IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, et al., Plaintiffs, v. NATIONAL LABOR RELATIONS BOARD Defendant.	Case No. 1:15-cv-00009-ABJ Judge Amy Berman Jackson

EXHIBIT 9 IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	**RIN 3142-AA08**
	)	
	)	**(79 Fed. Reg. 7318 No. 25)**
	)	
NOTICE OF PROPOSED	)	
	)	
RULEMAKING	)	
	)	
Representation Case Procedures	)	

Comments to the Rules Proposed By the National Labor Relations Board Regarding Representation Case Procedures

I. INTEREST IN THE RULES PROPOSED BY THE NATIONAL LABOR RELATIONS BOARD REGARDING REPRESENTATION CASE PROCEDURES.

The undersigned represent small, medium and large businesses. As an employers covered under Section 152 of the National Labor Relations Act ("Act") the undersigned organizations respectfully submit that the separate and aggregated effects of the proposed rules would have a significant adverse effect on business, the meaningful exercise of employee Section 7 rights, employer rights under Section 8(c), employee privacy rights and on the workplace in general. The undersigned have a significant interest in the manner in which the Act is administered by the National Labor Relations Board ("Board"), particularly with respect to the conduct of representation elections and the procedural safeguards associated therewith.

II. SUMMARY OF COMMENTS.

The Proposed Rules radically impair the right and ability of employees to make an informed choice regarding their Section 7 rights and effectively denies employers their Section 8(c) rights to communicate vital information to their employees regarding unionization. Furthermore, by deferring determination of important procedural issues until after the representation election and imposing expedited, determinative pleading requirements on employers, the Proposed Rules compromise employers' due process rights.

Although the Supreme Court has stated that "Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives by employees," that discretion must be consistent with the essential purposes of the Act. *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). We submit that the Proposed Rules are not consistent with the considered judgment of Congress to safeguard the employer's ability to communicate its positions to its employees and, in turn, for employees to make an informed decision regarding union representation.

There is no demonstrable need for the Proposed Rules and their promulgation will have a negative effect on employer/employee rights and workplace stability. Moreover, the Proposed Rules will have a significant economic impact on our small business, yet the Board has failed to comply with the directory requirements of the Regulatory Flexibility Act.

III. THE PROPOSED RULES WOULD SIGNIFICANTLY IMPAIR THE RIGHTS AND ABILITIES OF EMPLOYERS TO COMMUNICATE THEIR POSITIONS TO EMPLOYEES UNDER SECTION 8(C) OF THE ACT.

Section 8(c) protects the employer's right to communicate its position regarding, *inter alia*, union organization to its employees. As the Supreme Court stated in *Chamber of Commerce v. Brown*, 555 U.S. 60, 67-68 (2008):

> From one vantage, Section 8(c) "merely implements the First Amendment," *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617, 89 S.Ct. 1918, 23 L.Ed.2d 547 (1969), in that it responded to particular constitutional rulings of the NLRB. See S. Rep. No. 80-105, Pt. 2, pp. 23-24 (1947). But its enactment also manifested a "Congressional intent to encourage free debate on issues dividing labor and management." *Linn v. Plant Guard Workers*, 383 U.S. 53, 62, 86 S.Ct. 657, 15 L.Ed.2d 582 (1966). It is indicative of how important Congress deemed such "free debate" that Congress amended the NLRA rather than leaving to the courts the task of correcting the NLRB's decisions on a case-by-case basis. We have characterized this policy judgment, which suffuses the NLRA as a whole, as "favoring uninhibited, robust, and wide-open debate in labor disputes," stressing that "free will use of the written and spoken word has been expressly fostered by Congress and approved by the NLRB." *Letter Carriers v. Austin*, 418 U.S. 264, 272-73, 94 S.Ct. 2770, 41 L.Ed.2d 745 (1974).

