

**Statement of Christine L. Owens
National Employment Law Project**

On Proposed Rule Governing Procedures in Representation Cases

Before the National Labor Relations Board

July 18, 2011

Madam Chair and members of the Board: I appreciate the opportunity to speak to you today on the NLRB's proposed rule regarding representation elections. We will be expanding on these remarks in the comments we file next month.

The National Employment Law Project is a non-profit organization that engages in research, education litigation support and policy advocacy on behalf of low wage and unemployed workers. The overwhelming majority of workers for whom NELP advocates are women, people of color and immigrants, and most are not represented by unions.

While others today have addressed the particulars of the proposed rule changes, my remarks will focus on the low wage workforce, with the goal of highlighting why two specific proposed changes—streamlining the election procedure by eliminating most pre-election hearings, and providing more contact information more quickly about the proposed bargaining unit—are of such value to these workers.

Low wage workers make up roughly 25% of the workforce. Low wage jobs are among those projected to grow the most throughout this decade, and to date in this recovery, low wage occupations have accounted for the bulk of new job growth.

Union representation provides a powerful economic salve for low wage workers, with unionized workers in the bottom ten percent of the earnings distribution earning 21 percent more than their non-union counterparts. Among the discrete demographic groups that populate the low wage labor market – women, African Americans, Latinos and immigrants – the union premium in the form of higher earnings and greater access to employer-provided health insurance and retirement coverage is significant as well, particularly for workers in the 15 lowest paid occupations. Specifically, within these groups, unionized workers earn as much as 19.5 percent more than their non-union counterparts, and they are up to 41 percentage points more likely to have employer-provided health coverage and up to 29.2 percentage points more likely to have employer-provided retirement savings accounts than their non-union peers.

Low paid workers represented by unions are also more likely to have access to a host of additional employee benefits, such as paid leave of reasonable duration, along with the basic due process rights conferred by a collective bargaining agreement; a workplace representative and collective voice to help ensure and enforce statutory rights (non-discrimination, fair pay, safe workplaces), which is critical because of insufficient agency resources and high incidence of violations; and greater job security.

Notwithstanding the considerable benefits of unionization for a sector of the workforce whose ranks are large and growing, low wage workers are less likely to be represented by unions: fewer than 8 percent of workers in sales and office occupations have union representation, and fewer than 12 percent in service occupations are represented by unions (the share who are actually union members is even smaller). These representation rates compare to 17+ percent of workers in manufacturing & production and construction and 20 percent of professionals.

The reasons for low rates of union representation among low wage workers are multiple, but certainly include their vulnerability and perceived disposability, which makes them less able and willing to endure the lengthy process, risk of retaliation, uncertainty and added pressures associated with a union organizing campaign.

Low wage workers are extremely economically tenuous. Roughly half of low wage workers live in low income households. One-quarter are the sole source of earnings for their households, and another third provide more than half of household income.

Compounding low wage workers' economic vulnerability, the low wage labor market is characterized by considerable churning and high rates of turnover. Roughly 60 percent of low wage workers work in firms where annual turnover is 50 percent. They are easily displaced, and easily replaced – and they know it, making job retention a challenge and an urgent need.

Low wage workers experience high rates of workplace violations—especially with respect to wages and hours. In a 2008 survey of low wage workers in NY, Chicago and L.A. conducted by NELP and university researchers in the three cities, one-fourth were not paid legally required minimum wages, and of those who worked overtime, three-fourths were not paid legally required overtime pay. Of the twelve percent who were injured on the job, only eight percent applied for workers' compensation—and of those, half were subjected to some type of adverse employer reaction.

This same survey found that among workers who complain about workplace violations or attempt to form unions, a high rate of retaliation prevails—43 percent experienced a retaliatory reaction when they exercised their rights. Significantly, a large share of the surveyed workers—20 percent – who experienced a serious problem such as dangerous working conditions or payment of sub-minimum wages did not pursue complaints or attempt to form a union because doing so was perceived as futile or risking retaliation.

The economic vulnerability of low wage workers, the urgency of getting and keeping jobs, their high rates of turnover, the ease with which their employers can replace them, and the high frequency of violations and retaliation combine to dilute the tenacity required for workers to see the process

through to exercise their right to organize. As Professor Jennifer Gordon put it in the context of low wage immigrant workers, slow processing, limited enforcement powers, and complex bureaucracies discourage the low waged from asserting workplace rights.

The combination of low wage workers' undeniable benefits from union representation with the facts of their work and their lives that make representation harder to cement underscore the importance of proposed rule changes to representation procedures to streamline the election process and enhance communications among employees and between employees and the union they are seeking to organize into.

The proposed changes are modest in scope and do not affect the content of employer and union speech, employer control of the workplace, coverage under the Act or remedies for unfair labor practices. They preserve due process, advance rights of free speech and free association, and further the Act's purposes. The proposed rules overall will create more uniformity and certainty for all parties and provide a more fair, efficient and transparent election process, which is crucial to ensuring that all workers—and particularly low wage workers—can freely exercise their right to organize and bargain collectively.

###

As prepared for delivery