



NLRB FACT SHEET

Revisions to the Board's Representation Case Procedures

The National Labor Relations Board has issued modifications to the Agency's representation case procedures. Although the new procedures retain the essentials of the Agency's existing representation rules, the selective changes will create a fairer and more efficient election process. The changes clarify some procedures that better ensure the opportunity for resolution of unit scope and voter eligibility issues prior to an election and will permit parties additional time to comply with the various pre-election requirements instituted in 2014.

Below are the most significant changes in the new rule:

- **Pre-Election Hearings:** Pre-election hearings will generally be scheduled 14 business days from notice of the hearing, and regional directors will have greater discretion to postpone hearings. In most cases, pre-election hearings currently must be scheduled 8 calendar days from the notice of hearing.
- **Notice of Petition for Election:** Employers must post and distribute the Notice of Petition for Election within 5 business days after service of the notice of hearing. Existing rules require posting and distribution within 2 business days.
- **Non-Petitioning Party's Statement of Position:** Non-petitioning parties (most commonly employers) must file a Statement of Position within 8 business days after service of the notice of hearing, and regional directors will have greater discretion to grant extensions. Under the existing rules, non-petitioning parties' Statement of Position usually must be filed 1 day before the opening of the pre-election hearing (typically 7 calendar days after service of the notice of hearing).
- **Petitioning Party's Statement of Position:** Petitioners (typically unions) must file a Statement of Position responding to the issues raised in any non-petitioning party's Statement of Position. This responsive Statement of Position is due at noon 3 business days before the hearing. In most cases, the current rules do not provide for pre-hearing statements of position from petitioning parties.
- **Unit Scope and Voter Eligibility Determinations:** All disputes concerning unit scope and voter eligibility – including issues of supervisory status – will generally be litigated at the pre-election hearing and resolved by the regional director before an election is directed. The parties may, however, agree to permit disputed employees to vote subject to challenge. Under the current rules, disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.
- **Post-Hearing Briefs:** Parties are permitted once again to file post-hearing briefs with the regional director following pre-election hearings. Post-hearing briefs will be permitted for post-election hearings as well. Such briefs are due within 5 business days, and hearing officers may grant an extension of up to 10 business days for good cause. Under existing rules, post-hearing briefs are permitted only upon special permission of the regional director.
- **Notice of Election:** The regional director's discretion to issue a Notice of Election subsequent to issuing a direction of election is emphasized. The current rules provide that regional directors "ordinarily will" specify election details in the direction of election.
- **Scheduling of Election:** Regional directors must continue to schedule the election for the earliest date practicable, but—absent agreement by the parties—normally will not schedule an election before the 20th business day after the date of the direction of election.

- **Voter Lists:** Employers must furnish the required voter list within 5 business days following the issuance of a direction of election. Under the current rules, employers have 2 business days to provide voter lists.
- **Election Observers:** Parties are required to select election observers who are current members of the voting unit whenever possible. When no such individual is available, a current nonsupervisory employee should be selected. The current rules provide for election observers but place no restrictions on who may be selected to serve as an observer.
- **Requests for Review:**
 - *Filed within 10 Business Days after Direction of Election:* If the Board either does not rule on a request for review or grants the request before the election, ballots will be impounded and remain unopened pending a decision by the Board.
 - *Filed more than 10 Business Days after Direction of Election:* Parties may still file a request for review of a direction of election more than 10 business days after the direction, but the pendency of such a request for review will not require impoundment of the ballots or postponement of the vote results.
 - *Post-Election:* Consistent with the current rules, parties may wait to file a request for review of a direction of election until after the election has been conducted and the ballots counted.
- **Oppositions to Requests for Review:** Oppositions are explicitly permitted in response to all types of requests for review, and the practice of permitting replies to oppositions and briefs on review only upon special leave of the Board has been codified.
- **Certification of Election:** The regional director will no longer issue certifications following elections if a request for review is pending or before the time has passed during which a request for review could be filed. Under the current rules, regional directors are required to issue certifications following elections despite the pendency or possibility of a request for review.
- **Business Day Calculation:** All time periods applicable to the election rule are calculated based on business days as opposed to calendar days. Under the existing rules, there is a lack of consistency on the calculation of days. The new rules also define how business days are calculated, including clarification that only federal holidays are implicated in time period calculations.

This summary of the Board's rule modifications is meant to provide a general overview. The language of the actual rules should be relied upon for compliance purposes.

The new rules will go in effect in 120 days from the date of publication in the Federal Register.