

The Decertification Process

The National Labor Relations Act (“NLRA”), the law that authorizes employees to elect a union as their exclusive bargaining representative, also allows for employees to get rid of their union through a “decertification election.” During such an election, the employees can effectively vote out their union. The NLRA, however, includes numerous provisions restricting how and when decertification elections may occur. Although decertification elections are not uncommon, negotiating these rules properly takes time and careful planning.

As an initial matter, the NLRA restricts who may request a decertification election and when the request may be submitted. Only employees, individuals or other labor unions may request a decertification election. Employers may not.¹ To request such an election, the employees must file a decertification petition (see sample attached) asserting that the currently certified union no longer represents the employees in the bargaining unit. At least 30 percent of the employees in the bargaining unit must sign the petition for it to be considered by the National Labor Relations Board (“NLRB”). Obviously, employees should not seek such an election unless they are relatively certain they will have the support of a majority of their fellow employees.

The NLRA also governs when a decertification election may be sought. Decertification petitions may be filed any time a contract is not in effect, although new unions are given one year to represent the employees before a decertification election may be held. The general rule for unions with a negotiated contract in place is that a decertification petition can only be filed 60 to 90 days prior to the expiration of the contract (or every three years, whichever comes first). For health care employees, this window is 90 to 120 days prior to the expiration of the contract. Accordingly, employees with an existing union should begin collecting signatures on their decertification petition a few months prior to the expiration of their contract to ensure that they do not miss their narrow window of opportunity.

The NLRA also provides that all decertification efforts must be free of any coercive influence from management. Accordingly, signatures on the decertification petition must be collected on non-work time and in non-work areas. The employer may not help gather signatures and the employer’s resources may not be used. In addition, the names of the union and the employer must be filled in on the petition before any signatures are collected. The completed petition, along with a completed NLRB petition cover sheet (see attached NLRB Form 502), must be filed at the NLRB’s closest regional office.

Once the NLRB receives and validates the decertification petition, it will schedule a date for the decertification election – usually in approximately 60 days. Prior to the election, both the union and the employer may campaign to influence the vote. The NLRB will decertify the union if a simple majority of the voting employees vote against the union.

¹ An employer may file an “employer petition” for an election when one or more unions have presented a claim to be recognized as the exclusive bargaining representative of a unit of employees. If one of the unions is an incumbent, the employer must show that it has a “good-faith uncertainty” regarding the union’s continued majority status.