

NLRB Shoots Down Lobbying as a Representational Function of a Union

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As union membership continues to decline, the NLRB has delivered another blow to organized labor, limiting the ways it can spend dues collections from certain members.

The latest ruling stems from *Communications Workers of America v. Beck*, where the U.S. Supreme Court held that workers subject to a union security clause may decline union membership but that the union may still legally charge nonmember objectors for representational activities "reasonably employed to implement or effectuate the duties of the union." Thirty years after *Beck*, the National Labor Relations Board in *United Nurses & Allied Professional (Kent Hospital)* considered this month whether unions' use of nonmember dues and fees to pay for its lobbying and political work violates its duty of fair representation.

The NLRB ruled that unions violate workers' rights by forcing nonmembers who opt out of the union (aka "Beck objectors") to fund union lobbying activities because lobbying falls outside the union's "representational function." The NLRB further required that unions must independently audit financial information and verify to Beck objectors that their dues money is being spent on representational functions - activities related to collective bargaining, contract administration and grievance adjustment - rather than union lobbying or political activities. The bottom line for the NLRB is that lobbying isn't part of the unions' collective bargaining duties, so Beck objectors can't be forced to help fund political lobbying.

This case starts with Jeanette Geary, a Rhode Island nurse, who previously invoked her Beck rights to decline paying union fees unrelated to collective bargaining. The union provided Geary with a reduced dues calculation and charts setting forth the major categories of expenses for the union, which showed that a portion of the expenses went to lobbying efforts. Geary filed an unfair labor practice charge with the NLRB seeking an auditor's verification that the union was not using her fees against her wishes for political purposes.

In Friday's ruling, the NLRB held that Geary's union violated the National Labor Relations Act both by not providing her and other Beck objectors with a verified audit of the financial disclosures it made to them as well as by charging her for lobbying work related to seven bills that were pending in the Rhode Island and Vermont legislatures.

Key Takeaways

- The NLRB's decision follows a trend of recent cases expanding similar individual employee rights, but in the public sector. Specifically, in *Janus v. AFSCME*, the U.S. Supreme Court ruled that public employees do not have to pay fees to unions to cover the costs of collective bargaining even if those unions collectively bargain on behalf of those employees. We are seeing an impact on union membership and revenues nationwide.
- Public and now private union members have an incentive to become "free-riders," benefiting from collective

bargaining but not paying (as much) for it.

- As a result of *United Nurses*, Beck objectors and employees everywhere will reevaluate whether they want their dues money spent on political lobbying activities. The NLRB's decision could significantly impact revenue generated from nonmembers. The decision also could affect the continued financial viability of private-sector unions and their ability to engage in lobbying and political activities.

You can find out more about the NLRB's recent decision-making under the Trump administration at [Barley Snyder's 36th annual Employment Law Seminar on May 10.](#)

If you have any questions about the recent NLRB decision or how it can affect your business, please [reach out to me](#) or to anyone in our [Labor Law group](#). As union membership continues to decline, the NLRB has delivered another blow to organized labor, limiting the ways it can spend dues collections from certain members.