



Q&A: Union Election Petitions Rise Under New Rules, but Impact Unclear

News

7.29.15

Stephen Mitchell was quoted in *Reuters* on July 29, 2015. The article “Q&A: Union Election Petitions Rise Under New Rules, but Impact Unclear” discussed the alarming influx of election petitions filed by unions, in light of the National Labor Relations Board's implementation of controversial new rules governing elections.

Stephen told Reuters on Tuesday that in the 90 days after the rules took effect on April 14, 755 petitions had been filed, up from 687 during the same period last year, while the number of elections held fell from 255 to 234.

He said it was difficult to draw conclusions from the early numbers but that they suggested employers will face more union campaigns and should prepare ahead of time.

Questions and answers have been edited below for clarity and brevity..

Reuters: Why do you think petitions are up but the number of elections is down compared with last year?

Stephen: What you're seeing is unions filing more petitions but not going through with the election as often. It could be because they realize they don't have the support they need, or they are filing in order to get the personal information [of employees] so they can come back and use it later. But employers still have to deal with the petitions that are filed, and that is more difficult now.

Reuters: Critics of the rules say shorter petition periods favor unions, so why would the success rate stay the same?

Stephen: One of the initial arguments against this was that unions already had a reasonable success rate so the process wasn't slanted against them. It's too early to say if the new rules are having an adverse effect. But more petitions are being filed, so even if the success rate is the same, there will be more elections and unions will increase their membership.

Reuters: What does the decrease in the average length of a petition period mean for employers?

Stephen: The process requires a company to initially spend a good seven days determining whether

the proposed bargaining unit is accurate. It's a big deal because these are the people who get to vote and will be covered by the collective bargaining agreement.

And (the rules) simply give the employer less time to articulate its position and employees less time to examine all of the facts prior to making an extremely important decision. Employers should now be prepared and make a determination (ahead of time) about their position.

Reuters: Have any novel issues arisen in these cases about the application of the rules that may end up in appeals courts?

Stephen: Anecdotally, we have heard that many employers have been (consenting to elections) as opposed to going to a hearing (before the NLRB), but there has always been a lot of that and it's not clear if that is being done to avoid dealing with the board. Otherwise it's too early to know how these things are playing out. Most of these (cases) haven't even been published yet.

Reuters: Have there been disproportionate increases in petitions in particular industries?

Stephen: There's not enough data yet to know that. I have heard some people say there's been a big increase in petitions filed on behalf of smaller units, but the data available now doesn't articulate the size of the units at the petition stage. Generally the larger the unit, the less likely the employer will be taken by surprise.

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