

NLRB Election Rule Statistics Demonstrate Shorter Election Periods And Why Proactively Preparing For Union Organizing Is Smart Business

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On April 14, 2015, the NLRB's new rule applicable to union organizing went into effect. See previous posts [here](#) and [here](#). From the time the new rule was first introduced, employer's argued that its main aim was to speed up the time for union elections (to the benefit of unions) and that it was a certainty that elections under the rule would occur much more quickly. Conventional wisdom has always been the shorter the period between the filing of a petition for representation and an election date, the more likely a union would prevail. Put otherwise, time benefits employers because with time an employer can demonstrate for employees some of the pitfalls of unionization that unions do not share when they are soliciting employee signatures for union authorization cards in support of a petition. The first statistics are now in from the NLRB regarding the [time between the filing of a petition by a union and an election](#). The NLRB's statistics demonstrate the time for an election has fallen by nearly 40 percent. While under the prior rules employers had nearly 42 days to run a "campaign" and discuss what unionization might mean for employees (unions being able to do the same during this period), now the statistics demonstrate that window has shrunk to an average of 23 days. In some regions, like Region 7 which covers Michigan, the regional director has instructed her staff to target having elections not later than the 21st day following the filing of a petition, and sometimes earlier. Ironically, however, in this practitioner's experience, when an employer conversely sought an earlier date for an election because it suited the employer's situation the region rejected the request. The NLRB's rule is also being criticized from other angles. This past weekend, former NLRB member Peter Schaumber authored an opinion piece for the Wall Street Journal entitled "[Workplace Democracy Gets Ambushed](#)" that was deeply critical of the NLRB's new rule. Mr. Schaumber wondered aloud about the propriety of the NLRB putting additional information into union organizer hands through the NLRB's new rule to the detriment of employee privacy concerns, pointing out that in formulating the rule, the NLRB rejected efforts that would have allowed employees to opt out of having their personal information shared with unions. He also deeply criticized the new rule on other fronts, concluding the new rule's election procedures will "skew results in favor of unions," and that smaller employers especially should be particularly wary. What is not known yet is what the result of the shorter period for "campaigning" will be. Will unions win more elections than before? Those statistics still need to be compiled and analyzed. If that is the result,

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unions will then be winning more than 68 percent of the time because that was the union win percentage even before the new rule. Of course, given that number it somewhat begs the question what additional advantages unions feel they need. Mostly, however, unions are clearly worried about a decade of declining membership and how to reverse that trend and therefore every advantage is lobbied for. On that front, unions also got some good news in late August when [Gallup released a poll](#) indicating the approval of labor unions has jumped to 58 percent over the past year (nearly six in 10 approving), the highest point since 2008. The poll also demonstrated that women generally support unions more than men, and approval among younger workers (ages 18-34 years) is quite high, nearly 66 percent of those surveyed in this age bracket having a positive view of unions and nearly 44 percent wanting labor unions to have more influence. Combined with shortened campaign periods, unfavorable procedural rules, etc., such increasing union favorability should cause employers to carefully consider their vulnerability to organizing. Put together, the statistics demonstrate that more American workers will look favorably toward unionization and the NLRB's rule change statistically is providing employers much less time to respond to a union organizing campaign. The point for employers that wish to resist unionization is this: they better be prepared and focused on positive employee engagement now, because there may not be time later to respond.