

Michigan's 'Right to Work' Law?

The passage of the right to work law in Michigan is simply an exclamation point on the long and gradual decline of unionism in the United States

Walter Reuther must be rolling in his grave. On December 11, 2012, the State of Michigan, birthplace of the United Auto Workers Union and the fifth most unionized state, enacted "right to work" legislation.

What is it?

Right to work legislation makes "union security" clauses illegal. Union security clauses require employees to join a union or pay dues or fees to a union as a condition of employment. Under the National Labor Relations Act ("Act"), "union security" clauses can be agreed to by employers and unions, but the Act grants states the right to make union security clauses illegal. Michigan became the 24th state to adopt right to work legislation when it adopted two bills, one making union security clauses illegal in private employment and the other bill making union security clauses illegal in public employment, except for police and fire employees.

The only direct effect of right to work legislation is to make union security clauses illegal. Unions will still represent the same collective bargaining units even if a majority of employees do not join the union or pay dues. The same positions will be covered by the union contract, even if the employee in the collective bargaining position is not a union member nor pays union dues. Employers still need to deduct dues from employees' paychecks as long as there is a valid authorization for the deduction. The laws concerning union organizing remain unchanged. The law changes nothing for the non-union employers.

When does it happen?

The Michigan Right to Work Law is effective on March 28, 2013, but will have a limited initial effect because it only applies prospectively to collective bargaining agreements entered into, extended, or renewed after its effective date. Accordingly, union security clauses in existing collective bargaining agreements will remain legal and enforceable until the termination of each collective bargaining agreement.

How did this happen?

There has been "talk" of right to work legislation in Michigan for several years, but it was generally thought to be unrealistic. However, in 2012, the unions launched a ballot initiative for a constitutional amendment which, among other things, would have outlawed right to work

legislation. In the November 2012 election, this constitutional proposal was soundly defeated with 57% voting against it. There are reports that the opponents of the constitutional amendment did extensive polling and learned that a majority of Michigan voters favored right to work laws. This gave right to work supporters added incentive to urge the Michigan legislature to pass the right to work law in its lame duck session. Indeed, the Michigan legislature agreed and passed the right to work law in a very short time period.

Why the uproar?

The benefits and detriments of right to work laws are hotly contested. Proponents of the right to work law assert that it gives individuals the liberty to determine whether or not to join a union or pay dues to a union. Further, proponents of right to work will point to the statistics showing that states with right to work laws enjoy greater economic growth than states that do not have a right to work law.

Opponents of right to work contend that the law allows employees to be “free riders” reaping the benefits of the unions’ collective bargaining without having to pay the dues necessary to support those activities. Opponents also assert that right to work states have lower wages than states without right to work. Indeed, at a rally in Michigan shortly before the adoption of right to work, President Obama proclaimed that right to work means “the right to work for less”.

The benefits and detriments of right to work in Michigan remain to be seen, but in the end two of the usual suspects are at play: money and power. While union membership in Michigan, as throughout the country, has decreased significantly over the years, approximately 17.5% of Michigan workers are dues-paying union members making it the fifth most unionized state in the nation. Obviously, if right to work legislation can be passed in Michigan, right to work supporters in other states will be emboldened to press for right to work legislation. More ominous for unions is the decrease in their revenues. Studies show that only two-thirds of workers in right to work states pay union dues. If that holds true in Michigan, then Michigan unions would be facing a one-third reduction in their revenues. The effect of this reduction would be significant on union staffing, organizing, and other activities. Further, such a reduction would also impact the unions’ political power in both monetary support and influence. In short, the unions would have a reduced role in economic and political affairs.

What’s next?

The unions will certainly file legal challenges to the right to work laws under any number of theories. However, the political reality is that the current Michigan Supreme Court has a conservative, Republican majority and it is unlikely that the Court would, in the end, overturn right to work. It is also possible that unions will seek to recall Michigan Governor Rick Snyder and/or legislators who supported right to work laws. Whether this takes place and the scope of this activity remains to be seen. However, it is almost a certainty that the unions will take a much greater interest and participation in the 2014 elections and make strong efforts to elect legislators who are willing to repeal right to work.

It is also possible that unions may even begin to make some more fundamental changes in how they operate. The passage of the right to work law in Michigan is simply an exclamation point on the long and gradual decline of unionism in the United States. The economy, jobs, and, indeed,

population of the country is significantly different from the high water mark of unionism forty to sixty years ago. Before employers start celebrating too much over these changes, it is worthwhile to remember the law of unintended consequences and the potential dangers of getting what you wish for. Given the current status of unionism in the United States, it is not inconceivable that unions might start looking at other strategies and concepts including smaller units, minority units, “members only” organizing, the use of social media for concerted action, and even a reversion to its roots of highly disruptive concerted actions such as sporadic sitdown strikes.

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