



2020 NLRB ELECTION RULES TIMELINE SUMMARY

****These updated rules are set to take effect April 16, 2020****

FROM PETITION TO HEARING

Timeframe	To Do	Requirements
<i>Start of process</i>	Service of Representation Petition	Petitioner must file original <i>Petition</i> with Region and serve a copy on all parties named in the petition. A person filing a Petition electronically need not file an original. Petitioner must certify service on all parties named in the petition and, along with the petition, the petitioner shall serve the Agency's description of the procedures in representation cases and the Agency's Statement of Position form on all parties named in the petition.
<i>After filing</i>	Region's Investigation	Region will investigate petition and send out initial letter with Notice of Petition and Hearing Date. Generally, the Notice will set the Hearing Date to commence 14 days from the Petition.
<i>5 "business days"¹ after service of Notice of Petition for Election</i> <i>(change from 2 business days under prior rule)</i>	Post Notice of Petition for Election	Employer must post & distribute a <i>Notice of Petition for Election</i> within 5 days. <ul style="list-style-type: none">• Post in conspicuous place with all pages; maintain the posting of the Notice of Petition for Election until the petition is dismissed, withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election.• Email to unit employees where the employer customarily communicates with the employees in the petitioned-for unit through electronic means.

¹ *Business days* have now been universally defined by the Board and *do not include Saturdays, Sunday, or federal holidays*.

<p>8 Business Days after Service of Notice of Petition -</p> <p><i>(change from due 1 day before the opening of a pre-election hearing).</i></p>	<p>File and Serve Non-Petitioning Party's Statement of Position and Employee List</p>	<p>The non-petitioning party (ordinarily the employer) must file a Statement of Position (form provided by NLRB) identifying the issues the employer wishes to litigate at the hearing. <i>Under the new rules, parties may litigate all disputes concerning unit scope and voter eligibility at a pre-election hearing. This is a major change from the 2014 rules.</i></p> <ul style="list-style-type: none"> • The parties may formally defer litigation until after voting. • Along with its Statement of Position form, the employer must provide an alphabetized list of the full names, work locations, shifts, and job classification of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. • The list must be in a Microsoft Word, table format. The first column of the table must begin with each employee's last name, and the list must be alphabetized (overall or by department) by last name. The font size must be Times New Roman 10 or larger. • If the employer fails to timely furnish the employee list, the employer is precluded from contesting the appropriateness of the proposed unit and the eligibility or inclusion of any individuals at the pre-election hearing.
<p>Due by Noon 3 Business Days Before Hearing Date</p> <p><i>(this is a brand new requirement on petitioning parties)</i></p>	<p>File and Serve Petitioner's Position Statement Due</p>	<p>Petitioner (usually the union) must file a Statement of Position at least 3 business days (by noon) before the hearing is scheduled to open. The petitioner's SOP must respond to the issues raised by the non-petitioning party in its SOP. Timely amendments to the responsive statement may be made on a showing of good cause.</p> <p>This is completely new. Under the prior rules the petitioner could respond to the Statement of Position at the Hearing and did not have to show its hand prior to that..</p>

<p><i>14 business days after service of Notice of Petition for Election</i></p> <p><i>(change from 8 calendar days)</i></p>	<p>Pre-Election Hearing</p>	<p>The pre-election hearing will generally be scheduled for 14 business days after the Notice of Petition and will continue from day-to-day until completed.</p> <ul style="list-style-type: none"> • A party may request the Regional Director postpone the hearing upon a showing of good cause. Under the new rules, the Regional Director has much greater discretion to postpone the hearing for whatever length the Regional Director deems appropriate. The request must be made in writing, should include the position of all parties, and must be served on the other parties. <i>This flexibility for the Regional Director to postpone is new, as previously it was limited to 2 days and exceptional circumstances.</i> • Party's should note that a request to postpone the hearing does not automatically extend time for the Statement of Position and that too must be requested. • The primary purpose of the pre-election hearing is to determine if a question of representation exists. However, all disputes concerning unit scope and voter eligibility, including issues of supervisory status, <i>may now be litigated</i> and resolved by the Region before an election is conducted. The parties may, however, agree to permit disputed employees vote subject to challenge, thereby deferring litigation until after the election. <i>This is a return to Board procedure before the 2014 rules.</i> • <i>The final rule makes three additional, significant modifications. First, § 102.66(a) now states that parties have the right to call, examine, and cross-examine witnesses and to introduce into the record evidence of the significant facts that support the party's contentions that are relevant not just to the existence of a question of representation, but also the other issues in the case that have been properly raised.</i> • <i>Second, § 102.66(c) now emphasizes that, notwithstanding the offer of proof procedure, in no event shall a party be precluded from introducing relevant evidence "otherwise consistent with this subpart."</i>
<p><i>5 business days after the close of the hearing</i></p>	<p>Post-Hearing Brief</p>	<ul style="list-style-type: none"> • <i>Third, the right of parties to file post-hearing briefs with the Regional Director has been restored for pre-election hearings and extended to post-election hearings as well. Such briefs are due within 5 business days of the close of the hearing. Extension of up to 10 additional business days where good cause is shown. This is a return to Board procedure before the 2014 rules.</i>

