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What Is It Really Like To Deal With The NLRB's New Quickie Election Rules (Part 1)

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By now most people have heard about the fact that the Obama NLRB has changed the union election landscape with new "quickie election" rules that are designed to help unions win more elections. But many readers may be wondering what the practical impact of these rules really are. Having spent a part of the summer dealing with two union election petitions, I wanted to share some of the biggest issues these new rules raise for employers. **Part 1: No time to prepare** The NLRB's rationale for these new rules is that they need to speed things up so that employees can have a fair opportunity to express their views without "employer coercion" blunting their ardor for union representation. (Of course, even before the new rules were promulgated, the union win rate was far more than 50 percent, leading me to ask leading me to ask earlier this year *How High Is Too Low: NLRB's Revised Ambush Election Rule*. There are several changes that speed things up. First, petitions are now faxed to the employer the day they are filed. That triggers the new timelines which set an employer to a hearing in a mere eight days after the union files the petition. That is not eight business days, but eight calendar days, including whatever Saturdays, Sundays and holidays may be fall between the day of the petition filing and the hearing. Typically, the fax will come to the employer late in the day it is filed, using one of the precious eight days to prepare. On the day prior to the day of the hearing, an employer must file a Statement of Position with the region or it waives its rights to the hearing. By odd quirk in the Rules this Statement must be either electronically filed by noon on the day it is due; all other filings with the board can be filed by midnight on the due date. Thus, an employer must file its Statement of Position with the board after no more than six and a half days after it learns of the petition. Within that time, the employer and its counsel have to figure out what potential unit issues may exist, research the legal issues involved and investigate the facts that would be required to be established at the hearing. This could be a daunting task. Think about this timeline compared to that in a typical lawsuit. In most courts, a defendant has between three week and one month to answer a complaint initiating an action. Preparing for trial is usually a year long process. Here the NLRB has condensed that process into a mere seven-eight days; six days to answer the petition and set forth the issues to be litigated and just one more day to be ready to present the case for trial at the hearing. Does that sound like due process? **Coming Next Part 2: The Uneven Playing Field**

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