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The Truth about “Right to Work” Laws

"We must guard against being fooled by false slogans, such as 'right to work.' It is a law to rob us of our civil rights and job rights... Its purpose is to destroy labor unions and the freedom of collective bargaining by which unions have improved wages and working conditions of everyone. Wherever these laws have been passed, wages are lower, job opportunities are fewer and there are no civil rights."

– Rev. Dr. Martin Luther King, Jr., speaking on right-to-work laws in 1961¹

Introduction

There are many misconceptions about “right-to-work” laws. This sounds like it would be a plus for working people. However, this term is misleading, and a distortion of the reality underlying it. Despite its name, right-to-work laws do not guarantee anyone a job, protect against unfair firing, guarantee equitable wages, or decent working conditions. By undermining unions and the ability of labor and management to bargain freely, right-to-work laws weaken the best job security protection workers have -- the union contract. Maine has rejected such a law a number of times in the past, including a 1948 referendum in which state voters defeated two different right-to-work proposals (see Maine history, below).

In the current political climate of austerity and concerns about the role of government, it is tempting to seize upon various proposals for addressing economic challenges. However, it is critical to explore whether states with right-to-work laws are better off or worse off than those states in which workers and employers are free to reach their own agreements through collective bargaining, the process through which a union and an employer negotiate a contract. In particular, given the evidence showing lower incomes and wages in states with such laws, one must ask whether having lower wages and reduced income for Maine workers is a desirable goal in state policy. **Also, the frequent claim by proponents that right-to-work laws will encourage more economic development is highly questionable.**

This paper will explore the following issues: a) what is meant by “right to work;” b) the legal issues involved in union membership and right-to-work; c) impacts of right-to-work laws, including comparisons of right-to-work vs. “free-bargaining” states, and d) the history of earlier right-to-work attempts in Maine.

What is meant by “Right to Work?”

Right-to-work laws affect the collective bargaining process between employers and employees in the private sector, and also can cover workers in the public sector. Through collective bargaining, employers and unions meet to negotiate a contract covering the terms and conditions of employment. Generally, both the employer and the union agree to all provisions in the contract before it is implemented. Union members also vote on whether to accept the contract, which covers wages, hours, benefits, working conditions, and other issues. Many unions and employers agree to include a “union security” clause, which says that all workers who receive the benefits of a collective bargaining agreement must pay their share of the costs of union representation. **A right-to-work law prohibits employers and employees from negotiating a union security clause.**

Under the legal duty of “fair representation,” a union must represent all workers in the bargaining unit fairly and equally, whether or not they belong to the union. In short, right-to-work laws allow workers to pay nothing and still receive all the benefits of a negotiated agreement. Currently, there are 22 states with right-to-work laws, mostly poorer states in the South or Midwest, with none in the Northeast.² These states also have lower unionization rates (see Table One).³

¹ Rev. Dr. Martin Luther King, Jr., 1961; quoted at: www.nathannewman.org/laborblog/archive/003608.shtml

² U.S. Department of Labor, Wage and Hour Division (U.S. DOL/WHD); “Table of State Right-to-work Laws as of January 1, 2009;” <http://www.dol.gov/whd/state/righttowork.htm>

³ U.S. Department of Labor, Bureau of Labor Statistics (U.S. DOL/BLS); “Table 5. Union affiliation of employed wage and salary Workers by state;” <http://www.bls.gov/news.release/union2.t05.htm>

An analysis of the consequences of right-to-work laws shows that they are unfair to workers who are paying dues in return for union representation and services. Such laws force unions to allocate their time and members' dues money to provide benefits to non-members who are unwilling to pay their fair share. This ultimately weakens unions and their ability to bargain collectively, as well as affecting the wages and working conditions of both union and non-union workers. **In essence, government would be interfering with the bargaining rights of labor and management to negotiate over the issue of union security.**

The term "right to work" also is highly deceptive, since it implies that workers are forced to join unions. This is not true. The U.S. Supreme Court has already ruled, in the 1963 case *NLRB v. General Motors Corp.*, that workers cannot be legally required to join a union as part of a collective bargaining contract.⁴

Unions, Fair Representation, Right to Work, and the Law

There is much misunderstanding of how unions work, along with other issues in the right-to-work debate. So it is important to clarify some basic legal context, including the legal duties of unions regarding workers, the costs and activities of union representation, and the definitions of union membership.

