McDowell County Commission On Aging, Inc. ***and*** **Service Employees International Union, District 1199 and John Reeves.** Case 09–RD–343950

September 1, 2026

ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On February 20, 2025, the Regional Director issued a decision dismissing a decertification petition filed by the Petitioner as a "result of the investigation of the unfair labor practice charge[s]" in related cases, and the Petitioner timely filed a request for review. The Petitioner's request for review of the Regional Director's Decision to Dismiss is granted as it raises substantial issues warranting review.[1] For the reasons stated below, we reverse the Regional Director's decision and remand the case for the purpose of processing the decertification petition.

In the months following the expiration of the collective-bargaining agreement between the Employer and the Union, the Union filed unfair labor practice charges in two cases, and the Petitioner filed the instant petition seeking to decertify the Union. The Employer and the Petitioner agreed to a stipulated election held on July 9, 2024. After the election was completed, the Regional Director impounded the ballots under the terms of the rule then in effect pending issuance of a complaint in the unfair labor practice cases.[2] The Regional Director did not issue a consolidated complaint in those cases for 60 days, the maximum time permitted for issuance of a complaint under the Board's rules. On January 23, 2025, the Employer and the Union executed an agreement settling those cases, without an admission of wrongdoing by the Employer, and requiring dismissal of the instant petition; the Petitioner was not a party to that agreement.

On February 20, 2025, the Regional Director dismissed the petition. The Decision to Dismiss relevantly states that, "[a]s a result of the investigation of the unfair labor practice charge in Cases 09–CA–339522 and 09–CA–341670[,] I find that further proceedings on the petition are unwarranted. The investigation of that charge disclosed that the Employer engaged in the following conduct that tainted the decertification petition:" followed by a list of the settled unfair labor practices, including alleged interrogations and creating the impression of surveillance. The Decision to Dismiss also listed as settled allegations of "provid[ing] more than ministerial assistance to employees attempting to decertify the Union" and "[soliciting] the decertification of the Union by advising employees to contact an employee engaged in decertification efforts and telling employees to provide that employee with signed papers stating that they no longer wished to be represented by the Union." In support of the dismissal, the Regional Director cited *Truserv Corp.*, 349 NLRB 227 (2007), and *Canter's Fairfax Restaurant*, 309 NLRB 883 (1992).

The Regional Director dismissed the petition in error. The Regional Director's Decision to Dismiss merely recited the complaint allegations that formed the basis of the since-settled ULP charges without including any express reasoning as to why those claims justified dismissing the petition at that juncture. To the extent the dismissal relied on conduct alleged in the settled ULP charges, it is directly contrary to *Truserv*. See 349 NLRB at 231–232 ("Without a finding of liability or an admission of wrongdoing, there is no substantial evidence that the employer engaged in the alleged unfair labor practices[.]").

Our dissenting colleague suggests that the Regional Director dismissed the petition based on an administrative investigation that revealed that the Employer encouraged and promoted the decertification effort and solicited the showing of interest. It is true that, under *Truserv*, a petition may still be dismissed if "the Regional Director finds that the petition was instigated by the employer or that the employees' showing of interest in support of the petition was solicited by the employer." See 349 NLRB at 227. But the dissent reads too much into the Decision to Dismiss. The Regional Director's Decision did not state that he had conducted an "administrative investigation" focused on the alleged instigation or taint to the showing of interest in a manner that would have been consistent with the NLRB Casehandling Manual. To the contrary, the Regional Director merely stated that "[t]he above-captioned case . . . has been carefully investigated and considered," that he had investigated "the unfair labor practice charge in Cases 09–CA–339522 and 09–CA–341670," and that "[t]he investigation of that charge" disclosed conduct requiring the dismissal of the petition; he then recited all of the complaint allegations, including conduct irrelevant to the allegations of instigation or solicitation, without any further explanation (aside from his citation of *Truserv* and *Canter's Fairfax*). In these circumstances, we will not impute any further spe-

