Preparing for “Ambush” Union Elections

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Legal Update

Last week the National Labor Relations Board (NLRB) confirmed it will shorten the time employers have to respond to union organizing. The NLRB’s endorsement of "ambush" union election rules follows its approval in August of "micro-unions." These two legal changes make up a "one-two punch" designed to reverse decades of union membership decline. Prudent employers who wish to protect their direct relationship with their employees must quickly adjust to this new labor law environment.

What Happened. On November 30, 2011, the NLRB voted two-to-one in favor of a slightly scaled back version of its threatened accelerated union election procedures. By January 2012, the new procedures likely will be in place. The exact time between a union's request for an NLRB election and the vote will depend upon the final language of the new rule, plus how the NLRB's Regional Directors apply the rule's new procedures. The rule's procedural shortcuts, however, guarantee employees will be rushed to judgment once a union asks for a vote.

What This Means. For over a decade, unions have honed their skills at soliciting employees secretly. They strive to avoid "going public" until they secure union cards, or a similar "showing of interest," from a majority of their target group. The NLRB's new "ambush" election rule will give unions an opportunity to cement their position through a quick vote before employees can seriously consider the other side of the union story.

The new rule will handicap employer efforts to win an NLRB election once a union asks for one. In recent years, however, unions have asked for few NLRB elections. They rarely secure the initial support of a majority of workers. The NLRB's approval of "micro-unions" in August handed unions a solution to this problem. They no longer need the support of a majority of your employees. They need only majority support among the sub-set of your workers the union selects.

Now a union may be formed from any group of your workforce that shares more in common with one another than with other employees in the workplace. It is not unusual for workers performing a particular job, working on a particular product or service, or in a particular department or work group, to become temporarily unhappy or discouraged. Using the new
"ambush" election rule, a union can quickly convert this discontent into a union beachhead within your workforce as a whole. For more discussion on "micro-unions" please click here to view our Legal Update on the NLRB’s Specialty Healthcare decision.

**What To Do.** The NLRB’s new "ambush" election rule means employers can no longer wait for union activity to prepare their response. At the same time, the NLRB’s approval of "micro-unions" multiplies every employer’s union risk. Managers must understand the conditions that create opportunities for unions among even the smallest groups of your employees. They must be prepared to respond immediately should a union seek to exploit discontent anywhere in your workplace.