



Deauthorization: The Union Workers' Trump Card

by Robert P. Hunter and Mark L. Fischer

Summary

Michigan workers can be legally forced to join and financially support a union in order to keep their jobs. However, a “deauthorization” provision in federal law allows private-sector employees to vote to withhold dues payments from a poorly performing union. State lawmakers can do more to help workers use deauthorization as a way to keep unions accountable to their members.

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In 21 of the 50 states, it is illegal to force workers to join and pay money to a labor union as a condition of holding a job. Unfortunately, Michigan is not one of these 21 “right-to-work” states, though many Michigan workers undoubtedly would prefer to opt out of their union membership obligations if they could. Thanks to an obscure provision in federal law, however, Michigan workers can choose this “right-to-work” type protection for their own workplaces.

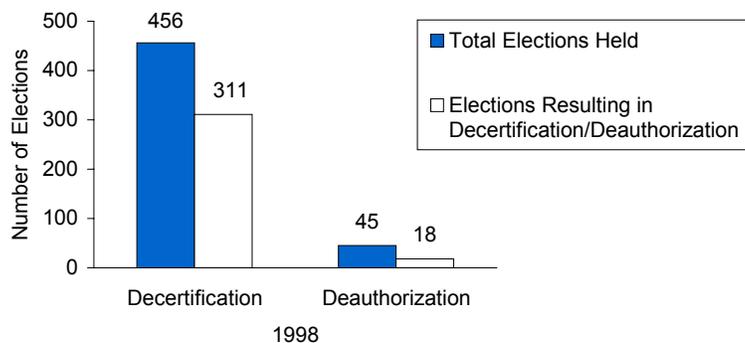
The National Labor Relations Act (NLRA) permits employees working under a union contract to petition the National Labor Relations Board (NLRB) to hold a vote on whether to revoke any contractual requirement to join the union or support it financially as fee payers. This is known as a deauthorization election.

It is important to note that *deauthorization* differs from the more familiar concept of *decertification*. When employees *decertify* their union, they fire their bargaining agent. The union loses its privileges and obligations as the employees’ exclusive representative in bargaining, including the ability to compel dues or fees from employees. A majority of employees in the bargaining unit who actually vote is sufficient to win decertification elections. In Michigan, unions were decertified in 19 out of 26 elections last year.

Deauthorization elections are different. Employees cannot fire their exclusive representative after a successful deauthorization vote, *but they can withhold its pay*. The deauthorized union still represents the employees, but it cannot legally force them to pay dues and fees. Payment becomes a truly voluntary exchange of value. Deauthorization votes can occur at any time during the life of a contract and may be sought annually.

Winning a deauthorization election means that a majority of employees in the bargaining unit as a whole must vote in favor of deauthorization, not just a majority of those

Union Deauthorization Is a Little-Known Alternative to Decertification



Source: NLRB

voting. Thus, an employee who skips the election votes, in effect, against deauthorization.

Deauthorization is far less common than decertification, and many workers may not realize that they have this option. According to NLRB data, 18 of the 45 deauthorization votes held in 1998 resulted in an actual deauthorization—a mere 40 percent. Of the 456 decertification elections concluded last year, 311 ended in decertification—a whopping 68 percent.

Why should employees, when faced with an ineffective or unresponsive union, be forced to choose between the extremes of “living” with it or firing their union through a full-blown decertification? Workers saddled with an apathetic, abusive, or under-performing union should know that the democratic process can work in their favor through a government-sponsored, secret-ballot deauthorization election.

Deauthorization is not unfair to unions. Unions serving their members’ needs have nothing to fear from this increased accountability to workers. Under deauthorization, even marginal, under-performing unions will be able to solicit dues support and employees will be free to continue to pay union dues as they see fit. No other provision of a labor agreement is affected by deauthorization.

The U. S. Supreme Court has long held that the states can regulate union security agreements under the authority of section 14(b) of the Taft-Hartley amendments to the NLRA. Thus, Michigan lawmakers could mandate that an election be held *before* employers and unions can negotiate agreements requiring union membership.

Following the Supreme Court’s lead, the NLRB ruled in September 1999 that while states cannot enact more restrictive provisions for deauthorization, they are free to loosen the rules. This means that Michigan legislators have a new opportunity to help the state’s workers by bringing balance to the worker-union relationship.

Lawmakers should add a deauthorization provision to Michigan’s Public Employment Relations Act to give 310,000 public employees more options to effect needed change within their unions. By doing so, the legislature would put public employees on equal footing with their private-sector counterparts.

Consumers wield the incredible power of choice when they make voluntary decisions about how to spend their money in the marketplace. Michigan union members should be able to enjoy the same power held by other consumers—the power over their purse strings. Deauthorization is a great way for dissatisfied workers to hold their union accountable and ensure that it always delivers top-quality representation.

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