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COMPETING REFORM EFFORTS

The House has passed a bill, the Workforce Democracy and Fairness Act, H.R.3094, to change some union representation election process rules. This version of this bill has its roots in a proposal made earlier this year by the majority party of the National Labor Relations Board (NLRB) to overhaul the union representation election process. The bill is the House majority's "answer" to that NLRB proposal. The bill provides employers with at least 14 days to prepare their case to present before a NLRB election officer and an opportunity to raise additional concerns throughout the pre-election hearing; ensures no union election will be held in less than 35 days; reinstates the "traditional" standard for determining which employees will vote in the union election; and, establishes that workers would be able to choose the type of personal contact information that is provided to the union, rather than directed by NLRB regulations.

And speaking of those NLRB proposed rule changes, the NLRB, has voted to develop a final slimmed down version of those changes. The majority whittled it down to six changes. If you have not been following the saga, the

NLRB is down to three Board members, two Democrats and one Republican. One of the Democrats has been serving as a "recess appointment" which means the President appointed him when Congress was out of session and his appointment will end at the end of the year. At that point, the NLRB will fall below the quorum necessary to do anything hence the sprint by the majority to get something done this month.

The Senate Republicans have been adept at keeping Congress in session so that no further recess appointments can be made and they are not likely to allow a confirmation vote to occur – for all of 2012 is my guess. So these changes are likely to be among the NLRB's last official acts for a long time. At the same time, the Senate Democrats are not likely to bring the House passed bill to the floor during 2012.

The NLRB changes do not make for easy reading. The National Labor Relations Act provides for a pre-election hearing to determine whether there exists a "question of representation" to be resolved by an election and the first proposed amendment gives the hearing officer authority to limit the hearing to matters relevant to the question of whether an election should be held. The second

proposed amendment authorizes the hearing officer to decide whether to permit the parties to file briefs depending on whether the hearing officer believes the case presents issues that would benefit from it. The Board's current rules require parties to file two separate appeals to seek Board review of pre-election issues and issues concerning the conduct of the election, respectively and the third amendment consolidates the two appeals into a single post-election procedure. The fourth amendment prohibits delaying the scheduling of elections to permit time for a pre-election appeal. The fifth amendment would narrow the circumstances in which a request for special permission to appeal to the Board would be granted. The sixth amendment would give the Board discretion to hear and decide any appeals to the election process, whether they concern pre-election or post-election issues.

BALANCED BUDGET AMENDMENT

Why are you still hearing talk about the balanced budget amendment to the Constitution when you know the House did not pass an amendment by the constitutionally-required majority to move it forward?

The Senate will consider it because the debt ceiling increase deal requires both chambers to vote. Since the House did not approve it, the Senate does not have to consider the same version. At the moment, the Democrats and Republicans have dueling versions. Neither will get the necessary margin and it will be interesting to see how many Democrats vote for one given it is a “free” vote.

ONCE UPON A TIME

The House “official” calendar said “December 8th - target adjournment.” That would be at the end of this week. The main thing between hitting the target is funding the government for fiscal year 2012, which started a couple of months ago. Some of the funding bills have been passed; this last “omnibus” will include what is normally included in nine separate appropriations bills. One would have thought it would be a “no brainer,” since the debt ceiling increase deal set the aggregate numbers for this fiscal year. Fiscal conservatives, primarily in the House, would like to use lower numbers. I don’t think they will prevail.

When the Congress passed their most recent short term continuing resolution, it included an extension through December 16th so target adjournment date notwithstanding, Congress has another week before something actually has to be done.

PAYROLL TAX RELIEF

Other than the aforementioned funding issue, the last great battle of 2011 appears to be over the extension of the temporary payroll tax relief for employees.

It looks like the extension of the current 2 percent cut is a pretty good bet. Some change it would be lowered by another 1.1 percent. There is the slight possibility it could be expanded to include relief for employers.

The challenge is the revenue offset. In the Senate, as the two sides whittle down the revenue offset to avoid increasing taxes on higher income folks, the less likely employers will get any temporary payroll tax relief. The battle ground is a surtax on incomes for millionaires. It does catch the high end of small businesses since S Corporation, sole proprietorships and partnerships pay on the individual schedule.

For me the income threshold isn’t as a big a problem as paying for temporary relief with a permanent increase. If I could get a permanent 3.1 percent cut in payroll taxes, I am not sure I would shed as many tears for the millionaires.

Of course, the House majority is not interested in any tax increase, and is not that thrilled about extending the payroll tax cut for employees so it remains a three sided debate.