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## THE NATIONAL LABOR RELATIONS BOARD FINALIZES “QUICKIE ELECTION RULES”

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On December 12, 2014, in a split decision along party lines, the National Labor Relations Board (the Board) finalized new rules that are unquestionably intended to assist unions' organizing efforts by reducing the amount of time employers have to educate their employees about the drawbacks to unionization. The rules are scheduled to take effect on April 14, 2015, assuming that date is not pushed back by legal challenges.

The main impact of the new rules is to deprive employers of as much as two to three weeks to educate their employees as to the potential negative effects of an organized workforce. Additionally, for the first time, an employer will be required to provide the petitioning union not just eligible voters' home addresses as is required presently, but also their telephone numbers and email addresses, if available. Employers will, for the first time, also be required to post and distribute to employees a Board notice informing employees that an election petition has been filed and the potential for an election to follow.

It is anticipated that the new rules will accelerate elections so that they will be scheduled as quickly as 14 to 21 days after the filing of the election petition rather than the present 38 days. The Board will achieve this result through the following modifications:

- Issues relating to whether a small number of voters are eligible to vote or should be included in the unit will typically be deferred to after an election and then will be addressed only if they affect the election results.
- Non-petitioning parties, typically employers, will need to identify the issues they wish to raise in a statement of disputed issues submitted the day before the hearing. Issues not raised in the brief are waived.
- Additionally, the Regional Director will have the discretion to decide whether post-hearing briefs will be permitted.
- Currently, the parties have the right to file a post-hearing brief seven days following the hearing. The present automatic 25-day stay of an election from the date the Regional Director issues his or her pre-hearing election decision to allow the Board to review any request for review of the Regional Director's Decision is also eliminated.
- Further, the Regional Director will in his or her direction of election set the time and date for the election rather than consult with the parties over these issues after the election has been directed. Thus, an election could be directed by

a Regional Director days after he or she issues the pre-election decision.

The new rules will incentivize unions to try and organize employers as they will have a greater chance of winning. Now more than ever, it is important for employers to evaluate their susceptibility to union organizing and to be proactive in eliminating any weaknesses so that they do not find themselves trying to convince employees not to vote for a union shortly after a union election petition is filed.

For instance, employers should now consider whether collecting the personal email addresses and cell phone numbers for employees is advisable. Employers should also review their nonsolicitation and access policies and their enforcement practice with respect to such policies to evaluate the policies'

enforceability. Further, it behooves employers to consider implementing "open door" policies to encourage employees to bring any grievances they have to the employer and not a union, and to make certain that rules and expectations are clear and are applied consistently and fairly.

Employers are advised to contact their Fox Rothschild labor counsel to consider what steps they should take to try to remain union-free.

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