✚ Duty of Fair Representation: One of the principal functions of a labor organization is to represent everyone in the "bargaining unit" it represents, in negotiating and maintaining a collective bargaining agreement with an employer. **Under federal laws, unions are legally required to represent all workers covered by this agreement fairly, equitably, and responsibly, whether they belong to the union or not.** This responsibility is known as the Duty of Fair Representation (DFR), and a union can be sued for failing to meet its DFR responsibilities.⁵ The union also can be charged with an Unfair Labor Practice through the National Labor Relations Board, which enforces the National Labor Relations Act.

✚ Costs and Activities Involved in Union Representation: It may not be widely understood that the various activities involved in representing workers costs money. Negotiating a contract, maintaining and enforcing the contract, and representing workers in grievances, are all time consuming and expensive. To help cover these basic costs, members of a union often propose to include a "**union security**" clause in the contract. If the employer and the union agree, this clause requires that all employees in the bargaining unit should at least pay their fair share for the costs of the union representation activities to attain and maintain the wages, benefits, and working conditions that have been obtained through the union.

Right-to-work laws actually take away the right of labor and management to freely negotiate a union security clause. There is no "forced unionism" in free-bargaining states where workers and employers are able to work out their own agreements regarding union security, since **collective bargaining contracts cannot require a worker to join a union.**⁶ Also, a union cannot require an "objector" non-member to pay for any union activities "unrelated to collective bargaining, contract administration, and grievance adjustment."⁷

To summarize, unions are required under federal law to fairly represent all workers covered by a collective bargaining agreement, which protects and benefits both nonmembers and members.

⁴ *NLRB v. General Motors Corp.* (1963). See memo by NLRB Acting General Counsel Leonard R. Page, "Questions and Answers on Typical Union-Security and Beck Issues," 2001, www.lawmemo.com/nlrb/beck-qa.htm

⁵ The legal duty of unions to provide "fair representation" to all workers covered by a union contract was first established in a 1944 Supreme Court decision, *Steele v. Louisville & Nashville R. Co.* In 1962, the National Labor Relations Board (NLRB) adopted the doctrine of the duty of fair representation (DFR), previously developed by the courts. (Communications Workers of America; www.cwa-union.org/pages/Duty_of_Fair_Representation).

⁶ NLRB, Leonard R. Page, *ibid.* Workers who decide not to join the union are seen as "financial core members." While still entitled to the rights and protections provided by the collective bargaining agreement, they are not entitled to participate in internal union affairs since they are not full dues paying members. (*NLRB v. General Motors Corp.*)

⁷ *Communications Workers v. Beck* (1988). NLRB, Leonard R. Page, *ibid.*

Impacts of “Right to Work:” Comparisons of Social and Economic Well-Being

Governmental studies show that workers who belong to unions receive better wages, benefits, and working conditions than non-union workers.⁸ In addition, the standards attained in labor/management agreements also help to improve the wages, benefits and working conditions of non-union employees, by raising the state’s overall average weekly wage and benefit levels. **Over time, a right-to-work law is likely to undermine these wage and benefit gains, and prevent adequate representation for workers.**

It is also important to compare the social and economic well-being of families and workers in right-to-work states, versus states which allow employers and unions to negotiate their own contracts freely. There are a number of ways in which states are different on these issues (see Table One). This table shows the median weekly earnings, average annual pay, median income, and poverty rates for each state, and then calculates the average of these numbers for all right-to-work states, compared to all free-bargaining states.

First, the differences in worker pay levels between free-bargaining states and right-to-work states are quite evident. In 2009, the **median weekly earnings** of full-time workers in free-bargaining states (\$771) was **13.4** percent higher, on average, than for workers in right-to-work states (\$680).⁹ Similarly, the **average annual pay** for workers in all industries was 14.1 percent higher in free-bargaining states (\$44,707) than in right-to-work states (\$39,169).¹⁰

Household income figures show a similar contrast between these two groups of states. Among free-bargaining states, the **median household income** for 2009 (\$52,513) was again **13.4** percent higher for “free bargaining” states (on the average) than for right-to-work states (\$46,328). The figures for Maine in particular show that our state’s median household income was \$47,502 in 2009, higher than the median income in right-to-work states, taken as a whole, by \$1,174.¹¹

Proponents for right-to-work laws often argue that a right-to-work environment will help to attract industry and encourage economic development. However, the evidence supporting this is inconsistent, and other evidence does not support this claim. For example, in the most recent rankings available from the Corporation for Enterprise Development (CFED), **Maine’s business creation rate, or the number of establishment openings for every 1,000 workers in the state, was ranked as the ninth highest in the U.S.** (in 2007), and was substantially higher than the average right-to-work business creation rate.

