COALITION FOR A
DEMOCRATIC WORKPLACE

Ambush Elections Final Rule

Legislative and regulatory solutions are needed to end this job killing final rule and restore the rights of employees and employers

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. Congress should immediately pass the Workforce Democracy and Fairness Act (H.R. 2776 and S. 1350) and Employee Privacy Protection Act (H.R. 2775); all of which would roll back the harmful policies of this rule.

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, 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;
- 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:

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. Additionally, the Senate should move quickly to confirm President Trump's nominees to the Board, who can also take steps through adjudication and regulation to mitigate the damage being done by the Ambush rule.