

Employers No Longer Have a Pre-Contract Duty to Bargain Over Disciplinary Decisions

“Recently, the National Labor Relations Board (NLRB), overruling an important Obama-era decision, held that employers do not have a pre first-contract duty to bargain before disciplining employees in a manner consistent with an existing policy or practice. The Board’s Care One at New Milford unanimously overruled Total Security Management Illinois 1, LLC, and will be applied retroactively to all cases pending before the NLRB,” write Anne Marie Bueth and Matthew C. Tews in *Stinson’s News & Insights*.

“In Care One, an employer suspended three employees and discharged another pursuant to its disciplinary policy. The employees were newly union-represented, but not yet covered by a collective bargaining agreement (CBA). The employer did not provide the union with prior notice or an opportunity to bargain. The union brought an unfair labor practice charge claiming that the employer violated the Total Security rule. The Board’s 2016 Total Security decision had held that an employer must provide a newly certified union with notice and an opportunity to bargain before imposing serious discipline (i.e., suspension, demotion, discharge), during the time after the union was certified but before the parties had entered a first CBA if the imposition of such discipline involved any discretion.”

Read the article.