NLRB Deals Blow To Unions' Ability To Use Fees For Lobbying Purposes

Insights
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The National Labor Relations Board just decided that private sector unions cannot use fees paid by nonmembers to fund their lobbying efforts. Especially when coupled with last year's momentous *Janus* decision at the U.S. Supreme Court, Friday's decision in *United Nurses & Allied Professionals (Kent Hospital)* could further impact the effectiveness of union lobbying activities. What do employers need to know about the latest decision from the Labor Board?

The Facts
Jeannette Geary and several other members of the United Nurses and Allied Professionals union resigned their union membership and objected to the assessment of dues and fees for activities unrelated to collective bargaining, contract administration, or grievance adjustment on the basis of their *Beck* rights. "*Beck* rights" are defined in the Supreme Court's 1988 decision in *Communications Workers of America v. Beck*, which held that unions have a duty of fair representation which would be violated by the improper use of nonmembers' fees. Specifically, unions can only use funds collected from nonmember employees for activities that are germane to a union's core representational duties of collective bargaining, contract administration, and grievance adjustment.

Geary's objection was that her union had used fees collected from the *Beck* objectors to lobby for seven bills pending in the Rhode Island and Vermont legislatures. The *Beck* objectors alleged charging fees to nonmembers for lobbying purposes violated the National Labor Relations Act (NLRA).

The Decision
In its March 1 ruling, the Board agreed with Geary and her fellow union members, holding "that lobbying expenses are not chargeable to *Beck* objectors under the NLRA." In reaching this holding, the Board rejected the argument that lobbying is a representation function. It noted that the proposed legislation, which is the subject of the lobbying, involved a matter that would be the subject of collective bargaining.

While certain lobbying efforts "may in general relate to terms of employment or may incidentally affect collective bargaining, the lobbying activity is not part of the union's statutory collective-bargaining obligation and, therefore, is nonchargeable." Thus, by charging the *Beck* objectors fees

associated with lobbying, the Board concluded that the union "violated its duty of fair representation" and the NLRA. From this point forward, unions have been put on notice not to engage in similar activities without risking an NLRA violation.

What Does This Decision Mean?

Last week's ruling is another blow to the ability of unions to collect and use fees from nonmembers. On the last day of the Supreme Court's 2018 term, it held in *Janus v. AFSCME* that public sector employees who refused to join a union could not be compelled to pay agency fees to a union despite the supposed benefit the union's collective bargaining provides to the non-members. The Supreme Court held requiring such fees violated First Amendment principles protecting freedom of speech and association.

Collectively, the dual decisions of *United Nurses* and *Janus* have the potential to hamper both public and private sector unions and their ability to use and raise funds for lobbying purposes. The full extent of the impact that the *United Nurses* decision will have on union organization and effectiveness, however, remains to be seen. We will continue to monitor further developments and provide updates, so you should ensure you are subscribed to Fisher Phillips' alert system to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our Labor Relations Practice Group.

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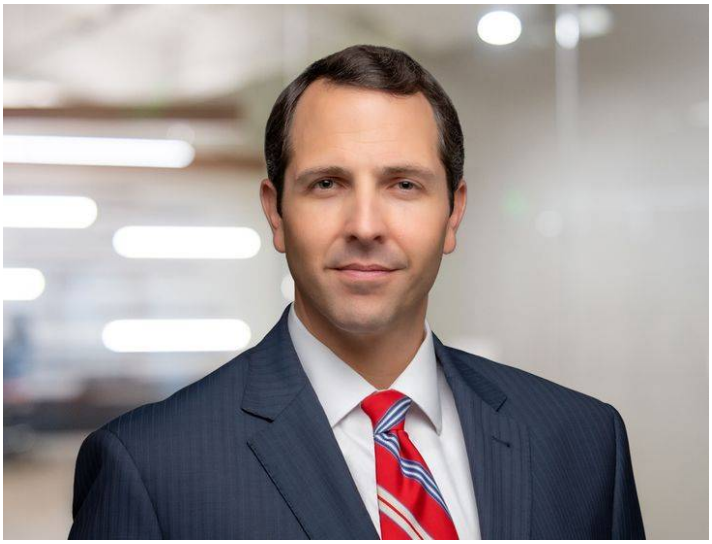

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