

June 15, 2010

Submitted Via Email: doug.wolf@nlrb.gov.

Mr. Doug Wolf
Senior Contracting Officer
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C.20570

RE: Response of HR Policy Association To Solicitation Number RFI-NLRB-01; Secure Electronic Voting Service; (June 9, 2010)

Dear Mr. Wolf:

The HR Policy Association (HR Policy) welcomes the opportunity to submit a response on the Request For Information (RFI) issued by the National Labor Relations Board (NLRB) seeking information regarding the implementation of “electronic voting services for both remote and on-site elections.” While we recognize the RFI is directed at potential vendors, we wish to express our deep concerns with what appears to be the initiation of a process that could ultimately undermine key protections available to employees through on-site secret ballot elections supervised by the NLRB.

Statement Of Interest

HR Policy Association represents the chief human resource officers of more than 300 large employers doing business in the United States and globally. The Association’s member companies employ more than ten million Americans, nearly nine percent of the private sector workforce in the United States. HR Policy’s members have a significant depth of knowledge of the practical, as well as legal, considerations relevant to the proper interpretation and application of federal labor law policy and practices such as NLRB supervised elections. As such, they have a direct and ongoing interest in the manner and methods which the Board uses in conducting representation elections.

RFI – Secure Electronic Voting Service

The NLRB’s RFI regarding the use of “electronic voting services” for Board conducted elections is a cause for serious concern because such elections stand to potentially infringe on the employee’s privacy with respect to his or her vote. Moreover, electronic voting may substantially increase the likelihood of unlawful coercion by other employees, employers or unions and thereby undermine the integrity of the representation process.

Currently, the vast majority of elections are conducted on-site with employees manually casting their ballots in the privacy of an election booth, policed by an NLRB agent to ensure that the voting is confidential and free of any coercion. For example,

employees vote in private booths and are asked not to sign their ballots.¹ Moreover, “no one, other than a Board agent and the individual voter, is permitted to handle the ballots.”² Representatives of both the employer and the union are present but may not engage in any campaigning and the location itself must be free of any campaign materials or activity. Typically, the election booth is located at the workplace, which is normally the most accessible location to all employees and facilitates their ability to participate without disrupting their normal workday schedules. Indeed, as one NLRB member declared, “the process of holding manual elections is the crown jewel of the Board’s accomplishments.”³

This on-site NLRB supervised manual voting is superior to any other method because it provides the greatest chance to have an environment in which an employee can cast his or her ballot in complete confidence and be free from intimidation or coercion regardless of the source. A process that used on-site electronic manual voting that mirrors the current NLRB supervised elections in all respects except that the paper ballot is replaced with an electronic touch pad appears, at first blush, to be a reasonable proposal that would appear not to give rise to concerns about the invasion of privacy or increased coercion and intimidation. It would be essential, however, to implement adequate electronic security and privacy measures in order to protect the integrity of the election process.

The use of electronic web-based, telephone or any other remote form of electronic voting, however, is particularly troublesome. Such a procedure could easily compromise a bargaining unit employee’s privacy and increase the likelihood of coercion and intimidation because bargaining unit employees could be pressured to vote for or against the union. For example, individuals may literally stand over an employee’s shoulder to confirm that the employee votes the “right way.” With significant access to the internet (including wireless internet), such pressure could occur at any time and in almost any location. Similarly, individuals (supporting the union or opposing it) could demand an employee’s voting identification information and threaten the employee with harm or retaliation if he or she failed to provide it. These bad actors could then use the employee’s information and unlawfully cast the employee’s vote. Such individuals could even come to the home of an employee and use similar intimidation or coercion in front of the employee’s family. Indeed, there are no real safeguards to protect employees from such abuses in remote, electronic voting. In contrast, the opportunity for these serious abuses to occur is extremely low at an on-site NLRB supervised manual election where the employee enters a private booth and casts a vote on a private ballot.

The purpose of the NLRB supervised elections is to ensure that the employee casts his or her vote in the strictest confidentiality and without union or employer coercion. Remote electronic elections would provide too many opportunities for unions, employers or co-employees to thwart this purpose and impede the rights of the employees under the National Labor Relations Act.

¹ NLRB Case Handling Manual, § 11304.3.

² *Id.* at § 11306.

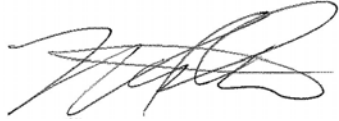
³ *London’s Farm Dairy, Inc.*, 323 NLRB 1057 (1997) (Member Higgins dissenting).

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Conclusion

HR Policy appreciates the opportunity to respond to the NLRB's RFI on secure electronic voting, and respectfully ask that it reject remote electronic voting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Peterson", written over a horizontal line.

Michael D. Peterson
Associate General Counsel and Director, Labor & Employment Policy