CLIENT ALERTS & INSIGHTS

Employers May Stop Deducting Employee Union Dues When Contract Expires

DECEMBER 17, 2019

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On December 16, the final day of lone Democrat Lauren McFerran's term, the National Labor Relations Board ("NLRB" or the "Board") overruled a recent, Obama-era decision that required an employer to comply with its union dues checkoff obligations under its collective bargaining agreement ("CBA") even after the CBA had expired. In *Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center*, 368 NLRB No. 139 (2019), the Board returned to its longstanding precedent in which an employer is relieved from any obligation to continue deducting union dues from its employees and remit such sums to their union after its CBA expires. In doing so, the NLRB overruled *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015), which had held that the dues checkoff obligations survived the expiration of the parties' CBA.

In *Valley Hospital*, the NLRB returned to its 1962 standard established by *Bethlehem Steel*, 136 NLRB 1500 (1962), stating that dues checkoffs belong to a limited category of mandatory bargaining subjects that are exclusively created by contract. They are only enforceable during the term of the contractual obligation created by the parties because there is no statutory obligation to check off and remit dues after expiration of a CBA containing a checkoff provision, just as no statutory obligation to remit dues would exist prior to entering into a CBA.

In reaching the decision in *Valley Hospital*, the Board relied upon a widely followed exception to the unilateral change doctrine in *NLRB v. Katz*, 369 US 736 (1962). In *Katz*, the Supreme Court found that an employer must refrain from unilaterally changing bargaining unit employees' terms and conditions of employment until the employer and union have reached a lawful impasse in negotiating a successor CBA. However, many NLRB decisions, including *Bethlehem Steel* - decided soon after *Katz* - recognize exceptions to *Katz's* unilateral change doctrine that permit the cessation of certain contractual obligations after the expiration of a CBA. That is precisely the basis for the NLRB's decisions in *Valley Hospital*. In so finding, the NLRB once again places contractual dues checkoff clauses in the same category of economic weapons as no-strike or no-lockout clauses - contract provisions that also cease to be binding on the parties after their CBA expires. Similar union contract clauses which are also unenforceable after a CBA expires include management rights, union security, and arbitration provisions.

For more information on this topic, contact a member of the firm's Labor & Employment Practice Group.

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