



Court Finds Indiana Right-To-Work Law Unconstitutional

Insights

9.12.13

In a stunning decision, a state court judge has ruled that Indiana's hard-won right-to-work law is unconstitutional.

The reasoning is strained and rests on the rather peculiar notion that "just compensation" for a union means forcing all employees to pay dues, whether they support the union's aims or not.

On February 1, 2012, Indiana became the 23rd state to adopt a right-to-work law.

Indiana's law prohibits anyone (including employers and labor organizations) from requiring a covered individual, as a condition of initial or continued employment, to: 1) become or remain a member of a labor organization; 2) pay dues, fees, assessments, or other charges to a labor organization; or 3) pay a charity or third party a dues equivalent. Violating the law is a Class A misdemeanor. The ruling has now cast doubt on the law's viability.

In February 2013, the International Union of Operating Engineers, Local 150, filed suit, claiming the law violates Indiana's constitution. *Sweeney et al. v. Zoeller et al.* On September 5, 2013, Lake County Superior Court Judge John M. Sedia threw out four of the Union's five counts, but held the right-to-work law was unconstitutional.

The Judge cited Article I, Section 21 of the Indiana Constitution which provides, "[n]o person's particular services shall be demanded, without just compensation."

The court noted that to be considered "particular," services must be 1) historically compensated, and 2) something required of a party as an individual, as opposed to something required generally of all citizens. The court found services provided by a union, including negotiations and enforcing collective bargaining agreements, fit within that definition.

The court then considered the federal National Labor Relations Act, which requires unions to process grievances for nonmembers, negotiate contracts on behalf of members and nonmembers alike, and provide other services to nonmembers regardless of whether they pay dues. The court found this problematic in light of Indiana's law:

This is where the problem lies: In the absence of the federal law, a union could, without incurring any criminal liability... refuse to provide services for those employees who chose

not to join the union; in the absence of [the right-to-work law], the union could insure that it received compensation in the form of dues for the services the federal law required it to perform from those employees who chose not to join the union through a collective bargaining agreement with the employer that made the payment of dues to the union a condition of employment. Put simply, with the enactment of [the right-to-work law] it becomes a federal criminal offense for a union to receive just compensation for particular services federal law demands it provide to employees.

The Union's victory may be short-lived. A spokesman for the Indiana Attorney General's office said the state will take an immediate appeal to the Indiana Supreme Court. Unless and until the Indiana Supreme Court upholds Judge Sedia's decision, the right-to-work law will remain in effect. Legal experts believe the decision will be reversed. Supporters of the right-to-work law agree, noting that the Union's decision to bring the suit in Lake County, home of Gary Indiana and known to be sympathetic to union causes, was no accident.

This is not the first time the Union has challenged the right-to-work law. A federal court had already dismissed a similar complaint filed by Local 150. The Union is fighting that dismissal in the U.S. Court of Appeals for the 7th Circuit. Stay tuned.

The foregoing provides an overview of certain legal issues. It is not intended, and cannot be construed, as legal advice for any purpose. For more information contact your regular Fisher Phillips attorney.