

Board In Position to Review Union-Friendly Blocking Charge Policy

NOVEMBER 17, 2017

The National Labor Relations Board (the “Board”) is poised to review a policy long-used by unions to stave off decertification elections. Under current Board policy, a union that has lost the support of its membership can effectively delay a decertification election by filing a “blocking charge”; that is, by alleging that the employer has committed an unfair labor practice. Under Board policy, the filing of such a charge serves to delay the decertification election without inquiry into whether the union’s allegations have any merit, and regardless of whether the charge is related to any forthcoming decertification election.

A case currently before the Board, *Calportland Co.*, Case 28-RD-206696, presents a prime example of this union-friendly delay tactic in action. In that case, an unpopular union, likely aware of its membership’s internal decertification activity, filed two “blocking charges” alleging, among other things, that the employer had improperly refused to bargain with the union. Weeks after the filing of the second charge, an individual employee and union member filed a decertification petition supported by a majority of the bargaining unit employees.

None of the union’s allegations set forth in the charges involved the employees’ internal efforts to decertify, the petition to decertify, or the forthcoming election. Nevertheless, the Board’s Regional Director reflexively halted the election pending the resolution of the charges-without hearing and without any inquiry as to the merit of the charges. Thus, by the filing of two charges of unproven merit, the union successfully thwarted its membership’s right to decertify, and, for at least the time being, continues to collect dues from the employer’s non-consenting workforce. The individual employee petitioned the Board for review.

Board Chairman Philip A. Miscimarra is a known critic of the Board’s “blocking charge” policy, and has urged the Board to reconsider its treatment of such charges while previously sitting as a Member of a Democratic-majority Board. *See, e.g., Cablevision Sys. Corp.*, Case 29-RD-138839, NLRB, (June 30, 2016) (Member Miscimarra, dissenting). Now, with the recent nomination and confirmation of Members William J. Emanuel and Marvin E. Kaplan, the Board’s first Republican majority in nearly a decade is positioned to re-examine the issue.

Notably, Chairman Miscimarra’s term expires on December 16, 2017, at which point the Board would, at least temporarily, lose its newfound Republican majority until a replacement is nominated and confirmed. As the process of seating a replacement often takes months, it is widely anticipated that the Board will decide *Calportland Co.* in this final month of the Republican Chairman’s term.

For more information on this topic, please contact a member of [Benesch’s Labor & Employment Practice Group](#).

Eric Baisden | ebaisden@beneschlaw.com | 216.363.4676