

# NLRB Finalizes Rule Addressing Blocking Charges and Other Election Issues

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On March 31, the National Labor Relations Board (“NLRB”) finalized a series of rules, slated for publication on April 1, addressing union elections and recognition, which were originally proposed last August (see [prior alert](#)). The three parts are:

- 1. Blocking Charge:** The new rule replaces the NLRB’s blocking charge policy that allowed a pending unfair labor practice (“ULP”) charge to prevent the NLRB from conducting a representation election until the ULP charge was resolved. The new rule allows the election to be conducted with ballots either counted or impounded depending on the nature of the ULP charge until the charge is resolved. Regardless of the nature of the charge, the certification of the results will not issue until there is a final disposition of the charge and a determination of its effects, if any, on the election.
- 2. Voluntary Bar:** Historically, an employer could voluntarily recognize a union, which would protect the union from challenges for a “reasonable period of time” subject to a 45-day window for workers or rival unions to file a decertification petition. In 2011, the NLRB in *Lamons Gasket* determined that the reasonable period was six months to a year and overruled its prior 2007 decision in *Dana Corp.*, 351 NLRB 434 (2007), that established the 45-day challenge period. The new rule states that, for a post-recognition collective bargaining agreement to have contract-bar effect, unit employees must receive notice of the voluntary recognition and the 45-day period in which to file an election petition to challenge the recognition, reinstating *Dana Corp.*
- 3. Construction:** The new rule overturns a 2001 decision (*Staunton Fuel & Material*) that found that a construction industry bargaining relationship established under Section 8(f) of the National Labor Relations Act could transition into a Section 9(a) bargaining relationship based solely on language in the parties’ collective bargaining agreement. The new rule instead finds that proof of a Section 9(a) relationship requires “positive evidence of majority employee support” and not just contract language.

In addition to this final rule, the NLRB is still developing a rule to unwind the Obama-era NLRB’s “quickie election” rule that sped up the union election process. This separate rule, proposed in December 2019 (see [prior alert](#)), would expand the time frame for holding elections and return to a timeline closer to the pre-Obama-era standard.

**For more information, contact a member of the firm’s [Labor & Employment Practice Group](#).**

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