

Unions must represent all covered workers, even nonmembers, Michigan Supreme Court rules

By law, nonmembers can't represent themselves

By Stephen Delie | May 2024

A recent decision from the Michigan Supreme Court will have significant implications for public sector labor law in Michigan. The court's decision in *TPOAM v. Renner* upholds a longstanding interpretation of law requiring unions to treat the employees they represent — members or nonmembers — equally. At a time when Michigan has been adopting increasingly anti-worker policies, the court's unanimous decision is a welcome breath of fresh air.

The case began when Daniel Renner, a local government employee, complained that a colleague's smoking was harming his health. Renner's employer investigated and concluded that his complaints were unfounded. Renner sought to challenge the decision, and asked his union, the Technical, Professional, and Officeworkers Association of Michigan, to file a grievance on his behalf. Because Renner had opted out of union membership, the union refused to process his grievance unless he paid

\$1,290 — just to start the grievance process. The union's final fee would have been prohibitively expensive, but Renner would have to pay it if he wanted to challenge his employer. That's because, under the union contract, only the union could process an employee grievance.

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Renner sued, arguing the *TPOAM* decision violated the union's legal duty to fairly represent both members and nonmembers. The union argued that it was not obligated to represent employees who refused to join the union unless those employees paid for the cost of that representation. In *TPOAM* the court based its position on the theory that workers in a unionized workplace must compensate a union for representation through either dues or direct payments for services rendered. Federal courts have repeatedly rejected this theory, but Michigan's courts had yet to consider this doctrine under state labor law.

The case made its way to the Michigan Supreme Court, which requested amicus, or “friend of the court,” briefs from the Mackinac Center. The Mackinac Center, together with the National Right to Work Foundation, submitted two amicus briefs, both supporting Renner.

Another brief, which largely supported the Mackinac Center’s brief, came from an unusual set of allies: the Michigan Education Association, American Federation for Teachers Michigan, AFSCME and AFL-CIO. The other unions concluded that unions have a duty to fairly represent both members and dissenting employees.

The Michigan Supreme Court unanimously agreed.

In doing so, the court upheld a decades-long understanding of the duties a union owes to the employees it represents. In unionized workplaces, employees cannot bargain for their own terms and conditions of employment. They frequently cannot challenge their employer through the grievance process without their union’s involvement. This is because the union is the “exclusive representative” of these employee’s interests. Given this unique power, courts have long recognized that unions enjoying the status of exclusive representation have a duty to represent all employees equally, regardless of union membership status.

The Mackinac Center is proud to have played a role in achieving this victory. Michigan’s public sector workers should not be forced to choose between joining a union they oppose or paying thousands of dollars to use the grievance process negotiated by their union.

Workers who disagree with their union’s political speech cannot be forced to subsidize that speech through dues or fees. Despite this, unions aggressively attempt to organize public sector workers, knowing that by doing so, they are choosing to represent members and nonmembers equally. By upholding a union’s duty of fair representation, the Michigan Supreme Court has ensured that these protections continue, and cut short union efforts to strongarm employees into membership.

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