



STUDY

Worker's Choice

Freeing unions and workers from forced representation

By F. Vincent Vernuccio, published on June 1, 2016



THE PROBLEM

Where there's a unionized workplace, there's forced representation. That's true regardless of whether a state is right-to-work or not. Even if a union can't get a worker fired for not paying dues, the worker is still bound by union representation.

Unions call these workers — trapped by collective bargaining agreements — “free riders.” But unions have actually lobbied for this requirement and use it to claim the moral high ground. They say, “We are not given what is ours: the right to be paid for the work we are required to perform.”

Building on this argument, unions have recently brought several court cases challenging right-to-work. Having to represent workers who don't pay them, they say, is a violation of constitutional takings clauses.

Depending on the makeup of the U.S. Supreme Court, unions could use this argument to overturn seven decades of precedent, killing right-to-work for the entire nation.

THE SOLUTION

Worker's Choice would end the issue of free or forced riders.* Worker's Choice would let workers who opt out of a union in a right-to-work state represent themselves before employers. It would also free unions from having to represent nonpaying workers.

Worker's Choice gives unionized employees the choice of two options:

1. Be a union member and accept the working conditions negotiated by the union;
2. Leave union membership behind, negotiate for compensation and working conditions independently, and provide your own representation in grievances and other dealings. That's what over 87 percent of workers — those without union representation — do already.

With Worker's Choice, each worker can stay in the union that is in the workplace. Alternately, they can negotiate for salary, benefits and working conditions independently.

With Worker's Choice, unions are freed from having to represent workers who are not paying them and workers are freed from accepting forced union representation.

SAFEGUARDS

- **One-or-none** — Worker's Choice does not change collective bargaining for unionized workers in any way. If there's a union presence in a workplace, it's one union that will still represent all the unionized employees there. The one-or-none provision safeguards against having multiple unions at a worksite.
- **It imposes no new duty to bargain on employers** — Workers who wish to exercise Worker's Choice are treated as nonunion and the employer is under no duty to negotiate with them, mirroring the job creators who employ over 87 percent of nonunion workers in the rest of the economy. An employer may, if he or she wishes, negotiate individually with these employees as a way to attract and retain top talent.
- **Unions cannot affect individual contracts** — Worker's Choice prevents unions from basing their contract off the independent employees' contracts. For example, unions cannot say that the highest paid independent employee must be paid lower than the lowest paid union employee.

BENEFITS OF WORKER'S CHOICE

1. **Addresses the main union objection to right-to-work:** Worker's Choice eliminates the free/forced rider issue, one of union's most powerful objections to right-to-work.
2. **Protects legal challenges to right-to-work:** Worker's Choice would negate the main legal argument for overturning right-to-work, the argument of violating the takings clause.
3. **Rewards employee productivity:** Under Worker's Choice, employers can reward higher performing employees without being limited to a collective bargaining agreement.
4. **Advances personal flexibility:** Worker's Choice lets workers represent themselves and negotiate their own contracts, which are driven by personal needs rather than collective ones.
5. **Makes unions more responsive:** Worker's Choice will require unions to be more responsive to the needs of their members or risk losing them.
6. **Provides the above benefits to employers without imposing new obligations:** Worker's Choice does not create any new burdens on employers; its one-or-none provision safeguards against multiple unions. The employer does not have any more increased obligation to employees exercising Worker's Choice than employers in a nonunionized worksite, i.e. no duty to bargain.

* Congress can amend the National Labor Relations Act to enact Worker's Choice for private sector employees.
States can amend their own labor laws to enact Worker's Choice for public sector employees.

Copyright © 2016 Mackinac Center for Public Policy

www.mackinac.org