# The Misnomer Lives On: The Supreme Court Dismisses Mulhall Without Deciding the Issue

## Labor & Employment Law Update

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Back in October, we discussed *Unite Here Local 355 v. Mulhall*, a case pending at that time in the U.S. Supreme Court. The issue in *Mulhall* was whether a union neutrality agreement could be a "thing of value" paid, lent, or delivered to a union in violation of Section 302 of the Labor-Management Relations Act ("LMRA").

The misnomer is that neutrality agreements have little to do with neutrality. Instead, they are a way for a particular union to virtually guarantee that it will acquire control over employees who may have no interest at all in being unionized.

In December, the Supreme Court dismissed *Mulhall* from the Court's docket, essentially stating that *Mulhall* should not have been one of the very few cases the Court chooses to hear each year. Why the Court did so is unclear. The Court did not give the exact reason for its decision, but three Justices opposed the dismissal, and those three hinted that there may have been procedural defects in the underlying appellate decision. Because the Supreme Court dismissed *Mulhall* instead of issuing an opinion, the underlying appellate decision remains intact in spite of any potential procedural defects. What that means for employers going forward is that the Eleventh Circuit's decision in *Mulhall* continues to hold that, under certain circumstances, union neutrality agreements can be things of value prohibited by the LMRA.

Even though the Eleventh Circuit's decision remains intact, unions nation-wide are breathing a sigh of relief because the Supreme Court did not directly restrict their ability to use neutrality agreements to further their organizing campaigns. For that reason, employers across the country must be prepared to face increased pressure from unions to accept neutrality agreements.

These agreements are not to be entered into lightly—regardless of what a union agent may say to the contrary. If a company signs a neutrality agreement, the company may be giving up its ability to remain non-union. These agreements are extremely valuable to unions because the agreements often lead quickly to a

unionized workforce.

Further, in almost all circumstances, the language of the neutrality agreement will control how the agreement is interpreted. As such, any oral "promises" a union might make to convince a business to sign a neutrality agreement are likely meaningless. Employers must focus on the actual text of any proposed neutrality agreement.

Since neutrality agreements have the potential to place significant and long-lasting burdens on companies, employers should not enter into these agreements without first consulting with experienced labor counsel who can advise the employer on the likely legal and practical consequences. The Supreme Court's decision to dismiss *Mulhall* allows unions to continue to make neutrality agreements a significant weapon in the union organizing arsenal. Employers must be prepared to respond with creative strategies to defend themselves.