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Proposed NLRB Rules Make It Easier for Employees to Exercise Choice About Representation

On August 9, the National Labor Relations Board released [three proposed new rules](#) designed to ease employees' ability to avoid unionization or decertify unions.

The first amendment modifies the Board's current policy regarding so-called "blocking charges," unfair labor practice charges filed by a union to avoid a decertification election. Currently, these elections are delayed until the charges have been resolved. The proposed rule establishes a "vote and impound" procedure in which the election would take place as scheduled, but the votes would not be counted until the blocking charges are resolved.

The second proposed amendment re-establishes the requirement of a notice and a 45-day period during which an employee can file an election petition following an employer's voluntary recognition of a union. Since 2011, the Board had been following the rule that a union enjoyed a presumption of majority support for six months to a year following such voluntary recognition. The new proposed rule would return to the standard announced in *Dana Corporation*, 351 NLRB No. 28 [2007].

The third amendment, applicable only to the construction industry, requires extrinsic evidence in addition to contract language to establish a majority of employee support for a union.

The Board's stated purpose is to restore the ability of employees to "exercise their fundamental statutory right to the timely resolution of questions concerning representation through the preferred means of a Board-conducted secret ballot election." The current rules make it easier for unions to obtain and hold onto their status as employee representatives without a formal Board election procedure.

Questions? Contact Stokes Wagner.