Proskauer

NLRB Eliminates Many "Quickie" Election Rule Components

Labor Relations Update Blog on **December 17, 2019**

The National Labor Relations Board issued a new rule on Friday that will significantly amend NLRB election rules and procedures. Expected to take effect on April 16, 2020, the new rules, in large part, reverse course from the "quickie" election rules of 2014, and restore reasonableness to election procedures.

Key provisions from the Board's new rule are set forth below:

Reasonable Time Limits During the Election Process:

- Pre-election hearings will no longer be scheduled to open eight calendar days after a hearing notice is served on the parties. Now, there must be at least fourteen business days between the hearing notice and the pre-election hearing.
- Employers now have five business days – as opposed to two under the current rule – to post a "Notice of Petition for Election" indicating that an election has been requested.
- Employers will still be required to file a Statement of Position, but will now have eight business days to do so, as opposed to seven calendar days under the current rule.
- When providing a voter eligibility list, employers currently have only two business days from either the signing of a stipulated election agreement or the issuance of a Decision and Direction of Election. Under the new rule, employers will now have five business days.
- While the Regional Director may continue to schedule elections for the earliest practicable date, the new rule clarifies that elections will normally not be scheduled before the twentieth business day after the date a Decision and Direction of Election is issued.

Ensuring Thoughtful, Fair and Efficient Resolution of Election Issues:

- Under the new rule, parties will once again be permitted to litigate issues regarding unit scope and voter eligibility in a pre-election hearing. Currently, these issues do not automatically qualify for a pre-election hearing, as it is left to the discretion of

the Regional Director.

- The new rule will restore the parties' right to file post-hearing briefs with the Regional Director as of right. The current rule only permits such briefing if the Regional Director provides special permission.
- Under the current rule, the petitioning party is not required to file a Statement of Position – only the non-petitioning employer is required to do so. However, under the new rule, the petitioning party will be required to file its own Statement of Position at least three business days before the pre-election hearing.
- Under the new rule, the Regional Director will no longer be permitted to certify election results if a request for review is pending or if one could still be timely filed.

Implications:

By scaling back some of the current rule's draconian deadlines, the new rule will allow employers to more meaningfully identify and raise unit issues as well as properly prepare for litigating such issues at a pre-election hearing. Furthermore, because the new rule again gives employers the right to litigate voter eligibility issues prior to an election, employers can avoid being caught between a "rock and a hard place" when they have individuals who are not clearly an excluded employee, like a supervisor. Now employers will get answers to those important questions prior to an election which will enable employers to avoid unnecessary unfair labor practices.

The new rule in many ways restores the various election rule guidelines that were in place for decades prior to the 2014 rule change. It also keeps intact some of the provisions of the 2014 rule, like the Statement of Position. The new rules will reduce some of the frenetic pace imposed by the 2014 rules while still ensuring such issues get resolved efficiently.

The new rule does not take effect until April 16, 2020. If you have any questions, please don't hesitate to reach out.

View Original