These figures show that there were **13.1** businesses opened for every 1,000 workers in Maine, compared with only 10 businesses opened in right-to-work states, on the average.¹² By this measure, Maine is already in a healthier economic place than 16 out of the 22 “right-to-work” states. **Is it worth the risk to move Maine into the category of right-to-work states which are struggling to attain economic well-being?**

Another empirical study offers more evidence that right-to-work laws are not a solution for promoting economic growth. In a careful economic analysis, Kenneth Sanford and Kenneth Troske found that states with right-to-work laws were actually worse off in terms of their state’s Gross State Product per capita

⁸ U.S. DOL/BLS; “Union Members Summary: Union Members -- 2009.” Table 2: “Median weekly earnings of full-time wage and salary workers by union affiliation and selected characteristics;” 1/22/2010.

www.bls.gov/news.release/union2.t02.htm

⁹ U.S. DOL/BLS; “Highlights of Women’s Earnings in 2009;” June 2010. Table 3: “Median usual weekly earnings of full-time wage and salary workers, by State and sex, 2009 annual averages.” www.bls.gov/cps/cpswom2009.pdf

¹⁰ U.S. DOL/BLS; calculations from Quarterly Census of Employment & Wages. In addition, **private sector annual hourly earnings** in 2009 averaged **\$20.04** for workers in “right-to-work” states, and **\$22.54** for workers in “free bargaining” states”. www.progressillinois.com/quick-hits/content/2010/09/16/earning-less-right-work

¹¹ www.census.gov/hhes/www/income/data/historical/household/H08_2009.xls

¹² Corporation for Enterprise Development (CFED), “2009-2010 Assets and Opportunity Scorecard: Business Creation Rate”, http://scorecard.cfed.org/business.php?page=business_creation_rate

(GSP).¹³ In discussing the results of their “regression analysis,” they state that the most important predictors of income in a state are not “business climate” factors, but a state’s “stock of knowledge,” such as the educational levels of the state’s residents. They also concluded that **“states that became right-to-work states tended to experience slower growth after adopting right-to-work legislation.”**¹⁴ [emphasis added]

Lastly, Table One shows a strong contrast between free-bargaining states and the right-to-work states in terms of poverty rates.¹⁵ **It is notable that fully half of all right-to-work states – 11 out of 22 – have poverty rates over 15 percent.** The average poverty rate for all of these states combined is also 15 percent. In contrast, only six of the 28 free-bargaining states have poverty rates over 15 percent, and the average for this group is 12.8 percent. Although many factors probably contribute to the high poverty rates in these right-to-work states, these data do suggest that right-to-work laws may have negative economic impacts.

To summarize, these data clearly suggest that becoming a right-to-work state is not likely to result in a healthier or stronger economy. On the contrary, it may risk a downward slide into a more depressed economy, with higher poverty rates. **If passed, a right-to-work law could encourage “low-road” employers to offer even lower wages and fewer benefits, to an already distressed population of workers in Maine.**

As noted, the wages paid in right-to-work states, on the average, are substantially less than in states free of these highly restrictive statutes. Furthermore, despite the claims of right-to-work proponents, **these lower wages are NOT simply explained by differences in the cost of living in these states**, as shown by a controlled study by the Economic Policy Institute.¹⁶ Low wages also have negative impacts on the state’s economy and standards of living. People with low incomes have little money to buy goods and services, or to pay taxes. Low tax revenues lead to a reduced quality of public services involving education and health care, which can prevent a state from attracting business and industry needed to create jobs and economic growth.¹⁷ Thus, a so-called right-to-work law can hurt the **entire economy** of a state.

