



Ambush Rulemaking, Email

New NLRB – New Challenges



www.lrionline.com



Agenda

- NLRB Update
 - Ambush Election Rulemaking
 - Purple Communications
- Next Actions for Employers
 - Preparation for Ambush Elections
 - Email best practices



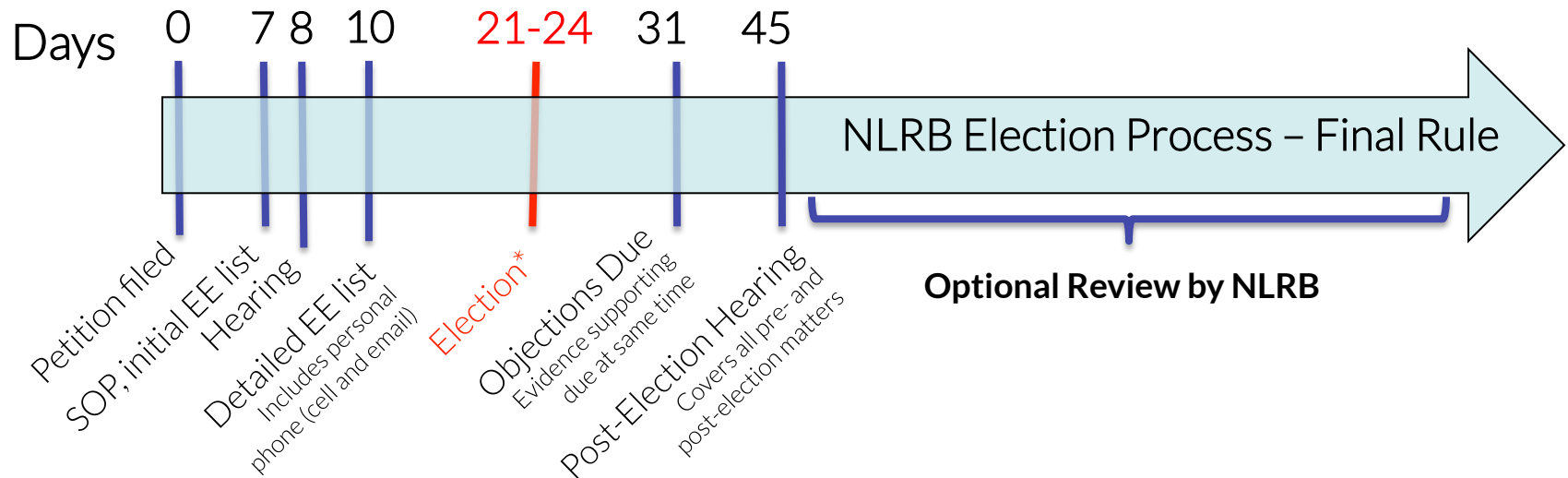


What's Happening?

- NLRB adopted Final Rule on Ambush Elections
 - Published in FR on 12/12
 - Goes into effect on 4/14/15
 - Likely to face legal challenge
 - Republicans are threatening to block funding
- Purple Communications
 - Published 12/11
 - Overturns *Register Guard*



"Send lawyers, guns and money to get me out of this." Warren Zevon



Key Changes:

- Petition: electronic, served on parties, must include show of interest at filing
- Notice: Employer required to post pre-election notice
- Show of interest: GC asked to consider *electronic* showing of interest
- Employee list: name, job class, shift, work location due *1 day prior* to hearing; address plus *personal* phone (cell) and email address, due *2 business days* after unit determination
- Unit hearing: only to determine if election appropriate – all other issues deferred – did *not* adopt the “20% rule”, RD and Hearing Officer have broad discretion

* Note: Election period can be shorter if union waives 10-day rule on voter list. Rulemaking does not mandate an election within a certain period of time.



Other Issues

- Employee privacy
 - Use of disclosed information (phone, email) limited to representation case matters
 - No specific penalty for non-compliance
- Electronic signatures
 - Board says they are OK
 - Asks GC to suggest practical way to accept



Purple Communications

- Overturns *Register Guard*
- Presumption that employees with email access have right to solicit using employer email system during non-work time
 - Non-employees can still be restricted from *employer* email
 - Employer can only limit access for employees with special circumstances
- Can monitor email communication
- Applies retroactively