[1] The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] See Sec. 103.20(c) (eff. July 31, 2020, to Sept. 29, 2024) (the "Election Protection Rule").

cific findings or legal rationale to a Decision that, on its face, is dismissing the petition based on settled unfair labor practice allegations.[3]

We recognize that the Regional Director's letter also states that the petition was tainted by "more than ministerial assistance" provided by the Employer and by the Employer "advising employees to contact an employee engaged in decertification efforts and telling employees to provide that employee with signed papers stating that they no longer wished to be represented by the Union." But *Truserv* states that "[a] petition will be dismissed on traditional grounds if it is *instigated* by the employer." See *Truserv*, 349 NLRB at 231 (citing *Canter's Fairfax*, 309 NLRB at 884) (emphasis added). The Dismissal Letter does not describe the kind of "*direct* employer involvement" with the petition that is necessary to demonstrate that the showing of interest has been sufficiently tainted to warrant dismissing the petition. See *Canter's Fairfax*, 309 NLRB at 884 fn. 1 (emphasis in original); see also *Dejana Industries, Inc.*, 336 NLRB 1202, 1202 (2001) (noting the Board's "bright-line rule of excluding all cards directly solicited by a supervisor").[4]

Therefore, even if the Regional Director was attempting to invoke an exception to *Truserv* and dismiss the petition based on taint to the showing of interest, the conduct that the Regional Director relied on was not the kind that taints the showing of interest for the purpose of *Tru-Serv*.

Accordingly, we grant review and remand the case to the Regional Director to open and count the ballots as soon as is practicable. In all other respects, the request for review is denied.

Dated, Washington, D.C. September 1, 2026

James R. Murphy, Chairman

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting.

I respectfully dissent from the majority's decision to grant review, reverse the Regional Director's dismissal of the decertification petition, and remand the case with instructions to count the ballots. The Regional Director correctly applied long-standing Board precedent and procedures, which required dismissal of the petition after an administrative investigation revealed that the Employer had engaged in conduct inherently inconsistent with the petition—namely, encouraging and promoting the decertification of the Union and soliciting the employees' showing of interest in support of the petition. Accordingly, I would deny review.

I.

The Employer provides senior services and in-home care. Since at least 2021, the Employer has recognized Service Employees International Union, District 1199 (the Union) as the representative of a unit of service and maintenance employees at its Welch, West Virginia facility. The Employer and the Union were party to a collective-bargaining agreement which expired on March 25, 2024.[1] The Union subsequently filed unfair labor practice charges (in Cases 09–CA–339522 and 09–CA–341670) alleging that the Respondent violated Section 8(a)(1) of the Act by, among other things, providing more than ministerial assistance in connection with a decertification effort and soliciting employees to decertify the Union.

On June 7, a bargaining-unit employee (the Petitioner) filed the petition in this case seeking to decertify the Union. The Union filed a request to block the election, based on the previously filed pending unfair labor practice charges. The Regional Director processed the petition under the 2020 election rule then in effect, which precluded the Regional Director from holding the petition in abeyance before the certification stage of the representation proceeding.[2] The decertification election was held on

[3] The timing of the Regional Director's Decision to Dismiss further undercuts the notion that the dismissal was based on anything other than the settled ULP allegations.

[4] Our dissenting colleague cites the Board's decision in *Kauai Veterans Express Co.*, 369 NLRB No. 59 (2020), which is inapposite here. That case involved a memorandum "presented to employees by a company official at a staff meeting, [who] asked the employees . . . to check a box on the memorandum to indicate whether they 'would like to be in the Union[.]' See 369 NLRB No. 59, slip op. at 1. The Regional Director has not identified any materially similar conduct here. Additionally, the Board in *AIM Aerospace Sumner* rejected the argument that the employer's actions there "directly assisted the decertification effort." See 367 NLRB No. 148, slip op. at 1 fn. 2 (2019), affd. 822 Fed. Appx. 585 (9th Cir. 2020). And in *SFO Good-Nite Inn*, the Board found that multiple managers had directly threatened certain employees with reduced hours and discharge in an attempt to coerce them into signing the decertification petition, which differs materially from the conduct described in the Regional Director's Decision to Dismiss. See 357 NLRB 79, 80 (2011), enfd. 700 F.3d 1 (D.C. Cir. 2012).

