

## INDIANA'S RIGHT-TO-WORK LAW IS CONSTITUTIONAL AGAIN

The four-year battle over Indiana's Right-to-Work Law came to a close on November 6, 2014 when the Indiana Supreme Court issued its unanimous 5 - 0 **decision** upholding the constitutionality of the law passed by the General Assembly amid union protests in 2012. See our blog [Right-to-Work: Now There are Twenty Three](#) that discusses the history of Right-to-Work in Indiana and the political battle that led up to its passage.

### TWO CONSTITUTIONAL CHALLENGES

After passage of the law, several unions challenged the law on federal and state constitutional grounds. In September 2014, the Seventh Circuit upheld Indiana's law and ruled that it did not violate the U. S. Constitution. See our blog [Right-to-Work in Indiana The Courts Weigh IN](#) that discusses the court's reasoning at the federal level but leaving the door open for the pending challenge under the state Constitution. With the Indiana Supreme Court's decision, that door has now been shut, although some union commentators hint at an appeal to the U. S. Supreme Court.

### REFRESHER - INDIANA'S RIGHT-TO-WORK LAW

In a nut shell, the Right-to-Work Law provides that a person may not require another individual to (1) become or remain a member of a labor organization; (2) pay dues, fees, assessments or other charges of any kind or amount to a labor organization; or (3) pay to a charity or third party an amount that is equivalent to or a pro rata part of dues, fees, assessments or other charges required of members of a labor organization as a condition or continuation of employment. A second provision makes the knowing or intentional violation of section 8 a Class A misdemeanor.

### THE UNION'S CHALLENGE - "FREELoadERS"

The union argument points to Section 21, Article 1 of Indiana's Constitution that provides in relevant part that "[n]o person's particular services shall be demanded, without just compensation." In other words, the union is being compelled to represent employees even though they are not members or paying dues. These non-members and non-dues paying employees have been termed "freeloaders."

On appeal, the state and the union disputed whether the challenged provisions of the law constitute a demand by the state for particular services under Section 21. The state argues that, literally, state law has not demanded the union to do anything. The union responds that its services are indirectly demanded by the state because the state is "charged with the knowledge of the existence of the federal law which requires unions to represent every individual employee fairly."

### THE STATE DOESN'T DEMAND SERVICES TO BE PROVIDED - UNION SERVICES ARE "OPTIONAL"

Ultimately, a challenger to a law on constitutional grounds has the heavy burden of demonstrating that there are no set of circumstances under which the statute can be constitutionally applied because there is a presumption of constitutionality until clearly overcome by a contrary showing. The union failed in meeting that burden. In so ruling, the Indiana Supreme Court said, "The union's federal obligation to represent all employees in a bargaining unit is *optional*; it occurs only when the union elects to be the exclusive bargaining agent, for which it is justly compensated by the right to bargain exclusively with the employer." The court goes on to state that, "On the face of the Indiana Right-to-Work Law, there is no state demand for services; the law merely prohibits employers from requiring union membership or the payment of monies as a condition of employment." Accordingly, the court unanimously found Indiana's law to be constitutional.

So, it looks like Indiana employees will have the "right to work" for a long time to come.

Reference: [Zoeller, et al v. Sweeney, et al \(Ind. S. Ct. November 6, 2014\)](#)

If you have any questions, please contact Steve Lyman at [slyman@hallrender.com](mailto:slyman@hallrender.com) or your regular Hall Render attorney.