

## NLRB Rules That Employers Must Give Union Opportunity To Bargain Over Discretionary Discipline For Employees Represented By A Union But Not Yet Covered By A Collective Bargaining Agreement

---

*Amber Cox*  
**09.30.2016**

On August 26, 2016, the National Labor Relations Board (NLRB) held that discretionary discipline is a mandatory subject of bargaining and that employers may not unilaterally impose serious discipline (which the NLRB defines as suspension, demotion, and discharge) when a union has been certified or lawfully recognized as the employees' representative, but the union has not yet entered into a collective bargaining agreement with the employer. The NLRB also held that notice to the union and the opportunity to bargain is required about less serious discipline, such as warnings or corrective actions, but may occur after the discipline is imposed. This decision effectively reaffirms the NLRB's 2012 holding in *Alan Ritchey, Inc.*, but that decision was invalidated on procedural grounds by the U.S. Supreme Court's 2014 ruling in *NLRB v. Noel Canning*. The NLRB's decision in *Total Security Management Illinois 1, LLC* does not prevent employers and unions bargaining their first contract from agreeing on a disciplinary process different than that imposed by the NLRB. However, absent such an agreement, an employer bargaining its first contact with a union should give the union notice and an opportunity to bargain before imposing serious discipline on any employee.

### **Attorneys**

Amber L. Cox

### **Practice Areas**

Collective Bargaining

Labor Management  
Relations

Representation and Unfair  
Labor Practice Cases