

Ohio Public Employee Picketing Provision Declared Unconstitutional

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A recent opinion of the Ohio Appeals Court dealt a victory to picketing public employees when it found the state's decades-old law regulating strikes and picketing by public employees unconstitutional as an impermissible restriction on free speech. The Ohio statute at issue was part of the state's act governing bargaining rights of public employees and included [a provision](#) making it an unfair labor practice for a public employee labor organization to "engage in any picketing, striking, or other concerted refusal to work without giving written notice to the public employer and to the state employment relations board not less than ten days prior to the action."

The union representing employees of Mahoning County Board of Developmental Disabilities was found to have violated the statute after picketing a Board meeting without notice. The union challenged the law on constitutional grounds, claiming that the restrictions on picketing violated public employees' First Amendment rights to free speech. After an Ohio trial court upheld the law, the Ohio Appeals Court reversed, finding that the law should be classified as a "disfavored speaker" law because it restricted only public employees from picketing without notice and not any other class of citizens. Because of this, the law was to be analyzed under a strict scrutiny standard. The state had argued that the statute should be seen as a "content-neutral" regulation, imposing reasonable restrictions on the time, place, and manner of speech, which would have been analyzed under the more favorable intermediate scrutiny standard.

After applying the strict scrutiny standard, the Appeals Court found that the law was not justified by a compelling state interest and was not narrowly tailored, therefore it was unconstitutional. It remains to be seen whether the State Employee Relations Board will continue to enforce the notice provision now that it has been found unconstitutional or whether this decision will be appealed to the Ohio Supreme Court.

The case is *Mahoning Edn. Assn. of Dev. Disabilities v. State Emp. Relations Bd.*, No. 11 MA 52 (Ohio Ct. App. June 28, 2012). The full opinion can be found online [here](#).

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