CASE SUMMARIES

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Labor and Employment Law

Right to Work is Reserved for States to Decide, not Counties

Federal District Court in Kentucky Feb.2016

About half of the states in the United States are what is called “right-to-work” states where employees do not have to join a union to work at a unionized company. Section 14(b) of the National Labor Relations Act specifically states, “Nothing 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.” Some counties have broadly read this clause to mean that the creation of right-to-work counties (and by that extension, cities, and “zones”) can determine to be right-to-work even though the state as a whole is not. These counties are wrong.

A federal district court in Kentucky recently found that the National Labor Relations Act preempts a county right-to-work ordinance banning the use of union-security agreements between employers and unions and regulating other practices that are either permitted or prohibited by federal law. Unions successfully argued that Section 14(b) of the Act allows states or territories to prohibit union-security agreements; it did not authorize counties to enact a right-to-work measure.