

Labor Board Upholds Employers Right to Provide Truthful Information about Right to Work Laws

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The National Labor Relations Board (NLRB) has dismissed a complaint against a Wisconsin employer that published a document informing employees of their right to stop paying union dues under Wisconsin's right to work law. *Metalcraft of Mayville*, 367 NLRB No. 116 (Apr. 17, 2019).

Employers in states with new right-to-work laws have questions about what they can and cannot say to employees about employees' right to decide not to pay union dues. In 2015, Wisconsin enacted a right-to-work law that prohibited employers and unions from agreeing to contract clauses that force employees to pay union dues as a condition of employment. Wisconsin's law also gave employees the right to revoke dues checkoff authorizations on 30 days' notice. While this provision was held invalid by the U.S. Court of Appeals for the Seventh Circuit in 2018, one Wisconsin employer seized upon the new Wisconsin law to inform employees of their right to stop paying dues to their union.

After negotiating a new labor agreement with the Machinists' union, the employer, Metalcraft of Mayville, took the position that the dues checkoff authorizations employees had previously signed were invalid because they did not permit revocation on 30 days' notice, but, instead, only allowed employees to cancel the authorization during a short window each year. The company then sent a series of letters to employees informing them of their right not to pay union dues.

Its first letter said:

If you want to pay Union dues, it is now your decision and it's entirely voluntary. Currently you pay \$59.30 per month or \$711.60 per year in Union dues. All together our employees' payments of Union dues are about \$255,000 per year. Based on the signed authorization for Union dues, we believe it is a violation of the Right-to-Work law. Therefore, effective after June 4, we will no longer deduct the \$59.30 from your paycheck per month.

The company sent a second letter to employees listing several questions and answers:

Q: Look at the yearly total we pay the union, where is all that money going?

A: Much of the information about the distribution of union dues is publicly accessible. For example you can Google IAM and find answers to your questions directly from the source or other sources if you want to find out more.

Q: Why should I pay them anything after they screwed up the contract negotiations?

A: This is a personal choice that every individual has to decide on their own and how they will handle their money.

Q: Can I still work here if I don't join the union?

A: Yes. By state law, being a member of the union is no longer a condition of employment.

Q: What happens if we decide not to pay union dues?

A: Then you don't pay union dues.

The Machinists union filed unfair labor practice charges under the National Labor Relations Act (NLRA) over the company's failure to withhold dues and its communications to employees. The union claimed the company illegally stopped withholding union dues, arguing that the Wisconsin law relating to dues checkoffs was preempted by federal law. It also claimed the company's letters unlawfully undermined the union.

After a hearing, an NLRB administrative law judge (ALJ) agreed with the union, ruling the company violated the law on all counts. Metalcraft appealed to the NLRB.

The NLRB overruled the ALJ, writing that the company had a "sound arguable basis" for asserting the checkoffs were invalid. The Board pointed out that although Wisconsin's law on checkoff revocations ultimately was found invalid in 2018, Metalcraft's actions occurred before that court decision was issued. Thus, at the time Metalcraft stopped the dues checkoff, the law was unsettled and Metalcraft had a reasonable argument that it was complying with Wisconsin's law as written.

The NLRB also dismissed the "undermine" allegation, pointing out that an employer may lawfully criticize, disparage, or denigrate a union, provided its expression of opinion does not threaten employees or otherwise interfere with their rights. While the ALJ had said the employer disparaged the union, the NLRB stated that "it is perfectly lawful for an employer to criticize a union." Key to the NLRB's decision was the fact that the employer expressly stated the decision not to pay union dues was the employee's alone. The employer did not tell employees what they should do.

The NLRB's decision shows that the current Board is committed to respecting employer rights to free speech even where the employer's action may be perceived as aggressive. Taking an aggressive approach might not be appropriate for every company or for every situation. Employers should consult with counsel about the strategic and practical pros and cons of any course of action.

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National Law Review, Volume IX, Number 137

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