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Wisconsin Evens the Score by Becoming the Twenty-Fifth Right-to-Work State — So What Happens Now?



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Wisconsin's Legislature passed a "right-to-work" (RTW) law on Friday, March 6, 2015, and Wisconsin Governor (and possible presidential candidate) Scott Walker promptly signed the bill into law today. Wisconsin has now become the nation's twenty-fifth state to exercise the option to have a right-to-work law. This article provides a brief summary of the law and offers some thoughts about what may happen next.



What's It All About?

History buffs may be interested to learn that this "right-to-work" concept flows from the Labor-Management Relations Act of 1947, commonly referred to as the Taft-Hartley Act. With that law, the U.S. Congress sought to balance the power of organized labor created in the original federal labor law, the National Labor Relations Act of 1935. Among other things, the Taft-Hartley Act authorized states to pass laws prohibiting the enforcement of provisions in labor contracts in which an employer and a union agreed that hourly employees, in jobs within the scope of the bargaining unit, had to pay union dues as a mandatory condition of employment. (Why the employers historically agreed to impose such a burden on their employees is an interesting topic beyond the scope of this article.)

Obviously, union dues payments are the economic lifeblood of the union. The rub for unions is that if a union is elected by a majority of employees in a properly

defined work unit, the union is obligated to fairly represent all of the employees in that work unit, even those who choose not to pay dues. Employees who have and exercise a choice not to pay any dues will nonetheless receive all the protections and benefits of the labor contract that is negotiated, administered, and enforced by the union, such as job protections that prevent discharge except for “just cause,” seniority rights to bid on open positions or avoid layoff before more junior employees, and more.

Imagine the impact on any business if, by operation of law, customers would receive the business’ services, but had the option to choose whether or not pay for the business’ services. Many would not pay and the business would struggle to stay alive. Now consider if only customers in certain states had that option not to pay for the services. The business would likely focus its efforts on markets and customers in the other states where customers could be forced to pay. The same dynamic is at play with right-to-work laws. Unions presumably will spend less resources organizing and representing employees in states where the employees can, nonetheless, choose not to join or pay dues.

Wisconsin’s Law

Wisconsin’s new law makes it illegal for any person to require an individual to pay anything to a union as a condition of obtaining or continuing employment. In fact, the law makes it a misdemeanor crime to do so.

The law is effective immediately upon the governor’s signing, but existing labor contracts are not impacted until those contracts are renewed, modified, or extended sometime after the law takes effect. Note that if unions ask Wisconsin employers to extend their current labor contracts, thinking that will extend the time that their current union security clauses will remain enforceable, they apparently will be doing the opposite and accelerating the end of their union security clause because, under the language of the statute, an extension of an existing agreement will trigger application of the new right-to-work law to that existing agreement.

Considerations for Wisconsin Employers

If your company’s Wisconsin employees currently are not unionized, this new law probably will not have any significant impact right away. But, beware of the possible unintended consequence of the employee viewpoint: “If I can choose not to pay any dues, why not elect a union and get whatever benefits and job protections it can get for me?” Note that one of the effective campaign themes employers use to counteract a union organizing campaign — i.e., “the union will take money out of your pocket” — is no longer available.

If some of your company's Wisconsin employees are subject to an existing labor contract:

- Continue enforcing the union security clause and dues check-off provisions until that Collective Bargaining Agreement (CBA) is renewed, modified, or extended.
- Before your next renewal contract negotiations, consult labor counsel to eliminate illegal language from your labor contract and optimize the leverage the employer will have in relation to the agreements it might make with the union about what it will or will not communicate to employees about their new rights and do with respect to assisting in the collection of dues.

Beware that unions may ratchet up their aggressiveness to demonstrate to their members the apparent value of their services. The employees will “vote” with their dollars when the right-to-work law first impacts them; so expect unions to make a bigger show of their zealous representation of employees' rights and interests. Much of that may just be for show, but nonetheless, it can disrupt and distract your business.

What's Next?

Conventional wisdom is that right-to-work laws will decrease union membership. But recent history calls that conventional wisdom into question. The last two states to pass right-to-work laws, Wisconsin's nearby neighbors Indiana (in 2012) and Michigan (in 2013), have experienced different consequences. Although these are just the short-term results, the differences are interesting.

In Indiana, the right-to-work law has not resulted in a significant reduction in union membership. In 2011, the year prior to Indiana's RTW law, 302,000 Hoosiers belonged to unions, representing about 11.3 percent of the workforce. In 2013, the year after the RTW law, that number decreased to 275,000 (10.3 percent), but then the trend reversed. In 2014, 335,000 employees were represented by a union in Indiana (12 percent), and 299,000 of them voluntarily remained dues-paying members. That number is almost equal to [the number of union members in 2011](#) before RTW. Also note that when given the choice, 89 percent of Hoosiers represented by a union voluntarily paid union dues.

The story in Michigan is different. *The Detroit Free Press* [reported in January 2015](#) that in 2014, union membership in Michigan fell to 585,000 (14.5 percent of the workforce) from 633,000 (16.3 percent) in 2013. This shift may still be understated because the RTW law has not yet impacted many labor contracts that were in place when the law passed and have not yet expired.

The impact the new right-to-work law will have in Wisconsin cannot yet be predicted. We will be very interested observers and will report developments in this space. Please let us know of your company's experiences with unionized employees in Wisconsin, or in your operations in Michigan or Indiana as well. Employers with unions in these states have some interesting strategic choices to make with respect to how they manage their relationships with their employees, and the employees' unions, given the new dynamics of right-to-work laws.

TAGS: LABOR-MANAGEMENT RELATIONS ACT OF 1947, RIGHT TO WORK, TAFT-HARTLEY ACT, WISCONSIN

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