

# How Employers Control the Timing of the NLRB Election Process<sup>1</sup>

The National Labor Relations Board (NLRB) is mandated by the National Labor Relations Act to protect the rights of employees to form unions and collectively bargain. One key role of the NLRB is to oversee representation elections, where workers decide whether or not to form unions. Under current NLRB election procedures, once workers collect signatures and file a petition to hold an election, employers can exercise a significant amount of control over the timing of the vote. As a result, if an employer wants more time to expose employees to its antiunion campaign, there are many stages where it can further delay the vote from occurring. **When an election case involves a decision by the Labor Board, the vote is delayed by an average of 198 days.**

## UNION ORGANIZING CAMPAIGN

Workers discuss forming a union with their co-workers and contact a union representative. The group begins collecting union authorization cards.

A petition can be filed with the NLRB to hold a representation election once 30 percent of the workers sign union authorization cards.

The NLRB schedules a hearing no sooner than two weeks after the petition for an election is filed and seeks an agreement to proceed with the election without a hearing.

Absent an agreement, a hearing is conducted to litigate issues regarding the bargaining unit and who is eligible to vote. Briefs are submitted after the hearing and the Regional Director rules on whether or not the election should be held and, if so, which employees are eligible to vote.

The Regional Director's decision can be appealed to the Board. If the Board decides to accept the appeal, it then chooses either to delay the vote until it rules or to proceed with the vote and impound the ballots until it rules.

If a vote is held, challenges and objections to the election are resolved after the election by an administrative investigation and/or hearing. The decision on challenges and objections to the conduct may be appealed to the Board, which must review the case and issue a decision. Once the election results are certified, bargaining for a first contract can begin.

**Employers can delay the vote** by forcing the NLRB to hold a hearing where it must consider any employer objections to the scope of the group and the inclusion or exclusion of employees and groups of employees to that group. A hearing must be held even if there are no issues regarding voter eligibility or any other legal issue if the employer declines to agree to an election date or time or location.

**Employers can delay the vote** by requesting to adjourn the hearing.

**Employers can delay the vote** by requesting to postpone the hearing.

**Employers can delay the final vote count and certification** by challenging voters and filing objections to the election, triggering more litigation. In cases where a post-election hearing is held to hear challenges to the election, the certification of results is delayed, on average, by 382 days after the vote. (Source: Analysis of publicly available NLRB Case Activity Tracking System data.)

Source: FOIA request of the National Labor Relations Board, fulfilled December 2009.

<sup>1</sup> Originally published in John Logan, Erin Johansson, and Ryan Lamare (June 2011), *New Data: NLRB Process Fails to Ensure a Fair Vote*, UC Berkeley Center for Labor Research and Education.