



SUMMARY OF RECENT LITIGATION AGAINST RIGHT TO WORK LAWS

IDAHO

Operating Engineers Local 370 v. Wasden, 217 F. Supp. 3d 1209 (D. Idaho 2016), *appeal dismissed*, No. 16-35963 (9th Cir. July 13, 2018): Complaint filed without publicity Oct. 22, 2015, alleged that NLRA preempts Right to Work law's prohibition of forced fees for bargaining-related costs and, if not preempted, that prohibition violates 5th Amendment as taking without just compensation. State moved to dismiss for failure to state claim. Foundation discovered case on Apr. 13, 2016. Court accepted Foundation amicus brief. Court dismissed on Oct. 24, 2016, ruling that NLRA "Section 14(b) allows states to ban compulsory union fees" and that "Idaho's law does not effectuate an unconstitutional taking." Union appealed to 9th Circuit on November 18. The union's brief was filed on Mar. 28, the State's on Apr. 27, and the union's reply brief on June 12, 2017. Foundation amicus filed on May 3, 2017. On March 1, 2018, the case was removed from the argument calendar and submission "deferred pending the Supreme Court's decision in *Janus v. American Federation of State, County, & Municipal Employees*." On June 27, 2018, the day *Janus* was decided, the court ordered the parties to file by July 24 "supplemental briefs on the effect, if any, of *Janus*" on this case. However, on July 12, the union stipulated to dismissal of its appeal, which the court did the next day, effectively ending the case.

INDIANA

Sweeney v. Pence, 2013 WL 209047 (N.D. Ind. Jan. 17, 2013), *aff'd*, 767 F.3d 654 (7th Cir. 2014) (2-1 decision): Federal district court dismissed case, upheld Right to Work law against all federal constitutional claims. 7th Circuit affirmed Sept. 2, 2014, holding that the law's prohibition of forced fees even for exclusive representation is not preempted and rejecting dissent's argument that that prohibition constitutes an unconstitutional taking of union property. Foundation amicus brief denied, but Foundation attorneys advised State's attorneys. Union's petition for reconsideration en banc denied Jan. 13, 2015. No U.S. Supreme Court petition for certiorari filed, case closed.

Steel Workers v. Daniels, No. 45C01-1207-PL-00071 (Lake Cnty., Ind., Super. Ct. July 17, 2014) (summary judgment), *vacated*, No. 45S00-1407-PL-492 (Ind. Dec. 16, 2014): Judge held Right to Work law violates Indiana anti-forced services constitutional provision, enjoined State from enforcing law. Judgment stayed Aug. 29, 2014, then vacated Dec. 16, 2014, by Ind. Supreme Court. Foundation amicus briefs for workers accepted by both courts. Case dismissed on remand.

Zoeller v. Sweeney, 19 N.E.3d 749 (Ind. 2014): Judge held Right to Work law violates state anti-forced services constitutional provision, but did not enjoin law. State Supreme Court accepted Foundation amicus brief for workers making preemption argument AG ignored. Judgment reversed Nov. 6, 2014. No petition for certiorari filed with U.S. Supreme Court. Case closed.

KENTUCKY

Zuckerman v. Bevin, 565 S.W.3d 580 (Ky. 2018). Complaint filed in Franklin Circuit Court by Teamsters Local and Ky. AFL-CIO Presidents alleging state constitutional violations of taking without just compensation, denial of equal protection, and impermissible “special legislation.” The state defendants moved to dismiss. Foundation attorneys on June 28 moved for intervention of three Ky. private-sector employees and filed their motion to dismiss. The motion to intervene was granted on July 25. The court granted both motions to dismiss on January 23, 2018, holding that the Right to Work law “does not constitute a taking” or violate equal protection or the prohibition of special legislation. After the plaintiffs appealed to the Kentucky Court of Appeals, all parties moved to transfer the appeal to the Kentucky Supreme Court. Those motions were granted on April 18. Briefing was completed by June 28, and oral argument was held on August 10. The Supreme Court affirmed dismissal of the complaint on November 15, 2018. The takings clause claim was rejected 7-0, the other claims 4-3. Significantly, the majority opinion reasoned that the U.S. “Supreme Court’s analysis of the ‘free-rider problem’ in” *Janus v. AFSCME* “conclusively refutes, for several reasons, the Unions’ claims that they will be compelled to provide services without compensation.” Rehearing was denied on February 14, 2019. The case is closed.

