



April 18, 2018

via [nlrb.gov](http://nlrb.gov)

Honorable Roxanne Rothschild  
Deputy Executive Secretary  
National Labor Relations Board (NLRB)  
1015 Half Street SE  
Washington, DC 20570

**Re: Representation Case Procedures;  
29 CFR Parts 101 and 102; RIN 3142-AA12**

Dear Ms. Rothschild:

The National Automobile Dealers Association (NADA) represents over 16,800 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together they employ over 1,135,000 people nationwide, yet the majority are small businesses as defined by the Small Business Administration.

On December 15, 2014, the NLRB published a final Election Rule, which amended existing union election procedures. 79 Fed. Reg. 74308 (2014). NADA filed comments during the 2014 comment period, opposing a number of proposed changes.

On December 14, 2017, the NLRB requested comment on three questions involving the amended Election Rule:

1. Should the 2014 Election Rule be retained without change?
2. Should the 2014 Election Rule be retained with modifications? If so, what should be modified?
3. Should the 2014 Election Rule be rescinded? If so, should the Board revert to the Representation Election Regulations that were in effect prior to the 2014 Election Rule's adoption, or should the Board make changes to the prior Representation Election Regulations? If the Board should make changes to the prior Representation Election Regulations, what should be changed?

In response, NADA is pleased to offer the following comments in response.

### **The 2014 Election Rule Should Not Be Retained, Even with Modifications**

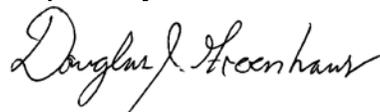
Among the many other things, the Election Rule has undermined the rights of employers by severely compacting the time employers have to communicate with employees on potential union organizing activities. This shortened time period is especially burdensome on small businesses like dealerships that need to seek out and retain outside resources to learn the basics of NLRB procedures generally and the "ins and outs" of election procedures specifically. The 2014 Election Rule failed to preserve a level playing field between employers and employees with regards to election procedures, nor did it do anything to protect the free speech rights of employers and

unions alike by preserving the ability of employees to fully consider all issues prior to casting an informed ballot. In short, the 2014 Election Rule so substantially changed the election procedures requirements, which had been relied upon for nearly 50 years, that the only option that the NLRB should consider is to issue a new rulemaking to rescind the 2014 changes and to modernize the election procedures without undermining the rights of employers. In adopting the 2014 Election Rule, the NLRB relied on a premise (without adequate rationale) that representation elections should be expedited at all costs. However, prior to the issuance of the 2014 Election Rule, the median time between the filing of a petition and an election was only 37 days<sup>1</sup>. The data suggests that prior to the 2014 Election Rule, employees did not wait an unreasonable length of time for elections to occur and that employers had adequate time to respond to election petitions. Unlike unions, which exist and are staffed specifically to organize employees and are constantly prepared for representation elections, small business employers like dealerships, are not staffed to respond to union campaigns. Gathering and analyzing the information necessary to fully respond to a full-throated unionization campaign typically takes more time than what is afforded by the 2014 Election Rule.

the 2014 Election Rule substantially changed the personal information disclosure required by employers under *Excelsior Underwear* for nearly 50 years. Employers now required to include the following employee information in an election eligibility list: personal email addresses, home phone numbers, personal cell phone numbers, work locations, shifts, and job classifications.<sup>2</sup> Employers must provide this additional personal information despite the drastically shortened time to respond to the petition. A revised rule must assure that these additional personal disclosure information mandates must be protected by the parties in the election.

On behalf of NADA, I thank the NLRB for the opportunity to comment on this matter.

Respectfully submitted,



Douglas I. Greenhaus  
Chief Regulatory Counsel  
Environment, Health and Safety

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<sup>1</sup> 77 Fed. Reg. 25548 (2012)

<sup>2</sup> 79 Fed. Reg. 74335 (2014)