

NLRB to Review Recognition Bar in Neutrality Agreement Cases

June 16, 2004

Recent union organizing initiatives have met with the greatest success when they are accomplished without secret ballot elections conducted by the National Labor Relations Board. As a result, unions are increasingly relying on agreements which couple a commitment of employer neutrality with an agreement to recognize the union based on authorization cards alone. These neutrality/card-check recognition agreements are typically the product of union leverage at the bargaining table or political clout. Because the National Labor Relations Board has largely been a bystander to this process, there is little decisional law available on this topic.

On June 7, 2004, a divided NLRB agreed to consider arguments that the so-called recognition bar—which provides that voluntary recognition of a union upon demonstrated majority status will bar a decertification petition for a “reasonable” period of time—should not apply when the recognition has occurred pursuant to a neutrality agreement between the employer and the union. *Dana Corp./Metaldyne Corp.*, 341 NLRB No. 150 (June 7, 2004). A decision on these consolidated cases is not expected until next year.

In *Dana/Metaldyne*, the parties had entered into neutrality/card-check recognition agreements prior to the start of the union organizing drives. When the unions notified the employers that they had the support of a majority of employees in the agreed-upon bargaining units, card-checks were conducted by third-party neutrals and the employers voluntarily recognized the unions. Decertification petitions were filed by employees within weeks of recognition. The Regional Directors, applying the traditional recognition bar, found that “a reasonable time had not elapsed since recognition” and dismissed both decertification petitions.

In granting the requests for review, a three-member majority of the five-member National Labor Relations Board expressed the view that the recent surge in the use of neutrality/card-check recognition agreements provides a compelling reason to take a “critical look” at the recognition bar in this limited class of cases. The majority made clear that it would not reverse existing Board precedent, which provides for a recognition bar when a union is voluntarily recognized without being a party to a neutrality agreement. Two members vigorously dissented from the grant of review.

Employers should note that the upcoming Board decision will not affect the general validity of neutrality and card-check recognition agreements. It is only expected to impact newly recognized bargaining units following voluntary recognition pursuant to a neutrality/card-check agreement in circumstances where a decertification petition is filed.

Attorneys in our Labor and Employment Law Practice have extensive experience advising employers on the subjects of neutrality agreements and union organizing campaigns. We have contributed to the national discourse on neutrality agreements by appearing before the National Labor Relations Board, federal courts, and Congress, and expect to participate fully in these cases before the Board. If you would like to obtain more information on the Board's recent action, or to address any other issues relating to neutrality/card-check agreements, please contact one of the following attorneys in our Washington or Philadelphia office:

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