



OFFICE OF THE GOVERNOR

207 STATE HOUSE
SPRINGFIELD, ILLINOIS 62706

BRUCE RAUNER
GOVERNOR

From: Jason Barclay, General Counsel to the Governor

Re: Permissibility of Employee Empowerment Zones Under Federal Law

Date: March 20, 2015

The Governor has proposed legislation to protect employee rights, including the right to employment not conditioned upon union membership, in employee empowerment zones. Under the Governor's proposal, voters could decide whether such rights should apply within their respective county, municipality, school district, or other unit of local government.

The National Labor Relations Act ("NLRA"), 29 U.S.C. § 158(a)(3), preempts the regulation of "union security agreements" in all instances that impact interstate commerce. That preemption does not apply, however, where such agreements have been "prohibited by State . . . law." Specifically, Section 14(b) of the NLRA provides:

Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territory law.

In opinion 15-001, issued March 20, 2015, Attorney General Lisa Madigan concludes that this exception permits state to prohibit union security agreements only "on a statewide (or territory-wide) basis", as 25 states and one territory have done. She argues that local governments cannot prohibit such agreements.

The Attorney General's opinion cites several cases, including Kentucky and New Mexico, that challenged a local ordinance establishing the right-to-work in that locality. Notably, in each of these cases, the law at issue was enacted by the *local government*, without state authority. None of these cases addressed the structure being proposed by Governor Rauner, which would be based on new state law.

Office of the Governor

March 20, 2015

Page 2 of 2

Under Governor Rauner's proposal, the state would establish a uniform set of employee rights. Those rights would apply to employees only in those parts of the state that opted-in to the state law. Thus, in the plain language of Section 14(b) of the NLRA, the use of labor security agreements in those parts of the state would be "prohibited by State law." While state law would authorize voters to decide whether or not to apply these employee protections, if applied the protections would derive from state law, not local law, and therefore fit squarely within the exception under Section 14(b) of the NLRA.

Resolution in Support of the “Turnaround Agenda” for Local Government Empowerment and Reform

WHEREAS, Illinois state law creates a "one size fits all" approach to collective bargaining for local units of governments. This approach creates added costs which are ultimately passed on to taxpayers; and

WHEREAS, voters and local officials should determine what is a subject of bargaining - not the State; and

WHEREAS, local control of bargaining would allow voters or local governments to determine if certain topics should be excluded from collective bargaining, including contracting, wages, provisions of health insurance, use of employee time, required levels of staffing, procedures and criteria for personnel evaluations; and

WHEREAS, state law sets thresholds for workers on state and local construction projects increasing costs significantly; and

WHEREAS, state law has increased utilization of Project Labor Agreements for construction projects; and

WHEREAS, repealing the Illinois Prevailing Wage Law and the requirements for Project Labor Agreements would allow local governments more control over construction and project costs; and

WHEREAS, more than 280 unfunded mandates have been imposed in recent years on communities across Illinois, costing those communities billions. Rolling back mandates will create more flexibility in local government budgets; and

WHEREAS, Illinois' workers' compensation costs are the seventh highest in the nation – and more than double the costs in Indiana; and

WHEREAS, updating how injuries are apportioned to ensure employers pay for injuries that occur on the job, a clarification regarding the definition of “traveling employees” to ensure a reasonable standard that excludes risks that would impact the general public, and implementation of American Medical Association guidelines when determining impairment would result in major cost savings for local governments; and

WHEREAS, voters in our community should be allowed to decide via referendum whether or not employees should be forced to join a union or pay dues as a condition of employment; and

WHEREAS, local empowerment zones will help attract jobs and make our community more attractive for businesses; and

WHEREAS, local governments face unfunded liabilities that threaten core services and functions of government. State action on pension reform for future work should provide local governments the ability to address pension reform for future work as well;

THEREFORE, BE IT RESOLVED, that the (CITY/TOWN/VILLAGE) of (NAME) endorses major reforms in state government that will encourage local control, reduce costs on local governments, empower local voters, and increase competitiveness in our community.