



Mr. Marvin E. Kaplan
Chairman
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Re: Request for Information Regarding the Representation Election Regulations located at 29 CFR parts 101 and 102 / RIN 3142-AA12

Dear Chairman Kaplan:

On behalf of the National Small Business Association (NSBA), the nation's first small-business advocacy organization, with more than 65,000 small-business members representing every state and every industry across the country, I write to express our concerns about the impact of the National Labor Relation Board's (NLRB's) 2014 Election Rule, which modified the Board's representation-election procedures located at 29 CFR parts 101 and 102.

NSBA has long been opposed to the Ambush Election Rule, filing comments as far back as 2011, which detailed the unfair process and significant burden the rule posed for small businesses while favoring large, organized labor. The rule, which became effective on April 14, 2015 implemented sweeping changes to union elections and considerably shortened the average time between the date of a petition being filed by a union and the date of election. NSBA strongly believes that this change substantially impacts the employer's ability to conduct an effective campaign in the event of a union petition, and prevents employees from getting full and complete information from both sides. NSBA remains committed to representing the interests of America's small-business owners and hopes that the NLRB realizes that this rule is the wrong solution and should be fully rescinded.

Data from the first nine months when the NLRB's implementation of the controversial rules clearly confirms the impact it was having on both employers and their employees, and demonstrated that the agency's quickie election rules significantly truncated the time employers have to conduct union campaigns.

The NLRB released quarterly representation case statistics on Feb. 25, 2016 comparing the results for the nine months since the election regulations went into effect (April 14, 2015 – January 14, 2016) with the comparable time period in 2014-2015 when the old election regulations were still in use.

- The time between the election petition and

- the pre-election hearing decreased from 13 days to 10 days – just three days over the 7 day target under the new rules.
- an election agreement dropped by 28 percent, from 11 to 8 days.
- The overall days between the petition and the election is now 24 days, a reduction of 14 days or 37 percent from the time under the old rules.
 - In stipulated elections (no hearing held) the time was even less (23 days), 15 days less than under the old rules.
 - In directed elections (hearing held) the reduction in time was the most dramatic – 34 days versus 66 days under the old rules – a 51 percent reduction. This statistic may be somewhat skewed, however, because of the enormous number of cases in the 90th percentile of directed elections which are over 100 days – many far over.
 - The number of days was slightly higher in RD (decertification) cases (25 days) and RM (employer petition) cases (28 days).
- Surprising to some, union win rates were down slightly overall to 64 percent (a 1 percent decline) and in Representation Cases (RC) to 68 percent (a 2 percent decline).
- The election agreement rate is steady, up only slightly from 91 to 92 percent.

Unions can spend months or even years in advance of filing a petition to encourage employee support of unionization. The unions control when a petition is filed, giving them the upper-hand in planning and spreading information to the workforce. Employers bear the full brunt of a shortened timeframe which, in certain circumstances, could be—as shown in the data above—just 10 days following the filing of a petition. Additionally, the previous median time between a petition being filed and the election was only 38 days, and according to the statistics has declined to 24 days. This further prevents employees from having unfettered access to information from both sides on the implications of a unionizing campaign before a vote would happen. This information shows the rule impedes that objective, and union elections are now being held at a faster rate after the ambush election rule has been implemented. Thus, as a result of these 2014 rules, employers now need to have a response and campaign procedure in place long before a representation petition approaches management’s door.

For years, NSBA has opposed the NLRB’s 2014 Election Rule because we feel the expedited time frame unfairly prevents a full and informed discussion before a union election is held. As a result, NSBA has continued to call on the NLRB to repeal the current ambush election rule; reinstate the prior standards and rules; as well as revise the election process in a way that brings them up-to-date in a sensible, fair manner.

Small-business owners face unique challenges in navigating federal regulations and, according to NSBA surveys, consistently rank “reduce the regulatory burden” as one of the most important things Congress and the administration ought to do. There exists among the small-business community growing concern about regulations and the burdens they impose. This 2014 rule from

the NLRB is a perfect example of what's wrong with the regulatory process. Small-business owners justifiably fear this rule will—and has—put them at a distinct competitive disadvantage to both unions and larger businesses.

As you consider modifying the Board's representation-election procedures, NSBA recommends you consider the impact and consequences these current Ambush Election Rules truly have on small businesses overall, and consider rescinding the 2014 election rule and revert to the representation election regulations that were in effect prior to the 2014 election rule's adoption.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd McCracken", with a long horizontal line extending to the right.

Todd McCracken
President & CEO