

Unions Winning More Elections, But Organizing Fewer New Workers

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Unions won 72% of all representation elections conducted by the **National Labor Relations Board** in 2016, and 74% when the election involved a small unit of 49 workers or less, according to a Bloomberg BNA report based on NLRB data. These percentages are a four-year high for unions. At the same time, fewer workers were organized — 57,800 (lowest in four years), down from 63,300 new members in 2015.

The number of NLRB-conducted elections also slipped, from 1,626 in 2015 to 1,381 in 2016. Unions also continue to lose members by decertification elections. Between 2012 and 2016, the NLRB conducted 970 decertification elections. Unions lost over 60% (596 of 970) of them.

As the statistics about the number of workers organized and elections held in 2016 suggest, unions are focusing on organizing smaller bargaining units, which generally are easier to organize. As reported by Bloomberg BNA, Maria Sommer, an organizing director with the Steelworkers Union, “credit[s] an approach of focusing on smaller units of workers . . .,” among other factors. This strategy has been made fruitful, in large part, by a union-friendly NLRB decision — *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011) — that endorses union organizing of identifiable “micro-units.” This and the difficulties countering a union organizing drive that are posed by NLRB’s “quickie-election” rules, have created significant challenges for employers.

The Teamsters Union has said it is focusing on “internal organizing” designed to “retain[] employees in bargaining units by communicating and educating them about the benefits . . . [of unionization].” However, that strategy may not be working. Between 2012 and 2016, the Teamsters Union was involved in 231 decertification elections and lost 155 — a 67% loss rate. (On the flip side, the Teamsters were involved in more NLRB-conducted elections in 2016 than any other union and won just under 63% of them.) Overall, unions lost 61.4% of all decertification elections held during that time.

The NLRB's won-loss statistics do not take into account situations where unions filed petitions for elections at the NLRB, but withdrew before the election, or where unions were unable to garner enough employee support to file petitions at all with the NLRB.

Help may be on the way for employers. There are two vacancies on the NLRB that almost assuredly will be filled by President Donald J. Trump with pro-business members. This will create a 3-2 pro-business NLRB majority, perhaps paving the way for a decision, given the appropriate case, overruling *Specialty Healthcare*. However, the appointment process will take time, and, even following confirmation, change at the NLRB will not be automatic. This means that, as always, employers should focus on their best defense to union organizing — creating an issue-free workplace where employees feel listened-to and well-treated and see no need for union representation.

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