

EMPLOYER LAW BLOG

# Employer Alert: Card Check Recognition

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For several years, Democrat controlled NLRBs have tried to implement card check recognition. This method of recognition requires employers to recognize a union without an election upon a showing that a majority of a defined bargaining unit members have signed authorization cards to be represented by the petitioning union. Public employee labor boards have had this feature for years.

Now, so does the NLRB. On August 25, the NLRB issued a decision which provides that if a union makes a claim of majority support, the employer is required to recognize the union or file its own petition for an election (RM Petition). See *Cemex Construction Materials Pacific LLC* (372 NLRB No. 130). The Board made it clear that there is a risk if employers file an RM petition. The risks are that the burden of proof on representation issues shifts to the employer instead of the union and the employer will be scrutinized during the period while the RM petition is pending for any unfair labor practices. If found liable, the result will likely be a mandatory bargaining order from the Board. This is another of the Board's self-fulfilling prophecies created when it appears it's trying to be fair to employers.

Employers must seek guidance from labor counsel when presented with this situation in the workplace. The Labor and Employment Team at Sandberg Phoenix stands ready to offer counsel through the increasingly dangerous minefield created by recent NLRB lopsided decisions.