

Political Drama In New Hampshire

By Steven Bernstein and Reyburn Lominack

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Showdown Over Right To Work

Like its New England neighbors, New Hampshire has long been perceived as a friendly state for labor unions. Much like Wisconsin, many would view it as an unlikely candidate for legal reforms that attempt to shift the balance away from organized labor. Yet New Hampshire stands poised to become the first state in many years, and the only one within the Northeastern United States, to pass comprehensive right-to-work legislation that would do just that. Even more remarkably, a growing number of other states are now entertaining the same notion.

We believe this may be the start of a nationwide trend.

Background

In 1947, Congress passed the Taft-Hartley Act over President Truman's veto. Among other things, it amended the National Labor Relations Act (NLRA) to outlaw "closed shops," through which employers agreed with unions to employ only dues-paying members. As an alternative, Taft-Hartley permitted arrangements, in which the parties utilized "union security" clauses to require employees to either join the union, or to pay a fee that was equivalent to union dues, within a specified period of time after hire. Such workplaces are referred to as "union shops" or more commonly "agency shops."

Among the more controversial sections of Taft-Hartley was an additional provision allowing states to enact their own "right-to-work" laws, prohibiting even agency shop arrangements. Not to be confused with "employment-at-will" statutes, right-to-work

legislation prohibits unions and employers from agreeing to impose union membership or the payment of dues as a condition of employment.

Since that time, 22 states (primarily in the southeast and southwest) have enacted various forms of right-to-work legislation, the most recent being Oklahoma in 2001. Analyzing various statistics, the National Institute for Labor Relations Research has drawn a strong correlation between these laws and ensuing economic growth. Among the 22 right-to-work states, private sector (non-farm) employment grew by 3.7% from 1999 to 2009, while shrinking 2.8% within the 28 remaining states. During that decade, real personal income rose 28.3% in right-to-work states, while dropping 14.7% elsewhere. Oklahoma offers the most recent case in point, reflecting a 13.6% growth rate in real personal income between 2003 and 2006 alone – over twice as fast as the average in non-right-to-work states.

Businesses create jobs. Jobs build income. And more income leads to a better way of life for most Americans. Proponents of right-to-work laws point to these statistics as evidence that forced-unionism states (i.e., states without right-to-work laws in place) are losing the economic development game. Consequently, it's not surprising that many of those states are now seriously considering right-to-work legislation to jump-start their troubled economies.

Currently, 13 states are considering right-to-work initiatives to promote job growth. Indiana Representative Jerry Torr explained it this way: "What I'm trying to do is bring jobs to Indiana. We have lost manufacturing jobs in Indiana because we are not a right-to-work state."

The Fight Is At The State Level . . .

Thus far, New Hampshire has made the hardest charge among traditionally unionized states. The House accepted a Senate-passed version of the right-to-work bill on May 4. While the Senate passed the measure with a veto-proof majority, the House did not. As he had promised to do, Gov. Lynch vetoed the measure a week later. The House plans to take up a challenge of that veto in late May, and as we went to press it remains to be seen whether the bill's supporters have the votes to override it. Consequently, New Hampshire could remain a non-right-to-work state – at least for the time being.

Nonetheless, this debate is unlikely to fizzle out any time soon. Right-to-work laws have been a hot topic lately, sparked in part by the recent Wisconsin standoff over collective bargaining rights for public sector employees. In February 2011, a group of Democrat senators fled to neighboring Illinois in an attempt to prevent the passing of legislation that would effectively eliminate the rights of some public employees to engage in certain forms of collective bargaining. The standoff drew national attention to a related controversy over whether workers should be free to refrain from union financial obligations if they so desire.

. . . And At The Federal Level

Federal legislators are now chiming in, having recently proposed a national right-to-work law that would effectively amend the NLRA to prohibit agency-shop arrangements in all 50 states. In the short term, political dynamics suggest that this legislation faces an uphill battle. While its prospects over the longer term remain to be seen, it seems clear that organized labor is fighting a battle for its remaining viability on all fronts. Even federal agencies such as the National Labor Relations Board (NLRB) are drawing fire.

Meanwhile, current right-to-work states are fighting against what they perceive to be a pro-union federal administration. Specifically, senators from South Carolina have introduced a bill titled the "Right to Work Protection Act" that would preserve states' power to decide for themselves whether they want right-to-work laws in place. The bill is an expressly acknowledged response to the NLRB's recently issued complaint against the Boeing Company, challenging its decision to locate a new production line in South Carolina. The complaint is seen by many as a federal attack on state right-to-work laws, given the NLRB Acting General Counsel's controversial assertion that the new line should essentially have been awarded to Boeing's unionized employees in Washington – which happens to be a non-right-to-work state.

Where Things Are Headed

It remains to be seen where all this will end up, but the decline of unions and organized labor is not new or even recent; it is a decades-long trend. There are those who say that the union movement will continue to decline to the point that it is no longer a significant political force. That certainly remains to be seen. But there is an unmistakable sense that compulsory unionism is drawing increased scrutiny at both a state and federal level. Additional pressure is expected to be brought to bear when it comes time to evaluate the proposed appointments of the Acting General Counsel, along with the current NLRB Chair. Budgets for the agency are also likely to draw severe scrutiny come this fall.

But unions remain closely allied with the political left, and as the left prospers so will unions. Currently we've seen the NLRB moving full speed ahead with a decidedly pro-union agenda, while unions are vowing to counter the long-term nationwide trend by stepping up their own organizing efforts.

One thing remains clear – complacent employers could get caught in the crossfire. Our advice is that employers should seize the initiative by training supervisors to recapture their legal free speech rights, and to look for other legal means to protect their union-free status.

For more information contact the author: rlominack@laborlawyers.com or 803-255-000; and sbernstein@laborlawyers.com or 813-769-7500.