

National Labor Relations Board Issues Final Rule on So-Called “Quickie Elections”

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December 18, 2014

On December 15, 2014, the National Labor Relations Board (“NLRB”) published a final rule regarding its handling of union representation petitions and the timing of elections. The new procedures, dubbed the “quickie election” rules by employer groups, are designed to expedite representation cases. They substantially shorten the pre-election process, thereby allowing union elections to take place much more quickly than under the current regulatory framework. The practical effect of these rules is that employers will have far less time to campaign against unionization.

The final rule changes representation-case procedures in many ways. The most significant changes impacting employers include:

- NLRB Regional Directors generally will be required to hold pre-election hearings 8 days after service of a hearing notice;
- Employers will be required to file a comprehensive written Statement of Position within 7 days of the hearing notice and will be prohibited from litigating issues not identified in the Statement of Position;
- Employers will be prevented from raising important issues of employee eligibility and inclusion during pre-election hearings. Under the new rule, Regional Directors will have the discretion to defer addressing those issues until after the election if they involve fewer than 20% of employees;
- Employers will be forced to provide unions with any personal email addresses and phone numbers they have on record for their employees, giving unions greater access to employees in advance of elections;
- Employers will have much less time to provide voting lists to unions. Currently, employers must provide voting lists within 7 calendar days after the direction of election. Under the new rule, employers will have a mere 2 business days to provide these lists;
- Employers will no longer have the right to file briefs after a pre-election hearing. Instead, the Regional Director will permit parties to file post-hearing briefs if he or she believes they are necessary; and
- Mandatory review by the NLRB of post-election disputes is eliminated. Such review will be discretionary.

The new procedures are designed to advantage unions by limiting litigation over a representation petition and by shortening the campaign period. While unions may be campaigning weeks before they even file an election petition, the new rule leaves employers with a much shorter period of time to prepare for and communicate effectively with employees about the election. Employers also are losing some of the procedural protections that had existed under the old rules. At the same time, employers will have to jump through substantial procedural hurdles, such as preparing a comprehensive Statement of Position about the petition, providing employees’ personal contact information to the union and preparing complete voter lists in a very short window of time. In sum, these “quickie election” rules will significantly hinder employers’ ability to fight efforts to unionize their workplaces. These changes highlight that employers need to develop a pro-active labor relations strategy long before a petition is filed with the NLRB.

Given the scope of the changes to existing procedures and the issues they raise concerning due process, protected speech and employee privacy, a legal challenge to the rule is all but certain. In the meantime, the rule is scheduled to take effect on April 14, 2015.

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