

---

# Circuit Court Rules That Public Act 53's Bar On Dues Withholding Under A Collective Bargaining Agreement Executed While Federal Court Injunction Was In Place Does Not Violate Constitutional Impairment of Contract Clauses

By Mark W. McInerney / Apr 02, 2014

Public Act 53 of 2012, effective March 16, 2012, forbade public school employers from withholding union dues or service fees from the pay of public school teachers. The Act did not apply to collective bargaining agreements in effect as of the effective date of the statute, but did apply to subsequently-executed agreements. In response to a challenge to PA 53 filed by several labor organizations that would be affected by this ban, the United States District Court for the Eastern District of Michigan on June 11, 2012 issued a preliminary injunction against enforcement of this ban by the Michigan Employment Relations Commission. On May 9, 2013, the United States Court of Appeals for the Sixth Circuit reversed the preliminary injunction, noting that "the injunction should not have issued." Eventually, the District Court dissolved its injunction, and the underlying challenge was thereafter dismissed.

During the nearly 11 months when the federal court injunction was in effect, a number of replacement collective bargaining agreements were negotiated and executed. Many of these new agreements were designed primarily to defer the effects of the "right to work" legislation that became effective in late March 2013, but the ban on dues withholding was also a concern in some situations. When the Sixth Circuit nullified the District Court's injunction, the question became whether collective bargaining agreements, executed after PA 53 took effect but while the injunction was in place, were governed by PA 53 or the contract's requirement for withholding dues.

Conflicting positions on this issue taken by Michigan's Attorney General and public school employee unions left public school districts, with contracts dating from the injunction period, in a quandary. Some school districts elected to stop withholding on the basis of PA 53. Others continued withholding awaiting judicial or legislative clarification. The Lansing School District chose to seek a declaratory judgment, asking the Court to declare whether the agreement language permitting withholding governed, or whether withholding was banned by PA 53. Attorney General Schuette intervened in the case, and actively participated in the motion process.

In an opinion issued on March 27, Ingham County Circuit Judge William E. Collette went a long way toward answering this key question. Preliminarily, the District's unions had contended that this was an issue that should be decided by an arbitrator, even though there was no dispute about the meaning of the contract language. Judge Collette held that the question of whether the collective bargaining agreement was superseded by PA 53 was a legal issue to be decided by a court, not an arbitrator, particularly where there was no allegation that the District had violated the agreement since it had continued withholding while the litigation was pending.

The Court then addressed the substantive issue of "whether a contract lawfully enacted during a preliminary injunction, which contains a provision that would be unlawful but for the preliminary injunction, remains valid after the dissolution of the preliminary injunction" under the constitutional contract clauses. The Court concluded that no constitutional violation would occur if the public act superseded the contract provisions. The Court first cited to United States Supreme Court precedent that the contract clause protects against impairment by state legislative action, not court judgments, and added that Michigan law holds likewise. The Court then found inapplicable the unions' reliance upon cases holding that a court decision overruling a former decision should be applied prospectively if a party were prejudiced by the change in law, holding that those cases applied to judicial changes in substantive law rather than a reversal of a preliminary injunction that never should have issued.

Finally, the Court rejected the unions' argument that the fact that the Attorney General had taken a contrary position in the course of the federal litigation on the effect of PA 53 during the injunction period should estop the Attorney General from contending that PA 53 superseded the injunction-period contracts, pointing out that a court may not grant equitable relief to avoid the application of a statute.

With Judge Collette's determinations, public school employers who were uncertain whether to withhold union dues now have judicial support for a decision to follow the requirements of PA 53 to cease withholding. If you have questions about the requirements of PA 53, please contact Mark McInerney at (313) 965-8383 or by email at [mmcinerney@clarkhill.com](mailto:mmcinerney@clarkhill.com), or you may contact another member of Clark Hill's Education Law group.