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NLRB Revives Obama-Era Rule: Union Dues Deductions Must Continue After Labor Contract Expiration

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On Monday, a split National Labor Relations Board (NLRB) issued a ruling that requires employers to maintain union dues deductions even after the collective bargaining agreements establishing those arrangements expire. The case is *Valley Hospital Medical Center, Inc.*, NLRB, Case 28-CA-213783 (Sept. 30, 2022).

The NLRB's 3-2 ruling, decided along party lines, reinstates the Obama-era rule[1] requiring dues deductions to continue after a labor contract ends. Prior to Monday's decision, employers were permitted to unilaterally end dues checkoff arrangements post-contract pursuant to 2019 Board precedent that overruled the Obama-era rule.[2]

Impact of the Ruling

Due to Monday's ruling, when a current labor contract expires, employers must now maintain the status quo with respect to existing payroll deductions for, and remittance of, union dues until either a successor contract is reached, or an overall bargaining impasse permits unilateral action by the employer. Further, if an employer already has a pending case before the NLRB involving dues checkoff provisions, this rule will be applied retroactively by the Board.[3]

This ruling may also enhance a union's position during successor contract negotiations given that the union will no longer risk interruption of dues collection during bargaining.

History of Board Precedent Leading up to Monday's Ruling

The NLRB generally prohibits employers from making unilateral changes to terms and conditions of employment considered mandatory subjects of bargaining pursuant to the duty to bargain established by Section 8(a)(5) of the National Labor Relations Act. Employers are required to maintain the status quo with respect to most terms and conditions of employment, such as wages, certain benefits and hours, after the expiration of an existing labor contract to facilitate negotiation of a successor contract.

In the Board's initial 1962 decision on the issue of dues checkoff arrangements, *Bethlehem Steel* [4], the Board held that an employer's obligation to honor such an arrangement ended upon contract expiration. Dues checkoff was established as an exception to the general rule and bar on unilateral changes. Consequently, employers were free to end dues checkoff arrangements after a labor contract expired.

The rule established in *Bethlehem Steel* remained in place for over 50 years, notwithstanding subsequent criticism from the United States Court of Appeals for the Ninth Circuit.

In 2015, the issue was once again presented to the Board in the matter of *Lincoln Lutheran.*[5] This time, the Board reconsidered this long-standing precedent and ultimately overruled *Bethlehem Steel*, the Board held that dues checkoff arrangements were subject to the general statutory rule requiring the employer to maintain this term and condition of employment after the expiration of a labor contract.

Only a few years later in 2019, the Board reversed course once more, voiding *Lincoln Lutheran* and restoring the rule in *Bethlehem Steel* in its decision in *Valley Hospital I.*[6]

In *Valley Hospital I*, a dispute arose between the hospital and the Culinary Workers Local 226, when the hospital unilaterally ended dues deductions more than one year after the expiration of the parties' collective bargaining agreement. The union filed an unfair labor practice charge, as *Lincoln Lutheran* was controlling at that time. In affirming the administrative law judge's dismissal of the case and reviving its 1962 precedent, the Board in *Valley Hospital I* reasoned that dues checkoff provisions more properly belonged in the limited category of exceptions to the general rule barring unilateral changes by the employer post-contract. The Board revived prior precedent permitting employers to unilaterally cease dues deductions upon contract expiration.

The Board's Monday ruling arises from the union's appeal of *Valley Hospital I.*

Monday's Ruling by the Board

The union petitioned the United States Court of Appeals for the Ninth Circuit to review the Board's decision in *Valley Hospital I.* Upon review, the Ninth Circuit remanded the case to the Board for supplementation, finding its rationale insufficient to support the rule regarding dues checkoff arrangements. The Ninth Circuit found the contradictory Board precedent cited by the union persuasive, and urged the Board to provide "an adequate explanation for its approach to dues checkoff[.]"[7]

On remand, a divided NLRB returned to the rule established in *Lincoln Lutheran*: that an employer must maintain the status quo and honor dues checkoff provisions established in a collective bargaining agreement after the agreement's expiration, until ratification of a successor contract or impasse. The Board reasoned that dues checkoff provisions properly and reasonably belonged within the broad category of mandatory bargaining subjects for which no unilateral changes can be made by the employer after contract expiration. The Democratic majority likened dues checkoff agreements to other voluntary payroll deductions such as those made to pay insurance premiums or for deposit in savings accounts. Ultimately, the majority found no persuasive reason to treat dues checkoff agreements differently from other voluntary deduction agreements that remain in place after contract expiration. Further, the majority held that the analysis in *Lincoln Lutheran* was well-supported. The rule announced in that decision better effectuated the policy set out in the National Labor Relations Act, to encourage collective bargaining and protect the "full freedom" of workers in selecting their bargaining representatives.

In a separate statement, Chairman Lauren McFerran (D) explained, "Prior Boards have never cogently explained why dues checkoff should not be part of the status quo that employers must maintain when a contract expires, and courts have struggled with this inconsistency in Board law. Today the Board definitively resolves this issue by confirming that it is a violation of the Act to unilaterally stop dues checkoff when a contract expires."[8]

The Board was divided along party lines, with Chairman McFerran joined in the decision by Members Wilcox and Prouty, while the two Republican Members, Ring and Kaplan, dissented.

FOOTNOTES

[1] *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015) (holding that dues checkoff is a term and condition of employment that must be maintained after the expiration of a collective-bargaining agreement containing the checkoff obligation).

[2] *Valley Hospital Medical Center*, 368 NLRB 139 (2019) (*Valley Hospital I*) (expressly overruling *Lincoln* and restoring 1962 NLRB precedent holding that an employer's statutory obligation to check off union dues ends upon expiration of the labor contract providing for the same).

[3] *Valley Hospital Medical Center, Inc*., NLRB, Case 28-CA-213783 at p. 2, (Sept. 30, 2022).

[4] 136 NLRB 1500 (1962).

[5] *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015).

[6] *Valley Hospital Medical Center*, 368 NLRB No. 139 (2019) (*Valley Hospital I*).

[7] *Local Joint Exec. Bd. of Las Vegas v. NLRB*, 840 F. App'x 134 (9th Cir. 2020) (*rehearing denied, Local Joint Exec. Bd. of Las Vegas v. NLRB,* No. 19-73322, 2021 U.S. App. LEXIS 4937 (9th Cir. Feb. 19, 2021)).

[8] *See* NLRB News and Publications, "NLRB Rules Employers May Not Unilaterally Stop Union Dues Checkoff When Labor Contracts End," *https://www.nlrb.gov/news-outreach/news-story/nlrb-rules-employers-may-not-unilaterally-stop-union-dues-checkoff-when* (last visited Oct. 4, 2022).

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