



VIA ELECTRONIC SUBMISSION

September 28, 2020

withdraw its election proposal.⁴ ABC and its members specifically opposed the information to unions, including personal phone numbers and emails. ABC affiliates in Texas subsequently sued for declaratory and injunctive relief against the final rule, but that challenge was rejected by the U.S. Court of Appeals for the Fifth Circuit.⁵

Since it went into effect in April 2015, ABC members have found the 2014 final election rule requirements to be unduly burdensome for employers, intrusive on employee privacy rights and an infringement on the rights of employers and employees to a fair pre-election process.

Under the Trump administration, the NLRB has issued various rulemakings to modify or rescind entirely the 2014 final election rule. In 2017, the NLRB issued a request for information⁶ scaling back some of the final rule changes, and ABC submitted comments in support of such changes.⁷ In revising the Obama-era rule, ABC encouraged the NLRB to return to the election procedures that were in place prior to adoption of the 2014 final election rule.

The NLRB issued its new Representation-Case Procedures final rule on Dec. 18, 2019, which modified procedures for union elections and scaled back provisions of the 2014 final election rule.⁸ However, the 2019 rule retained the requirement that employers disclose the available email addresses and home and personal cell phone numbers of eligible voters to nonemployer parties to an election petition, once an election is agreed to by the parties or directed by the regional director.⁹

Shortly before the 2019 final rule was set to go into effect on May 31, 2020, the U.S. District Court for the District of Columbia blocked some of the new changes from going into effect following a lawsuit filed by the AFL-CIO. On June 1, the NLRB announced that it would move forward with upheld.¹⁰ The NLRB and the AFL-CIO filed cross-both appeals remain pending before the U.S. Court of Appeals for the District of Columbia Circuit as of this writing.

On July 29, the NLRB issued its NPRM on Representation-Case Procedures: Voter List Contact Information; Absentee Ballots for Employees on Military Leave as part of its ongoing efforts to more effectively administer the National Labor Relations Act.¹¹ The NPRM would modify the voter list provisions to eliminate the requirement that the employer provide available personal email addresses and home and personal cell phone numbers of all eligible voters to the

4

regional director and other parties. Additionally, the proposed rule would modify the general policy of not providing absentee ballots by establishing a procedure to provide absentee ballots to employees who would otherwise be unable to vote in the election because they are on military leave.¹²

Uwo o ct { 'ghCDEarEgo o gpw'kp'Tgur qpug'vq'vi g'PNTDaiRt qr qugf "T wq"

above-

The requirement that employers disclose employee email addresses and phone numbers imposes unnecessary invasions of privacy and related burdens on both construction employers and employees. As ABC noted in its response to the RFI on this issue, a survey of ABC member labor attorneys found that 90% of respondents reported complaints by employees about the infringement of their privacy rights under the 2014 final election rule.¹⁵ If anything has become clear during the explosive growth of electronic and social media, it is the increased potential for abuse, harassment, malicious security intrusions and identity theft. In particular, the requirement that employers disclose employee email addresses and personal phone numbers ignores email addresses that have become part of union corporate campaigns.¹⁶ For example, in the case of *Pulte Homes, Inc. v. LIUNA Construction*,¹⁷ the

In another report

eligibility list requirements laid out in *Excelsior* allows employers and employees to more easily comply with the current timeline and submit voter lists without hindering the progress of an election.

ABC therefore encourages the NLRB to finalize removing the personal electronic information

Of Counsel:

Maurice Baskin
Little Mendelson, P.C.
815 Connecticut Ave., N.W.
Washington, DC 20006