[1] All subsequent dates are in 2024 unless otherwise indicated.

[2] NLRB, Representation-Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relations, 85 Fed. Reg. 20156 (Apr. 1, 2020) (2020 election rule). The 2020 election rule was superseded by the 2024 Fair Choice-Employee Voice Rule. Representation-Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships, 89 Fed. Reg. 62952 (August 1, 2024).

July 9, and the ballots were impounded in accordance with the procedures set forth in the 2020 election rule.

On January 13, 2025, the Regional Director issued an amended consolidated complaint in Cases 09–CA–339522 and 09–CA–341670. Around January 23, 2025, the Employer and the Union reached an agreement resolving the unfair labor practice cases, which the Regional Director approved on January 28, 2025. The settlement agreement contained the following provision:

> **RELATED DECERTIFICATION PETITION**—The parties acknowledge that, in connection with approval of this settlement agreement, the Regional Director will dismiss the petition filed in Case 09-RD-343950, with prejudice, and will not entertain a new decertification petition for a reasonable period of four months after the notice-posting period ends.

The settlement agreement did not contain an admission of wrongdoing by the Employer. The Petitioner was not a party to the settlement agreement.

By letter dated February 20, 2025, the Regional Director dismissed the decertification petition. In the dismissal letter, the Regional Director explained that the matter "has been carefully investigated and considered," and the investigation has disclosed employer conduct that "tainted the decertification petition," including, among other things, "provid[ing] more than ministerial assistance to employees attempting to decertify the Union"; scheduling a mandatory meeting "to directly conflict with a scheduled union meeting"; and, at the mandatory meeting, "poll[ing] employees about their union activities and sympathies and whether they supported the Union" and "solicit[ing] the decertification of the Union by advising employees to contact an employee engaged in decertification efforts and telling employees to provide that employee with signed papers stating that they no longer wished to be represented by the Union." The Regional Director therefore found that further proceedings on the petition were unwarranted, citing *TruServ Corp*., 349 NLRB 227 (2007), and *Canter's Fairfax Restaurant*, 309 NLRB 883 (1992).

II.

The majority finds that the Regional Director erred in dismissing the petition for two reasons. First, the majority finds that *TruServ* precludes the Regional Director's reliance on the settled unfair labor practice allegations in Cases 09–CA–339522 and 09–CA–341670 to find that the petition was tainted. Second, the majority finds that, if, by citing to *Canter's Fairfax*, the Regional Director meant "to signal" that he was dismissing the petition based on "traditional grounds" related to the showing of interest, the conduct the Regional Director relied on was not the kind of "*direct* employer involvement" that is necessary to demonstrate that the showing of interest has been sufficiently tainted to warrant dismissing the petition, citing *Canter's Fairfax*, 309 NLRB at 884 fn. 1 (emphasis in original) and *Dejana Industries, Inc.*, 336 NLRB 1202, 1202 (2001) (noting the Board's "bright-line rule of excluding all cards directly solicited by a supervisor").

III.

