



News & Types: Client Advisories

Union Members Vote Out Union

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Practices: Employment, Labor & Benefits

Executive Summary

In an unusual situation, an employer filed a request with the federal government to allow its employees the right to vote whether the employees wanted a union to continue to represent them against the company. The employer filed an RM Petition. It was only one in four filed in the Chicago Region of the National Labor Relations Board during 2019. The union's members voted against the union. The employer will no longer have to follow the union's contract or bargain with the union.

So far in 2019 in the Chicago Region of the National Labor Relations Board ("Labor Board"), only one group of already union-represented employees – working for one of the Firm's clients – voted the union out of the company. The vote was the result of the employer filing an "RM Petition (Management-Filed Decertification Petition)". The employer filed a "showing of interest" with the RM Petition. The "showing of interest" was an affidavit signed by the company's president. The president stated that a majority of the employees no longer wanted to be represented by the union. After the Acting Regional Director approved the "showing of interest," the employer and union campaigned during the election period, the union's members voted, and a majority voted out the union. The contract between the employer and union ended. The employer will no longer need to bargain with the union. The employer will establish its employees' wages, benefits and terms and conditions of employment.

This result was unusual. Usually, already-represented unionized employees will file an RD Petition (Employee-Filed Decertification Petition) – a petition to decertify the union. So far in 2019, only four RM Petitions have been filed in the Chicago Region. The Labor Board dismissed one petition. An employer withdrew a second petition. A union blocked a third petition by filing an unfair labor practice against the employer which filed the petition. The fourth petition, filed with the help of the Firm, succeeded in giving the employees/union's members the right to express their desires in a secret ballot election.

Under the National Labor Relations Act ("Labor Act"), if an employer believes that a majority of the employees represented by the union no longer want to be represented by that union, the employer may file an RM Petition. To file the petition, the employer files a showing of interest, which may be one or more affidavits filed by one or more of the employer's supervisors or agents. In the affidavits, the employer's supervisors or agents attest to statements made by the union's members that they no longer want to be represented by the union. If a regional director of the Labor Board finds the affidavit a sufficient showing of the union's members' interest, the Labor Board will process the petition. The employer and union have the right to convince the employees to vote either for or against representation by the Union. At the end of the election period, the union's members have the right to vote or not to vote. The Labor Board conducts a secret ballot election, counts the ballots and

issues a certification of results, certifying that the union's members either have voted in favor or not in favor of the union continuing to represent the employees. As a result of the process, the employer and Labor Board effectuated the policies and purposes of Section 7 of the Labor Act, which states that employees shall have "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing" or "the right to refrain from joining a union."

*Before joining the Firm, Mr. Kaplan was an attorney with the National Labor Relations Board's General Counsel's Office of Appeals in Washington, D.C. and a prosecuting attorney and elections hearing officer with Region 13 of the National Labor Relations Board in Chicago, Illinois.