

## MEMORANDUM

**To:** ES&A, Inc. Clients

**From:** Anna Elento-Sneed, Esq.  
Trisha Gibo, Esq.

**Date:** May 11, 2015

**Subject:** “Quickie Elections” Rule

The National Labor Relations Board adopted an administrative rule which will make it easier for unions to organize. The [final rule](#) known as the “quickie election” rule became effective **April 14, 2015**. See 29 C.F.R. Parts 102, 103 (2015). General Counsel Richard F. Griffin, Jr. issued [Memorandum GC 15-06](#) summarizing the main changes to unionization process. The differences between the old rules and new rules are outlined below.

OLD RULE	NEW RULE
<b>Representation Petition</b>	
Representation petition may be filed via hard-copy or facsimile.	Representation petitions may be e-filed. § 102.60
	Representation petitions and related documents must be served by the petitioner on all parties. § 102.60
Petitioner has 48 hours after filing petition to file showing of interest.	Petitioner must file showing of interest at the same time petition is filed. § 102.61
	Petitions must include name and contact information of petitioner’s representative and information about election sought (type, date, time, location) § 102.61
Employer may voluntarily post and distribute notice about petition and potential election.	Employer must post and distribute Notice of Petition for Election within two (2) business days after service of notice of hearing. § 102.63(a)
	Employer must distribute the Notice of Petition for Election electronically if that’s the customary method of communication. § 102.63(a)

OLD RULE	NEW RULE
<b>Pre-Election Hearing Preparation</b>	
Hearings could be scheduled 15 days or longer from notice of hearing.	Hearing will be scheduled to open eight (8) days from notice of hearing. § 102.63(a)
	Employers required to submit a written Statement of Position at least one (1) day before pre-election hearing. Issues omitted from statement are waived. § 102.63(b)
	Issues omitted from the written Statement of Position are waived. § 102.66(d)
Rule did not require production of written Statement of Position and preliminary list of voters prior to the hearing.	Employers required to provide alphabetized electronic preliminary list(s) of voters in petitioned-for unit and employees to add to unit with Statement of Position. § 102.63(b)
Prior practice was oral presentation of position at hearing.	Employer may indicate individuals who it believes must be excluded from the proposed unit. § 102.63(b)
	Failure to timely submit voter lists results in employer's waiver of contesting appropriateness of proposed unit. § 102.66(d)
<b>Hearing Procedures</b>	
Rule silent on purpose of pre-election hearing.	States purpose of pre-election hearing is to determine whether there is a "question of representation." § 102.64(a)
There was no rule on timing and, therefore, allowed continuances during the pre-election hearing process.	Pre-election hearing will continue day-to-day until completed absent extraordinary circumstances. § 102.64(c)
All voter eligibility issues brought by either party were required to be litigated.	Regional Director has discretion to determine which questions should be litigated at the hearing before an election is held. §§ 102.64(a); 102.66(a); 102.66(c)
	Petitioner is required to respond on the record to issues raised by Employer. § 102.66(b)
Previous practice, but not codified.	Parties have the right to call, examine, and cross examine witnesses, as well as to introduce evidence into the record. § 102.66(a)
	Hearing officer has discretion to ask each party to describe what evidence it has in support of its position. § 102.66(b)

OLD RULE	NEW RULE
	Hearing officer must solicit the parties' position on the type, date, time, and location of the election. § 102.66(g)
Election details such as date, time, place, type, and payroll period of eligibility were determined <i>after</i> direction of election was issued.	Parties must take positions on election details, such as date, time, place, type, and payroll period of eligibility <i>prior</i> to close of hearing in its statement of position. §§ 102.61; 102.66(g)
Parties are permitted to file written post-hearing briefs.	Parties may not file written post-hearing briefs unless permitted by Regional Director. § 102.66(h)
	Board has discretion to allow employees to vote pending challenge to election. § 102.65(e)(3)
Regional Director could <i>sua sponte</i> transfer case to the Board.	Regional Director must decide the matter and may not transfer it to the Board <i>sua sponte</i> . § 102.65(a)
<b>Pre-Election Decisions</b>	
Party had multiple and varying means for asking for Board review.	Board review of Regional Director's action is discretionary and will only be granted for compelling reasons within 14 days of disposition of case. § 102.67(c)
Request for review automatically stays the count of ballots (impounding ballots).	Request for review will not operate as a stay. Stays will only be granted in extraordinary circumstances. § 102.67(l)
Elections were scheduled 25-30 days after Decision and Direction of Election by Regional Director to permit time for requests for review to be ruled on by Board.	Elections will not be automatically stayed in anticipation of requests for review. § 102.67(c)
<b>Election Preparations and Election</b>	
Previous practice, but not codified.	Election will be set at the earliest date practicable. § 102.67(b)
Notice of election was transmitted by mail after the direction of election.	Notice of election and direction of election will be transmitted at the same time and may be done electronically. § 102.67(b)
Employer must post paper notices.	Employer must distribute all election notice electronically, if that is the customary method of communication. § 102.67(b)
Employer must electronically transmit Excelsior list within 7 days of direction of election to the Board.	Employer must electronically transmit Excelsior list which includes email and phone numbers within two (2) days of direction of election to the parties. § 102.62(d)
	Parties shall not use Excelsior list for purposes other than representation proceeding, Board

OLD RULE	NEW RULE
	proceedings, or related matters. §§ 102.62(d); 102.67(l)
<b>Blocking Charges</b>	
	Regional Director has discretion to delay (or “block”) the election until ULP charges are resolved. § 103.20
	Employer must file offer of proof and make witnesses available if seeking to block the election. § 103.20
<b>Post-Election Procedure And Decisions</b>	
Parties have 7 days to file objections. Parties have 14 days for providing offer of proof.	Parties have seven (7) days to file both objections and offers of proof. Objections must be served by objector on other parties. § 102.69(a)
No timeline for opening the post-election hearing.	Post-election hearing on challenges and/or objections are scheduled 21 days after tally of ballots or as soon as practicable thereafter. § 102.69(c)(1)(ii)

Employers should be aware that the shortened time frame gives employers less time to prepare for and respond to unionization efforts. If your company senses that unionization may occur, it should start preparing *immediately*. Once an employer receives notice of a petition for election, it may need to respond in as short a period as one week.

Please feel free to contact us if you have any questions.