The majority's assertion that *TruServ* bars the dismissal of the petition in this case is flatly contrary to the Board's articulation of the governing standard in that decision. In *TruServ*, the union filed an unfair labor practice charge alleging that the employer made unilateral changes in violation of Section 8(a)(5) of the Act. An employee subsequently filed a decertification petition, which was blocked or held in abeyance pending disposition of the charge. The employer and union thereafter executed a new collective-bargaining agreement and the union agreed to withdraw the 8(a)(5) charge. The Acting Regional Director then dismissed the decertification petition, relying on the Board's decision in *Douglas-Randall, Inc*., 320 NLRB 431 (1995) (holding 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, but before the settlement, must be dismissed). A divided Board granted review, overruled *Douglas-Randall,* and reinstated the standard enunciated in *Passavant Health Center*, 278 NLRB 483 (1986), and its progeny. Under the reinstated standard, an employer's agreement to resolve outstanding unfair labor practice charges and complaints by recognizing and bargaining with the union, entering into a collective-bargaining agreement, or entering into a settlement agreement, "will not require dismissal of a decertification petition challenging the union's majority status filed after the alleged unlawful conduct but prior to settlement." *TruServ*, 349 NLRB at 233. The Board explained that, "[w]ithout a finding of liability or an admission of wrongdoing, there is no substantial evidence that the employer engaged in the alleged unfair labor practices." Id. 231–232. Applying the reinstated standard, the Board in *TruServ* reversed the Acting Regional Director's decision and reinstated the petition.

However, the Board in *TruServ* did not impair Regional Directors' authority to dismiss decertification petitions based on an administrative finding that the employer directly instigated the petition or solicited employee support for it. To the contrary, the Board expressly held that, under the reinstated standard, "a decertification petition may *not* be processed if . . . the Regional Director finds that the petition was instigated by the employer or that the employees' showing of interest in support of the petition was solicited by the employer." Id. at 227 (emphasis added). *TruServ* thus left intact the Board's preexisting policy of dismissing decertification petitions based on an administrative finding of taint caused by direct employer involvement. The Board's current Casehandling Manual, which was updated in light of *TruServ*, recognizes as much.[3] The Casehandling Manual (Part One) Section 10131.5 Decertification Petitions and Settlement Agreements, subsection (b) *Pending Decertification Petition and Taint* provides that "following the investigation of an unfair labor practice charge alleging that a pending decertification petition was tainted by employer conduct, such as a claim that the employer instigated the filing of the petition or solicited employees' support of the petition, the Regional Office should make an administrative determination as to the taint allegations," and if the investigation reveals employer taint, then "[a]bsent withdrawal, the Regional Office should dismiss the petition setting forth the taint found in the administrative investigation." As relevant here, Section 10131.5(b) emphasizes that dismissal is appropriate in these circumstances regardless of "whether a settlement of the related unfair labor practice charge, with or without an admission of employer liability, is reached or the Regional Office issues a complaint," citing *TruServ* and *Canter's Fairfax*.[4]

Put simply, in *TruServ*, the Board drew a distinction between dismissals based solely on an employer's agreement to resolve related unfair labor practice allegations without an admission or finding of wrongdoing, and dismissals based on an administrative finding of taint. The Board held that an employer's agreement to resolve related unfair labor practice allegations does not, *by itself*, require dismissal of a decertification petition. However, the Board expressly reaffirmed Regional Directors' authority to dismiss a petition on the basis of an administrative finding that the employer directly instigated the petition or solicited employee support for it. 349 NLRB at 227, 231. Indeed, consistent with longstanding Board policy, *TruServ* compels dismissal in such circumstances, irrespective of whether related charges have been settled, and with or without an admission of wrongdoing. Id. at 227; Section 10131.5(b) of the Casehandling Manual (citing *TruServ* and *Canter's Fairfax*).

