

Employers Disadvantaged by New NLRB Election Rules

February 2012

In December 2011, the National Labor Relations Board voted to implement a new set of union election rules that will limit the type of pre-election legal challenges available to employers. With fewer permissible challenges, there will be fewer pre-election hearings and balloting will take place more rapidly. Employers are concerned that faster elections will prevent them from adequately educating their workforce prior to the vote.

In addition, because employers may no longer contest voter eligibility, including a determination of who is a supervisor, prior to the election, they are more susceptible to unfair labor practice charges for acts committed by employees who are later found to be supervisory in nature.

Prior to the rule change, Board policy had been to schedule elections within 42 days of receiving the petition. Where there is no pre-vote litigation, and the election is held based on a stipulated pre-election agreement, the average period from petition to election was 31 days. The median period was 38 days. Where, however, pre-vote litigation was initiated, the time frame averaged 101 days. By eliminating the grounds for pre-vote litigation, the Board intends to speed up the election process in more cases.

Now, instead of being able to challenge unit appropriateness, voter eligibility, and Board jurisdiction before the election, challenges in that timeframe will be limited to whether a union has produced a show of interest. Further, under the new rules when a pre-election hearing is held, the hearing officer has the discretion of whether to accept post hearing briefs. Where they

are not accepted, the decision process and election time frame shrinks. Also, review of the Regional Director's pre-election decision is no longer permitted. In addition, the current 25 day waiting period between the Regional Director's decision and the election will be eliminated.

The Chamber of Commerce has already filed a legal challenge to the new rules, and the House of Representatives passed HR 3094, the Workplace Democracy and Fairness Act, which would reverse a number of the changes. If the changes are not reversed, they will go into effect April 30, 2012.

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