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NLRB Board Passes Limited Version of Union-Backed Election Rule Changes

On November 30, the National Labor Relations Board voted to proceed with preparation of a final rule modifying the Board's election procedures to speed up the process in certain circumstances.

The new rule substantially shortens the period from filing of the petition to the date of election from the current Board election target of 42 days. The fact that elections will be held more quickly underscores the need of employers to remain constantly vigilant regarding potential union organizing efforts in order to address such efforts at the earliest possible opportunity.

The changes that were passed represent a substantially more limited version of what initially had been proposed and include:

- Elimination of pre-election appeals to the Board from the actions of the Regional Director on an election petition, providing instead only for a single, discretionary appeal of pre-election and post-election issues after the votes are cast. An appeal to the Board prior to the election is limited to issues that otherwise would escape Board review if not raised prior to the election.
- Express direction that a pre-election hearing is to determine only whether a question concerning representation exists, and that the hearing officer has authority to limit evidence taken at the hearing where the evidence does not have relevance to a genuine issue of fact material to that issue. This means that questions of individual voter eligibility (as opposed to appropriate bargaining unit composition) will be litigated after the election, as opposed to before. Also, the hearing officer may decline requests of parties to submit post-hearing briefs, which right previously was guaranteed by the Board's rules.
- Elimination of the current requirement that the vote may not be held sooner than 25 days after the Board's Regional Director issues a Direction of Election. As a result, some elections likely will be held sooner after the Direction of Election than was previously the case.

The Board will draft a final rule codifying the adopted changes.