



New NLRB Election Rules Drastically Change the Playing Field

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On April 15, 2015, the National Labor Relations Board's "ambush election" rules became effective, and going forward any representation petitions filed by unions will be subject to the new rules, which drastically expedite the amount of time between the filing of an election petition and the actual election.

In support of the rules adoption, Union supporters contend that the prior procedures for unionizing a workforce took too long. Under the new rules, the time from petition, or election-request, to election will be as little as 15 days as opposed to several months. Such a compact timeline potentially harms the right of an employer to make its case as to why unionization is not in the best interest of its employees.

Ambush elections hold many advantages for unions. Chief among them is that the union will often be able to run a one-sided campaign, springing an election before the employer has an opportunity to make its case against unionization. The "ambush" strategy stems from the nature of the union's organizing tactics. Unions rarely give employers warning when they begin soliciting employees. Employers often only become aware of the effort after the union "petitions" for an election – usually after the union has already gathered "cards" indicating majority support of a "unit" of employees. The past rules gave employers (and unions) some time after that petition, but before the election, to mount a campaign and formally raise issues regarding the petition, the union, voting, and other important matters. This will no longer be the case.

The new board rules drastically alter the election process in many ways, including the following:

- The proposed rules eliminate nearly all pre-election hearings. No longer will employers be allowed to challenge the proposed voting-bloc of employees or campaign abuses until after the election. Further, even challenges to the sufficiency of the petition would be postponed unless it concerns more than 20% of the potential voters.
- Pre-election rulings by a regional director of the National Labor Relations Board will not be appealable until after the election.
- Regional Directors have been given broad latitude to determine whether there really are issues of representation.
- The proposed rules also make it discretionary whether the Board will even entertain post-election disputes. Such a change could result in a union-friendly Board ignoring challenges to election conduct where the union prevailed, but entertaining challenges if the union lost an election.
- The rules even eliminate the pre-existing mandatory 25 day period between a decision as to the appropriate voting unit and the election.

- The rules also require employers to hand over employee phone numbers, email addresses and home addresses to union leaders prior to the election.
- In, addition, as soon as a union election petition is filed, an employer will be required to post a government notice informing employees of their rights under the NLRA.

Despite the rhetoric of unions, the significance of this rule change goes far beyond “streamlining the process.” Indeed, it effectively eliminates many substantive rights of employers, including the right to challenge union campaign tactics, voting irregularities, dubious unit designations, and other critical matters until after the election has already been held. Further, the proposal allows stealth campaigns ending in a titular “ambush” election that takes place before an employer can mount a response to the union. That is, it achieves many of the same goals as the “card check” laws: the ability to achieve unionization quickly, secretly, and without meaningful challenge or response from employers.

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