

Ambush Elections Final Rule

Legislative and regulatory solutions are needed to end this job killing final rule

During the Obama Administration, organized labor pushed unelected bureaucrats at the National Labor Relations Board (NLRB) to make sweeping policy changes aimed at increasing union membership rolls at the expense of employees' and employers' rights. One of the Board's most controversial actions was the "ambush" elections rule, which attacks both employer free speech rights and employee free choice. The rule drastically shortens timeframes for union representation elections, effectively limiting legal communication between employers and employees about the pros and cons of unionization prior to an election. The rule also tramples on employee privacy rights by requiring employers to hand over personal contact information to union organizers.

THE PROBLEM

On December 12, 2014, the Board issued its final rule making dramatic changes to the NLRB's long-standing union representation election procedures (elections held to determine whether or not employees want to be represented by a union). The rule, which went into effect on April 14, 2015, shortens the time between the union filing a petition for election and the NLRB holding of that election from the previous median time of 38 days to a median of 23 days. If fully implemented, the rule could impose elections as short as 14 days. This effectively limits employers' ability to communicate with employees prior to a representation election and encourages "back door" organizing.

The Board's rule included provisions that:

- Require all pre-election hearings be set to begin within eight days after a hearing notice is issued;
- Mandate employers file a "statement of position" by noon on the day before the hearing begins, which must include a list of prospective voters with their names, job classifications, work shifts, and work locations;
- Provide Regional Directors with discretion to limit the scope of pre-election hearings by excluding evidence on voter eligibility and delaying the resolution of those issues until after the election; and
- Require an employer provide, within two business days of the election agreement or decision directing an election, employee personal contact information without the employee's consent.

The rule was clearly intended to increase union organizing and dues revenue streams at the expense of employees, who will not have the opportunity to hear both sides before voting on union representation, and employers, who are effectively denied free speech and due process rights.

SOLUTIONS ARE POSSIBLE:

In its last session, Congress introduced legislative solutions challenging the ambush elections rule. Those bills were not signed into law. Under the new administration, Congress has an opportunity to reinstate the previous union representation election procedures in order to protect the rights of workers and employers alike. Congress should work to quickly introduce and pass legislation to ensure employees are able to exercise their rights. CDW looks forward to working with the new Congress and new administration to undo this policy.