History of Previous “Right to Work” Attempts in Maine

Since the passage of the Taft-Hartley Act in 1947, which contained a provision allowing individual states to adopt so-called “right-to-work” statutes, there have been five attempts to adopt this type of legislation in Maine. The first attempt (1948) ultimately was defeated through a public referendum when Maine’s electorate voted by a margin of over two to one against two competing right-to-work bills.¹⁸ The next four attempts to adopt a right-to-work bill in Maine occurred in 1961, 1963, 1979, and 1999. Each time, these bills were defeated on a bipartisan basis.

It is both instructive and timely to review the positions of Maine’s prominent politicians and government officials regarding right-to-work:

¹³ Kenneth Sanford and Kenneth Troske; “Why is Kentucky so Poor?: A Look at the Factors Affecting Cross-State Differences in Income.” Kentucky Annual Economic Report, 2007: Center for Business and Economic Research; University of Kentucky, 2007; p. 8. GSP is the market value of the goods and services produced by the labor and property located in a State. cber.uky.edu/Downloads/Sanford&Troske07.pdf

¹⁴ Sanford and Troske; *ibid.* The negative regression coefficient for “right to work” was statistically significant.

¹⁵ U.S. Census Bureau, American Community Surveys, “Number and Percentage of People in Poverty in the Past 12 Months by State and Puerto Rico: 2008 and 2009.” www.census.gov/prod/2010pubs/acsbr09-1.pdf.

¹⁶ Lawrence Mishel, “The Wage Penalty of Right-to-Work Laws,” Economic Policy Institute, 2001. This multi-variate study controlled for the standard of living in each state. http://www.epi.org/resources/datazone_rtw_index/

¹⁷ Corporation for Enterprise Development (CFED), “Development Report Card for the States”, http://cfed.org/knowledge_center/research/DRC/

¹⁸ University of Maine Bureau of Labor Education (BLE), “Summary History on Efforts to Pass a Right-To-Work Law in Maine,” p. 2. This summary was based on the following sources: 1) Garland, Whitmore B., *The Right-To-Work Movement in Maine: A Study of Interest Group Technique, Master of Arts Thesis*, University of Maine at Orono, 1963). 2) *Register of All Bills and Resolves – History and Final Disposition – 1963, Maine State Legislature.*

Margaret Chase Smith: “I am opposed to the Barlow (right-to-work) bill as I do not think it is workable or sound.” (Maine State Labor News, September, 1948).

Maine Attorney Sidney Wernick labeled the Barlow bill as a “deceptive measure” which he said is designed to “trick Maine voters into destroying Maine unions and fundamental American liberties.” (Maine State Labor News, February, 1948.) Also, he pointed out that “this bill is misleading and unconstitutional.” (Maine State Labor News, August, 1947).

In March of 1961, a right-to-work bill was killed in the Maine Legislature by a Republican caucus. Governor John H. Reed, stating that “he opposed the right-to-work bill,” told a T.V. audience Wednesday evening, March 29, 1961, that “he was gratified with the action taken by the House Republicans Tuesday night.” (Daily Kennebec Journal, March 30, 1961).

Marion E. Martin, Former Commissioner, Maine Department of Labor and Industry: “Any individual might and frequently does prefer working for an employer who has a contract with the union because the working conditions generally are better. These conditions are the result of a contract entered into by the free will, and I emphasize this, the free will of the employer and the employees. I question the right of any one or a number of individuals to upset such contracts and to create labor unrest and discord where labor-management relations are excellent.” (From speech before Chamber of Commerce, Presque Isle, January 7, 1963).¹⁹

Conclusion

Although many proponents argue that right-to-work laws are important for business development and state economic well-being, the evidence does not support this claim. In reality, these laws serve no other purpose than to weaken unions. This is explicitly recognized in much economic analysis of right-to-work. As one scholarly article from the Journal of Law and Economics stated, “**We agree with the dominant opinion in the RTW literature that right-to-work laws are passed ‘to make unions more insecure – to slow down or halt the rate at which unions are organizing and to destroy existing unions.’**”²⁰ Ultimately, the phrase “right to work” has been found to be so misleading and confusing that the Supreme Court of Idaho refused to permit the term as part of the title on a past initiative measure proposed to voters in that state.²¹

In the current conditions of a fragile economy, with many people already unemployed or in low-wage jobs, a right-to-work law would further undermine the precarious situations of thousands of Maine’s working families. This “flim flam” play on words actually represents a movement whose main purpose centers on lowering wages, restricting the rights of workers, and weakening the long standing principles of free collective bargaining in the U.S. Such a law could jeopardize Maine’s economic growth, and would only give workers the “**right to work**” for less.

