

# Newly Organized Employer Must Bargain Discretionary Employee Discipline Pre-First Contract

**Jackson Lewis** reports that, prior to entering into a first contract, an employer has a statutory obligation to bargain with the union that represents its employees before imposing discretionary “serious discipline” (such as suspension, demotion, or discharge) on any of those employees, the National Labor Relations Board again has held.

In its ruling in *Total Security Management Illinois 1, LLC*, 364 NLRB No. 106, the board found that discretionary discipline, like pay rates and benefits, is a term and condition of employment, and, thus, a mandatory subject of bargaining. The board also held bargaining is required about less serious degrees of discipline, such as oral or written warnings, but may occur after the discipline is imposed, write **Philip B. Rosen** and **Howard M. Bloom**.

“Despite this decision, employers and unions in the midst of first contract bargaining may continue to agree on the employer’s unilateral right to impose discipline or on a procedure for bargaining over discipline that is less cumbersome than that imposed by the Board,” they conclude.

**Read the article.**