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# BOND INFORMATION MEMO

## Labor and Employment Law

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### National Labor Relations Board Reissues Proposed Rule on “Quickie” Elections

On February 6, 2014, the National Labor Relations Board (“Board”) reissued a proposed rule that would significantly shorten the timetable for union representation elections. This same proposed rule (which has become known as the “quickie” or “ambush” election rule) was initially issued by the Board on June 22, 2011. After the proposed rule was met with strong opposition from employer organizations, the Board issued a final rule on December 22, 2011, that was a scaled-down version of the proposed rule. The final rule became effective on April 30, 2012. However, on May 14, 2012, the U.S. District Court for the District of Columbia declared the final rule to be invalid because the Board lacked a quorum when it voted on the final rule. The Board appealed the decision, but recently announced that it was withdrawing its appeal.

As some had predicted, the Board’s withdrawal of its appeal set the stage for its reissuance of the broader June 22, 2011, proposed rule. The proposed rule:

- Establishes electronic filing of election petitions and other documents (intended to speed up processing);
- Requires pre-election hearings to begin seven days after a petition is filed (currently, pre-election hearings can begin up to two weeks after a petition is filed);
- Defers litigation of all “eligibility” issues if they involve less than 20% of the proposed bargaining unit until after the election (these issues would be decided post-election if needed);
- Eliminates pre-election appeals of rulings by Board Regional Directors; and
- Reduces the time in which an employer must provide an electronic list of eligible voters from seven days to two days.



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If this proposed rule is implemented, it will significantly shorten the time period from the filing of a union representation petition to the date on which a representation election is held. This creates a distinct advantage for the union, because it gives the employer less opportunity to counteract a union campaign which likely began well before the filing of the representation petition.

Comments on the proposed rule from interested parties must be received on or before April 7, 2014. After the comment period, the Board may revise the proposed rule, or may issue it as a final rule. The Board's decision to reissue the original proposed rule that was issued on June 22, 2011 (rather than the final rule that was issued on December 22, 2011) seems to indicate that the Board may not be willing to make significant changes before a final rule is issued. However, it is likely that the final rule — in whatever form it is issued — will once again be challenged by employer organizations in federal court on the ground that the Board exceeded its rulemaking authority.

To learn more, contact Tyler T. Hendry at (315) 218-8301 or [thendry@bsk.com](mailto:thendry@bsk.com).