

NLRB Sued Over Quickie Election Rule

January 7, 2015 | [National Labor Relations Board, Labor And Employment](#)

In an utterly unsurprising development, a coalition of trade associations headed by the Chamber of Commerce of the United States of America filed a lawsuit against the National Labor Relations Board (the NLRB) before the U.S. District Court for the District of Columbia. The lawsuit, filed on Jan. 5, 2015, alleges that the NLRB's implementation of its "Quickie Election" final rule (the Final Rule, discussed [here](#) previously) would violate the First Amendment, the Due Process Clause of the Fifth Amendment, and various sections of the National Labor Relations Act (the NLRA). The Complaint alleges that employers will be injured because they: (a) will have less time for employers to communicate with workers about the election, in derogation employers' free speech rights under Section 8(c) of the NLRA, the First Amendment, and the clear congressional intent for a full and informed debate before workers cast their votes; (b) will have less time for employers to investigate whether it is even appropriate for the NLRB to hold an election in the petitioned-for bargaining unit; less time for employers to determine whether other employees should be included or excluded from the petitioned-for bargaining unit; (c) will have less time for employers to determine whether individuals encompassed by the petition are actually eligible to vote in the election; less time to prepare for a pre-election hearing and file a binding position statement under penalty of issue waiver; and less time for employers to negotiate an election agreement that would obviate the need for a pre-election hearing; and (d) will incur additional costs in order to prepare for the shortened, and inadequate, time to respond to an election petition under the Final Rule. Moreover, per the complaint, "the Final Rule will restrict employers' ability to litigate issues of eligibility and inclusion at the pre-election hearing, even if those issues are timely raised; sharply limit employers' opportunity to seek Board review of a Regional Director's decision before the election; and eliminates mandatory Board review of post-election disputes, making such review discretionary only. In these circumstances, if the union wins the election, the employer may be denied any Board review of the Regional Director's decision and the employer's only recourse for judicial review will be to subject itself to an unfair labor practice proceeding by refusing to bargain with the union." Among other relief, the Plaintiffs seek to vacate and set aside the Final Rule as well as to enjoin the NLRB from enforcing, applying or implementing it.

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