FOLLOWING DIRECTION OF ELECTION		
Timeframe	To Do	Requirement
<p><i>Upon Completion by Regional Director</i></p> <p><i>(Note - the date for this may vary widely from days to months depending on the complexity of the record and the issues)</i></p>	Decision and Direction of Election	<p>The Regional Director will continue to schedule the election for the earliest date practicable, but (absent waiver by the parties) not normally before the 20th business day after the date of the direction of election. <i>Under the 2014 Rules, the Regional Director was required to pick the earliest practicable date without limitation.</i> In addition, the final rule emphasizes the Regional Director's discretion to issue election details in the direction of election. The Regional Director retains discretion to continue investigating the details after issuing the direction of election so as to get the parties' final input.</p>
<p>5 "business days" after Decision and Direction of Election</p> <p><i>(change from 2 calendar days)</i></p>	Serve Voter List	<p>The employer must provide the Regional Director and the parties a list of the full names, work locations, shifts, job classifications, and contact information (including home address, available personal email addresses, and available home and personal cell phone numbers) of all eligible voters, <i>i.e., Voter List</i>. In a separate section of the list, the employer must provide the same information for any employees directed to vote subject to challenge.</p> <ul style="list-style-type: none"> An employer may be given additional time to compile the list if it can demonstrate <i>extraordinary circumstances</i>, defined as a particularized demonstration that it is unable to produce the list within the required time limit due to specifically articulated obstacles to its identification of its own employees.

<i>Anytime during the period starting on the date of the Regional Director's pre-election decision (and direction of election) until 14 business days after the election</i>	Request for Review	<p>Parties may file a Request for Review of the Regional Director's pre-election decision. The request for review does not stay the proceeding.</p> <p><i>Where a request for review is filed within 10 business days of the Regional Director's decision, and if the Board has not ruled on the request or granted it before the conclusion of the election, the ballots whose validity might be affected by the Board's ruling on the request will be segregated and all votes will be impounded pending the Board's ruling.</i></p> <p><i>[NOTE - A party may still file a request for review of a direction of election more than 10 business days after the direction, but the pendency of the request will not require impoundment of the ballots.]</i></p> <p>The Board eliminated the filing of multiple requests for review, as was permitted under the 2014 Rules. All requests must be in one filing and subsequent requests are not accepted after an initial request is made.</p>
<i>After filing of Request for Review, but before Board ruling on Request for Review</i>	Opposition to Request for Review	<p>The party not requesting review may file an Opposition to Request for Review, but the Board need not wait for such filing to rule on the request for review. The Board has updated the Rules to provide that there is no right, except upon special leave, to file a reply to the opposition.</p>

