



RESPONDING TO THE REPUBLICAN ATTACKS ON THE NLRB’S REPRESENTATION RULE

Myth: The current election process works. Shortening the time between an employee’s request for representation and the election will allow unions to hold “ambush elections”.

Fact: The current process creates unnecessary bureaucratic delays in the union election process and is an obstacle to workers organizing a union. The rule will prevent unnecessary delays and legal challenges to union elections.

The NLRB election process has failed American workers. Although 58% of workers want representation in their workplace, only 7% of workers in the private sector belong to a union because the broken election process discourages unions and workers from relying on the NLRB to obtain representation. Approximately 35% of the time that workers file a petition for a union election, they never even get to have an election. Federal appellate courts have called union election delays “inexcusable,” “deplorable,” and “egregious.” [Senate HELP Committee, 2/15]

Key Facts:

- Preventing unnecessary delays in the election period will lessen coercive behavior and improve workplace relationships.
 - One in five workers who openly advocated for a union were fired, and employees are fired in 34% of all private-sector union organizing campaigns.
 - In 57% of campaigns, workers are threatened with plant closings and 47% are threatened with loss of wages and benefits.
 - As a result of employer intimidation, 31-35% of workers give up and withdraw their petition for an election before the vote is held. [Senate HELP Committee 2/15; Columbia University, [1/11](#)]

- A long election campaign subjects employees to harassment and intimidation. A recent study found that the longer the delay between the filing of the petition and election date, the more likely it is that the NLRB will issue complaints charging employers with illegal activity. [Senate HELP Committee, 2/15; University of California, Berkeley Center for Labor Research and Education, [6/11](#)]
- The procedures under the NLRA are so flawed and the remedies are so ineffective that workers are no longer organizing through NLRB processes.
 - The number of union election petitions filed with the NLRB has declined by 80% since 1959.
 - In 2001, there were more than 4,100 petitions filed with NLRB compared to less than 2,000 in 2013. [Senate HELP Committee, 2/15]
- Even employers acknowledge that the election process is broken. The Committee for a Level Playing Field, an employer coalition that included Starbucks, Whole Foods, and Costco, previously proposed reforms to NLRB election rules that were more dramatic to address the flawed process, including setting a fixed date for elections and giving unions the right to access employer’s property to campaign for the union. [Senate HELP Committee, 2/15; Reuters, [3/21/09](#)]
- Many employers recognize that the new rules are fair.
 - Catholic Healthcare West, a company with 31,000 employees, filed comments stating that the “reforms proposed by the NLRB are not pro-union or pro-business, they are pro-modernization.”
 - Willie West, founder and owner of West Sheet Metal Company in Sterling, VA, wrote that “[t]hese seemingly minor changes certainly do not create uncertainty for me and they will not affect my ability to create jobs. In fact, if the NLRB standardizes the election process, it seems to me that this will reduce uncertainty and turmoil in the workplace — especially for small businesses.” [Senate HELP Committee, 2/15; Catholic Healthcare West, [7/18/11](#); The Hill, [10/26/11](#)]

Myth: Under the new rule, union elections will be required to be held seven to 10 days after a petition is filed.

Fact: The rule does not establish a specific timeframe for an election. Instead, the rule standardizes the election process to limit opportunities to abuse the system and prevent workers from voting on union representation.

The rule will have a modest impact on the average time it takes to hold an election. The rule does not set a timetable for when contested elections must occur. 90% of NLRB

elections are conducted under voluntary agreements between the parties, and those procedures are unchanged under the new rule. [Senate HELP Committee, 2/15]

Key Facts:

