

## New NLRB Rule Speeds Union Elections

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### Time and Procedures for Employers to Respond to Union Election Petitions Are Eliminated or Reduced

Today the National Labor Relations Board (NLRB) published in the *Federal Register* its new Rule that will change **procedures** for private sector union representation elections. The Rule becomes effective April 30, 2012. The Rule dramatically shortens the period between the filing of an election petition and the election unless the parties stipulate to the election date. The Rule also effectively eliminates pre-election challenges to NLRB rulings on such critical issues as the appropriate bargaining unit and eligible voters.

While the NLRB defends these changes predicting they “will reduce unnecessary litigation in representation cases and thereby enable the Board to better fulfill its duty to expeditiously resolve questions concerning representation,” the sure effect of these changes will be to reduce the time period—and thus the opportunity—for employers to communicate their views on unions with their employees and to respond meaningfully to union campaign efforts before an election is held.

### Which Election Procedures Will Be Changed?

The specific amendments to the NLRB's current rules of procedure include:

- Authorizing NLRB hearing officers in pre-election hearings to limit evidence on any individual eligibility issue.
- Expanding these hearing officers' discretion over post-hearing briefs, including limiting the subjects that can be addressed, the amount of time for filing, and also determining whether a brief can be filed at all.
- Eliminating the right to request pre-election review of a Regional Director's rulings, requiring the request for review to be consolidated with any post-election requests for review of the Regional Director's rulings on challenges and objections.
- Eliminating the current 25-day waiting period between the Regional Director's post-hearing Decision and Direction of Election and the election.
- Limiting special appeals from rulings of the NLRB hearing officer or Regional Director to “extraordinary circumstances where it appears that the issue will otherwise evade review.”

- Subjecting the current right to appeal a Regional Director's post-election rulings on potentially outcome-determinative challenges and objections to the NLRB's discretion.

### What Changes That the NLRB Had Initially Proposed Are Not Included in Its New Rule?

The NLRB's Final Rule implements only some of the more dramatic procedural changes that the NLRB had originally proposed in June 2011. Some of those proposed changes which are **not** included in the current Rule would have:

- Required employers to directly provide the union—within two days of the Regional Director's decision—each eligible employee's name, telephone number, e-mail address, work location, shift and classification. Currently, only the employee's name and home address are required to be provided by the employer to the Regional Director within seven days of the decision. The Regional Director then makes that information available to the union.
- Set the pre-election hearing within seven days of the filing of the election petition and required that the non-petitioning party, such as an employer, submit a written statement of position with all substantive arguments before that hearing or risk waiving those arguments on appeal.

### Has the NLRB's Final Rule Been Challenged?

Yes.

- On December 1, 2011, the U.S. House of Representatives passed the **Workforce Democracy and Fairness Act**, which would allow a union representation election only after 35 days from the filing of the petition and would also require a two-week waiting period before the first hearing could be held on that petition.
- On December 20, 2011, the U.S. Chamber of Commerce and the Coalition for a Democratic Workplace filed a **lawsuit** in the United States District Court for the District of Columbia challenging the Rule, claiming that employers will be denied a fair opportunity to explain to employees the consequences of unionizing.

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