

condition of eligibility that did not apply to the installment form. However, an otherwise identical distribution form need not retain rights or features of the optional form of benefit that is eliminated or restricted to the extent that those rights or features would not be protected from elimination or restriction under section 411(d)(6) or this section.

(3) *Example.* The following example illustrates the application of this paragraph (e):

*Example.* (i) P is a participant in Plan M, a qualified profit-sharing plan with a calendar plan year that is invested in mutual funds. The distribution forms available to P under Plan M include a distribution of P's vested account balance under Plan M in the form of distribution of various annuity contract forms (including a single life annuity and a joint and survivor annuity). The annuity payments under the annuity contract forms begin as of the first day of the month following P's severance from employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)). P has not previously elected payment of benefits in the form of a life annuity, and Plan M is not a direct or indirect transferee of any plan that is a defined benefit plan or a defined contribution plan that is subject to section 412. Distributions on the death of a participant are made in accordance with plan provisions that comply with section 401(a)(11)(B)(iii)(I). On September 2, 2004, Plan M is amended so that, effective for payments that begin on or after November 1, 2004, P is no longer entitled to any distribution in the form of the distribution of an annuity contract. However, after the amendment is effective, P is entitled to receive a single-sum cash distribution of P's vested account balance under Plan M payable as of the first day of the month following P's severance from employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)).

(ii) Plan M does not violate the requirements of section 411(d)(6) (or section 401(a)(11)) merely because, as of November 1, 2004, the plan amendment has eliminated P's option to receive a distribution in any of the various annuity contract forms previously available.

(4) *Effective date.* This paragraph (e) is applicable on January 25, 2005.

\* \* \* \* \*

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: January 10, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 05-1327 Filed 1-24-05; 8:45 am]

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## NATIONAL LABOR RELATIONS BOARD

### 29 CFR Parts 101 and 102

#### Final Rules Governing Consent-Election Agreements

**AGENCY:** National Labor Relations Board.

**ACTION:** Final rule.

**SUMMARY:** On July 22, 2004 the National Labor Relations Board published in the **Federal Register** proposed changes to its rules to provide a mechanism to have preelection disputes decided with finality by the Regional Director as part of its ongoing efforts to address the needs of employers, individuals and labor organizations and to further the fundamental purposes of the Act. One comment was received in response to this publication. The American Federation of Labor and Congress of Industrial Organizations, AFL-CIO, supported the proposed changes, but expressed the view that the changes did not address what it considered to be major problems in the Board's representation process. Upon consideration of that comment, the National Labor Relations Board (NLRB) is adopting the proposed changes and publishing the rules as final.

**EFFECTIVE DATES:** March 1, 2005.

#### FOR FURTHER INFORMATION CONTACT:

Lester A. Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570. Telephone: (202) 273-1067.

**SUPPLEMENTARY INFORMATION:** Section 102.62 of the Board's Rules and Regulations currently provides two kinds of "consent" election procedures. Under both procedures, the parties must stipulate with respect to jurisdictional facts, labor organization status, appropriate unit description, and classifications of employees included and excluded. The parties must also agree to the time, place and other election details. Under Sec. 102.62(a), the parties agree that postelection disputes will be resolved with finality by the Regional Director. Under Sec. 102.62(b), postelection disputes are resolved pursuant to Sec. 102.69, with the parties retaining the right to file exceptions or requests for review with the Board. The Board is revising its Rules and Regulations to create a new, voluntary procedure whereby the parties can agree to the conduct of an election with disputed preelection and postelection matters to be resolved with finality by the Regional Director. The new rule also amends Sec. 102.62(a) to

provide that the decision of the Regional Director in a postelection proceeding has the same force and effect as that of the Board "in that case." The addition of this language makes it clear that the Regional Director's decision will not be regarded as Board precedent in future cases. Identical language is present in the revised Sec. 102.62(c). In addition to revisions to Sec. 102.62 of the Board's Rules and Regulations, the Board also has revised its Statements of Procedures, Sec. 101.19 and 101.28, to reflect the revisions to Sec. 102.62 in the description of Board processing of union deauthorization elections (Sec. 101.28) and all other elections (Sec. 101.19).

Under the new procedures, after the filing of a petition supported by the requisite showing of interest, an employer and individual or labor organization can voluntarily enter into an agreement under which the Regional Director will resolve with finality disputed pre- and postelection issues and issue a certification of representative or results. If the parties voluntarily agree to utilize this new procedure they will be assured of a more expeditious and final resolution of their question concerning representation by a Regional Director, who will act in a neutral, expert, and conclusive fashion. Although the Agency decided to give notice of proposed rulemaking with respect to these rule changes, the changes involve rules of agency organization, procedure, or practice and thus no notice of proposed rulemaking was required under section 553 of the Administrative Procedure Act (5 U.S.C. 553). Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601), does not apply to these rule changes.

#### List of Subjects in 29 CFR Parts 101 and 102

Administrative practice and procedure, Labor management relations.

