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COLLECTIVE BARGAINING AND EMPLOYEE BENEFITS  
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Chapter 18
COLLECTIVE BARGAINING AND EMPLOYEE BENEFITS

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In response to the Ninth Circuit’s decision concerning ceasing the dues checkoff upon expiration of a collective-bargaining agreement, see Local Joint Exec. Bd. of Las Vegas Culinary Workers Union Local 226 v. NLRB, 657 F.3d 865, 876-77 (9th Cir. 2011), the Labor Board overruled its decision in Bethlehem Steel, 136 NLRB 1500 (1962), in WKYC-TV, Inc., 359 NLRB No. 30 (2012). Over the dissent of Member Hayes, the majority decided that dues checkoff survives contract expiration because the earlier decision mistakenly equated checkoff with union security provisions when they are not, in fact, interdependent.

C. No Change in Existing Conditions of Employment

D. Waiver or Consent to Changes
   1. Provisions Commonly Found in Plan Documents

In Oak Harbor Freight Lines, Inc., 358 NLRB No. 41 (2012), the Board held that the cancellation provisions in the multiemployer plan subscription agreements constituted a waiver of the union’s right to bargain concerning the termination of contributions to the plans. The Board also held that no waiver existed for the one plan that did not require a subscription agreement. Consequently, the employer violated the duty in good faith by unilaterally ceasing contributions to that plan as well as making alterations to the health care benefits.
2. Provisions Commonly Found in CBAs

In *Chevron Mining, Inc. v. NLRB*, 684 F.3d 1318, 1330 (D.C. Cir. 2012), the Court of Appeals for the District of Columbia Circuit enforced the Board’s order, over the dissent from Judge Williams, concerning an employer’s alteration to an employee bonus plan in retaliation for the union’s use of “memorial day” work stoppages. The Court majority rejected the argument that the union waived the right to object to the unilateral change to this employee benefit in a Letter Agreement because there was no “clear and unmistakable” waiver of the statutory rights related to the unlawful retaliation.

3. Acts or Omissions Showing Acquiescence

In *E.I. Du Pont De Nemours and Co. v. NLRB*, 682 F.3d 65, 69 (D.C. Cir. 2012), the Court of Appeals for the District of Columbia Circuit denied enforcement of the Board’s order concerning whether the employer violated the duty to bargain in good faith by unilaterally implementing changes to the employee benefits program. During negotiations for the successor collective bargaining agreement, the employer made unilateral changes to the medical benefits for union and non-union employees in accordance with its practice in previous years. The Court rejected the Board’s conclusion that the past practice argument was unavailable when the collective bargaining agreement was no longer in force. Because the unilateral changes were consistent with the past practice, the Court remanded for a justification about departing from Board precedent.

In *Des Moines Cold Storage, Inc.*, 358 NLRB No. 58 (2012), the Board held that the parties had reached agreement concerning a successor collective bargaining agreement, and the employer was not unilaterally entitled to alter the health insurance premium obligations for the bargaining unit employees. The Employer had argued that the contract was not in place because it was not formally signed at the time the Employer announced the new premiums. The Board rejected this argument because there was no evidence of impasse and because the employer did not actually propose changes to the health insurance benefits during the collective bargaining negotiations.

E. Impasse

In *Atrium of Princeton, LLC v. NLRB*, 684 F.3d 1310, 1317-18 (D.C. Cir. 2012), the Court of Appeals for the District of Columbia Circuit enforced the Board’s order because the parties were not at impasse over the health insurance benefits when the employer implemented the revised benefits. While the parties were negotiating about the rates that the employer would contribute to a multiemployer benefit plan, that plan cancelled the employer because of a delinquency. The employer refused to bargain about the subsequent health insurance benefits, asserting that the parties were at impasse over the rates to the prior plan. The Court and Board held that the employer’s defense was without merit because the employer failed to comply with the union’s requests for information and because the cancellation of the existing plan changed the backdrop of negotiations thereby breaking any impasse.

In *Comau, Inc.*, 671 F.3d 1232, 1239-40 (D.C. Cir. 2012), the Court of Appeals for the District of Columbia Circuit denied enforcement of the Labor Board’s determination that an employer unlawfully implemented modifications to health insurance benefits because the bargaining parties were at impasse at the time the employer implemented the modifications.
Although the parties were not at impasse several months after implementation, the Court reasoned that the parties were at impasse when the employer announced the change. As a result, the Board was mistaken in finding an unfair labor practice concerning the employer’s unilateral change in benefits.

