

NLRB General Counsel Gives Unions an Early Labor Day Present: Electronic Based Union Organizing Standard Impacting all Employers

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On September 1, 2015, the National Labor Relations Board General Counsel issued a memo to all NLRB filed employees instructing them to accept e-mail exchanges and various “internet/intranet sign-up methods” to support a union organizing petition instead of the traditional authorization cards used for the last 60 years.

Before the NLRB will conduct an election regarding whether employees will be represented by a union, the NLRB must verify that at least 30 percent of the voting unit desires such representation. This “showing of interest” has always been proven by the signed and dated authorization cards union organizers obtained from the employees. The signature was necessary to ensure the employee, and not someone acting on their behalf or fraudulently, desired such representation. The date on the card was critical to ensuring the desire for representation was current.

The use of electronic signatures will allow employees simply to email their desire or click a box on a web page rather than consider and sign an authorization card. To be valid, the electronic submission simply needs to have (a) the signer’s name; (b) the signer’s email address or other known contact information, such as a social media account in the event the employee uses Twitter to “Tweet” his or her signature; (c) the signer’s telephone number; (d) language signifying that the employee desires the union’s representation; (e) the date; (f) the employee and employer name.

The ease and secrecy of such efforts will greatly reduce the time employers have to respond to such efforts by educating their employees on the pros and cons of such a choice. Coupled with the new shorter election rules and the NLRB’s new joint employer standard, unions have much to celebrate this Labor Day. One benefit unions presumably won’t like is that employees can similarly use this

new form of evidence to support a decertification petition.

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