What are your rights when your contract expires?

LEGAL CORNER

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WHEN A CONTRACT expires, do you lose all of your rights and obligations immediately? It depends. Collective bargaining agreements are different from ordinary contracts. Once a typical commercial contract expires, unless its terms specify otherwise, the parties have no further obligations to each other. This is not so with collective bargaining agreements. Though its terms may have legally expired, the parties to a collective bargaining agreement are still required to abide by the "status quo ante," which are the conditions that the agreement had established during the term. Those employment terms may be modified during the course of good-faith negotiation only when the parties have either negotiated a new agreement or have come to impasse, which is the mutual realization that no agreement can be achieved.

The principle that the status quo must be preserved after the termination of a collective bargaining agreement was established by the National Labor Relations Board and affirmed by the Supreme Court in NLRB v. Katz, 369 U.S. 736 (1962). There the court held that "freezing the status quo ante after a collective bargaining agreement has expired promotes industrial peace by fostering a non-coercive atmosphere that is conducive to serious negotiations on a new contract. Thus an employer's failure to honor the terms and conditions of an expired collective bargaining agreement pending negotiations on a new agreement constitutes bad faith bargaining in breach of the National Labor Relations Act."

Despite the legal requirement that the parties preserve the status quo during ongoing negotiations, a contentious issue often arises as to whether or not the parties wish to enter into a formal extension agreement. Such an agreement merely codifies the status quo terms so that they are now contractually binding. However, entry into an extension agreement could have a significant impact upon the course of negotiations since it would preserve the parties' "no strike/no lockout" obligations. In other words, if an extension agreement is executed, neither party can engage in concerted activity. Understandably this could hobble a party's ability to exercise bargaining power during negotiations. A party with weaker bargaining leverage would be inclined to convince the other party to enter into an extension agreement.

But there are circumstances where both parties benefit from the security that an extension agreement provides. The law provides an incentive for unions to enter into contractual extension agreements. The NLRB has held that the status quo requirement does not apply to the arbitration provisions of the expired agreement. Thus, a union may desire an extension agreement so that it can arbitrate contractual violations that might occur during collective bargaining negotiation. However, even without an extension agreement, the parties may still enforce the expired agreement's terms through unfair labor practice procedures.

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Until recently, a more compelling reason existed for unions to seek an extension of their collective bargaining agreement. Until 2012, for over 50 years NRLB precedent held that an employer would not have to abide by an expired collective bargaining agreement's dues checkoff provisions. The impact of that decision was that without an extension agreement, a union could be financially crippled by an employer who simply decided not to remit dues to the union. The union would be relegated to seeking direct payment. During the course of a job action or lockout, the failure to receive dues could be fatal. Fortunately, the NLRB reversed this rule in WKYC-TV, Inc. and NABET, Local 42, 359 NLRB No. 30 (2012). It is now no longer permissible for an employer to withhold dues deductions remitted under an expired collective bargaining agreement.

The import of the change in the law is that unions can now proactively choose whether an extension agreement makes strategic sense to them. Often the decision to enter – or not to enter – into an extension agreement can be used strategically to compel an employer to settle on a full contract.

As a final point, the parties to a collective bargaining negotiation should be aware of whether their expired collective bargaining agreement contains an "evergreen clause" – a provision that automatically extends the collective bargaining agreement if notice of termination is not timely given. The failure to terminate such a contract would bar negotiation over the terms of a successor agreement.