

NLRB Continues Its Election Process Make Over

Alert

04.15.2020

By Matt Tews and Anne Marie Buethe

The National Labor Relations Board (NLRB) began April by [issuing a new rule](#) geared towards improving case procedures for union representation elections. Specifically, the rule implements three amendments, addressing (1) election “blocking” charges practices, (2) election bars, and (3) the standard of proof required for demonstrating a labor organization’s exclusive representation in construction industry collective bargaining relationships. The Board’s goal with these amendments is to “better protect employees’ statutory right of free choice on questions concerning representation.”

The amendments come as part of a series of efforts by the Board to revamp the union election process. The rule’s effective date is currently set for [July 31, 2020](#), which closely aligns with the [new effective date](#) of the Board’s [final rule](#) issued at the end of 2019, which modifies the Obama-era “quickie” election rules.

KEY TAKEAWAYS:

- **Amendment One:** Ends the ability to file “blocking” charges. In the past, Board policy prohibited elections from occurring if certain types of unfair labor practice charges were outstanding. In practice, this gave parties the ability to block elections from occurring—sometimes for months or years—by filing a slew of unfair labor practice charges. No longer. Under the Board’s new rule, pending unfair labor practice charge will not delay an election. However, certification of election results will not occur until the charge’s final determination. In certain circumstances, ballots will be impounded until there is a final determination of the charge and its effect on the election.
- **Amendment Two:** Provides for a 45-day grace period within which election petitions may be filed and processed after an employer’s voluntary recognition of a union as its employees’ exclusive

NLRB Continues Its Election Process Make Over

representative. Therefore, voluntary employer recognition will not serve as an immediate bar to an election as was previously the practice. Employers must post and provide a specific notice to employees of this 45-day window and the employer and/or labor organization must file a notice of recognition with the appropriate regional office.

- **Amendment Three:** Heightens the standard of proof a labor organization in the construction industry must show to demonstrate that it is the recognized representative for the employer's employees. Bare contract language alone will no longer suffice. Rather, the labor organization must provide affirmative evidence that it demanded recognition and that it received unequivocal recognition from both the employer and the majority of employees in the relevant unit.

A PROACTIVE APPROACH TO POSITIVE EMPLOYEE RELATIONS

The NLRB's election process changes come at a time of great workforce upheaval in the wake of COVID-19. Non-union employers desiring to stay union-free must evaluate their current work climate and address the key factors that leave employers vulnerable to union organization. While the NLRB's new election rules may help ease some of the burdens of union elections, a proactive approach to positive employee relations helps to avoid an election altogether.

For more information on the new rule, please contact [Joel Abrahamson](#), [Anne Marie Buethe](#), [Dominic Cecere](#), [Nicole Faulkner](#), [Kyle Malone](#), [Richard Pins](#), [Matthew Tews](#), [Johnny Wang](#) or the Stinson LLP contact with whom you regularly work.

CONTACTS

Anne Marie Buethe

Matthew C. Tews

RELATED CAPABILITIES

Labor Relations

Labor, Employment & Benefits

STINSON

STINSON LLP \ STINSON.COM