

Labor & Employment Alert
April 2015

“Quickie” Election Rules Take Effect This Week

Barring any last-minute court action, the National Labor Relations Board’s new election rules take effect this week. All election petitions filed on or after Tuesday, April 14, 2015, will be processed under these new rules.

The Rule is aimed at significantly reducing the time between when a union files a petition seeking an election and the election itself. The result is that elections that once were held on average 38-43 days after an election petition was filed are likely to take place much sooner, perhaps within a 17-25 day timeframe.

The Rule is also designed to reduce the number of hearings by limiting the issues that can be litigated. Hearings concerning whether a particular bargaining unit is appropriate will be fewer and will likely conclude in significantly less time. The end result is that employers will have significantly less time to react to a petition, evaluate and argue over the structure of the appropriate unit in which to hold the election, and to explain its position to the Board.

The Board’s view is that elections were unduly delayed in the past because of these hearings and appeals. Employer organizations generally have taken the position that delays occur in only a small minority of cases, and hence there is no need to change the timelines, particularly where the tradeoff is that the employer’s ability to express its views is greatly reduced.

More and quicker elections means that now, more than ever, employers should consider some advance planning for the contingency of an election petition since the time frame to prepare and respond will be much shorter than it has been. There are also related issues that will need to be thought through for each employer. For example, if an election is held, the employer will need to provide a voter list to the union. In the past, the list included only names of the employees and their home address. Under the new Rule, employee personal email addresses and cell phone numbers will also have to be provided. Accordingly, each employer will want to think about its need for collecting certain employee information and how and if that information will be retained and accessed.

**Labor & Employment Alert
 April 2015**

The following table provides a side-by-side comparison of current and new procedures:

Current procedures	New procedures
Parties cannot electronically file election petitions. Parties and NLRB regional offices do not electronically transmit certain representation case documents.	Election petitions, election notices and voter lists can be transmitted electronically. NLRB regional offices can deliver notices and documents electronically, rather than by mail.
The parties and prospective voters receive limited information.	Parties will receive a more detailed description of the Agency’s representation case procedures, as well as a Statement of Position form, when served with the petition. The Statement of Position will help parties identify the issues they may want to raise at the pre-election hearing. A Notice of Petition for Election, which will be served with the Notice of Hearing, will provide employees and the employer with information about the petition and their rights and obligations. The Notice of Election will provide prospective voters with more detailed information about the voting process.
The parties cannot predict when a pre- or post-election hearing will be held because practices vary by Region.	The Regional Director will generally set a pre-election hearing to begin 8 days after a hearing notice is served and a post-election hearing 21 days after the tally of ballots.
There is no mechanism for requiring parties to identify issues in dispute.	Non petitioning parties are required to identify any issues they have with the petition, in their Statements of Positions, generally one business day before the pre-election hearing opens. The petitioner will be required to respond to any issue raised by the non petitioning parties in their Statements of Positions at the beginning of the hearing. Litigation inconsistent with these positions will generally not be allowed.
The employer is not required to share a list of prospective voters with the NLRB’s regional office or the other parties until after the regional director directs an election or approves an election agreement.	As part of its Statement of Position, the employer must provide a list of prospective voters with their job classifications, shifts and work locations, to the NLRB’s regional office and the other parties, generally one business day before the pre-election

Labor & Employment Alert
April 2015

	hearing opens. This will help the parties narrow the issues in dispute at the hearing or enter into an election agreement.
Parties may insist on litigating voter eligibility and inclusion issues that do not have to be resolved in order to determine whether an election should be held.	The purpose of the pre-election hearing is clearly defined and parties will generally litigate only those issues that are necessary to determine whether it is appropriate to conduct an election. Litigation of a small number of eligibility and inclusion issues that do not have to be decided before the election may be deferred to the post-election stage. Those issues will often be mooted by the election results.
Parties may file a brief within 7 days of the closing of the pre-election hearing, with permissive extensions of 14 days or more.	Parties will be provided with an opportunity to argue orally before the close of the hearing and written briefs will be allowed only if the regional director determines they are necessary.
Parties waive their right to challenge the regional director's pre-election decision if they do not file a request for review before the election. This requires parties to appeal issues that may be rendered moot by the election results.	Parties may wait to see whether the election results have made the need to file a request for review of the regional director's pre-election decision unnecessary and they do not waive their right to seek review of that decision if they decide to file their request after the election.
Elections are delayed 25-30 days to allow the Board to consider any request for review of the regional director's decision that may be filed. This is so even though such requests are rarely filed, even more rarely granted and almost never result in a stay of the election.	There will be no automatic stay of an election.
The Board is required to review every aspect of most post-election disputes, regardless of whether any party has objected to it.	The Board is not required to review aspects of post-election regional decisions as to which no party has raised an issue, and may deny review consistent with the discretion it has long exercised in reviewing pre-election rulings.
The voter list provided to non-employer parties to enable them to communicate with voters about the election includes only names and home	The voter list will also include personal phone numbers and email addresses (if available to the employer). The employer must submit the list within

**Labor & Employment Alert
April 2015**

addresses. The employer must submit the list within 7 days of the approval of an election agreement or the regional director's decision directing an election.

2 business days of the regional director's approval of an election agreement or decision directing an election.

As noted above, advance planning will be critical since the time frame to prepare and respond to a proposed election will be much shorter than it has been in the past.

If you have any questions about this issue, please contact Geoff Wermuth or the attorney responsible for your account, or call (617) 479-5000.

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