

NLRB Representation Case-Procedures Fact Sheet

The National Labor Relations Board's (NLRB) Final Rule governing representation-case procedures is designed to remove unnecessary barriers to the fair and expeditious resolution of representation questions. The Final Rule will streamline Board procedures, increase transparency and uniformity across regions, eliminate or reduce unnecessary litigation, duplication and delay, and update the Board's rules on documents and communications in light of modern communications technology. The amendments provide targeted solutions to discrete, specifically identified problems to enable the Board to better fulfill its duty to protect employees' rights by fairly, accurately and expeditiously resolving questions of representation.

Background on Representation-Case Procedures

Representation petitions are filed by employees, unions and employers seeking to have the NLRB conduct an election to determine if employees wish to be represented for purposes of collective bargaining with their employer. The Board will investigate these petitions to determine if an election should be conducted and will direct an election, if appropriate.

In most instances, parties agree on the voting unit and other issues. If parties do not agree, the NLRB's regional office holds a pre-election hearing to determine whether an election should be conducted. The NLRB's regional office conducts the election and, if necessary, holds a post-election hearing to resolve challenges to voters' eligibility and objections to the conduct of the election or conduct affecting the results of the election. Parties can seek Board review of regional determinations made before and after the election.

Modernizing Board Procedures

Electronic Filing/Communications – Parties may file documents, such as petitions, electronically, rather than by fax or mail. Parties and the NLRB's regional offices can transmit documents electronically, rather than using slower or more expensive forms of communications, such as mail or express delivery services.

Election Voter List – The employer must include available personal email addresses and phone numbers of voters on the voter list in order to permit non-employer parties to communicate with prospective voters about the upcoming election using modern forms of communication.

Streamlining Board Procedure and Reducing Unnecessary Litigation

Identifying Disputed Issues – The non-petitioning parties will be required to respond to the petition and state their positions generally the day before the pre-election hearing opens. The petitioner will be required to respond to the issues raised by the non-petitioning parties at the opening of the hearing. Litigation inconsistent with the positions taken by the parties will generally not be allowed.

Litigation of Eligibility and Inclusion Issues – Generally, only issues necessary to determine whether an election should be conducted will be litigated in a pre-election hearing. A regional director may defer litigation of eligibility and inclusion issues affecting a small percentage of the appropriate voting unit to the post-election stage if those issues do not have to be resolved in order to determine if an election should be held. In many cases, those issues will not need to be litigated because they have no impact on the results of the election.

Post Hearing Oral Argument and Briefs – All parties will be provided with an opportunity for oral argument before the close of the hearing. Written briefs will be allowed only if the regional director determines they are necessary.

Review of Regional Director Rulings – The parties may seek review of all regional representation-case rulings through a single post-election request, if the election results have not made those rulings moot. The election will no longer be stayed after the regional director issues a decision and direction of election, in the absence of an order from the Board.

Review Standard for Post-election Issues – The Board will have the discretion to deny review of regional director post-election rulings, under the same standard that has governed Board review of regional director pre-election rulings for many years.

Increasing Transparency and Standardizing Board Process

Earlier and more complete information to the parties – When the petitioner files its petition, it will be required to simultaneously serve a copy of the petition, along with a more detailed Agency description of representation case procedures and an Agency Statement of Position form, on all parties identified in its petition in order to provide them with the earliest possible notice of the filing of the petition and Board procedures for processing those petitions. NLRB regional offices will serve a Notice of Hearing and a Notice of Petition for Election (along with a copy of the petition, description of representation case procedures and the Statement of Position form) on all parties. The non-petitioning parties will be required to respond to the petition (generally the day before the hearing opens) by filing with the regional director and serving on the other parties a Statement of Position identifying the issues they have with the petition. As part of its Statement of Position, the employer will be required to provide all other parties with a list of prospective voters, their job classifications, shifts and work locations.

Earlier and more complete information to employees - The employer is required to post a Notice of Petition for Election containing more detailed information on the filing of the petition and employee rights within two business days of the region's service of the petition. The Notice of Election will provide prospective voters with more detailed information about the election and the voting process.

Scheduling of Hearings – Except in cases presenting unusually complex issues, pre-election hearings will generally be set to open 8 days after a hearing notice is served on the parties. Post-election hearings will generally open 14 days after objections are filed.