

BLIZZARD WARNING: NLRB SEEKS TO BURY EMPLOYERS UNDER NEW RULINGS AND REGULATIONS

After a year spent digging out from revisiting decisions invalidated by the Supreme Court's ruling in *Noel Canning*, the National Labor Relations Board issued two blows to employers in the last two days. Yesterday, the NLRB issued the long-awaited decision in *Purple Communications, Inc.*, granting employees the federally protected right to use employer e-mail systems for union organizing and other protected concerted discussions. Today the NLRB issued the final election processing rules.

Combined, these two actions will have far reaching consequences for all employers, both those already with unionized employees but more importantly for those who don't yet have a unionized workforce. Employers must immediately revise their policies and practices to permit (or at a minimum not prohibit) employees who already have access to the employer's e-mail system to use that system during their non-work time for protected concerted discussions and solicitations.

The NLRB's final election rule will be published in the Federal Register on December 15, 2015, and will be effective (absent successful legal challenge) on April 15, 2015. The rules will have the practical effect of eliminating the historic 42-day campaign period, provide greater access to employee personal contact information and in short are designed to allow unions to get to an election faster and prevent employers from mounting an effective informational campaign as they have done under the traditional 42-day period. The rules require the following:

- Pre-election hearings to be held within 8 days of a petition being filed (compared to the traditional 10 to 14 day period);
- Employers to submit a statement of position outlining issues in the hearing at least 1 business day prior to the hearing (completely new);
- Employers to submit a list of prospective voters inclusive of their names, job classifications, shifts and work locations at least 1 business day prior to the hearing (completely new);
- Only issues necessary to determine whether it is appropriate to hold an

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election will be litigated in a pre-election hearing;

- Elections will not be automatically delayed for 25 to 30 days to allow for NLRB review of any request for review of a Regional Director's Decision and Direction of Election as they were previously;
- Employers will be required to submit a final and accurate list of eligible voters inclusive of personal phone numbers, e-mail addresses and home addresses within 2 business days of the Regional Director's approval of an election agreement or decision directing an election (was 7 days and limited to names and home addresses).

If you wish to discuss steps you can take now to bring your policies into compliance or prepare your organization for future ambush union organizing under the new election rules, please contact any of the members of Armstrong Teasdale's Employment and Labor Group listed below or your primary Armstrong Teasdale attorney.