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Wisconsin's Right-to-Work Law Upheld by the Wisconsin Court of Appeals

September 20, 2017 – At long last, Wisconsin's "Right-to-Work" Law (2015 Wisconsin Act 1) has survived review by both the Seventh Circuit and the Wisconsin Court of Appeals. In July, we advised you of the Seventh Circuit Court of Appeals' decision in *International Union of Operating Engineers Local 139, et al. v. Schimel*, No. 16-CV-590, 2017 WL 2962896, affirming the Eastern District of Wisconsin's dismissal of a lawsuit filed by two units of the International Union of Operating Engineers challenging Wisconsin's "Right-to-Work" law (2015 Wisconsin Act 1). The Seventh Circuit held the Right-to-Work Law is constitutional and was not preempted by federal law. Yesterday, the Wisconsin Court of Appeals similarly upheld the Wisconsin's Right-to-Work Law as constitutional, in *Machinists Local 1061 v. Walker*, No. 2016AP820 (Wis. Ct. App. Sept. 19, 2017). As a result, Wisconsin's private-sector employers now have clarity regarding the application and enforceability of Wisconsin's Right-to-Work Law.

Wisconsin's Right-to-Work Law

Wisconsin's Right-to-Work law, in relevant part, provides as follows:

No person may require, as a condition of obtaining or continuing employment, an individual to do any of the following:

1. Become or remain a member of a labor organization [or]
2. Pay any dues, fees, assessments, or other charges or expenses of any kind or amount, or provide anything of value, to a labor organization.

Wis. Stat. § 111.04(3)(a). Under this law, Wisconsin private-sector employers could no longer enter into "union security agreements" with unions, which require employees, as a condition of employment, to become or remain members of the union or pay union dues.

The Decision

Prior to the Right-to-Work Law going into effect, the International Association of Machinists District 10 and its Local Lodge 1061, United Steelworkers District 2 and Wisconsin State AFL-CIO (collectively, the "Union") brought a declaratory judgment action against the State of Wisconsin challenging the constitutionality of the Right-to-Work Law arguing the Law imposed a costly continuing duty to represent non-member employees in collective bargaining and grievance adjustments, while depriving the Union of their right to negotiation contracts that would allow them to compel those non-member employees to pay the cost of the services the Unions were obligated to provide for that representation. As a result, according to the Union's argument, the Law violated Wisconsin's Constitution's Takings Clause, which states "[t]he property of no person shall be taken for public use without just compensation therefor." See Wis.

Const., Art. I, § 13. The Dane County Circuit Court hearing the case granted judgment for the Union, declaring the Right-to-Work Law constituted an unconstitutional taking and the challenged provisions were “null and void.” The State of Wisconsin subsequently appealed.

On review of the Dane County Circuit Court decision, the Wisconsin Court of Appeals held the Union did have property interests in money contained in the Union’s treasury and in the services expended by the Union to provide representation to non-members, but the Right-to-Work Law does not *take* those property interests. The Court of Appeals looked to a U.S. Supreme Court decision as persuasive and considered the fact the Law does not “appropriate, transfer, or encumber” money contained in the Union’s treasury. The Court of Appeals also explained the Right-to-Work Law does not require labor organizations to provide services to anyone because the duty to fair representation of all employees the Union is the exclusive bargaining unit for is an optional duty the Union voluntarily files a petition and seeks election to take and the duty was not created by the Right-to-Work Law. Instead, the Law merely prohibits employers from requiring union membership or the payment of fees as a condition of employment. Further, the Court of Appeals said the Union has no constitutional entitlement to the fees of non-member employees. As a result, the Court of Appeals concluded the Right-to-Work Law did not result in an unconstitutional taking of private property without just compensation, declaring the Law is enforceable.

Practical Implications

Wisconsin’s Right-to-Work Law is constitutional and remains in effect, which means union security agreements are prohibited by law, and union membership and dues deduction must be voluntary for all employees. If you are or will be negotiating a successor collective bargaining agreement, any provision regarding union membership and dues deduction should take into account the Right-to-Work Law and recognize union membership and the payment of dues to a union cannot be a condition of employment with any private employer in Wisconsin.

If you have questions, please contact Joel Aziere jaziere@buelowvetter.com or 262-364-0250 or Claire Hartley at chartley@buelowvetter.com or 262-364-0260 or your Buelow Vetter Attorney.