Here, the Regional Director's administrative finding that the Employer "provided more than ministerial aid" in the decertification effort, polled employees regarding their support for the Union, and "solicited the decertification of the Union by advising employees to contact an employee engaged in decertification efforts and telling employees to provide that employee with signed papers stating that they no longer wished to be represented by the Union," brings this case squarely within the exception recognized in *TruServ.* The majority's assertion that the Regional Director "merely recited the complaint allegations that formed the basis of the since-settled ULP charges" is contradicted by the plain text of the Regional Director's Decision to Dismiss. The Decision to Dismiss states that the petition and unfair labor practice allegations "have been carefully investigated and considered," and the investigation "disclosed" that the Employer engaged in the conduct recited above. That is an administrative finding that the petition has been tainted by direct employer involvement —exactly the kind *TruServ* recognizes as a basis to dismiss rather than process a decertification petition. Although my colleagues complain that "[t]he Regional Director's Decision did not state that he had conducted an 'administrative investigation' . . . in a manner that would have been consistent with the NLRB Casehandling Manual," they fail to identify any specific deviation from the Casehandling Manual. The Region fully investigated the unfair labor practice allegations in this case, determined that they had merit, and issued a complaint. The Casehandling Manual outlines the exhaustive procedures Regions are required to follow during the investigation of unfair labor practice allegations prior to issuing a complaint and my colleagues cite no reason to doubt that those procedures were followed by the Region prior to issuing the complaint in this case. Hence, my colleagues' critique of the Regional Director's investigation is unfounded and appears to be motivated by disagreement with the outcome rather than the process.

My colleagues also criticize the Regional Director for failing to set forth the "legal rationale" supporting his decision to dismiss the petition. However, the Regional Director followed the guidance provided in Section 10131.5(b) of the Casehandling Manual. As noted above, this section specifies that "following the investigation of an unfair labor practice charge alleging that a pending

[3] "Although the Casehandling Manual is not binding on the Board, it provides 'operational guidance' that is 'intended to safeguard a free and fair election."' *Mercedes-Benz of San Diego*, 357 NLRB 650, 651 fn. 4 (2011) (quoting *Queen Kapiolani Hotel*, 316 NLRB 655, 655 fn. 5 (1995); *Kirsch Drapery Hardware*, 299 NLRB 363, 364 (1990)).

[4] See also *Nu-Aimco, Inc.*, 306 NLRB 978, 979 (1992) ("Once an employer has fully complied with a settlement agreement remedying unfair labor practice charges, or once unfair labor practice charges have been withdrawn, then the question of whether a decertification petition is 'tainted' is limited to the sufficiency of the showing of interest or the existence of supervisory or employer assistance in obtaining or circulating the petition."). The Board expressly affirmed this precedent in *TruServ*. 349 NLRB at 231 (clarifying that under the reinstated *Passavant* standard, a petition may still be dismissed on "traditional grounds") (citing *Canter's Fairfax*, 309 NLRB at 884); id. at 228-229 (reaffirming *Nu-Aimco*).

decertification petition was tainted by employer conduct, such as a claim that the employer . . . solicited employees' support of the petition, the Regional Office should make an administrative determination as to the taint allegations." If the Region finds merit to the allegation, then "[a]bsent withdrawal, the Regional Office should dismiss the petition setting forth the taint found in the administrative investigation." The Casehandling Manual does not require Regional Directors to include a "legal rationale" in dismissal letters, and in my experience, they rarely do. In any event, if the absence of a legal rationale were truly the reason for granting review, the appropriate response would be to remand the case to the Regional Director to provide a fuller explanation.

The majority further errs in concluding that the conduct relied upon by the Regional Director in the Decision to Dismiss is not the kind of direct employer involvement that is necessary to demonstrate that the petition has been sufficiently tainted to warrant its dismissal. In support of this contention, the majority observes that *TruServ* states that "[a] petition will be dismissed on traditional grounds if it is *instigated* by the employer." (Emphasis in original.) However, the majority overlooks *TruServ*'s unequivocal directive that "a decertification petition may *not* be processed if . . . the Regional Director finds that . . . the employees' showing of interest in support of the petition was solicited by the employer," regardless of whether related unfair labor practice charges were previously settled without an admission of wrongdoing.[5] 349 NLRB at 227 (emphasis added).

