

New NLRB Rules Would Speed Up Unionization Elections

Will The Race Be Half Over Before You Put On Your Running Shoes?

June 24, 2011

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If you and your company have ever been through a union election, you know the process usually takes around six weeks, whether you go through a hearing or not. In those six weeks, the employer lines up labor counsel or a labor consultant for advice so they do not commit unfair labor practices and they train your supervisors on what the employer can and cannot say under National Labor Relations Board (NLRB) case law. The employer then campaigns for about one month providing employees with any facts about collective bargaining or the union itself, facts which the union may have omitted¹ while collecting signatures for a union petition. During this time, the employer is permitted to express its lawful views about unionization under Section 8(c) of the National Labor Relations Act (NLRA). At the end of this six week process, the employees cast their secret ballot and the union is certified or not. If certified, the employer begins good faith collective bargaining. **That process is changing.**

A. New Process Described

Under the NLRB's new proposed rules, issued on June 21, 2011, the NLRB plans to change the timeframe and procedures as discussed below:

1. On day one, the employer will get notice of the petition sent to them directly from the union, along with a description of NLRB procedures and a "statement of position" form. (*Picture the notice sitting on Manager Bob's desk all day Friday because he is meeting with customers and his assistant was out on leave; the petition lays unopened until Monday, day three*)
2. Meanwhile, the NLRB will send the employer a notice to immediately post for all employees and an e-mail which the employer must send to all employees. The NLRB will also send a Notice of Hearing to be held seven days from day one.
3. Before that hearing, the employer must fill out a "statement of position" form *and* prepare and send to the NLRB *and* the union its preliminary list of voters, which list must contain names; work locations; shifts and classifications. (This mandatory preliminary list is a new requirement)
4. On day seven, the hearing will take place on any issue identified in the employer's "statement of position", so long as the issue involves 20% or more of the eligible voters in the unit. Otherwise, the issues will be deferred until after the

election. If there is a hearing, it is only to allow the NLRB to collect what little evidence an employer is able to put on with less than seven workdays to get ready for such an important hearing.

5. The Regional Director will review the evidence and will direct an election, specifying the type, date, time and place of the election. This decision can be made on day eight, following the hearing and earlier if there is no hearing. Reviews of these decisions will only be taken up after the election. This guarantees the ballots are in the box before there are any final decisions by the NLRB on unit issues.
6. Two days after this Direction of Election, roughly day ten, (or earlier if no hearing) the employer must provide the NLRB with the final voter list. This list must include addresses, phone numbers and all known e-mail addresses of its employees. The list must be submitted by e-mail so it can be e-mailed to the union. Giving phone numbers and e-mail addresses is brand new and has the obvious potential for abuse by aggressive union organizers. Meanwhile, the employer must post the election notice for at least two days.
7. Somewhere between day seven and day 14 will be the Secret Ballot Election

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
					Union Files & Serves Election Petition	1
2	3	4	5	6	7 Hearing on Unit Issues	8
9	10 RD Directs Election	11 Employer Posts Notice & E-mails Voter List	12	13 Secret Ballot Election	14	15

B. Ways to Start Getting Ready For This Process

1. Check with an association of businesses about filing comments to this proposed rule. Consider filing your own comments on the proposed rule explaining why certain items are not practical or are problematic. Not everyone lives in a reliable electronic service world. This timetable does not give the employer the

opportunity of three days to see the Notice of Petition and make sure it goes to the right people to begin responding. Employees may not wish to have home and mobile phone numbers or e-mail addresses provided, especially if these devices are shared with non-voters, such as spouses or children.

2. Talk to or write your Senator and Congressional Representatives about the unfairness of such a shortened process and the potential invasion of privacy issues regarding phone numbers and email addresses for employees.
3. Meanwhile, have your supervisors trained regularly so they know what to look for and know their lawful role in a union election campaign. You will not have much time for this in an election schedule of 10-15 days.
4. Have your in-house “labor SWAT” team prepared and ready. Are there videos available you want to order ahead of time? Are your communications pieces already pre-drafted? Have you researched the unions likely to target your company? Do you know what the NLRA requires of employers during election campaigns? Learning the legal requirements on the fly is difficult, if not risky.
5. Do you know all your employees and talk with them or do you at least engage in regular, and lawfully conducted, employee surveys so you know your company’s issues in time to diffuse them?
6. Are you regularly training supervisors to improve their leadership skills and getting out to the worksites yourself so you know what is going on?
7. Is there any team-building project or plan you have been putting off because you have other, more time critical, issues? Take care of this important project now.

C. Conclusion

It is clear that the proposed NLRB rules will make it much more difficult for employers to fairly exercise their labor law rights under Section 8(c) of the NLRA to provide facts and express their views, before employees are raced into a speedy union election procedure. In short, even if comments to the proposed rule result in some modifications to the NLRB’s current proposed rule, expect that the NLRB’s union election process will likely shorten from the current six weeks.

As an employer, it is important for your voice to be heard regarding these rule changes. Meanwhile, it is just as critical to make internal plans for doing business under a very different union election timetable and process.

(1) For example, employees may not be aware of the unions constitutions, the condition of their underfunded pension plans, or how collective bargaining works and that it is a negotiation where wages can go up, down or remain the same.