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Local “Right to Work” Decision Creates New Opportunities for Improving Labor Climate

The Sixth Circuit Court of Appeals ruled on November 18, 2016, that the National Labor Relations Act (NLRA) permits local governments to free their citizens from mandatory union dues and membership. This update offers analysis gained from Frost Brown Todd LLC’s (FBT) role in securing this ruling. FBT labor and employment lawyers, John Lovett and Kyle Johnson, represented Hardin County, Kentucky, in the successful defense of its “right to work” ordinance in the Court of Appeals.

What has happened

Union political influence kept Kentucky from joining the ranks of “right to work” states for over 50 years. After decades of watching new employers prefer “right to work” locations for new facilities, some Kentucky communities pursued a strategy of adopting local “right to work” ordinances. Hardin County was among them.

Kentucky law grants counties the right to regulate commerce and promote economic development within their boundaries. Few issues more directly impact local commerce than what local citizens are free to do with their own paychecks. And, studies have shown that few steps more enhance economic development than “right to work” laws, which demonstrate that labor unions do not control political decision-making.

National labor unions and their Kentucky “locals” responded by suing Hardin County in U.S. District Court in Louisville. The National Labor Relations Board (NLRB) joined as a “friend of the court” in support of the unions. They argued that the National Labor Relations Act (NLRA) prevents (“preempts”) local governments from adopting “right to work” laws. No court had ever upheld a “right to work” law adopted by a city or county. The few courts that have addressed the issue, including an early Kentucky decision, seemed to support the unions. The District Court accepted the unions’ argument, and

issued an injunction against Hardin County's ordinance. Hardin County appealed to the U.S. Sixth Circuit Court of Appeal.

Last week, a three-judge panel of the Court of Appeals unanimously reversed the District Court. The appeals court ruled that counties, and other "political subdivisions" of a state, are free to exercise the authority their state grants them as they see fit, unless Congress has "clearly stated to the contrary." No such clear statement is found in the National Labor Relation Act.

What this means

The Sixth Circuit decision is the first of its kind in the nation, and signals that federal labor law does not prevent any local government from adopting a "right to work" law. Kentucky counties, like Hardin County, that have already adopted "right to work" laws are now free to enforce them. Recent changes in the Kentucky legislature may open the door for a state-wide "right to work" law. Yet, this is not guaranteed, and "right to work" laws usually apply only to union contracts negotiated after the effective date of the law. This gives Hardin County, and others with "right to work" ordinances, a head start on the benefits of "right to work," even if Kentucky adopts a state-wide law.

What's next

The unions that sued Hardin County have already announced that they will continue their legal attack. They plan to ask the Court of Appeals to reconsider its decision. If this fails, they are likely to ask the U.S. Supreme Court to reverse the Court of Appeals. The Sixth Circuit's decision, however, is legally sound. We predict it will withstand all legal attacks, keeping the door open for local governments across the nation to adopt "right to work" laws.

If you would like more information, please contact [John Lovett](#) or any other attorney in FBT's [Labor and Employment](#) practice group.

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