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CLIENT ALERT

NLRB Overturns 50-Year Precedent on Dues-Checkoff

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In *WKYC-TV Inc.*, 359 N.L.R.B. No. 30 (Dec. 12, 2012), a divided National Labor Relations Board (the "Board") reversed long-standing Board law and held that an employer's obligation to check off union dues pursuant to the terms of a collective bargaining agreement ("CBA") generally survives expiration of the CBA. The decision overrules fifty years of Board precedent on this issue and is another in a growing list of victories for organized labor, from the Democratic-controlled Board.

The Board's Decision

Employers and unions regularly include "dues-checkoff" clauses in their CBAs. These clauses require that employers, when authorized, collect dues on behalf of the union by directly deducting the amounts from the union employees' paychecks. Unions, of course, benefit from and strongly favor this arrangement, since it relieves them of the administrative burden to actively collect union dues from each union member individually.

For fifty years, since *Bethlehem Steel*, 136 NLRB 1500 (1962), the Board consistently ruled that once a CBA expires, the employer's contractual obligation in the CBA to deduct union dues also comes to an end. This rule was widely seen as providing an employer with an important economic weapon in its subsequent contract negotiations with the union. Since the employer would have no obligation to continue to deduct dues following expiration of the parties' CBA, the union would be economically incented to enter into a new CBA with the employer as soon as possible that contained a dues-checkoff provision.

In reaching its 3-1 decision, the Board concluded that *Bethlehem Steel* should be overturned because it was not well-reasoned and runs contrary to the federal labor law policy requiring employers to maintain the "status quo" on mandatory terms of employment in a CBA following its expiration.

Member Hayes, in a strongly worded dissent, found no basis for the Board majority's ruling and questioned the motive behind it:

To strip employers of that opportunity [to stop dues-checkoff following expiration of the CBA] would significantly alter the playing field that labor and management have come to know and rely on. Indeed, even in times of union boycott and other economic actions in opposition to an employer's legitimate bargaining position, the employer will be forced to act as the collection agent for dues to finance this opposition. This is the unspoken object of today's decision . . . .

Recognizing that the rule of *Bethlehem Steel* has been established labor law policy for fifty years and has been relied upon by employers, the Board stated that it would only apply its new rule on dues-checkoff prospectively and not in any pending cases.

The Board also acknowledged that, under its new rule, a union could still waive the right to dues-checkoff following expiration of a CBA, but such a waiver would be upheld only if it were "clear and unmistakable."

Significance to Employers

WKYC-TV Inc. promises to change the dynamic of collective bargaining on this issue. Employers interested in regaining leverage on this issue will face considerable challenges from the current Board, particularly with respect to the issue of successfully getting to impasse and unilaterally implementing a proposal on this issue. Employers wishing to understand the full implications of the decision should consult with labor counsel before beginning contract negotiations.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Thomas P. Gies
Partner – Washington, D.C.
Phone: +1 202.624.2690
Email: tgies@crowell.com

Glenn D. Grant
Senior Counsel – Washington, D.C.
Phone: +1 202.624.2852
Email: ggrant@crowell.com