A Timely Analysis of Legal Developments

ASAP®

July 11, 2014

Supreme Court Invalidates Union Fee Requirements Imposed on Homecare Employees

By Robert Long and Jason Stanevich

On June 30, 2014, the U.S. Supreme Court rejected Illinois law that required homecare providers for Medicaid recipients to pay fees to a union. In *Harris v. Quinn*, the Court held that compulsory union agency fees imposed on Illinois homecare workers violated the First Amendment. The Court, however, did not issue a more expansive ruling that would have overruled *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977) and affected public-sector unionization and agency fees as a whole. While the Court's decision was narrow, it has widespread implications for the home healthcare industry as many other states allow homecare workers to unionize under statutory arrangements similar to those in Illinois, including California, Connecticut, Maryland, Massachusetts, Minnesota, Missouri, Oregon, Vermont and Washington.

Factual Background

Illinois' Department of Human Services Home Services Program, known as the Rehabilitation Program, allows Medicaid recipients who need institutional care to hire a personal assistant to provide homecare services. Many of the personal assistants are relatives of the person receiving care, and some provide care in their own home.

Illinois (and other state) law establishes an employer-employee relationship between the person receiving the care and the person providing it. The law states that the person receiving home care—the "customer"—"shall be the employer of the [personal assistant]."[1] A "personal assistant" is defined as "an individual employed by the customer to provide . . . varied services approved by the customer's physician,"[2] and the law confirms that the state "shall not have control or input in the employment relationship between the customer and the personal assistants."[3] Other provisions emphasize the customer's employer status. The homecare recipients control most aspects of the employment relationship, including the hiring, firing, training, supervising, and disciplining of personal assistants. They also define the duties of a personal assistant by proposing a service plan. The customer has complete discretion over which personal assistant he or she wishes to hire.

1 89 Ill. Admin. Code. § 676.30(p).

2 *Id.*

3 *Id.*, § 676.10(c).

While homecare recipients exercise near-exclusive control over their employment relationship with personal assistants, the state, subsidized by the federal Medicaid program, pays the personal assistants' salaries. Other than compensating personal assistants, the state's involvement in their employment relationship with the customer is minimal. Importantly for union purposes, however, the state's employer status was created by executive order, and later codified by the legislature, solely to permit personal assistants to join a labor union and bargain under Illinois' Public Labor Relations Act (PLRA). Nevertheless, personal assistants are excluded from statutory retirement and health insurance benefits and from other state employment laws.

Under this framework, SEIU Healthcare Illinois & Indiana was designated the exclusive union representative for approximately 20,000 personal assistants who work for the Rehabilitation Program in Illinois. SEIU negotiated labor contracts with the state that contained an agency fee provision, requiring all bargaining unit members who do not wish to join SEIU to pay the union a fee for the cost of certain activities, including those tied to the collective-bargaining process. SEIU received approximately $3.6 million in annual fees through this funding scheme.

A group of personal assistants brought a class action against SEIU and other respondents in the U.S. District Court for the Northern District of Illinois, seeking an injunction against the agency fee provision and a declaration that the PLRA violated the First Amendment because it required personal assistants to pay fees to a union they do not wish to support. The district court dismissed their claims, and the U.S. Court of Appeals for the Seventh Circuit affirmed, concluding the personal assistants were state employees within the meaning of *Abood v. Detroit Bd. of Ed.* In *Abood*, the Supreme Court had held agency fees clauses were valid for public-sector employees if the fees are used for collective bargaining, contract administration, grievance-adjustment purposes, and other activities germane to its duties as the collective-bargaining representative.

Plaintiffs sought certiorari, bringing to the Court's attention other states that have followed Illinois' example by enacting laws or issuing executive orders that deemed personal assistants to be state employees for purposes of unionization and the assessment of agency fee charges.

Supreme Court Decision

In a controversial 5-4 decision, the Supreme Court held that the compulsory agency fees imposed on personal assistants violated the First Amendment. In declining to follow *Abood*, the Court held the personal assistants were not "full-fledged public employees," as the vast majority of their terms and conditions of employment, including hiring and firing decisions, were set by individual homecare recipients. Likewise, the Court relied on the fact that Illinois intentionally did not provide personal assistants with most of the rights and benefits enjoyed by full-fledged public employees and noted that the state did not provide vacation, sick, retirement, or other benefits. Nor did the state assume responsibility for actions taken by personal assistants during their employment. The Court determined that Illinois deemed personal assistants to be public employees for one purpose only—collective bargaining—and that under the PLRA, collective bargaining can occur for terms and conditions of employment within the state's control only. As the agency fee mechanism is designed to compensate a union for a full range of representational issues available under American labor law, the Court held the agency fee provision had limited value to the personal assistants because SEIU's "powers and duties are sharply circumscribed" in this situation.

Because *Abood* did not control based on the lack of full-fledged employment status, the Court examined the compulsory agency fee under general First Amendment standards. The Court found that the agency fee provision did not serve a compelling state interest and that the purpose of the fee could be achieved through means significantly less restrictive of associational freedoms. The Court held that personal assistants in Illinois cannot be compelled to accept and financially support the SEIU or any other union as their exclusive representative because the agency fee provision imposed a heavy burden on the free speech interests of objecting employees.

Future Challenges

The Court's ruling did not invalidate compulsory agency fees for public-sector employees as a whole, but Justice Alito's majority opinion contended that *Abood* rested on "questionable foundations" and that it may have been erroneously decided. The Court majority further explained: "In the public sector, core issues such as wages, pensions, and benefits are important political issues, but that is generally not so in the private sector." Based on that statement and others, the Court may have signaled its willingness to hear additional challenges to agency

fee agreements with other public-sector unions. Further, implications from *Harris v. Quinn* will continue to develop outside of Illinois as many states have established similar arrangements with homecare workers based on Medicaid reimbursements. The SEIU has vowed to continue organizing homecare workers despite the ruling and it recently filed a petition to represent over 26,000 caregivers in Minnesota.

Robert Long is a Shareholder in Littler's Columbus / Chicago offices and Jason Stanevich is an Associate in the New Haven office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Mr. Long at rlong@littler.com or Mr. Stanevich at jstanevich@littler.com.