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.