In *Laurel Bay Health & Rehabilitation Center v. NLRB*, 666 F.3d 1365, 1374-75 (D.C. Cir. 2012), the Court of Appeals for the District of Columbia Circuit determined that the employer did not violate the duty to bargain in good faith by unilaterally modifying the contribution rate for the health insurance benefits because the parties were at impasse in the negotiations. The Court reasoned that the Board improperly relied upon the parties’ post-impasse conduct, instead of the parties’ stated positions during the bargaining sessions.

In *Redburn Tire Co.*, 358 NLRB No. 109 (2012), the Board adopted Administrative Law Judge Wacknov’s conclusion that the employer did not violate the duty to bargain in good faith by implementing the employer’s proposal to require employee contributions for medical insurance. Judge Wacknov reasoned that the parties reached a lawful impasse prior to the implementation of the alteration of the medical insurance benefits, so no violation occurred.

IV. Recurring Issues Respecting the Duty to Bargain in Employee Benefit Cases

A. Selection of Insurance Carrier

In *Ahearn v. Remington Lodging & Hospitality*, 842 F. Supp. 2d 1186 (D. Alaska 2012), the court granted the Regional Director’s request for §10(j) injunctive relief and entered an injunction prohibiting the employer from announcing and implementing changes to medical benefits and eliminating the pension plan. The changes, which included switching from a union-sponsored Taft-Hartley health and welfare plan to a medical insurance plan where the employer could “shop and compare” on an annual basis, were implemented at a time when the parties were not at impasse. Coupled with several other likely violations of the Act, the court found that the Regional Director’s petition justified injunctive relief.

B. Increases in Employee Contributions

In *Comau v. NLRB*, 671 F.3d 1232 (D.C. Cir. 2012), also discussed above, the court granted the employer’s petition for enforcement and vacated the Board’s findings that the employer violated the Act by unilaterally implementing a new health insurance plan that increased premiums. The employer lawfully declared an impasse in December 2008 and announced its intention to implement its last best offer, which included transferring employees to a new insurance plan effective March 2009. In March 2009, however, the parties were no longer at impasse. The court found that the new insurance plan was lawfully “implemented” in December 2008, when the parties were at impasse and that “[t]he different ‘effective’ dates merely reflected the facts that the mechanics of transferring [employees] from the Old Plan to the [new] Company Plan required extensive preparation.”

In *E.I. DuPont de Nemours, Louisville Works*, 682 F.3d 65 (D.C. Cir. 2012), also discussed above, the court of appeals granted review and denied enforcement of a Board order finding that DuPont unlawfully implemented changes, including increased premiums, to an employee benefit
plan while the parties were bargaining over a successor contract. A divided Board had distinguished the *Courier-Journal* lines of cases and concluded that DuPont did not meet its burden of establishing a past practice because the asserted past practice was limited to changes that had been made when the contract, which included a reservation of rights clause, was in effect.

The court of appeals held that DuPont lawfully maintained the status quo when it made changes to the benefit plan after the expiration of the contract. DuPont had a practice of annually making unilateral changes to the benefits and the disputed changes, although made after the contract expired, were similar in scope to those made in prior years. The court noted that DuPont’s discretion to make the changes was limited by the plan’s reservation of rights clause, which only permitted changes during the annual enrollment period. Additionally, DuPont’s discretion was limited because, as in *Courier-Journal*, it was obligated to treat union and non-union employees the same.

Next, the court rejected the Board’s argument that extending *Courier-Journal* where there was no past practice of making changes during the contract hiatus would conflict with settled law holding that a management rights clause does not survive a contract’s expiration. The court explained that the past practice was not dependent on a clause in the expired contract, citing *Capital Ford*, 343 NRLB 1058 (2004). Ultimately, the court found that the Board failed to give a reasoned explanation for departing from prior precedent and remanded with instructions.

In *Des Moines Cold Storage*, 358 NLRB No. 58 (2012), also discussed above, Board concluded that the employer violated the act when it unlawfully modified a contract provision which required it to pay 100 percent of the bargaining unit employees’ health insurance premiums. The Board held that the contract was already in effect on July 20, 2010. Therefore, the employer’s July 20 and 23 notifications that bargaining unit employees would be required to pay a portion of their health insurance premiums and the August 1 unilateral implementation of the employer’s announced changes violate the Act.

