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MORE MONEY, MORE PROBLEMS? NLRB RULES THAT EMPLOYERS MUST COLLECT UNION DUES AFTER CBA EXPIRATION

Insights
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The National Labor Relations Board just ruled that employers must continue to collect union dues even after the collective bargaining agreement has expired, a decision that will require many businesses to alter their labor relations practices. The October 3 decision in *Valley Hospital Medical Center, Inc.* returns the nation's unionized employers to the standard used during the Obama administration that prohibited employers from unilaterally ending the collection of union dues after contract expiration. The NLRB's ruling, decided 3-2 along party lines, will allow unions to continue to receive their dues revenue stream during the contract hiatus. Here is what employers need to know about this significant doctrinal shift.

Going Back in Time: Union Dues Deductions are Part of the Status Quo

Upon the expiration of a collective bargaining agreement, the National Labor Relations Act requires that employers maintain status quo or bargain over changing most terms and conditions of employment. The question at issue is whether this NLRA requirement permits employers to unilaterally end the collection of dues. It has plagued the NLRB for two decades, and the answer has toggled back and forth along doctrinal shifts.

In this most recent round, the NLRB answered that the collection of union dues is part of the status quo requirement. It said that the "dues-checkoff provision properly and reasonably belongs in the broad category of mandatory bargaining subjects that Section 8(a)(5) of the

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Act bars employers from changing unilaterally after the expiration of a contract."

So how did we get here? The origins of this doctrine lay in a 1962 decision from the NLRB that first gave employers the power to stop transferring union dues directly from employee paychecks once the CBA had expired (*Bethlehem Steel*). After President Obama installed a union-friendly Board in 2015, the NLRB issued the controversial *Lincoln Lutheran of Racine* decision that scrapped *Bethlehem Steel*.

Then [in *Valley Hospital I*, decided in 2019](#), the Trump-era NLRB created a limited category of unique union rights that were contractual in nature that could be unilaterally changed – and they included ending the collection of union dues.

In overturning this standard and returning to a union-friendly standard, the Board rejected the doctrines and rationales set forth in *Bethlehem Steel* and *Valley Hospital I* by returning to *Lincoln Lutheran of Racine*. The current Board strongly reiterated that the collection of union dues is "without dispute a mandatory subject of bargaining, and, once implemented under an agreement, it becomes part of employees' terms and conditions" that cannot be changed unilaterally.

What Should Employers Do?

The *Valley Hospital* decision is the most recent shift in doctrines by the union-friendly Board. As a result of this decision, you should review your dues deduction language and plan to collect union dues after the collective bargaining agreement expires.

Perhaps one thing you could consider is to negotiate for a specific expiration-of-dues deduction clause so that it will not continue past the next contract cycle. Otherwise, unions will continue to receive a revenue stream during contract negotiations, which may eliminate any incentive to reach a successor contract before expiration.

Conclusion

We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have compliance questions, consult with your Fisher Phillips attorney, the authors of this

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