

# ***NLRB NEWS:***

## ***NEW ENGLAND***

### ***REGION 1 (BOSTON)***

### ***SUBREGION 34 (HARTFORD)***

**October 2015**  
*Fourth Edition*

Subregion 34 – Hartford

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#### *Fuchs Conference Planned for October 29*

The 42<sup>nd</sup> Annual Robert Fuchs Labor Law Conference will be held on October 29, 2015 at the Suffolk University Law School, 120 Tremont St., Boston, MA. The Massachusetts Bar Association's Labor & Employment Section will sponsor the event, which will highlight a year of significant legal developments. Do not miss this exclusive opportunity to network with colleagues, program faculty, and the leaders of the labor and employment bar.

Richard F. Griffin, Jr., General Counsel of the National Labor Relations Board (NLRB), will provide an update on the latest developments in the General Counsel's office, including the ongoing McDonald's litigation involving the Board's joint employer standard and the Board's related *Browning Ferris* decision.

M. Patricia Smith, Solicitor of Labor, United States Department of Labor (DOL), will address developments at the DOL.

Professor Marc D. Greenbaum of Suffolk University Law School will moderate a panel of experts examining the responses by regulators (the NLRB and DOL), and by employee-side and employer-side practitioners, to the new and perplexing challenges to the changing U.S. employment landscape. The panel will also consider the implications of the NLRB's *Browning Ferris* decision.

A reception will follow the conference.

Registration is available at [www.massbar.org/fuchs](http://www.massbar.org/fuchs) or call (617) 338-0530.

**Contact the Region:**

There is always an information officer available between 8:30 am and 5:00 pm at the Boston Regional Office or the Hartford Subregional office, by phone at 617-565-6710 (Boston) or (860) 240-3522 (Hartford) or in person at 10 Causeway St. in Boston or 450 Main St. in Hartford, to answer general workplace questions or to discuss a specific workplace problem. The information officer can offer information about the NLRA and advice as to whether it appears to be appropriate to file an unfair labor practice charge or an election petition. If filing a charge or petition appears to be appropriate, the information officer will assist you in completing the charge or petition form.

Information is also available on the Board's website at [www.nlr.gov](http://www.nlr.gov), which has a link to the Boston Regional Office and Hartford Subregional Office webpages featuring newsletters, news releases and local cases and decisions.

Hearing impaired callers should contact the Federal Relay Service at <http://www.federalrelay.us/tty>, calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-866-667-NLRB.

**The Final R-Case Rule is Here!**

On December 15, 2014, the National Labor Relations Board published in the Federal Register its Final Rule amending its representation-case procedures. The Final Rule went into effect on April 14, 2015. However lawsuits challenging the Board's adoption of the Final Rule are pending in two federal district courts.

While the Final Rule changes some aspects of our representation case processing, the basic process is unchanged. We still work with the parties to enter into an election agreement so a pre-election hearing does not need to be held. And elections are conducted in the same manner as before the Final Rule.

A Guidance Memorandum discussing the new R-Case procedures, as well as a comparison of former and new R-Case procedures, can also be found on the NLRB web site at <http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015>. You can also find the News Release and Frequently Asked Questions about the Rules on the website at [nlrb.gov](http://www.nlr.gov).

In the remainder of this issue of *NLRB News: New England*, you will find additional information on filing a petition, the initial processing of a petition, pre-election hearings, direction of elections, elections and post-election hearings. In addition, you will find Agency-wide Representation Case statistics from Mid-April 2015, when the new rules went into effect, through Mid-September 2015. These statistics, which are based upon estimated values using data that are still being reviewed for accuracy, demonstrate the impact of the new Rules, including the total number of petitions filed, the median days between the petition filing and the election date, the election agreement rate, blocked charges, median size of unit, and election results. The statistics for Region 1 and Subregion 34 for the same period reflect similar results.

**For more information about the Final R-Case Rule, please visit the NLRB website at [www.nlr.gov](http://www.nlr.gov) or go to <http://www.nlr.gov/news-outreach/fact-sheets/nlr-representation-case-procedures-fact-sheet>.**

**How to File an Unfair Labor Practice (ULP) Charge:**

- Anyone may file a ULP charge within 6 months of the ULP by submitting a charge form to any Regional Office. The form identifies the parties to the charge and includes a brief statement of the basis for the charge, and must be signed by the charging party. Charges may be filed electronically at [nlrb.gov](http://nlrb.gov). Charges may also be filed by mail or fax.
- Forms are available at [nlrb.gov](http://nlrb.gov), or may be obtained from any NLRB regional office. The Boston Regional Office and the Hartford Subregional Office have information officers available to assist with the filing of charges.

