

Seventh Circuit Upholds Wisconsin's Right-to-Work Law

Labor & Employment Law Update

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On July 12, 2017, a three judge panel in the seventh circuit unanimously affirmed District Judge J.P. Stadtmueller's ruling dismissing a lawsuit filed by two International Union of Operating Engineers (IUOE) locals that challenged the validity of Wisconsin's right-to-work law. Judge Stadtmueller's dismissal in September 2016 was based on the seventh circuit *Sweeney v. Pence* 2014 decision that upheld Indiana's "nearly identical" law.

The Wisconsin law provides that "no person may require, as a condition of obtaining or continuing employment, an individual to...become or remain a member of a labor organization [or] pay any dues, fees, assessments, or other charges or expenses of any kind or amount, or provide anything of value, to a labor organization."

In *Sweeney*, the seventh circuit determined that the National Labor Relations Act did not preempt Indiana's right-to-work law, even if it prohibited the mandatory payment of any dues or fees to unions, and it did not result in a taking in violation of the Fifth Amendment. The court reasoned that unions are "justly compensated by federal law's grant to [unions] the right to bargain exclusively with...employer[s]."

On this appeal, the IUOE conceded that *Sweeney* controlled, but argued that it was wrongly decided and should be overturned. The IUOE relied on a strong dissent in *Sweeney* and the close en banc vote to rehear it. Writing for the panel, however, Judge Joel Flaum rejected these arguments and noted that they were not "compelling reasons" to overturn a recent decision. Judge Flaum also added that the unions failed to direct the court to any intervening development in statutory, Supreme Court, or other intermediate appellate court decision undermining *Sweeney's* validity.

The seventh circuit's decision affirming the Wisconsin's 2015 law suggests a continuing trend favoring the right-to-work movement at the judicial and legislative levels of government. In February of this year, Missouri enacted its right-to-work law becoming the 28th state with a right-to-work law on the books, closely following Kentucky's adoption of its own law in January. Opponents in Missouri have sought a referendum seeking to repeal the law, but their efforts

suffered a setback when union-led referendum summaries were ruled “unfair and insufficient.” In Kentucky, labor organizations have sued seeking to block the law.

At the federal level, Republican Congressmen Steve King of Iowa and Joe Wilson of South Carolina re-introduced the National Right to Work Act bill (an effort that went nowhere in 2015) in the hope that a Trump administration would approve such legislation. Within a month, Senator Paul Rand of Kentucky introduced similar legislation in the Senate. These bills would amend the National Labor Relations Act and Railway Labor Act to prohibit the use of union security clauses requiring union membership and payment of dues and fees.

Where all of this leads is unclear, but we can be certain of one thing for the near future – this battle will continue to be fought all across the country.

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