Section 8(c) provides all employers the ability to engage their respective employees in robust discussion regarding unions and unionization. Furthermore, Section 8(c) safeguards our ability to ensure that our employees make an informed choice regarding critical employer-employee relations. See, e.g., *NLRB v. Virginia Electric & Power Co*., 314 U.S. 469 (1941); *NLRB v. American Tube Vending Co*., 134 F.2d 993 (2nd Circuit), cert denied, 320 U.S. 768 (1943). See also, H.R. Rep. No. 510 80th Cong. 1st Sess. 15 (1947). This can only be done when

an employer has a reasonable amount of time to prepare and communicate the necessary information to employees.

The current median time frame of 38 days between the filing of a representation petition to the conduct of an election is one of the shortest periods in the Board's history. Consider the typical union organizational scenario: The union spends six to eight months gathering authorization cards from employees. During that time, the union conveys its message regarding the benefits of unionization. Not all employees will necessarily be privy to the message and many, if not most, employers are completely oblivious to the fact that a union campaign is underway.

During the union campaign, the employee population, or portions thereof, can hear a one-sided message. Employees may not receive information about union dues, fines and assessments imposed by the union.

The filing of a representation petition is generally the first time most employers become aware that a union organizational campaign has been underway at their workplace. The employer then has approximately 5-1/2 weeks to formulate and convey its message to its employees – in contrast to the six to eight months that a union has been communicating to the same employees.

Unionization is not a trivial matter for either the employer or the employees. For many employers, unionization will radically alter the manner in which they interact with their employees and conduct their business operations. Section 8(c) provides the employer the ability to communicate important information to employees, *provided, however*, the employer has a sufficient amount of time to convey the information. This information may include, but is not limited to, information on the petitioning labor organization, existing wages, benefits, and terms and conditions of employment, data concerning the profitability of competitors, the potential

effects of unionization on operations, etc. Without such information, employees will be selecting a collective bargaining representative lacking crucial information. By truncating the period between the filing of a representation petition and the conduct of an election, the Proposed Rules reduce an employer's Section 8(c) rights to legal theory as well as compromise employee Section 7 rights to make an informed choice regarding unionization.

The Proposed Rules would compress the period between the filing of a representation petition to the conduct of an election to a mere 10-20 days. An employer often needs 10-20 days just to determine what information it wishes to provide to employees regarding the union and unionization. Moreover, the compressed time frame deprives employers—particularly small and medium-sized businesses—of a meaningful opportunity to engage and consult with counsel. Smaller businesses do not necessarily have labor counsel on retainer. Therefore, after receiving the petition, the typical employer will need to find competent labor counsel, develop a communications program, and implement such program while simultaneously analyzing all of the issues to be addressed in its Statement of Position and the hearing—all within 10-20 days.

Consequently, were the Proposed Rules implemented, the election would occur before an employer has even had an opportunity to effectively consult with counsel and/or to determine what information should be conveyed to its employees. This information vacuum is compounded by the fact that the only information that employees will likely have received has come from the petitioning union. Therefore, employees will be making the critical decision as to whether or not to unionize with incomplete information. This will deprive employees of the ability to make an informed choice regarding their Section 7 rights. See, Section 1(b) *Short Title and Declarations of Policy, Labor Management Relations Act of 1947,* Pub.L.No. 101, 80th Cong., 29 U.S.C. § 145 (1994).

IV. THERE IS NO EVIDENCE THAT THE PROPOSED REPRESENTATION ELECTION RULES ARE NECESSARY.

There is absolutely no evidence that the present timeframe for conducting representation elections is either too long or otherwise flawed. Indeed, all of the evidence demonstrates that the current timeframes are not only adequate, but among the most expeditious in the Board's history.

Unreasonable delays in the resolution of representation petitions are atypical. Moreover, there is no evidence that the causes of such delays would be remedied by any of the proposed rules changes.

There is no demonstrable need for shortening the time between the filing of a representation petition and the conduct of an election and the Board has met or surpassed its internal representation timeframe targets. Therefore, we respectfully submit that the Proposed Rules are a solution in search of a problem. Perhaps more accurately, it is a solution that will *create* a myriad of problems for employees and employers by impairing their Section 7 and 8(c) rights, as well as increasing structural costs to all employers, particularly smaller businesses.