PRECEDING THE ELECTION		
Timeframe	To Do	Requirement
<i>At least 3 full “working days” prior to 12:01 a.m. on election day</i>	Notice of Election	<p>The employer must post the Notice of Election in conspicuous places in the workplace, including all places where notices to employees are customarily posted. The Notice must remain posted until the conclusion of the election.</p> <ul style="list-style-type: none"> • The Notice of Election need only be electronically distributed “to all eligible voters (including individuals permitted to vote subject to challenge) if the employer customarily communicates with employees in the unit electronically. • In mail ballot elections, this time frame is measured from the date the ballots are to be mailed by the Region.
<i>Up to the start of the Voting Period</i>	Selection of Election Observer	<p>In selecting election observers, <i>whenever possible</i>, a party will now select a current member of the voting unit. When no such individual is available, a party should select a current nonsupervisory employee.</p> <p><i>Under the prior rules, this was not spelled out and this avoids any confusion about whether a non-employee union official may serve. As the Board notes - But to be clear, “the intent of § 102.69(a)(5) is—absent agreement of the parties to the contrary—to limit observers to current nonsupervisory employees of the employer at issue.”</i></p>

POST-ELECTION		
Timeline	To Do	Requirement
<p><i>Within 5 business days after the tally of ballots (change from 7 calendar days)</i></p>	<p>Objections and Offers of Proof</p>	<p>A party filing objections to an election must file an offer of proof in support of the objection, which identifies and summarizes the witness's testimony. The party must serve the objections on the other party; however, the party need not serve the offer of proof on the other party.</p>
<p><i>15 business days from the tally of ballots (change from 21 calendar days)</i></p>	<p>Post-Election Hearing</p>	<p>A post-election hearing will be held if the Regional Director decides to issue a notice of hearing. The hearing will continue day-to-day until completed unless the Regional Director determines that extraordinary circumstances warrant otherwise.</p> <ul style="list-style-type: none"> • <i>Post-hearing briefs may be filed as a matter of right within 5 business days of the close of the hearing.</i> Extensions may be granted not to exceed an additional 10 business days upon good cause.
<p><i>Within 10 business days after the issuance of the Hearing Officer's Report</i></p>	<p>Exceptions to the Hearing Officer's Report</p>	<p>A party may file Exceptions to the Hearing Officer's Report with the Regional Director. A brief in support of exceptions may not exceed 50 pages, absent permission of the Regional Director. If the brief exceeds 20 pages, it must contain an index, table of contents, and table of authorities. The brief must be double-spaced. <i>A request for additional time or additional pages must be filed within 3 business days of the due date. This is a change from 5 days for additional pages.</i></p>

CERTIFICATION OF ELECTION		
Timeframe	To Do	Requirement
<i>Variable timeline following Tally of Ballots - but not while a request for review is pending or while a request for review may still be filed</i>	Certifying the Election Results	<p>The Regional Director will no longer certify the results of an election if a request for review is pending or before the time has passed during which a request for review could be filed.</p> <p>If there are no objections, no request for review, no determinative challenges, and no runoff election is required, the Regional Director will certify the results of the election (tally of ballots) after 14 business days.</p> <p>The end result of the changes here is that the certification now issues when the result is essentially certain.</p>

Some Controversial 2014 Amended Election Rules That Have Been Modified

Special Note: In its explanation of the new rules for 2020 and also in its Fact Sheet about the new rules, the Board points out that the following 2014 Amended Election Rules (which it says were viewed as the most controversial) have all been modified:

- The substantial reduction of time between the filing of a petition and the conduct of the pre-election hearing in contested cases that was owing to the mandate that hearings usually must open 8 days after the issuance of a notice of hearing;
- The requirement that the non-petitioning party or parties file a detailed Statement of Position at noon on the business day before the opening of the pre-election hearing (with the penalty of waiving any arguments not raised in the Statement of Position);
- The dramatic curtailment of the scope of pre-election hearings occasioned by the provision that disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated and resolved before an election;
- The elimination of the right of parties to file post-hearing briefs following pre-election hearings;
- The elimination of the 25 to 30 day period between a decision and direction of election and the conduct of the election, which previously permitted the Board to rule on requests for review of the decision and direction of election prior to the conduct of the election, along with the automatic impoundment of ballots that resulted when the Board had not yet ruled on, or had granted, a request for review before the conduct of the election;
- The reduction of the time for an employer to produce the required voter list from 7 days to 2 business days; and
- The implicit provision that, in virtually all cases, Regional Directors would issue a certification of results (including, where appropriate, a certification of representative) notwithstanding that a request for review was pending before, or could still be timely filed with, the Board.