

NLRB Re-Issues “Quickie Election” Rules: It’s Déjà Vu All Over Again

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Yogi Berra coined the phrase "It's déjà vu all over again" and today, as the NLRB has re-issued its "Quickie Election" Rules, Yogi could not have been more correct. In a [press release dated Feb. 4, 2014](#), but circulated early today, the Board announced that a Notice of Proposed Rulemaking (NPRM) will appear in the Federal Register tomorrow setting forth the Board's latest effort to amend its rules to speed up the Board election process and to eliminate defenses and procedures previously available to employers targeted for union elections. As the Board notes in its press release, a copy of which is available here, the proposed amendments are "identical" to the amendments originally proposed by the NLRB in June, 2011 and do not reflect the changes made by the Board following the public comment period and two days of public hearing. In the Board's press release, Board Chairman Mark Gaston Pearce is quoted as saying "I believe that the NPRM first proposed in June of 2011 continues to best frame the issues and raises the appropriate concerns for public comment... Re-issuing the 2011 proposals is the most efficient and effective rulemaking process at this time." While re-assuring the public that the "Board is reviewing the proposed changes with an open mind," Pearce also noted that "No final decisions have been made." Before issuing its last final rule on "Quickie Elections" in December, 2012, the Board received 65,958 written comments and conducted two full days of hearing, during which 66 individuals gave oral statements and answered questions asked by the Board members, which resulted in 438 transcript pages of oral testimony. Today, the Board asserted that it will reconsider all of this prior evidence and discouraged commenters from repeating any arguments that have already been made. The most significant changes in the amendments include:

- Parties may file petitions electronically.
- The non-petitioning party would produce a preliminary voter list, including names, work location, shift, and classification, by the opening of the pre-election hearing.
- Employers are to provide phone numbers and email addresses for all employees included in the proposed bargaining unit
- Employers must provide the list of eligible voters within seven days after the direction of election.
- The final voter list would be produced in electronic form and the deadline for providing the list would be shortened to two work days.
- Legal challenges to the election would be conducted post-election
- The Regional Director would set a pre-election hearing to begin seven days after a hearing notice is served and a post-election hearing 14 days after the tally of ballots (or as soon thereafter as practicable.)

The deadline for public comments on the proposed amendments is April 7, 2014. Reply comments may be filed by April 14, 2014. The Board will hold a public hearing during the week of April 7. Criticism of the rule came swiftly today. Geoff Burr, vice president of government affairs for the Associated Builders and Contractors trade group, is quoted by The Wall Street Journal as saying: "This proposal is a solution in search of a problem," he said. "Shortening the election period does nothing to ensure a fairer election...In addition, it denies employers their rights to free speech and employees the opportunity to make a fully informed decision." A copy of the proposed amendments is [available here](#). Coverage of the NLRB's announcement can be found here: *The Hill*: "[NLRB resurrects union election rule](#)" *The Wall Street Journal*: "[NLRB Proposes Rule to Streamline and Speed Union-Organizing Elections](#)"