

# Amazon election do-over: a turning point for labor relations in US

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## Attachments

-  Amazon.com Services LLC and Retail, Wholesale and Department Store Union

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On Monday, a regional director of the National Labor Relations Board ordered Amazon to hold a second union election for employees at its Bessemer, Alabama distribution center. *Amazon.com Services LLC and Retail, Wholesale and Department Store Union*, 10-RC-269250.

Between February and April 2021, the NLRB conducted a secret ballot union election via mail. Employees voted 738 to 1,798 against unionization. The union timely filed objections, and a hearing officer recommended another election be held. Regional Director Lisa Henderson affirmed the hearing officers' rulings and directed that the parties hold a second election.

The union's objections centered on Amazon's having the U.S. Postal Service place a mailbox in its parking lot. The union argued and Henderson agreed that Amazon's push to have a mailbox installed in its parking lot created the false appearance that Amazon was conducting the election. The union further claimed that Amazon's placing a tent covering the mailbox with its slogan and placing the mailbox in the plain view of its security cameras pressured workers to vote against the union.

The hearing record revealed that, "[a]fter discussions between the Employer and Postal Service in January and February, the Postal Service installed a gray 'cluster box unit' -- instead of its more typical blue mailboxes -- on February 4. The Postal Service installed the mailbox on the walkway at the main entrance of the facility, one of three locations suggested by the Employer, and in plain sight of the Employer's security cameras. The mailbox did not bear Postal Service insignia or any other signage associating it with the Postal Service. The Employer subsequently erected a tent around the mailbox and attached a large banner that read, 'SPEAK FOR YOURSELF! MAIL YOUR BALLOT HERE.' Notably, the 'speak for yourself' message was part of the Employer's campaign slogan encouraging employees to vote against the Union."

The NLRB attempts to provide the parties with "laboratory conditions" for its elections to determine the uninhibited desires of the employees. The board will set aside an election when alleged objectionable conduct "so interfered with the necessary 'laboratory condition' as to prevent the employees' expression of a free choice in the election." *Dairyland USA Corp.*, 347 NLRB 310, 313 (2006), *enfd. sub nom. NLRB v. Food & Commercial Workers Local 348-S*, 273 Fed. Appx. 40 (2d Cir. 2008). Consequently, Henderson found that, "by causing the Postal Service to install a cluster mailbox unit, communicating and encouraging employees to cast their ballots using the mailbox, wrapping the mailbox with its slogan, and placing the mailbox at a location where employees could reasonably believe they were being surveilled, the Employer engaged in objectionable conduct that warrants setting aside the election."

Amazon argued that because the results of the election were so lopsided in its favor -- 71% against unionization -- and because any objectionable conduct was so de minimus that it would not have changed the result, the objections should have been overruled.

Significantly, Henderson noted that, "[t]he question of whether the second election should be a manual or mail ballot election is not yet ripe for determination. Both parties raise concerns about the location of a potential in-person election ... It is possible that the second election could be set in the near or distant future."

Amazon intends to appeal the decision, leaving an open question as to the future of the union organizing drive at Amazon. The timing and the manner of a future election remains to be determined.

According to Robert Schoonover, executive director of SEIU Local 721, the problem with trying to organize workers in the private sector is that there is never a level playing field. Employers often control over employees for eight hours a day. Employers can make their workers attend "captive audience" meetings, where a highly paid anti-union consultant will persuade them to vote against unionization. Indeed, an employer such as Amazon can vastly outspend a union. It is difficult for any union to win an NLRB election.

Schoonover suggests leveling the playing field by changing the law to allow for "card checks," whereby a union could demand recognition based upon presenting union authorization cards from a majority of the workers, instead of going through an NLRB election.

According to a management-side attorney John Golper, of counsel at Balard, Rosenberg, Golper and Savitt, LLP, Henderson's decision is part of a nationwide anti-Amazon sentiment prevalent in most cities and states. In this regard, the California Legislature passed Assembly Bill 701, which will go into effect January 1, requiring warehouse employers such as Amazon with 100 or more employees to provide new employees with information regarding production quotas at their time of hire, and providing employees with a right to sue if the production quotas interfere with their ability to take breaks. Golper also felt that since the election results were so lopsided that any de minimus conduct alleged could not have affected the results.

Amazon spokesperson Kelly Nantel said the company discourages unions and is disappointed with the NLRB decision. "Our employees have always had the choice of whether or not to join a union, and they overwhelmingly chose not to join the RWDSU earlier this year. It's disappointing that the NLRB has now decided that those votes shouldn't count," Nantel said in a statement. "As a company, we don't think unions are the best answer for our employees."

Stuart Appelbaum, president of the Retail, Wholesale and Department Store Union, applauded the decision. "Today's decision confirms what we were saying all along -- Amazon's intimidation and interference prevented workers from having a fair say in whether they wanted a union in their workplace -- and as the regional director has indicated, that is both unacceptable and illegal," Appelbaum said in a statement.

We are at a turning point in labor relations in America. Major employers in the warehouse and delivery industry will be watching the results of the second election closely. □