

# Update on NLRB Representation Case Rule Changes



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## Changes: Filing the Petition

- **Petition form includes: requested election date, time, place and method**
- **Petition *can* be e-Filed**
- **Serve petition, statement of position form, and description of procedures in R cases**
- **When filed with the Region, Petition must be accompanied by:**
  - **Showing of Interest** (may be e-filed or faxed if originals provided to Region within 2 business days)
  - **Certificate of Service** showing service on all parties



## Changes: Initial Processing

**In addition to petition and forms, Region will serve:**

- **NOTICE OF HEARING**, which sets
  - **Hearing date – 8 days from service, excluding intervening holidays**, (or the next business day thereafter if the 8<sup>th</sup> day falls on a weekend or Federal holiday)
  - **Statement of Position due date** – generally will be noon of business day before hearing is set to open
- **NOTICE OF PETITION FOR ELECTION**, which specifies the proposed unit



## Changes: Initial Processing

### Employer **must** post Notice of Petition for Election

- Within **2 business days** of service of Notice of Hearing

### Must also distribute Notice **electronically** *if* Employer customarily communicates with employees electronically

- Failure to post or distribute *may* be grounds for setting aside election



## Changes: Initial Processing

**Statement of Position form will include, among other things:**

- Whether Employer agrees proposed unit is appropriate.

If not, it must provide:

- Basis for contention it is not appropriate
- The classifications, locations, or other employee groupings that should be added or excluded
- Individuals whose voting eligibility the Employer intends to contest at the pre-election hearing and the basis for each such contention



## Changes: Initial Processing

### Statement of Position form (cont.):

- Alphabetized electronic list(s) of employees:
  - (a) With full names, work locations, shifts and job classifications of all individuals in proposed unit
  - (b) If Employer claims unit is inappropriate, a separate list of the full names, work locations, shifts and job classifications of all individuals Employer claims should be added to the unit
- If Employer contends unit is not appropriate, it must also separately list the individuals whom it believes should be excluded from the proposed unit to make it an appropriate unit.



## Changes: Initial Processing

### Statement of Position form (cont.):

- **Failure to provide list:**

If the Employer fails to timely furnish the list of employees, the Employer will be precluded

- from contesting the appropriateness of the proposed unit at any time and
- from contesting the eligibility or inclusion of any individuals at the pre-election hearing.



# Changes: Pre-Election Hearing

## Hearing

- **QCR – appropriateness and scope of unit**
- **Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated.**
- **RD has discretion to postpone litigation of eligibility issues that affect a small percentage of employees in the unit.**
- **Briefs:** Parties are entitled to oral argument but not allowed to file post-hearing briefs unless RD grants special permission.





# Changes: Pre-Election Hearing

## Hearing

- All other parties have the opportunity to respond on the record to each issue raised in the Statement of Position before introduction of further evidence.
- Preclusion: A party is precluded from:
  - raising any issue,
  - presenting evidence relating to any issue,
  - cross-examining any witness concerning any issue, and
  - presenting argument concerning any issue

that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response.

## Changes: Direction of Election

- **Election Date:** Earliest day practicable. The 25-day waiting period – to allow Board to rule on a request for review - was eliminated.
- **Request for Review:** Parties may file a request for review at any time following the decision until 14 days after a final disposition of the proceeding by the Regional Director.
  - Can file before the election or wait until after the election and see if the election results moot it.
- **Stay of Election, Expedited Consideration, or Impounding of Ballots:** May be requested, but will only be granted upon a “clear showing that it is necessary under the specific circumstances of the case.”



# Changes: Election

## **Voter List Contents:**

- **Within 2 business days after approval of Election Agreement or D&DE issuance, Employer must provide the parties and the Region with an alpha list in electronic format of the following information for all eligible voters:**
  - **Full names**
  - **Work locations**
  - **Shifts**
  - **Job classifications**
  - **Contact information (including home addresses, available personal email addresses and available home and personal cell telephone numbers)**



# Changes: Election

- **Challenged Voters:** The Employer shall also include, in a separate section of the voter list, the same information for those individuals who will be permitted to vote subject to challenge
- **Notice of Election:** Employer must post for 3 full working days and now must also distribute electronically if it customarily communicates with employees in the unit electronically.
- **Election** – At the election, a party generally can challenge someone for cause even if their eligibility was not contested at the hearing.



# Changes: Post-Election

- **Filing Objections:**

Must be accompanied by a written offer of proof unless Regional Director extends the time upon good cause shown.

- **Post-election Hearing:**

Unless parties agree to an earlier date, will **open 21 days after preparation of tally of ballots** or as soon thereafter as practicable.

- **Hearing Officer Reports:**

- Exceptions to HO Report must be filed with Regional Director
- Except in consent election agreement cases, all RD post-election reports will be subject to discretionary review by the Board



## Changes: Blocking Charges

- **Offer of Proof:** When a party to a representation proceeding files a ulp charge and requests that it block further processing of a petition, the party shall simultaneously file, but not serve on any other party, a written offer of proof in support of the charge.

The offer of proof must provide the names of the witnesses who will promptly testify in support of the charge and a summary of each witness's anticipated testimony.



# Implementation of Final Rule

**Election Rule Information is on the NLRB website, such as:**

- **GC 15-06 Guidance Memorandum**
- **OM 15-28 Hearing Dates & SOP Due Dates**
- **GC 15-08 Electronic Signatures**
- **FAQs**
- **Petition forms**
- **Statement of Position forms**
- **Certificate of Service forms**
- **Description of Procedures in R Cases**

# R Case Rule Statistics from Mid-April through Mid-October\*

	<u>2015</u>	<u>2014</u>
● Total petitions	1446	1422
– RC	1158	1092
– RD	183	222

\* Disclaimer - The statistics provided herein are estimated values as they were obtained using data that is still being reviewed for accuracy.



# R Case Rule Statistics

## Median days between Petition Filing and

	<u>2015</u>	<u>2014</u>
● Pre-election Hearing	9	13
● Election Agreement	8	10
● Election	23	38
– With election agmt	23	37
– With directed election	32	67
● Certification	35	49

## R Case Rule Statistics

	<u>2015</u>	<u>2014</u>
● Election Agmt Rate	94%	92%
● Blocked charges	58	104
● Median size of unit	23	28
● Manual ballots	621	733
● Mail ballots	84	95

# R Case Rule Statistics

	<u>2015</u>	<u>2014</u>
<b>Election Results</b>		
● Cases w/ certs	653	884
– Cert of rep	65.7%	64%
– Cert of results	34.3%	36%
● RC cases U won	68.8%	69%
● RD cases U won	47.2%	39%