

Board Overturns A 50-Year Old Precedent

December 20, 2012 | [National Labor Relations Board, Labor Relations](#)



**Gerald F.
Lutkus**

Of Counsel
(Retired)

The NLRB's relentless march towards reshaping U.S. labor law continued this month when the Board overruled its own 50-year old policy on whether dues may be withdrawn from employee checks after the expiration of a collective bargaining agreement.

The Board, on Dec. 12, 2012, overruled its *Bethlehem Steel* decision from 1962 in which it had previously held that once a collective-bargaining agreement had expired, if that agreement contained a dues check-off clause, the employer could unilaterally stop withdrawing dues from employee paychecks.

Under the Board's new holding, after the expiration of a CBA, an employer will continue to be obligated to withdraw dues from employee checks and forward them to the union. The Board majority noted that requiring employers to honor dues check off arrangements post contract expiration "is consistent with the language of the Act, its relevant legislative history, and the general rule against unilateral changes to terms and conditions of employment."

Member Hayes in his dissent argued that this was yet another example of the Board taking away long-standing economic weapons from employers and intentionally attempting to alter the "playing field" in favor of unions. Hayes wrote:

"[M]y colleagues know well that an employer's ability to cease dues checkoff upon contract expiration has long been recognized as a legitimate economic weapon in bargaining for a successor agreement. The ability of parties to wield such weapons is an integral part of the system of collective bargaining...Indeed, even in times of union boycott and other economic actions in opposition to an employer's legitimate bargaining position, the employer will be forced to act as the collection agent for dues to finance this opposition. This is the unspoken object of today's decision..."

RELATED PRACTICE AREAS

Labor and Employment
Labor Relations
National Labor Relations Board (NLRB)