**C. Failure to Contribute to a Plan**

In *Omaha World-Herald*, 357 NLRB No. 156 (2011), the Board found that the employer did not violate the Act when it froze accrual of benefits in its pension plan, but did violate the Act when it ceased matching 401(k) contributions. The pension plan changes were made while the collective bargaining agreement was in place. The majority found that the union clearly and unmistakably waived its right to bargain based on “an amalgam of factors that support a finding of waiver even though none of the factors, standing alone, is sufficient to establish a waiver” under existing precedent. The majority noted that the agreement referenced the pension plan, which included a reservation of rights; that changes to the pension plan were expressly excluded from the grievance and arbitration procedure; and that the agreement did not state that the parties would bargain over proposed changes, but instead only stated that the employer will advise and “meet to discuss and explain [the] changes if requested.” Addressing the cessation of matching 401(k) contributions which were made after the expiration of the collective bargaining agreement, a different majority noted that any waiver by the union over the matching contribution issue does not outlive the contract unless there was evidence to the contrary. The majority then concluded that there was no evidence that any relevant provision showing a waiver extended beyond the contract’s expiration. In so holding, the majority noted that in *E.I. DuPont de Nemours, Louisville Works*, 355
In Oak Harbor Freight Lines, Inc., 358 NLRB No. 41 (2012), also discussed above, the Board found that the employer did not violate the Act when it unilaterally ceased making payments to three trust funds. According to the Board, signed cancellation language in the Subscription Agreements and in the employer union pension certifications constituted a waiver of the right to bargain. These documents permitted the employer to cease contributions following the expiration of the collective bargaining agreement on five days written notice. However, the employer’s decision to stop contributing to one trust fund (the Oregon Trust) violated the Act because there was no cancellation language. With regard to the Oregon Trust, the Board also rejected the employer’s argument that equitable estoppel applied, noting that the employer “acted at its peril in discontinuing fund payments based on cancellation language that it was not certain even existed.” Finally, the Board also concluded that the employer violated the Act by unilaterally implementing its company health care plan at the conclusion of a strike.

In FirstEnergy Generation Corp., 358 NLRB No. 96 (2012), the Board found that the employer violated the act when implemented its announced changes that it would cap its contribution costs charged to a retiree participating in the employer-sponsored health program to three years of retirement. The Board concluded that the unilateral changes to retiree healthcare benefits of current employees violated the duty to bargain. The employer was unable to establish a past practice of making unilateral changes, particularly where the union objected to the last major change to future retiree health benefits. Additionally, the Board held that even if the union had acquiesced to annual minor changes, that acquiescence did not establish a waiver of the right to bargain over future, significant changes, citing Caterpillar, Inc., 355 NLRB No. 091 (2010), enforced 190 LRRM 3295, 2011 WL 2555757 (D.C. Cir. 2011).

In Sung Ohr v. Nexeo Solutions, 871 F. Supp. 2d 794 (N.D. Ill. 2012), the district court denied a request for NLRA §10(j) injunction against a possible successor employer pending the resolution of unfair labor practice charges. The alleged violations included implementing the new company’s 401(k) retirement plan and healthcare plans instead of making contributions to the union’s pension plan and health and welfare plans. The court found the Regional Director failed to establish a likelihood of success on the merits that the new employer was a “successor” employer under NLRB v. Burns Int’l Sec. Servs., 406 U.S. 272 (1971) because the new employer had made it clear that the employer would change the terms and conditions of employment upon hire. The court also concluded that the Regional Director failed to establish the remaining factors that would justify injunctive relief.

V. The Duty to Supply Information

In Des Moines Cold Storage, Inc., 358 NLRB No. 58 (2012), the National Labor Relations Board found that the employer had violated its duty to bargain by refusing to provide information that the union had requested as part of a grievance. After the parties signed a new collective bargaining agreement, the employer notified employees of significant changes in health insurance benefits, including a requirement that employees now pay part of the premiums. The union filed a
grievance regarding the implementation of a new health care insurance plan and requested information about the plans. The employer never responded to either the grievance or the request for information. The employer, at hearing, contended that the grievance was untimely so that responding to the information request was unnecessary.

