

***Third Thursday* – Crowell & Moring’s
Overview of the NLRB’s New
Ambush Election Rules**

June 25, 2015

The webinar will begin shortly. Please stand by.

Today's Presenters



Tom Gies



Glenn Grant



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Today's Discussion

- Summary of Final Rules
- Pending legal challenges
- Key provisions for employers
- Practical effect on employers

Final Rules - Overview

- Effective Date – April 14, 2015
- Historical Background
- The NLRB Election Process
- Intent
- Significant New Employer Obligations
- Part of an Emerging Trend

Procedural Changes

- Electronic filing of petitions
- Pre-election hearing 8 days after petition
- Post hearing briefs typically denied
- Excelsior List w/2 days of direction of election
- No 25-day grace period
- No automatic stay
- Condensed time for objections to election

New Obligations

- Post and distribute initial NLRB notice of Petition
- Provide personal employee email and phone numbers on Excelsior List
- Position statement 1 day before pre-election hearing
 - Challenges to appropriateness of unit
 - Identification of voter eligibility issues
 - Any issued not raised waived
- List of employees, job classifications, shifts, work locations
- Most voter-eligibility issues handled after election
- RD handles stipulated election disputes first, then Board review

Pending Legal Obligations

- DC Litigation
 - *Chamber of Commerce v. NLRB*
 - *Baker v. NLRB*
- Texas litigation
 - *Associated Builders & Contractors v. NLRB*

Likely Impact -- More Union Wins

- No time to overcome Union momentum
 - To identify key issues driving employee dissatisfaction
 - To assemble right management response team
- Less time to focus on legal issues (unit issues, etc.)
- No time to fix unlawful policies
- Increased chance of Union win

Employer Action Items

- Conduct Risk Assessment
 - Town halls, 360 reviews, speakouts etc.
- Review Current At Risk Policies
 - No solicitation/distribution
 - Social media
- Prepare for Potential Organizing
 - Rapid Response Team
 - Procedures and Potential Campaign Materials

Selected Authorities and References

- NLRB Final Rule, Representation – Case Procedures, 79 Fed. Reg. 74308 (to be codified at CFR parts 101-103)
- NLRB GC Memorandum 15-06 (April 6, 2015) *Guidance Memorandum on Representational Case Procedure Changes Effective April 14, 2015*
- *U.S. Chamber of Commerce, et al. v. NLRB*, No. 1:15-cv-00571 (D.D.C.)
- *Baker LLC v. NLRB*, No. 1:15-cv-00571(D.D.C.)
- *Associated Builders & Contractors of Texas, Inc. v. NLRB*, No. 15-cv-26 (W.D. Tex.)

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New NLRB Election Timeline

- Day 1 – Petition filed and Notice of Petition and Hearing served by NLRB
- Day 3 – Employer Posts Notice of Election (within 2 business days of service)
- Day 8 – Statement of Position due (1 day before Hearing)
- Day 8 – Initial employee list due (submitted with Statement of Position)
- Day 9 – Pre-Election Hearing (8 days from service of Notice of Hearing, unless extended)
- Day 10 – Decision Directing Election (DDE) issued and Notices of Election served
- Day 11 – *Excelsior* list from Employer due (2 days after DDE)
- Day 13 – Employer Posts Notice of Election (within 3 working days of DDE)
- Day 14 – Election can held (if union waives the 10 days for having the *Excelsior* list)
- Day 23 – Election held (if union does not waive the 10 days for the *Excelsior* list)
- Day 30 – Objections to Election with Evidentiary Support due (w/7 days of tally of ballots)