

## Decertification 101

September 12, 2013 | [Union Organizing, Labor And Employment](#)



**Gerald F.  
Lutkus**

Of Counsel  
(Retired)

A recent decision of the 6th Circuit Court of Appeals does not break any new ground on the law of decertification, but it provides a great reminder of what employers cannot do when the issue of decertification arises.

In *All Seasons Climate Control, Inc. vs. NLRB*, 196 LRRM 2774 (6th Cir. 2013), the Court of Appeals upheld the decision of an NLRB administrative law judge who found that the employer had encouraged and assisted an employee in collecting signatures on two decertification petitions.

As always, it's the facts that decide these cases. Here, the ALJ found that an employee regularly came to the owner's office to ask him what the company was doing about the union. In February of 2008, the owner, according to the decision, called the employee on his company cell phone and said he needed him to do a favor. The ALJ determined that the owner instructed the employee to call the company's attorney. When he did, according to the opinion, the attorney told him that "they needed [him] to do something" for the Company and to circulate "a Petition to call for another vote to vote the union out." Once the employee said he would do it, the attorney, according to the opinion, told the employee exactly what the petition should say. He told him further not to have the other employees sign the petition until May or June. And, finally, the attorney reportedly told the employee "remember, we didn't have this conversation, and don't call me from a cell phone again."

The employee drafted and circulated the petition and presented it to the owner. The owner rejected it saying that the language was problematic and told him to do it again. The employee circulated a second petition, got sufficient signatures on it, and then again submitted it to the owner. The owner took the petition. Shortly thereafter, the company withdrew recognition from the union based on the second petition and declined to have any further bargaining sessions with the union.

The ALJ determined and the 6th Circuit affirmed that the company unlawfully solicited and encouraged an employee to circulate two decertification petitions. "The law is clear that an employer may not solicit its employees to circulate or sign decertification petitions." The Court further noted that, "other than to provide general information about the [decertification] process on the employees' unsolicited inquiry, an employer has no legitimate role in that activity, either to instigate or to facilitate it."

In affirming the decision, the 6th Circuit also affirmed the NLRB's Order which required the Company to bargain with the Union at least 15 hours a week until a contract could be completed.

## RELATED PRACTICE AREAS

Collective Bargaining  
Labor and Employment  
Labor Relations  
Union Avoidance

A copy of the 6th Circuit Opinion is [available here](#).