



441 G St. N.W.  
Washington, DC 20548

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August 16, 2024

The Honorable Bernard Sanders  
Chairman  
The Honorable Bill Cassidy  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Virginia Foxx  
Chairwoman  
The Honorable Bobby Scott  
Ranking Member  
Committee on Education and the Workforce  
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 (the Board) titled “Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships” (RIN: 3142-AA22). We received the rule on July 26, 2024. It was published in the *Federal Register* as a final rule on August 1, 2024. 89 Fed. Reg. 62952. The effective date is September 30, 2024.

According to the Board, as part of its ongoing efforts to more effectively administer the National Labor Relations Act (the Act) and to further the purposes of the Act, the Board has rescinded and replaced the amendments it made in April 2020 to its rules and regulations. The Board stated that the rules and regulations govern the filing and processing of petitions for a Board-conducted representation election while unfair labor practice charges are pending and following an employer's voluntary recognition of a union as the majority-supported collective-bargaining representative of the employer's employees. The Board also stated that it also rescinded an amendment governing the filing and processing of petitions for a Board-conducted representation election in the construction industry. The Board stated further that it believes that the amendments made in this final rule better protect employees' statutory right to freely choose whether to be represented by a labor organization, promote industrial peace, and encourage the practice and procedure of collective bargaining.

Enclosed is our assessment of the Board'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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

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  
TITLED  
“REPRESENTATION—CASE PROCEDURES: ELECTION BARS;  
PROOF OF MAJORITY SUPPORT IN CONSTRUCTION INDUSTRY  
COLLECTIVE-BARGAINING RELATIONSHIPS”  
(RIN: 3142-AA22)

(i) Cost-benefit analysis

The National Labor Relations Board (the Board) indicated in its submission to us that it did not prepare a cost-benefit analysis for this final rule.

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

The Board certified that this final rule will not have a significant economic impact on a substantial number of small entities. 89 Fed. Reg. 62952, 63023 (Aug. 1, 2024).

(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, the Board is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

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

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

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

On November 4, 2022, the Board issued a Notice of Proposed Rulemaking. 87 Fed. Reg. 66890. The Board stated that it extended the comment period by 30 days. 87 Fed. Reg. 73705 (Dec. 1, 2022). The Board also stated that it summarized and addressed comments in the preamble of this final rule. See 89 Fed. Reg. at 62952, 62924.

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

The Board determined that this final rule contains information collection requirements under the Act. 89 Fed. Reg. at 66932.

Statutory authorization for the rule

The Board promulgated this final rule pursuant to sections 156 and 159 of title 29, United States Code. 89 Fed. Reg. at 66933.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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