With divided government in Washington relegating most congressional labor and employment legislation to the dead letter file, state legislation becomes a more viable option for interest groups to press their initiatives. The only caveat—be careful what you wish for! The tables may be turned, and suddenly you are on the defensive.

The newly-enacted right-to-work laws in Michigan are an example. Organized labor groups overreached by insisting on a 2012 ballot initiative to enshrine collective bargaining in the Constitution of the State of Michigan. The referendum lost badly by 52 to 48 percent despite unions spending tens of millions of dollars in political advertising to promote it. Had labor groups not pushed the issue over the objections of Michigan Governor Rick Snyder, there might never have been a subsequent effort by the lame duck Michigan legislature to pass right-to-work legislation. And almost certainly Governor Snyder, who had declared that right-to-work laws were “divisive” and “not on [his] agenda,” would not have agreed to sign it. Yet, when Proposal 2 failed on the 2012 Michigan ballot—the measure that would have precluded a state right-to-work law and tied the governor’s hands in other ways—it suddenly became the catalyst for the Michigan legislature to act. What was the result? Michigan is now the 24th right-to-work state, joining its neighbor Indiana as the two most recent states to enact right-to-work legislation and the only two from the Rust Belt. The other right-to-work states are in the Southeast, Southwest, and Midwest.

The Michigan right-to-work law goes into effect 90 days following the close of the current legislative session. Thus, it will be effective around April 1, 2013, with the exact date dependent upon when the legislature decides to end the current session.

For currently represented union members, the law applies only upon the expiration or modification of existing collective bargaining agreements. The law prohibits closed-shop collective bargaining contracts, which force workers in the public and private sectors to join a union and/or pay union dues as a condition of employment. The only exceptions to these requirements are for the police and firefighters. The law prohibits any term or condition of employment that requires an employee to: (1) join a union; (2) refrain from joining a union; or (3) pay union dues, agency fees, or money to a third party in lieu of such dues or fees. Importantly, the law gives employees the right to choose whether to pay union dues and provides that employers cannot be required simply to check-off union dues from their employees’ paychecks. Unions, which must still continue to represent all bargaining unit employees, have experienced much more difficulty collecting dues themselves. In fact, the American Federation of State, County and Municipal Employees (AFSCME) reportedly lost 50 percent of its dues revenues in Wisconsin when Governor Scott...
Walker restricted dues check-offs for public sector workers in that state. Since much of the union spending goes to support political candidates or political parties, declining union revenues concern those politicians as well.

Unions in Michigan and nationally are in an uproar. They have threatened virtual “civil disobedience.” At least one Michigan pro-union legislator threatened “blood.” There likely will be litigation challenging the new law under the OPEN Government Act of 2007 or based on the denial of equal protection since police and firefighters are not covered by the law. The process in Michigan will likely run its course more quickly than usual because the bills provide exclusive original jurisdiction in an expedited manner to the Michigan Court of Appeals for any action challenging the validity of the sections containing the most controversial changes. Also, the new right-to-work law in Michigan is immune from challenge through a state referendum since proponents of the law shrewdly attached it to an appropriations bill, which is precluded by law from a referendum. The law provides for appropriations to the Michigan Department of Licensing and Regulatory Affairs in order to inform the public about its rights under the bills and to implement the new requirements. By including specific appropriations in these bills, they cannot be repealed by a voter referendum, unless a court finds a defect that would allow submitting the bills to the referendum process.

Unions in Michigan are digging in their heels. Some are madly rushing to negotiate long-term 10-year contracts so as to delay the inevitable. Although the new law prohibits employers from requiring union membership as a condition of employment, contracts in effect prior to the law’s effective date are grandfathered until they expire.

What’s Ahead?

Will the actions in Michigan and Indiana trigger other right-to-work initiatives? Is Ohio next?

Michigan was bleeding jobs to Indiana, following Indiana’s enactment of right-to-work legislation. New business rushed to Indiana. Will job creation in Michigan now similarly improve and unemployment fall as well?

Will other states follow Wisconsin in weakening public-sector collective bargaining and cutting public-sector pensions? In fact, both Democratic and Republican governors, mayors, and state legislatures are contemplating or have already undertaken similar actions.

Will public-sector union density no longer be the firewall for private-sector union membership? Nationally, union density currently stands at 11.8 percent compared with only 6.9 percent in the private sector. Public-sector union membership is 37 percent.

Will private-sector union membership in Michigan decline in the very state that has been a union stronghold—the home of the still powerful United Auto Workers? No longer able to compel union membership by “pushbutton” unionism, will unions in Michigan be successful in convincing workers to join voluntarily? And will they be able to collect dues on their own without dues check-off by employers?

One thing is certain. Organized labor will be forced to divert significantly greater financial resources and people power to state battles in order to hold on to what they have. Lobbying for federal legislation in Congress is no longer their only concern.
Funding political candidates in federal elections will no longer be sufficient either; unions must become more involved in gubernatorial and state house races as well.

Money spent in state races and on state ballot initiatives has been exploding. This year, for example, a few tax initiatives and a failed measure to restrict political activity by labor unions drew more than $350 million in California alone.

Apparently, the sky's the limit. Political spending reported by AFSCME totaled $116 million out of a total budget of $1.3 billion and 1.4 million members. The National Education Association's 3.1 million teachers reported $238 million in political spending out of a $2.5 billion budget. Their political spending is eclipsed only by the American Federation of Labor and Congress of Industrial Organizations and the Service Employees International Union. In the future, more of those funds will be spent on state and local politics.

State right-to-work laws are authorized by Section 14(b) of the National Labor Relations Act, and therefore, they are not preempted by federal law. Although federal labor and employment laws continue to preempt state laws in many instances, national politics have gone local for organized labor. It proves once again the wisdom of the old maxim by the late Speaker of the House of Representatives Thomas "Tip" O'Neill, Jr. that "all politics is local."