



Employer Must Show Evidence Of Union's Loss Of Majority Support To Withdraw Recognition

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The National Labor Relations Board recently ruled in [Kauai Veterans Express](#), that a Hawaii trucking company violated Section 8(a)(5) of the National Labor Relations Act by unilaterally withdrawing recognition from a union without objective evidence demonstrating that the union lost the support of a majority of workers.

Kauai Veterans Express Co. (KVEC) created a petition to determine if its union members wished to be represented by its union. A majority of KVEC's union workers indicated by checking a box on the petition that the employees wished to "leave" the union. Directly below the employees' signatures, however, the petition stated that the "signature above indicates my ... individual desire to participate as a member of Operating Engineers Local Union #3." As is evident from the last sentence, the document contained contradictory language; some language indicating a desire to "withdraw membership" from the union and other language expressing a clear "desire to participate as a member." Nevertheless, KVEC withdrew recognition of the union claiming it had evidence that the union lost majority support.

The NLRB upheld the administrative law judge's (ALJ) determination that the petition did not constitute objective evidence of the union's actual loss of majority support because it reflected only the signing employees' desire to cease membership in the union, not their desire to cease having union representation. Moreover, the Board determined that KVEC did not have the necessary evidence to withdraw recognition because "the petition itself contained contradictory statements expressing both a desire to withdraw membership from the Union and to participate as a member of the Union." As such, the Board agreed with the ALJ that KVEC violated Section 8(a)(5) and (1) of the NLRA by withdrawing recognition from the union.

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In crafting the appropriate remedy in the case, the NLRB ordered KVEC to recognize and, upon request, bargain with the union as the exclusive collective-bargaining representative of employees in the appropriate bargaining unit. The Board ordered KVEC to:

1. Make whole its unit employees by making contractually required contributions to the Union's pension annuity trust fund
2. Reimburse unit employees for any expenses ensuing from its failure to make the required contributions
3. Reimburse the union for any dues that it failed to deduct from wages and remit to the union without recouping the money owed for past dues from those employees

The ruling is a reminder that an employer withdraws recognition of a union at its peril, and will have to prove by a preponderance of the evidence that the union had, in fact, lost majority support at the time the employer withdrew recognition.