

ABA'S BASIC NATIONAL LABOR RELATIONS ACT PRACTICE

ANNUAL MEETING – JULY 9, 2000

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ABA BASIC NATIONAL LABOR RELATIONS ACT

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REPRESENTATION PROCEDURES

I. PURPOSES & POLICIES OF ACT

- A. Employers, employees and union's have legitimate rights
- B. Public health, safety or interest cannot be jeopardized
- C. The Act provides peaceful procedures for preventing interference with legitimate rights
- D. The Act promotes industrial peace

II. SECTION 7

- A. Employees have the right to form, join, assist a union or refrain from such activity, unless under an already existing collective bargaining agreement.
- B. Employees have the right to negotiate through a representative of their choosing for their mutual aid and protection

III. REPRESENTATION CASES

A. How Do Union's Achieve Recognition

- 1. Voluntary Recognition
- 2. Representation Election
- 3. Bargaining Order

B. Election Petitions

- 1. RC Petition - Certification of Representation
 - a. showing of interest 30% of bargaining unit
 - b. signed and dated petition
- 2. RM / Employer: Petition by employer who must have objective considerations
- 3. RD / Employee: Decertification Petition
- 4. UD - Decertification of union security clause
- 5. UC - Unit Clarification Petition
- 6. AC - Amendment to Certification

C. RC Petitions

1. Showing of interest checked by Board
2. Employer notified and hearing date set
3. May reach agreement without hearing commonly through a Stipulation for Certification Upon Consent Election (Stip.)

- a. Waives pre-election hearing
- b. Parties agree to:

- i) election date
- ii) place
- iii) time
- iv) description of bargaining unit
- v) jurisdiction
- vi) language issues
- vii) release of employees for voting
- viii) resolve any issues
- ix) observers from each side
- x) Excelsior List
 - payroll period just before stip or direction of election
 - alphabetical names & addresses of employees

D. Hearing (R Case)

1. Issues

- a. jurisdiction
- b. unit scope
- c. unit placement
- d. contract bar - lead case: Appalachian Shale Products Company, 121 NLRB 1160, 42 LRRM 1506 (1958)

Some requirements for contract to bar election

- i. written contract
 - ii. signed before rival petition filed
 - iii. contains substantial terms & conditions of employment
 - iv. encompasses employees involved in the petition
 - v. must have a fixed term of no more than three years
- e. labor organization status

2. Appropriateness of a unit

- a. community of interest

- i. similarity of duties, skills, wages, benefits, hours, working conditions
- ii. employee interchange
- iii. employer's organizational structure
- iv. integration of work flow and interrelationship of production process
- v. bargaining history in unit or industry
- vi. petitioner's desire

3. Whose Excluded From the Unit

Statutory Exclusions

- a. supervisors
- b. domestic workers
- c. agricultural laborers
- d. independent contractors
- e. certain family members
(related to major shareholder in closely held corporation)
- f. anyone subject to Railway Labor Act
- g. guards

Other exclusions

- a. managerial employees
- b. confidential employees
- c. technical employees but depends upon community of interest
- d. truck drivers - also depends upon community of interest
- e. professional employees - must vote for inclusion in a non-professional unit
- f. absent agreement of the parties, the Board will not put office and plant clericals in the same unit.
- g. part-time, temporary or casual employees but dependent upon the community of interest
- h. laid off employee with no expectation of recall

4. Whose Included in the Unit

- a. lead men
- b. casual/part-time employees depending upon community of interest
- c. laid off employees if expectation of returning to work

5. Separate Units

- a. technical
- b. professional

6. Location

a. Multi Plant / Single Plant

- i. central control of daily operation and labor relations
- ii. interchange
- iii. similarity of skills and job classifications
- iv. commonality of working conditions, benefits and supervision
- v. geographical separation
- vi. plant product integration
- vii. bargaining history

b. Multi Employer Units

- i. group of employers agree to be bound as group rather than individual employers
- ii. union consent
- iii. employer can only withdraw from group by written notice to union prior to beginning of negotiations

E. Employer Pre-Election Conduct

1. No promise of benefits
2. No threats of reprisals
3. No surveillance
4. No interrogation
5. No systematic polling unless

Struksnes Construction Co., 165 NLRB 1062, 65 LRRM 1385 (1967), guidelines followed

- purpose is to determine truthfulness of union's claim of majority status
- inform employees of this
- assurances given against reprisals
- secret ballot
- no unfair labor practice (ULP) committed

6. Discipline/discharge because of union activity
7. Employer may hold meetings, distribute campaign literature
8. No captive audience speeches based upon Peerless Plywood Co., 107 NLRB 427, 33 LRRM 1151 (1953), Final campaign speech by an employer may not be given after 24 hours before the election

F. Blocking Charges - ULPs can delay an election unless the union agrees to go forward with the petition.

G. Election

1. Board agent conducts the election
2. Secret ballot
3. Observers from each side
4. Pre-election conference with Board agent and parties
5. No campaigning at polling place
6. No supervisor or union interference
7. Counting ballots - usually immediately after election
8. Challenges - either determinative when it affects the outcome of election or not determinative — If determinative, the Board will conduct an investigation

H. Board Certification of Election Results
1 year bar against union filing a petition

I. Objections to Conduct of Election

1. Acts or omissions of Board agent misconduct in running election or in polling area
2. Alleged misconduct of a party after filing a petition — interferes with free choice of employees — inhibits a free election
 - a. violations by employer - promises of benefits, etc.
 - b. violations by union - conditional waiver of or reduction in union fees limited to employees who pledge union support prior to election
3. Party must file objections within 7 calendar days after election and receipt of Tally of Ballots
 - a. include brief statement for each objection
 - b. submit supporting evidence, witness names, and short description of testimony
4. Regional Director may:
 - a. overrule objections without an investigation
 - b. investigate and then dismiss
 - c. hold a fact-finding hearing and issue a Decision

Which may include:

- rerun election
- dismiss election or
- consolidation with ULPs

J. Testing Certification

1. Employer refusal to bargain with newly certified union - technical 8(a)(5) violation
2. Brought to Board via Summary Judgment Motion
3. Issue: validity of certification
4. Factual record is the underlying representation proceeding
5. Final Board Order subject to direct appeal and enforcement before U.S. Court of Appeals