



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

Regional Director Committee

TO: Marvin Kaplan, Chairman  
FROM: Regional Director Committee<sup>1</sup>  
DATE: April 13, 2018  
RE: Regional Director Committee's Response and Comments to the NLRB's Request for Information on the Representation-Case Procedures

---

In response to the Board specifically inviting the NLRB Regional Directors to provide input with respect to the 2014 Election Rule, we submit the following.

**1. Should the 2014 Election Rule be retained without change?**

**Responses from the Regional Directors indicate that they are in agreement with the following sections of the 2014 Election Rule:**

**102.61(f) and 102.114(g)- Showing of Interest:** Permitting a petitioner to submit its showing of interest by fax makes sense.

**102.62(d)- Service of Voter List:** All of the Regional Directors who responded were in agreement with the requirement that the Employer serve the voter list on the other parties. Also, permitting a petitioner to waive its right to have the voter list for the 10-day period makes sense.

**102.63(a)- Notice of Petition For Election:** All of the Regional Directors who responded were in agreement with this section of the Election Rule; i.e. that the Employer post a Notice of Petition for Election. This requirement provides useful guidance for employees about the process. The Notice also provides the contact information of the Regional office so that an employee could contact the Region if he or she needed additional information.

**103.20- Blocking Charges:** The Regional Directors who responded do not see a need to change this section of the Election Rules. It has provided consistency and assisted with

---

<sup>1</sup> Regional Directors David Leach-Region 22, Pat Nachand-Region 25, Peter Sung Ohr-Region 13, Mori Rubin-Region 31, and Nancy Wilson-Region 6 serve on the executive committee representing all Regional Directors.

preventing a party from attempting to block the processing of a petition by filing frivolous charges without an offer of proof.

**102.67(c)- Requests for Review:** All of the Regional Directors who responded found that providing for the Requests for Review to be filed after the certification has issued has worked well by reducing the amount of unnecessary review by the Board in cases in which the petitioning union did not win and the unit issues were therefore rendered moot. Also, it eliminates confusion by not having a stay of an election in most cases. Under the prior rules, the parties would not know until shortly before the election as to whether the election would be conducted and/or the ballots impounded.

**102.69(a)- Offers of Proof filed with Objections:** The Regional Directors found this part of the rule helpful in eliminating delay in processing the objections.

**2. Should the 2014 Election Rule be retained with modifications? If so, what should be modified?**

**102.60- Filing Requirements:** Most Regional Directors found that these filing requirements have worked well for institutional parties by providing all parties involved in the proceeding with early notice of the petition. However, it was noted that there have been problems with individual petitioners filing decertification petitions in compliance with these rules. One Regional Director commented that there have also been problems with some unions complying with the new filing requirements. One Regional Director suggested this section of the Election Rules be changed to revert back to the filing requirements that were in effect prior to the 2014 Election Rule.

**102.63(a)- Hearing Dates:** Some Regional Directors did not agree with this section of the rule which set hearings for eight days from the filing date of the petition. Other Regional Directors liked this section of the rule because it provides for consistency and is consistent with the hearing dates that were set by many Regions prior to the 2014 Election Rule.

**102.63(b) and 102.66(d)- Statement of Position Filing Requirement and Preclusion:** All of the Regional Directors who submitted comments liked this Election Rule because it greatly assisted with identifying the issues prior to hearing and assisted with making the hearing run more efficiently. Providing Regional Directors with the authority to invoke preclusion on issues that are not raised in the Statement of Position has worked well as

it provided an effective means for securing compliance with this section of the 2014 Election Rule. One Regional Director commented that in one case where a party submitted a flawed Statement of Position, the Director permitted the party to amend its Statement of Position at the hearing.

The Regional Directors also felt that having the authority to defer certain eligibility issues to the challenged ballot procedure worked well in reducing the amount of unnecessary pre-election litigation. One Regional Director commented that it would be beneficial if the filing deadline for the Statement of Position was made one-day earlier because, it would reduce the amount of unnecessary travel in Regions where it may take a Hearing Officer a full day to travel to the hearing location. One Director suggested that the Statement of Position form be amended to provide for the petitioner to indicate whether it is seeking an *Armour Globe* election.

**102.66(h)- Filing of Briefs:** All of the Regional Directors commented that this section of the Election Rules should be modified to give the Regional Directors discretion in permitting the filing of briefs.

**102.67- Dates for an Election:** Setting elections for the “earliest date practicable” provides for very little discretion on when an election should be conducted. One Regional Director noted that while elections are being conducted within a shorter time period from the filing date of the petition in comparison to the period prior to the 2014 Election Rule, there has not been any significant change to the outcome; i.e. win rate by unions. Additionally, one Regional Director commented that the 2014 Election Rule does not provide for the Regional Director to use his or her discretion to administratively dismiss a petition if the Petitioner is insistent upon an election date that is earlier than the date the other parties are proposing which may be reasonable. In one case, this Regional Director had to conduct a hearing where parties agreed on all of the issues with the exception of the election arrangements and the parties submitted their positions regarding the election arrangements on the record.

**102.69(c)(1)(iii): Appeal of Hearing Officer Report to Regional Director:** Under the old rules, the Regional Director had discretion in determining the appeal process; i.e. either the appeal would be made to the Regional Director or, could be filed with the Board. The new Election Rules eliminated that discretion and provide for the Regional Director’s review of all post-election Hearing Officer Reports. This section of the 2014 Election Rule has placed an additional burden on Regional staff since an additional layer of review is necessary within the Region. This section of the Election Rules should be

modified to allow for greater Regional Director discretion as was previously provided prior to 2014.

- 3. Should the 2014 Election Rule be rescinded? If so, should the Board revert to the Election Regulations that were in effect prior to the 2014 Election Rule's adoption, or should the Board make changes to the prior Election Regulations? If the Board should make changes to the prior Election Regulations, what should be changed?**

None of the Regional Directors who submitted comments advocated for rescission of the 2014 Election Rule. Most Directors commented that the 2014 Election Rule was working well but, suggested some modifications as described above in response to question number two. While parties initially voiced great concerns about the 2014 Election Rule, to all the parties' credit, after the initial learning curve, there have been very few difficulties in the adoption of the rules. However, the shifting of resources to ensure the election petitions are processed as expeditiously as possible has been significant in the Regions.

Regional Director Committee