



OFFICE OF THE GOVERNOR

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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.

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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.