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**LABOR ORGANIZING AND ACTIONS DURING THE CORONAVIRUS CRISIS:
UNION ELECTIONS AND ORGANIZING IN THIS NEW, UNPRECEDENTED, AND
UNCHARTED TERRITORY**

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**MAIL-BALLOT
UNION ELECTIONS –
THE NEW NORMAL**

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Manual-Ballot Union Elections – The Old Normal

In pre-COVID-19 National Labor Relations Board elections, manual-ballot, in-person elections were the norm.

In normal pre-COVID-19 National Labor Relations Board elections, employees manually cast their ballots in the privacy of an election booth, policed by an NLRB agent to ensure that the balloting is confidential and free of any coercion.

Employer and union representatives are present but the location must be free of campaign materials or activity.

Typically, the election booth is located at the workplace, which is normally the most accessible location to all employees and facilitates their ability to participate without disrupting their normal workday schedules.

Mail-Ballot Union Elections – The New Normal

Prior to COVID-19, mail ballots were used sparingly by the Board, and only in unusual circumstances.

Until COVID-19 conditions improve, mail ballots will be the normal procedure.

In all 30+ cases in April and May 2020, regional directors in regions 2, 5, 13, 16, 18, 27, 28, and 32 (and counting) have ordered mail-ballot elections.

These mail-ballot elections often come at the objection of the employer.

In one case, Phoenix New Times, LLC, Case No. 28-RC-254936 (April 15, 2020), the regional director ordered a mail-ballot election unilaterally due to COVID-19 concerns, despite both parties' desire to proceed manually.

Policy and Process Concerns with Mail-Ballot Elections

In 1994, when then NLRB Chairman William Gould proposed that the Board expand the situations in which mail ballots were to be used, many of the strongest comments in opposition were filed by NLRB regional office officials



Protection

The presence of a Board agent at an election gives employees a greater sense of security that their rights are being preserved.



Participation

Mail balloting has a lower participation rate than regular, manual-ballot elections.

If the voter is confused or uncertain about the process, there is no official agent available to answer their questions, increasing the likelihood that he or she will procrastinate and “find it easier to not vote.”



Orderliness

Mail ballots lack a procedural orderliness and the potential for interference by either party increases the likelihood of a second election needing to be conducted because of misconduct. By including ballots with other “junk mail” that employees typically receive, it “dilutes the seriousness of the process.”

Key Takeaways for Employers

1

Any employer that believes that it may be vulnerable to union organizing during COVID-19 should now begin gathering evidence in support of its best argument in favor of a regular manual-ballot election (or for otherwise delaying the election).

2

Because union elections are now processed in a matter of weeks, if you wait until a petition is filed, it will be too late.

3

Otherwise, because the Board has now signaled its desire to review mail-ballot procedures in the next appropriate case, and that case may very well be yours, all employers should take careful steps to preserve all available arguments during election proceedings.

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**THE ROLE OF COVID-19 IN
THE CURRENT REVIVAL OF
WORKER/UNION ACTIVISM**

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Unions are capitalizing on COVID-19 virus fears.

