

NLRB Issues Decision Protecting Union Coffers

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Historically, employers have been free to discontinue union dues check-off arrangements upon the expiration of a collective bargaining agreement. The National Labor Relations Board (NLRB) changed that long-standing rule on December 12, overturning 50 years of precedent and ruling employers must honor dues check-off arrangements until the parties execute a new collective bargaining agreement or reach a bargaining impasse. The fact that this decision came just one day after Michigan joined the ranks of Right-to-Work states, by banning requirements that non-union employees pay union dues, raises the question of whether the NLRB is seeking to give where state legislatures take away.

In *WKYC-TV, Inc.*, a divided Board determined that employers must continue to honor dues check-off provisions after contract expiration in order to preserve the status quo, thereby “ensuring that the trade-offs made by the parties in earlier bargaining remain in place.” Union dues check-off provisions are a mandatory subject of bargaining, the NLRB reasoned. But unlike other mandatory bargaining subjects that do not survive the contract (such as no-strike clauses), dues check-off provisions do survive, because they do not “involve the contractual surrender of any statutory or nonstatutory

right.” Rather, they are simply a matter of “administrative convenience,” the NLRB stated. In this way, dues check-off provisions are no different from “other voluntary check-off arrangements, such as employee savings accounts and charitable contributions ... [which] survive the contracts that establish them.” Therefore, the Board determined, “it is anomalous to hold that they survive contract expiration, but that dues check-off arrangements ... do not.”

In so holding, the NLRB overruled the 1962 *Bethlehem Steel* decision, which held an employer’s dues check-off obligations terminate upon contract expiration. Given employers’ long-standing reliance on *Bethlehem Steel*, the Board made clear that *WKYC-TV* will apply only prospectively. A copy of the *WKYC-TV* decision, including a vigorous dissent by Member Hayes, is [here](#).

To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact Emily S. Miller at esmiller@cozen.com or 215.665.2142.