

Congress of the United States

Washington, DC 20510

December 21, 2017

Hon. Mark Gaston Pearce
Hon. Lauren McFerran
Hon. Marvin Kaplan
Hon. William Emanuel
Hon. Peter Robb, General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dear Member Pearce, Member McFerran, Member Kaplan, Member Emanuel, and Mr. Robb¹:

We write to request information regarding the National Labor Relations Board's (NLRB) 2014 Election Rule.² On December 14, 2017, the NLRB published a Request for Information (RFI) in the *Federal Register* that solicits comments on whether to retain, rescind, or modify the 2014 Election Rule, which streamlined the NLRB process for union representation elections.³ The RFI does not supplement its questions with any empirical evidence or internal data suggesting a need to reconsider the Rule, let alone provide any factual or legal justification for overhauling or modifying the current election procedures. Further, the NLRB has not indicated whether it has initiated any effort to conduct an internal review of cases processed pursuant to the Rule.

Given that the Rule has been in effect for less than three years, we are concerned with the NLRB's decision to consider rescinding or modifying the Rule without first providing any data or analysis sufficient to justify reopening the Rule. We note that, when the NLRB enacted the Rule, it had engaged in a thorough rulemaking process that provided research, considered thousands of public comments over a combined 141 days, and held four days of public hearings. As the RFI notes, the Rule has been upheld in every court where it has been challenged.⁴

In order for commenters to provide the NLRB with meaningful analysis on whether to retain or modify the Rule, comprehensive data regarding the Rule's implementation should be available. Accordingly, we request that you provide us with the information detailed in this letter no later than January 19, 2018.

Please provide the following information and data with respect to cases involving representation petitions, decertification petitions, and employer-filed petitions from April 14, 2015 to the most

¹ In the absence of a Chair, this letter is directed to all Members and the General Counsel.

² 79 Fed. Reg. 74307 (Dec. 15, 2014).

³ 82 Fed. Reg. 58783 (Dec. 14, 2017).

⁴ *Assoc. Builders & Contractors of Texas, Inc. v. NLRB*, 826 F.3d 215 (5th Cir. 2015), *affirming* No. 1-15-CV-026 RP, 2015 WL 3609116 (W.D. Tex. June 1, 2015); *Chamber of Commerce v. NLRB*, 118 F. Supp. 3d 171 (D.D.C. 2015).

recent date for which data is available, and for a period of equal length going back from April 14, 2015, with each of the two periods organized into one-year increments:

1. The number and percentage of elections where the parties stipulated to the terms of the election.
2. The number and percentage of elections where the parties have not stipulated to the terms of the election, and a hearing was ordered. Please identify each such case by name and case number.
3. The number and percentage of cases in which the employer requested a continuance of the originally-scheduled pre-election hearing date. Please identify each such case by name and case number.
4. The number and percentage of cases in which the employer's request described in Request No. 3 was granted. Please identify each such case by name and case number.
5. The range, mean, and median number of additional days granted by each continuance described in Request No. 4.
6. The number and percentage of cases where the labor organization requested a continuance of the originally scheduled hearing date. Please identify each such case by name and case number.
7. The number and percentage of cases in which the labor organization's request described in Request No. 6 was granted. Please identify each such case by name and case number.
8. The range, mean, and median number of additional days granted by the each continuance described in Request No. 7.
9. The number and percentage of cases in which a pre-election hearing was held. Please identify each such case by name and case number.
10. The number and percentage of cases in which the only issues that were not agreed to by the parties were the election date or details regarding the conduct of the election.
11. The range, mean, and median number of days for the duration of pre-election hearings.
12. The number and percentage of cases in which the parties stipulated that some employees should vote subject to challenge (a) as part of an overall election agreement and (b) in a case that resulted in a decision and direction of election. Please identify each such case by name and case number.

13. The number and percentage of cases in which the Regional Director or Board directed that some employees should vote subject to challenge over the objection of a party. Please identify each such case by name and case number.

14. The number and percentage of cases in which the Regional Director or Board refused to permit a party to litigate an issue on the grounds that it was not identified or contested in its position statement. Please identify each such case by name and case number.

15. The number and percentage of cases in which a dispute that was deferred by permitting employees to vote subject to challenge was mooted by the election results. Please identify each such case by name and case number.

16. The number and percentage of cases in which the employer requested an extension of time to file and serve the voter eligibility list. Please identify each such case by name and case number.

17. The number and percentage of cases described in Request No. 16 in which the request was granted, and the number and percentage of cases described in Request No. 16 in which the request was denied.

18. The range, mean, and median number of additional days granted by each extension described in Request No. 17.

19. The number and percentage of cases in which a decision and direction of election was issued.

20. The range, mean, and median number of days between the close of a pre-election hearing and the issuance of a decision and direction of election.

21. The range, mean, and median number of days between the filing of post-hearing briefs following a pre-election hearing, when such filing was permitted, and the issuance of a decision and direction of election.

22. The number and percentage of certifications of a representative that were followed by a technical refusal to bargain that resulted in a Board decision finding a violation of section 8(a)(5) of the National Labor Relations Act. Please identify each such case by name and case number.

23. The number of charges, objections, or complaints of any kind concerning a labor organization's misuse of any form of list of employees provided pursuant to the NLRB's election procedures, together with copies of all such charges, objections, or complaints.

Please contact our staff at John_DElia@help.senate.gov, and Kyle.deCant@mail.house.gov if you have any questions about this request. We look forward to hearing from you.

Sincerely,



Patty Murray
U.S. Senator
Ranking Member
Committee on Education,
Labor & Pensions



Robert C. "Bobby" Scott
U.S. Representative
Ranking Member
Education and the Workforce
Committee



Gregorio Kilili Camacho Sablan
U.S. Representative
Ranking Member
Subcommittee on Health, Employment,
Labor and Pensions



Donald Norcross
U.S. Representative

cc: The Honorable Lamar Alexander
Chairman
U.S. Senate Committee on Health, Education, Labor and Pensions

The Honorable Virginia Foxx
Chairwoman
U.S. House of Representatives Committee on Education and the Workforce

Gary Shinnars
Executive Secretary
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