

December 17, 2019

Employers May Cease Deducting Union Dues When CBA Expires

Employers will recall that the National Labor Relations Board (the “Board” or “NLRB”) previously held, in *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015), that dues checkoff provisions – those requiring employers to deduct union employees’ dues from their pay upon an employee’s consent – are mandatory subjects of bargaining that employers cannot unilaterally discontinue after a collective bargaining agreement (“CBA”) expires, unless the CBA terms expressly provide otherwise.

This week, on December 16, 2019, the NLRB reversed *Lincoln Lutheran of Racine* and returned to the rule established by *Bethlehem Steel*, 136 NLRB 1500 (1962), holding that a dues checkoff provision did not survive the expiration of the relevant CBA, and that an employer did not violate the National Labor Relations Act by discontinuing its practice of deducting employees’ union dues from their wages over a year after the CBA expired. *Valley Hospital Medical Center*, 368 NLRB No. 139 (2019). In *Valley Hospital Medical Center*, the Board majority distinguished dues checkoff provisions from other mandatory subjects of bargaining such as wages benefits, hours, and working conditions that are independent of a CBA’s duration (and typically cannot be changed following the CBA’s expiration absent a lawful impasse), because the latter are not exclusively rooted in a contract and already exist when the bargaining relationship commences. By contrast, because dues checkoff provisions are exclusively established by contract, they are only enforceable under Section 8(a)(5) of the National Labor Relations Act for the term of the CBA that establishes them, the Board reasoned. The ruling applies retroactively to all pending cases.

Although the Board’s decision permits employers to unilaterally discontinue dues checkoff provisions once a CBA expires, employers should nonetheless be mindful that the terms of their own CBAs may warrant a different approach, and any decision to modify employees’ terms and conditions of employment following the expiration of a CBA warrants careful consideration with counsel. If you have any questions about the Board’s decision or would like additional information, please contact any attorney at the Firm at (212) 758-7600.

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