

## The Indiana Union Construction Industry



**Preserving the Right to Freely Bargain and Contract**  
*The facts on what a falsely labeled “Right to Work” law  
would do to the Indiana Union Construction Industry*

## **Executive Summary**

The Indiana Union Construction Industry is a business model for success that is proven in the marketplace. The adoption of a state law that criminalizes contractors for negotiating a “union security clause” as part of a collective bargaining agreement would fundamentally disrupt this successful business model. Such an action would be detrimental to the state of Indiana—which now boasts one of the most highly skilled construction workforces in the country—and its economic development efforts. It is widely noted that the availability of a skilled workforce is the chief determinant for site selection of a company.

Laws that ban union security agreements are often times falsely labeled “Right-to-Work laws.” Such laws are traditionally only adopted by Southern and rural states. As a result of federal case law over the last 48 years, any perceived benefit of prohibiting a union security clause has become redundant, antiquated, and unnecessary. In fact, only four states have chosen to prohibit the union security clause with the last 48 years.

Indiana’s Union Construction Industry; It’s Working!

## **Preserving the Right to Freely Bargain and Contract**

### *The facts on what a falsely labeled “Right to Work” law would do to the Indiana Union Construction Industry*

#### **The Indiana Union Construction Industry—Why Tamper with Success?**

The Indiana Union Construction Industry is a vital part of economic development in Indiana providing good jobs, with benefits, to tens of thousands of workers. This success is due to the cooperation between labor and management. Negotiated collective bargaining agreements create hiring hall referral procedures, provide for classroom training, and allow for portability of benefits for workers. These agreements further recognize that these services cost money. To make sure that all members pay their part for these services, the labor agreements contain a union security clause which requires the workers to pay fees for union representational activities.

The passage of falsely-labeled “Right-to-Work” legislation would needlessly void these negotiated contract provisions and irrevocably impair contractors’ ability to operate. Valuable resources such as hiring halls and the ability to transfer construction workers amongst contractors would diminish under this legislation. More importantly, this legislation is unnecessary. In the Indiana Union Construction Industry, workers make a conscious decision to be union members by joining the relevant apprentice program. Additionally, federal law already provides that an individual does not have to be a full union member. Instead, workers can elect to only pay those fees directly related to union representational activities.

#### **What are the Building Trades?**

The “Building Trades” are the 15 trade unions that work in the building and construction industry. In Indiana, the Building Trades are 75,000 members strong. The Building Trades work with signatory contractors to win construction bids through superior training and maximized worker productivity. Both members and contractors are skilled on principle and union by choice, providing unsurpassed value to the construction user. Construction workers choose, at the onset of their careers, whether to work in the non-union construction industry or to apply to a union apprenticeship program. Contractors may choose whether or not to become signatory and take advantage of the pooled resources provided by both the union and the multi-employer environment.

The Building Trades consist of the international unions of the Boilermakers, Bricklayers and Tile Setters, Carpenters and Millwrights, Electricians, Elevator Constructors, Insulators, Iron Workers, Laborers, Operating Engineers, Painters and Glaziers, Plasterers and Cement Masons, Roofers, Pipe Trades, Sheet Metal Workers, and Teamsters.

The productivity factors that are embedded in the Building Trades (e.g. productivity trumps seniority; the ability quickly expand and contract the size of workforce as work dictates, etc.) and the efficiencies achieved through rigorous apprenticeship programs are what give our union contractors the edge. Together, we make the Indiana Union Construction Industry both competitive and successful in the market place. This value is passed on to the construction user everyday through cost savings, bringing construction projects to completion on time and on budget.

### **How do the Building Trades Work?**

The Building Trades work in a multi-employer environment. Each union negotiates a contract, or collective bargaining agreement (CBA), with a contractor association. Through this multi-employer bargaining, each signatory contractor has access to a pooled, high-skilled, on-demand workforce. Contractors can quickly hire and lay off workers according to the demands of each job.

At the onset of their careers, construction workers make the choice to either work for a single non-union contractor, or to apply to a union apprenticeship program and work in the union construction industry. (Currently, union-affiliated apprentices outnumber non-union apprentices 8 to 1 in Indiana.) In the union apprenticeship programs, apprentices earn a progressive scale of wages over time while receiving both on-the-job and classroom training. After four to five years of apprenticeship, depending on the trade, an apprentice graduates and receives journeyman status and oftentimes an associate's degree in construction technology through Ivy Tech Community College.

