VTCU Corp. *and* International Union of Operating Engineers, Local 302. Case 27–CA–320744

March 23, 2026

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS PROUTY, MURPHY, AND MAYER

On September 28, 2023, the National Labor Relations Board issued a decision in this case, finding that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing and refusing to bargain with International Union of Operating Engineers, Local 302 (the Union) and, accordingly, ordering the Respondent to bargain with the Union on request.[1] At that time, the Board severed and retained the issue of whether the Board should grant the General Counsel's request for the Board to overrule *Ex-Cell-O Corp.*, 185 NLRB 107 (1970), and adopt a remedy that would require employers to compensate employees "for the lost opportunity to engage in collective bargaining at the time and in the manner contemplated by the Act" in test-of-certification cases.

On February 26, 2026, the Board issued its decision in *Longmont United Hospital*, 374 NLRB No. 52, declining to depart from its longstanding remedial practices where an employer has defended its refusal to bargain on grounds that it is challenging the union's certification. Consistent with that decision, we decline to order the additional remedy requested.[2]

Dated, Washington, D.C. March 23, 2026

_____

David M. Prouty, Member

_____

James R. Murphy, Member

_____

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] *VTCU Corp.*, 372 NLRB No. 148 (2023), enfd. 123 F.4th 501 (D.C. Cir. 2024).

[2] For the reasons stated in his dissent in *Longmont United Hospital*, supra, and in order to effectuate Sec. 10(c) of the Act, Member Prouty would overrule *Ex-Cell-O Corp.* and impose the additional remedies outlined in his dissent, including ordering the employer to make affected employees whole for any provable, reasonably quantifiable economic harm resulting from the employer's unlawful refusal to bargain. See *Longmont*, supra, slip op. at 2–5 (Member Prouty, dissenting).