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## NLRB Overrules Union Dues Checkoff Obligations

In *Valley Hospital Medical Center, Inc.*, the NLRB decided to overrule the 2015 decision in *Lincoln Lutheran of Racine*. The NLRB now holds in a return to prior case law that an employer's obligation to checkoff union dues ends on expiration of the collective bargaining agreement containing the checkoff provision.

The *Bethlehem Steel* NLRB case had upheld this precedent since 1962. *Lincoln Lutheran* overturned the *Bethlehem Steel* case in 2015. The NLRB majority in a 3-1 decision held that dues checkoff provisions belong in the limited category of mandatory bargaining subjects they are exclusively created by the contract and are enforceable through Section 8(a)(5) of the NLRA only for the duration of the contractual obligation created by the parties. The NLRB further held that there is no independent statutory obligation to check off and remit employees' union dues after the expiration of the collective bargaining agreement even where the contract does not contain a union security provision. This case will apply retroactively.

The good news for employers is that this will encourage unions to have serious negotiations prior to expiration of the contract or run the risk of having their dues checkoff unilaterally terminated by the employer when the contract expires. This new NLRB ruling returns the case law to the *Bethlehem Steel* standard restoring precedent that had been in place for 53 years prior to the *Lincoln Lutheran* decision. Reversing *Lincoln Lutheran* restores the balance of power in the bargaining relationship on these issues. It should provide an additional incentive for unions to settle contracts prior to their expiration date and not have the contract negotiations drag on after expiration. Clearly this is advantageous to management to be able to plan their business and know that they have a much greater chance of reaching an agreement by contract expiration under this renewed NLRB case law. The ability of the employer to cease union dues checkoff at contract expiration restores this option (after a four-year hiatus) to the "arsenal of economic weapons that an employer may legitimately use as leverage in support of its bargaining position."

### Related Practices

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This significant NLRB case is coupled with the recent positive changes in NLRB election procedures. These changes are heading the NLRB in a much better direction for employers.

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