V. THE PROPOSED RULES' STATEMENT OF POSITION REQUIREMENT PLACES AN UNDUE BURDEN ON EMPLOYERS AND IS INCONSISTENT WITH THE ACT.

The Statement of Position requirement contained in the Proposed Rules places an impermissible and untenable burden on employers by compelling them to set forth certain positions and information in an unreasonably short amount of time, and perhaps without effective input of counsel. This is especially true in light of the Board's decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (Aug. 26, 2011). The proposed Section 102.63(b)(1) provides as follows:

> After a petition has been filed under Section 102.61(a) and the regional director has issued a notice of hearing, the employer shall file and serve on the parties

named in the petition its Statement of Position by the date and in the manner specified in the Notice unless that date is the same as the hearing date. If the Statement of Position is due on the date of the hearing, its completion shall be the first order of business at the hearing before any further evidence is received, and its completion may be accomplished with the assistance of the hearing officer. (1) The employer's Statement of Position shall state whether the employer agrees that the Board has jurisdiction over the petition and provide the requested information concerning the employer's relation to interstate commerce; state *whether the employer agrees that the proposed unit is appropriate, and, if the employer does not so agree, state the basis of the contention that the proposed unit is inappropriate, and describe the most similar unit that the employer concedes is appropriate; identify any individuals occupying classifications in the petitioned-for unit whose eligibility to vote the employer intends to contest at the pre-election hearing and the basis of each such contention; raise any election bar; state the employer's position concerning the type, dates, times, and location of the election and the eligibility period; and describe all other issues the employer intends to raise at the hearing. . . .*

(iii) The Statement of Position shall further state the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing, *and if the employer contends that the proposed unit is inappropriate, the employer shall also state the full names, work locations, shifts, and job classifications of all employees in the most similar unit that the employer*

> *concedes is appropriate*. The list of names shall be alphabetized (overall and by department) and be in an electronic format generally approved by the Board's Executive Secretary unless the employer certifies that it does not possess the capacity to produce the list in the required form. (Emphasis added)

It is plain from the above that the proposed Section 102.63 will place an unreasonable burden on the employer to not only provide a wealth of information to the Board within an impossibly short time of receiving the petition, but posit an alternate appropriate unit as well. This places the employer, as the *non-petitioning party*, in the extraordinary position of having to concede the appropriateness of a unit where it may oppose the propriety of the unionization effort and where it is without determinative evidence that its employees wish to be unionized.

The burden is compounded by the difficulties placed on an employer pertaining to the appropriateness of the petitioned-for unit under *Specialty Healthcare*. Unit scope matters—whether expansion or contraction—contain even more complex factual issues related to an overwhelming community of interest, issues an employer must now address in a compressed timeframe.

Moreover, an employer is required to provide the names, work locations, shifts and job classification of all employees in the most similar unit that it concedes is appropriate. The rule makes no provision for, indeed does not even contemplate, that the non-petitioning party might not otherwise need or want to disclose such information, which information may be of extreme interest to the petitioning union or other unions in subsequent organizational campaigns.

Proposed Section 102.63 clearly presumes that all employers subject to the Act have the capacity to produce the required information in a timely fashion. The presumption may be valid for larger employers with a standing human resources department and, perhaps, in-house legal

counsel. The presumption is flawed as it pertains to many, if not most employers. A sizeable cohort of employers do not maintain at the ready the information necessary to comply with the Statement of Position requirements in a timely manner. Thus, the effect of the Proposed Rule, whether intentional or not, is to require employers covered by the Act to conform their personnel policies and practices so as to comply with proposed Section 102.63. Employers that fail to so conform may not be able to transmit the necessary information within the Board's timeframes. Moreover, this will add tens of thousands of dollars – in legal fees alone – to an employer's overhead. This prejudices employers and unfairly disadvantages smaller employers especially.

