



NLRB Overturns Key Bush-Era Decisions, Boosts Union Card Check Campaigns

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As **we predicted in September 2010**, with the Employee Free Choice Act stalled in Congress, a majority of the National Labor Relations Board (the “Board”) has taken the opportunity to overturn two key employer-friendly decisions from the Bush-era Board, boosting the prospects for union card check campaigns.

In *Lamons Gasket*, the Board overturned its 2007 decision in *Dana Corp.*, which held that when an employer agrees to voluntarily recognize a union based upon a card check, dissenting workers could unwind the results of a successful union card check campaign, as long as the dissenters filed a decertification petition no more than 45 days from the date of receiving notice of the employer’s recognition of the union. Under *Dana*, employers were required to post a notice for employees informing them of these rights. In overturning *Dana* and returning to its decision in *Keller Plastics*, the Board reinstated the voluntary recognition bar, which holds that employers, employees, and rival unions must wait for a “reasonable time” (usually around 6 months) after a company’s voluntary recognition of a union before seeking to decertify it, thus protecting that newly formed relationship between the employer and the union from challenge. The Board also held that this “new” rule will be applied retroactively to all pending cases except those in which an election was held and the ballots have been opened and counted.

According to the **Board summary**, *Lamons Gasket* “focuses on the new bargaining relationship created by an employer’s voluntary recognition of a union based on a showing of support by a majority of employees” and “returns the Board to the law as it existed before *Dana Corp.*” The majority found that “empirical evidence acquired since 2007” demonstrated that the *Dana Corp.* majority’s concern of union coercion in card signing campaigns was unwarranted, and returned to the *Keller Plastics*’ “reasonable time” standard. The Board did change *Keller Plastics* in one important respect by precisely defining the reasonable time during which the voluntary recognition bar would apply. The Board held that the bar would apply during a “reasonable period of bargaining” of “no less than 6 months after the parties’ first bargaining session and no more than 1 year” after that session.

In *UGL – UNICCO Service Co.*, the Board majority also overruled *MV Transportation*, reinstating the “successor bar” and greatly curtailing employees’ ability to challenge a union’s status after the merger or sale of a company. In *MV Transportation*, the Bush-era Board had created an immediate window after a sale or merger to allow the union’s status to be challenged by 30% of employees, the new employer, or a rival union, reversing a Clinton-era Board decision protecting the union’s status for a “reasonable time” after the merger or sale. In *UGL-UNICCO Service Co.*, the Board retroactively reinstated the successor bar for the same “reasonable period of bargaining” of between 6 months and 1 year as outlined in *Lamons Gasket*.

In the Board’s only nod to employers in either decision, the majority shortened the related “contract bar” period in certain situations where both it and the successor bar applied, allegedly so that a union would not have a “prolonged insulated period.” In his dissent, Member Hayes noted that this change still meant that “employees could have their right to raise a question concerning the union’s continuing representative status foreclosed for as much as 4 years.”

Lamons Gasket and *UGL-UNICCO Service Co.* return the Board to reinforced versions of its pre-Bush era rules concerning employees’ rights to challenge a union’s representative status. These decisions will likely enable unions to target management or workers more effectively through card checks and other organizing campaigns without the need to resort to a Board-conducted secret ballot election,



effectively elevating voluntary recognition to the same significance as an election. Employers should take note that in both voluntary recognition and sale/merger situations, it is the parties' first bargaining session that starts the clock ticking on the "reasonable period of bargaining." Thus, employers may want to avoid delaying that initial meeting with a newly recognized union.

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