Here, as discussed above, the Regional Director determined that the Employer, during a mandatory meeting, polled employees regarding their union support and "solicited the decertification of the Union by advising employees to contact an employee engaged in decertification efforts and telling employees to provide that employee with signed papers stating that they no longer wished to be represented by the Union." Contrary to the majority, this is precisely the kind of direct employer involvement that the Board has held requires dismissal of a decertification petition. See, e.g., Section 10131.5(b) of the Casehandling Manual (requiring dismissal where the region determines that "the employer . . . solicited employees' support of the petition"; *Canter's Fairfax*, 309 NLRB at 884 & fn. 1 (confirming that the Regional Director retained authority to dismiss a representation petition after the employer settled related unfair labor practice charges without an admission of wrongdoing, on the basis of an administrative investigation that "revealed *direct* employer involvement with the petition," such as "supervisors circulating the petition") (emphasis in original); *Kauai Veterans Express Co.*, 369 NLRB No. 59, slip op. at 1–2 (2020) (holding that employer's polling of employees regarding their union support "constituted improper employer solicitation" and "direct involvement" in decertification effort and tainted the subsequent decertification petition) (citing *AIM Aerospace Sumner,* 367 NLRB No. 148, slip op. at 1 fn. 2 (2019) (holding that a decertification petition is tainted when an employer "directly instigate[s] or propel[s]" the decertification effort by "actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of" the petition) (quoting *SFO Good-Nite Inn*, 357 NLRB 79, 80 (2011), enfd. 700 F.3d 1 (D.C. Cir. 2012)), affd. on other grounds 822 Fed.Appx. 585 (9th Cir. 2020). Contrary to my colleagues, *Kauai* is directly on point: the Board there held that the employer's memorandum asking employees to mark whether they "would like to be in the Union" "constituted improper employer solicitation of employee disaffection," and further that the memorandum "manifests the Respondent's direct involvement in the decertification effort and warrants the presumption . . . that the petition was tainted." 369 NLRB No. 59, slip op. at 1–2 (citations omitted). That is functionally indistinguishable from the Respondent's conduct here; whether the employer solicits disaffection by written checkbox (as in *Kauai*) or by orally polling employees (as here) does not alter the legal character of the employer's direct involvement. Moreover, in this case, the coercive impact of the Employer's conduct was heightened by the fact that it occurred during a mandatory meeting deliberately timed to interfere with a scheduled union meeting. *Amazon.com Services LLC*, 373 NLRB No. 136, slip op. at 1–2 (2024) (holding that "an employer interferes with employees' decision whether to exercise their Section 7 rights within the meaning of Section 8(a)(1) of the Act when it compels employees to attend a captive-audience meeting on pain of discipline or discharge"). Notably, in the Petitioner's Motion to Intervene, attached as an exhibit to the Employer's Request for Review, the Petitioner acknowledges that "the earliest signatures" supporting the decertification petition were collected after the conduct that allegedly tainted the petition occurred. Hence, there

[5] My colleagues assert that "[t]he timing of the Regional Director's Decision to Dismiss" after the related unfair labor practice charges were settled "undercuts the notion that the dismissal was based on anything other than the settled ULP allegations." This assertion reflects a fundamental misunderstanding of *TruServ*. The sequence of events in this case is exactly what *TruServ* and Sec. 10131.5(b) of the Casehandling Manual contemplate: they explicitly instruct Regional Directors to dismiss a petition following the settlement of "related unfair labor practice charge[s], with or without an admission of employer liability" where, as here, the Regional Director's investigation of those charges reveals that the employer "solicited employees' support of the petition." Sec. 10131.5(b); 349 NLRB at 227.

is no basis for finding that any of the signatures are untainted by the Employer's direct involvement in the decertification effort.[6]

IV.

