

Decertification Vote Allowed to Proceed Despite Employer Voluntary Recognition

By Judd H. Lees

One of the National Labor Relations Board's decisions on organized labor's dart board is *Dana Corp.* governing voluntary recognition of a union by an employer. In the *Dana Corp.* decision and subsequent regulations authored by the Board, the Board openly criticized the efficacy of card checks as the basis for an employer voluntary recognition of a union absent the more trustworthy secret ballot election. The Board therefore mandated that employees be provided notice of the employer's voluntary recognition and a reasonable opportunity to void it by filing a decertification petition within 45 days. The requisite notice to trigger commencement of the 45 day period must comply with Board regulations. Absent employee filing of a decertification petition during the 45-day period, the recognition bar or the contract bar on such petitions will be in effect.

The 2007 decision provoked a great deal of fury on the part of unions who were starting to rely heavily on corporate campaigns coupled with neutrality agreements and voluntary recognition as the preferred means to organize large employers. The *Dana Corp.* decision threw a monkey wrench into that approach by providing a potential employee and employer out. The *Dana Corp.* rules were recently applied by our very own Region 19 office out of Seattle in a case entitled *AT&T Mobility LLC*. In late 2009, AT&T voluntarily recognized the Communication Workers of America as the representative for network employees in 11 different locations throughout Washington, based on a majority showing of authorization cards from the affected employees. The resulting bargaining unit was folded into another unit and became subject to a preexisting collective bargaining agreement.

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In order to comply with the *Dana Corp.* requirements, requisite notices were posted for 45 days. Meanwhile, an employee was gathering signatures for a decertification petition and filed it with the Board but filed it well after the 45-day period had elapsed. The union sought to dismiss the petition as untimely and the regional office, upon investigating, learned that one of the notices had not been posted for the entire 45 days; apparently at some point, someone had removed the notice for an indeterminate period of time and the employer, upon noticing it was gone, posted another notice. However, there was no question that it had not been posted for 45 consecutive days. The Regional Director for Region 19 determined that the decertification petition should therefore be allowed proceed to election since the notice posting at one location failed to meet the requirements of *Dana Corp.*

The *AT&T Mobility* decision serves as a reminder to employers and unions involved in voluntary recognition that the *Dana Corp* requirements will be strictly construed unless and until modified or overturned by the Obama Board.