

## 6th Circuit Upholds County Right-To-Work Ordinance

The 6th Circuit in *United Automobile, Aerospace and Agriculture Implement Workers of America v. Hardin County, Kentucky*, 2016 WL 6818852 (6th Cir. 2016) upheld a right to work ordinance adopted by Hardin County.

The District Court awarded summary judgment to the union, finding the NLRA preempts right-to-work laws that are not specifically authorized in §14(b) of the Act. Being that the Hardin County ordinance was not specifically authorized by §14(b) of the Act the District Court found that preemption was appropriate. Further the Court found that the Ordinance's regulation of "hiring halls" was also preempted.

On Appeal the County contended that the ordinance constitutes state law within the meaning of 14(b), therefore, is not preempted by the NLRA. §14(b) of the NLRA states that "[n]othing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." The 6th Circuit held that the Hardin County Ordinance constitutes state law, therefore falls within §14(b)'s exception.

The 6th Circuit held that congress' use of the term "state" in §14(b) of the Act also applies to a county ordinance, "political subdivisions are merely subordinate components of the whole." *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 612 (1991). The NLRA did not expressly recognize a state's authority to prohibit union-security agreements, instead they are silent as to whether political subdivision ordinance equate to state legislation. The 6th Circuit found that congress' silence on this issue could be construed as congress "preserving state authority to delegate its governmental powers to its political subdivisions as it sees fit." *Hardin County*, 2016 WL 6818852 (6th Cir. 2016).

The Court further held that Congress did not intend for the Act to preempt state law explicitly or implicitly. The Hardin County ordinance regulates an activity that is arguably protected by §8(a)(3) of the Act, which explicitly provides that employers may enter into union-security agreements.

On the other hand, the 6th Circuit affirmed the District Court's finding that that the ordinance prohibiting employers and unions from entering into "hiring hall" agreements was preempted by the LMRA.

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