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## What does the right-to-work bill mean for N.H.?

On Feb. 15, by a vote 221-131 vote, the New Hampshire House voted to approve a Republican-sponsored bill that would establish New Hampshire as the only "right-to-work" state in the Northeast.

Under the Labor Management Relations Act, or LMRA, nonsupervisory private sector employees have the right to unionize. Under current law, a workforce decides whether or not to unionize through the democratic process of a secret ballot election.

At the time these votes occur, the employees in the proposed "bargaining unit" are usually not union members. If a union receives the majority of the votes cast by eligible employee voters, the union is certified as the "bargaining agent" for the entire bargaining unit, including those employees who may have voted against the union. Bargaining group members are then subject to the provisions of any collective bargaining agreement that the union might negotiate with the employer, regardless of whether an individual employee voted for the union or ever became a union member after the election.

The LMRA prohibits so-called "closed shop" agreements, which means that unionized employers cannot refuse to hire individuals because they are not already union members. However, the LMRA does not prohibit employers and unions from agreeing to so-called "open shop" agreements, which require new employees to become union members as a condition of employment.

The LMRA also allows parties to agree to "agency fee" arrangements, by which employees are not required to join the union but are required, as a condition of employment, to pay a fee to cover a portion of the union's representation expenses.

Open shop and agency fee provisions in collective bargaining agreements are referred to as "union security clauses."

If enacted, House Bill 474 would bar union membership or the payment of agency fees as a condition of employment in any private or public sector workplace. In addition, it would require employers to post a notice in the workplace advising employees of their right to join or refrain from joining a union and their right to refuse to pay dues or fees to a labor union.

Right-to-work legislation does not take away the federally protected rights of employees to unionize. However, without the prospects of an open shop agreement that would provide a reliable revenue stream, unions may be less likely to invest in organizing activity.

**Too early to tell**

If enacted as drafted, HB 474 will go into effect on Jan. 1, 2012. It provides that it will not apply to collective bargaining agreements then in effect, but will provide to any renewals or extensions, as well as to any new contracts enacted after the effective date.

It is unclear how the removal of union security clauses from labor negotiations will impact the bargaining table. Union security clauses are obviously important to unions, in that they assure a revenue stream in the form of dues or agency fees.

In order to obtain an employer's agreement to a union security clause, unions are often willing to agree to provisions important to employers, such as a "management rights" clause, which reserves to the employer the right to control business operations and direct the workforce. At a minimum, it should be anticipated that unions would seek some other trade-off, whether in the form of wages, benefits or job protection, in exchange for a strong management rights clause.

It is also unclear whether the removal of a negotiated union security clause will cause represented employees to abandon union membership.

The impact may be significant in workplaces where employees have grown dissatisfied with union representation or in newly organized workplaces where a significant minority of employees voted against unionization. If a great number of employees decline to voluntarily join the union, representation may not be financially viable.

Under the measure, unions that are certified as a bargaining unit would still be obligated to represent employees who chose not to become union members or pay a fee for union services. The unions often refer to such employees as "free riders" who benefit from union representation without sharing the cost - a primary basis for union objections to right to work.

Some bill sponsors have argued that right to work will make New Hampshire more attractive to businesses seeking to avoid the higher labor costs associated with unionization. But in our current global economy, employers interested in avoiding high labor costs increasingly move jobs overseas, even from states where right to work is already the law.

It is too early to tell if HB 474 will be enacted.

Having passed the House by almost a 2-1 margin, the bill will move to the Senate, where Republicans hold a large majority. Governor Lynch has stated that he will veto the bill, but Republicans may have sufficient votes to override a veto.

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