

NLRB FINALIZES QUICKIE ELECTION RULE

One day after issuing a controversial decision regarding employees' rights to use an employer's email system for union organizing (detailed in this [blog](#)), the NLRB has adopted its final rule significantly shortening the timeline for union elections in the private sector. We have blogged extensively on the development of this rule as can be seen in these previous postings: [here](#), [here](#) and [here](#).

THE FINAL RULE

The NLRB issued a news release this morning, explaining that the rule will be published in the Federal Register on December 15 and will take effect on April 14, 2015. The final rule was approved by Board Chairman Mark Gaston Pearce and Members Kent Y. Hirozawa and Nancy Schiffer. Board Members Philip A. Miscimarra and Harry I. Johnson III dissented. We do not believe that it is a coincidence that the long anticipated final rule and the decision regarding employees' use of employer's email systems were issued less than a week before left-leaning Member Nancy Schiffer's term expires on December 16. Among other changes, the new rule is supposed to:

- Allow for electronic filing and transmission of election petitions and other documents;
- Ensure that employees, employers and unions receive and exchange timely information they need to understand and participate in the representation case process;
- Streamline pre- and post-election procedures to facilitate agreement and eliminate unnecessary litigation, shortening the time between when a petition is filed and the actual date of the election;
- Require the employer to prepare and provide the petitioning union an electronic list of the work locations, shifts, job classifications and contract information (including home addresses and available personal email addresses, home telephone numbers and personal cellular telephone numbers) of all eligible voters; and
- Consolidate all election-related appeals to the Board into a single post-election appeals process.

The final rule requires employers to disclose employee email addresses in the employer's possession. At the same time, a recent Board decision expands employees' rights to use employer email systems for organizing activity.

WHAT TO DO NOW

The proposed rulemaking will severely shorten the time that an employer has to educate employees on the advantages and disadvantages of union representation once a petition for election is filed. It will be much more difficult for an employer's message to be effectively communicated to employees in the shortened time between petition and election. Employers are well advised to educate leaders on the rights and responsibilities of employees and management in these situations. It also makes sense to continually express a positive message about the organization rather than to wait until it's too late once a petition is filed. Employers may also choose to assess their vulnerabilities and take proactive steps to correct and educate employees regarding any real or perceived deficiencies. Proactive education and training will ensure that the employer is prepared to effectively prevent and respond to any union activity. It will be interesting to see what Washington does with this. If you have any questions, please contact Steve Lyman at slyman@hallrender.com, Bruce Bagdady at bbagdady@hallrender.com, Brad Taormina at btaormina@hallrender.com or your regular Hall Render attorney.