

NLRB Board Scales Back Rules for Fast-Tracking Union Representation Elections

The National Labor Relations Board announced a number of changes to its representation election rules on December 13, 2019, many of which, to some degree or another, restored elements of the Board's procedures prior to the 2014 overhaul of these rules. The 2014 election rules had shortened the time between the filing of a petition and the conduct of a union representation election from an average of 39 days to just 23 days, resulting in three to five percent increases in annual union success rates.

Rule Changes

Among the changes announced by the Board are the following:

- Pre-election hearings will be scheduled 14 business days from the filing of the petition and notice, as opposed to eight calendar days under the 2014 rules
- The employer will be required to post the Notice of Petition within five business days after service, as opposed to two business days under the 2014 rules
- Non-petitioning parties must file and serve the Statement of Position required by the 2014 rules within eight business days after service of the Notice of Petition, as opposed to the day before the hearing
- The petitioner will now be required to file and serve a responsive Statement of Position three business days before the hearing
- Disputes concerning unit scope and voter eligibility, including issues of supervisory status, will once again normally be litigated at the pre-election hearing
- Post-hearing briefs may be filed again as a matter of right
- The regional director will continue to schedule the election for the earliest date practicable, but not normally before 20 days after the decision and direction of election (DDE)
- Rather than waiting until after the election, a request for review may be filed within ten business days of a DDE, and ballots will be impounded and remain unopened pending such review
- The employer now has five business days to furnish the required voter list following the issuance of the direction of election, as opposed to two business days under the 2014 rules
- Election observers, whenever possible, should be current members of the voting unit; but, when no such individual is available, a party should select a current nonsupervisory employee
- The regional director will no longer certify the results of an election if a request for review is pending or before the time has passed during which a request for review could be filed

The final rule also makes a number of incidental changes in formatting requirements and terminology, and updates internal cross-references, consistent with earlier changes.

The Notice of Proposed Rulemaking issued by the Board on August 12, 2019, to modify procedures surrounding its blocking charge policy, voluntary recognition bar doctrine, and pre-hire agreements, remains pending.

Takeaways

The sum impact of the rules announced last week is likely to be a slight lengthening of the campaign period between a petition and election, but not necessarily back to the timeframes typical prior to 2014. More importantly, certain of these appear to be aimed at restoring a greater degree of legal certainty to the process. Employers would be prudent to review their protocols for potential response to the filing of a petition to take advantage of the additional time to assure accurate compliance.

Please contact experienced counsel with any questions on these changes.

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