

DECEMBER 15, 2014 BULLETIN TO ALL LABOR & EMPLOYMENT CLIENTS

## NLRB AGAIN ANNOUNCES IMPLEMENTATION OF ITS “QUICKIE” ELECTION RULE

On Friday, December 12, 2014, the National Labor Relations Board announced that it approved, by a 3-2 vote, its new rule designed to speed up the election process. The final rule, published in the Federal Register on December 15, is to become effective on April 14, 2015. There is no question that the new rule will improve union odds of winning NLRB elections -- primarily by reducing significantly the amount of time it takes the NLRB to conduct an election after a petition is filed. Employers will have less time to educate employees about the drawbacks of voting for a union before ballots are cast. Features of the new rule will require employers to respond differently and much faster to NLRB election petitions.

- ***There will be quicker elections.*** By eliminating most pre-election hearings over disputed issues of voter eligibility, the amount of time necessary to schedule an election once a petition is filed will be reduced from the current target of approximately 41 days, to approximately 14-21 days. In some cases, it will be possible for the NLRB to conduct an election in as few as 10-12 days.
- ***There will be unresolved eligibility issues.*** Since the rule shifts resolution of most disputes concerning the eligibility of employees to vote to a post-election hearing, there is a potential for lack of clarity as to who is eligible to vote. As much as 20% of the voting group could remain “disputed” at the time of the election. This uncertainty can be particularly troublesome in cases where the “disputed” voters may be supervisors whose role during the pre-election campaign can be very meaningful to the employer.
- ***Additional employee contact information will be required.*** Employers will be required to provide unions with employee telephone numbers and email addresses of voting employees, in addition to the current mailing address requirement. Email addresses will be more useful to unions and employee organizers in light of the NLRB’s very recent decision in *Purple Communications, Inc.*, 361 NLRB No. 126 (12/11/14), which allows employees to use employer email systems for union organizing purposes.
- ***An immediate well-prepared written response to the petition will be required.*** Although pre-election hearings will generally not be held, employers will be required to submit a very detailed written statement of position within days of the petition being filed stating all possible issues raised by the petition. Failure to raise issues in this position statement may forever waive the employer’s right to later raise them.

The new rule comes on top of the NLRB's decision in the *Specialty Healthcare* case, which allows unions to organize employees in smaller bargaining units. Statistics clearly show that unions have a much higher rate of success with quicker elections and smaller voting groups.

**Best Practices.** Because the proposed rule will create what has been described by dissenting Board members as a “vote now, understand later” situation, employers should take proactive steps to avoid being caught off guard by union organizing.

- Train management and front-line supervisors to recognize, report and effectively and lawfully deal with troublesome workplace issues and/or signs of union organizing at the earliest possible time.
- Identify potential voting groups and eligibility issues, understand the organizing landscape, and take steps to avoid vulnerability to union organizing in small voting groups. Identify your supervisors and prepare to defend your position on these and other key eligibility issues.
- Have a “ready to go” avoidance team and campaign in the event your company is taken by surprise by a union petition. Time is of the essence; it will be too late to assemble a capable response team and develop an employee communication strategy in the short amount of time between the petition and the election under the new rule.

The attorneys in Cohen & Grigsby's labor and employment group are available to assist in taking proactive measures to best position employers to prevent and respond appropriately to union organizing activity.

### **Upcoming Seminar**

A seminar on the new NLRB election rule will be held late next month at PNC Park. Look for more details via email.

### **More Information**

Please contact any member of the Cohen & Grigsby Labor & Employment Group at 412.297.4900 if you have any questions regarding this information. To receive future bulletins by e-mail, please send an e-mail to [info@cohenlaw.com](mailto:info@cohenlaw.com).

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