“Right-to-Work” Upheld in Indiana, Challenged in Michigan, But What Does It Really Mean?

Labor & Employment Law Update

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On November 6, Indiana’s right-to-work law cleared its most recent major hurdle. The Indiana Supreme Court upheld the law overturning a Lake County decision declaring the law unconstitutional. The Seventh Circuit upheld the law in September. Meanwhile the Michigan Supreme Court announced it will hear argument in January on whether its state’s right-to-work laws properly apply to state employees.

So, Indiana and Michigan and twenty-two other states (the entire south plus several states in the west) now have right-to-work laws on the books and several others have considered similar legislation. But what does “right-to-work” really mean for employers?

Contrary to popular belief, right-to-work laws do not ban unions, displace employment-at-will or guarantee employees a “right” to continued employment. Rather, they prohibit “union security clauses” – provisions in union contracts and collective bargaining agreements that require union membership as a condition of employment. Indiana’s right-to-work law, for example, which is fairly typical, makes it unlawful to require an employee to: (1) join or remain a member of a union; (2) pay union dues, fees or assessments; or (3) make a charitable donation in lieu of paying union dues. The law also invalidates union agreements that violate the law and makes knowing violations a misdemeanor criminal offense.

The bottom line: In a right-to-work state, employees in union shops cannot be forced to join the union, but must be afforded the same wages and receive the same benefits and terms and conditions of employment as their union-member co-workers. Under federal law, once a union is recognized as a unit’s exclusive bargaining agent, the union must bargain on behalf of all employees in that unit, even those who choose not to join the union.