- The current median time between when a petition is filed and when an election occurs is usually 37-38 days. Some Republicans are arguing that the NLRB rule will result in elections being held seven to 10 days after the petition is filed. However, an attorney from Jackson Lewis, the nation's biggest management side law firm told the Wall Street Journal they predict that the time would be reduced to 19-23 days. Another group estimates that the time would be between 10-21 days. These estimates vary because the rule does not establish a set timeframe for elections. [Senate HELP Committee, 2/15; WSJ, [6/22/11](#)]
- The rule reduces opportunities for unnecessary delays and litigation. Under the current system, employers can delay a union election through litigation, appeals, and duplicative procedures. If an employer takes advantage of every opportunity for delay, the average time before workers can vote is 198 days. [Senate HELP Committee, 2/15]
- Under the current system, elections are often delayed by motivated employers who pursue frivolous appeals that are rarely granted. This is because the NLRB is required to hear appeals that are filed before the election – even if there are no compelling grounds for review. The new rule will schedule appeals hearings after the election, allowing workers to vote on whether they want a union first. [Senate HELP Committee 2/15; [SEIU](#)]

Myth: The rule tilts the playing field in favor of unions in order to increase unionization rates.

Fact: The rule is a modest step to help level the playing field and remove obstacles to workers' right to vote.

Employers and workers are entitled to a fair election process that is consistent and efficient. The rule will allow workers to hear from both employers and unions, consider both sides of the issue, and have a timely, up-or-down secret ballot vote to decide if they want a union. [Senate HELP Committee, 2/15]

Key Facts:

- Employers will still have the right to communicate with workers about the drawbacks of unions. Employers can still require workers to meet one-on-one with supervisors, or to participate in repeated large group meetings to watch anti-union videos, and employers can still say anything they want to workers that is legal under current law. [Senate HELP Committee, 2/15]

- The new procedures will apply to decertification elections as well. Since the same rules will apply to decertification elections, the proposed rule will ensure that employees who have union representation will be able to have a timely up-or-down vote to get rid of the union. [Senate HELP Committee, 2/15; University of California, Berkeley Center for Labor Research and Education, [6/11](#)]
- Employers do not wait until an election petition is filed to communicate with workers – they speak out against unions from the day that a worker is hired. [Senate HELP Committee, 2/15; Columbia University, [1/11](#)]

Myth: The rule will require employers to turn over new information about employees to the unions, which violates employee privacy rights.

Fact: The rule simply modernizes and updates a longstanding requirement to allow for less intrusive, more modern forms of communication like email.

The new rule will bring the election process into the 21st Century. The rule will allow employers and unions to file forms electronically and it will allow employers and unions to use cellphone and email communication to communicate with workers about election proceedings instead of having to rely on the post office for all forms of communication. The rule will prohibit the use of employee information for any purpose other than the representation proceedings. [Senate HELP Committee 2/15; [SEIU](#)]

Key Facts:

- The Supreme Court has found that the information sharing rules promote a fair election. Since the 1960s, the Supreme Court has held that providing a union with the ability to contact workers ensures a fair election “by encouraging an informed employee electorate and by allowing unions the right of access to employees that management already possesses.” [Senate HELP Committee, 2/15]

Myth: The NLRB is taking unprecedented action to help increase unionization rates.

Fact: The only thing unprecedented is the intensity of Republicans’ partisan attacks on an independent agency and the lengths they are taking to protect wealthy special interests.

Republicans have threatened agency budgets and the status of pending nominations, held hearings that potentially violate the due process rights of litigants in pending cases, and even refused to confirm the Secretary of Commerce unless President Obama publicly sides with management in an ongoing dispute that is before an independent judge. [Senate HELP Committee, 2/15]

Key Facts:

- Passage of a resolution of disapproval under the CRA would strike down the NLRB rule in its entirety. The CRA would prohibit enactment of the rule and forever bar the NLRB from adopting similar updates to the representation-case procedures in the future, including electronic filing of election petitions.
- The current NLRB has not overturned precedent nearly as often as many previous, Republican-dominated Boards. As recently as 2007, a Republican-dominated Board issued a series of decisions dramatically departing from long established precedent. These decisions – which rolled back workers’ rights under the Act – were labeled the “September massacre”. [Senate HELP Committee, 2/15]
- The NLRB solicited broad public input from all sides before issuing the rule. [Senate HELP Committee, 2/15]