

## **New NLRB Actions Stunt Businesses, Republicans Say**

By **Stewart Bishop**

*Law360, New York (October 12, 2011, 4:01 PM ET)* -- If recent actions by the National Labor Relations Board are allowed to stand, businesses nationwide will be subject to an onslaught of “micro unions,” bringing management headaches and stemming growth, House Republicans warned at a committee hearing Wednesday.

At the House Committee on Education and the Workforce hearing over the Republican-backed H.R. 3094, Workforce Democracy and Fairness Act, supporters said the bill would block “quickie union elections” and beat back the effects of the NLRB’s recent Specialty Healthcare decision by restricting the ability of workers to form smaller collective bargaining units.

“We are here today for one simple reason: the National Labor Relations Board is wreaking havoc on the nation’s workforce and it must be stopped,” Education and the Workforce Committee Chairman John Kline, R-Minn., said.

Testifying in support of the bill, former NLRB member Charles I. Cohen of Morgan Lewis & Bockius LLP said the proposed legislation would effectively dispense with the Specialty Healthcare decision by returning to a standard of law which frowned on fractured units within the same company.

In Specialty Healthcare, the NLRB cleared the way for a union to try to organize a bargaining unit of only certified nursing assistants at a nursing home, rejecting a move by the home to include other nonprofessional employees and remanding the case to schedule an election of the proposed unit of 53 assistants.

“Bargaining with a small unit of employees ... will impose significant costs on employers, and undermine employment stability by causing increased workforce fragmentation,” Cohen said.

The bill would mandate that no union election be held in fewer than 35 days and restrict which employees could vote in a union election, require a two-week waiting period between a petition filing and the first hearing on the matter, and restrict how a union may contact prospective members.

In addition to Specialty Healthcare, Republicans crafted the Workforce Democracy and Fairness Act to counter a NLRB proposal, unveiled in June, that would require parties to hold a pre-election hearing within seven days of the filing of a petition, postpone certain challenges until after the election, allow for electronic petition filing, and require employers to provide worker email addresses and telephone numbers to organizers, among other provisions.

Republicans called the proposed new time frame an “ambush elections proposal” and maintained a longer election process was in the best interests of both the employer and the worker.

Democrats blasted the proposed legislation and took aim at a provision in the bill that would allow employers to raise any issue in pre-election proceedings “which may reasonably be expected to impact the election's outcome.”

This language would allow employers to file endless appeals on trite issues to delay the process long enough to kill the organizing effort, according to Democrats.

“Unscrupulous employers will have an incentive to appeal all pre-election decisions, regardless of merit because no election could proceed until all appeals, frivolous or not, are reviewed,” Rep. George Miller, D-Calif., said. “They and their union busting consultants know that delay gives them more time to use any means, legal or illegal, to overcome employee interest in forming a union.”

Democrats further said the GOP’s argument that seven days was not enough time for employers to prepare for a union was meritless.

“Employers have access to their workers from the minute the worker is hired,” Rep. Lynn C. Woolsey, D-Calif., said. “Day in and day out, the employer has the opportunity to prove to their workers that they don’t need third party representation.”

In addition to Cohen, the hearing featured testimony from Retail Industry Leaders Association spokesman and consultant Robert Sullivan, management labor lawyer Phillip Russell of Ogletree Deakins Nash Smoak & Stewart PC and union-side labor attorney Michael J. Hunter of Hunter Carnahan Shoub & Byard.

The Workforce Democracy and Fairness Act, part of a regulatory reform agenda led by House Majority Leader Eric Cantor, R-Va., is expected to proceed to a legislative markup followed by a committee vote and will probably reach the House floor sometime this winter.

--Additional reporting by Ben James. Editing by Andrew Park.