

Employers' Role In Decertification Efforts Continue To Receive Intense Scrutiny

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Decertification petitions are a mechanism under which employees can vote to get rid of their union in the workplace. Employers' efforts during employees' decertification efforts, however, always receive much scrutiny from the National Labor Relations Board (NLRB). The NLRB generally only permits "ministerial aid" by an employer prior to the filing of a petition (e.g., an employer may be able to answer technical questions about the timing for filing such a petition in direct response to such inquiries from an employee). Anything beyond minimal aid generally will invalidate a decertification petition.

On August 5, 2016, the U.S. Court of Appeals for the D.C. Circuit affirmed an NLRB decision in *Alamo Rent-A-Car v. NLRB* that voided a decertification petition in the latest example of an employer over-stepping the tight limits imposed by the NLRB. In that case, employees were circulating a decertification petition. A pair of supervisors asked the employees how many signatures they had obtained on the petition. When the employees informed the supervisors of the number, the supervisors instructed them to go get more signatures before filing the petition with the NLRB. The NLRB found, and the DC Circuit agreed, that the supervisors' directive to the employees to go out and secure additional signatures rose above permitted "ministerial aid" and crossed into unlawful promotion of the decertification effort. Thus, the supervisors' actions nullified the decertification petition. Accordingly, this case serves as an important reminder that there are very strict rules on employer communications during a decertification effort, and all managers and supervisors within an organization should be fully trained on permissible communications to the extent the employer is aware that such a drive is underway. A copy of the court's decision can be found [here](#).

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