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B-332043

April 10, 2020

The Honorable Lamar Alexander  
Chairman  
The Honorable Patty Murray  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Robert C. "Bobby" Scott  
Chairman  
The Honorable Virginia Foxx  
Ranking Member  
Committee on Education and Labor  
House of Representatives

Subject: *National Labor Relations Board: Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the National Labor Relations Board (NLRB) entitled "Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships" (RIN: 3142-AA16). We received the rule on April 1, 2020. It was published in the *Federal Register* as a final rule on April 1, 2020. 85 Fed. Reg. 18366. The effective date of the rule is June 1, 2020.

The final rule makes three amendments to NLRB's rules and regulations governing the filing and processing of petitions for a NLRB-conducted representation election and proof of majority support in construction-industry collective bargaining relationships. According to NLRB, the amendments effect changes in current procedures that have not previously been incorporated in NLRB's rules.

Enclosed is our assessment of NLRB's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Roxanne L. Rothschild  
Executive Secretary  
National Labor Relations Board

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
NATIONAL LABOR RELATIONS BOARD  
ENTITLED  
“REPRESENTATION—CASE PROCEDURES: ELECTION BARS;  
PROOF OF MAJORITY SUPPORT IN CONSTRUCTION-INDUSTRY  
COLLECTIVE-BARGAINING RELATIONSHIPS”  
(RIN: 3142-AA16)

(i) Cost-benefit analysis

The National Labor Relations Board (NLRB) stated it anticipates the final rule will impose low costs on small entities related to reviewing and understanding the substantive changes and implementing those changes to the blocking-charge policy, voluntary-recognition-bar doctrine, and modified requirements for proof of majority-based voluntary recognition in the construction industry. NLRB estimated it would cost small entities \$164.51 to understand the new vote-and-impound or vote-and-count procedures and the modified voluntary-recognition bar. NLRB also estimated it would cost small employers and labor unions in the construction industry \$211.25 to become familiar with the same changes as well as the changes to the majority-based recognition procedures for their industry. Finally, NLRB estimated it would cost a small employer \$78.66 to follow the procedures in the voluntary-recognition bar. NLRB stated it could not estimate costs to the construction industry for an NLRB-conducted election.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

NLRB prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) a response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, NLRB is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On August 12, 2019, NLRB issued a proposed rule. 84 Fed. Reg. 39930. NLRB received more than 80 comments from interested organizations, labor unions, Members of Congress, academics, and other individuals. NLRB addressed the comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

NLRB determined that this final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

NLRB promulgated the final rule pursuant to section 156 of title 29, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, NLRB is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, NLRB is not subject to the Order.