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Federal Court Dismisses Union's Lawsuit Against Indiana's Right-To-Work Law

Labor unions have threatened to challenge the legality of the new, controversial Michigan right-to-work laws. On January 17, 2013, however, a federal court in Indiana dismissed all of the Operating Engineers' federal claims against the similar Indiana right-to-work law, which was enacted in 2012. In dismissing all of the union's federal claims, the court stated: "For better or worse, the political branches of government make policy judgments. The electorate can ultimately decide whether those judgments are sound, wise and constitute good governance, and then can express their opinions at the polls and by other means."

The court's decision about the Indiana law may foreshadow both legal arguments that Michigan unions may use to challenge the Michigan right-to-work laws and how the Michigan Court of Appeals, which has "exclusive original jurisdiction" over any lawsuit challenging the validity of the right-to-work laws, may react to those arguments.

The Operating Engineers claimed that the Indiana law violated the federal constitution's Contracts Clause and *Ex Post Facto* Clause. The Contracts Clause prohibits a State from passing any law "impairing the Obligation of Contracts," and the *Ex Post Facto* Clause prohibits the enactment of any law that imposes a punishment or an additional punishment for an act that was not punishable at the time when it was committed. The Indiana right-to-work law, like Michigan's right-to-work laws, however, "applies prospectively only" and does not "'retroactively impose sanctions against those who entered such contracts before" its effective date. For that reason, the court dismissed the union's claims under the Contracts Clause and *Ex Post Facto* Clause.

The union also claimed that the Indiana right-to-work law violated the federal constitution's Equal Protection Clause of the Fourteenth Amendment. Because "union membership is not a suspect classification triggering the strict scrutiny standard" under the Equal Protection Clause, the "Right to Work law is subject to rational basis review," which means that a challenge to its constitutionality must "negate 'every conceivable basis which might support it.'" However, as in Michigan, there was a "plausible public policy reason for enacting the Right to Work statute based on economic theories which the Indiana legislators may have believed to be true": right-to-work legislation "contributes to a business-friendly environment that can attract companies and encourage job growth." Given that reason for the law, the court ruled that the "Equal Protection challenge fails."

One reportedly potential challenge to Michigan's right-to-work law for public sector employees is that excluding police and fire fighters who are subject to Act 312 arbitration from the coverage of the law violates the constitutional guarantee of equal protection. In the Indiana case, the Operating Engineers used similar "equal protection" arguments: the law violated the Equal Protection Clause by treating the construction industry differently from other industries as a result of creating a "carve-out" allowing "Maintenance of Membership" clauses in the building trades and also by covering only private sector employees, but not public sector employees. The federal court rejected those arguments on the ground that the distinctions were rational.

The Operating Engineers also claimed that the National Labor Relations Act, as amended, preempted the Indiana right-to-work law in three different ways. The court, however, rejected all three preemption claims.

First, the union alleged that the NLRA preempted the Indiana law's prohibition against compulsory financial support of a union as a condition of employment. Michigan's right-to-work laws also contain that kind of prohibition. In rejecting the union's preemption argument, the federal court stated that Section 14(b) of the NLRA, which authorizes states to adopt right-to-work laws, "expressly permits" that kind of prohibition.

Second, the union challenged the part of the Indiana law that makes it a misdemeanor to violate the right-to-work law, asserting that the NLRA preempted the criminal penalty. Michigan's right-to-work laws similarly contain provisions for, depending on the nature of the violation, fines, damages, injunctive relief, and attorney's fees as penalties. Citing a 1963 decision by the United States Supreme Court, the court, however, rejected the union's preemption claim against the Indiana law's misdemeanor provision: "Indiana's determination to provide for enforcement of its Right to Work law by means of a misdemeanor penalty is not preempted by the NLRA."

Third, the Operating Engineers alleged that the NLRA preempted the part of the Indiana law relating to religious objectors. The Indiana law prohibits requiring an employee to pay "to a charity or third party an amount that is equivalent to or a pro-rata part of dues, fees, assessments or other charges required of members of a labor organization" as a "condition of employment or continuation of employment." Michigan's right-to-work laws contain virtually identical provisions.

The union's theory was that because Section 19 of the NLRA, which was enacted after Section 14(b), "expressly allows union security provisions for such payments to charity by conscientious objectors," the Indiana law's religious objector provision is preempted. According to the union, Section 19 is an "'exception to'" the policy in Section 14(b) that "'allowed the states to regulate union security clauses.'" The court, however, rejected that preemption theory: "Nothing in the language of Section 19 suggests or supports interpreting it as an exception to Section 14(b) that would preempt any state attempt to outlaw the kind of provision that Section 19 permits."

Opponents of Michigan's right-to-work laws may attempt to invalidate those laws by both political and legal means. For Michigan employers, however, the judicial decision dismissing the Operating Engineers' challenges to the Indiana right-to-work law suggests that similar legal arguments challenging the similar provisions of Michigan's right-to-work laws may similarly fail.

If you have any questions about this Client Alert or Michigan's right-to-work laws, please contact the author of this Client Alert, your Butzel Long attorney, or any member of the Labor and Employment Law Group.

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