

Ambush Elections Final Rule

NLRB and Congress need to end this job killing final rule and restore the rights of employees and employers

In December 2017, the NLRB issued a Request for Information on the previous administration's "ambush elections" final rule, which attacked both employer free speech rights and employee free choice. The RFI asked for public input on the impact of the rule and whether it should be modified or eliminated. The rule drastically shortened timeframes for union representation elections, effectively limiting legal communication between employers and employees, and trampled on employee privacy rights. The NLRB should move forward quickly to eliminate this rule. Additionally, Congress should immediately pass the Workforce Democracy and Fairness Act (H.R. 2776 and S. 1350) and Employee Privacy Protection Act (H.R. 2775); both of which would roll back the harmful policies of this rule.

NLRB ISSUED ITS REQUEST FOR INFORMATION:

On December 12, 2017, the National Labor Relations Board (NLRB) under the new administration issued a Request for Information (RFI) seeking public input on the consequences of the ambush elections final rule, and whether the rule should be modified or eliminated entirely. CDW is submitting comments on the RFI, urging the NLRB to restore reason to the representation election process and protect the rights of employers and employees alike.

THE RULE:

In December of 2014, the Board issued its final rule making dramatic changes to the NLRB's long-standing union representation election procedures (elections held to determine if employees want to be represented by a union). The rule, which went into effect on April 14, 2015, shortened 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 the current 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, with any issues not raised to be considered waived by the employer;
- 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 or choice as to which information is provided.

The rule was designed to speed up elections in order to increase union density and dues revenue streams. This is all at the expense of employees, however, who due to the rule's rushed time frames, are denied the opportunity to hear from both sides of the debate prior to voting on union representation. An employer's rights of free speech and due process, as well as its ability to present facts and views on the union at issue and unionization generally, are also severely undermined by the final rule.

LEGISLATIVE SOLUTIONS SHOULD BE PURSUED:

Congress is also working to eliminate the rule. The Workforce Democracy and Fairness Act (S. 1350 and H.R. 2776) would require at least 35 days before a union election can take place and provide employers with at least 14 days to prepare their case prior to a hearing before an NLRB election officer. The Employee Privacy Protection Act (H.R. 2775) would protect the personal privacy of employees by giving them control over what personal information can be passed along to union organizers and gives more time for employers to comply. CDW strongly supports these bills and encourages Congress to move quickly to pass this legislation.