The administrative law judge determined that the grievance was filed within the contractual period and that the employer’s defenses were not presented in a timely fashion. In addition, the Board stated, “It is well established that an employer is required to provide such information regardless of the potential merits of a grievance.” (cites omitted)

In *Dover Hospitality Services, Inc.*, 358 NLRB No. 84 (2012) the Board found that the employer wrongfully withheld information requested by the union, including tax information, after it had claimed that it could not afford to maintain its current health plan in a successor agreement. The employer had claimed that the union really wanted the data for its concurrent lawsuit for delinquent contributions. As the employer had, in effect, pleaded poverty, the union was entitled to the requested information since it could be used for a proper and legitimate purpose—contract negotiations—in addition to the lawsuit. (the ALJ cited *Westinghouse*, 239 NLRB at 110) The employer therefore violated Section 8(a)(5) by failing to provide the information.

A purely labor law issue that sometimes arises in information request cases is illustrated by *Austin Fire Equipment, LLC*, 359 NLRB No. 3 (2012). In this case, the Board held that, because the parties were in a so-called 8(f) relationship, the employer was free to repudiate the relationship on expiration of the agreement as the union no longer had the presumption of majority status. See, *Developing Labor Law, Sixth Edition*, Chap. 10.I.B.2.b. Therefore, the employer was not required to provide information about fringe benefits.

The type of information a union typically requests, and is entitled to, in preparation for bargaining is discussed in *Salem Hospital Corp. a/k/a The Memorial Hospital of Salem County*, 358 NLRB No. 95 (2012). Regarding benefits, the union requested “[A] list of current employees participating in the 401(k) plan, including the employee’s annual earnings, contributions made by each employee and the employer match for 2010 and 2011 to present; and employee and employer payments for health and/or dental insurance, premium cost per eligible employee and status.” The union requested information about the unit employees as well as the contract employees in order to “negotiate contract terms to preserve and protect unit work.”

The employer contended that the information request was “overly broad, burdensome and asked for confidential information.” The ALJ found that the information request was not overly broad or burdensome, nor was it confidential. As such, the employer violated Section 8(a)(5) by refusing to provide the information.

VI. Interference and Discrimination Cases and Related Issues

A. Threats to Withdraw or Promises to Grant Benefits

In *Miron & Sons*, 358 NLRB No. 78 (2012) the employer admitted it told employees that if he had to pay the amounts the union demanded for its benefit funds, he would close the shop. He also stated that he would give employees a raise in pay, and better medical plan and holiday pay
when he also said he did not want the union and conditioned the benefits on employees’ withdrawal of support for the union. The threat to close the shop as well as the promise to give benefits both violated Section 8(a)(1).

But see Contemporary Cars, Inc., d/b/a Mercedes-Benz of Orlando, 358NLRB No. 163 (2012), where the employer’s statement of loss of benefits, made in the context of everything being on the table in negotiations, was not a threat and the allegation was dismissed.

B. Benefit Plan Provisions Related to Union Status

1. Exclusions From Coverage Based on Union Status

2. Credit Provisions Based on Union Status

3. Benefits for Employees on Union Leave

C. Treatment of Employee Benefits During a Strike

In Redburn Tire Co., 358 NLRB No. 109 (2012), a human resources representative allegedly told employees that the employees who would be replaced during a strike could not withdraw their 401(k) funds from the employer’s pension plan. The administrative law judge, as affirmed by the Board, found that there was insufficient evidence to demonstrate that the employer attempted to mislead the employees; nor did it prevent them from withdrawing their funds in retaliation for striking. The pension plan had specific provisions addressing the withdrawal. In addition an employer representative also made an agreement with the union to provide the strikers with vacation pay and said that employees should have no problem withdrawing their funds. The allegation that the employer unlawfully threatened employees was dismissed.

VII. Arbitration of Benefit Issues Under Collective Bargaining Agreements

In Int’l Union, United Auto., Aerospace, & Agric. Implement Workers of Am. v. TRW, No. 11-CV-14630, 2012 WL 4620879 (E.D. Mich. Sept. 30, 2012), the court held that retirees were required to arbitrate their dispute in accordance with the terms of a CBA. The retiree plaintiffs sued for lifetime healthcare benefits under CBAs and employee welfare plans and the defendant moved to compel arbitration. The plaintiffs argued that the presumption of arbitrability did not apply to their dispute because they were no longer employees under the CBA.

