

National Labor Relations Board Upholds Neutrality Agreement

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One of the key holdings by the Bush Board in 2007 which drew withering fire from unions was the decision in Dana Corp. criticizing neutrality agreements calling for union recognition based on card checks. The Bush Board took great pains to underscore its strong support for secret ballot elections over union authorization cards. In fact, the Board ordered that a process be implemented requiring employers to post written notices of such voluntary recognitions in order to provide employees an adequate opportunity to file timely decertification petitions should they disagree with the employers' actions. On December 6, 2010, the Obama Board reversed direction and upheld the lawfulness of such a card check procedure involving Dana Corp.

At issue was a 2003 letter of agreement between the United Auto Workers and Dana Corp. in which both parties agreed to remain neutral and, in the event the union obtained a majority of signed authorization cards, Dana Corp. would recognize the union and enter into negotiations. The letter of understanding further defined some of the key provisions which would be included in the negotiated agreement, including the potential duration of the agreement as well as binding interest arbitration in the event the parties could not reach agreement on all provisions of the resulting contract. Several employees filed an unfair labor practice charge against the parties alleging that Dana Corp. was entering into an agreement with the UAW before the UAW had been properly certified as the employee representative. In essence, the employees argued that the letter of understanding undermined their right to vote for or against representation.

The Board dismissed the complaint and held that the parties had merely agreed to the process for recognition and that the agreement would not compel employees to sign authorization cards. In a strongly worded dissent Board member Brian Hayes relied heavily on the pre-negotiated items contained in the letter of understanding including duration and mandatory interest arbitration.

The Board's recent reversal of position and endorsement of neutrality agreements will lead to a renewal in their popularity and use by unions as part of their organizing efforts. Employers presented with so-called neutrality agreements should carefully review them to determine what rights are being given up both by the employer and the employees. The primary employer right sacrificed by neutrality agreements is the ability to provide information to employees regarding the wisdom of signing authorizing cards or voting against the union. As in the Dana Corp. case, most neutrality agreements also tie the employer's hands when the union obtains a majority of authorization cards. If all of this sounds familiar, it is. The still-born Employee Free Choice Act attempted to codify what the UAW successfully obtained in this case.