



Can I Get Your Digits? NLRB Ruling Expands Quickie Election Rules To Cover Supervisors' Possession Of Employee Phone Numbers

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The National Labor Relations Board's (NLRB) "quickie election" rules that passed a few years ago have been a hot-button topic. One of the significant changes they brought about was the decrease in time employers have to furnish unions with contact information of employees potentially eligible to vote in union elections.

The new rules reduce the allotted time from seven calendar days to two business days from the time an election is directed. In addition, under the "old rules," an employer only had to provide the union with addresses of voters, but the new rules require that phone numbers also must be given if they are "available" to the company.

A recent case tested the definition of "available." On June 7, the NLRB issued its decision in [RHCG Safety Corp.](#), 365 N.L.R.B. No. 88 (2017) that set forth the agency's interpretation. In that case, the employer furnished a list of voters' addresses but **not** phone numbers to the union in advance of a vote, as it did not maintain employees' phone numbers in any database or through any other type of formal system. Various supervisors at the company, however, did have the phone numbers of at least some employees stored in their cell phones. The NLRB ruled that the company failed to meet its obligations under the new election rules by not gathering the "available"

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phone numbers of potential voters from its supervisors. The NLRB majority rejected the employer's argument it did not need to give any phone numbers since it had no formal tracking system for such information. While Chairman Philip Miscimarra dissented, raising several concerns about the majority's stance, his view did not carry the day.

This ruling is problematic for companies facing union elections – especially those of significant size. For example, imagine a plant that does not track employee phone numbers and has 2,000 hourly employees as well as 150 supervisors/managers. Under the rationale of this case, that company would have to survey and gather any phone numbers of employees that any of the 150 supervisors/managers may have in as few as **two business** days.

Needless to say, this may be near impossible in some circumstances, as vacation schedules of supervisors/managers and other factors undoubtedly will complicate the process. Accordingly, companies experiencing or anticipating union activity should consider planning how to address this issue now.