

NLRB Allows Decertification Process to Proceed During Certification Year Extension Period

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The National Labor Relations Board (NLRB) has ruled an employee's effort to decertify his union could proceed, despite a previous agreement between the employer and union extending the time during which decertification petitions are barred. *Pinnacle Foods*, 368 NLRB No. 97 (Oct. 21, 2019).

An employee filed a petition to decertify his union after the expiration of the "certification year," the period during which the parties cannot challenge a union's majority status. However, as part of a settlement of pending unfair labor practice charges, the employer and union had agreed (without the employee-petitioner's consent) to extend the certification year by seven months. An NLRB regional office dismissed the decertification petition because it was filed during the seven-month extension period.

Reversing the dismissal, the NLRB allowed the decertification process to continue. Citing *TruServ Corp.*, 349 NLRB 227 (2007), the Board held that where there is no finding of a violation of the National Labor Relations Act or an admission by the employer of a violation, there is no basis for dismissing a petition "based on the settlement of alleged but unproven unfair labor practices." Here, the settlement agreement contained a non-admission clause and, as a result, there was no "basis for finding that the alleged unfair labor practices tainted the petition."

The NLRB also held that "the processing of the petition ... may not properly be held in abeyance simply because the Employer and the Union have agreed to an extension of the certification year [A] decertification petitioner cannot 'be bound to a settlement by others that has the effect of waiving the petitioner's right under the Act to have the decertification petition processed.'"

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