

BARGAINING UNIT ANALYSIS

The National Labor Relations Board (NLRB) in 2011 issued two orders that could reshape America's workplaces for decades.

The first action created major procedural changes that will sharply limit the time allowed for a representation election. We estimate that the gap between when the Board calls an election and when the election actually is held could shrink from the current median of 38 days to an average of 21 and, in extreme cases, 10 days, making it far more difficult for employers to run an effective counter-campaign.

Of the many elements affected by the new election rules, perhaps the most troublesome for employers is having enough evidence to have a pre-election hearing granted. Most hearings, including those to determine appropriate bargaining units and supervisory status, won't be held until after the election takes place. Even if a hearing is granted after an election, the employer still will need to have their preparation work finished long before the union shows up.

The second NLRB decision, a judgment against Specialty Healthcare and Rehabilitation Center of Mobile, AL, allows unions to carve out very small bargaining units (in the case of Specialty Healthcare, one job title), establishing footholds in businesses where the majority of the employees may not want union representation.

As the chart below indicates, there is a close correlation between the size of a bargaining unit and a union's success in representation elections; in general, the smaller the size of the bargaining unit, the more often unions win.

With election schedules compacted and bargaining units shrunk, the need to be prepared well in advance of union organizing has never been greater. Employers should determine before a petition is filed which employees should be included in a proposed bargaining unit based on job description, as well as which employees it considers to be supervisors and which it considers to be union-eligible employees.

IRI's Bargaining Unit Analysis goes beyond merely reviewing job descriptions to identify what an employee in a particular position does and the work they perform in that role. We begin by analyzing a client's list of job titles and job descriptions, then interviewing human resources leaders and/or front-line managers to more fully understand what employees actually do on their jobs. This critical step enables us to more accurately assign employees to the correct, defensible bargaining unit.

IRI's Bargaining Unit Analysis helps remove the vulnerability that, because the employer isn't certain which employees fit in which bargaining unit, they would have to file an appeal after the election is held. It is a thorough evaluation of employees' inclusion in proper bargaining units based on NLRB guidance, past cases, legal precedent and past union challenges.



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