Village of Lincolnshire's Right-to-Work Zone Struck Down by 7th Circuit

Labor & Employment Law Update

on October 2, 2018

Last week, the 7th Circuit Court of Appeals (covering Illinois, Indiana and Wisconsin) held that Section 14(b) of the National Labor Relations Act (NLRA) does not permit local governments to create local "right-to-work" zones that seek to ban union-only shops in the private sector. The court further concluded that bans on requiring union hiring halls and compulsory union dues checkoff agreements are also invalid under the NLRA.

In 2015, the Village of Lincolnshire adopted an ordinance that banned union-security agreements, within the Village, by forbidding any requirement that private sector workers join a union or compensate a union in order to keep their job working at a unionized worksite. Interestingly, the ordinance was overwhelmingly supported by the Village's residents and taxpayers. The ordinance also barred any requirement that employees "be recommended, approved, referred, or cleared for employment by or through a labor organization" (aka a union hiring hall). Finally, the ordinance prohibited employers from making any payment to unions pursuant to signed authorizations revocable by employees at any time (aka dues check-off). A number of unions successfully sued the Village in district court and the Village appealed.

Chief Judge Diane Wood, writing for a unanimous three-judge panel, noted that the issue of whether a local law, rather than a state-wide law, falls within the scope of Section 14(b) is a subject that has divided courts. Specifically, Judge Wood pointed to a 2017 6th Circuit decision in *United Automobile, Aerospace & Agricultural Implement Workers of America v. Hardin County, Kentucky* that held that a right to work law adopted by Hardin County was not preempted by the NLRA and, therefore, valid.

Judge Wood acknowledged that the 7th and 6th Circuits are in agreement and the law is clear that local governments cannot regulate hiring halls and dues checkoff obligations as negotiated and made part of a private collective bargaining agreement. However, this left the issue of *compulsory union membership in order to maintain employment with a private unionized employer* as the central question for the court to decide and here is where the 7th Circuit split from the 6th Circuit (which covers Kentucky, Ohio, Michigan and Tennessee).

In the decision, the court rejected arguments that as a political subdivision of Illinois, the Village can exercise federal laws granted to the State. To do so would result in an administrative nightmare of having over 38,000 local governments (as opposed to 50 states and a few territories) adopt their own right to work laws. "Permitting local legislation under section 14(b) threatens 'a crazy-quilt of regulations.' The 'consequence of such diversity for both employers and unions would be to subject a single collective bargaining relationship to numerous regulatory schemes thereby creating an administrative burden and an incentive to abandon union security agreements.'" This, the court explained, undermines the Supreme Court's pronouncement that "Congress enacted the NLRA to create national uniformity in labor law." Accordingly, according to the 7th Circuit, Section 14(b) simply does not extend to the political subdivisions of the states to enact local "right-to-work" zones whereas Illinois could if it wanted to. NOTE: Indiana and Wisconsin have previously enacted Right-to-Work laws so this decision, for now, only impacts Illinois private employers and employees.

While the U.S. Supreme Court declined to review the 6th Circuit decision in *Hardin County*, this split sets up a potential United States Supreme Court review. Thus, the stakes are raised even higher on the imminent appointment of retired Justice Anthony Kennedy's replacement. On that subject, one thing is certain – we'll have a clearer picture in the next couple of months. Maybe… stay tuned!