

Michigan Supreme Court Throws Out Public Employee Agency Shop Fees

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In a 4-3 opinion released this week, the Michigan Supreme Court invalidated a State Civil Service Commission rule which allowed for public sector collective bargaining agreements to require collection of a mandatory service fee, also known as an “agency shop fee,” from union-eligible employees who opted out of union membership. A copy of the opinion can be found [here](#). In sum, the majority found the imposition of the agency shop fee (even though paid to the unions, not the commission) amounted to a “tax” but that the commission’s general power to regulate public sector collective bargaining did not encompass the general legislative authority to tax or appropriate. The court reasoned because the commission has “absolute control” over public sector collective bargaining agreements, it rendered such agreements “merely advisory” until approved by the commission. This, the court said, illustrated that “the commission is the true beneficiary of the collective bargaining process it has authorized in order to fulfill its constitutional regulatory obligation.” “Having chosen this method of regulating conditions of employment, what the commission cannot do is foist the administrative costs of that choice onto anyone else. This principle remains true regardless of who pays whom.” The three-member dissent argued the agency shop fees were consistent with the commission’s authority to “regulate all conditions of employment in the classified [civil] service.” They also argued Michigan’s Right-to-Work law should not abrogate the commission’s agency shop fee rules “because the people of this state have specifically limited the Legislature’s authority to enact laws providing for the resolution of disputes concerning public employees to public employees who are not in the classified civil service.” Coverage of the decision by the Detroit Free Press can be found [here](#).

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