

## UNION ELECTIONS CONTINUE AT ACUTE CARE HOSPITALS

In the past few weeks, the National Labor Relations Board ("Board") has issued several crucial decisions impacting union elections in the health care setting.

At the close of April 2020, the Board declined to find that COVID-19 justified the stay of a union election at an acute care hospital. In its [Order](#) denying the hospital's request to stay the election, the Board acknowledged the "significant challenges" posed by conducting a union election in the midst of the pandemic, but nevertheless found that "the Acting Regional Director [had] carefully considered the circumstances presented [in the case], and neither the parties nor the record ha[d] raised an issue that warrant[ed] postponement of the election."

Under the facts of the case, on February 28, 2020, the Union (which did not represent any other hospital employees), sought to represent multiple types of unrepresented professional and technical employees at the hospital. The hospital argued that the COVID-19 pandemic was "an extraordinary circumstance justifying a stay of the election" and that the hospital "expects a huge influx of sick patients in the coming days and weeks."

While the Board declined to find extraordinary circumstances in the *Crozer* case, it did expressly state there may be circumstances in a particular case that warrant postponing an election. It remains to be seen what facts and factors would support postponement of a union election during COVID-19.

More recently, on May 8, 2020, Board members approved a mail-ballot process for a union election during the COVID-19 pandemic. The decision came as several employers across the nation – including hospitals – continue to argue that elections should be postponed.

"In finding that a mail-ballot election is warranted in this case, we rely on the extraordinary federal, state and local government directives that have limited nonessential travel, required the closure of nonessential businesses and resulted in a determination that the regional office charged with conducting this election should remain on mandatory telework," the members said in the opinion.[\[1\]](#)

### PRACTICAL TAKEAWAYS

While health care employers continue to battle the pandemic, Union organizing drives and elections will continue. Health care employers are well-advised to contact legal counsel as soon as they become aware of an organizing drive or a representation petition. Legal counsel can help prepare a response and fact-specific request for postponement in order to best position health care employers to respond to the petition without sacrificing patient care or other measures put in place to help combat the spread of COVID-19.

If you have any questions or would like additional information, please contact:

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Hall Render's attorneys and professionals continue to maintain the most up-to-date information and resources at our [COVID-19 Resource page](#), through our 24/7 COVID-19 Hotline at (317) 429-3900 or by contacting your regular Hall Render attorney.

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[references]

[\[1\]](#) The case is *Atlas Pacific Engineering Co.*, NLRB No. 27-RC-258742, Unpublished Case Decision 5/8/20.

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