In rejecting this argument, the court reasoned that “nearly every court to consider this issue has relied on the presumption in favor of arbitrability in finding that disputes regarding retiree benefits are generally subject to arbitration so long as the collective bargaining agreements in question include terms regarding retiree health benefits.” Because the plaintiffs were attempting to enforce their right to benefits that allegedly arose pursuant to the CBA, their entitlement vel non to benefits “necessarily requires interpretation and application of the CBA.”

The court rejected the plaintiffs’ argument that they were entitled to litigate their claims under ERISA because the claims were based entirely on the CBA and not on an ERISA-governed plan.
In Local Union No. 13417 of the United Steel Workers v. Kansas Gas Serv. Co., No. 12-1003-JWL, 2012 WL 1435305 (D. Kan. Apr. 25, 2012), the court held that the parties to a CBA were required to arbitrate a dispute over retiree benefits after the union sued to compel arbitration. The defendant company argued that the dispute was not subject to arbitration because (1) it never agreed to arbitrate disputes raised by retirees, none of whom were union members (2) the grievance was a “postexpiration” grievance not arbitrable under the Supreme Court’s decision in Litton Fin. Printing Div. v. NLRB, 501 U.S. 190 (1991) and (3) the union could not represent the retirees in arbitration without the consent of the retirees. The court rejected the first two arguments and agreed with the third.

First, unlike the case cited by defendant, the arbitration provision did not expressly restrict arbitration to grievances by “employees” but instead provided that the “contracting parties” agreed to arbitrate any grievances. Because the union filed the grievance over retiree medical benefits, the court found that the dispute was subject to the arbitration clause.

The court found several reasons for rejecting the company’s “postexpiration” argument, the primary one being that because the union filed its grievance and demanded arbitration during the life of the CBA the dispute was not “postexpiration.”

Finally, the court held that the union was required to obtain the consent of the retirees in order to represent them in arbitration. The court noted that both the Sixth and Seventh Circuits have held that a union seeking to represent retirees in arbitration must obtain the consent of those retirees and that the Fifth and Eighth Circuits have suggested in dicta that they would adopt similar consent rules, while the Ninth Circuit has rejected a consent rule. Adopting the rule espoused by the Seventh Circuit, the court held that the union could represent in arbitration only those retirees from which it obtained written consent to do so. The court tasked the arbitrator with determining how the union should obtain consent; whether and to what extent it was appropriate for the defendant to produce last-known-address information; the nature and extent of written notice to the retirees; and appropriate scheduling of deadlines for consent to be filed.

In Kop-Flex Emerson Power Transmission Corp. v. Int’l Ass’n of Machinists & Aerospace Workers Local Lodge No. 1784, 840 F. Supp. 2d 885 (D. Md. 2012), the court rejected the plaintiff-company’s request for a declaration that it was not required to arbitrate whether it possessed the unilateral right to modify post-retirement health benefits provided to retirees who retired during the terms of expired CBAs. The operative CBA contained several references to benefits of employees who retired before its effective date. The CBA also provided that any dispute would be submitted to arbitration.

The plaintiff argued that because “[t]he Retiree class in issue was never employed under the current CBA, never accrued or earned benefits under that CBA and was never represented by the Defendant union,” it had “no rights under the current CBA and no entitlement to rely upon or invoke its arbitration provision.” Instead, the plaintiff argued that the expired CBAs should determine if unilateral changes could be made to the retiree health benefit plans. However, because the plaintiff and the union bargained to include provisions for retiree benefits in the current CBA,
the court rejected plaintiff’s argument and held that the current CBA was the operative contract and that it provided for arbitration of changes to retiree benefits.

The plaintiff also argued that the union must obtain the consent of the retirees in order to represent them at arbitration. The court noted that the Sixth and Seventh Circuit have held that consent of some, but not all, retirees is required before the union may represent those retirees in arbitration proceedings while the Ninth Circuit has rejected any consent requirement. The court expressed “doubts” as to whether consent was necessary but held that it need not resolve the issue because the union had “obtained the written consents of over 77 percent of the affected retiree group” and could proceed to arbitration on their behalf.

