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Beer, brats and FMLA intermittent leave, ah, summertime has arrived »

Supreme Court rules against union on “special” collection of fees

By Lisa Baiocchi

Lisa A.
Baiocchi

“…This aggressive use of power by the SEIU to collect fees from nonmembers is indefensible. …” *Knox v. Service Employees*, 567 U.S. ____(2012), Slip No. 10-1121.

On June 21, 2012, the United States Supreme Court, in a 7-2 decision, held that the Service Employees International Union, Local 1000 (SEIU) impinged on the First Amendment rights of California’s public sector employees by requiring non-members to pay 100% of an emergency assessment fund collected without giving them a notice and opportunity to opt out.

Facts

California law allows public sector employees to create an agency shop arrangement in which employees in the bargaining unit covered are not required to join the union; however these “non-members” are still required to pay union dues for chargeable expenses, essentially the cost of union services. Furthermore, with respect to union dues, non-members can object and therefore refrain from paying any portion of the dues attributable to a union’s political expense or activity.

In June 2005, the SEIU sent out its regular notice informing employees what the union dues would be for the upcoming year. The notice established that the monthly union dues would be 1% of the employee’s gross monthly salary capped at $45.00 per month. The SEIU represented in this notice that 56.35% of its total expenditures would be dedicated to chargeable expenses. The remaining percentage, 43.65%, arguably would fund the political costs and activities of the SEIU. Non-members had 30 days to object to the payment of the full amount of the union dues. Thus, if a non-member objected to the amount of the union dues within this time frame, he or she would only be required to pay 56.35% of the total dues.

On June 13, 2005, the governor of California called for a special election to be held on November 8, 2005 to address various ballot propositions aimed at addressing the growing state budge deficit. Two propositions to be voted on in November, Proposition 75 and Proposition 76 directly affected public sector unions and employees. Proposition 75 would have required unions to obtain employees’ affirmative consent **prior** to charging them dues to be used for political purposes. Proposition 76 would have given the governor the ability under certain circumstances to reduce state appropriations for public employee compensation.

In response to this special election in November and in order to fund political activities aimed at defeating Proposition 75 and Proposition 76, the SEIU proposed a 25% increase in dues on July 30, 2005 (just days after the 30 day objection period had expired). At the end of August 2005, the SEIU’s General Council voted to implement the 25% increase. The SEIU then informed employees that the monthly union dues collected would increase and would be 1.25% of employees’ gross monthly salary. The SEIU also stated that the $45.00 monthly cap no longer applied. It furthermore communicated to employees that the increase in union dues would go to fund activities to defeat Proposition 75 and Proposition 76 on November 8. No new notice period was given to the non-members concerning the ability to opt out of this increase of 25%. However, the SEIU did state that those employees who had filed timely objections in June would only be required to pay 56.35% of the (25%) increase.

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Petitioners, non-members, filed a class action suit on behalf of 28,000 similarly situated employees who were forced to contribute additional dues for the SEIU’s fight against Proposition 75 and Proposition 76. Some of the class members had filed timely objections in June while others had not.

The District Court granted summary judgment for the petitioners finding that a new notice should have been given allowing non-members to opt out of this 25% increase because it concluded that this increase was not the result of chargeable expenses. On appeal, a divided Court of Appeals for the Ninth Circuit reversed stating that the proper inquiry was a balancing test as to whether the SEIU had reasonably accommodated the interests of the union, employer and non-member employees. The United States Supreme Court granted certiorari.

Holding and Reasoning

“…By authorizing a union to collect fees from nonmembers and permitting the use of an opt-out system for the collection of fees levied to cover nonchargeable expenses, our prior decisions approach, if they do not cross, the limit of what the First Amendment can tolerate. The SEIU, however, asks us to go farther.” Knox v. Service Employees, 567 U.S. ____(2012), Slip No. 10-1121.

Case law is well established that a public-sector union cannot force non-members to fund the union’s political projects or activities. *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209.

In this case, the Supreme Court held that there was no justification for the SEIU to not provide a fresh notice allowing non-members to opt out of paying the 25% increase. The purpose of the notice is to give non-members an opportunity to assess whether the nonchargeable activity of the union is something that he or she supports and therefore wishes to fund. Additionally, the irony of this specific situation was not lost as the Supreme Court took notice that the required 25% increase in union dues was going to subsidize political activities of the union which were intended to limit non-members rights (Proposition 75, which the union opposed and if passed, would have required the affirmative consent of employees before unions could charge them fees for paying for political activities).

Additionally the Supreme Court held that requiring those members who did originally opt out in June to pay 56.35% of this new (25%) increase was a violation of the First Amendment. The union had proclaimed that this increase of 25% would be used to support a political campaign, specifically fighting against Proposition 75 and Proposition 76 and not ordinary union expenses.

While this is clearly an important decision impacting public sector unions, clients should be aware that given that private employers are not subject to state action, this case is of no precedential value for private employer unions.

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