Prudent small and medium-sized employers will retain advisors and counsel to help them navigate through Section 102.63(b)(1) requirements, whereas there currently is no need to do so. Under the Proposed Rules – particularly the timeframes contained therein – employers that "go it alone" without counsel will be taking a risk that their interests are adequately protected. The scope and complexity of the required information cannot credibly be transmitted by most employers. Thus, their interests will be unduly prejudiced and/or their costs will substantially increase. See, *Direct Press Modern Electro, Inc*., 328 NLRB 860, 161 LRRM 1193 (1999); *General Cable Corp*., 191 NLRB 800, 77 LRRM 1600 (1971); *Bob's Big Boy Family Rest. S.*, 259 NLRB 153, 108 LRRM 1371 (1981); *Frank Hager, Inc*., 230 NLRB 476, 96 LRRM 1117 (1977); see also, *Mego Corp*., 223 NLRB 279, 92 LRRM 1080 (1976).

VI. THE PROPOSED RULES WILL DEPRIVE EMPLOYERS OF THEIR DUE PROCESS RIGHTS UNDER SECTION 9(C) OF THE ACT.

The Proposed Rules eviscerate the substance of an employer's Section 9(c) right to present evidence and witnesses in furtherance of, and to protect its interests in, the representation election process. Proposed Rule 102.63(b)(v) provides:

> The employer shall be *precluded* from contesting the appropriateness of the petition-for unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses, if the employer fails to timely furnish the information described in paragraphs (b)(1)(iii) and (iv) of this section. (Emphasis added).

Moreover, proposed Rule 102.66(c) provides:

> A party shall be *precluded* from raising any issue, presenting any evidence related to any issue, cross-examining any witness concerning any issue and presenting argument concerning any issue that the party failed to raise in their timely statement of position or to place in dispute in response to another party's statement. (Emphasis added).

The Statement of Position must be filed before or on the hearing date—generally within seven days of receiving the petition. Accordingly, the Rule requires that an employer retain counsel, analyze multiple, potentially complex issues in consultation with counsel, prepare for a representation hearing, develop a communication strategy for its employees, develop its legal arguments on numerous issues and prepare and file its Statement of Position within approximately five working days. Such requirement is manifestly unreasonable and effectively deprives employers of their rights to a hearing under Section 9(c) of the Act.

As set forth in Section V above, compliance with the proposed Statement of Position requirement will be difficult enough for larger employers but will place small employers at a

special disadvantage. Indeed, for smaller employers, compliance with the Statement of Position requirements may be extraordinarily burdensome and in many cases impossible. Small employers are not insulated from the panoply of representational issues that confront all employers. Small employers have multi-plant unit issues, employ seasonal employees, utilize a variety of skills and crafts. Sophisticated and complicated issues are not the sole preserve of major corporations. See, *J&L Plate*, 310 NLRB 429, 142 LRRM 1300 (1993); see also, *NLRB v. Broyhill Co*., 528 F.2d 719 (8th Cir. 1976). Determinations related to supervisory status and voter eligibility cannot and should not be made cavalierly. Yet, the Proposed Rules necessarily require such determinations to be made without due deliberation, and consequently, to the potential prejudice of both the employer and affected employees. That a number of employers will be deprived of effective legal representation and due process rights is not hyperbole, but rather, a certainty.

The deprivation of due process rights is made more egregious by the fact that, as set forth in Section IV hereof the Board has adduced absolutely no evidence that the proposed changes are the result of a demonstrable need. Thus, the rules are more akin to preferential fiat rather than consistent with the Board's rulemaking authority under Section 156 of the Act.

The evidentiary preclusions set forth in proposed rule 102.66(c) are exacerbated by proposed rule 102.63(b)(1)(v) that prevents employers from contesting the appropriateness of the petitioned-for unit and from contesting the eligibility or inclusion of any individuals at the pre-election hearing if such information is not contained in a timely filed Statement of Position.

