Ohio Legislative Service Commission

Bill Analysis

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H.B. 151

130th General Assembly
(As Referred by House Rules and Reference)

Reps. Roegner, Thompson, Boose, J. Adams, Becker, Buchy, Maag, Wachtmann, Young, Lynch, Brenner, Blair, Beck, Terhar, Rosenberger, Stautberg, Hood

BILL SUMMARY

- Prohibits a private sector employer from requiring an employee to become or remain a member of, or to pay any dues, fees, assessments, or other charges to, an employee organization.
- Prohibits a private sector employer from deducting from an employee's compensation any dues, fees, assessments, or other charges to be held for or paid over to an employee organization unless the employer first receives a written authorization.
- Makes an agreement between a private sector employer and an employee organization that violates the bill's prohibitions void and unenforceable.
- Establishes criminal and civil penalties for violating the bill's prohibitions.
- Creates and requires the posting of an employee freedom of choice notice.

CONTENT AND OPERATION

Requirement to join or pay dues to an employee organization

The bill

The bill prohibits any private sector employer from doing any of the following:

(1) Requiring any employee to become or remain a member of any employee organization (essentially, a union);

(2) Requiring any employee to pay any dues, fees, assessments, or other charges to an employee organization;

(3) Deducting from the wages, earnings, or compensation of any employee any dues, fees, assessments, or other charges to be held for or paid over to an employee organization unless the employer first receives a written authorization for those deductions as provided under "**Written authorization**," below.

Additionally, the bill prohibits a private sector employer and an employee organization from entering into an oral or written agreement, contract, or promise that violates the prohibitions described above. Any such agreement, contract, or promise is void and unenforceable.[1]

Background

Collective bargaining involves an employer and employees reaching an agreement with respect to rates of pay, wages, hours of employment, or other conditions of employment. Collective bargaining in the private sector, with certain exceptions, is governed by the federal National Labor Relations Act (NLRA).[2] Currently, under the NLRA, a private sector employer may require either of the following as a condition of employment:

(1) An employee to join the employee organization that represents the employer's employees 30 days after the date the employee begins employment;

(2) An employee who is not a member of the employee organization but is covered by an agreement between the employer and an employee organization to pay agency, or "fair share," fees to the employee organization.

However, the NLRA expressly permits a state to have a law that prohibits requiring employee organization membership as a condition of employment.[3] (See **COMMENT** for a discussion with respect to the effect of the NLRA on the bill's other provisions.)

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[1] R.C. 4119.04.

[2] 29 United States Code (U.S.C.) 151 et seq.

[3] 29 U.S.C. 158(a)(3) and 164(b) and *International Union of United Assn. of Journeymen & Apprentices of Plumbing & Pipefitting Industry v. NLRB*, 675 F.2d 1257 (D.C. Cir. 1982).

Written authorization

Under the bill, a private sector employee may authorize the employee's employer to deduct from the employee's wages, earnings, or compensation any dues, fees, assessments, or other charges of any kind to be held for or paid over to an employee organization. The authorization must be in writing and signed by the employee. Every employer that receives a written authorization from an employee must promptly notify the employee, in writing, that the employee may revoke the authorization at any time by providing the employer with a written notice of the revocation. The revocation becomes effective 30 days after the employer receives the revocation.[4]

Remedies

Criminal penalty

Any person may file a complaint alleging a violation of the prohibitions described under "**Requirement to join or pay dues to an employee organization**," above, with the Attorney General. The Attorney General must investigate any complaints of an alleged violation. If, based on that investigation, the Attorney General has reasonable cause to believe that an employer has violated those prohibitions, the Attorney General must prosecute the employer for the violation. Under the bill, an employer or employee organization that violates those prohibitions is guilty of a misdemeanor, punishable by imprisonment up to 90 days, a fine up to $1,000, or both.[5]

Civil actions

Additionally, under the bill any person who is injured or is likely to be injured as a result of a violation of prohibitions described under "**Requirement to join or pay dues to an employee organization**," above may bring an action in the court of common pleas in the county in which the violation is alleged to have occurred, and may obtain injunctive relief and recover any actual damages the person sustained as a result of the violation or threatened violation. However, a court does not have jurisdiction to grant injunctive relief under this provision that specifically or generally prohibits a person from doing any of the following:

(1) Ceasing or refusing to perform work or to remain in an employment relationship, regardless of a promise to do the work or to remain in the relationship;

[4] R.C. 4119.05.

[5] R.C. 4119.08 and 4119.99.

(2) Becoming or remaining a member of an employer or employee organization, regardless of a promise not to do so as described in continuing law (such a promise is void and unenforceable under continuing law);

(3) Paying or giving to, or withholding from, another person anything of value, including money, insurance, or strike or unemployment benefits;

(4) Helping, by lawful means, another person to bring or defend against an action similar to an action under the bill in a court of any state or the United States;

(5) Publicizing, obtaining, or communicating information about the existence of or a fact involved in a labor dispute by any method that does not involve the act or threat of a breach of the peace, fraud, or violence, including advertising, speaking, and patrolling, with intimidation or coercion, a public street or other place where a person lawfully may be present;

(6) Ceasing to patronize another person or to employ another person;

(7) Assembling peacefully to do or to organize an act listed in (1) to (6) above;

(8) Advising or giving another person notice of an intent to do an act listed in (1) to (7) above;

(9) Agreeing with another person to do or not to do an act listed in (1) to (8) above;

(10) Advising, inducing, or urging another person, without the act or threat of fraud or violence, to do an act listed in (1) to (9) above, regardless of a promise not to join or remain a member of an employee organization (such a promise is void under continuing law);

(11) Performing an act listed in (1) to (10) above in concert with another person on the ground that the persons are engaged in an unlawful conspiracy.[6]

Employee freedom of choice notice

The bill requires a private sector employer to post in a conspicuous place and keep continuously displayed the notice described below. An employer must provide a copy of the notice to each employee at the time the employee is first hired or rehired after a lapse of the employee's employment with that employer. The notice must read as follows:

[6] R.C. 4119.07, by reference to R.C. 4113.02, not in the bill.

