

## “Quickie” Elections Are Not So “Quickie” Any More: NLRB Amends Union Representation Election Procedures

On December 18, 2019, the National Labor Relations Board published a [final rule](#) in the Federal Register amending its union representation election procedures to eliminate several aspects of the “quickie” election rule that became effective on April 14, 2015. The “quickie” election rule provided unions with a significant advantage in the representation process by, among other things, shortening the time period between the filing of a petition and the scheduling of an election and limiting the issues that may be litigated by employers in a pre-election hearing. The final rule will become effective on April 16, 2020.

### Timing of Pre-Election Hearing

Under the current procedures, pre-election representation hearings are generally scheduled to begin eight calendar days from the issuance of the notice of hearing. Under the new procedures, the pre-election hearing will generally be scheduled to begin 14 business days -- essentially two weeks -- after the issuance of the notice of hearing, and regional directors will have the discretion to postpone the hearing for good cause. This will enable employers to investigate issues relating to the scope of the bargaining unit more thoroughly and to better prepare for the hearing.

### Posting and Distribution of Notice of Petition for Election

Currently, employers have two business days after service of the notice of hearing to post and distribute the Notice of Petition for Election. Under the new procedures, employers will have five business days to accomplish this task.

### Statement of Position

The current procedures require employers to file and serve a Statement of Position one day before the opening of the pre-election hearing (which would generally be seven calendar days after the service of the notice of hearing). Under the new procedures, employers will have eight business days after service of the notice of hearing to file and serve a Statement of Position, and regional directors will have the discretion to permit additional time upon a showing of good cause. In addition, the petitioner union will now be required to file and serve a Statement of Position in response to the employer's Statement of Position by noon three business days before the opening of the hearing. Under the current procedures, the petitioner union was not required to file and serve a written Statement of Position prior to the hearing, but was only required to respond orally to the issues raised by the employer at the beginning of the hearing.

### Issues for Pre-Election Hearing

Under the current procedures, disputes regarding individuals' eligibility to vote or inclusion in the proposed bargaining unit generally may not be litigated at the pre-election hearing. In its final rule, the NLRB returns to the procedures that existed prior to the issuance of the “quickie” election procedures. Under the final rule, disputes concerning unit scope and voter eligibility (including, but not necessarily limited to, issues regarding supervisory status) will be litigated at the pre-election

hearing and resolved by the regional director before an election is directed, unless both parties agree to allow disputed employees to vote subject to challenge and defer litigation of such disputes until after the election.

### Filing of Post-Hearing Briefs

Under the current procedures, parties are not permitted to file post-hearing briefs after a representation hearing unless the regional director grants permission to do so. The new procedure (which restores the procedure that was in effect prior to the effective date of the “quickie” election rule) gives both parties the right to file post-hearing briefs. Briefs will be due within five business days after the conclusion of the hearing, but the hearing officer may grant an extension of up to ten additional business days upon a showing of good cause.

### Timing of Election

The current procedures require the regional director to schedule the election for the earliest date practicable after the filing of the petition. The new rule provides that the regional director will not schedule an election before the 20th business day after the date of the direction of election. This new rule is consistent with the general time line that existed prior to the “quickie” election procedures, and will provide employers with more time to express their views and disseminate information to employees regarding the potential disadvantages of unionization.

### Request for Review

Under the new rule, if a request for review of a direction of election is filed within ten business days and the NLRB has either not ruled upon the request or has granted it before the election, any ballots whose validity might be affected by the decision will be impounded and remain unopened until the NLRB issues a decision. If a request for review is filed more than ten business days after the direction of election, disputed ballots will not be impounded.

### Voter List

The current procedures require employers to provide a list of voters within two business days after the issuance of the direction of election. Under the new rule, employers will have five business days after the issuance of the direction of election to provide the voter list.

These new rules should go a long way toward making the election process more fair and balanced. Employers will have more time to communicate with their employees regarding the potential disadvantages of unionization and debunk some of the assumptions that employees have made regarding unionization.

If you have any questions about this Information Memo, please contact [Subhash Viswanathan](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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