

Proposed Labor Board Rule Would Prevent Delays In Elections to Oust Unions

by Grant S. Gibeau - Thursday, August 22, 2019



The National Labor Relations Board (NLRB) has just issued a Notice of Proposed Rulemaking that could have a major impact on how union elections are conducted.

Blocking Charges and Elections

Under current law, the NLRB will not proceed with union elections if there is a pending unfair labor practice charge which either 1) challenges the sufficiency of an election petition or 2) raises questions regarding whether or not the employees' free choice has been impacted.

In many cases involving election petitions filed by employers to determine if a majority of employees still wish to be represented by an incumbent union, the union will file these sorts of charges (commonly labeled "blocking charges") to delay the vote. With the election blocked, the union gets more time (often months and occasionally a year or more) to campaign among the workers in the bargaining unit in an effort to persuade them to vote in the union's favor. With a long enough delay, some of the employees who originally sought the union's ouster may have left the company, thereby allowing the union the chance to garner votes from the newer employees.

Board Proposes a Streamlined Approach

Under the proposed rule, the NLRB would no longer allow charges to block elections. Instead, the election would proceed but the employees' ballots would be impounded pending the outcome of the unfair labor practice charges. If the charges are found to have no merit, the ballots would be counted and the election results would be announced. If the charges are upheld, the ballots would not be counted and the election would be declared a nullity.

In a [press release](#) announcing and extolling the proposed amendments, NLRB Chairman John F. Ring stated "there are few more important responsibilities entrusted to the NLRB than protecting the freedom of employees to choose, or refrain from choosing, a labor organization to represent them, including by ensuring fair and timely Board-conducted secret ballot elections."

The Notice of Proposed Rule Making is open to public comments until October 11, 2019. Following receipt of public comments, the NLRB could decide to implement these changes or revise them further in light of the comments from the public.

Bottom Line

Should these changes go through employers will be able to obtain the benefits of their election petitions without having to endure the added campaign period that results from the union's blocking charges. This would allow for a more accurate assessment of whether the current employees truly wish to remain represented by their union