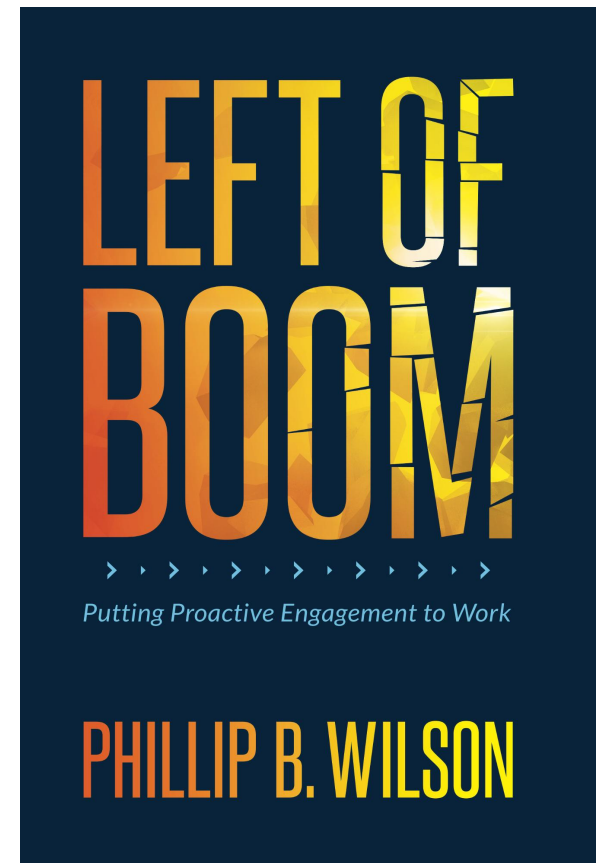
Next Actions for Employers

- Watch the legal challenges, but assume the rule is happening
- Review email policy
 - Assume it can be used for organizing
 - Key issue: discrimination for limitations during work time
- Ambush preparation
 - Review last webinar
 - Risk assess (internal and external)
 - Prepare defense team
 - Tripwire™ Training for first level leaders
 - Approachability training (<http://ApproachableLeadership.com>)



Shameless Plug

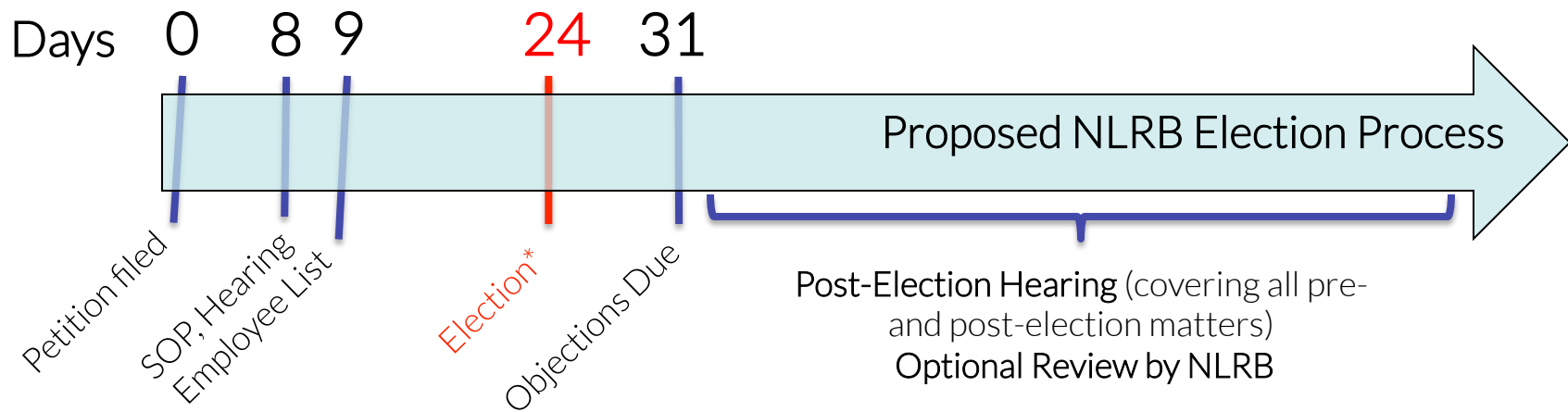
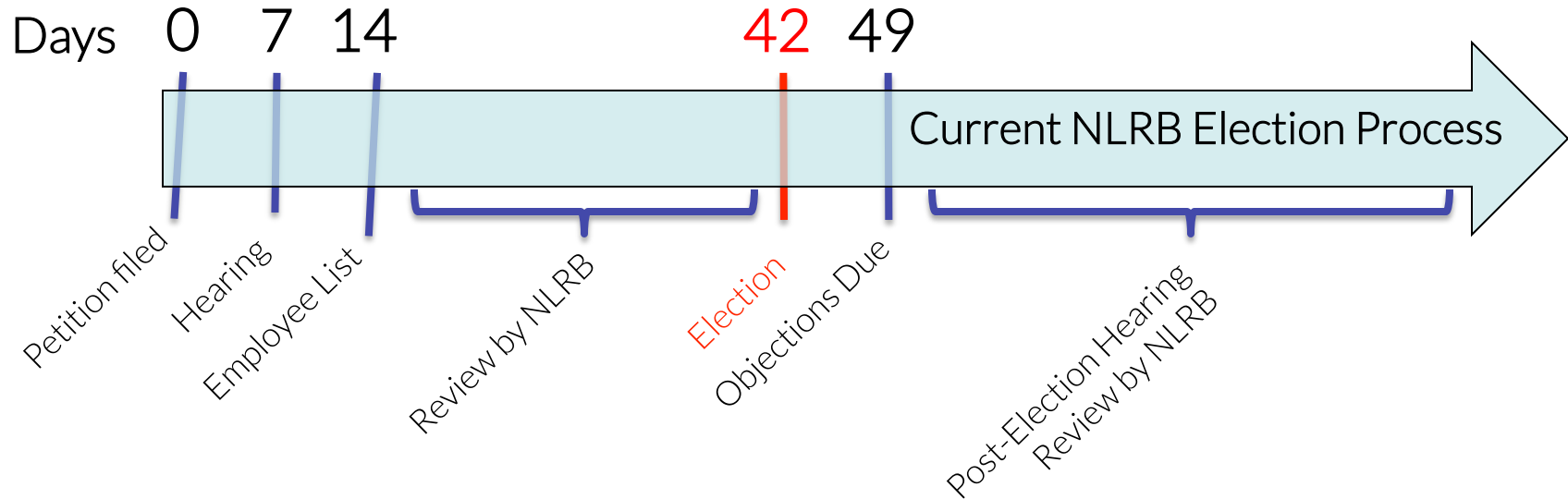
- Available at Amazon.com
- Paperback or Kindle version
- Covers in-depth the suggested ambush response
- Makes a great door-stop or sleep aid!





