



## COALITION FOR A **DEMOCRATIC WORKPLACE**

### **Eliminating the Ambush Elections Rule**

*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 reintroduce and pass the Workforce Democracy and Fairness Act and Employee Privacy Protection Act; 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) issued a Request for Information (RFI) seeking public input on the consequences of the Obama-era ambush elections final rule and whether the rule should be modified or eliminated entirely. CDW submitted [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 AMBUSH RULE:**

The Board issued its ambush elections rule in December 2014, 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.

Some of the provisions of the Board's rule included:

- Requiring employers provide union organizers with all eligible employees' names, home addresses, phone numbers, email addresses, work locations, shifts and job classifications, without the employee having a say in which information is provided, possibly exposing employees to harassment and intimidation;
- Requiring pre-election hearings be held within seven days of the filing of the petition, giving employers little time to find appropriate counsel and understand the complexities of the laws governing union representation elections;
- Requiring employers draft a "statement of position" to be presented at the pre-election hearing and setting forth their positions on all relevant legal issues, while any issues they fail to raise would be deemed waived, jeopardizing their right to due process;
- Limiting the issues that may be litigated before an election, including employee eligibility to vote, and dispensing with post-hearing briefs absent "special



## COALITION FOR A **DEMOCRATIC WORKPLACE**

permission” from the hearing officer, risking confusion about the validity of the outcomes of the election;

- Eliminating pre-election Board review of a Regional Director’s decision; and
- Permitting electronic filing of election petitions and potentially electronic showing of interest, creating a risk of fraud.

The rule was designed to speed up elections in order to help unions win more elections and thereby 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. The rule also severely undermined 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.

### **LEGISLATIVE SOLUTIONS SHOULD BE PURSUED:**

In past sessions of Congress, members have introduced legislation to nullify the ambush elections rule. CDW supported two of these bills – the Workforce Democracy and Fairness Act ([H.R. 2776](#) & [S. 1350](#), 115<sup>th</sup> Congress) and the Employee Privacy Protection Act ([H.R. 2775](#), 115<sup>th</sup> Congress). CDW strongly encourages Congress to quickly reintroduce and pass these bills into law.

Furthermore, challenges to the 2014 rulemaking continue to make their way through the court system. In October 2018, for example, CDW, along with numerous other employer organizations representing various industries and millions of employers nationwide, filed an [amicus brief](#) before the US Court of Appeals for the DC Circuit in *UPS v NLRB*, arguing that the rule denies employers their due process rights and the NLRB in its review of the case failed to remedy those problems.

CDW will continue to fight against the abuses of the ambush election rulemaking via all available avenues.