



## **WORKFORCE DEMOCRACY AND FAIRNESS ACT**

H.R. 2776

### **Protecting Worker Freedom and Employer Free Speech**

In 2015, the National Labor Relations Board (NLRB) implemented significant changes to the rules governing union elections. The board's ambush election rule provides employers just seven days to prepare a case to present before a NLRB hearing officer and leaves workers as little as 11 days to determine whether or not they want to join a union. The board has also adopted, in its *Specialty Healthcare* decision, a new standard for determining which group or "unit" of employees will vote in the union election, which will divide employees and raise employers' labor costs.

These actions impose sweeping changes on the nation's workplace at a time when employers need certainty and millions of individuals are searching for work. The *Workforce Democracy and Fairness Act* (H.R. 2776) restores fairness to union elections and reaffirms protections workers and employers have received for decades.

### **Ensuring Employers Can Participate in a Full and Fair Election Process**

In 2010, 92 percent of initial union elections were held under a "voluntary election agreement," where the employer and union agree to such things as the date and location of the election, and the appropriate unit of employees that will vote in the election. When a voluntary agreement cannot be reached, an NLRB election officer convenes a pre-election hearing to examine and decide issues raised by both sides. It is important that employers have an opportunity to find legal representation and to prepare their case to present at the pre-election hearing. The *Workforce Democracy and Fairness Act* ensures all parties are able to participate in a fair election process.

- Under no circumstance can a pre-election hearing take place less than 14 calendar days after a petition for an election has been filed.
- A pre-election hearing is to be non-adversarial and identify any issues before the election. The board must decide all issues that may make the election unnecessary or that may reasonably be expected to impact the election's outcome.
- Both unions and employers may raise any relevant/material issue or position at any time prior to the conclusion of the pre-election hearing.
- The full board must review appeals filed at the conclusion of the pre-election hearing.

## Empowering Workers to Make an Informed Choice in Union Elections

Many factors can sway a worker's vote in a union election. Employees are often interested to know which employees may vote in the election. It can be a complicated decision with significant consequences that may last for years. Workers deserve an election process that provides them with the information and time necessary to make an informed decision.

- An election is to be held as soon as practical but not less than 35 calendar days from the filing a petition for an election.
- The board is to determine before the election the group of employees or "unit" that is appropriate for the purposes of collective bargaining.
- When deciding which employees will be included in the bargaining unit in a representational election, the board is to apply the long-standing "sufficient community of interest" test.
  - Traditionally, the test is met when employees in a proposed unit are readily identifiable as a group whose similarity of functions and skills create a community of interest.
  - The legislation outlines eight factors the board shall consider before concluding which employees will be a part of the bargaining unit, such as wages and benefits, and skills and development.
- In cases in which a union seeks to add to its membership non-union workers (known as accretions), the board shall maintain the current "overwhelming community of interest" standard.