Next Actions

- Schedule a demonstration of Campaign in the Cloud toolbox: 800-888-9115
- Watch the Approachable Leadership™ keynote: ApproachableLeadership.com
- Download free Tripwire Sample (Under Hot Topics on LRIonline.com)

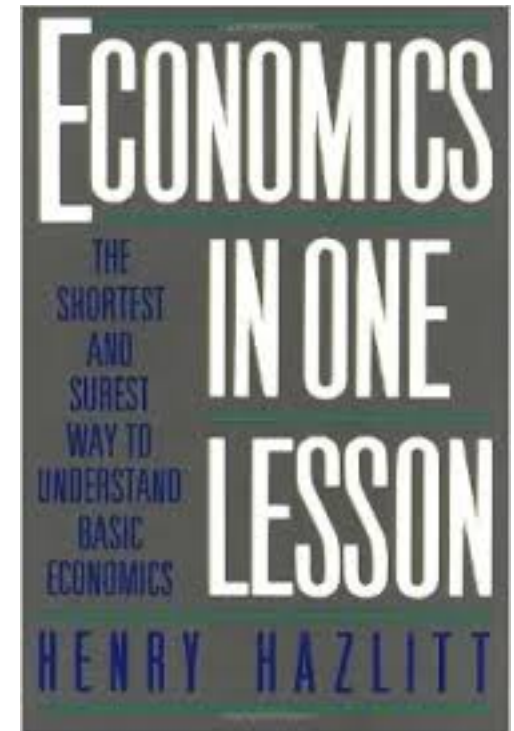


* Note: Election period can be shorter if union waives 10-day rule on voter list. Rulemaking does not mandate new targets, only makes them possible



Micro Units

- “One Lesson” – unintended consequences
 - Fractures bargaining units
 - Unions win battles, lose war
- What should I do?
 - Unit analysis
 - Segment vulnerability assessment by potential micro-units
 - Ultimately doesn't change overall Left of Boom strategy





Joint Employer

- GC McDonald's Memo
 - Authorizes complaints as “joint employer” with franchisee
 - Actual memo hasn't surfaced
 - Analysis from *Browning-Ferris*
 - GC wants “direct or indirect control” standard
- Applies to temps, contractors

