

NLRB Finds Union Improperly Interfered with Decertification Election

Article By:

Thomas Lucas

Robert J. Guidotti

Philip B. Rosen

Howard M. Bloom

A union “interfere(d) with employee free choice” during the run-up to an **NLRB** election to decertify the union by seeking the discharge of the decertification Petitioner for alleged non-payment of dues and fees to the union, the National Labor Relations Board has held in an unpublished opinion. ***Bio-Medical Applications of New Jersey, Inc.***, Case 22-RD-114233 (Apr. 29, 2015).

According to the NLRB, Local 1199J, AFSCME falsely claimed to the employer and other bargaining unit voters that the Petitioner had not paid initiation fees and dues under the union contract, and then failed to inform the voters of its mistake after it dropped its demand for the employee’s discharge. When the union narrowly won the decertification election (15-13), objections were filed to the union’s conduct.

The Board found the union had sent the decertification petitioner letters on successive days claiming he owed \$666.30 in unpaid dues and initiation fees, and asserting that under the collective bargaining agreement he could be discharged if he failed to pay. The letters did not explain how the union calculated this amount, but it is undisputed that it was inaccurate. The union also posted one of these letters on the employer’s premises in the employee lunchroom. The union sent a letter to the employer, as well, requesting that the decertification petitioner be discharged for this non-payment. Two weeks later, the union Vice President met with the bargaining unit employees/voters and told them of the union’s demand to have the decertification petitioner terminated. However, after the employer challenged the union’s discharge request, the union withdrew its request. It did not inform prospective voters (other than the decertification petitioner) that it had dropped its demand.

Applying its nine-factor test from *Cedars-Sinai Medical Center*, 342 NLRB 596 (2004) to evaluate whether the union’s conduct during the critical pre-election period interfered with employees’ freedom of choice in the election, the Board held the union’s conduct was objectionable and

interfered with employee freedom of choice. Although the union had the right to seek the decertification petitioner's discharge under the CBA, its claim was inaccurate, and although the union withdrew its demand for his discharge, that fact was not communicated to other bargaining-unit employees.

The Board infrequently finds that a union engaged in unlawful conduct. However, in this case, “[g]iven the severity of this incident, the extent of dissemination, the closeness of the election, and the Union’s failure to effectively disseminate its withdrawal of the threat,” the Board set aside the first election and directed a rerun.

Jackson Lewis P.C. © 2025

National Law Review, Volume V, Number 137

Source URL: <https://natlawreview.com/article/nlrb-finds-union-improperly-interfered-decertification-election>