NLRB Rules Dues Checkoff Must Continue After Collective Bargaining Agreement Expires

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In a decision that (again) throws out decades of legal precedent, the National Labor Relations Board (NLRB) issued a ruling in October stating that employers must continue to collect and provide dues to unions after a collective bargaining agreement expires. This decision is yet another monumental shift by the Biden board.

In a 3-2 decision in *Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center and Local Joint Executive Board of Las Vegas*, the NLRB held that as part of maintaining the status quo in the terms and conditions of employment, dues checkoff, or the process of collecting dues and sending them to a union, must continue after a labor contract ends. 371 NLRB No. 160 (2022).

The NLRB initially took up this issue in *Bethlehem Steel*, and held that employers may cease dues checkoff after the expiration of a collective bargaining agreement. 136 NLRB 1500 (1962). Like union security, no-strike, arbitration, and management-rights clauses, the NLRB subsequently (and consistently) considered dues checkoffs to be another term that an employer may unilaterally change after the expiration of the agreement and not subject to the employer's obligation to maintain the status quo of the terms and conditions of employment as established in *NLRB v. Katz*, 369 U.S. 736, 743 (1962). This line of precedent had been controlling on the issue until 2015,

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when the Obama board overturned it in *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015).

In *Lincoln Lutheran*, the Obama board first adopted the position that *Bethlehem Steel* was erroneously decided and lacked any compelling justification for the proposition that dues checkoff needed to continue after a collective bargaining agreement ended. After the board's shift in composition following the election of President Trump, the Trump board overturned *Lincoln Lutheran* and reinstated the holding of *Bethlehem Steel* in *Valley Hospital Medical Center*, 368 NLRB No. 139 (2019) (*Valley Hospital I*).

Now, three years later, the Biden board has again rescinded *Bethlehem Steel/Valley Hospital I* for the Obama board's holding in *Lincoln Lutheran*.

Board Chairman Lauren McFerran was joined in the decision by board members Gwynne Wilcox and David Prouty. Board members John Ring and Marvin Kaplan, who were in the majority in *Valley Hospital I*, dissented, arguing that dues checkoff provision are a unique exception to bargaining rules. Because the Taft-Hartley Act prohibits employers from deducting dues absent explicit consent to a bargaining agreement, they argued dues checkoff cannot continue in the absence of a valid collective bargaining agreement.

Following the NLRB's August 2022 decision in *Tesla*, which significantly expanded an employee's ability to wear union insignia in the workplace, this is the second major, precedent disrupting decision of the Biden board, and it is shaping up to certainly not be its last. With broad new rules being promulgated by the NLRB and other significant longstanding doctrines like *Joy Silk* also in the crosshairs, it is seemingly a matter of when, and not if, the NLRB will make its next major move in advancing its robust pro-labor agenda.