The multi-employer labor agreement allows each contractor to utilize the three most valuable assets of the Indiana Union Construction Industry: the jointly-administered apprenticeship programs, the union hiring halls, and the jointly-administered pension and health & welfare funds.

**Training:** Through the apprenticeship schools, the Indiana Union Construction Industry spends over \$27 million a year on apprenticeship and journeymen upgrade training, thus giving contractors access to the most highly skilled craftsmen in the country.

**Hiring:** Union contractors rely on the union hiring halls to meet their manpower needs, sometimes quadrupling a workforce with only a few hours notice. The union hiring hall is responsible for identifying and dispatching members who are immediately available for work with requisite contractor-specified skills and certifications. By using the union referral systems, a signatory contractor can obtain the necessary workforce to quickly man projects without the need for constant in-house recruiting and training.

**Portability of Benefits:** As wages, pension and health & welfare benefits are uniform under the CBA, Building Trades members can move from employer to employer with no disruption in benefits. This includes moving across geographic boundaries as demand for major construction work ebbs and flows--hence the term "journeymen."

**Scalability:** Because signatory contractors have access to the union hiring hall, they have the ability to quickly expand and contract the size of their respective workforces as work dictates. Signatory contractors can manage multi-million projects as they are awarded bids. Contractors can access a large workforce of specialized trades in an emergency situations (e.g. an unplanned outage at a power plant, the 9/11 dispatch of construction workers to ground zero)

### **Workers Select a Career as a Building Trades Journeyman**

Indiana workers join the union construction industry for the training and benefits it offers them and their families. Not a single construction worker in the state is forced to become a union construction worker. Individuals voluntarily elect to either join the union or non-union construction industry. Thousands of individuals decide each year that a career in the union construction industry provides the greatest opportunity by applying for positions with union apprentice programs.

### **What is a union-security obligation?**

In the building and construction industry, the proviso to Section 8(f) of the National Labor Relations Act that allows employers and unions to enter into a union-security agreement which requires all employees in a particular bargaining unit to become “members” on or after the 7th day following being hired. The purpose of a union security clause is to make sure that all employees working under a labor agreement pay their share for union representational services. In a 1963 decision, *NLRB v. General Motors Corporation*, 373 U.S. 734, the U.S. Supreme Court held that the term “member” requires only the payment of periodic union dues and fees as opposed to full membership. Individuals choosing that approach are often referred to as “financial core members.” The National Labor Relations Board has held that a union must give employees notice of their right to be a financial core payer before seeking to enforce a union security clause. Thus, under current law, no one has to be a member of a union in order to maintain a job, but all employees subject to a union security obligation can be required to pay representational fees.

Signatory contractors acknowledge that the critical role that unions play in Indiana Construction Industry requires adequate funding. Multiple employer associations in Indiana have agreed to union-security clauses in their multi-employer labor agreements. These employer associations include the National Electrical Contractors Association, the Mechanical Contractors Association of Indiana, Sheet Metal Contractors Association of Indiana, Indiana Mason Contractors Association, and Indiana Construction Association to name a few. These associations represent over four thousand contractors in Indiana, including some of the largest contractors in their fields. If a union-security clause was actually a bad idea, these multi-million dollar businesses would not have made the decision to include it in their labor agreements.

## **How can a state infringe upon the rights of an Employer and Union to agree upon certain conditions of a labor agreement?**

Section 14(b) of the National Labor Relations Act (NLRA) allows a state to outlaw an employer from utilizing a “union-security clause” as part of a freely negotiated collective bargaining agreement (CBA). It bans an employer from requiring that employees become members of a union or pay “service fees” for benefits provided by a union under a CBA. It requires that the union provide all services to both union members and non-union members alike. In effect, government limits the right of the contractor to bargain with its employees’ representative to establish terms and conditions of employment. The legislation also creates an unfunded mandate for unions by requiring unions to provide free services to non-members without necessary compensation.

A few states have exercised their option under Section 14(b) of the NLRA to pass legislation prohibiting union-security agreements. Opponents of unions like to falsely label these states as “right-to-work” states, even though this terminology is nowhere within the NLRA. States that currently have such laws include: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana (agricultural workers only), Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and Wyoming. Employees working in these states cannot be required to pay union dues and fees under a union security clause, unless they are employed on a federal enclave.

