

Sixth Circuit Court Of Appeals Rules Local Subdivisions Of Government Can Pass Right-to-Work Ordinances

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In [Autoworkers Local 3047 v. Hardin County](#), the Sixth Circuit Court of Appeals has reversed a Kentucky District Court decision that last February found that counties in Kentucky could not pass right-to-work ordinances. Siding with the union plaintiff, the District Court held that Hardin County's ordinance was preempted by the National Labor Relations Act (NLRA). At the District Court level, the United Autoworkers (UAW), along with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and NLRB as amici curiae, successfully argued that Section 14(b) of the NLRA which allows states to pass right-to-work legislation was not broad enough to allow local units of government to pass such laws. The Sixth Court of Appeals disagreed in its [Nov. 18, 2016, decision](#). The Sixth Circuit Court of Appeals held the District Court misapplied the *Powerex* rule of construction to Section 14(b) ("identical words and phrases with in the same statue should normally be given the same meaning"). Rather than concluding that the two uses of the word "state" in Section 14(b) led to the conclusion that local subdivisions of government could not pass right-to-work measures, the Sixth Circuit found the correct application of the *Powerex* rule in fact led to the opposite result. The Sixth Circuit also found the District Court ignored U.S. Supreme Court decisions that should have led it to the same conclusion. The Sixth Circuit held that "Section 14(b)'s use of 'state' does include political subdivisions of a state. Based on that, the court held that Hardin Kentucky's local right-to-work ordinance was not preempted by the NLRA, but rather was explicitly sanctioned by it. After reaching this conclusion, the court then distinguished and found two other local ordinances (ordinances regulating "hiring-hall" agreements, which prohibited "dues-checkoff" provisions) were in fact preempted because, unlike the specific right-to-work provision of the NLRA, these issues of the labor law were already occupied by federal labor law. The Sixth Circuit's decision may be seen as clearing the way for other municipalities to pass right-to-work ordinances, or may prove persuasive in challenges to similar "copycat" ordinances passed by other local units of governments in other states. It will in all likelihood, however, that given the far-reaching implications of the Sixth Circuit's decision it will be appealed by the UAW to the U.S. Supreme Court.

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