

# NLRB Gives Gift To Employers: Modifies Obama Board's "Quickie Election" Rule

## Labor & Employment Law Update

By Jeffrey Risch on December 16, 2019

On December 13, 2019, the National Labor Relations Board (NLRB) issued notice of new regulations designed to materially change what is commonly referred to as the "Quickie Election" Rule. The new regulations, set to take effect on April 16, 2020, will materially help employers combat labor unions in the private sector by primarily providing more time to react to and educate the workforce on the "Good, Bad & Ugly" of what union representation actually means to workers.

As a brief reminder... the "Quickie Election" Rule is a set of unprecedented regulations that the Obama NLRB published in 2014, and went into effect in 2015. The primary effect of the "Quickie Election" Rule limited the amount of time an employer had to respond to a petition filed by a labor union seeking to represent its workers, and oppose the union's attempt to unionize the workforce. There were other significant pieces to the "Quickie Election" Rule, including, but not limited to: requiring employers (not unions) to submit a position statement on all issues the employer wanted or needed to raise as a result of the union's proposed bargaining unit and the election in general – within 7 calendar days after receipt of the petition – and, any issues not timely raised are deemed waived; setting material limitations on issues to be considered in any pre-election hearing and pushing any review of objections related to the election to a post-election hearing (after votes are opened and counted); and eliminating any stay of certifying an election's results in order to allow time for the NLRB to consider a request for review filed from a Regional Director's Order directing an election to proceed in the first place.

In essence, the official vote to "go union" or not, went from approximately 42 days to around 21 days from the filing of the union's petition, under the "Quickie Election" Rule, while tying the hands of employers to mount a comprehensive defense strategy along the way. With the changes found in the new regulations set to go into effect on April 16, 2020, the process will return to the days when employers had greater rights and abilities to fight against labor unions aiming to organize and represent their workers. In short, the new regulations include the following material changes from the current rules:

- The pre-election hearing must be held within 14 business days from the filing of a petition (up from the current *within 8 calendar days* requirement);

- Legal statements of position that identify issues and problems with any petition must be filed within 8 business days after service of the notice of hearing (up from the current *within 7 calendar days* requirement), and the union must file a formal response to a statement of position filed by an employer at least 3 business days before a scheduled pre-election hearing;

- The pre-election hearing can include, once again, the litigation of disputes involving voter eligibility as well as the size/scope of the bargaining unit (not just the issue of whether valid and lawful representation exists);

- The employer and the union can, once again, file post-hearing briefs to any pre-election or post-election hearing within 5 business days from the close of the hearing;

- Employers will be allowed more time to educate their workforce on union representation and mount a more robust counter-organizing campaign of their own in light of a new rule that provides that absent the parties' agreement, a Regional Director "normally" will not schedule an election less than 20 business days after the Regional Director directs an election;

- Employers will be permitted, once again, to file a Request for Review by the NLRB of any Regional Director's adverse Order directing an election, within 10 business days of such Order, and if the request is pending at the time of the election then the ballots cast would not be opened while the NLRB resolves the controversies raised in the Request for Review;

- Regional Directors will be prohibited from certifying results of any election while a Request for Review is still pending or at any time prior to the time a post-election request for review can be filed; and

- Employers will generally be provided more time to provide voter eligibility lists and information to the NLRB after the Regional Director issues a direction of election.

In issuing notice of the new regulations, NLRB Chairman John F. Ring (R) stated, "These are common sense changes to ensure expeditious elections that are fair and efficient. The new procedures will allow workers to be informed of their rights and will simplify the representation process to the benefit of all parties." Sole Democratic Board Member Lauren McFerran (D) vehemently opposed the changes. There is no doubt these Trump-era NLRB election rules will be opposed greatly by any future Democratic controlled NLRB. However, for now (starting in April 2020) employers will be in a much stronger position to successfully dispose of or counter union petitions seeking to represent workers in the private sector.

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