

## COLLECTIVE BARGAINING AGREEMENTS MUST EXPLAIN EMPLOYEE RIGHTS AND PROCEDURES FOR NONASSOCIATION FROM THE UNION DUE TO RELIGIOUS BELIEFS

The Illinois Labor Relations Board (the "Board") recently issued a decision and order confirming an Administrative Law Judge's recommended decision and order that both employers and unions commit an unfair labor practice when their collective bargaining agreements fail to contain language explaining employees' rights and procedures for nonassociation from the union on religious grounds pursuant to section 6(g) of the Illinois Labor Relations Act, 5 ILCS 315 (the "Act"). *Trygg, 32 PERI ¶ 164, 2016 WL 1381921, 2016 IL LRB LEXIS 23.*

Under section 6(g) of the Act, agreements that contain a fair share clause "must safeguard the right of nonassociation of employees based upon bona fide religious tenets or teachings of a church or religious body of which such employees are members." This "nonassociation" includes not being required to pay a fair share fee directly to the union. Instead, the Act allows for payment of the fair share fee to a nonreligious charity agreed upon by the objecting employee and the union. In *Trygg, 32 PERI ¶ 164, 2016 WL 1381921, 2016 IL LRB LEXIS 23*, an Illinois state worker objected on religious grounds to paying fair-share fees to the union representing his bargaining unit. The collective bargaining agreement contained a fair share clause, but no language regarding religious objections to union association.

The Board held that employees have a right to nonassociation on religious grounds under the Act and that agreements that fail to apprise employees of this right or the procedures to exercise the right tend to restrain or coerce employees from exercising their rights. The Board further held both employers and unions commit an unfair labor practice when they negotiate or maintain agreements without this language. The employer and the union were ordered to negotiate language into their collective bargaining agreement to inform employees of their right to nonassociation on religious grounds, their right to a prompt and impartial union hearing on the religious objection, and procedures to escrow the employee's fair share fees until the religious objection is confirmed and the employee and union agree to a nonreligious charity to receive the fees.

Additionally, the Board held that employees satisfy the Act's requirements that religious objections are "bona fide" in two ways. First, the objection is bona fide if the employee demonstrates they are members of a church or religious body that objects on religious grounds to union association and the employee also sincerely holds this same belief. Second, even if the employee does not claim their objection is based on church teachings, it can still be bona fide if the employee proves by clear and convincing evidence that they hold a genuine and sincere personal religious objection to union association.

Unions should review their collective bargaining agreements to ensure they contain fair share language that includes an explanation of employee rights to nonassociation on religious grounds and procedures to exercise these rights and pay a fair share fee to a nonreligious charity. If your agreement does not contain this language, contact your attorney for sample language or if you have any questions related to union responsibilities pursuant to this Board decision.

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