## **What effect would banning the “Union Security Clause” have on the Indiana Union Construction Industry?**

Infringing upon an Employer’s right to bargain the terms of a labor agreement —by banning the use of a Union Security Clause—would needlessly interfere with the unique and productive relationship between Building Trades Union members and signatory contractors. Building Trades members usually belong to a single bargaining unit, with multiple employers, governed by one labor agreement. This business model allows Building Trades members to transfer among various contractors and work on different project sites in multiple counties while continuing the same wages and benefits.

Signatory contractors have ready access to a mobile, skilled workforce to staff projects in an expeditious and economic manner. Because of the many benefits arising from these flexible Building Trades Union labor agreements, almost all significant and sophisticated construction owners utilize Building Trades members on their major Indiana projects. (e.g. Eli Lilly, Toyota, Honda, Subaru, Duke Energy, NISPCO, AEP, etc.)

Prohibition of the Union Security Clause would cause a fundamental shift in the way Indiana’s hiring halls would work, to the detriment of the union, the members, and the contractors. The Building Trades Union workers could lose access to referral halls and other benefits. Accordingly, the bargaining relationship between Building Trades Unions and contractors would be weakened with a resulting negative effect on Indiana economic development.

Contractor Benefits with Union Security	Contractor Losses w/o Union Security
Allows out-of-state contractors to use local in state workforce	The size of the labor pool is diminished as union members withdraw. As such, there is a loss of ability for the Union contractor to quickly expand and contract the size of the workforce
Avoids stipends, cost of living, and travel expenses by using local workforce first	Pooled costs rise (e.g. training, pensions, health and welfare) with decreases economies of scale.
Ability to scale workforce up or down depending on the level of work under contract without fear of losing pool of skilled building tradesmen	Would maintain a larger payroll (increasing contractor cost) for fear of not being able to replace skilled building tradesmen

**Union Hiring Halls:**

The Building Trades have two types of hiring halls: (1) Exclusive hiring halls where signatory contractors must hire from union hiring halls and (2) Non-Exclusive hiring halls where signatory contractors may either hire from the hiring halls or may hire construction workers on their own. With non-exclusive hiring halls, union members may solicit their own work instead of going through the union hall.

Non-exclusive hiring halls normally bar non-members from the out-of-work list, as they are already free to solicit their own work from signatory contractors. Exclusive hiring halls are required to either allow non-members to sign the out-of-work list for free or charge a fee consistent with the expense of maintaining the referral system.

If the union security clause were abolished, contractors that rely on the union hiring halls to supply manpower would be hurt as the pool of skilled labor from these hiring halls diminished, either from the withdrawal of union members in the non-exclusive system or from the lack of union dues funding the referral system under the exclusive hiring hall. Over time, the employees would likely withdraw their union membership--because they are able to collect the same pay and contract benefits as non-members--resulting in a decline in the number of skilled workers available to a contractor through the union referral system. As a result, union contractors would be forced to bid smaller and fewer jobs.

**What effect would a ban on Union Security Clauses have on the Building Trades and their members?**

Although free to withdraw membership at anytime, union members made the commitment to either work in the union construction industry at the onset of their careers. As with any organization, union programs require money to operate in an effective manner. If an Employer and the union were not allowed to negotiate a Union Security Clause, the affected union would be forced to represent all workers regardless of whether or not they have paid for the services to be rendered by the union. As a result, the Building Trades Unions would likely not be able to provide these programs.

Indiana Building Trades members who decide not to pay dues would be limited in their ability to work in neighboring states such as Illinois, Michigan, Ohio, and Kentucky that recognize the merits of allowing

unions and contractors to bargain over conditions of employment. The Indiana member who does not pay dues would have to pay dues and initiation fees to work in those jurisdictions. This situation would definitively be an administrative nightmare for both the contractor and the union.

