



NLRB GENERAL COUNSEL LAYS OUT EXPEDITED TIMELINE FOR UNION ELECTIONS

On December 8, 2023, National Labor Relations Board (“NLRB” or “Board”) General Counsel Jennifer Abruzzo released [Memorandum GC 24-02](#) to all of the NLRB’s Regions regarding new election procedures (“Memo”). The Memo provides guidance to the Regions on new election procedures after the NLRB issued a final rule amending its procedures governing representation elections (the “[2023 Election Rule](#)”). The changes go into effect December 26, 2023.

The 2023 Election Rule rescinded major parts of the Trump-era Board’s 2019 Election Rule. Those provisions were: (1) employers having five days to furnish the voter list following the direction of election; (2) Regional Directors being precluded from issuing election certifications if a request for a review was pending or during the time such request could be filed; (3) the limiting of a party’s selection of election observers to people who were members of the voting unit whenever possible; and (4) the automatic impoundment of ballots under certain circumstances.

The 2023 Election Rules will require pre-election hearings to be scheduled 8 calendar days after a petition for an election is filed and may only be postponed for up to 2 business days. Any position statement from a non-petitioning party will be due 7 calendar days after a petition is filed, again subject to a 2 business day postponement. Responses can be oral.

Further, employers must post and distribute the Notice of Petition for Election within 2 business days after service of the notice of hearing.

Importantly, pre-election litigation is to be focused only on issues necessary to determine whether an election is to be conducted. Eligibility and inclusion issues will be litigated post-election. Further, written briefs for pre- and post-election hearings are only to be allowed with the Regional Director’s or Hearing Officer’s permission.

Regional Directors are to specify election details (the type, dates, times, and locations as well as the eligibility period) in the decision and direction of election. Regional directors will also transmit the Notice of Election with the decision and direction of elections. Finally, the 2023 Election Rule and Memo will end the 20-business day waiting period for elections and instead will schedule elections for “the earliest date practicable.”



WISCONSIN PUBLIC SECTOR EMPLOYEES SEEK TO SUBJECT ANTI-UNION LAW TO JUDICIAL SCRUTINY

Since 2011, Wisconsin has had a state law on its books that severely limits the collective bargaining power of public sector unions. Now, eyeing a recent ideological shift from conservative to liberal in Wisconsin's Supreme Court, seven unions representing teachers and other public sector employees have filed a lawsuit in a county circuit court challenging the law's constitutionality. The case is *Abbotsford Education Association vs. Wisconsin Employment Relations Commission*, Wis. Cir. Ct., No. 2023-CV-003152, complaint filed 11/30/23.

The law, Wisconsin Act 10, is purported to address a projected budget deficit. But according to the complaint ("Complaint"), "the vast majority of Act's provisions targeted Wisconsin public servants who had decided to join together and form labor unions." However, the law differentiated between "public safety" employees – including certain fire fighters, law enforcement officers, and state motor vehicle inspectors, and "general" public employees – essentially everyone else. The law's provisions restricting collective bargaining only apply to the "general" public employees.

Among these provisions is the limitation of subjects of bargaining; "general" public employees are only allowed to bargain about base wages, and only up to the consumer price index. Moreover, agreements reached on base wages are restricted to a duration of one year. Next, the law subjects "general" public employees to annual recertification elections, thus forcing unions to retain at least 51 percent of a bargaining unit's votes year to year. Finally, the law prohibited dues deductions from paychecks, thus "substantially burdening" public employees' ability to support their unions.

The Complaint alleges that the distinction drawn between "public safety" employees and "general" public employees violates Wisconsin's equal protection guarantee by creating irrational classifications, which "closely track the different political endorsements made by public sector unions in the election immediately preceding Act 10's passage." Specifically, the only five unions which publicly endorsed Scott Walker in his 2010 run for Governor represented employees classified as "public safety" employees. However, other employees performing "public safety" functions, such as conservation wardens, Capitol Police, and University of Wisconsin Police, were not classified as "public safety" employees. The Complaint alleges that these arbitrary delineations violate equal protection because, in addition to being arbitrary, they "lack a discernible connection to any legitimate governmental objective."



STARBUCKS' LOSING STREAK AT THE NLRB CONTINUES

Starbucks' remarkably consistent record of being caught violating federal labor laws continued this week as a National Labor Relations Board ("NLRB") Administrative Law Judge in Salt Lake City found that the coffee giant once again engaged in illegal union-busting conduct at two stores in the Salt Lake City area which voted to unionize in the summer of 2022. In this case, Starbucks disciplined a worker for his union activities, more strictly enforced rules in response to union organizing, coercively interrogated employees about their union activities and those of their coworkers, and stopped staff from posting union-related materials on bulletin boards, Administrative Law Judge John Giannopoulos ruled.

Starbucks has repeatedly been found to have committed unfair labor practices in response to a nationwide unionizing wave in more than 35 NLRB ALJ decisions. About 75 complaints alleging the company violated federal labor law remain pending before agency judges. Further, the NLRB has certified union representation at nearly 370 Starbucks stores in 41 states and the District of Columbia since the first store voted to unionize in December 2021. Starbucks hasn't completed a collective bargaining agreement at any of those unionized locations.

In the Salt Lake ruling, the ALJ rejected the allegation that Starbucks illegally disciplined and discharged a worker without giving Starbucks Workers United a chance to negotiate. Under current NLRB law, employers have no duty to bargain prior to issuing discipline to unionized employees in accordance with an established disciplinary practice or policy under the NLRB's 2020 decision in *Care One at New Milford*, the ALJ found.

The case is *Starbucks Corp.*, N.L.R.B. A.L.J., Case 27-CA-296848, 12/12/23.

EEOC ISSUES NEW ELECTRONIC FILING RULE

On December 13, 2023, the Equal Employment Opportunity Commission ("EEOC") issued a rule permitting parties to immediately upload an already signed charge through the EEOC Public Portal.

"E-File for Attorneys will create efficiencies allowing our staff to better assist all workers and job applicants who come to the EEOC for help, including those who do not have an attorney," said EEOC Chair Charlotte A. Burrows. "We listened to requests from attorneys that we provide them with a streamlined process to submit charges of discrimination on behalf of their clients and found a solution that would also enable the EEOC to better serve the public."



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The EEOC estimates that about a third of the charges it receives come from attorneys filing on behalf of their clients. The EEOC reported that attorneys submitted these charges by mail, fax, and hand-delivery, and the EEOC processed them manually, resulting in duplication of work for the agency, attorneys, and represented charging parties. By adding the e-filing option, the EEOC expects to operate more efficiently.

To use of E-File for Attorneys (<https://e-file.eeoc.gov/>), attorneys must create or use an existing Login.gov account. Attorneys will not be able to file amended charges through the application. Once attorneys submit a charge, they will be able to access it through the Public Portal. The application does not permit an attorney to file a charge without disclosing a client's identity.

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