Not only will such preclusion have a profoundly deleterious effect on the due process rights of employers, it will have the perverse effect of increasing the probability that *nearly every*

petition will be contested—thereby thwarting the Board's ostensible aim of "streamlining" the representation election procedures.

Presently, pre-election hearings are a relative rarity. Employers and unions generally reach agreement on a variety of issues including unit composition, date, time and place of the election. Employers and unions typically enter into one of three types of pre-election agreements: consent election; stipulated election agreement and full consent-election agreement. Rather than enter into *any* of these agreements, a cautious employer will go to hearing. Mutually agreed eligibility lists, with agreement on timeframes would necessarily be less likely under the Proposed Rules. See, *Norris-Thermador Corp.*, 119 NLRB 1301, 41 LRRM 1283 (1958); see also, *NLRB v. Hood Furniture Mfg. Co.*, 941 F.2d 235 (5th Cir. 1991). Since many if not most employers will have had insufficient time to assess the issues that would otherwise be included in a Statement of Position, they will necessarily reserve the right to go to a hearing.

Furthermore, the short timeframe allowed for submitting the Statement of Position will necessarily prompt employers to raise every conceivable issue so that such issue will not be forfeited under the preclusion rule. Again, as a consequence, relatively few elections will be conducted by stipulation.

This would impair the finality the parties otherwise would have in, for example, an agreement for consent election. *McMullen Leavens Co.*, 83 NLRB 948, 24 LRRM 1175 (1949); *c f Hampton Inn & Suites*, 331 NLRB 238 (2000).

VII. BACKLOADING LITIGATION OF SUPERVISORY ISSUES UNTIL AFTER THE ELECTION INCREASES UNCERTAINTY.

By back loading Section 2(11) litigation, the Proposed Rules merely postpone nettlesome issues more appropriately litigated prior to the election. Pre-election litigation of supervisory issues clarifies matters related to unit scope and reduces the probability of objectionable conduct

by employees whose managerial status is indeterminate. By permitting a regional director (or hearing officer) to direct an election before resolving unit appropriateness and eligibility issues, the Proposed Rules prejudice employers' due process rights and employee Section 7 rights.

VIII. THE PROPOSED "20% RULE" WILL DEPRIVE THE EMPLOYER AND THE ELECTORATE OF CERTAINTY REGARDING UNIT COMPOSITION, FRUSTRATE EMPLOYEE SECTION 7 RIGHTS TO MAKE AN INFORMED CHOICE AND INCREASE LITIGATION.

The Proposed Rules permitting a regional director or hearing officer to deny the employer a right to a pre-election hearing regarding the appropriateness of the bargaining unit and eligibility of certain individuals purportedly within such unit unless such individuals constitute greater than 20% of the unit is contrary to Section 9(c) of the Act. The Proposed Rule plainly violates the requirement that a hearing be held where there is a question concerning representation.

Section 102.66(d) provides:

> Disputes concerning less than 20% of the unit. If at any time during the hearing, the hearing officer determines that the only issues remaining in dispute concern the eligibility or inclusion of individuals who would constitute less than 20% of the unit if they were found to be eligible to vote, *the hearing officer shall close the hearing*. (Emphasis added)

This proposed rule suffers from several serious infirmities, not the least of which is its stark contravention of Section 9(c) of the Act that:

> The Board shall investigate such petition and if it has a reasonable cause to believe that a question of representation affecting

> commerce exists *shall provide for an appropriate hearing upon due notice*. (Emphasis added)

While it is true that a hearing officer has the authority to narrow issues related to a representation hearing, a full operative record on such issues is presumed. *Cf Angelica Health Care Servs. Group, Inc*., 315 NLRB 1320, 148 LRRM 1130 (1995). This will upset the workplace balance contemplated by Congress and compromises the Act's neutrality between employer and union. See, Section 1(b), *Short Title and Declaration of Policy, Labor-Management Relations Act of 1947*, Pub. L No. 101, 80th Cong., 1st Sess; 29 U.S.C. Section 141 et seq. (1994).

