

NLRB moving toward offsite union elections?

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The majority of NLRB elections are conducted on the employer's premises. This practice has historically applied to both the initial election and any subsequent rerun elections. However, in a recent decision, [2 Sisters Food Group, Inc.](#), the NLRB suggested that it may be appropriate to conduct rerun elections offsite in certain circumstances.

Today, the NLRB's Associate General Counsel issued [Operations Memo OM 12-50](#) which discusses the *2 Sisters* case and the factors that Regional Directors should consider when evaluating whether to conduct a rerun election on the employer's premises or offsite. The four factors discussed in the memo are:

1. The Petitioner's objection to holding the rerun election on the Employer's premises, the Employer's request that it be held there, and the grounds therefore.
2. The extent and nature of the Employer's prior unlawful and objectionable conduct and whether the Petitioner makes a request to proceed despite the fact that the compliance period relating to the prior unlawful conduct has not yet closed.
3. The advantages available to the Employer over other parties to the proceeding if the election is conducted on Employer owned or controlled premises.
4. Any alternative sites proposed by the Petitioner, as well as other readily available sites.

Where there is a dispute over the location of the rerun election, the Regional Director must issue a written decision explaining the basis for the determination. The Board reviews challenges to the Regional Director's decision regarding the location of the election using an abuse of discretion standard.

2 Sisters and today's OM memo suggest that the NLRB is moving toward conducting an increasing number of rerun (and possibly initial) elections offsite. Employers facing a rerun election should be prepared to make their case to the Regional Director that the election should be held onsite while establishing a record for a possible appeal to the Board. We will continue to monitor this issue and report on it.

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