

Quickie Union Elections: The Results Are In

Legal Alert

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The early results are in and, as predicted, unions are filing more petitions for union elections and winning under new “quickie” election rules adopted by the National Labor Relations Board (NLRB) in April of 2015. The new rules make it easier and faster for unions to organize workers, as discussed in my client alert in December.

The new rules speed up the process for holding union elections and require employers to provide unions with employees’ personal email addresses and telephone numbers. Employees — union or non-union — also must be permitted to use their employer’s email systems for union organizing activity and all other communications about workplace conditions, during non-working time, if the employees are permitted to use the employer’s email system for non-work communications.

These new rules have resulted in a 32% increase in union elections and the median time from the moment the election petition was filed until the holding of the election decreased from 38 days to 23.5 days, according to the Wall Street Journal.

The shortened election timeframe limits an employer’s ability to respond and educate its employees about the pros and cons of belonging to a union. 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, making it extremely difficult for an employer to respond effectively before the election is held. NLRB election statistics show that unions win about 80% of elections held within 18 days of filing the petition for representation, and therefore unions are now likely to win more elections under the new rules. Under previous election timeframes, unions won roughly 66% of elections.

Employers that receive an expected notice of a “quickie” union election, and are not prepared to combat a union’s organizing drive, will be forced to play catch-up in an election campaign, starting with the basics of identifying issues and concerns that prompted workers to sign union authorization cards, and dealing with the negative emotions and credibility issues that may exist in the workforce. This can take weeks and leave employers with little time to refute union claims, clarify the facts, and educate their workers about the advantages of remaining union-free.

What Employers Should Do Now

It is imperative that employers take steps to prepare now, since they will have much less time under the new rules to respond to a union organizing campaign. Key components to a union-free, pro-active labor relations plan include the following:

Evaluate the company’s vulnerability to a union organizing drive, both internally and externally.

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- Train supervisors/managers about the pluses and minuses of unionization and its impact on the company's 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, thereby blocking or eliminating the ability of union organizers to use company email.
- Notify employees that the company's 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 company's 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.