

union kNOw – November 2016

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UnionizeMe

With a few keystrokes, www.UnionizeMe.org is connecting like-minded employees of the same retail employers in a given area who are interested in forming a union. For an employee, the entire process may take no more than five minutes. UnionizeMe is a labor union and through its professionally developed and easy-to-use platform, segregates employees by employer, collects signed union authorization cards from employees, bundles them with cards signed by other employees from their store and employees of other nearby stores of the same retailer, and files a representation petition with the National Labor Relations Board. It provides employees with information about the supposed economic advantages of unionization while excoriating the pay and benefit practices of several retailers that it says drives employees into poverty. The union is pushing for a \$15-an-hour wage, increased full-time hours, and affordable health insurance.

Voter List

The NLRB's "quickie election" rules requires employers, within two business days after the election details are finalized, to provide to the NLRB Regional Director and the union a list containing personal contact information about voters. The list may be "e-filed" on the Board's website. E-filed documents must be filed by 11:59 p.m. unless a specific exception exists. No exception exists for the list. If a document is e-filed, it also must be provided to the union by email the same day. Clearly, 11:59 p.m. is the time by which an e-filed list must be e-filed and emailed to the union.

The NLRB acknowledges this leads to the conclusion the list is timely if e-filed and emailed by 11:59 p.m. on the due date, but it will not commit to that. Is this because making the due date time the close of business at the regional office will give the union several hours more to contact employees on the list?

Presidential Election Likely Will Have Major Impact on Labor Relations

A majority, but no more than three, members of the five-member NLRB belongs to the President's political party. With two current vacancies, depending on the results of the presidential election, the Board may consist of a three-member Democratic or Republican majority for the next several years. (For the past several years, the Democratic Board members regularly have formed the majority on pro-labor decisions.)

Moreover, the Democratic and Republican platforms have radically different labor law agendas.

The Democratic platform, essentially, provides for resurrecting the Employee Free Choice Act (EFCA) by amending the National Labor Relations Act to require the NLRB to certify a union if a majority of eligible employees sign authorization cards and to require binding arbitration in connection with first contracts. The Republican platform focuses on individual employee rights — all employees, represented or not, should have the right "to accept raises and rewards without veto power from union officials." Whether the NLRA is amended is not decided unilaterally by the President, so, whether changes in the platforms are enacted also will depend upon the composition of the U.S. Senate and House of Representatives.

How Far Will the NLRB Go?

Despite a parade of NLRB decisions expanding employee and union rights during the past several years, employers have taken comfort that their private property could be kept free of employee picketing/protests. However, two recent NLRB decisions signal a troubling erosion of those property rights.

In *Capital Medical Center*, 364 NLRB No. 69 (Aug. 12, 2016), the NLRB ruled that off-duty employees have the right to picket on an employer's premises, unless the employer can prove that a ban on picketing was necessary to prevent a disruption of healthcare operations. Similarly, in *Wal-Mart Stores, Inc.*, 364 NLRB No. 118 (Aug. 27, 2016), the Board decided that six employees who stopped work and engaged in an in-store protest over their alleged mistreatment by a supervisor, among other issues, were unlawfully disciplined for that action.

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Labor Relations

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