New York
220 Fifth Ave., 5th Floor
New York, NY 10001
1.212.633.1405

Boston
358 Chestnut Hill Ave, Suite 303
Brighton, MA 02135
1.617.232.5885

Washington, D.C.
1710 Rhode Island Ave., NW
12th Floor
Washington, DC 20036
1.202.559.1543

demos.org

info@demos.org

August 22, 2011

Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570
Submitted electronically to www.regulations.gov
Re: 3142-AA08

Dear Mr. Heltzer:

Dēmos, a national, non-partisan public policy research center, is pleased to submit these comments in response to the National Labor Relations Board's Notice of Proposed Rule Making (RIN 3142-AA08). We agree that there is a need to amend the Board's rules governing the filing and processing of petitions relating to the representation of employees for the purposes of collective bargaining.

The goal of the National Labor Relations Act is to assure that employees are able to "bargain collectively through representatives of their own choosing." Unfortunately, all too often workers in the private sector are not able to freely exercise this right. An analysis of the 1999-2003 data on NLRB election campaigns by the Economic Policy Institute and American Rights at Work finds that during union election campaigns:

- 63% of employers interrogate workers in mandatory one-on-one meetings with their supervisors about support for the union;
- 54% of employers threaten workers in such meetings
- 57% threaten to cut wages and benefits; and
- 34% fire workers[1]

Given the power of employers over workers' livelihoods and their willingness to use that power to discourage unionization, it is little wonder that relatively few workers in the United States are able to realize their desire to collectively bargain for wages and benefits. Studies of workers preferences have found that 58% would like to be represented by a union.[2] However, only 11.9% are members of a union.[3].

The changes to the Board's procedures contained in this Notice of Proposed Rule Making will make a modest but not insignificant contribution to addressing current barriers to the American right of collective bargaining. The proposal contains significant changes in two areas. First, it updates the board's requirement for employers to make available a list of all workers eligible to vote in a union election. Second, it eliminates unnecessary delays in the holding of NLRB supervised union elections.

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[1] Kate Bronfenbrenner, "No Holds Barred The Intensification of Employer Opposition to Organizing," May 20, 2009, available at: http://www.epi.org/publications/entry/bp235.
[2] Peter D. Hart Research Associates, December 2006.
[3] Bureau of Labor Statistics, "Union Members Summary 2010," January 2011, available at http://www.bls.gov/news.release/union2.nr0.htm

Currently, employers are only required to provide to workers advocating in favor of collective bargaining a list of names and physical addresses for all workers who are eligible to participate in an election. The proposed changes would update this requirement so that employers would have to provide all the contact information they possess, including email addresses and phone numbers. This is an important step in leveling the playing field in union elections. It gives proponents of collective bargaining the same ability as management to contact voters electronically and by phone. While this is a step in the right direction, it is important to realize that it is only a step and does not eliminate inequalities in access to voters. Even with this proposed change, employers have access to workers in-person, on the job, a privilege they are legally allowed to deny to the proponents of unionization. Employers can, and routinely do, require that employees attend meetings during work hours where the case against collective bargaining is forcefully presented and may bar union organizers from the workplace.

Current rules for union elections also allow employers to significantly delay the date of a union vote through legal maneuvering. Employers routinely exploit the NLRB's current rule that all outstanding claims be resolved before a vote can be held, even those claims that are clearly frivolous. Accordingly, the average litigation-related delay after an election petition is 124 days.[4] This delay is not benign; a 2011 UC Berkeley study found that "the longer the delay…the more likely it is that the NLRB will issue complaints charging the employer with illegal activity."[5] The new proposed rules would limit employers' ability to engage in these stalling tactics. No longer would claims that impact less than 20 percent of voting-eligible workers provide grounds to delay the date of an election. These minor disputes would be duly resolved *after* the date of the election, instead of being used as a tool to indefinitely delay said election.

These two proposed rules are, of course, inadequate to address the desperate erosion of American's labor rights attributable to decades of government under-enforcement and under-regulation in this area. The result of this erosion has been nothing less than the decline of the great American middle class. Although the Board and its staff may not often think of their work in such terms, it is important to recall the significance of National Labor Relations Act to the creation and renewal of the American Dream. In fact, the two proposed rules represent modest progress at a time when American workers need and deserve transformational progress. We hope that the Board will continue to issue new regulations over the coming months as part of its delegated obligation to meaningfully enforce the National Labor Relations Act.

Sincerely,

Miles Rapoport
President, Demos

[4] UC Berkeley Labor Center, "New Data: NLRB Process Fails to Ensure a Fair Vote", June 29, 2011, available at: http://laborcenter.berkeley.edu/laborlaw/NLRB_Process_June2011.pdf
[5] *Id.* at 2.