

Right to Work Battle Not Over in Indiana?

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Despite the recent Indiana Supreme Court and 7th Circuit rulings upholding the constitutionality of Indiana's Right to Work Act under both the state and federal constitutions, the *Indiana Lawyer* is reporting today that the battles might not yet be over. The publication quotes Dale Pierson, general counsel for the International Union of Operating Engineers Local 150, that the union decided to go ahead with a petition for review *en banc* by the full 7th Circuit as a result of what it described as Chief Judge Diane Woods' "strong dissent" in *Sweeney v. Pence*. No action has been taken yet on that petition. Local 150 is also actively considering an appeal to the United States Supreme Court depending on how the 7th Circuit resolves the *en banc* petition.

Local 150 is also considering a new law suit based upon the concurrence of Justice Rucker in the Indiana Supreme Court decision, *Zoeller v. Sweeney*. Rucker concurred in the majority decision but wrote separately (without joinder by any of the other 4 Justices) that while the statute could survive a facial challenge on constitutionality grounds, he questioned whether there could be an "as applied" challenge to the statute. The *Indiana Lawyer* quotes Pierson as saying that based on Rucker's concurrence Pierson thinks another lawsuit could be filed if a union can show it has suffered revenue losses or it is unable to represent the workers because the nonmembers are not paying their fair share of dues and costs.

As it stands today, Local 150's petition for *en banc* review is the only remaining piece of litigation over RTW. Lake Superior Judge John Sedia's decision striking down the RTW statute in September 2013 was reversed by the Indiana Supreme Court in *Zoeller v. Sweeney*. Lake Circuit Special Judge George Paras also decided in July 2014 that the statute was unconstitutional. The state appealed that decision as well, but earlier this month the Supreme Court granted the parties' joint motion to dismiss the appeal of that decision in light of the decision in *Zoeller v. Sweeney*.

So, the Right to Work Act is the law of Indiana. It prohibits employers and unions from negotiating agreements that require employees within the defined bargaining unit to pay any fees or assessments to the union.

The *Indiana Lawyer* article can be viewed [here](#).

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