Under Ohio law, an employee who is employed by a private employer may choose whether to join an employee organization without penalty. It is unlawful for an employer and an employee organization to enter into a contract or agreement that requires employees to join or belong to an employee organization. It also is unlawful for a private employer to require employees to pay dues, fees, or charges of any kind to an employee organization as a condition of obtaining or keeping a job. A private employer may not discharge or otherwise discriminate against an employee because the employee joined or refused to join an employee organization.[7]

Scope

The bill applies to all collective bargaining agreements entered into on or after the bill's effective date.[8]

General Assembly findings and policy

Under the bill, the General Assembly finds that governmental authority allows and encourages employers to organize in corporate and other forms of capital control, and, in dealing with these employers, an employee who is not represented by an employee organization is helpless to exercise liberty of contract or to protect personal freedom of labor and thus is helpless to obtain acceptable terms and conditions of employment. The policy of Ohio, under the bill, is that the negotiation of terms and conditions of private sector employment should result from voluntary agreement between an employer and the employer's employees. Therefore, each employee must be fully free to associate, organize, and designate a representative, as the employee chooses, for the negotiation of the terms and conditions of employment in the private sector and must be free from coercion, interference, or restraint by the employee's employer or an agent of the employee's employer in designating a representative, self-organizing, or other concerted activity for the purpose of collective bargaining or other mutual aid or protection.

The policy of Ohio, under the bill, is that each employee must be fully free to decide whether to associate, organize, designate a representative, or join or assist an employee organization.[9]

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[7] R.C. 4119.06.

[8] Section 2.

Definitions

The bill defines the following terms:

(1) "Employee" means any person who performs a service for wages or other remuneration for an employer.

(2) "Employee organization" means any labor or bona fide organization in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, hours, terms, and other conditions of employment.

(3) "Employer" means any person who has one or more employees and includes an employer's agent, but does not include the state or any agency or instrumentality of the state, or any municipal corporation, county, township, school district, or other political subdivision or any agency or instrumentality of a municipal corporation, county, township, school district, or other political subdivision.

(4) "Injunctive relief" includes a permanent injunction, a temporary injunction, or a temporary restraining order.

(5) "Labor dispute" includes any controversy, regardless of whether the disputants stand in the proximate relation of employee or employer, that concerns any of the following:

- The terms or conditions of employment;
- Employment relations;
- The association or representation of persons in negotiations for the purpose of setting, maintaining, or changing the terms or conditions of employment;
- Any other controversy arising out of the respective interests of the relationship between an employee and an employer.[10]

COMMENT

Any state regulation of the right of private employers and employees to bargain collectively runs the risk of conflicting with, and potentially being preempted by, the NLRA. Enacted in the 1930s, the NLRA does not contain an express preemption

[9] R.C. 4119.02.

[10] R.C. 4119.01, by reference to R.C. 4113.51, not in the bill.

provision. Nevertheless, the United State Supreme Court has interpreted the NLRA as having broad and comprehensive applications to the field of private sector collective bargaining, and but for a few narrowly drawn exceptions, the NLRA takes supremacy over state law.

The Court has held that, when a state purports to regulate activities that are protected by section 7 of the NLRA[11] governing labor-management relations (e.g., the right to bargain collectively) or that constitute an unfair labor practice under section 8,[12] the state jurisdiction must yield to the federal law.[13] Another type of federal preemption, the so-called "*Machinists* preemption," prohibits state and local regulation of areas that have been left "to be controlled by the free play of economic forces."[14]

While states are not totally excluded from activities affecting private sector labor relations, federal preemption likely would be invoked whenever a court thought a very real potential of conflict between federal law and the state regulation existed. Preemption under the NLRA is inappropriate only if the conduct at issue is a peripheral federal concern, or if the conduct involves a significant state interest that heavily outweighs the interests of the National Labor Relations Board in maintaining exclusive jurisdiction.[15] When it is not clear whether the particular labor-relations activity being regulated by a state is covered under the NLRA, state courts are not the primary tribunals to adjudicate such issues. Rather, the National Labor Relations Board retains sole jurisdiction over matters concerning or potentially concerning the NLRA.[16]

HISTORY

ACTION	DATE
Introduced	05-02-13
Referred by House Rules and Reference	05-07-13

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[11] 29 U.S.C. 157.

[12] 29 U.S.C. 158.

[13] *San Diego Bldg. Trades Council, Millmen's Union Local 2020 v. J.S. Garmon*, 359 U.S. 236, 244 (1959).

[14] *Lodge 76, Internatl. Assn. of Machinists and Aerospace Workers, AFL-CIO v. Wisconsin Emp. Relations Comm.*, 427 U.S. 132 (1976).

[15] *Garmon*, 359 U.S. at 243-244.

[16] *Garmon* at 244-245.