



The Death of the National Mediation Board's "Straw Man" Decertification Procedure?

The National Mediation Board's proposed rule would create a direct decertification procedure, eliminating its current, convoluted "straw man" decertification procedure.

On January 31, 2019, the National Mediation Board ("NMB") published a Notice of Proposed Rulemaking to simplify the process of decertifying a union under the Railway Labor Act. If successful, it would be the first time the NMB has adopted a direct decertification procedure.

Currently, employees cannot simply request a decertification election if they no longer wish to be represented by a union. Instead, they must follow a convoluted process under which an individual or group serves as a "straw man" to run against the existing representative. The straw man must provide the NMB with authorization cards from at least half of the employees to get an election. The NMB then holds an election with four choices: (i) the current representative; (ii) the straw man; (iii) "no representative"; and (iv) a write-in option. If a majority votes for "no representative," the union is decertified. Alternatively, if the straw man wins the election but disclaims interest in representing the group, the union is decertified.

The NMB's proposed rule would simplify the decertification process by doing away with the straw man requirements. Instead, a majority of employees would submit authorization cards to the NMB stating their wish to decertify. That would result in an election with just three options: (i) the current representative; (ii) "no representative"; and (iii) a write-in. If a majority voted for "no representative," the union would be decertified.

In proposing the rule, the NMB observed that "inherent in the right to representation is the right to be unrepresented," and the proposed rule would put "decertification on an equal footing with certification." Nevertheless, it is expected that labor unions will oppose the rule, and the lone Democratic member of the NMB dissented from the rulemaking. The NMB will accept public comments on the proposed rule until April 1, 2019, and will schedule a hearing on the proposed rule before the comment period closes.



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