



April 18, 2018

Via Electronic Submittal

**Roxanne Rothschild, Deputy Executive Secretary
National Labor Relations Board
1015 Half Street SE,
Washington, DC 20570**

**Re: Response of Western Electrical Contractors Association, Inc. to NLRB
Request for Information Concerning Election Regulations**

Dear Ms. Rothschild:

Western Electrical Contractors Association, Inc. (WECA) was formed in 1984 to serve the needs of electrical contractors in the central valley of California and has since become a statewide organization serving over 250 electrical and low voltage contractors and 1,200 electricians, apprentices, and trainees. WECA sponsors federal- and state-approved apprenticeship training programs that have graduated over 1,177 apprentices, and operates an electrical trainee program and electrical Certified Journeyman continuing education programs.

On average, WECA members employ a total of approximately 6000 employees. The median number of electricians employed by these members is 70. Many of our members are family-owned businesses handed down from generation to generation.

Most of WECA's members are merit shop and were directly impacted by the Board's revised representation case procedures in 2014 (2014 Rules). Their major concerns with the 2014 changes are that small to medium sized contractors find it extremely difficult to comply with the new rules. Their ability to communicate with their employees during the compressed election



cycle is substantially eroded. In responding to the Board's Request for Information concerning the 2014 Rules, WECA, on behalf of its members, will concentrate on these issues, although there are other aspects of the Rules with which it disagrees.¹

Difficulty Complying with the New Rules

As you know, among other limitations and responsibilities, employers are given only 2 business days to post the Notice of Petition for Election and 8 days to prepare for a pre-election hearing. During this limited time period, employers are to arrange for legal representation, learn about the "do's and don'ts" under the National Labor Relations Act, figure out how to lawfully communicate with its employees, and talk to their employees who naturally want to hear from them, while at the same time dealing with the legal issues of completing the Statement of Position, and preparing for the Hearing.

The Statement of Position has become a complicated form, worse than some tax forms. A layperson cannot complete it accurately and attempting to do so is done at his or her own peril. Small to medium sized electrical contractors do not deal with "bargaining units" let alone appropriate or inappropriate units. They may employ workers who dig and fill trenches with a backhoe or shovels, pour concrete and slurry, install concrete vaults, carry and install conduit, bend conduit, load and unload electrical fixtures, move wire by forklift and by hand, make electrical connections, splice wire, demolish and repair walls, landscape, and clean the jobsite, to name some of their daily activities. Completing the Statement of Position and providing information on bargaining units, classifications, inclusions, and exclusions is daunting, with grave consequences if completed inaccurately. This cannot and should not be done without legal assistance.

One of the most critical issues for electrical contractors is determining whether their lead persons and forepersons are in or out of the bargaining unit. The 2014 Rules fail to give this issue the importance it deserves. Since the statements and actions of its statutory supervisors are imputed to the employer, an employer finds itself without an answer or even guidance as to whether these workers are management who can speak on its behalf, or

¹ Our members report their employees do not want their personal information to be released to third party labor organizations without their written consent. We trust you have received information from employee groups explaining why this invasion of privacy is troubling from both legal and practical standpoints.



rather, are part of the unit and eligible to vote. The 2014 Rules place electrical contractors on the proverbial “horns of a dilemma” – damned if they speak to workers as part of management – damned if they don’t educate them and they commit unfair labor practices. This issue must be resolved in the pre-election stage.

The Statement of Position has been drafted for the convenience of the Board which is a mistake because the Board should design its forms and procedures to benefit employees, employers and labor organizations. Determining which workers should be included or excluded from bargaining units is not a science and should be not treated as such. Worker classifications and eligibility needs to be discussed in a non-threatening manner. Requirements such as the use of Microsoft Tables, specific font size, and other formulaic rules to report worker classification and eligibility information does not facilitate the representation process. Preventing an employer from litigating eligibility issues before the election, punishing them by not allowing evidence if an issue is not properly raised in the Statement of Position, or preventing them from determining the appropriate bargaining unit because of technical difficulties with the Statement of Position, only causes grave frustration for an employer and often wariness that these Rules are designed to be trap for the unsuspecting. The representation process should not become a “gotcha game.” Our members have and will continue to comply with their legal obligations, but the Board should provide to all parties, including employers, the assistance and flexibility necessary to provide useful and relevant information without pain of being foreclosed on or precluded from participating in a fair representation process.

For government organizations or large employers, complying with formalistic rules and constrained timelines is merely a challenge in allocating resources. For our members, taking on these legal responsibilities, while at the same time running their businesses, is neither practical nor feasible. They have no staff attorneys whose duties include responding to Petitions or other government mandates. In many cases, there are no human resource departments with skill in handling NLRB matters. They do not have the financial ability to pay outside consultants and attorneys to work in an expedited fashion. Our members start with no knowledge or experience in the representation process and must become educated within an inadequate period of time. This is quite literally impossible.

It was explained to us that these rule changes were made because “justice delayed is justice denied.” Most litigation is backward looking, but that is not the case in representation cases. Here, we are talking about elections that will



affect the futures of employees and employers. The emphasis should be on getting it done right, not merely on getting it done quickly.

WECA recommends that significant eligibility issues such as determining whether a worker is a statutory supervisor be litigated in the pre-election phase to clarify not only who is in the unit but also who may speak for management. The Statement of Position should also be modified to allow employers enough time to understand and participate in the representation process and to change their opinions on legal issues without fear of losing their legal rights. Finally, hearings should be used to investigate and come to fair conclusions about eligibility and unit issues. Straightjacket rules that hamper a free flow of information and diminish discussion do not achieve this goal.

On behalf of our members, WECA wishes to thank the Board for the opportunity to present its views in its response to the Board's Request for Information.

Sincerely,

A handwritten signature in cursive script that reads "Terry Seabury".

**Terry Seabury,
Executive Director, CEO**