MICHIGAN

Michigan AFL-CIO v. Callaghan, 15 F. Supp. 3d 712 (E.D. Mich. Mar. 31, 2014): Suit alleged federal labor laws preempt private-sector Right to Work law. State moved to dismiss based on NLRA § 14(b). Foundation attorneys’ motion for four workers to intervene denied, court accepted Foundation amicus brief for workers. Core provisions held not preempted Mar. 31, 2014, some peripherals held preempted. Stipulated Final Order entered July 31, 2015, incorporating those rulings. Case closed.

UAW v. Green, 839 N.W.2d 1 (Mich. Ct. App. 2013), *aff’d on other grounds*, 870 N.W.2d 867 (Mich. 2015) (4-3 decision): State Court of Appeals held public-sector Right to Work law constitutionally applies to state civil service employees. Mich. Supreme Court granted leave to appeal Jan. 29, 2014. Foundation amicus brief for worker accepted June 6. Argument Jan. 13, 2015. Held July 29, 2015, that Civil Service Commission lacks constitutional authority to compel union fees. Case closed.

WEST VIRGINIA

West Virginia AFL-CIO v. Tomblin, Nos. 16-C-959 to 16-C-969 (Kanawha Cnty. Cir. Ct. Feb. 24, 2017) (preliminary injunction), *rev’d*, 804 S.E.2d 883 (W. Va. 2017), *summary judgment granted on remand sub nom. W. Va. AFL-CIO v. Justice* (Kanawha Cnty. Cir. Ct. Feb. 27, 2019): Union petition for declaratory judgment filed June 27, 2016, claiming that Right to Work law violates right to associate, takes private property without compensation, and violates liberty without due process under state constitution. Attorney General for State opposed preliminary injunction. At hearing Aug. 10, judge accepted Foundation amicus brief and said she would grant preliminary injunction, but did not then enter such an order. Cross-motions for summary judgment and Foundation motion for leave to file second amicus supporting State filed. Foundation moved for worker’s intervention and court heard oral argument on summary judgment motions on Dec. 2, 2016. Intervention denied Feb. 10, 2017.

Preliminary injunction order finally entered Feb. 24. Attorney General filed Notice of Appeal to W. Va. Supreme Court. Foundation moved for leave to file amicus brief for worker in support of State's appeal and filed notice of appeal from denial of his intervention. Court accepted amicus brief on March 31. Oral argument on appeal of preliminary injunction held on September 5. Supreme Court dissolved the injunction on September 15, 2017, the majority finding that the "unions failed to establish a likelihood of success on the merits." The Chief Justice wrote separately "to demonstrate how fatally unsupported and lacking in merit the [unions'] constitutional challenge is." Case "remanded for the circuit court to conduct a final hearing." Circuit court decided merits on February 27, 2019, granting plaintiffs summary judgment on their associational, takings, and due process claims. It did not explain how those rulings square with the Supreme Court's conclusions that the unions had no likelihood of success. The Attorney General filed second appeal to Supreme Court, which on March 29 stayed the circuit court's judgment, leaving the Right to Work law in effect. Briefing on appeal was completed on August 20.

WISCONSIN - PRIVATE SECTOR

Machinists Local 1061 v. Walker, No. 15CV628 (Dane County, Wis., Cir. Ct., Apr. 8, 2016), *rev'd*, 903 N.W.2d 141 (Wis. Ct. App. 2017): Complaint alleged that under state law Right to Work law constitutes an unconstitutional taking of union property. Foundation attorneys filed amicus brief for workers. State's motion to dismiss denied Nov. 9, 2015. Judge granted unions summary judgment on Apr. 8, 2016; a week later he enjoined the State from enforcing the law. State appealed to the Wisconsin Court of Appeals which, on May 24, 2016, stayed the judgment, leaving the Right to Work law in effect. The Court of Appeals also accepted an amicus brief in support of the stay Foundation attorneys filed for Wisconsin workers. Foundation attorneys filed workers' amicus brief on the merits on Aug. 9, and State filed its merits brief next day. Unions' brief filed on Sept. 9, State's reply on Sept. 22. Court heard oral argument on May 3, 2017. Court reversed and remanded on Sept. 19 with directions to dismiss the complaint, holding that the Right to Work law "does not take property within the meaning of the Wisconsin Constitution" but "merely prohibits anyone from conditioning a person's employment on the payment of monies." No petition for review being filed with the Wisconsin Supreme Court within 30 days of that decision, the case returned to the Circuit Court for dismissal of the complaint. The case is now closed.

