

Indiana's 'Right to Work' Law Unconstitutional, State Trial Court Rules

By Michael W. Padgett

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Indiana's "right to work" law violates the state constitution's guarantee of just compensation for services rendered, a Lake County (Indiana) Superior Court Judge has held. *Sweeney v. Zoeller*, No. 45D01-1305-PK-52 (Ind. Super. Ct. Sept. 5, 2013). Indiana Attorney General Greg Zoeller has filed an appeal and the case will go directly to the Indiana Supreme Court (since the decision holds a state statute unconstitutional), which likely will overturn the trial court decision. Meanwhile, the trial court has stayed relief for the duration of any appeal and the law remains in full force and effect.

Enacted in 2012, the Indiana right to work law (IC-22-6-6) bars anyone (including employers and labor organizations) from imposing mandatory dues on individuals as a condition of initial or continued employment. A violation of the law is a Class A misdemeanor.

The International Union of Operating Engineers, Local 150, argued the right to work law violated the Indiana constitutional guarantee of just compensation for services rendered. Article I, Section 21 of the constitution states, "No person's particular services shall be demanded, without just compensation." The union argued that the right to work law required it to represent non-dues-paying employees without just compensation. The trial court agreed, noting that federal law provides that a union owes a duty of fair representation to all bargaining unit employees, regardless of whether the employees pay dues.

The union's victory here may be temporary as the Indiana Supreme Court is believed likely to overturn the trial court's decision. The lower court failed to address whether a labor organization is a "person" within the meaning of Article I, Section 21 of the constitution. The Indiana Supreme Court has never found a union to be a "person" under this provision. Indeed, traditionally, Section 21 rights have been afforded only to individuals. The Court is thought likely to reject an argument that such rights should be extended to labor organizations.

Moreover, the Supreme Court has stated the Indiana legislature should be accorded significant deference in its enactments. In *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1037 (Ind. 1998), the Court held, "Every statute stands clothed with the presumption of constitutionality until clearly overcome by a contrary showing.... If two reasonable interpretations of a statute are available, one of which is constitutional and the other not, we will choose that path which permits upholding the statute because we will not presume that the legislature violated the constitution unless the unambiguous language of the statute requires that conclusion."

For now, employers should remember that the trial court's decision does not affect an employee's ability to opt out of paying union dues. We will continue to follow this case and provide updates. If you have any questions about this or other workplace developments, please contact the Jackson Lewis attorney with whom you regularly work.

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