

NLRB REWORKS “QUICKIE ELECTION” RULES

By: Melissa M. Tetreau, Senior Associate, Workplace Law Practice

As any employer who has undergone a union representation election in the past five years knows, the Obama National Labor Relations Board (“NLRB” or the “Board”) made it significantly more difficult to effectively respond to the union given the “Quickie Election” regulations. When a union files a petition requesting a vote of employees on whether they want to be represented by the union, it is important for the employer to have time to respond to the union’s position and, often, actively campaign against the union.

Yet, the Quickie Election regulations shortened this time period between the filing of the petition and the vote from approximately 42 days to around 21 days. These regulations also placed new obligations on employers within limited time frames. For example, employers had only seven calendar days after receiving the union’s election petition to submit a position statement on all of the issues the employer wanted to raise to the Board. In many cases, employers were simply unable to meet the Board’s timelines and still campaign effectively against the union.

Good news – on December 13, 2019, the NLRB announced changes to the election rules for the better. Here is a summary of the important changes:

- A pre-election hearing must now be held within 14 **business** days after the petition is filed (previously only 8 *calendar* days after the petition);
- Employers must post a Notice of Petition for Election within 5 business days after the Notice of Hearing is served (previously 2 business days after service);

- Employer position statements raising any and all potential issues are now due within 8 **business** days after the Notice of Hearing is served (previously only 7 *calendar* days after service);
- A formal written response from the union to the Employer’s position statement is now required;
- The election will “normally” not be scheduled less than 20 **business** days after the Regional Director directs an election (increased from approximately 21 *calendar* days after the petition is filed);
- Employers now have 5 business days to provide a voter list to the union and the Board following the Direction of Election (previously 2 business days after the Direction of Election); and
- The Board will no longer certify election results while a Request for Review is pending (previously the Board would certify results even if the Employer appealed issues that could result in the election being set aside).

These changes will take effect in April 2020 and should restore some balance to the union election process. The revised regulations give employers more time to establish a successful defensive strategy and meet the required deadlines. However, it is still critical that employers keep their eyes and ears open for potential union activity so that they are in the best position to act if and when an election petition is filed. If you need assistance with a union campaign, election, or related labor issues, please call any member of Bodman’s Workplace Law Group.



ABOUT THE AUTHOR
MELISSA M. TETREAU

Melissa M. Tetreau counsels employers on compliance with state and federal labor and employment laws, represents them in connection with employment disputes, and assists employers and individuals in connection with immigration matters.

**WORKPLACE
LAW PRACTICE
GROUP**

AARON D. GRAVES <i>Chair</i> 313.392.1075 agraves@bodmanlaw.com	JOHN T. BELOW 248-743-6035 jbelow@bodmanlaw.com	JOHN C. CASHEN 248.743.6077 jcashen@bodmanlaw.com
GARY S. FEALK 248-743-6060 gfealk@bodmanlaw.com	STEVEN J. FISHMAN 248.743.6070 sfishman@bodmanlaw.com	JOHN DAVID GARDINER 616.205.3123 jgardiner@bodmanlaw.com
DONALD H. SCHARG 248.743.6024 dscharg@bodmanlaw.com	BRENT R. SCOTT 616.205.3317 bscott@bodmanlaw.com	REBECCA C. SEGUIN-SKRABUCHA 313.393.7594 rseguin-skrabucha@bodmanlaw.com
MELISSA M. TETREAU 248.743.6078 mtetreau@bodmanlaw.com	DAVID B. WALTERS 248.743.6052 dwalters@bodmanlaw.com	KAREN L. PIPER <i>Of Counsel</i> 248.743.6025 kpiiper@bodmanlaw.com