■ For the reasons set forth above, the NLRB amends 29 CFR parts 101 and 102 as follows:

#### PART 101—STATEMENTS OF PROCEDURES

■ 1. The authority citation for 29 CFR part 101 continues to read as follows:

**Authority:** Section 6 National Labor Relations Act, as amended (29 U.S.C. 151, 156), and sec. 55(a) of the Administrative Procedure Act (5 U.S.C. 552(a)). Section 101.14 also issued under sec. 2112(a)(1) of Public Law 100-236, 28 U.S.C. 2112(a)(1).

■ 2. Section 101.19 is amended by revising the introductory text and adding paragraph (c) to read as follows:

**§ 101.19 Consent adjustments before formal hearing.**

The Board has devised and makes available to the parties three types of informal consent procedures through which representation issues can be resolved without recourse to formal procedures. These informal arrangements are commonly referred to as consent-election agreement followed by Regional Director's determination, stipulated election agreement followed by Board certification, and full consent agreement, in which the parties agree that all pre- and postelection disputes will be resolved with finality by the Regional Director. Forms for use in these informal procedures are available in the Regional Offices.

\* \* \* \* \*

(c) The full consent-election agreement followed by the Regional Director's determination of representatives is another method of informal adjustment of representation cases.

(1) Under these terms the parties agree that if they are unable to informally resolve disputes arising with respect to the appropriate unit and other issues pertaining to the resolution of the question concerning representation; the payroll period to be used as the basis of eligibility to vote in an election, the place, date, and hours of balloting, or other details of the election, those issues will be presented to, and decided with finality by the Regional Director after a hearing conducted in a manner consistent with the procedures set forth in § 101.20.

(2) Upon the close of the hearing, the entire record in the case is forwarded to the Regional Director. The hearing officer also transmits an analysis of the issues and the evidence, but makes no recommendations as to resolution of the issues. All parties may file briefs with the Regional Director within 7 days after the close of the hearing. The parties may also request to be heard orally. After review of the entire case, the Regional Director issues a final decision, either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the Regional Director in the manner already described in this section.

(3) All matters arising after the election, including determinative challenged ballots and objections to the conduct of the election shall be processed in a manner consistent with paragraphs (a)(4), (5), and (6) of this section.

■ 3. Section 101.28 is revised to read as follows:

**§ 101.28 Consent agreements providing for election.**

(a) The Board makes available to the parties three types of informal consent procedures through which authorization issues can be resolved without resort to formal procedures. These informal agreements are commonly referred to as consent-election agreement followed by Regional Director's determination, stipulated election agreement followed by Board certification, and full consent-election agreement providing for the Regional Director's determination of both pre- and postelection matters. Forms for use in these informal procedures are available in the Regional Offices.

(b) The procedures to be used in connection with a consent-election agreement providing for the Regional Director's determination, a stipulated election agreement providing for Board certification, and the full consent-election agreement providing for the Regional Director's determination of both pre- and postelection matters are the same as those already described in subpart C of this part in connection with similar agreements in representation cases under section 9(c) of the Act, except that no provision is made for runoff elections.

**PART 102—RULES AND REGULATIONS, SERIES 8**

■ 4. The authority citation for 29 CFR part 102 continues to read as follows:

**Authority:** Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 552a(j) and (k) of the Privacy Act (5 U.S.C. 552a(j) and (k)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 5. Section 102.62 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 102.62 Consent-election agreements.**

(a) Where a petition has been duly filed, the employer and any individual or labor organizations representing a substantial number of employees involved may, with the approval of the Regional Director, enter into a consent-election agreement leading to a determination by the Regional Director of the facts ascertained after such consent election. Such agreement shall include a description of the appropriate unit, the time and place of holding the election, and the payroll period to be used in determining what employees within the appropriate unit shall be eligible to vote. Such consent election

shall be conducted under the direction and supervision of the Regional Director. The method of conducting such consent election shall be consistent with the method followed by the Regional Director in conducting elections pursuant to §§ 102.69 and 102.70 except that the rulings and determinations by the Regional Director of the results thereof shall be final, and the Regional Director shall issue to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect, in that case, as if issued by the Board, provided further that rulings or determinations by the Regional Director in respect to any amendment of such certification shall also be final.

\* \* \* \* \*

(c) Where a petition has been duly filed, the employer and any individual or labor organizations representing a substantial number of the employees involved may, with the approval of the Regional Director, enter into an agreement providing for a hearing pursuant to §§ 102.63, 102.64, 102.65, 102.66 and 102.67 to resolve any issue necessary to resolve the question concerning representation. Upon the conclusion of such a hearing, the Regional Director shall issue a Decision. The rulings and determinations by the Regional Director thereunder shall be final, with the same force and effect, in that case, as if issued by the Board. Any election ordered by the Regional Director shall be conducted under the direction and supervision of the Regional Director. The method of conducting such consent election shall be consistent with the method followed by the Regional Director in conducting elections pursuant to §§ 102.69 and 102.70, except that the rulings and determinations by the Regional Director of the results thereof shall be final, and the Regional Director shall issue to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect, in that case, as if issued by the Board, provided further that rulings or determinations by the Regional Director in respect to any amendment of such certification shall also be final.

Dated in Washington, DC, on January 13, 2005.

By direction of the Board.

**Lester A. Heltzer,**

*Executive Secretary.*

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