**When a Charge is Filed:**

- The NLRB Regional Office will investigate. As the charging party, be prepared to provide a sworn affidavit in support of the charge within 7 to 14 days of the filing, and arrange to promptly present additional witnesses and any documents relevant to your case.
- The Region will ask the charged party to present a response to the charge, and will further investigate the charge to establish all facts.
- After a full investigation, the Region will determine whether or not the charge has merit.

**A Guide to the New R Case Rules**

**Filing a Petition**

Petition forms in RC, RD and RM cases will include Petitioner's position on the type, date, time, and place of the election sought and the Petitioner's designated representative for service of documents.

The Petitioner must serve the employer and all parties named in the petition with a copy of the petition, a blank Statement of Position form, and a copy of the Description of Procedures in R cases.

The Petitioner may file the petition by E-Filing (through the Agency's website at <http://www.nlrb.gov>), by facsimile, by mail, or in person at one of the NLRB's field offices.

When filed, the petition must be accompanied by the showing of interest in support of the petition and a certificate of service. The showing of interest may now be E-Filed or faxed, but originals must be provided to the Region within two business days of the filing of the petition.

When filed, the petition must also be accompanied by a Certificate of Service showing service by Petitioner on all parties named in the petition of a copy of the Petition, a blank Statement of Position form, and a copy of the Description of Procedures in R-Cases. An optional Certificate of Service form is available for this purpose.

**After the Region Makes a ULP Determination:**

- If the Region determines that a charge has no merit—that the charged party has not violated the Act—it will dismiss the charge after giving the charging party the opportunity to withdraw. The charging party has the right to appeal a dismissal.
- If the Region determines that a charge has merit—that the charged party has violated the Act—it will attempt to settle the case. Unless there is a settlement, the Region will issue a formal complaint and proceed to trial to obtain a finding of a violation and an order directing the charged party to undertake remedial actions. The charged party has appeal rights, including a right to a hearing, with a final decision subject to a United States Circuit Court of Appeals.

**A Guide to the New R Case Rules**

**Initial Processing of a Petition**

The NLRB will send the Employer a Notice of Hearing and a Notice of Petition for Election. Within 2 business days of service of the Notice of Hearing, the Employer must post the Notice of Petition for Election in all places where notices to employees are customarily posted. The Employer must also distribute the Notice of Petition for Election electronically if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice may be grounds for setting aside an election whenever proper and timely objections are filed.

The NLRB generally will schedule the pre-election hearing for a date eight days after service of the Notice of Hearing (excluding intervening holidays) or the next business day thereafter if the 8th day falls on a weekend or Federal holiday. The hearing may be postponed up to two business days upon request of a party showing special circumstances or more than two business days upon request of a party showing extraordinary circumstances.

A completed Statement of Position form must be filed and served by the Employer such that is received by the other parties and the regional director by the date and time specified in the Notice of Hearing, which will generally be at noon of the business day before the pre-election hearing is set to open.

## **How to File a Representation Petition:**

An NLRB Information Officer can assist you in completing a petition form. If you complete the petition yourself, keep in mind these helpful tips:

- Effective April 14, 2015, petitions may be filed electronically at [nlrb.gov](http://nlrb.gov), where you can also access detailed filing instructions and all necessary forms.
- Know the job titles used by the Employer and the employee shift schedules.
- Provide the Region at the time the petition is filed with authorization cards (or other proof of interest) signed and dated by at least 30 percent of the employees in the petitioned-for unit.
- Be prepared to enter into a stipulated election agreement or to attend a hearing. The hearing is typically held 8 days from the filing date of the petition.
- Be prepared for the election to be conducted as soon as practicable after the election agreement or the hearing.

## **A Guide to the New R Case Rules**

### **The Statement of Position**

The Statement of Position solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. It will include:

1. A completed commerce questionnaire.
2. Whether the Employer agrees the proposed unit is appropriate and if not, the basis for its contention that the proposed unit is not appropriate and the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.
3. Any individuals whose voting eligibility the Employer intends to contest at the pre-election hearing, and the basis of each such contention.
4. Any election bar asserted by Employer.
5. Other issues the Employer intends to raise at the pre-election hearing.
6. The Employer's position on election details: type of election, date(s), time(s), location(s), payroll period information, and eligibility period.
7. Contact information for the Employer's authorized representative.
8. An alphabetized list containing the full names, work locations, shifts and job classifications of all employees in the petitioned-for unit. Unless the employer certifies that it does not have the capacity to produce the list in the required format, the list must be in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/what-we-do/conduct-elections](http://www.nlrb.gov/what-we-do/conduct-elections).
9. If the Employer claims the petitioned-for unit is not appropriate, it must also provide the full names, work locations, shifts and job classifications of all individuals the Employer claims must be added to the unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the petitioned-for unit to make it an appropriate unit.
10. If the Employer fails to timely furnish the list(s) of employees, the Employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing.

