

NLRB Rules Dues Checkoff Cannot Be Unilaterally Stopped Upon The Expiration of the CBA

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The National Labor Relations Board (NLRB) recently issued a decision which held that employers who currently do not remit union dues because of the expiration of a collective bargaining agreement (CBA) may be found to be in violation of the National Labor Relations Act (NLRA). This decision not only overturned prior law, but also applies retroactively to all pending cases.

The rule that employers could unilaterally cease dues checkoffs following the expiration of a CBA that was in place for nearly 50 years after the NLRB's decision in *Bethlehem Steel* was issued. During the Obama administration, the NLRB issued a decision overturning *Bethlehem Steel*. However, the Trump administration brought the rule back and allowed the cessation of dues checkoffs after a contract expires through the *Valley Hospital I* case.

Valley Hospital I was reviewed by the Ninth Circuit Court of Appeals, which remanded the case back to the NLRB to determine whether authorized dues checkoff provisions are a term and condition of employment that must be maintained, or bargained over changing, after a CBA expires. In rejecting *Valley Hospital I*'s majority view, the NLRB reasoned that dues checkoff provisions are not uniquely created by a contract, and thus must survive the expiration of the contract that contains them.

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The decision strategically means that employers have one less tool to use in negotiating contracts, as the dues checkoff provision is now to be deemed a part of the “status quo” that must be maintained when a CBA expires. Employers now must bargain any provision in the CBA that preserves its right to stop collecting dues deductions at the expiration of the CBA. Employers should be mindful that if they unilaterally stopped union dues checkoffs, they may face punitive claims by the NLRB, and could be liable to make the union whole for lost dues during that time period.

Please contact your servicing Laner Muchin attorney for questions about your company’s obligations at the expiration of a CBA in light of this recent decision.