

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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National Labor Relations Board
1099 14th Street NW
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Docket Number: NLRB-2011-0002

Following are comments about the proposed amendments to Board's Rules and Regulations. These comments are submitted on behalf of the International Brotherhood of Teamsters (IBT) and its more than 500 affiliated Joint Councils and Local Unions.

As we are sure you are aware, the Board conducts more representation elections involving affiliates of the Teamsters than for any other International Union. Our affiliates' experience with the current election procedures is that they are unfair, confusing, outdated and susceptible to abuse by unscrupulous employers seeking to prevent their workers from exercising their right to organize by obstructing and delaying the process. The proposed changes will streamline the election process, reduce uncertainty and promote fairness.

We commend the Board for proposing these commonsense improvements to its Rules and Regulations. The proposed changes will be a first step toward accomplishing what workers deserve: a fair and efficient process for them to decide whether to form a union. In this regard, it is the workers' fundamental right to organize that is enshrined in the statute, not the employers' right to obstruct workers' rights.

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Delaying elections has become a routine strategy by employers seeking to buy more time to conduct anti-union campaigns. True enough, employers have the right to express their views about collective bargaining. They do not, however, have to engage in frivolous or pointless litigation pursued solely for the purpose of achieving delay. The current procedures place enormous stress on rank-and-file workers and their managers, inhibiting productivity and souring working relationships. The bad feelings generated by long and protracted election campaigns often extend to a company's customers. Everyone loses -- the company, the workers, the union, and the customers.

Our organizers have found that employers consistently and aggressively delay elections to discourage workers from forming unions. They take it for granted that workers who want to form a union will have to fight a lawyer or consultant driven battle involving threats, pressure and costly litigation.

The current election procedures led to unnecessary delays earlier this year at Latino Express, a Chicago transportation company, at which approximately 100 recently voted to be represented by one of our affiliates. The Employer was unfortunately allowed to challenge the election in such frivolous ways as even questioning whether the Teamsters affiliate is a "labor organization."

Teamsters Local 777 filed its RC Petition on January 18, accompanied by an overwhelming showing of interest from the company's 100 or so school bus drivers. The Company successfully delayed the election for fully three months by engaging in various delaying tactics.

First, the Employer challenged the composition of the bargaining unit. It sought to "pack" the unit with accountants, supervisors, and even its public relations staff. It challenged the Union's status as a labor organization. It argued over the election date, insisting that it should be held during spring break when none of the drivers would be working. Then, it refused to permit the election to take place on its property.

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During this period, the Company fired two Union supporters, hired replacements, distributed anti-union literature, held captive audience meetings, and pressured workers in one-on-one conversations. The Union filed multiple unfair labor practice charges. Ultimately, Local 777 won the election 46-33.

In another example of a deliberately drawn-out election process, Teamsters Local 79 filed a petition to represent warehouse employees at a U.S. Foodservice distribution center in Tampa, Fla., on May 21, 2010, again supported by an overwhelming showing of interest. Fifteen months later, the workers are still waiting for an election.

Shortly after the RC Petition was filed, U.S. Foodservice hired a notorious anti Union law firm (Ogletree Deakins). Its lawyers proceeded to stall the election through long and expensive hearings concerning the size and composition of the bargaining unit.

On July 2, 2010, NLRB Region 12 issued a Decision and Direction of Election. Teamsters Local 79 filed unfair labor practice charges because, during the two months of litigation over the unit, the Company committed a litany of unfair labor practices. On June 8, 2011, Administrative Law Judge Joel P. Biblowitz sustained the Union's charge that the employer had unlawfully violated their right to engage in concerted protected activity. He ordered the Company to post a notice concerning its behavior in the workplace. No election date has yet been set.

In many cases, workers overwhelmingly want to join a union. But employers are skilled at taking advantage of antiquated rules and preventing workers from benefiting from a collective bargaining agreement. They are able to waste the government's resources with frivolous appeals.

The Board is proposing to give Regional Directors the discretion to deny review of post-election rulings. They now have that discretion concerning pre-election rulings. The Teamsters believe such a change would prevent employers from abusing the election process to prevent employees from joining unions.

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The Teamsters also support the proposed change that would defer eligibility issues until after the election if they involve less than a fifth of the workers in the bargaining unit. Changing this rule would eliminate many unfair challenges that are intended only to delay an election.

Such challenges bogged down an election in 2003. On November 18, Local 527S of the Graphic Communications International Union (now affiliated with the Teamsters) filed a petition to represent the 69 employees who bagged and delivered the Atlanta Journal-Constitution newspaper at the facility in Cumming, Ga.

The composition of that unit was challenged. The Employer claimed the only appropriate unit was all 3,800-plus employees in the Atlanta Journal-Constitution circulation department located in 70 facilities scattered over 58,000 square miles.

The Board has never refused to apply its normal presumption in favor of a single location unit in favor of an integrated unit covering so many facilities in such a vast space. Nevertheless, a six-day hearing was conducted over non-consecutive days.

On January 23, 2004, the Regional Director directed an election at the single-facility Cumming location. Finally, on February 6, a representation election was scheduled for February 17, 91 days after the petition had been filed.

The Board's proposed rules would have prevented this delay. The issues could have been resolved after the election. If the employer's challenge was upheld, the union would have walked away. If the employer's challenge was denied, the ballots could then have been counted.

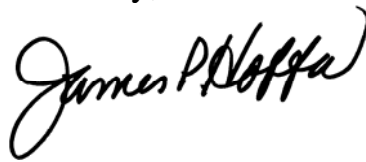
The Board's proposal to take the uncertainty of scheduling a date for a representation election out of the equation is laudable. It will provide unions, employers and employees with much-needed guidance and predictability as to what will occur from the filing of a petition for an election to the counting of the ballots.

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The Teamsters strongly support the NLRB's proposed changes to election rules and regulations. These are modest, common-sense changes that preserve due process and strengthen the secret ballot process. They update election methods so they are compatible with today's technology. And they eliminate the uncertainty that costs so much in time, money and productivity.

Sincerely,

A handwritten signature in black ink that reads "James P. Hoffa". The signature is written in a cursive, flowing style.

James P. Hoffa
General President

JPH/lm