

# **The Unions Are Coming...The Unions Are Coming! We Don't Need Paul Revere's Lantern To See Who's Coming!**

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On December 16, 2014, the term of NLRB Board Member Nancy Schiffer ends. This is a critical date for the union movement because on that date the pro-Union members of the Board will lose their 3-2 majority status and their effective control over the NLRB. So what's coming next for private employers?

On July 29, 2014, the General Counsel of the NLRB issued an advice memorandum to the NLRB Regional Directors identifying his game plan regarding re-establishing a new definition for joint employer, to make it easier for unions to organize:

“The new broader standard will allow employees to use traditional economic weapons to exert lawful economic pressure on those parties to realistically control the economics of their relationship even if they do not directly control working conditions.”

Prior to that public announcement, the General Counsel had stated that the objective of the Board has been to consistently uphold unions organizing very small subsets of employees, called “micro-units,” instead of the traditional wall-to-wall bargaining units. Quite simply, these “micro units” are easier for unions to gerrymander and, ultimately, to organize.

The final step in this trifecta is the most troubling for employers - the new NLRB Election Rules. Through rule-making, the NLRB is seeking to re-write the NLRA in such a way as to greatly speed up the elections. The new rules reduce the timeline for elections from over 35 days to under 20 days between the time of the petition and the election. These “quickie” or “ambush” elections will undoubtedly benefit unions, because it gives the employer less time to explain to the employee the

pros and cons of joining a union. These rules are on a fast track and clearly support the union movement.

So, undoubtedly, the unions are indeed coming after management! This is a watershed moment for the unions. The union's financial coffers have been depleted as the union membership numbers continue to plummet. If they don't get their act together and start to effectively unionize, then they will have to stop blaming employers and/or the NLRB for their organizing failures.

Under the new NLRB Election Rules, nearly all election-related issues will be resolved after the election. This process would be similar to the approach taken in the recent Northwestern University football players' case, in which the NLRB held the election and then impounded the ballots. The NLRB will sort out any issues after the fact so long as the objections don't impact more than 20% of the bargaining units.

Employers had better gear up and get ready because the unions are locked and loaded and ready to attack. The stage has been proactively set by the NLRB to give unions their best-ever opportunity to succeed in union organizing. If employers don't prepare now, they will jeopardize their freedom to deal directly with their employees and reduce their flexibility in running their company. The NLRB Regional Offices are already gearing up to explain the new changes in NLRB election procedure, starting in November, so here come the unions!

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