

Subject:

FW: RTW options going forward

The following message is sent on behalf of MEA President Steven Cook:

Dear MEA local presidents, board members and staff,

Yesterday, the Legislature officially ended their 2011-12 session. All bills introduced but not passed in the past two years are cleared off the decks. And when they next meet on Jan. 9, the House will include newly elected Democrats, with a split of 59 Republicans and 51 Democrats (56 is needed for passage). The Senate has 26 Republicans and 11 Democrats (with one Democratic vacancy in the Flint area), with 20 votes needed to pass legislation.

Now that the Legislature is officially done and democracy is safe for a few weeks, let's get into greater detail on our options regarding "right to work" (RTW).

Bargaining

We've looked very carefully at this and believe the impact of RTW can be blunted through bargaining strategies. RTW takes effect March 27, 2013. If you have a current contract in place on that date, RTW does not impact your local until that contract expires. Your contract can be extended further which would still protect you from RTW, but there are other laws that may come into play and some examination of the particular situation would be required to weigh all the pros and cons.

If you have an open contract we would recommend that with respect to RTW, it be closed out before the implementation date of March 27, 2013.

Another strategy we will be discussing with UniServ Directors upon their return from the holiday break involves a separate contract with respect to agency shop and its impact on your bargaining unit. Stay tuned for more information on this and other strategies.

There are a lot of details and nuances regarding our bargaining (and subsequent legal) approaches on this. Whatever we do needs to withstand certain challenges from the National Right to Work organization and the Mackinac Center. The Thrun law firm is aware of this strategy and while they do not argue it's illegal, the advice they offer to their school district clients is to get something for it, or not do it at all. As you know, MASB and MASA publically stated their opposition to RTW -- we have been and will be in contact with them to hopefully collaborate on bargaining contracts that keep RTW from hurting unions and school districts alike.

Membership Applications

The membership application signed by every member indicates that if they wish to resign their membership, they must do so in August – and only August. We are sticking to that. Members who indicate they wish to resign membership in March, or whenever, will be told they can only do so in August. We will use any legal means at our disposal to collect the dues owed under signed membership forms from any members who withhold dues prior to terminating their membership in August for the following fiscal year. Same goes for any current fee payers who choose not to pay their service fee.

Again, any members covered under an agency shop clause or agreement as of March 27 will not be able to resign their membership and avoid paying a service fee until that contract expires.

Litigation

There are three potential avenues under consideration here.

The first is a challenge under the open meetings act. While there were actions taken while the Capitol was open, there were numerous procedural votes on RTW that were taken while the Capitol was locked down. The legal question that's being investigated is whether that's enough to strike down the entire Act.

The second is a possible direct challenge to the constitutionality of parts of the law. Attorneys from a coalition of unions are evaluating whether such a challenge has a reasonable chance of success and will be making recommendations to their union leadership.

The third is with respect to the "carve out" of police and fire that exempts them from RTW. Because of wording contained in the Act, challenging the carve out might not strike down the Act but could merely put police and fire into the same RTW pit the rest of us are in. Frankly, causing damage to other unions isn't our goal and so that may not be a viable option.

The long and the short of it is, the litigation angle should not be relied on to overturn the Act.

Citizens Initiative

This is how we did the K-16 funding initiative (Prop 5) in 2006. The citizens initiative route is where we have 6 months to gather signatures (slightly fewer signatures than what we needed for a constitutional amendment) and present the Legislature with a bill that basically undoes the RTW legislation. (This is not a referendum -- we'll talk briefly on that later.)

When the House and Senate are presented with citizens initiative legislation, they have 40 days to vote either yes or no. If they vote no or don't vote at all, the citizens initiative legislation goes on the next general election ballot (Nov. 2014). If voters pass it, it requires a 3/4 majority to amend that law going forward. But if the Legislature votes yes, the initiative is immediately made law (doesn't even need the governor's signature), but it's able to be amended by a simple majority. Much like this Legislature did with Emergency Manager, they could pass our citizens initiative and then re-enact similar legislation.

Are there risks involved? You bet -- but if they were to pull that kind of partisan trick in the months before the 2014 primary and general election, the negative political fallout for Republicans would be significant. As decisions are made about this potential path, we'll keep you informed.

Referendum

Because the Legislature attached an appropriation of \$1 million to the RTW bills, they blocked any potential referendum. Bills appropriating money aren't subject to referendum and courts have already ruled that even if one could prove an appropriation was attached for the sole purpose of avoiding a referendum, it still cannot be brought to the people in a referendum vote.

Recalls

If the goal is to undo RTW, this is the least appealing of all the options. To bring the state government back to its senses, we would need to recall 8 senators, 5 representatives and the Governor -- it simply isn't a realistic goal. We tried the "send the message" route when Rep. Paul Scott was recalled, but the response from the ideologues was to double down on their attacks.

In addition, recall rules were changed during lame duck to raise the bar and make recalls even harder than they were before.

Despite all that, we know more than a few of our members will no doubt get the recall bandwagon rolling again, expecting if not demanding MEA fund the effort. Conservative PAC funding estimates to be successful with recalls are as high as \$1.3 million for each state senator and upwards of \$500,000 for each representative. We simply don't have the PAC money to fund one of those races -- let alone the dozen plus races described above.

In my conversations with other labor organizations, MEA would most likely be on its own as there is little support for recalls as a sound strategy for achieving our goal of throwing out RTW. While certain progressive groups would no doubt be supportive in gathering petition signatures, they do not have anywhere near the amount of money necessary to be useful partners in a recall campaign.

Having said all that, I'm not closing the door on the idea of a targeted recall or two -- but those targets need to be carefully and strategically selected so that we get closer to our ultimate goal and are not burning money and other resources just to feel good.

I want to thank you for your patience, I know this past month wasn't easy...and it will not be easy going forward. As our coalition strategy takes more shape, form and direction these next few weeks we'll keep you informed of any useful developments.

Thank you.
Steven Cook
MEA President

