blocking charges are inapplicable and employees are not parties to the post-election proceedings.

The proposed rules are generally objectionable because they remove the Board from effectively policing the election process. They instead delegate almost all authority to colluding union officials and employers. If adopted, the proposed rules will do little more than give Board approval to a host of abusive top-down union organizing methods. The Board should not "rent out" its representational machinery for these purposes.

III. Specific Objections: The Foundation and employees Atherholt, Cox and Ivey object to the following provisions of the NLRB's proposed rules.

1. "The petition will provide the date on which the parties have agreed for an election, not to exceed 28 days from the date of filing of the petition."

This rule gives union officials and employers almost complete control over the date, place and hours of the election, subject to only "extraordinary circumstances." The rule is tailor-made for abuse, as union officials and employers can manipulate the schedule to ensure that the election results in union officials gaining exclusive bargaining

privileges over employees. For example, an election can be timed to make it more difficult for a shift of employees opposed to union representation to vote. Or, union officials could use a tactic they commonly use in contract ratification votes—schedule the election at an inconvenient time and location so that only union militants participate.

2. “The petition will provide a description of the bargaining unit that the parties claim to be appropriate.”

This rule gives union officials and employers almost complete control over the composition of the bargaining unit. This permits union officials and employers to gerrymander bargaining units to ensure union victory in ways that the Board would not allow if it were conducting a full and open certification election. Units of employees with no community of interest can (and most likely will) be lumped together into gerrymandered units. The proposed rules provide no procedure for the employees to challenge the composition of the unit into which they are forced.

3. “No showing of interest is required to be filed with the petition.”

This rule gives union officials and employers complete control over whether an election will be conducted, irrespective of the wishes of employees. Union agents and employers can conspire to thrust union representation onto employees via a rapid-fire election, even though not a single employee has sought or desires such representation.

This is a severe abuse of the Board’s traditional election processes, which have always required a showing of interest. In Dana Corp., 351 NLRB No. 28 (2007), the

Board rejected the General Counsel's argument that employees seeking a decertification should have to make a 50% showing of interest. The Board reiterated its 30% showing of interest standard as fair to all parties. Yet here, the proposed rule scraps that standard, and substitutes nothing more than the discretion and collusion of self-interested union officials and employers as the equivalent of a "showing of interest."

The inequity of this proposal is highlighted by the fact that any intervenors wishing to get on the ballot must meet the Board's traditional showing of interest standards in less than fourteen (14) days. Coupled with the rapid-fire nature of this election process and the fact that notice of the election may never reach the employees in a timely fashion, it is difficult to imagine that any other union or group of employees could muster themselves in time to meet the standard "showing of interest" requirement to get on the ballot. In essence, the Board is giving a free pass for an employer to choose a specific union for its employees, with no practical opportunity for employees to voice even a modicum of dissent or organize themselves against the anointed union.

In any event, an election petition without any showing of employee interest is impermissible under the plain language of § 9(c)(1)(A) of the Act, 29 U.S.C. § 159(c)(1)(A), which requires that a "substantial number of employees . . . wish to be represented for collective bargaining." While the Board has discretion to interpret the NLRA, it cannot adopt a rule under which "substantial number of employees" is construed to mean no employees whatsoever.

