

Board Overrules *Dana Corp.* Decision on Voluntary Recognition

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Followers of the National Labor Relations Board who have been waiting for the other shoe to drop on the *Dana Corp.* decision, need wait no more. The National Labor Relations Board recently handed down a controversial 3 to 1 decision that an employee-filed decertification petition may be barred for a reasonable period of time after the employer has voluntarily recognized a union based upon a card check. The Board therefore overturned the Bush Board's controversial decision of *Dana Corp.* In that decision, the Board held there was no so-called "recognition bar" on a decertification petition based upon the untrustworthiness of a union-sponsored authorization card check versus a Board-sponsored secret ballot election. The *Dana Corp.* Board determined that an employer recognition based upon a card check should not trump a timely decertification petition filed by employees who disagreed with the employer's decision to voluntarily recognize a union.

In the latest decision, the Obama Board disagreed. According to the Board, the bar on the decertification petition is necessary to allow the parties to attempt to negotiate a contract after voluntary recognition even if employees do not support the employer's decision to recognize a union. The voluntary recognition bar will last between six months and one year after negotiations commence and no decertification petition will be entertained during that time period. The decision underscores the need for employers to think twice before signing so-called neutrality agreements which call for card checks instead of secret ballot elections. The case also reminds employers of the hazards of allowing unsuspecting supervisors to review signed authorization cards proffered by a union. Such an act may have the unintended consequence of constituting

voluntary recognition and, pursuant to this recent case, depriving employees of their right to set aside the recognition via the decertification process.