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The 'Free Choice' Act and Binding Arbitration

By SHIKHA DALMIA

Big Labor is on a roll. With the installation of Minnesota Democrat Al Franken to the Senate this week, and another change of heart by Sen. Arlen Specter, the misnamed Employee Free Choice Act (EFCA) has just scored two more votes. To secure the remaining votes for a filibuster-proof majority, unions are planning a massive rally today in Arkansas to pressure Blanche Lincoln, the state's Democratic senator who has withdrawn her support for the bill, to pull a Specter and change her mind yet again.

Arkansas is ground-zero for unions because it is a right-to-work state with low union enrollment. EFCA's elimination of secret ballot elections for unionization has garnered most of the critical attention. But the bill contains another controversial provision: compulsory arbitration. This would be no less destructive to the rights of employers and workers, and the economy as a whole. Exhibit A: Michigan.

In 1969, the Wolverine State embraced a form of compulsory arbitration nearly identical to the one proposed in EFCA to resolve disputes with its police and firefighters. Years later, Detroit mayor Coleman Young -- who had authored the original law as state senator -- rued what he had done. "We now know that compulsory arbitration has been a failure," he lamented to the National Journal in 1981. "Slowly, inexorably, compulsory interest arbitration has destroyed sensible fiscal management and has caused more damage to the public service than the strikes it was designed to prevent."

Most citizens agree. Just seven years ago 54% of Michigan voters turned down a union-sponsored ballot proposition to extend compulsory arbitration to all state employees. Nearly every newspaper in the state -- liberal and conservative -- editorialized against it. Why?

Under normal circumstances, when employers and workers negotiate an initial contract they are required by law to bargain in good faith until they come to an agreement. If they reach an impasse, workers can call a strike. But because a strike is costly for both sides there is a strong incentive for them to concede as much as possible to reach a compromise.

However, since emergency personnel -- firefighters, police and the like -- are barred from going on strike in many states, about 20 states have embraced some form of compulsory bargaining. If the two sides can't agree on a contract within a prescribed time, either one can invite a three-member panel jointly selected by the union, city, and the state government to intervene and impose a settlement.

This process is supposed to install a contract expeditiously. But a review of 29 arbitration cases in 2005 and 2006 by the Michigan-based Mackinac Center for Public Policy found that the average time involved in a case was almost 15 months -- not the four-and-a-half months that the law prescribed, defeating its whole purpose. Moreover, because an arbitration board doesn't have to live with the consequences of its decision, it has no reason to come up with a workable solution -- just one that is politically expedient.

Thus a board, convened at the request of Detroit police and firefighters in 1978, ordered the city to pay \$46 million in cost-of-living adjustments. This destroyed the city's already fragile budget, ultimately triggering layoffs of a quarter of its police force. The police eventually accepted a three-year wage freeze in 1981 -- but not before the crime rate, which had been falling before the layoffs, began soaring again.

Compulsory arbitration also nudged other Michigan cities, including the working-class towns of Hamtramck and Highland Park, into bankruptcy. In 1999 an arbitration panel awarded Hamtramck police officers \$2.1 million in pay raises and back pay, pushing it into state receivership. Under receivership, which is only used in extreme situations, the state government takes over the city's finances and appoints its own manager to run the city. Hamtramck was ultimately forced to impose a combination of service cuts and tax increases, all of which accelerated the exodus of its residents. Highland Park, wishing to avoid similar arbitration, gave its public safety officers raises it couldn't really afford and was also forced into receivership.

A 2006 task force convened by Gov. Jennifer Granholm, who supports compulsory arbitration, found that local government costs in arbitration states are 3%-5% higher compared to nonarbitration states. "While small in percentage terms, the impact in dollar terms is huge," the task force concluded. Given that local governments in Michigan alone spend over \$23 billion annually, this works out to over a billion in extra spending for them.

Michigan's experience is hardly unique. Former Massachusetts Gov. Michael Dukakis also tried to limit public-sector compulsory arbitration during his first term. In 1977, Mr. Dukakis argued that compulsory arbitration "has removed legitimate management prerogatives in the area of staff assignments, (and) transfers from the control of municipal officials at a time when they are under severe pressure to improve their management and make savings." Mr. Dukakis failed to stop compulsory arbitration, but two years later Massachusetts voters approved a ballot initiative that effectively scrapped it.

Should EFCA pass, the costs of compulsory arbitration in the private sector will dwarf those in the public sector. That's because businesses, unlike government, can't just bill taxpayers to pay off unions. They have to compete.

In a dynamic economy, a business's survival depends upon its ability to constantly cut costs and innovate. But a company forced into binding arbitration will be frozen for two years (the duration of the initial contract) from making any changes to any aspect of its business that is covered by the contract. Literally every issue -- from its 401(k) contributions to its reliance on outside labor -- could potentially become subject to review by a government panel that has neither the company-specific knowledge nor the incentive to turn a profit.

Businesses are not the only losers in compulsory arbitration. Currently, any contract negotiated by union officials has to be ratified through a vote of rank-and-file members. Under compulsory arbitration, workers do not get this vote. In other words, EFCA will take away the right of workers to vote to form a union, and then binding arbitration will take away their right to vote on a contract.

The only clear winners under this law would be the union bosses, who will obtain new powers without any new accountability. If Michigan's experience suggests anything, it's that rank-and-file workers, businesses, and the American economy will suffer. Sen. Lincoln and her colleagues should bear this in mind before they make their final decisions.

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