The Proposed Rules place employers in a position not contemplated by the Act: within five working days the employer must engage counsel and submit a Statement of Position regarding a genuine issue of fact regarding the eligibility of 20 percent or more of the individuals in the putative unit or forfeit its rights under Section 9(c). These are not casual or simple determinations. Employers often spend scores of man hours dissecting voter eligibility issues. It is not uncommon for employers to engage in protracted consultation with counsel regarding these issues, many of which turn on minor issues of fact. See, e.g., *Red Row Freight Lines*, 278 NLRB 965, 121 LRRM 1257 (1986); *Airport-Shuttle Cincinnati*, 257 NLRB 995, 108 LRRM 1044 (1981) *enforced*, 708 F.2d 20 (6th Cir. 1983); *L & B Cooling*, 267 NLRB 1, 113 LRRM 1119 (1983) *enforced*, 757 F.2d 236 (10th Cir. 1985); *Pat's Blue Ribbon*, 286 NLRB 918, 127 LRRM 1034 (1987).

Further, under the Proposed Rules the eligibility determination will be made by a hearing officer, not a regional director. Hearing officers frequently have much less experience than regional directors in matters related to eligibility. Consequently, the Proposed Rule will likely

result in more elections being overturned, creating greater uncertainty and disrupting workplace stability.

Where up to 20 percent of employees may vote under challenge, the number of such ballots may be determinative of the outcome of the election. The 20 percent rule increases the probability that sustained challenges will so modify the bargaining unit as to make it fundamentally different from the originally proposed unit. This necessarily compromises employees' Section 7 rights:

> When employees are led to believe that they are voting on a particular bargaining unit and the bargaining unit is subsequently modified post-election, such that the bargaining unit, as modified, is fundamentally different in scope or character from the proposed bargaining unit, *the employees have effectively been denied the right to make an informed choice in the representation election.*

NLRB v. Beverly Health and Rehabilitation Service, Inc., No. 96-2195, 1997 WL 457524 at 4 (4th Cir. 1997). See also, *K.C. Knitting Mills*, 320 NLRB 374, 152 LRRM 1083 (1985); *Virginia Mfg. Co.*, 311 NLRB 912, 143 LRRM 1368 (1993); *cf Scolari's Warehouse Mkts*., 319 NLRB 153, 150 LRRM 1153 (1995).

This defect in the Proposed Rule is not merely speculative. Under the 20 percent test, 19 employees in a proposed bargaining unit of 100 could vote under challenge. Those individuals could later be adjudged to have no community of interest with the other individuals in the bargaining unit: their compensation structure may be radically different from the remainder of the employees in the unit; their hours may not be consistent with others in the unit; their work assignments and locations may be at odds with that of their co-workers. Yet employees would be voting with the presumption that all of the individuals would be included in the proposed unit,

even though such unit may later be substantially modified. This is a prescription for chaos inconsistent with employees' Section 7 rights. See *NLRB v. Parsons School of Design*, 793 F.2d 503 (2nd Cir. 1986). See also, *NLRB v. Lorimar Productions,* 771 F.2d 1294 (9th Cir. 1985); *Hamilton Test Systems, New York, Inc. v. NLRB,* 745 F.2d 136 (2nd Cir. 1984).

Given the expedited timeframes in the Proposed Rules, small employers likely will make eligibility determinations and arguments without the benefit of counsel, or at the very least, with minimal consultation with counsel. Consequently, many employers will be left to analyze similarities/differences in wages, hours, benefits, supervision, training skills, job functions, operational integration, employee interchange and bargaining history on their own. The employers will also be left to fashion their assessments of such factors on their own. See, *Kalamazoo Paper Box Corp*., 136 NLRB 134, 49 LRRM 1715 (1962). This is a clear violation of employers' due process rights and will serve merely to complicate the representation election process.