**What are the free benefits that unions are required to provide to non-union members in Employer Restricted states?**

Building Trades Members enjoy numerous benefits by working under a labor agreement negotiated and administered by their respective Union. These advantages include the following:

1. Established wage rates and fringe benefit contributions along with other terms and conditions of employment;
2. Jointly administered training programs which provide apprenticeship training and journeyman upgrade classes at no charge. Members obtain journeyman certification by the United States Bureau of Apprenticeship and Training and often obtain an Applied Sciences degree from Ivy Tech. Through journeyman upgrade classes, members develop new skills for areas such as energy conservation and Green building techniques;
3. Access to Union hiring halls and referral procedures. Union referral halls also enable contractors to quickly obtain a workforce possessing the unique and necessary skills for each specific project;
4. Work in various Indiana counties and, if necessary, neighboring states without interruption of benefits;
5. Opportunity to work under nationwide labor agreements, such as the National Maintenance Agreement, negotiated by the Building Trades with significant construction owners. These agreements are frequently utilized for power plant construction and other large industrial projects;
6. A grievance procedure which quickly resolves labor disputes without costly litigation or disruption of work; and
7. Union administrative staff who can answer inquiries regarding the labor agreement and benefits. This Union administrative staff fixes problems which arise on job sites before they can adversely affect productivity.

Non-Member Free Benefits Retained	Non-Member Benefits Lost
Work under the Collective Bargaining Agreement without discharge	Possible loss of search waiver for unemployment insurance
File grievances and be represented by the union (This may include binding arbitration and legal representation)	No voting rights in internal union elections
Day to day administration of the contract	Loss of death benefits
Ability to work under the National Maintenance Agreement and the National Construction Agreement	No union meetings
	No union social events

**What options does a member have with regard to the spending of union dues for political activities and lobbying?**

The United States Supreme Court, in *Communication Workers of America v. Beck*, held that employees do not have to pay “all” of the union dues in order to remain employed. The Court held that employees, if they chose, could become what are called “service fee” members instead of union members. This meant that the individual only had to pay the proportionate percentage of the dues that was used for “representational” purposes, such as collective bargaining negotiations, grievance and arbitration proceedings. Service fee members did not have to pay the proportion of the dues which was “non-representational,” including political, educational or lobbying contributions.

***Facts***

Out-of-state special interest groups are pushing to pass a falsely-labeled "right to work" law in Indiana. These groups claim such laws create economic prosperity, but many measures show Indiana's working families are better off than working families in states with RTW.

***Wages***

- On average, workers in states with RTW laws earn \$5,538 a year less than workers in other states.
- Overall, union members earn 28 percent (\$198) more per week than nonunion workers. Hispanic union members earn 50 percent (\$258) more each week than nonunion Hispanics and African Americans earn 29 percent (\$168) more each week if they are union members.
- Median weekly wages in 17 of the 22 states with these laws are lower than the \$714 median wage in Indiana.
- Indiana's manufacturing workers earn \$2.17 more an hour than the average manufacturing worker wage in states with "right to work" for less laws.

### ***Higher Workplace Fatality Rates***

- The rate of workplace deaths is 52.9 percent higher in states with RTW laws, according to Bureau of Labor Statistics data.

### ***Health Care***

- Indiana Workers are more likely to have insurance (14.2 percent are uninsured, compared with 16.7 percent in RTW states). So are our children (8.6 percent of Indiana children are uninsured, compared with 10.4 percent in states with these laws).
- Hoosiers are more likely to have job-based health insurance than residents in 17 of the 22 states with RTW laws. Overall, 64.3 percent of us have job-based health insurance, compared with 60.1 percent in states with these laws.
- Nationwide, 78 percent of private-sector union workers have access to medical insurance through their jobs, compared with 51 percent of nonunion workers. And 77 percent of private-sector union workers have 'access to guaranteed (defined-benefit) retirement plans through their jobs, compared with just 20 percent of nonunion workers.
- Nationwide, only 2.9 percent of union workers are uninsured, compared with 14.2 percent of nonunion workers.

### ***Pensions***

- Indiana Workers are more likely to have pensions. Only 43 percent of private-sector workers have employer-provided pension coverage in RTW states, compared with 53.1 percent here in Indiana.

### ***Education***

- RTW states spend \$2,671 less per pupil on elementary and secondary education than other states.
- Students here are more likely to be at grade level in math and reading. In Indiana, 35.1 percent of 8th grade students were proficient in math in 2007 (compared with 29.6 percent states with RTW laws) and 31.1 percent were proficient in reading (compared with 28.1 percent).
- States with these laws spend less to educate their children than we do in Indiana-\$9,005 on average for the 2008-2009 school year, compared with \$9,780 in Indiana.