

NLRB Rules on Strategy for Loss of Majority Support

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On February 2, 2017, the National Labor Relations Board issued a decision and order in the case of *T-Mobile USA* and CWA. In this case, T-Mobile, following substantial proof that the members of a collective bargaining unit no longer maintained majority support for representation by the CWA, pursued the strategy of continuing to honor the collective bargaining agreement but refused to negotiate over a successor agreement unless and until the representation issue was resolved.

The employees in the unit had filed a decertification petition as well as provided a petition to T-Mobile that they no longer wished to be represented by the union (13 out of 20). In a split decision, the board rejected T-Mobile's strategy. The Board reiterated what it believed to be its existing alternatives when employees provide competent evidence of a lack of majority support for the union in a collective bargaining unit.

The Board provides two routes: the first is unilateral withdrawal of recognition from an incumbent unit if the union has actually lost the support of a majority of the bargaining unit employees. If this strategy is chosen, the employer will be required to show actual loss of majority support if the union challenges the unilateral withdrawal.

The other strategy is for an employer to seek an RM election to determine whether or not the union still enjoys majority support. This strategy involves not unilaterally withdrawing recognition. This alternative requires the employer to continue to bargain with the union while the RM petition is being processed.

The Board determined on a 2 to 1 majority that T-Mobile's strategy in this case of recognizing the union yet unilaterally refusing to bargain over a successor contract is not permitted under the National Labor Relations Act.

The board has provided in this decision useful guidance with respect to a situation that occurs from time to time. The Labor and Employment Law Team at Sandberg Phoenix & von Gontard P.C. can provide advice and guidance to employers when they have evidence of a loss of majority support for a union in a collective bargaining unit.