

**Labor & Employment Alert
December 2019**

NLRB Allows Employers to Stop Deducting Union Dues when CBA Expires

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On December 16, 2019, the National Labor Relations Board (“NLRB”) issued a decision, *Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center*, regarding an employer’s right to unilaterally stop deducting union dues at the expiration of a collective bargaining agreement (“CBA”). The Board initially permitted employers to stop collecting union dues after a CBA’s expiration in a 1962 decision called *Bethlehem Steel*. However, in 2015, the NLRB reversed course in a case titled *Lincoln Lutheran of Racine*.

In *Lincoln Lutheran of Racine*, the NLRB had found that employers had an obligation under the National Labor Relations Act to continue collecting union dues after a contract had expired. The NLRB determined that such a unilateral change ran contrary to the Act’s general requirement to bargain collectively over mandatory subjects of bargaining.

The Board’s recent decision reverses the finding in *Lincoln Lutheran of Racine*. The Board found that provisions for the deduction of union dues (“dues checkoff”) are more akin to no-strike/no-lockout pledges, arbitration requirements, management rights, and union security provisions rather than other mandatory subjects of bargaining. Each of these provisions cease to have effect after a CBA terminates. The Board held that similar treatment of union dues checkoff was appropriate.

Through its decision, the Board returns to its longstanding position as it first held in 1962. Employers should be aware, however, that specific language in a collective bargaining agreement takes precedence over this general rule. Therefore, if the collective bargaining agreement requires that dues be collected after the CBA expires, or more broadly allows for the continuation of the terms of the CBA to continue after its expiration (commonly known as an evergreen clause), employers must continue to deduct union dues.

This Client Alert was prepared by Rachel Mills. If you have any questions about this issue, please contact Rachel Mills or the attorney responsible for your account, or call (617) 479-5000.

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