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**Monday, February 5, 2007**

**R-2615**  
**202/273-1991**  
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**NLRB FINDS THAT DECERTIFICATION PETITIONS SHOULD  
NOT BE DISMISSED WHERE ALLEGED UNFAIR LABOR PRACTICES  
ARE SETTLED AFTER THE PETITION IS FILED AND IF THERE IS  
NO FINDING OR ADMISSION OF WRONGDOING**

The National Labor Relations Board (Board), in a 3-2 decision involving TruServ Corporation in Manchester, New Hampshire, found that a decertification petition filed after the occurrence of alleged unfair labor practices by the employer, and prior to settlement of those charges, should not be dismissed where there has been no finding or admission that the employer actually engaged in the allegedly wrongful conduct. [Truserv Corporation, 349 NLRB No. 23 \(Jan. 31, 2007\)](#).

In reaching this conclusion, the Board overturned its prior decisions in *Douglas-Randall, Inc.*, 320 NLRB 431 (1995), *Liberty Fabrics, Inc.*, 327 NLRB 38, 39 (1998), and *Supershuttle of Orange County*, 330 NLRB 1016, 1018-1019 (2000). The majority opinion is signed by Chairman Robert J. Battista and Members Peter C. Schaumber and Peter N. Kirsanow. Members Wilma B. Liebman and Dennis P. Walsh dissented. The decision is posted on the Board's website at [www.nlr.gov](http://www.nlr.gov).

In *Douglas-Randall*, the Board held that where the parties have entered into a settlement of outstanding unfair labor practice charges, and the settlement requires recognition and bargaining with the union, any petition challenging the union's majority status that is filed after the allegedly unlawful conduct, and before the settlement, must be dismissed.

*Douglas-Randall* involved a Board-approved settlement of pending unfair labor practice charges. In *Liberty Fabrics*, the Board applied the *Douglas-Randall* rationale to private, non-Board settlements. In *Supershuttle*, the Board extended the reasoning of *Douglas-Randall* and *Liberty Fabrics* to a situation where the parties' negotiation of a collective-bargaining agreement was intended to resolve unfair labor practice charges. The Board in *Supershuttle* held that the collective-bargaining agreement precluded a rival union's petition that was filed after the occurrence of the alleged illegal conduct, and before the parties entered into the collective-bargaining agreement. In overruling these cases, the Board returned to the doctrine previously enunciated in *Passavant Health Care*, 278 NLRB 483 (1986).

In reconsidering the *Douglas-Randall* decision and its progeny, the Board agreed with the reasoning of former Member Cohen in his dissent in *Douglas-Randall*, and the dissents of former Member Hurtgen in *Liberty Fabrics*, and *Supershuttle*. Like them, the Board concluded that, absent a finding of a violation of the Act, or an admission by the employer of such a violation, there is no basis for dismissing a petition based on a settlement of alleged but unproven unfair labor practices. To do so would unfairly give determinative weight to allegations of unlawful conduct and would be in derogation of employee rights under Section 7 of the Act.

In dissent, Members Liebman and Walsh disagreed with the majority's overruling of *Douglas-Randall*, *Liberty Fabrics* and *Supershuttle*, and stated they would adhere to the Board's decisions in those cases. They emphasize that the Board's task is to strike a balance between the establishment and maintenance of stable collective-bargaining relationships and employees' freedom of choice in deciding whether they want to engage in collective bargaining and, if so, whom they wish to represent them. The dissent contends that the Board in *Douglas-Randall* and its progeny struck an appropriate balance between these interests, recognizing that the settlement of unfair labor practice allegations is a meaningful act, which bears consequences, and must be given due consideration when weighed against the right to choose whether to decertify a union.

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