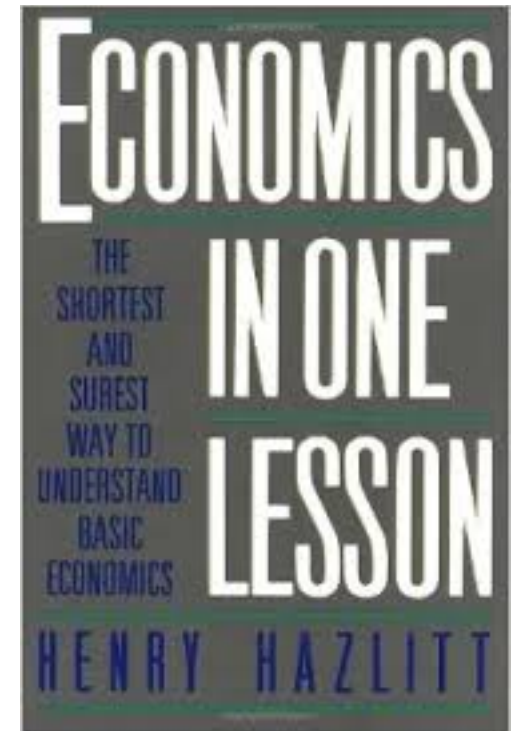


“Gonna raise hell at the union hall... Rip this joint, gonna save your soul, round and round and round we go” Rolling Stones



Joint Employer

- “One Lesson” - unintended consequences
 - Limits “sideline” behavior of franchisor
 - Increases resources, consistency of response
 - Increases unit sizes (bad for union) but multiplies targets (also bad for union)
 - Pokes the bear





Noel Canning

- SCOTUS: 2012 recess appointments invalid
- NLRB
 - “Around 100 cases” to re-review
 - July 18, 2014 - NLRB ratifies recess actions
 - Is this valid?
 - Memo and press release don't jive
 - Representation case and ULP decisions?



“When I am king you will be first against the wall, with your opinion which is of no consequence at all.” Radiohead



Winning Ambush Elections

- Risk assessment
- Structuring your Defense Team
- What to train frontline leaders
- Campaign In the Cloud (CITC)

