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Indiana’s Right-to-Work Statute Survives First Challenge While Court Clarifies Statutory Ambiguities

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On February 1, 2012, Indiana became the 23rd “right-to-work” (RTW) state. Since that date, unions have filed two lawsuits in Indiana federal courts hoping to overturn the law on different grounds. One of those lawsuits, *Sweeney et al. v. Daniels et al*., involved the International Union of Operating Engineers (Union).

Indiana’s RTW Law

The Indiana RTW statute prohibits unions from incorporating “union security clauses” into collective bargaining agreements drafted, modified, or amended after March 14, 2012. Union security clauses prohibit the employer from employing individuals who do not pay core union dues or, because of religious reasons, who do not give an amount corresponding to core union dues to charity each year. In any contract containing a union security clause, if an employee refuses to pay core union dues or donate the requisite amount, the union can demand the employee’s termination. Under the new RTW statute, this practice is illegal for contracts modified or entered into after March 14, 2012.

The *Sweeney* Case

In the *Sweeney* lawsuit, the plaintiffs alleged that the RTW law violated the U.S. Constitution, specifically the “contracts clause” and “ex post facto clause.” The Union also sought to have the law overturned on equal protection grounds. The plaintiffs further claimed that the RTW statute was preempted by federal labor law. Finally, the plaintiffs alleged that the new statute violated the Indiana Constitution.

The legal challenges in *Sweeney* relate to three specific sections of the RTW statute: namely, Sections 3, 8, and 13. Section 8 is the key provision of the RTW statute. It specifies that an employee may not be required to become or remain a union member; may not be forced to pay union dues; and may not be forced to make charitable contributions of an amount equivalent to union dues. Section 3 of the statute is, as the court says in *Sweeney*, a “curious provision.” It states:

> Nothing in this chapter is intended, or should be construed, to change or affect any law concerning collective bargaining or collective bargaining agreements in the building and construction industry other than:
>
> (1) a law that permits agreements that would require membership in a labor organization;
>
> (2) a law that permits agreements that would require the payment of dues, fees, assessments, or other charges of any kind or amount to a labor organization; or
>
> (3) a law that permits agreements that would require the payment to a charity or a third party of an amount that is equivalent to or a pro rata part of dues, fees, assessment, or other charges required of members of a labor organization**.**

Section 13 of the statute represents the last piece of the puzzle. Section 13 specifically states that the substantive sections of the law, Sections 8-12, do not apply to contracts in effect prior to March 14, 2012, grandfathering in the union security clause of existing union contracts until the next time the contract is modified, amended, or renegotiated after March 14, 2012.

The Union’s argument hung on what, if any, substantive differences there are between Sections 3 and 8.

On January 17, 2013, Judge Simon of the United States District Court for the Northern District of Indiana issued an order dismissing the Union’s federal claims with prejudice, while dismissing the remaining state constitutional issues without prejudice and allowing the union to re-file the state claims in state court should they choose. The court used the traditional analysis of the equal protection and federal preemption doctrines to dismiss several of the claims. Particularly insightful, however, was the court’s analysis under the contracts clause and ex post facto
clause of the U.S. Constitution. The court cleared up a great deal of confusion about the scope of the RTW statute in Indiana.

Contract and Ex Post Facto Clause Analysis

The Union’s argument centered upon a “drafting oddity” within the RTW statute. The Union alleged that Section 3 of the statute applied substantive provisions of the new law to existing contracts in violation of the contract and ex post facto clauses of the U.S. Constitution. These provisions bar the state and federal governments from

creating laws that apply retroactively to existing contracts or past situations.

The Union argued that Section 3 contained different substantive requirements than Section 8 and was retroactively applied to all existing contracts. The Union took the position that because Section 3 is not referenced in Section 13, which outlined the "grandfather" date provision of March 14, 2012, it must apply retroactively to existing union contracts in the building and construction industries, in violation of the contract and ex post facto clauses.

In addressing this claim, the court answered a question that has existed since the law passed: what exactly does Section 3 mean? As outlined above, Section 3 and Section 8 use very similar language. In many respects, Section 3 mirrors the exact prohibitions of Section 8 against union security clauses in contracts negotiated after March 14, 2012. Many believed this was the legislature's attempt to seek a carve-out for the building and construction industries based on discussions in the Indiana House of Representatives before the statute passed. If this were the intent of Section 3, as some have claimed, the language was murky.

According to the court, Section 3 did not create a carve-out from the law's provisos for the building and construction industries. Further, it did not impose any additional restrictions upon the building and construction industries. After reviewing the legislative history of the law and the text itself, the court concluded that Section 3 was nothing more than a curious reaffirmation of the prohibitions found in Section 8 of the RTW law.

The court determined that Section 3, like Sections 1 and 2, explained the RTW statute's limitations. Further, the construction industry is often treated differently in federal labor law because of its seasonal and transient nature, so specifically mentioning it in a separate section was not completely out of line. The court also was influenced by the state's insistence that Section 3 did nothing more than reaffirm the tenets of Section 8, and it took judicial notice that the state denied Section 3 had any separate enforcement meaning. The Indiana Commissioner of Labor went on record stating that the state did not believe it could enforce the RTW statute against current contracts that have not been modified or renegotiated since March 14, 2012.

Finding that Section 3 had no weight, Judge Simon held the Indiana RTW statute did not violate either the contracts or ex post facto clauses of the U.S. Constitution because it did not seek to enforce the RTW principles against current contracts or apply the law retroactively. Importantly, the court found that Section 3 conferred no additional rights or special treatment on the building and construction industry. Those industries, according to the court, were subject to all of the requirements of Section 8 forbidding union security clauses in contracts renegotiated or modified after March 14, 2012.

Conclusion

The *Sweeney* ruling is an important victory for RTW proponents and employers. The court upheld the RTW statute and dismissed all of the federal challenges. It also clarified the meaning of Section 3 of the statute, a point of contention and confusion among many. But, this case is not over. The court ruled that the Union could re-file its claims under the Indiana Constitution in state court. The *Sweeney* ruling also could be appealed to the Seventh Circuit Court of Appeals.

Even if this is the end of this lawsuit, it is not the end of the fight over the RTW statute. The United Steelworkers have challenged the RTW statute and that litigation continues. Look for more developments and updates in the future.

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