



County Right-to-Work Laws as the Latest Tactic to Undercut American Labor Unions

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Not long after taking office in 2015, Illinois Republican Governor Bruce Rauner urged leaders in McHenry County to support his plan for “employment empowerment zones.” According to the *Northwest Herald*, Rauner explained that the state “can thrive if we free up our economy to compete and... get a control on our bureaucracy costs” by using county-level right-to-work measures to prevent public employee unions from collecting mandatory dues. The Illinois state legislature is not willing to abolish union rights statewide, but Rauner proposes to get around that obstacle by copying a tactic undertaken in Kentucky, where by March 2012 six counties had adopted right-to-work rules and six more were considering similar steps. Arguing that localized right-to-work rules “would move Illinois to a list of states where companies would consider relocating,” the Governor speculated that such county-level enactments could inspire “dozens of employers [to] come to the state in the next four years.”

Trying to create right-to-work laws through local government action raises important legal questions. Democratic attorneys general in both Kentucky and Illinois have declared that attempts by municipal governments to regulate union relations conflict with federal pre-emption and state prerogatives. After Illinois attorney general Lisa Madigan issued her opinion, one member of the Illinois Senate, Gary Forby, told the *Chicago Tribune* that this ruling would end Rauner’s quest to spread right-to-work enactments through the counties. As he explained, the “attorney general’s opinion makes it pretty clear this is a matter for state lawmakers.”

The Long Right-to-Work War against Unions

What is unusual about local right-to-work laws is that they extend a legal rule far beyond its original understanding and encourage counties within a state to undermine wages in a quest for “competitiveness.” This approach, pitting some counties against others, will surely further a zero-sum game that reduces workers’ wages and bargaining power statewide – as has been true nationwide. Today’s anti-union agenda in Illinois and Kentucky is but the latest tactical innovation in a decades-long right-to-work campaign to undercut U.S. union power.

In the 1946 Congressional elections, Republicans took control of the House and Senate with veto-proof majorities. An important part of their agenda was to reverse the economic and political power of the labor movement, which had grown through union drives during and after World War II. Senator Robert Taft and Representative Fred Hartley introduced bills in the two houses of Congress to amend the “Wagner” National Labor Relations Act of 1935. In the name of protecting the rights of individual union members and restoring balance to federal labor law, their proposals took aim at the Wagner Act “closed shop” provision requiring all workers in a bargaining unit to join and pay dues to a union that bargained collectively on their behalf. Obviously, such a rule is necessary to sustain unions as organizations and prevent some workers from “free riding” on wage gains achieved by unions that other workers support with dues. But after hard-fought battles in Congress, Section 14(b) of what came to be called the “Taft-Hartley” legislation gave individual states across the United States the authority to enact right-to-work laws to prohibit unions from requiring all workers in collective bargaining units to join and pay dues.

Over the next seven decades, more and more states faced down bitter union opposition to enact right-to-work legislation – and presently there are 25 states with such laws and several others considering them. Initially, right-to-work laws spread mainly in the southern states, but thereafter there were both victories and setbacks for supporters of organized labor. Voters defeated right-to-work initiatives in Missouri and Ohio in the 1950s and again in Colorado in 2008. The Idaho legislature enacted a right-to-work bill in 1985, and Oklahoma voters passed a right-to-work initiative in 2001.

Following the huge gains made by Republicans in the 2010 elections, Indiana and Michigan enacted right to work in 2012, followed by Wisconsin in 2015. According to some analysts, Wisconsin represents the tipping point.
April 21, 2015 <https://scholars.org>

point for the right-to-work movement. Now that half the nation has adopted such laws, the remaining states will feel growing pressures to do so as well as a matter of economic self-interest – just as right-to-work enactments in counties can put pressure on others within states to follow suit.

The Need to Fight Back within and across States

A major weakness of the U.S. labor movement has been its failure to develop coordinated state strategies to counter anti-union forces. The National Right to Work Committee that has pushed these laws was originally launched by Fred Koch, a founding member of the John Birch Society and the father of Charles and David Koch, today's multibillionaire owners of Koch Industries and directors of ultra-conservative political campaigns. Supported by these and other wealthy conservatives, the American Legislative Exchange Council lobbies with great success across the states to urge legislators to pass various "model" bills furthering the conservative economic agenda, including right-to-work laws.

In the face of sustained and well-funded activity on the right, U.S. unions have been very much on the defensive. A notable exception arose when right-to-work proponents put an initiative measure up for popular vote in Colorado, and unions in that state responded by placing their own initiatives on the ballot – initiatives calling for improved job security, health insurance, and compensation for work injuries. Colorado employers found these potentially popular ballot initiatives so threatening that they agreed to join unions in campaigning against the right-to-work initiative, if the Colorado unions would agree to withdraw their ballot initiatives. The unions did so, and the state-wide alliance of labor and business handily defeated the right-to-work proposal.

Illinois is a state that allows direct popular initiatives to amend the state constitution, so a similar counterattack could be deployed by labor and its supporters in the Land of Lincoln. Faced with the prospect of a grass-roots labor uprising, Governor Rauner might think twice about his drive to get counties to act, one by one, to pass right-to-work rules that gut unions. Ultimately, Rauner's effort may stall in the legal process. But just waiting and hoping is unlikely to serve the union cause. Experience shows that effective defense requires a good offense.

Read more in Raymond Hogler, *The End of American Labor Unions: The Right to Work Movement and the Erosion of Collective Bargaining* (Praeger, 2015).