In sum, the majority's reading of *TruServ* is overly expansive and blurs the distinction between dismissal based solely on an employer's agreement to resolve related unfair labor practice allegations, and dismissal based on an administrative finding that the employer was directly involved in the decertification effort. In *TruServ,* the Board held that an employer's agreement to resolve related unfair labor practice allegations alone will not require dismissal of a decertification petition, but it expressly preserved the Board's preexisting, well-established policy of dismissing petitions where an administrative investigation reveals that the petition was tainted by the employer's direct involvement. That policy controls this case. Having determined that the petition was tainted by the Employer's polling of employees and direct solicitation of support for the decertification petition at a mandatory meeting, the Regional Director properly dismissed the petition.

Even properly understood, however, *TruServ* was wrongly decided, in my view. As the Supreme Court has recognized, "the object of the National Labor Relations Act is industrial peace and stability, fostered by collective-bargaining agreements providing for the orderly resolution of labor disputes between workers and employers." *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 785 (1996). *TruServ* undermines this statutory objective and upsets the delicate balance between protecting employee free choice and fostering industrial peace that Congress deemed essential. The Board and courts have long recognized that a settlement—even absent a finding of wrongdoing—is "quite different from a dismissal" because it fixes the parties' status and reflects an administrative determination that remedial action is necessary. *Poole Foundry & Mach. Co. v. NLRB,* 192 F.2d 740, 742–743 (4th Cir. 1951). By treating settlement agreements as though they were functionally equivalent to dismissals of the underlying allegations, *TruServ* deprives settlements of their intended stabilizing function and render them illusory. *TruServ*, 349 NLRB at 236–237 (Members Liebman & Walsh, dissenting).

Processing a decertification petition in the wake of an employer's agreement to resolve unfair labor practice allegations by recognizing and bargaining with the union or entering into a collective-bargaining agreement destabilizes bargaining relationships by allowing coercive conduct to produce lasting effects. The *TruServ* Board majority candidly acknowledged that its ruling "carries the. . . risk of permitting a tainted petition to be processed," yet offered no remedy beyond suggesting that unions and Regional Offices might persuade petitioners to withdraw the petition—an approach that has no legal force and seems unlikely to succeed. Id. at 231. The result is an incentive structure in which employers gain by sowing instability, while unions lose the benefit they secured through settlement.

Such an approach disrupts nascent or restored bargaining relationships and deprives the union of that for which it settled, while rewarding employers by relieving them of the meaningful consequences of their agreements.[7] The predictable effect is to discourage the settlement of unfair labor practice disputes, invite more litigation, and destabilize bargaining relationships—outcomes that run counter to the statutory design.

By contrast, the Board's historical approach, overruled in *TruServ,* encouraged parties to resolve disputes amicably, avoided unnecessary litigation, and prevented employers from benefiting from misconduct that taints employee choice. At the same time, it preserved the petitioner's rights in cases where unfair labor practice allegations lacked merit or were litigated and found to be without basis. Restoring that approach is essential to safeguarding meaningful settlement, ensuring genuine employee free choice, and upholding the Act's fundamental commitment to stable collective-bargaining relationships.

V.

For all these reasons, I would deny review and affirm the Regional Director's dismissal of the petition.

Dated, Washington, D.C. September 1, 2026

David M. Prouty, Member

[6] Accordingly, both the petition and the election must be treated as void. *Ron Tirapelli Ford*, 304 NLRB 576, 576, 580 (1991) (affirming administrative law judge's decision dismissing RM petition and nullifying election results where the RM petition was tainted by the employer's "coercive role in its solicitation and support for the employee petition" that was used to support the RM petition and "was thus void ab initio"), enfd. 987 F.2d 433 (7th Cir. 1991).

[7] As discussed above, in this case, the parties' settlement agreement included a provision requiring the Regional Director to dismiss the pending decertification petition. By reversing the Regional Director's dismissal of the petition and ordering that the ballots be counted, the majority is depriving the Union of the central benefit it secured in bargaining and destabilizing the bargaining relationship the settlement agreement was intended to restore. Because the Board is now negating the core commitment of the settlement agreement, fundamental fairness requires that the agreement be set aside in its entirety and the underlying complaint reinstated.

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