

NLRB REPRESENTATION CASE PROCEDURES

Final Rule published August 25, 2023

Comparison of Prior and New Representation Case Procedures

Prior Representation Case Procedure under 2019 Rule	New Representation Case Procedure under 2023 Rule
1. Pre-election hearings generally are scheduled to open 14 business days from service of the Notice of Hearing. Sec. 102.63(a)(1).	1. Pre-election hearings generally are scheduled to open 8 calendar days from service of the Notice of Hearing. Sec. 102.63(a)(1).
2. Regional directors can postpone a pre-election hearing for an unlimited amount of time upon request of a party showing good cause. Sec. 102.63(a)(1).	2. Regional directors can postpone a pre-election hearing for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. Sec. 102.63(a)(1).
3. A nonpetitioning party's Statement of Position is due to be filed 8 business days after service of the Notice of Hearing. Sec. 102.63(b).	3. A nonpetitioning party's Statement of Position is normally due 7 calendar days after service of the Notice of Hearing. Sec. 102.63(b).
4. Regional directors can postpone the due date for the filing of a Statement of Position for an unlimited amount of time upon request of a party showing good cause. Sec. 102.63(b).	4. Regional directors can postpone the due date for the filing of a Statement of Position for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. Sec. 102.63(b).
5. A petitioner must file and serve a responsive written Statement of Position 3 business days prior to the pre-election hearing. Sec. 102.63(b).	5. A petitioner must respond orally to the nonpetitioning party's Statement of Position at the start of the pre-election hearing. Sec. 102.66(b).
6. An employer has 5 business days after service of the Notice of Hearing to post and distribute the Notice of Petition for Election to inform its employees. Sec. 102.63(a)(2).	6. An employer has 2 business days after service of the Notice of Hearing to post and distribute the Notice of Petition for Election to inform its employees. Sec. 102.63(a)(2).

<p>7. Individual eligibility and inclusion issues are normally to be litigated at the pre-election hearing and resolved by the regional director prior to the election.</p> <p>Sec. 102.64(a).</p> <p><i>[This provision from the 2019 rule never took effect. It was enjoined by order of the district court prior to its effective date. When that injunction was lifted, the Board stayed its effective date until the date it was repealed.]</i></p>	<p>7. Individual eligibility and inclusion issues ordinarily do not need to be litigated or resolved prior to the election, and regional directors have authority to exclude evidence that is not relevant to determining whether there is a question of representation.</p> <p>Sec. 102.64(a); 102.66(a), (c).</p>
<p>8. Parties are entitled to file post-hearing briefs with the regional director following pre-election hearings and with the hearing officer following post-election hearings up to 5 business days following the close of the hearing, with an extension of an additional 10 business days available upon a showing of good cause.</p> <p>Sec. 102.66(h); 102.69(c)(1)(iii).</p>	<p>8. Parties may file post-hearing briefs only with the regional director’s special permission (following pre-election hearings) or hearing officer’s special permission (following post-election hearings) and within the time and addressing only the subjects permitted by the regional director or hearing officer.</p> <p>Sec. 102.66(h); 102.69(c)(1)(iii).</p>
<p>9. Regional directors <i>may</i> specify the election details (the type, date(s), time(s), and location(s) of the election and the eligibility period) in the decision and direction of election.</p> <p>Sec. 102.67(b).</p>	<p>9. Regional directors <i>will ordinarily</i> specify the election details (the type, date(s), time(s), and location(s) of the election and the eligibility period) in the decision and direction of election and <i>shall ordinarily</i> simultaneously transmit the Notice of Election with the decision and direction of election.</p> <p>Sec. 102.67(b).</p>
<p>10. There must normally be a waiting period of 20 business days before an election can be held following issuance of a decision and direction of election.</p> <p>Sec. 102.67(b).</p> <p><i>[This provision from the 2019 rule never took effect. It was enjoined by order of the district court prior to its effective date. When that injunction was lifted, the Board stayed its effective date until the date it was repealed.]</i></p>	<p>10. There is no mandated waiting period between the issuance of a decision and direction of election and the election; instead, regional directors shall schedule elections for the earliest date practicable.</p> <p>Sec. 102.67(b).</p>