Proposed Rules 102.66(d) and 102.67(a) deprive employees of the ability to determine whether they have a community of interest with other employees who may be voting in the representation election. The problem is exacerbated by *Specialty Healthcare.* This will cause considerable uncertainty and has the potential to delay final resolution of the election. Failure to resolve unit appropriateness and eligibility issues will likely result in more—not fewer—elections being overturned as a result of post-election exclusion of ineligible employees. Moreover, the Proposed Rules' requirement that an election be conducted with up to 20 percent of potential voters subject to challenge will further confound the employer's ability to assess supervisory determination issues, as well as increase the likelihood that the number of challenges will be sufficient to affect the outcome of an election.

IX. THE PROPOSED RULE REQUIREMENTS THAT EMPLOYERS PROVIDE CERTAIN EMPLOYEE INFORMATION IMPLICATES EMPLOYEE PRIVACY RIGHTS AND EMPLOYER PROPERTY RIGHTS.

Proposed Rule 102.67(j) provides in pertinent part:

> The employer shall, within two days after such direction, provide to the regional director and the parties named in such direction, a list of the full names, home addresses, available telephone numbers, available e-mail addresses, work locations, shifts, and job classifications of all eligible voters.

Section 102.67(j) also provides that where feasible the foregoing list is to be filed electronically with the regional director and served electronically on all other parties.

The foregoing rules requirement that certain employee information – specifically email addresses – be provided implicates employee privacy rights that may not be compromised by the employer despite the employer's good faith compliance with the Board's rule. Astonishingly, the Proposed Rules provide no parameters or provisos for employee privacy. Provision of employee names, work locations and shifts to a third party, especially in the age of email and smart phones, virtually guarantees intentional and/or inadvertent dissemination of employee data with consequent intrusions on privacy. Furthermore, seemingly innocuous information such as shift data and addresses provide a timeline and road map for the unscrupulous. An unknown individual could have access to when employees are away from home. The implications with respect to employer liability are profound as well. The Proposed Rules also have the potential to raise issues regarding email solicitation raised in *Register Guard* as well as property rights issues. See *NLRB v. Babcock and Wilcox Co.*, 351 U.S. 105 (1956). See also *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

X. CONCLUSION.

For the foregoing reasons the undersigned organizations respectfully submit that issuance of the Proposed Rules must be withdrawn in their entirety.

Respectfully submitted,

Acme-McCrary
American Apparel & Footwear Association
American Coke & Coal Chemicals Institute
American Frozen Food Institute
Arizona Chamber of Commerce and Industry
Arizona Manufacturers Council
Arkansas State Chamber of Commerce
Associated Industries of Arkansas
Associated Industries of Massachusetts
Associated Industries of Missouri
Associated Oregon Industries
Automotive Recyclers Association
Axson
Berkley Screw Machine Prod. Inc.
California Manufacturers & Technology Association
Colorado Association of Commerce and Industry
Corn Refiners Association
Ferguson Perforating Company
GAMPCO
Georgia Association of Manufacturers
Global Cold Chain Alliance
H. E. Morse Co., Inc.
ICPI, the Interlocking Concrete Pavement Institute
INDA, Association of the Nonwoven Fabrics Industry
Independent Lubricant Manufacturers Association
Indiana Manufacturers Association
Industrial Minerals Association - North America
International Bottled Water Association
International Sleep Products Association
Maier & Associates Financial Grp.
Metals Service Center Institute
Michigan Manufacturers Association
microPEP
Mississippi Manufacturers Association
National Association of Manufacturers
National Marine Manufacturers Association
Non-Ferrous Founders' Society
North Carolina Chamber
Nu-Wool Co., Inc.

Pentar Stamping,com
Raytheon
Resilient Floor Covering Institute
Rhode Island Manufacturers Association
Snack Food Association
Stella-Jones Corporation
Stolberger Inc. d/b/a Wardwell Braiding Co.
Swissline Precision Mfg. Inc
Textile Rental Services Association
The Allied Group
The Moore Company
The Ohio Manufacturers' Association
Virginia Manufacturers Association
Walco Electric Company, Inc.
Whittet-Higgins Company
William Collins Company
Window and Door Manufacturers Association
Wolverine Special Tool Inc