



NLRB Shortens Timeline for Union Representation Elections

December 17, 2014

The National Labor Relations Board (NLRB) has voted to revise its procedures for conducting union representation elections. The principal effect of these revisions will be to significantly reduce the time between the union's filing a petition for election and the actual vote of employees. The rule was published on December 15, 2014 and will take effect on April 14, 2015.

Typically, a union files a petition with the NLRB to ask for a vote to determine if the union will represent a group of workers. After such a petition is filed, the local NLRB office and the parties will address such issues as whether there is enough support to justify holding an election, and, if so, who will be eligible to vote. A date for the vote will also be set. The NLRB's existing target is to hold all elections within a median of 42 days after the petition, and to hold 90% of them in 56 days or less. Currently, according to NLRB statistics, those targets are being met. The actual median time from petition to election over the past decade is 38 days, with 94% of elections held in under 56 days.

Despite meeting these performance targets, the NLRB has now adopted the new rule to "modernize and streamline" the election process. The goal is to conduct the vote at the "earliest date practicable." Based on the changes adopted in the rule, this likely means that the election time will be cut in half, with the 42 day median time from petition to vote reduced to 14 to 21 days – and some commentators believe a vote could take place in just 10 days.

Under the new rule, many issues which were previously resolved before the vote will now be held in reserve until after the vote. Principal among these will be who is eligible to vote, so long as the dispute over eligibility affects less than 20% of the group. This means that employees may be voting without knowing the scope of the bargaining unit for which they are voting. Similarly, a substantial number of individual employees may not know whether they are "in" or "out" (and thus won't know whether they should pay attention during the election campaign or whether their vote will ultimately count).

In addition to a shorter time line, the new rule will require an employer to disclose personal e-mail addresses and telephone numbers of its employees to the union, in addition to the home addresses that are currently required. Employees will not be able to block disclosure of this personal information to the union.



Organized labor has long advocated for shorter election times. Union organizers can work behind the scenes for an indefinite period leading up to a petition being filed. Yet an employer won't know, officially, which union is seeking representation, or what group of employees it seeks to represent, until the petition is filed. The premise is that with less time from petition to election, the employer will have less time to communicate with employees about the issues. This is thought to make it more likely that the union will win the vote.

As with the "e-mail access" decision issued by the NLRB just one day before adopting the new election rule, a legal challenge is expected. In the meantime, employers might consider whether it makes sense to communicate with employees about union issues, and not wait until the severely truncated period between petition and vote to begin educating the workforce.

If you have questions, please contact your Lathrop Gage attorney or the attorney listed above.