On April 11, 2012, Administrative Law Judge Raymond P. Green issued the attached decision. The Acting General Counsel and the Charging Party each filed exceptions and supporting briefs, and the Respondent filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings, and conclusions, and to adopt the recommended Order.

Relying on Bethlehem Steel Co., 136 NLRB 1500, 1502 (1962), aff’d in relevant part sub nom. Industrial Union of Marine & Shipbuilding Workers v. NLRB, 320 F.2d 615 (3d Cir. 1963), cert. denied 375 U.S. 984 (1964), the judge found that the Respondent did not violate Section 8(a)(5) and (1) of the Act by ceasing to honor employees’ dues-checkoff authorizations after the expiration of the parties’ collective-bargaining agreement.

After the judge issued his decision, we overruled Bethlehem Steel and its progeny “to the extent they stand for the proposition that dues checkoff does not survive contract expiration.” WKYC-TV, Inc., 359 NLRB N286, 293 (2012). We held in WKYC-TV that an employer, following contract expiration, must continue to honor a dues-checkoff arrangement established in that contract until the parties have either reached agreement or a valid impasse permits unilateral action by the employer.” Id. We also decided, however, to apply the new rule prospectively only, and to apply Bethlehem Steel in all pending cases, such as this one. We therefore adopt the judge’s finding that, because the Respondent was privileged under Bethlehem Steel to cease honoring the dues-checkoff arrangement after the parties’ collective-bargaining agreement expired, the Respondent did not violate the Act as alleged. We shall dismiss the complaint.¹

¹ We agree with the judge’s rejection of the alternative argument of the Acting General Counsel and the Charging Party, based on Tribune Publishing Co., 351 NLRB 196 (2007), enf’d. 564 F.3d 1330 (D.C. Cir. 2009), that the Respondent tacitly agreed to extend the dues-checkoff provision by continuing to deduct and remit dues for 11 months after the contract expired, and thus could not unilaterally cease to do so thereafter. The Board found in Tribune that the employer unlawfully reneged on an express agreement to allow employees to have their union dues deducted and remitted to the union through the employer’s direct deposit system during the hiatus between collective-bargaining agreements. Here, as the judge found, there is no evidence that the Respondent and the Charging Party expressly agreed that the Respondent would continue to deduct and remit union dues after the contract expired. In those circumstances, the Board has held that an employer does not forfeit its right under Bethlehem Steel to cease checking off dues merely by continuing to honor a dues-checkoff provision after contract expiration. See West Co., 333 NLRB 1314, 1319–1320 (2001); see also WKYC-TV, Inc., supra, slip op. at 9 fn. 33, where we rejected the same argument.
authorizations and for whom the Respondent did not deduct dues from their pay or remit dues to the Union. One employee, Jonathan Hall, paid his dues directly to the Union.

The General Counsel concedes that under existing law, I should find that the Respondent did not violate the Act. The General Counsel is seeking to change the law. The Union argues an alternative position, which is that because the Employer waited for a long time after the contract’s expiration before refusing to enforce the checkoff provision, it had acquiesced in its continuation after expiration. It therefore argues that the Employer had tacitly agreed to continue it during the hiatus period.

In Bethlehem Steel Co., 136 NRB 1500, 1502 (1962), enf. denied on other grounds 320 F.2d 615 (3d Cir. 1963), the Board held that union-security and dues-checkoff contract provisions do not survive the expiration of a collective-bargaining agreement. There has been a good deal of recent debate among Board members as to whether this view of the law should remain valid and this has been expressed in a series of cases involving Hacienda Resort Hotel & Casino.¹

All of the parties made interesting arguments as to why the rationale cited in Bethlehem Steel should either be sustained or overruled. But as I am required to follow existing Board law,² these arguments have to be addressed to the Board itself.

I am also unpersuaded that the Union’s alternative theory has merit. Under current law, a union-security clause and a concomitant dues-checkoff clause requires, pursuant to Section 8(a)(3), the existence of a collective-bargaining agreement containing a provision consistent with what is permitted under that section of the statute. Here, the contract expired and during the hiatus, the Company ceased, for a period of time, to comply with the dues-checkoff provision of the expired agreement. There is no evidence that the Company made any agreement, express or implied, to extend that contract provision after the expiration date in the absence of a new collective-bargaining agreement. I do not conclude that the mere fact that the Respondent continued for some time after the contract’s expiration to deduct and remit dues should be construed either as some kind of “waiver” or some kind of tacit agreement. See Tribune Publishing Co., 351 NLRB 196 (2007), enf. 564 F.3d 1330 (D.C. Cir. 2009).

In light of the above, I conclude that the Respondent has not violated the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.³

ORDER

The complaint is dismissed.

¹ The initial Hacienda case is reported at 331 NLRB 665 (2000), which was remanded in Local Joint Executive Board of Las Vegas v. NLRB, 309 F.3d 578, 584–585 (9th Cir. 2002). A later decision was issued by the Board at 351 NLRB 504 (2007), and this also was remanded. The final Board decision in this series was reported at 355 NLRB 742 (2010). That decision was split 2 to 2 on the relevant issue.


³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.