

Board Members Again Raise Prospect Of Changing Blocking Charge Rule

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Last fall, there were several anecdotes and indications that once President Trump's National Relations Board was fully constituted, the long-standing "blocking charge" rule as we know it might change. More recently, the comments from two recent appointees to the Board indicate a real willingness to examine the issue. Although remaining cautiously optimistic, this renewed interest has the attention of employers and employer groups across the country. The blocking charge rule is not technically a rule but rather a Board policy that calls for the hiatus of a decertification election where an unfair labor practice charge is filed by a union – often without inquiry as to the merits of such charge. This approach has raised the ire of employers as it is seen as a tool for a union to restrict the rights of its members to determine whether to continue with their union representation. Similarly, pro-employer groups point to the policy actually creating an incentive for union officials to file meritless charges with the single goal of indefinitely pausing a decertification effort. These groups question how such an approach is consistent with the Act itself. In a recent NLRB order that actually upheld a local region's application of the policy, new appointees William Emanuel and Marvin Kaplan indicated in a footnote that the time has come for the Board to analyze this rule in an "appropriate case." This is not the first time these two members have tipped their hand on the issue and they are joined in their concerns about the policy by NLRB General Counsel Peter Robb. As such, there are truly reasons to believe that this time there may be some traction to revisit the policy. Hope springs eternal.

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