



Lessons from Boeing's union election victory in Charleston

Articles / Publications

04.05.2017

Many of you already know about Boeing workers soundly rejecting the Machinist Union's effort to represent approximately 2,800 employees at Boeing's Charleston facility. Seventy-four percent of voting employees desired to keep the facility union-free. The vote certainly dealt a blow to labor unions' efforts to expand their ranks in the private sector. The history of the union's organizing effort will shed light on several points all employers should be aware of.

Union seeks members

Boeing built the final assembly line for its Dreamliners in South Carolina. At least one reason for the move was to avoid strikes like the ones that brought work to a halt at its Puget Sound facility in Washington, where the union represents the workforce. South Carolina is a right-to-work state (i.e., employees do not have to be union members and pay union dues if a union represents workers in the group to which the employees belong) and has a union membership rate of approximately 1.6 percent of the workforce. Obviously, that translates into an environment that supports good employer-employee relations without the necessity for a third party in the relationship. That held true in the Boeing vote.

In 2015, the union filed a petition with the National Labor Relations Board (NLRB) asking for a secret-ballot election at the Charleston plant. The union withdrew the petition later that year, claiming that an antiunion campaign and political pressure by then-Governor Nikki Haley made it impossible to go forward with the election at that time. The withdrawal, however, came after the union received the so-called Excelsior list containing the contact information for

RELATED CAPABILITIES

Labor & Employment

Lessons from Boeing's union election victory in Charleston

all employees in the group or unit who were eligible to vote. Access to the list allowed the union to meet with employees and continue its efforts to convince them that it would be helpful in dealing with Boeing over wages, benefits, and other terms and conditions of employment. Even though there was a waiting period before the union could refile its petition, it had the advantage of an election being held under the expedited election procedures adopted by the NLRB, which had a majority of its members appointed by President Barack Obama.

Expedited election process

The expedited election process provides a number of features that reduce the amount of time between a petition and an election. Those features include:

- Election petitions, election notices, and voter lists can be transmitted electronically. NLRB regional offices can deliver notices and documents electronically rather than by mail.
- Parties receive a more-detailed description of the NLRB's representation case procedures as well as a "Statement of Position" form when served with a petition. The statement of position helps parties identify issues they may want to raise at the preelection hearing. A Notice of Petition for Election, which is served with the Notice of Hearing, provides employees and the employer information about the petition and their rights and obligations. The Notice of Election provides prospective voters more-detailed information about the voting process.
- The NLRB regional director generally sets the preelection hearing to begin eight days after the hearing notice is served and the postelection hearing 21 days after the tally of the ballots.
- Nonpetitioning parties are required to identify any issues they have with the petition in their statements of positions, generally one business day before the preelection hearing opens. The petitioner is required to respond to issues raised by nonpetitioning parties at the beginning of the hearing. Litigation that is inconsistent with the positions generally is not allowed.
- As part of its statement of position, the employer must provide a list of prospective voters with job classifications, shifts, and work locations to the NLRB's regional office and the other parties, generally one business day before the preelection hearing opens. That process helps the parties reduce the number of issues in dispute at the hearing or enter into an election agreement.
- The purpose of the preelection hearing is clearly defined, and parties generally litigate only issues that are necessary to determine whether it is appropriate to conduct an election. Litigation of a small number of eligibility and inclusion issues that do not have to be decided before the election may be deferred until after the election. Those issues often are made moot by the election results.
- The parties are provided an opportunity to argue orally before the close of the hearing, and written briefs are allowed only if the regional director determines they are necessary.
- The parties may wait to see whether the election results make the need to file a request for a review of the regional director's preelection decision unnecessary. The parties do not waive their right to seek a review of the decision if they decide to file a request after the election.

Lessons from Boeing's union election victory in Charleston

- There are no automatic stays of an election.
- The Board is not required to review the regional director's postelection decisions regarding which party has raised an issue and may deny review consistent with the discretion it has long exercised in reviewing preelection rulings.
- The voter list includes employees' personal phone numbers and e-mail addresses (if available to the employer). The employer must submit the list within two business days of the regional director's approval of an election agreement or decision directing an election.

In addition to the expedited election rules, the NLRB has issued decisions that allow for so-called mini- or microunits within a group of employees at a company. For instance, a company may have a shift in which the employment relationship is simply not very good, but all other shifts for the same group or class of workers are fine. A union can now carve out a shift or a smaller group of employees and gain a toehold in a company if it is successful in an election. Those standards will stay in effect at least until a new Board is appointed over the next several years by the Trump administration.

Bottom line

There are several important takeaways from the Boeing vote. First, the company did an excellent job of educating its entire workforce on why it made more sense to maintain a union-free status at the facility. Second, it demonstrated that using a solid approach to dealing with wages, benefits, and other terms and conditions of employment and consistently and continuously communicating that message in a positive way translate into not having to play catchup when a union petition hits your company. The bottom line is, using good HR practices every day is a-if not the-key factor in keeping a union-free environment.

For more information on the BLR, [click here](#). For more information on the South Carolina Employment Law Letter, [click here](#).