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NLRB Issues New Rules to Expedite Union Representation Elections

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In a Final Rule published in the Federal Register on December 15, 2014, the National Labor Relations Board has issued new representation election rules which will significantly reduce the period between the filing of an election petition by a union and the holding of an NLRB election. The new procedures will seriously affect the ability of employers to effectively communicate a union-free message to their work force in the course of a union election campaign, and will require employers to be more proactive in their employee relations programs in order to maintain non-union status. The new rules are scheduled to take effect on April 15, 2015.

Under current NLRB election procedures, an election petition typically proceeds to an election in a period of about six weeks. The new NLRB rules suggest that this period is more likely to be less than four weeks, particularly where the parties are unable to agree to an election date in a consent election "agreement", and the matter must proceed to a pre-election hearing. This "rush" to an election is accomplished in the new rules through a reduction in election timetables and deferral of important voter eligibility issues to post-election proceedings.

Some major changes in the new NLRB election rules can be summarized as follows:

- Once an election petition is filed, a hearing must be scheduled in eight days, and parties must file extensive Position Statements prior to the hearing on any legal issues raised by the petition. It will be difficult to raise new issues or modify any position taken by a party in this document.
- Testimony and proofs at a pre-election hearing can be significantly limited by a hearing officer or the NLRB Regional Director. Parties will no longer have the right to file post-hearing briefs, except with special permission from the Regional Director.

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- Issues such as voter eligibility and supervisory status will generally no longer be considered in the hearing, but deferred until after the election. These individuals will have to vote subject to challenge, and their status will be in limbo until after the election.
- Once an election is directed, the employer will have two business days to file an "Excelsior List" (voter list) electronically with the NLRB and the union. This is a reduction from the current seven day period. The new rules not only retain the current requirement of listing an employee's name and home address, but additionally require the employer to state an employee's personal email address and home/cell telephone numbers if such contact information is in the employer's possession.
- A statement of procedures accompanying the new rules states that a Regional Director directing an election should not schedule the election "for a date earlier than 10 days" after the voter list is required to be filed. This 10 day period is likely to be the new benchmark; a significant reduction from the current period of 25-30 days.

Once the new NLRB election rules are implemented, employers seeking to maintain non-union status will have a much more limited ability after the filing of a petition to exercise their right under Section 8 (c) of the NLRA to lawfully campaign against union representation. Accordingly, employers should be proactive in implementing effective employee relations and employee communications programs now, before union authorization cards are signed and an election petition is filed.

If you have any questions about the new rules or desire guidance on the lawful parameters of an effective employee relations program, please contact the author of this Client Alert, your Butzel Long attorney, or any member of the Labor and Employment Group.