



# Labor Board To Scrap Quickie Election Rule? Public Comment Requested

Insights

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In the clearest sign yet that the National Labor Relations Board is ready to shift away from the strong pro-union stance that had been taken for the previous eight years, the agency today announced that it will seek public comment on the possible revision to the representation election regulations – often known as the “quickie election” rule. The 2014 rule was considered by some to be the crowning achievement of the Obama-era Labor Board, dramatically compressing the election timeframe and thereby tilting the scales in favor of unions. Now that the Board is led by a majority of Republican appointees, it appears ready to substantially revise the election rules once again, but this time with an eye toward evening the playing field.

Employers across the country now have a voice to submit their ideas about how they would like to see the rules revised. What do you need to know about this impending change and what can you do to influence the process?

## **Background: Quickie Election Rule Gives Boost To Unions**

Soon after the Labor Board gained a Democratic majority in 2009, one of its announced priorities was boosting the number of unionized employees at workplaces across the country. One of the ways in which the agency decided to accomplish this goal was by shrinking the union election campaign timeframe so as to give organized labor an advantage at the ballot box. It took several years of work, including a battle all the way to the U.S. Supreme Court and back, but the NLRB finally got its wish in April 2014 when the quickie election rule was finalized and implemented. The resulting shortened election cycle placed employers at a serious disadvantage when it comes to educating employees on the detriments of union representation and training their supervisors to lawfully respond to union activity. It also left employees with less time to consider all the facts for purposes of making an informed choice on whether they want to be represented by a union. Worse yet, the new rule essentially compelled employees to cast their ballots before any lingering voter eligibility issues are resolved, effectively precluding them from understanding the full scope and ramifications of their decision.

In the last three-and-a-half years, the quickie election rule worked to significantly shrink the time between the representation petition being officially submitted and the election itself, giving a decided advantage to labor unions. Prior to the rule being put into place, the average election cycle took about 38 or 39 days. Currently, the average election cycle is closer to 22 or 23 days. This has led to an

uptick in union victories in representation elections, especially in smaller bargaining units where unions have the opportunity to sway more employees before the formal campaign is even under way.

## **2017: A Year Of Change**

But following the 2016 presidential election, the landscape of labor law is beginning to take a drastically different shape. The process has taken some time, but the Board now has a majority of Republican appointees and the wheels have been set in motion for changes to be implemented. As we predicted several months ago, there are many areas ripe for change, and the process of revising the quickie election system is one of the top priorities.

For those unfamiliar with the NLRB, the agency has two main areas of responsibility: investigating and resolving charges of unfair labor practices and violations of labor law (also known as the “C-case” side), and overseeing the representation election process (the “R-case” side). Not two weeks ago, the agency signaled that big changes were on the way when it comes to the C-case side through the publication of a memorandum by the current General Counsel. That memo announced that the Board wanted to take a new look at “cases over the last eight years that overruled precedent and involved one or more dissents” and invited an “alternative analysis” that would provide a roadmap for change. Today’s announcement, on the other hand, heralds big changes on the way when it comes to the R-case side. This second shoe dropping is nothing but good news for employers.

## **What Exactly Was Announced?**

Today’s announcement is more procedural than substantive. The agency said it is seeking information from the public regarding the representation election regulations that form the quickie election rule, “with a specific focus on amendments to the Board’s representation case procedures” adopted several years ago. The Board said it will be helpful to “solicit and consider public responses to this request for information” as part of its ongoing efforts to more effectively administer the National Labor Relations Act and to further the purposes of the Act, and announced that public comments will be taken through February 12, 2018.

The Board said that it wants to evaluate several options when it comes to addressing the quickie election rule. The first is retaining the rule without change (which is an unlikely outcome). The second is retaining portions of the rule but making modifications to the structure of the election process. The third is scrapping the rule and reverting to the old system that had been in place immediately before the rule was put into place. Of course, it is always possible that the Board could rescind the rule and create a new structure altogether, essentially starting from scratch. All options appear to be on the table. In other words, this is a soup-to-nuts invitation to open a dialogue with the nation’s employers about how union elections should be run.

## **What Can You Do?**

The NLRB has now opened the process for public comments to be submitted through February 12, 2018, and will need to review and address them all before it can proceed with any administrative rules change. This affords you an opportunity to weigh in with your experiences when it comes to the

election process, and your suggestions on how to improve the procedure and bring balance to the system. Instructions on how to submit comments are contained [on the NLRB's website](#).

Fisher Phillips has extensive experience working with employers and industry association groups when it comes to submitting public comments to federal agencies, and can partner with you to assist in the drafting and submission of such comments. If you are interested in pursuing such a course of action with the help of our law firm, please contact any member of our [Labor Relations Practice Group](#), the authors of this alert, or your regular Fisher Phillips attorney.

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*This Legal Alert provides an overview of a specific Board Request for Information. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

### ***Related People***

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**Joseph W. Ambash**  
Partner  
617.532.9320  
[Email](#)



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**Steven M. Bernstein**  
Regional Managing Partner and Labor Relations Group Co-Chair  
813.769.7513  
Email

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