



Union Dues Collection May Terminate Once CBA Expires

Insights

12.17.19

The National Labor Relations Board just decided that employers have the right to cease union dues collections once the relevant collective bargaining agreement expires, again restoring balance to the labor relations landscape. Yesterday's decision in *Valley Hospital Medical Center, Inc.*, which returns to a legal standard that had stood for decades before being overturned in 2015, will provide employers more options during the negotiation process.

Shifting Sands Shift Once Again

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*). But during a several-year spree that saw the union-friendly Board installed by President Obama overturn many longstanding rules, the NLRB issued the controversial *Lincoln Lutheran of Racine* decision that scrapped *Bethlehem Steel*.

In *Lincoln Lutheran*, the Board held that "dues checkoff" provisions could not just fall away once a contract expired, but instead could only be ignored if all sides to the agreement "expressly and unequivocally" say that they should. In so ruling, the Obama-era Board said in 2015 that these kinds of provisions were mandatory subjects of bargaining and thus needed to be negotiated away.

Fast forward to yesterday's *Valley Hospital Medical Center* decision. While the current Board agreed that dues checkoff provisions are mandatory subjects of bargaining, it also said that they fall into a "limited category" of unique union rights that are solely contractual in nature. Unlike provisions relating to wages, pension and welfare benefits, hours, working conditions, and numerous other mandatory bargaining subjects, the concept of automatically transferring union dues from an employee's paycheck is not a universal right deserving of special treatment outside of contractual terms. Instead, it is simply a statutory obligation "rooted in the contract and endures only for its term, unless the parties specifically agreed to extend it."

What Does It All Mean?

Yesterday's decision is the most recent in a string of decisions issued by the current Board over the past several years that once again restores an equilibrium to the labor relations arena. Although it is welcome news for employers who should enjoy an additional bit of authority that can be used during contract negotiations, you need to proceed thoughtfully as you contemplate your next steps.

You once again have, as a viable option, the right to suspend dues checkoff contributions once the life of the contract is over. From a practical standpoint, it means that you will have one more bargaining chip during the contract negotiation process. For the past four years or so, unions did not have to worry about bargaining past expiration where employee dues monies could be cut off. Which means there has been no economic incentive for unions to reach an agreement before expiration. Now they will once again be a topic for negotiations, and you can determine the extent to which they will enter your expiration and impasse strategy.

If you end up retaining the right to cut off the automatic stream of income, and at the expiration of your next CBA exercise that power, your employees will be exposed to a period of time where they do not have a portion of their paychecks immediately siphoned off to their union. This window of time could be eye-opening for a segment of the workforce, and employers will want to work with counsel to determine the best way to capitalize on this potential opportunity.

Of course, this decision and renewed legal standard is only available at the expiration of a collective bargaining agreement. It will not come into play during contract extensions. For this reason, you will also want to consider the new options you once again have at your disposal to determine how they will impact your larger labor relations strategy.

We expect more activity from the Labor Board in the near future, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions about this decision, please contact your Fisher Phillips attorney or any member of our [Labor Relations Practice Group](#).

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