



NLRB FACT SHEET

Representation Case Procedures

NLRB Representation Case Procedures – 2023 Final Rule

(Effective 12/26/2023)

The National Labor Relations Board's final rule governing representation case procedures is designed to remove unnecessary barriers to the fair, efficient, and expeditious resolution of representation questions. The amendments provide targeted solutions to discrete, specifically identified problems to enable the NLRB to better fulfill its duty under the National Labor Relations Act to resolve questions of representation appropriately.

Background on Representation Case Procedures

Representation petitions are filed by employees, unions, and employers seeking to have the NLRB conduct an election to determine if employees wish to be represented for purposes of collective bargaining with their employer. The NLRB will investigate these petitions to determine if an election should be conducted and will direct an election, if appropriate.

In most instances, parties agree on the voting unit and other issues. If parties do not agree, the NLRB's regional office holds a pre-election hearing to determine whether an election should be conducted. The NLRB's regional office conducts the election and, if necessary, holds a post-election hearing to resolve challenges to voters' eligibility and objections to the conduct of the election or conduct affecting the results of the election. Parties can seek review from the Board in Washington DC of regional determinations made before and after the election.

List of Amendments

The following list summarizes the ways in which this 2023 rule (which will apply to representation petitions filed on or after December 26, 2023) amends aspects of a prior 2019 rule that had added substantial time to the representation case process. In these ways, the 2023 rule restores provisions first adopted in 2014, but rescinded in 2019.

Allowing Pre-Election Hearings To Open More Quickly:

- 1. *Scheduling of Pre-Election Hearing*** – Pre-election hearings will generally be scheduled to open approximately 10 days sooner than under the 2019 rule.
- 2. *Postponement of Pre-Election Hearing*** – Regional directors will have more limited and defined discretion to postpone pre-election hearings than under the 2019 rule.

3. *Due Date for Nonpetitioning Party's Statement of Position* – A nonpetitioning party's written response to the petition will generally be due approximately 3 days sooner than under the 2019 rule.

4. *Postponement of the Statement of Position* – Regional directors will have more limited and defined discretion to postpone the due date for filing of a Statement of Position than under the 2019 rule.

5. *Responsive Statement of Position* – Petitioners will respond orally to the nonpetitioning party's Statement of Position at the start of the pre-election hearing rather than, as under the 2019 rule, delaying the opening of the pre-election hearing to allow them to file and serve a responsive written Statement of Position.

Disseminating Important Election Information More Quickly:

6. *Posting and Distribution of Notice of Petition for Election* – An employer will post and distribute the Notice of Petition for Election to inform its employees approximately 3 days sooner than under the 2019 rule.

Making Hearings More Efficient:

7. *Litigation of Eligibility and Inclusion Issues* – Generally, only issues necessary to determine whether an election should be conducted will be litigated in a pre-election hearing. Accordingly, a regional director will ordinarily defer litigation of eligibility and inclusion issues to the post-election stage, if those issues do not have to be resolved to determine if an election should be held. In many cases, those issues will become moot because they end up not impacting the results of the election. Thus, unnecessary and inefficient litigation that was required under the 2019 rule will be avoided.

8. *Briefing Following Pre- and Post-Election Hearings* – All parties will be provided with an opportunity for oral argument before the close of the hearing. Written briefs will be allowed only if the regional director (following pre-election hearings) or the hearing officer (following post-election hearings) determines they are necessary. This will save time and resources as compared to the 2019 rule, which entitled parties to file briefs at least 5 business days following the close of hearings.

Ensuring That Elections Are Held More Quickly:

9. *Specification of Election Details in Decision and Direction of Election; Notice of Election* – Regional directors will ordinarily specify the election details (the type, date(s), time(s), and location(s) of the election and the eligibility period) in the decision and direction of election and will ordinarily simultaneously transmit

the Notice of Election with the decision and direction of election. This will avoid unnecessary delay in setting the election details allowed under the 2019 rule, which emphasized regional directors' discretion to convey the election details later in the process.

10. *Elimination of the 20-Business Day Waiting Period Between Issuance of the Decision and Direction of Election and the Election* – Regional directors will schedule elections for “the earliest date practicable” after issuance of a decision and direction of election, rather than observing the 20-business day waiting period imposed by the 2019 rule.