Insights: Alerts

# NLRB Seeks to Make Union Removal More Difficult

**NOVEMBER 7, 2022** Written by John W. Alden, Christopher M. Caiaccio and Drew Williamson

On November 3, 2022, the National Labor Relations Board issued a proposed rule that would rescind a 2020 rule issued under the Trump Administration and make it more difficult for workers who are dissatisfied with their unions to vote them out via the decertification process.

Historically, unions could delay decertification elections by filing "blocking" charges claiming that the employer had illegally interfered with the decertification process by, for example, coercing workers to vote in favor of decertification. The filing of the unfair labor practice charge enabled unions to block decertification elections while the Board investigated the underlying charge, unless the party who filed the charge requested to move forward with the election.

The 2020 rule requires decertification votes to move forward, though a blocking charge may still delay the vote count or results certification. Under the rule, ballots are either counted or impounded, depending on the nature of the charge. However, regardless of the nature of the blocking charge, certification of election results may only occur after final disposition of the underlying charge.

The Board's latest proposal would once again allow unions to strategically file blocking charges to delay decertification elections they were likely to lose.

Thursday's proposal would also roll back the voluntary-recognition bar. In the past, employees were prevented from filing a decertification petition for an undefined "reasonable period" ***after*** an employer voluntarily recognized a union. A reasonable period could be six months to a year after voluntary recognition. The 2020 rule allowed workers to petition for a decertification election up to 45 days ***before*** the employer officially recognizes the union.

Last, the Board's proposal seeks to lower the bar for forming so-called Section 9(a) collective bargaining relationships in the construction industry by resurrecting its 2001 decision in *Stanton Fuel & Material*. Typically, unions are only formed when a majority of workers in a given workplace agree to organize. However, under *Stanton Fuel & Material*, a union in the construction industry could be formed solely based on language in a collective bargaining agreement between a labor organization and an employer and without proof of support from a majority of workers.

Comments are due to the NLRB on or before January 3, 2023.

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