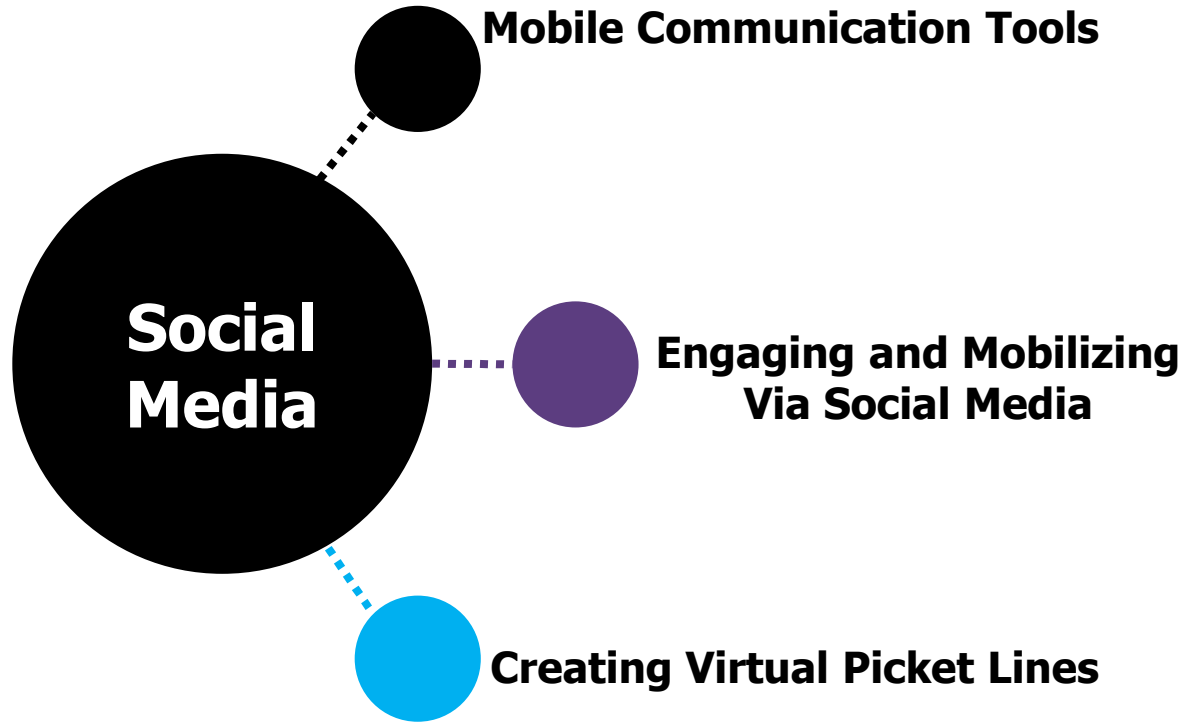
Unions and surrogates have developed organizing playbooks tailored specifically to COVID-19.

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- 1) You must talk to EVERYONE about The Plan
 - a. Find an "organizer" in each department (work station, aisle, shift)
 - b. Ideally, about one organizer per 10 co-workers
 - c. That's your "organizing committee"
- 2) **Agitate:** "This pandemic is life and death. If not for you, for a co-worker, for your family, for their family, for our customers."
- 3) **Explain the Plan**
 - a. Set up a text message group (WhatsApp or whatever works) for each department and for the organizing committee
 - b. Everyone agree to report if they have symptoms
 - c. Everyone agree to help investigate who was in close contact with the infected co-worker
 - d. Everyone who was in close contact agree to immediately self-quarantine for 14 days
 - e. Insist that management deep clean the facility if there is a confirmed case
 - f. Work out the "paperwork" later

DON'T WAIT for testing, doctor's orders, CDC/local health authorities, USPS Nurse, type of leave, notifying management).
- 4) Get **agreement** from each person, get their name, worksite, shift, and phone number for the text network.
- 5) **Follow up.** When a co-worker has symptoms,
 - a. Did they report to all? Did contacts self-quarantine? Did management deep clean?
 - b. Did management retaliate against anyone? How do you respond together?
 - c. Who needs to talk to whom to strengthen the solidarity?
 - d. Do you need to organize for a "refusal to work in dangerous conditions" if management doesn't deep disinfect?
 - e. Keep the network together for the next struggle.

Workers/unions are increasingly leveraging social media to organize and mobilize workers.



Employer Responses to Union-Organizing Efforts

Physical distance from workplaces/supervisors makes conventional methods of taking the temperature of the workforce obsolete.

Employers must find new ways to fully engage and connect with workers in efforts to measure the risk of union penetration.

Employees working now and those coming back to work soon will have one overarching concern: safety. Make sure you're doing everything to address it.

Key Takeaways for Employers

1

Take serious and credible steps to instill worker confidence about the scope and depth of the employer's coronavirus response.

2

Develop a sustained, fully integrated strategy to minimize vulnerability and maximize positive employee relations.