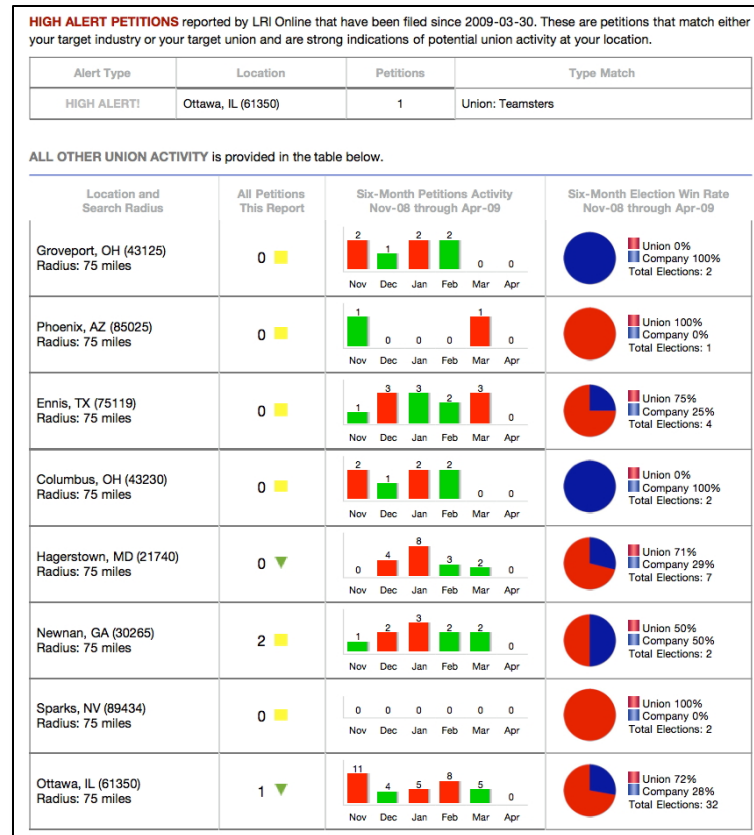


"It's a shootout at the plantation, it's so hard to understand." Leon Russel



External Risk Assessment

- Eye in the Sky
- Site labor climate assessment
- Site selection



"I'm on the outside" Oingo Boingo



Internal Risk Assessment

- Engagement Research
- Manager Interview (MDI process)
- Focus Groups

Highly Confidential	
The overall employee relations vulnerability Internal Organizing Vulnerability	
Informal Leadership <i>Low Vulnerability</i>	The informal leadership assessment refers to employees within and these leader's affiliation with your organization. Of your informal leader ratio of promoters to detractors is such that if a finding developing a union leadership base in your organization.
Affiliation Analysis <i>Low Vulnerability</i>	This portion of the assessment evaluates those members within affiliated with your organization or not. Employee who have a high of concern. Of this group, 71% are promoters, 27% are neutral, and workforce with a high need for affiliation are not predisposed to list
Work Demand <i>Moderate Vulnerability</i>	Work demand assesses the internal pressure placed on your work become less affiliated with an organization. When work demand is i jobs. Based on the data collected for your organization, work demand is moderately imbalanced across jobs and a job duty review
Work Control <i>High / Moderate Vulnerability</i>	Work control assesses the internal flexibility your workforce has too little or too much work control tend to become less affiliated with is possible to demand more of employees if they have the flexibility collected for your organization, work control is outside an optimal range
Achievement Analysis <i>Low Vulnerability</i>	This category assesses those members within your workforce who Employee who have a high need for achievement but are not performers group, 86% are promoters, 14% are neutral, and 0% are detractors need for achievement are predisposed to listening to a union message
Power Analysis <i>Low Vulnerability</i>	This category assesses those members within your workforce who power but are not able to direct work groups or teams or have little group, 78% are promoters, 22% are neutral, and 0% are detractors need for power are predisposed to listening to a union message and



Deep Dive Risk Assessment

- Deep Dive process for high-risk locations
 - Great use for Defense Team
 - Includes focus group, structured interviews, structured observations

Communications	1 or 2	3	4 or 5	Notes
Do you have an Open Door policy? If yes, how frequently do employees use it? (Ask for a recent example of an employee using the process).				
Comment on any processes available to employees for making suggestions, or raising complaints.				
How effective are managers/supervisors in promptly responding to employee complaints or suggestions?				
To what extent are the ideas and opinions of employees sought or listened to beyond formal processes such as the annual Global Employee Survey?				
How effective are supervisors in keeping employees informed of work-related matters that impact them?				
What communication process do you use to keep employees informed about the Company strategy, business conditions, and plant performance?				
Comment on the visibility of management to employees. How frequently do managers and supervisors walk the plant floor?				
Overall Rating				

"I'm in too deep" Matthew Sweet



Defense Team

- Big Mistake: Training too much
- Limit scope to what team will actually be asked to do
 - deep dive assessment
 - work disruption
 - PCA intervention
 - Cardsigning material from CITC
- Save everything else for Just in Time training





Benefits of Limiting Training

- Increased skill
 - More “reps” and practice
 - No overload
- Lower cost
 - Reduces overall training time
 - Saves resources for follow up training
- Higher ROI
 - Focus on skills that will actually be used



Training First Level Leaders: Tripwire™

- Tripwire Training
 - Don't try to make labor lawyers
 - Focus on noticing behavior change
- Two actions
 - Ask “what’s up?”
 - Escalate





Ambush Election Rulemaking

- Before December 2014
 - Nancy Schiffer term expires
- After mid-term elections (probably)



"You're going to make me lonesome
when you go" Bob Dylan



Training First Level Leaders: Approachable Leadership™

- “One Ring” of leadership
- Research-based leadership model
 - “Happiness has pit stains”
 - Environment that encourages OCB
- 3 simple questions:
 - Do you have what you need What would make work better Where are you going?
 - More at *ApproachableLeadership.com*



“I’ve got a question for you.” Rhett Miller



Campaign in the Cloud (CITC aka Campaign in a Box)

- Pre-built
- High-impact (animation, videos, documents)
- Legal – Updated regularly
- Union-specific, translated
- Easy to modify (PowerPoint) message “packets”
- Step-by-step communication plan
- Pre-staged securely on the web





Campaign in the Cloud

Union Spending: Your Dues Dollar

Spending on Individual Members

you pay \$300.00 dues/year

DUES RECEIPT	
OFFICIALS'	\$45.00
S'	\$16.00
S	\$28.00
TIONS	\$1.00
	\$1.00
PENDING	\$5.00
MEMBERS \$0.00	

Teamsters International (IBT)
based on Department of Labor 2016 LM-2 filing

No refunds, no returns!

A stack of US dollar bills is shown, with a \$100 bill prominently displayed in the foreground. A red circle highlights the text 'you pay \$300.00 dues/year' overlaid on the bills.



Campaign in the Cloud





Other Ambush Tips

- Speed is the key
 - Everything prepared in advance
 - Only time for minor tweaks
- Fewer days = no room for error
 - Almost no time for fence-mending
 - Consider use of campaign experts
 - Make sure to select now
 - Have more than one identified

