Sixth Circuit Decision May Open the Door for Ohio Cities and Limited Home Rule Townships to Enact "Right to Work" Legislation

Dec 19, 2016

Categories:
Publications

Authors:
Donald L. Crain

The Sixth Circuit Court of Appeals ruled on November 18, 2016, that the National Labor Relations Act (NLRA) permits local governments to enact "right to work" legislation. Right to work laws prohibit private-sector employers from requiring employees to either join a union or pay mandatory union dues or fees. Frost Brown Todd LLC (FBT) attorneys 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 happened

Hardin County, along with multiple other Kentucky counties, adopted local "right to work" ordinances. National labor unions and their Kentucky "locals" responded by suing Hardin County in U.S. District Court in Louisville. The National Labor Relations Board joined as a "friend of the court" in support of the unions. They argued that the NLRA prevents ("preempts") local governments from adopting "right to work" laws. The NLRA specifically authorizes agreements that require employees to join the union or pay a fair share fee but permits "States" to pass laws prohibiting such agreements.

No court had ever upheld a "right to work" law adopted by a city or county. The few courts that had addressed the issue, including an earlier 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 Appeals.

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, as subordinate components of the state, are free to exercise the authority their state grants them as

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

they see fit unless Congress has "clearly stated to the contrary." As no such clear statement is found in the NLRA, the Court refused to infer that Congress' failure to include "political subdivisions" in the statutory section granting "States" the authority to prohibit fair share fees meant that local governments were precluded from prohibiting fair share agreements.

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. Ohio public sector collective bargaining law, however, authorizes contracts to include fair share provisions. This means that local "right to work" legislation would not apply to public sector labor agreements. Additionally, local "right to work" laws would likely only apply to union contracts negotiated after the effective date of the local 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. While the Sixth Circuit's decision is legally sound, the future of this decision could rest in the hands of the next justice appointed to the Supreme Court.

If you would like more information, please contact Don Crain or any other attorney in FBT's Government Services Practice Group.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons