

State of the unions

How to be prepared for the accelerated union process

In December 2014, the National Labor Relations Board (NLRB) announced final rule governing union representation and election procedures. The rule, which took effect April 14, 2015, allows unions to move much faster in their organization campaigns while shortening employer timelines for providing employees information about unions and the election process.

“Because the time period between the filing of the representation petition and the election has been compressed, employers are severely handicapped in organizing opposition to a union’s organizational campaign,” says Frank P. Spada Jr., an attorney at Semanoff Ormsby Greenberg & Torchia, LLC.

Smart Business spoke with Spada about the expedited election process and how employers can be prepared.

How does the petition filing process work?

If there are least 30 percent of people in a particular bargaining unit — a group of employees who share a community of interest in a variety of factors — who sign authorization cards, the union can go to the NLRB and request a petition for an election. It’s a secret ballot election and if the union gets 50 percent plus one of the people who voted in that select bargaining unit, the union will be authorized as the collective bargaining representative for those employees and will negotiate with the employer to set the terms and conditions of employment.

Let’s say that there are 100 employees in a bargaining unit and only 60 vote in the election. If the union has 31 people vote for the union then it would be recognized as the collective bargaining representative. The 40 employees who didn’t vote would still be part of the union and pay dues.

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What type of information lists are now required?

In the past, only names and classifications of employees were required. The new rule requires employers to disclose full name, address, home and cell phone numbers, personal email addresses and job classification. This allows unions to contact employees directly so they can have a much more focused campaign. This information should be gathered and updated consistently prior to a union organizing effort so there is little delay in developing a strategy to combat unionization and, if necessary, to allow counsel to prepare a statement of position and proceed to a pre-election hearing on the appropriateness of the unit identified by the union.

How can businesses improve relations with their employees?

The management team should be trained on how positive employee relations can help avoid labor issues. If management listens to issues and problems before they fester, it stands to reason that the employees won’t need to go to an outside source to resolve their differences. One of the major reasons that employees seek representation is that supervisors fail to communicate effectively, or discipline employees unfairly or inconsistently.

How should potential bargaining units be identified?

Employers should take steps in advance to strengthen arguments in favor of preferred units should an organizing threat emerge. For example, a union may try to include employees on the manufacturing floor as well as the shipping department within a single bargaining unit. The employer might want to restructure operations or take other steps to enable it to argue to the NLRB that it would be improper for a union to try and organize both the shipping and manufacturing employees in one unit, or that certain parts of the manufacturing operations should be excluded from a petitioned for unit.

What type of plan should businesses have for dealing with organizing threats?

Preparation should begin, prior to any union organizing efforts, to identify individuals in management, human resources or in-house legal, if applicable, that are knowledgeable or can be trained regarding what an employer is legally permitted to do in opposing a union organizing campaign. What is communicated, as well as who communicates it, is very important. A trusted management team member or supervisor who is well liked by the employees should communicate information provided by a legal expert. With the accelerated organizing process, advance preparation by an employer is critical. ●