

## NLRB Issues Final Rule Regarding Representation Cases

DECEMBER 12, 2014

On December 12, 2014, a divided National Labor Relations Board (Board or NLRB) issued its long anticipated Final Rule governing union representation case procedures. The Board majority asserts the Rule is intended to “modernize election processes, enhance transparency, and eliminate litigation and delay.”

Many refer to the changes as “ambush election rules,” and dissenting Board members assert the Rule diminishes the Board’s role; offends due process, free speech, and privacy rights; and is generally unwarranted. The changes that were announced today have long been sought by union advocates in order to counter the effectiveness of union-free campaigns that are designed to inform employees about the reality of union representation, thereby persuading employees to reject unionization. The Rule represents dramatic changes for the union-organizing process.

Highlights of the Rule include:

- Providing for electronic filing and transmission of election petitions and other documents;
- Requiring election petitioners to serve a copy of the filed petition upon all parties identified in the petition, together with a description of representation case procedures and a position statement;
- Requiring employers to submit a written position statement within seven days after a petition has been filed disclosing all of the employer’s legal issues and objections to the petition within seven days. Employers must include in this statement a list of all prospective voters, including their job classifications, shifts, and work locations;
- Requiring employers to disclose employees’ phone numbers and email addresses in voter lists to facilitate the union’s ability to communicate with voters;
- Requiring employers to post Notices of Petition for Election and Election, which will provide more detailed information to employees about the petition, employee rights, the election, and the voting process;
- Scheduling pre-election hearings within eight days of a filing of petition, and post-election hearings 14 days after the filing of objections, except in the most complex cases;
- Prohibiting litigation that is inconsistent with the positions taken by the parties;

- Deferring most requests for Board review of election issues until after the election, when any such requests can be consolidated with post-election challenges;
- Narrowing the circumstances under which the Board will review a decision; and
- Significantly shortening the time between filing an election petition and voting day from 40-42 days to 21-24 days.

The Final Rule will be published in the Federal Register on December 15, and will take effect on April 14, 2015. The full text of the Rule is available [here](#) and an NLRB fact sheet and comparison chart are available [here](#).

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