MIRS Capitol Capsule
"If you don't read us, you just don't get it!" News
And Information About Michigan Government

Expert: SCOTUS Opinion Could Foreshadow Nationwide Public RTW

Neither unions nor anti-union forces got everything they wanted out of another major U.S. Supreme Court (SCOTUS) decision issued today.

On one hand, SCOTUS turned down an opportunity to essentially apply Right-to-Work (RTW) across the nation to public employee unions. But the opinion kept the door open to that possibility in the future, one legal expert said today.

"The court once again left open the possibility that at some point it would entertain the prospect of requiring RTW in all public sector" unions, said Samuel BAGENSTOS, a professor of law at the University of Michigan.

The decision likely wouldn't directly affect Michigan, as home health care workers here are no longer allowed to unionize through the Service Employees International Union after Gov. Rick SNYDER signed Public Act 76 of 2012 into law (See: "Snyder Signs MQCCC Bill," 4/10/12).

However, the decision only narrowly applied to partial-public employees like the in-home Medicaid providers in this case, Bagenstos said, so it's unclear if this will extend to other types of partial-public employees.

"It's not clear how much farther the precedent by itself extends beyond personal assistance workers, home health care workers, maybe home-based child providers," he said.

The High Court today ruled 5-4 in Harris v. Quinn that in-home care workers can opt out of paying agency fees if they choose not to join or support the union.

"The First Amendment prohibits the collection of an agency fee from personal assistants in the Rehabilitation Program who do not want to join or support the union," the opinion authored by Justice Samuel ALITO said, which was joined by Chief Justice John ROBERTS, Justices Antonin SCALIA, Anthony KENNEDY and Clarence THOMAS.

The Mackinac Center Legal Foundation championed the results today, proclaiming that SCOTUS had "freed hundreds of thousands of home-based caregivers from paying compulsory union dues." The Mackinac Center noted that it filed two amicus briefs in support of the in-home workers who filed the case.

"These schemes are similar to what we went through in Michigan with the SEIU's stealth unionization of caregivers and the ensuing dues skim," said Patrick WRIGHT, vice president for legal affairs at the Mackinac Center for Public Policy in a statement. "As we've contended all along, you can't force a person into a public-sector union simply because a portion of their income is derived from public dollars."

The Michigan Freedom Fund was also happy about the majority ruling.

"The United States Supreme Court today picked freedom again and again," said Michigan Freedom Fund President Greg McNEILLY in a statement. "The Constitution protects every citizen's right to worship and right to freely assemble. The Court's decision to affirm those rights is an important victory for Michigan families, workers and job providers."

But Democratic Attorney General candidate and Michigan State University law professor Mark TOTTEN said today in a statement the SCOTUS decision "undermines the right of home healthcare workers to organize and signals a willingness by some members of the Court to overrule decades of settled law that supports the right of public employees to collectively bargain with their employers."

The case involved a group of Illinois workers who sued the SEIU and the Illinois governor, arguing that paying dues to a union they didn't support violated their First Amendment rights.

Much of the case involved discussion of a 1977 SCOTUS decision, Abood v. Detroit Board of Education, which "held that state employees who choose not to join a public-sector union may nevertheless be compelled to pay an agency fee to support union work that is related to the collective-bargaining process," according to the SCOTUS opinion.

That's because a lower court had relied on Abood to rule in favor of the defendants, the state and the union. But the SCOTUS opinion consistently wore down the Abood precedent today in partially overturning that judgment.

"This is actually the second time the court, in a 5-4 decision written by Justice Alito, has questioned the vitality of the Abood precedent," Bagenstos said, referencing Knox v. Service Employees a few years ago. "So we have a kind of consistent hint from the Supreme Court that if someone squarely brings the case to them to require RTW constitutionally in all public sector employment, that they might hold that the First Amendment requires RTW in all public sector employment, but they have now twice refused to take that step."

A dissent written by Justice Elena KAGAN and joined by Justices Stephen BREYER, Sonia SOTOMAYOR and Ruth Bader GINSBERG, disagreed with the dismantling of Abood.

"The majority today misapplies Abood, which properly should control this case. Nothing separates, for purposes of that decision, Illinois's personal assistants from any other public employees," according to Kagan's dissent. "The balance Abood struck thus should have defeated the petitioners' demand to invalidate Illinois' fair-share agreement."