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Union Decertification Update: NLRB Extends Comments Deadline For Contract Bar

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The National Labor Relations Board (NLRB) announced in July that it is considering [modifying its longstanding contract bar doctrine](#). The agency invited briefs and public comment on this issue to be submitted by Sept. 22, 2020. The Board announced on Sept. 16, however, that it is [extending the deadline to October 21](#).

For those unfamiliar with this issue, the [contract bar doctrine](#) is a legal doctrine that prohibits (bars) a union representation election in a unit that is “covered” by an in-force collective bargaining agreement (CBA). The doctrine is limited to the length of the CBA or three years, whichever is shorter (the vast majority of CBAs are three years in length). Practically speaking, this most often comes up in “decertification” elections. Decertifications are the primary vehicle in which employees have an opportunity to vote out a union. The contract bar generally prevents employees from filing a decertification petition with the NLRB during the course of a labor agreement that lasts three years or less. This creates some complicated windows for filing such petitions that employees desiring decertification must hit, and the contract bar often results in those employees not being able to have a decertification vote. It has been a point of frustration for workers and companies over the years.

One problem with the contract bar doctrine is that it is arbitrarily set for the entire length of a CBA or three years (whichever is shorter). This drastically

limits the times during which employees can file a decertification petition to vote out their union – even if the employees believe the union has failed them or otherwise is not living up to its obligations. Accordingly, the NLRB is evaluating various changes to this rule, including whether that three-year bar should be eliminated or reduced. People who favor the three-year bar believe it helps promote labor relations stability by keeping these agreements in effect.

This is an important issue to monitor on the labor relations front. We'll see if and how the rule is modified. Stay tuned.