

## NLRB MODIFIES "QUICKIE" UNION REPRESENTATION RULES

On December 13, 2019, the Board issued a final rule amending its election procedures.



The NLRB uses these procedures to determine whether employees are unionized. The new amendments extend deadlines and add steps to ensure certain disputes are resolved before employees vote. Chairman John F. Ring announced, "These are common-sense changes to ensure expeditious elections that are fair and efficient." The new rules provide:

- The rule amendments allow more time for employers to prepare for the pre-election hearing. The new rule extends the time for holding a pre-election hearing from eight calendar days to 14 business days after the petition is filed. This allows the employer for a longer period before the opening of the hearing than is currently the case. It also allows the parties and the Board more time to try to resolve issues without a hearing, rather than litigating issues that might have been resolved through negotiation and agreement.
- The employer will now be required to post and distribute the Notice of Petition for Election within five business days after service of the notice of hearing. The prior rules required posting and distribution within two business days. The additional time will permit employers to balance this requirement with other obligations imposed on them by the filing of a petition and guarantee that employees have the benefit of the Notice of Petition for Election for a longer period of time prior to the opening of the hearing than is currently the case.
- The new rule requires unions to respond to the employer's position statement. Previously, the entire burden leading up to a pre-election hearing rested on the employer, including the filing of a position statement, or risk waiving the issues at the hearing. Under the new rule, some of the burdens are shifted to the union. The union is now required to file a response to the employer's position statement, or risk having their petition dismissed or the employer's position on bargaining unit issues accepted by the Region.
- The new rule allows employers to litigate who are supervisors and who is included in the bargaining unit before the election. Employers will once again know who is eligible to vote in the election and customize their communication to those employees who will be voting. Employers will also know in advance who its supervisors and front-line management are during the critical campaign period and who its union-free communications team is.

- The new rules provide employers with more time to conduct a union-free campaign before the election. The new rule directs Board officials to set elections no fewer than 20 days after approval of consent election agreement or order and direction of election. This change will come close to returning the pre-election timeline to the pre-expedited election rules average.

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