
Labor group intends to sue over right-to-work law

By Andrew Brown

The West Virginia AFL-CIO sent a letter late this week notifying state officials that the labor organization intends to file a lawsuit challenging the state's new right-to-work law, which was meant to restrict unions from collecting dues from non-union employees, even if those non-members benefit from union contract negotiations.

The AFL-CIO, which represents more than 500 local unions and roughly 70,000 members in West Virginia, sent a letter Thursday to Attorney General Patrick Morrisey and the state's Commissioner of Labor John Junkins, in order to give them 30 days notice of the impending lawsuit, which is required under state law.

According to the letter, the labor group intends to sue the state over the right-to-work law, which is officially referred to as the "Workplace Freedom Act," on the grounds that the law violates the state constitution.

The legal challenge to the law, which was passed by the West Virginia Legislature earlier this year, comes less than two months before it begins affecting union-negotiated contracts after July 1. It also follows a recent ruling in Wisconsin, where labor unions successfully challenged a similar law in that state.

The lawsuit will likely draw significant opposition from industry groups, which have pushed to have right-to-work laws passed in conservative-leaning states throughout the country.

If the AFL-CIO's challenge is upheld in Kanawha County Circuit Court, where it is expected to be taken up first, it could effectively overturn a law that has been celebrated as the signature accomplishment of West Virginia's conservative lawmakers and Republican gubernatorial candidate Bill Cole, who was the lead sponsor of the controversial bill.

During the first day of the 2016 legislative session, union members from all over West Virginia packed the Capitol's marble rotunda to boo and jeer Cole, the Senate president, as he made his way to the House chamber for Gov. Earl Ray Tomblin's 2016 state-of-the-state address.

As the Republican-led legislature moved to pass the law and override Tomblin's veto of the bill, many of those same union members also packed the hallways and galleries in the Capitol to voice their opposition to the bill.

While the AFL-CIO hasn't finalized the complaint for the lawsuit yet, interviews with the labor organization's staff suggest the group will be challenging the law based on numerous legal grounds. Josh Sword, the AFL-CIO's secretary-treasurer, said the challenge will rest primarily on two points.

The first is that forcing unions and their members to represent non-union employees in workplace contract negotiations is an illegal taking of property under state law.

The second rests on the AFL-CIO's and its outside counsel's belief that mistakes in the bill's language significantly change the literal interpretation of the law and ensures that the ban on collecting union

dues only pertains to public employee unions.

In their rush to get the law passed, Sword believes the bill's authors — who seem to have pulled from draft legislation introduced in Indiana and elsewhere — made a critical mistake by improperly defining the word “state” as any public agency, board, commission or other government entity and not the geographic state of West Virginia as a whole.

As a result, the AFL-CIO's lawyers are expected to argue that unions representing employees with private businesses in the state aren't actually restricted from collecting union dues from non-members.

The labor officials are hoping that argument will be helped out by the West Virginia Supreme Court's recent ruling in another case in which a majority of the justices emphasized the literal interpretation of the law when they ordered that a Republican should be appointed to fill the empty state senate seat left by Daniel Hall, an elected Democrat who later switched his party affiliation to Republican before stepping down earlier this year.

Sword expects the lawsuit to ultimately reach the Supreme Court, which will likely add even more emphasis to the high court's contested open seat to be filled after this Tuesday's election.

Some of the arguments that the AFL-CIO hopes to exploit in the case, Sword said, could have been prevented if Republican legislators had taken more time drafting the bill or by sending it through more than two legislative committees. But he is glad they didn't.

“If this was their top legislative priority, they didn't do a very good job dotting their I's and crossing their T's,” he said.

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