

National Labor Relations Board Issues Final Rules for Ambush Elections

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The National Labor Relations Board (NLRB) has adopted a final rule for what has become known as the “ambush election” rules, which will effectively shorten the time to 10-14 days in which a union election can be held. The proposed rules radically alter well established union representation election procedures that have worked in a highly efficient fashion for decades. While these rules contemplate many technical changes, the core result is that employers will have virtually no time to prepare a considered response to a representation petition or to help employees gather the information they need to make an informed decision.

The final rule goes into effect on April 14, 2015, and includes the following:

- Requires additional contact information (personal telephone numbers and email addresses) be included in voter lists that the employer gives to the NLRB, which in turn is then given to the union. These voter lists will now be given to the Board prior to any pre-election proceedings.
- Permits parties to file election petitions and other documents, like the voter lists electronically.
- Eliminates an employer’s right to challenge voter eligibility and other issues prior to the election being held.
- Requires the employer to identify all objections regarding the election in its “Statement of Position” filed prior to the election and does not allow any new objections to be raised after the election is held.
- Eliminates the Board’s requirement to review every aspect of any post-election dispute. The Board now will only review disputes when one party has raised an objection prior to the election.
- Forces parties to consolidate all election-related appeals to the Board into a single appeals process.

The main vehicle for most of this change is the pre-election hearing, which has historically been used to resolve legal disputes related to the union’s petition. Under the new rules, pre-election hearings would *only* be conducted to determine the narrow issue of whether a question concerning representation exists. NLRB hearing officers will have authority to enforce that mandate by limiting the evidence employers can submit at the hearing. Accordingly, many issues of individual voter eligibility will be deferred to post-election procedures rather than determined prior to the vote.

We anticipate lawsuits will be filed in the coming weeks challenging the rule from a number of different aspects. However, if the new rules remain intact, employers are well advised to implement a plan of action in advance of a petition being filed.

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