**Region 1/Subregion 34  
Representation Statistics -  
FY 2015:**

- 128 Representation elections were conducted.
- 91.4% of elections were achieved by way of an election agreement between the parties.
- 91.3% of elections were held within 56 days from the filing of the petition.
- Elections were conducted in a median of 37.5 days from the filing of the petition.
- 14 Regional Director Decisions in contested representation cases issued in a median of 36 days.

**A Guide to the New R Case Rules**

**Pre-Election Hearings**

The purpose of the hearing is to determine if a question of representation exists. Although an appropriate unit must always be established, disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted. The Regional Director has discretion to defer litigation of individual eligibility or inclusion issues until after the election, if necessary.

At the hearing, the Statement of Position is received into evidence and all other parties will respond on the record to each issue raised in the Statement of Position before introduction of further evidence. A party generally will be precluded from raising any issue, presenting evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response.

At the hearing, the Hearing Officer will solicit the parties' positions on the type, date(s), time(s), and location(s) of the election; the eligibility period; and the need for foreign language ballots or notices. The hearing officer will also solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the Region should transmit the Notice of Election if the Regional Director directs an election and will inform the parties of their obligations if an election is directed and the time for complying with such obligations.

Parties are entitled to oral argument but are not allowed to file post-hearing briefs unless the Regional Director grants special permission.

**Region 1/Subregion 34  
Unfair Labor Practice  
Statistics - FY 2015:**

- 1031 unfair labor practice charges were filed.
- 44 % of the charges were found to be meritorious.
- 90.4% of the meritorious cases were settled prior to hearing.
- Unfair Labor Practice hearings were held in a median of 82 days from the issuance of Complaint.
- \$1.26 million in backpay distributed to employees
- 21 employees accepted reinstatement to their former jobs, and 41 declined reinstatement.

**A Guide to the New R Case Rules**

**The Election and Post-Election Proceedings**

An alphabetized voter list must be *received* by the regional director and the parties within two business days after approval of the election agreement or issuance of the direction of election unless a longer time was specified in the agreement or in the decision and direction of election.

The voter list must contain the eligible voters' full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses and available home and personal cell phone numbers). Unless the employer certifies that it does not have the capacity to produce the list in the required format or the parties agree to a different format, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). A sample, optional form for the list is provided on the NLRB web-site at [www.nlr.gov/what-we-do/conduct-elections](http://www.nlr.gov/what-we-do/conduct-elections).

The voter list must also include in a separate section the same information for those individuals who will be permitted to vote subject to challenge based on the parties' agreement or the direction of election.

The Notice of Election will ordinarily be transmitted with the DD&E or sent promptly after the election agreement is approved. The Employer must post the Notice for at least 3 full working days (excluding Saturdays, Sundays and holidays) prior to 12:01 am on the day of the election and must also distribute it electronically if it customarily communicates with the employees in the unit electronically.

A party can generally challenge someone for good cause at the election whose eligibility was not contested at the hearing.

Objections must contain a short statement of the reasons for the objections and be accompanied by a written offer of proof. The party filing the objections must serve the objections, including the short statement of the reasons therefore, but not the offer of proof, on the other parties.

A hearing on objections or determinative challenges will be scheduled to open 21 days after the preparation of the tally of ballots or as soon as practicable thereafter, unless parties agree to an earlier date.

Exceptions to the Hearing Officer Report must be filed with the Regional Director.

Except in consent election agreement cases, all Regional Director post-election decisions will be subject to discretionary review by the Board.

**Contacte a la Region:**

Siempre hay un agente de guardia disponible entre las 8:30 a.m. y las 5:00 p.m. en la Oficina Regional de Boston o en la Oficina Subregional de Hartford, por telefono al 617-565-6710 (Boston) o al 860-240-3522 (Hartford) o en persona en el 10 Causeway St. en Boston o en el 450 Main Street, Hartford, para contestar preguntas generales que se refieren al lugar de trabajo o para discutir algun problema especifico del trabajo. El oficial de informacion puede ofrecer informacion acerca del NLRB y aconsejar, si es que es apropiado; archivar un cargo de practica laboriosa injusta. Si se archiva una peticion que aparece inapropiada, el agente de informacion le asistira a llenar el formulario del cargo o la peticion.

Tambien hay informacion disponible en la pagina electronica de informacion de la Junta, al [www.nlr.gov](http://www.nlr.gov), la cual tiene una conexion a la Oficina Regional de Boston y a las paginas de la Oficina Subregional de Hartford, cuales paginas proporcionan notas de informacion, noticias y casos locales asi como decisiones tomadas.

**Region 1 Professional Staff Directory**

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**Subregion 34 Professional Staff Directory**

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