

**NLRB RULES UNION LOBBYING EXPENSES ARE NOT CHARGEABLE
TO DUES OBJECTORS**

On March 1, 2019, the National Labor Relations Board (“NLRB”) ruled in *United Nurses & Allied Professionals (Kent Hospital)* that nonmember dues objectors in the private sector cannot be compelled to pay for any union lobbying expenses. The Board majority held that lobbying activity, although sometimes relating to terms of employment or incidentally affecting collective bargaining, is not part of the union’s representational function. Thus, lobbying expenses are not chargeable to nonmember dues objectors under the Supreme Court’s 1988 decision in *Communications Workers of America v. Beck*, which held that private-sector nonmember employees subject to union security who object to the expenditure of their agency fees for activities other than collective bargaining, contract administration, or grievance adjustment (referred to as “*Beck* objectors”) can only be compelled to pay that portion of the agency fee necessary to the union’s performance of “the duties of an exclusive representative of employees in dealing with the employer on labor-management issues.”

The Board majority in *United Nurses* further held that it is not enough for a union to provide an objecting nonmember with assurances that its compilation of chargeable versus nonchargeable expenses has been appropriately audited. The NLRB held that a union must provide independent verification that the audit had been performed in order to satisfy the “basic considerations of fairness” standard adopted by the Supreme Court. Failure to do so violates the union’s duty of fair representation.

Lauren McFerran, the NLRB’s only Democratic member, dissented from the Board’s ruling. She stated that the ruling is based on an unrealistically cramped view of a union’s role as bargaining representative. The decision also “arbitrarily undermines” a union’s capacity to influence government policy connected to its representation of workers, which “might be the best available tool in its arsenal,” McFerran said.

Member McFerran further took issue with the majority’s decision to apply its new requirement of providing independent verification of an audit to any *Beck* objectors retroactively, arguing that the union in this case was relying on preexisting law and should not be punished for not complying with a requirement that did not exist at the time the unfair labor practice charge was filed. In a footnote, the Board majority stated that it was following its usual practice of “apply[ing] new policies and standards retroactively to all pending cases in whatever stage.” Accordingly, if a dues objector currently has a charge or complaint pending against their union relating to a failure to verify an audit of chargeable expenses, the Board will almost certainly apply the new *United Nurses* standard and find a violation of the union’s duty of fair representation.

Any union that has previously charged *Beck* objectors for lobbying fees should cease this practice and should perform a new calculation of chargeable versus nonchargeable expenses. For any union that already has an unfair labor practice charge pending against it relating to charging lobbying fees, the *United Nurses* decision will likely be applied retroactively to that charge, and the union will likely be required to refund any lobbying expenses that were charged up to six months before the ULP charge was filed. Moving forward, if any *Beck* objectors file new ULP

charges over lobbying fees, the union will likely be liable to refund any lobbying expenses that were charged within six months of the filing of the ULP (which is the limitations period for filing a ULP charge under the National Labor Relations Act).

The *United Nurses* decision stems from an unfair labor practice charge filed in 2010. The NLRB originally issued a ruling dismissing that complaint in 2012, but its decision was vacated after the Supreme Court ruled in *NLRB v. Noel Canning* that two NLRB members joining in that decision were not properly appointed to the Board. The dues objector in *United Nurses* is represented by a conservative, anti-union advocacy group, the National Right to Work Legal Defense Foundation. The Board handed down its March 1, 2019 decision two months after the Foundation petitioned a federal appeals court to force the Board to decide the case, highlighting how responsive the current Labor Board is to pressure from conservative groups.

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