Quickie Union Elections

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The National Labor Relations Board (NLRB) has made it twice as easy for unions to organize workers. In a recent NLRB decision the NLRB ruled that employees union or non-union must be permitted to use their employers email systems for union organizing activity and all other communications about workplace conditions, during non-working time, if the employees otherwise are permitted to use the employers email system for non-work communications. The NLRB also amended its election rules, speeding up union elections and requiring employers to provide unions with employees personal email addresses and telephone numbers.

Employees Use of Employer Email Systems for Non-Work Related Communications

The NLRBs decision in *Purple Communications* overturned prior NLRB decisions by holding employee use of email for statutorily protected communications on non-working time must presumptively be permitted by employers who have chosen to give employees access to their email systems. This decision permits employees to use their employers email system to communicate to other employees about unions and the terms and conditions of their work environment during non-working time and also during work hours if the employer otherwise permits employees to use the employers email system for non-work emails during working time. Additionally, employees will be able to send documents such as union authorization cards and other union propaganda via the employers email system.

Employers will be permitted to monitor employees use of the employers email system provided there is no change during a union organizational drive or in response to employees conduct protected by the National Labor Relations Act. Employers also may be able to ban the use of non-work email on non-working time by demonstrating that special circumstances make the ban necessary to maintain production or discipline. However, the NLRB places a heavy burden on the employer to prove such circumstances exist.

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Traditionally, union organizing elections are held within about 42 days from the time the union files a petition for representation. Under the NLRBs new rules, which take effect April 14, 2015, the election process will speed up substantially and most union elections will be held within 10-21 days after the filing of the unions petition for representation. Since most unions organize in secret and do not surface until they have union authorization cards from 65-70% of the employees they are seeking to organize, the shortened election timeframe will limit employers opportunity to educate their employees about the pros and cons of belonging to a union. Moreover, since the initial stages of a union campaign are usually spent identifying issues and concerns, modifying negative emotions and restoring credibility, an employer will have even less time to educate its workers about the advantages to them in remaining union-free, refute union claims, and clarify facts. It is important to keep in mind that under the current election timeframes, unions already win

two out of every three union elections.

In addition to speeding up elections the NLRBs changes to the election rules include provisions:

- Requiring employers to provide available personal email addresses and telephone numbers for all eligible voters;
- Limiting pre-election hearings to determine only whether an election should take place and not resolving disputes over voter eligibility or inclusion in the voting unit;
- Limiting post-hearing briefs; and
- Holding elections pending the review of determinations of voter eligibility until after the election is held.

What Employers Should Do Now

Since employers will have little time to respond to a union organizing campaign it is imperative that employers take steps to prepare now. There are many components to a union-free, pro-active labor relations plan. Key components include the following:

- Evaluate the companys vulnerability to a union organizing drive, both internally and externally.
- Train supervisors/managers about the pluses and minuses of unionization and its impact on the companys customers, managers and employees.
- Establish and maintain lawful policies on non-solicitation and non-distribution rules at work, electronic communication, and social media.
- Consider adopting and enforcing a company email policy that limits or prohibits all non-work communications.
- Notify employees that the companys email system is subject to review and monitoring of all emails and attachments and that employees should have no expectation of privacy in the use of the companys email.
- Establish and maintain effective two-way communication programs and methods.
- Listen to and address employee concerns.
- Discipline and discharge fairly and consistently.
- Prepare materials for quick response distribution at the first sign of union activity.

To learn more about union elections and the employer's responsibility, or to address other labor and employment issues, we invite you to contact Ken Gilberg or any member of Flaster Greenbergs Labor & Employment Practice Group.