



AS THREATENED, NLRB IMPLEMENTS AMBUSH ELECTION RULES

Dec 12, 2014

On December 11, 2014, our Alert warned that the NLRB's ruling to allow employees to use company-provided email systems for union organizing was perhaps the first of a flurry of pro-union rulings to be released between now and the end of the year. Today the NLRB "modernized" its union election procedures. The Board's "modern" representation procedures are heavily slanted to favor unions winning representation elections and become effective on April 14, 2015.

Many of these changes are exactly as the Board threatened. A sampling of the changes that are most detrimental to non-union companies are:

Election Filing / Communications – Parties may file representation petitions electronically, instead of by fax or mail. This streamlined approach will reduce the number of days between the filing of a petition and the election, which reduces the number of days a company can campaign against unionization.

Election Voter List – The employer must include available personal email addresses and the phone numbers of voters on the voter list in order to permit the union to communicate directly with prospective voters using "modern forms of communication." Employers must collect additional personal contact information from employees. On the other hand, employees will likely be inundated with unwanted spam emails and telemarketer-style phone harassment from Unions encouraging them to support an organizing effort at their workplace. Additionally, Companies must provide Unions with the job classifications, shifts, and work locations of all prospective voters.

Litigation of Eligibility Issues – Only issues necessary to determine whether an election should be conducted at all will be litigated in a pre-election hearing. This means that important issues, such as whether certain employees may vote in the election, will not be determined until after the election. For example, whether low-level supervisors, working foremen, or assistant managers are in or out of the unit will be left unknown until after the election. The impact of this cannot be overstated: The incorrect treatment of low-level supervisors during the campaign period could result in unfair labor practice charges for severely tainting the election, or worse, the automatic recognition of a union without an election.

Earlier Notification of Petition – Unions will be required to send a copy of the Petition for Election to the Company in addition to the NLRB. While Companies may welcome this courtesy, it further reduces the number of days between the filing of the petition and the election.

The "Dreaded 8-Days to Hearing" – According to the Board, "except in cases presenting unusually complex issues, pre-election hearings will occur 8 days after a hearing notice is served on the parties." This hearing is critical to employers because it defines who is eligible to vote in the upcoming election. When Unions file the Petition for Election they craft a voter pool that is overwhelmingly in favor of being represented by the Union. The hearing is the Company's opportunity to re-shape the group of eligible voters. Eight days is a staggeringly short time to prepare for the hearing. The following scenario will likely occur: Union files petition electronically shortly before midnight on a Thursday. Company may learn about it on Friday, but most likely on Monday. Management meets and decides to hire labor counsel; Company and counsel meet on Tuesday – the 5th day after the Petition is filed. Counsel is then left with just two days to determine who should be allowed to vote, gather evidence needed to succeed, identify and prep witnesses, etc.

While these changes were anticipated, it still stings to officially read about them. Companies that want to remain non-union must take a hard look at their operations, which employees or departments are susceptible to union organizing efforts, consider making adjustments to job classifications and duties, and pro-actively engage in union-free, pro-employee training. The Board has kindly provided non-union companies with 119 days to prepare for these changes, so it is advisable to make the most of them.





Roetzel & Andress will continue to monitor the spate of decisions coming from the NLRB. For additional guidance on the ramifications of the “Ambush Elections” rules, please contact any of the listed Roetzel attorneys.

