LINCOLNSHIRE ANTI-UNION MOVE DEFEATED

The Rauner attempt to create small pockets of right to work municipalities with Lincolnshire being at the forefront has been defeated again. Months ago, the U. S. District Court found the Lincolnshire ordinance to be preempted, and that decision has now been affirmed by the U.S. Court of Appeals for the 7th Circuit. Lincolnshire passed an ordinance that consisted of three major themes: 1) To forbid the inclusion of union-security or hiring all provisions in collective bargaining agreements; 2) To forbid the mandatory use of hiring halls; and 3) To forbid checkoff arrangements in collective bargaining agreements.

The Village with the assistance of Rauner allies asserted that it had a right to do this under The Hartley Section 14(b), which permits states to bar compulsory union membership as a condition of employment. This ordinance was based upon a Kentucky county ordinance, Hardin County, that did the same thing, but the U.S. Court of Appeals for the 6th Circuit found the hiring hall and checkoff provisions to the outside the scope of Section 14(b) and thus preempted by the National Labor Relations Act. However, the union security provision was found to be lawful. So the 7th Circuit opinion conflicts with the 6th Circuit opinion, and may be a bases for persuading the U.S. Supreme Court to resolve the conflict.

The heart of this case turns on the language of Section 14(b):

> (b) **Agreements requiring union membership in violation of State law** – Noting in this sub chapter 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 29 U.S.C. Section 164(b).

The key question is whether congress meant to include local laws, as in municipal or county, when it referred to "State or Territorial Law". The 7th Circuit, like the 6th Circuit, held that the ban on union checkoff provisions and hiring halls was preempted by the National Labor Relations Act and therefore was invalid. As to the question of whether a municipality or county could enact a bar on union security clauses, the 7th Circuit held that municipalities are obviously not states and that Congress did not intend to allow cities or counties to ban union security clauses.

The administrative nightmare that would be caused in the State of Illinois by allowing Lincolnshire to enforce its ordinance was a major reason for the 7th Circuit's decision to reject Lincolnshire's arguments. An employer with offices located in Lincolnshire would be required to comply with the ordinance for job sites in Lincolnshire, and for job sites outside of Lincolnshire it would risk committing an unfair labor practice under the NLRA if it refused to bargain with a union over an agency-shop provision. The ordinance contained the words predominate job situs for purposes of attempting to extend a jurisdictional reach of the Village ordinance, but

predominate job situs was not defined, nor was the period of time for which the job was being performed, as in a week, month or year.

The 7th Circuit noted that Illinois has almost 7,000 local governments, and for some companies a single plant might cross municipal lines. Suppose neighboring Buffalo Grove has a different ordinance than Lincolnshire, and an employee works one day in Lincolnshire on a job site and the next day in Buffalo Grove. The employee would be covered by two different ordinances while working for the same employer. Accordingly, the court noted that the sensible conclusion is the Section 14(b) operates only at the state level. Important to this consideration is the fact that federal labor law places great weight on uniformity and construing the words "State or Territory" to allow delegation of authority is to local units of government to union security clauses would harm that interests of uniformity. This does not mean that Illinois would be barred from allowing local governments to enact such ordinances, but that is clearly not the case here, and we hope that it never will be. In fact, Lincolnshire admitted as such that it would not be able to use its home rule of power if Illinois were to pass a specific statute forbidding the State's political subdivisions to legislate in this area.

This is an important decision that finally places the Rauner turn around agenda where it belongs, dead in the water.

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