
Sixth Circuit Restores Law Prohibiting Public School Districts From Deducting Union Dues

By Kurt M. Graham / May 10, 2013

In a long-awaited decision, the United States Sixth Circuit Court of Appeals reversed a preliminary injunction issued by a federal district court judge that enjoined the Michigan Employment Relations Commission ("MERC") from enforcing PA 53 of 2012, which prohibits school districts from assisting a union in collecting union dues and service fees.

In *Bailey v. Callaghan*, Docket No. 12-1803 (6th Cir. 2013), the Michigan Education Association, and its union affiliates, challenged the law on First Amendment and Equal Protection grounds. The unions asserted that PA 53 was enacted in retaliation for their recall efforts of several legislators and for their opposition to the passage of several legislative bills that limited the scope of collective bargaining for teachers. The unions argued that since the law treated public school employees different from other public employees they were denied equal protection. Likewise, the unions claimed that the law, as applied, would burden the speech of public school employees, but not other public employees.

The Sixth Circuit majority opinion rejected the plaintiffs' First Amendment arguments, stating, "Public Act 53 does not restrict speech; it does not discriminate against or even mention viewpoint; and it has nothing to do with a forum of any kind. Instead, the Act merely directs one kind of public employer to use its resources for its core mission rather than for the collection of union dues. That is not a First Amendment concern."

The Sixth Circuit rejected the plaintiffs' Equal Protection argument because PA 53 was passed to achieve a conceivable governmental interest, "the Legislature could have concluded that it is more important for the public schools to conserve their limited resources for their core mission than it is for other state and local employers. The plaintiffs' equal protection claim therefore fails."

Now that the preliminary injunction has been lifted, school districts will have to carefully examine the *Bailey* decision to assess its impact upon any existing collective bargaining agreements that contain clauses requiring payroll deductions for the payment of union dues. As a result, school districts are encouraged to speak with a Clark Hill Education Law or Labor Law Attorney before taking any action with respect to deducting or not deducting union dues via payroll deduction pursuant to an existing collective bargaining agreement.

If you have any questions please contact Kurt M. Graham, (616) 608-1144, kgraham@clarkhill.com or another Clark Hill education or labor or employment attorney.