Operating Engineers Local 139 v. Schimel, 210 F. Supp. 3d 1088 (E.D. Wis. 2016), *aff'd*, 863 F.3d 674 (2017), *reh'g en banc denied*, 2017 WL 2962896 (7th Cir. Sept. 1, 2017). Complaint alleged that NLRA preempts Right to Work law's prohibition of forced fees for bargaining-related costs and that, if not preempted, the prohibition is unconstitutional taking without just compensation. The unions moved for a preliminary injunction. The State opposed and moved for judgment on the pleadings. Foundation attorneys moved for leave to file amicus brief for workers in support of the State. The court granted State judgment on the pleadings on Sept. 26 and denied injunction, following the holding and reasoning of *Sweeney v. Pence* majority, but denied workers leave to file amicus brief. Unions appealed to Seventh Circuit on October 21. Union's brief filed Jan. 13, State's Mar. 22, 2017. Union on Mar. 13 filed a petition that the appeal be heard en banc rather than by a 3-judge panel. Court accepted Foundation amicus brief for five workers on Mar. 29. Petition for en banc hearing denied on Apr. 10. Three-judge panel heard oral argument on June 2 and affirmed district court's decision on July 12, finding *Sweeney* dispositive. Union on July 26 petitioned for rehearing en banc, and at least

one judge requested on July 31 that the State answer the petition by August 14. However, rehearing was denied on September 1 with no judge in active service requesting a vote on the petition. No petition for certiorari having been filed by November 30, 2017, the case is closed.

WISCONSIN - PUBLIC SECTOR

Wisconsin Education Ass'n Council v. Walker, 705 F.3d 640 (7th Cir. 2013): U.S. Court of Appeals for 7th Circuit upheld entire public-sector bargaining reform bill (Act 10), including prohibition of forced fees for most public employees, as not violating 1st Amendment or equal protection. Foundation briefs for workers filed in both district court and court of appeals, but intervention denied. Decision final, time for requesting U.S. Supreme Court review expired.

Laborers Local 236 v. Walker, 749 F.3d 628 (7th Cir. 2014): District court granted State summary judgment, rejecting all 1st Amendment and equal protection claims, including some slightly different from those in *WEAC v. Walker*. District court accepted Foundation amicus brief for workers. No Foundation amicus filed in 7th Circuit due to stringent rules against amicus briefs. 7th Circuit upheld entire statute again on Apr. 18, 2014. Rehearing and rehearing en banc denied May 22. Decision final, time for requesting U.S. Supreme Court review expired.

Madison Teachers v. Walker, 851 N.W.2d 337 (Wis. 2014): Dane County Judge Colas held Act 10's provisions applicable to municipal and school employees violated 1st Amendment and equal protection. Court of Appeals denied stay, noting no statewide effect, and certified appeal to Wis. Supreme Court, which accepted appeal. Foundation filed workers' amicus briefs in all three courts. On Oct. 25, 2013, Judge Colas held WERC Commissioners in contempt for continuing to implement Act 10 as to unions not party to the case and ordered WERC to cease re-certification elections and treat non-party unions under pre-Act 10 law. State sought stay of contempt order. Foundation attorneys filed workers' amicus briefs supporting stay. Supreme Court vacated contempt order on Nov. 21, 2013. On July 31, 2014, Supreme Court upheld Act 10 in its entirety. Reconsideration on pension issue denied Sept. 3. Decision final, time for U.S. Supreme Court petition for certiorari expired Feb. 3, 2015.

Wisconsin Law Enforcement Ass'n v. Walker, No. 12CV4474 (Dane County, Wis., Cir. Ct. Oct. 23, 2013), *appeal dismissed*, No. 2013AP2653 (Wis. Ct. App. Aug. 8, 2014): Different Dane County judge held that Act 10 does not violate First Amendment and equal protection as applied to state employees. Union appealed to Wisconsin Court of Appeals, which on Dec. 26, 2013, stayed appeal pending Wisconsin Supreme Court decision in *Madison Teachers*. On Aug. 8, 2014, after *Madison Teachers* decision upholding Act 10, union dismissed appeal.

Operating Engineers Locals 139 & 420 v. Walker, No. 2:18-cv-285-LA (E.D. Wis. filed Feb. 23, 2018). The complaint alleged that the Right to Work provision, limitation on the subjects of collective bargaining, prohibition of payroll deduction of union dues by public employers, and recertification election requirement of Act 10 violate the free speech and freedom of association rights of the unions under the First Amendment. All of these claims were explicitly or implicitly rejected by the Seventh Circuit in its two previous decisions upholding Act 10 in its entirety, although the complaint alleged

that the unions' arguments were different "in light of the issues raised in *Janus*." However, the case was voluntarily dismissed by the unions on May 11, 2018.