



## **NLRB's Proposed Rules Will Accelerate The Union Election Process**

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**By David P. Radelet, Christopher A. Johlie and Joshua D. Meeuwse**

The NLRB intends to significantly accelerate the union election process, according to the **proposed rules** published today in the Federal Register. Most importantly, the proposed rules will shorten by more than half the time between the filing of an election petition and the election itself. Currently, the NLRB conducts union elections an average of 31 days after a petition is filed. Under the proposed rules, employers should expect the NLRB to conduct elections within 10 to 21 days after a petition is filed.

The reduced time period is not explicitly contained in the proposed rules, but is the likely result of a combination of several rule changes, including the following:

- Pre-election hearings will be held within 7 days after an election petition is filed. Under current practice, regional offices often conduct pre-election hearings within 14 days after a petition is filed, although the practice varies by region.
- Employers will be required to identify all issues before the pre-election hearing and make an offer of proof in support of its position regarding the issues raised. The practical result of this change in procedure may be to reduce the number of issues to be resolved at the hearing and shorten the time it takes to resolve them.
- Under current practice, pre-election hearings often involve disputes over whether certain employees are eligible to vote or should be included among the group of eligible voters. Such disputes often involve whether an individual is a supervisor. Under the proposed rules, however, disputes over the eligibility or inclusion of less than 20% of the employees in the proposed unit will be deferred to post-election proceedings. Thus, under the proposed 20% rule, issues relating to supervisor eligibility and other eligibility issues usually will not be resolved at the pre-election hearing. This, of course, will reduce the number of issues to be resolved before an election.
- Review of pre-election hearing decisions will be deferred until after the election, thus eliminating one of the NLRB's primary reasons for providing more time before it conducts an election.
- Employers must provide the NLRB with the list of eligible voters (the so-called "Excelsior List") within 2 days after the Regional Director's hearing decision, rather than 7 days under current procedure.

If implemented as written, the proposed rules will make other significant changes to the election process. For example, employers have long been required to provide the NLRB and the petitioning union with the names and home addresses of eligible voters. The proposed rule, however, requires more; it requires the employer to provide home addresses, e-mail addresses, and telephone numbers of employees eligible to vote in the election. As a result, unions will gain broader access to employees.

In their current form, the NLRB's proposed rules dramatically change the union organizing landscape. In response to a union election petition under the proposed rules, an employer must:



(1) Immediately and thoroughly identify and analyze issues related to unit scope, voter eligibility and supervisory issues (at the risk of waiving issues not raised at the first opportunity); and (2) develop and execute a communications plan to educate employees on the wide variety of issues that typically arise in an organizing campaign in a significantly reduced time frame.

The NLRB clearly intends to act quickly on the proposed rules and does not appear interested in extensive input from the public. Employers have only 60 days to review the proposed rules and submit comments and the NLRB will hold only one public hearing on July 18, 2011. Given the significant changes presented by the proposed rules and the NLRB's interest in implementing them quickly, employers should expect that these rules, or very similar rules, will become effective in the near future.

We will continue to monitor developments in this area and will provide updates as necessary.

## **More Information**

Christopher A. Johlie  
caj@franczek.com  
312.786.6152

Joshua D. Meeuwse  
jdm@franczek.com  
312.786.6512

David P. Radelet  
dpr@franczek.com  
312.786.6190

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