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# NLRB Rules Dues Deductions Continue Even After Expiration of Collective Bargaining Agreement

In another reversal of precedent, the National Labor Relations Board ("Board") ruled in *Valley Hospital Medical Center, Inc.*, N.L.R.B., Case 28-CA-213783, 9/30/22 ("*Valley Hospital II*") that ceasing dues checkoff after the expiration of a collective bargaining agreement ("CBA") is a violation of Section 8(a)(5) of the National Labor Relations Act ("NLRA").

Under *NLRB v. Katz,* parties to a collective bargaining agreement maintain the "status quo" at the expiration of the CBA.[1] The status quo requirement prohibits unilateral changes in most terms and conditions of employment at the CBA's expiration. However, some obligations under the CBA are not subject to the *Katz* requirement to maintain the status quo. Obligations such as refraining from strikes/lockouts or submitting grievances to arbitration are examples of rights that are not required to continue under the status quo obligation of Katz.

Similarly, the Trump Board held in *Valley Hospital I* that dues checkoff provisions are not subject to the status quo requirement because the benefits to the union under a dues checkoff provision are purely contractual in nature – they do not exist beyond by the written terms of the CBA.[2] This decision overturned the Obama Board's *Lincoln Lutheran of Racine,*[3] which held that dues checkoff continued after the expiration of a CBA, and returned Board precedent to the 50-year standard established in *Bethlehem Steel.*[4] In reaching this conclusion, the Board stated rights that are not subject to *Katz* requirements are rights that are "inclusive of mandatory bargaining subjects for which there is not, and cannot be, any obligation enforceable under the Act until that obligation is created by the parties in a collective-bargaining agreement."[5]

The Board was instructed to revisit the issue in *Valley Hospital II*, this time reaching the opposite conclusion.[6] Here, the Biden Board reasoned there are numerous other rights "created by contract" that are not permissible exceptions to the *Katz* requirement to maintain status quo. The Board concluded that the underlying policies of the NLRA support treating a dues checkoff provision as a right that survives the expiration of a CBA, stating that allowing dues checkoff to continue "more judiciously limits exceptions from the duty to maintain the status quo, better effectuates the Act's policy (as expressed in Sec. 1) to 'encourag[e] the practice and procedure of collective bargaining' and protect the 'full freedom' of workers in the selection of bargaining representatives of their own choice."

Under this ruling, upon expiration of a CBA, an employer must continue to honor a dues-checkoff arrangement established in that CBA until either the parties have reached a successor CBA, or a valid overall bargaining impasse permits unilateral action by the employer. From a practical

[1] *NLRB v. Katz*, 369 U.S. 736 (1962).
[2] *Valley Hosp. Med. Ctr., Inc.*, 2019 NLRB LEXIS 712 (2019).
[3] *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015).
[4] *Bethlehem Steel*, 136 NLRB 1500 (1962).
[5] *Id.* at *23.
[6] 371 NLRB No. 160 (2022).

standpoint, that means a dues checkoff provision will almost never, if ever, lapse. Finally, the Board is applying this new rule retroactively, stating that, "applying our holding retroactively in all pending cases, including this case, would not cause manifest injustice."

Practically, this decision represents another of many shifts in precedent favoring organized labor under the current Board.

## FOR MORE INFORMATION

If you are an employer and have questions about your rights and obligations as a party to a CBA, or if you have questions about your rights and obligations under the NLRA, please contact:

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