

Labor Law Professors Endorsing Members-Only
Non-Majority Collective Bargaining Under The NLRA

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Robert J. Battista, Chairman
Wilma B. Liebman, Member
Peter C. Schaumber, Member
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Peter N. Kirsanow, Member
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Re: Petition filed by the Steelworkers Union et al for issuance of a rule regarding members-only minority-union collective bargaining. Docket No. _____

To the Honorable Chairman and Members of the National Labor Relations Board:

We, the undersigned, are law professors who specialize in the field of labor law, including the law of the National Labor Relations Act. The purpose of this letter is to acquaint the members of the Board with our considered opinion concerning the legal merits of the petition filed by the Steelworkers Union and six co-petitioner unions for issuance of a substantive rule regarding members-only minority-union collective bargaining. It is our view that this rule should be promulgated for the following reasons:

- (A) The plain and unambiguous language of the Act guarantees that in workplaces where there is not currently a Section 9(a) majority-exclusive representative in an appropriate bargaining unit, employees have an enforceable right to bargain collectively through minority unions of their own choosing, but for their employee members only.

- (B) Such reading of the statute is fully supported by clear and consistent legislative history.

(C) The General Counsel erred in refusing to issue a complaint in *Dick's Sporting Goods and Steelworkers Union (charging party)*, NLRB Case No. 6-CA-34821, for the following reasons:

(1) In his Advice Memorandum and Letter of Dismissal, the General Counsel did not refute the foregoing reading of the Act nor did he contest the foregoing reading of its legislative history.

(2) By refusing to issue a complaint, the General Counsel failed to carry out his proper role of placing unresolved legal issues before the Board for its decision, for it is the function of the Board, not the General Counsel, to resolve issues of pure statutory construction.

(3) By dismissing the charge in the *Dick's* case, the General Counsel deprived the Board of its opportunity to resolve this issue by adjudication, which would have been in accord with its normal and customary practice.

(D) The Board has not heretofore decided this issue.

Pursuant to the substantive rulemaking procedures of Section 6 of the National Labor Relations Act and Section 5 of the Administrative Procedure Act (5 U.S.C. §553), it is now appropriate for the Board to issue the rule proposed by petitioner Steelworkers Union and its co-petitioners, and we urge the Board to do so.

Adoption of this rule will clarify the bargaining requirements of the Act and help to implement the intent of Congress as declared in the Wagner Act of 1935 (§1) and re-affirmed in the Taft-Hartley Act of 1947 (§201(a)), to wit, that it is the policy of the United States to encourage the practice and procedure of collective bargaining. It is our view that protecting employees' right to organize and bargain through minority unions on a members-only basis where there is not currently a majority-exclusivity bargaining agent provides a useful and often-needed steppingstone to majority-based Section 9(a) collective bargaining, such as was commonly practiced during the first decade of the Act. And it is our further view that the resulting enhancement of the collective bargaining process will inure to the benefit of both employees and employers and contribute to a healthier economy.

Respectfully submitted on behalf of the undersigned in our individual capacities, not as spokespersons or agents for any institution with whom we may be affiliated.

Yours very truly,

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