In *United Steelworkers of Am. v. Kelsey-Hayes Co.*, 862 F. Supp. 2d 690 (E.D. Mich. 2012), the court held that a dispute over retiree benefits was not subject to mandatory arbitration. The plaintiffs alleged that defendants breached their obligation under the CBAs to provide lifetime retiree benefits. The CBAs promised eligible retirees and former union-represented plant employees lifetime company-paid retirement healthcare at the levels and terms in effect during the effective dates of those CBAs and at the time of the closing of the plant. The CBA in effect at plant closing provided for arbitration of all disputes other than those “respecting the provisions of the . . . Insurance Program.” On September 30, 2005, the parties entered into a Plant Shutdown Agreement (“PSA”) which mandated that “any alleged violation of the [CBA], and or this [PSA], will be subject to final and binding arbitration in accordance with the Grievance Procedure set forth in Article V of the [CBA].” It further stated that the PSA would control in the event of inconsistencies between the two documents.

In rejecting the defendants’ argument that the plaintiffs’ claims were subject to mandatory arbitration, the court noted that the arbitration provision of the PSA provided that alleged violations would be subject to the grievance procedures of the CBA, which specifically excluded from arbitration the “Insurance Program.” The court distinguished an earlier Eastern District of Michigan decision, *UAW v. Kelsey–Hayes Co.*, No. 11–14434 (Dkt. 41 Jan. 5, 2012), which had held that the plaintiffs’ claims in that case were subject to arbitration. In the UAW case, the arbitration clause of the applicable termination agreement provided that, if the parties could not resolve their dispute, “the sole and exclusive recourse” was arbitration without being subject to any provision in another agreement between the parties.

VIII. Preemption Under the NLRA and LMRA

A. NLRA Preemption

B. LMRA Section 301 Preemption

In *Hamby v. Ford Motor Co.*, No. 1:11 CV 542, 2011 WL 6256964 (N.D. Ohio Dec. 14, 2011), the court held that a state law disability discrimination claim was preempted by Section 301 of the LMRA. The plaintiff went out of work due to injuries sustained in several non-work-related accidents. His application for hourly disability benefits was approved but expired after approximately 7½ years. The plaintiff requested paperwork to return to work but did not receive clearance to do so before his medical leave expired, resulting in his termination. The union filed a grievance challenging plaintiff’s discharge, and that action was still pending at the time of
plaintiff’s lawsuit. The plaintiff sued for inter alia handicap discrimination under the relevant Ohio statute.

The plaintiff argued that his claim was not preempted because he agreed that his medical leave was going to expire in February 2009 and no interpretation of the CBA was needed. The court rejected this argument because the plaintiff’s claim depended on his assertion that he was improperly discharged under the CBA’s medical leave of absence provision and thus was preempted by Section 301 of the LMRA. The court granted judgment on the preempted claim because plaintiff failed to exhaust his contractual remedies.

In Payne v. Local Lodge 698, 856 F. Supp. 2d 915 (E.D. Mich. 2012), the court held that plaintiff’s state law tort claims were preempted by Section 301 of the LMRA. In 2006, the plaintiff was hired by the directing business representative of Local Lodge PM2848 (“Lodge 2848”). The plaintiff was informed that her employment would be covered by a CBA and was offered deferred compensation bonuses, a higher pay rate, and a severance package worth one year’s pay and benefits, none of which were provided by the CBA but which plaintiff accepted. The individual who hired the plaintiff subsequently memorialized in writing the agreement regarding plaintiff’s compensation and severance. The severance portion of the agreement was never presented to the union bargaining representative for her signature. In 2010, Lodge 2848 was “merged out of existence” and plaintiff’s employment terminated. The plaintiff’s deferred compensation bonus had been paid at an earlier date but her claim for severance benefits was denied.

Plaintiff subsequently filed suit alleging various tort claims and seeking to recover the severance benefits. The defendants argued that because plaintiff’s employment was subject to a CBA, the severance agreement was unenforceable. The court agreed, reasoning that “[s]ide agreements are unenforceable even where they were negotiated before the employee obtained a union representative.” Furthermore, the CBA prohibited side agreements unless they were signed by Lodge 2848 and the union, and no union representative signed the severance agreement.

The court also held that the plaintiff’s state law tort claims were preempted by Section 301 of the LMRA, which “preempts state law claims that are ‘substantially dependent on analysis of a collective-bargaining agreement.’” Through her state law tort claims, plaintiff sought to enforce the severance agreement, which was unenforceable pursuant to the terms of the CBA.