

Michigan Ban on School Employee Union Dues Deductions Legal

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In a split opinion Thursday, a federal appeals court cleared the path toward implementing a 2012 Michigan law barring public school employers from collecting union dues from their employees.

In *Bailey v. Callaghan*, the Sixth U.S. Court of Appeals, overturned a district judge's order prohibiting the law from taking effect while four unions challenge its constitutionality. The appellate court held that the unions "have no chance of success" on their claims, and ruled that the law, Public Act 53 ("PA 53"), does not violate employees' constitutionally-protected First Amendment or Equal Protection rights.

The court summarized one of the unions' claims briefly: They engage in speech, and in order to do so, they need membership dues; if school employers do not collect the dues, the unions would have problems doing so on their own, and so the prohibition in PA 53 violates the unions' right to free speech. Citing U.S. Supreme Court precedent, the appeals court found PA 53 does not restrict unions' speech at all, and the right to free speech does not provide a right to use the government payroll system to fund such speech.

A second argument—that PA 53 is unlawful discrimination because it denies certain unions access to payroll deduction—was rejected upon the court's determination that the law simply prohibits certain employers from collecting the dues. Thus, in the majority's view, there was no discrimination against the school unions; in fact, it noted, non-school public employers almost certainly continue to withhold union dues for some of the plaintiff unions such as AFSCME.

The plaintiffs have announced they may appeal the decision; so while the appeals court decision means that PA 53 is in effect, school districts should proceed with caution to implement it.

For more information on how the decision in *Bailey v. Callaghan* may affect your district, please contact Miller Canfield's Employment and Labor Group.