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WESTON HURD CLIENT ADVISORY
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Employer New Year Resolution #1
Prepare for Union Campaigns

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Ever since President Obama began appointing members to the NLRB, the Board has been taking a very proactive and pro-union stance in a number of different areas. Among the most controversial of the Board's changes concerns the Board's "quickie" election rules. The Board finalized its highly anticipated rule (also known by management side lawyers as the "ambush election rule") on Friday, December 12, 2014. The final rule was published in the *Federal Register* on December 15, 2014 and is scheduled to take effect on April 14, 2015.

Like many of the NLRB's other changes in rules or case law, the quickie election rule has garnered praise from organized labor and jeers from the business community. The adoption of the final rule marks the NLRB's second pass at amending its representation case procedures. The NLRB re-introduced the controversial regulations in February, 2014, after a scaled back version of the rule was finalized in 2011, but struck down by a Federal judge in May, 2012. Here is a link to a previous newsletter we wrote concerning the 2011 rule and how it changed existing procedures.
NLRB Quickie Election Rules - March 2012

As its nicknames reflect, the biggest criticism of the new rules from the business community is that the change in procedures will substantially reduce the time between a union petition being filed and a union election being held, thus drastically reducing an employer's ability to make its case to workers about the benefits and drawbacks of unionization. Thus, employers that want to stay union-free in 2015, are well-advised to mount an ongoing anti-union organizing campaign and take proactive steps to address any workplace dissatisfaction that could lead to a union petition being filed, rather than waiting to mount their campaign after the petition has been filed. Employers that sit on their hands will simply not have enough time to counteract the union's campaign. This is particularly true since the union can campaign in secret for months or years prior to filing a petition while the employer might have as little as 10 to 12 days to respond between the time the petition is filed and the election held.

While business groups are certainly expected to file lawsuits in Federal court to get the rule overturned, a prudent employer will not wait to see the results of the legal challenges before

deciding to take measures in response to the rule. While many legal challenges to the Board's over-reaching have proven successful in the past, this does not guarantee a successful result for employers in the future. Moreover, the legal challenges won't be resolved quickly. You could be stuck with a union for a couple of years while waiting for the rules to be struck down.

One of the best union avoidance measures a company can take is to ensure its workers feel they are well treated and have an avenue to voice their concerns so that they feel there is no need to bring in a third party union to represent them. Explaining to employees as soon as they are hired what a union can and cannot do and what they can do for themselves by working directly with the company is also a must. Front-line supervisors are always either a company's best line of defense or their biggest downfall, depending upon how well trained the front-line supervisors are. Supervisors should be trained to spot problems and to avoid causing them by treating the employees fairly and consistently. It is important to know what workers' major concerns are so you can address them head on - you can be sure the union organizers will know what the big issues are so you should, too.

If you need help in revamping your employee policies or in preparing your union avoidance campaign, the lawyers in Weston Hurd's Labor and Employment Law Groups will be happy to help.

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