



Oregon

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TO: Joint Committee on Ways and Means, Subcommittee on General Government

FROM: Adam Rhynard, Board Chair, Employment Relations Board

RE: Union Representation Key Performance Measure (KPM)

The agency currently has a KPM for the time to process a petition regarding union representation when a contested case hearing is not required. The target for 2018 is to process those petitions within 79 days; for 2019, the target has been dropped to 60 days. The target has long been set at 79 days because that is almost as quickly as a petition for election can be processed, assuming that the parties avail themselves of maximum timelines and the case proceeds to an election. For example, here is what a typical timeline would look like for a representation election petition that results in an election:

Timeline	Day
• Petition filed with ERB	1
• Election Coordinator (EC) reviews, sets timelines for the employer to post the notice and return certificate of posting, and serves petition documents to all parties	2-3
• Employer posts notice of petition in accessible work areas for 14-day objection period, and returns the certificate of posting to ERB	8
• Employer sends current employee list to ERB	15
• ERB compares the employer's list of employees to the authorization cards submitted with petition to determine if showing of interest is at least 30% in order to proceed with petition.	15-16
• Objections are due – If OBJECTIONS ARE FILED, case is assigned to ALJ for a hearing. If NO OBJECTIONS ARE FILED, prepare consent election agreement and proceed to set the election	22-23
• Employer provides employee voter list to ERB. Election Coordinator ensures that the list is sent to all parties	33
• Notice of Election is posted by Employer for 14-day period	39
• ERB mails ballots to voters	53
• Voters' ballots are due to ERB	67
• Ballot Count (Tally) is held at ERB	68
• Objections to conduct of election are due from the parties	78
• Results of election are certified (if no objections filed)	79

As can be seen, the 79-day period for a representation petition that proceeds to an election leaves little room for any unforeseen delays or extenuating circumstances. The primary reason that the agency has been able to greatly improve on the 79-day KPM target is because labor organizations are using “card check” more frequently—these are representation petitions that rarely go to an election, but rather rely on the labor organization presenting a majority of signed authorization cards. “Card-check” cases can (and are) processed much quicker than a representation petition that results in an election. Another reason for the agency processing representation petitions much quicker than the 79-day period is that the agency is usually successful in getting the parties to agree to a “consent election,” which can expedite the process. The agency cannot compel, however, the parties to agree to a consent election.

In sum, in cases where a labor organization files a representation petition for an election (i.e., not “card check”) and the petition results in an election, the 79-day target is a meaningful one. In light of the increased numbers of card check petitions, however, a 60-day target was set for 2019. It may be that the ratio of card check to non-card-check petition remains high, in which case it can be reassessed whether the KPM target should be further lowered (or perhaps where card-check petitions and election petitions are treated differently).