

Dues Checkoff Revocations May Be Valid in Wisconsin Despite Federal Court Ruling

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A Wisconsin federal court has invalidated a key provision in Wisconsin's Right to Work law that gave employees the right to cancel deduction of union dues from their paychecks. *Int'l Ass'n of Machinists v. Allen, et al.*, No. 16-CV-77 (W.D. Wis. Dec. 28, 2016). However, there still are a number of National Labor Relations Board decisions that would allow employees to stop dues withholdings in *certain* situations under existing federal law.

Wisconsin Law

Under Wisconsin's Right to Work law, which became effective on March 9, 2015, employees represented by a union cannot be forced to pay money to the union in order to keep their jobs.

In addition to allowing employees a choice in whether to financially support the union, Wisconsin's law gave employees the right to revoke "dues checkoff" authorizations —authorizing their employers to deduct union dues from their paychecks — on 30 days' written notice. This provision was intended to stop unions from enforcing restrictive annual revocation windows contained in their checkoff authorization forms to keep employees paying dues after the Right to Work law went into effect.

District Court Decision

Judge William Conley of the U.S. District Court for the Western District of Wisconsin held that the provision of Wisconsin's Right to Work law giving employees the right to revoke "dues checkoff" authorizations was preempted by federal law, the National Labor Relations Act, and that regulation of this subject rests solely with the National Labor Relations Board.

NLRB Decisions

At first glance, the Wisconsin court's decision appears to be a significant setback to employees' rights to revoke dues authorizations. However, although employees cannot rely on the Wisconsin law to revoke their dues deduction authorizations, some NLRB decisions provide that employees may revoke their checkoffs — immediately and despite language on a checkoff form that revocation done must be during a narrow annual window period. These decisions hold that in right-to-work states, an employee may immediately revoke a dues checkoff authorization by resigning his membership if the language in the checkoff form obligated the employee to pay dues *as a condition of membership*. *IBEW Local No. 2088 (Lockheed Space Operations)*, 302 NLRB 322 (1991); *Washington Gas Light Co.*, 302 NLRB 425 (1991). The decisions are based on the principle that federal law provides an employee the right to quit a union at any time. Once an employee resigns from the union, he or she has no obligation to pay dues.

To resign, an employee notifies the union (and the employer) that he or she is resigning from membership and no longer wants dues withheld from his or her paycheck. Further, under the NLRB decisions, it would be an unfair labor practice for a union to attempt to force the employer to continue to collect dues on its behalf. In effect, these NLRB decisions permit the result that Wisconsin's Right to Work law was intended to achieve: an employee can revoke a dues authorization at any time, despite any revocation window the union tries to impose.

These NLRB decisions apply only where a dues deduction authorization form makes the payment of dues by an employee a *quid pro quo* for union membership. If the promise to pay dues is *not* tied to membership, the employee may not be able to revoke the authorization at will. For employees who signed checkoff authorizations before the passage of a state right-to-work law, chances are good that the language of the checkoff authorization form would make the authorization revocable upon resignation.

To add another wrinkle to this issue, since the Wisconsin court's decision, in a separate, unrelated case, an NLRB Administrative Law Judge has weighed in on the enforceability of the provision in Wisconsin's Right to Work law barring dues checkoff provisions. In *Metalcraft of Mayville, Inc.*, 18-CA-178322 (JD-17-17) (Mar. 10, 2017), the ALJ found a Wisconsin employer had violated the NLRA by unilaterally ceasing dues

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deductions for all employees in the absence of any individual requests to resign membership or revoke checkoff authorizations. The employer argued that the Wisconsin Right to Work law allowed it to do so. However, ALJ Charles J. Muhl held the provision was preempted by the NLRA and, therefore, the employer could not lawfully rely on it to stop deducting dues.

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Employers should be mindful to avoid any influence or involvement in an employee's decision on whether to quit union membership since such employer action is prohibited by the Act. Where questions arise, employers should consider contacting counsel for advice about what it can and cannot do or say. Moreover, this is an evolving area of the law as a number of states have passed or considered right-to-work laws in the past few years.

Please contact a Jackson Lewis attorney if you have any questions.

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