“New New” NLRB Election Rules – Coming Soon!

New NLRB election rules go into effect May 31, 2020.

HEARINGS

Old: limited ability to litigate scope of unit, eligibility, and supervisory status pre-election

New: much broader ability to litigate these issues pre-election

Takeaway: employers have better ability to shape voting unit; may be able to push election to post-pandemic

TIMING OF ELECTION

Old: as soon as practicable

New: RD may not schedule election before 20th business day after issuance of DDE

Takeaway: if employer goes to hearing, likely to have at least a month before election

BALLOTS

Old: typically counted immediately following election, even if request for review filed

New: ballots impounded if RFR filed within 10 business days of DD&E

Takeaway: will result in many more instances of impounded ballots

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CORONAVIRUS COVID-19



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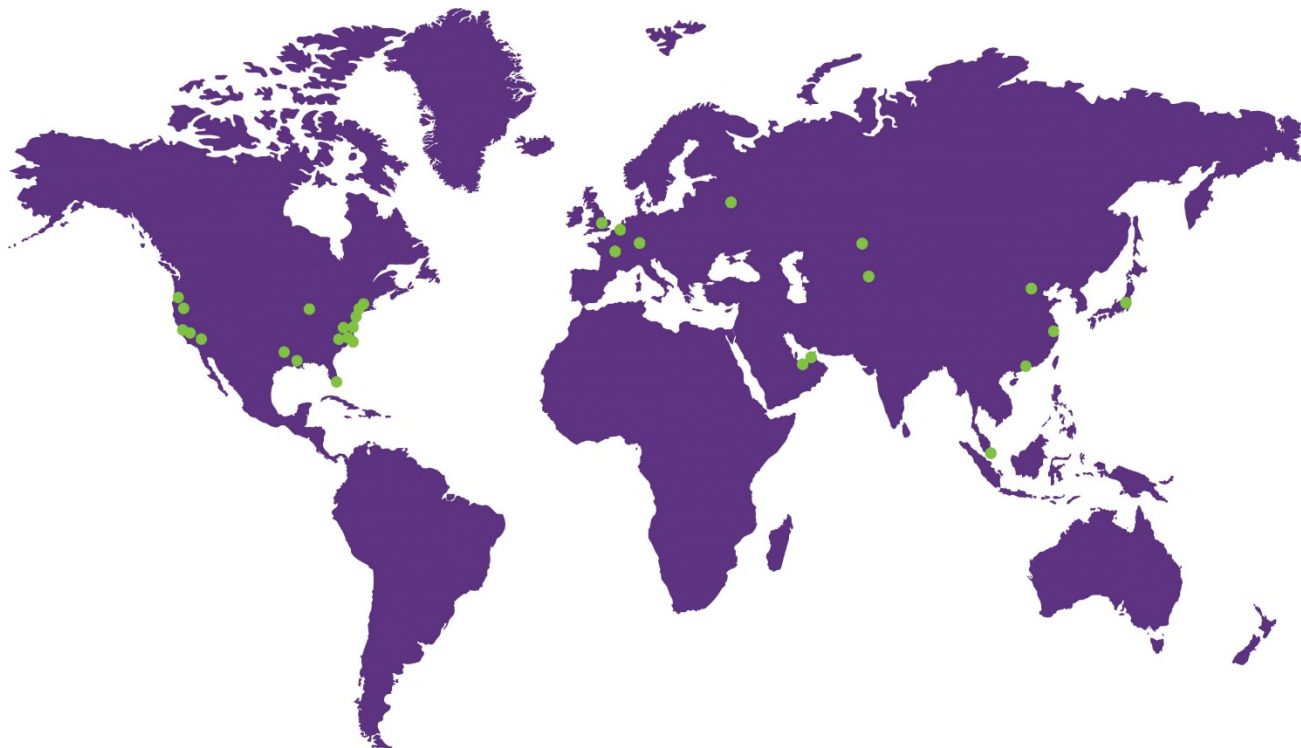
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