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¹⁹ For more information on the history of Right-to-Work in Maine, refer to Charles Scontras, BLE, working paper in progress entitled: “Echoes From the Past: The Right-to-Work Movement in Maine, 1961 – 1979.”

²⁰ William J. Moore, Robert J. Newman, and R. William Thomas; “Determinants of the Passage of Right to Work Laws: An Alternative Interpretation.” Journal of Law & Economics, April 1974, 197-211, p. 198; cited in Thomas M. Carroll, “Right to Work Laws Do Matter;” Southern Economic Journal, Vol. 50: No. 2; October, 1983; p. 495.

²¹ Idaho Supreme Court, “Re Petition of Idaho State Federation of Labor (AFL)”, 1954, cited by Missouri Attorney General Chris Koster, “Opinion Letter No. 17-87”, 1987. <http://ago.mo.gov/opinions/1987/17-87.htm>

Table One: Indicators of Social and Economic Well-being, "Right-to-Work" vs. "Free-Bargaining" States

	Percent	Median Weekly	Average	Median	# of Quarterly Establishment Openings per 1,000 Workers*	Poverty
	Unionized,	Earnings, Full-Time	Annual Pay, All	Household		Rate,
"Right-to-Work" States	2009	Workers, 2009	Industries, 2009	Income, 2009		2009
Alabama	10.9	\$683	\$39,422	\$39,980	6.9	17.5
Arizona	6.5	\$735	\$42,832	\$45,739	10.4	16.5
Arkansas	4.2	\$596	\$35,692	\$36,538	9	18.8
Florida	5.8	\$704	\$40,970	\$45,631	13.7	14.9
Georgia	4.6	\$732	\$42,902	\$43,340	13.3	16.5
Idaho	6.3	\$653	\$34,124	\$46,778	15.2	14.3
Iowa	11.1	\$713	\$37,158	\$50,721	7.6	11.8
Kansas	6.2	\$685	\$38,154	\$44,717	8.7	13.4
Louisiana	5.8	\$650	\$40,579	\$45,433	8.9	17.3
Mississippi	4.8	\$595	\$33,847	\$35,078	7.5	21.9
Nebraska	9.2	\$688	\$36,644	\$49,595	8.8	12.3
Nevada	15.7	\$706	\$42,743	\$51,434	11	12.4
North Carolina	3.1	\$661	\$39,844	\$41,906	10.1	16.3
North Dakota	6.8	\$676	\$35,970	\$50,075	10.6	11.7
Oklahoma	5.7	\$625	\$37,238	\$45,878	8.9	16.2
South Carolina	4.5	\$648	\$36,759	\$41,101	8.8	17.1
South Dakota	5.5	\$628	\$33,352	\$45,826	10	14.2
Tennessee	5.1	\$637	\$40,242	\$40,517	6.4	17.1
Texas	5.1	\$661	\$45,692	\$47,475	7.7	17.2
Utah	6.9	\$714	\$38,614	\$58,491	13.7	11.5
Virginia	4.7	\$775	\$48,239	\$60,501	9.7	10.5
Wyoming	7.7	\$785	\$40,709	\$52,470	14.7	9.8
Average, Right-to-Work	6.6	\$680	\$39,169	\$46,328	10.1	15.0
"Free-Bargaining" States						
Alaska	22.3	\$879	\$47,103	\$61,604	12.3	9.0
California	17.2	\$803	\$51,566	\$56,134	9.7	14.2
Colorado	7.0	\$797	\$46,861	\$55,930	14.2	12.9
Connecticut	17.3	\$965	\$57,771	\$64,851	6.1	9.4
Delaware	11.9	\$754	\$47,770	\$52,114	11.5	10.8
Hawaii	23.5	\$696	\$41,328	\$55,649	7.8	10.4
Illinois	17.5	\$746	\$48,358	\$52,870	8.5	13.3
Indiana	10.6	\$714	\$38,270	\$44,305	7.4	14.4
Kentucky	8.6	\$654	\$37,996	\$42,664	7.9	18.6
MAINE	11.7	\$712	\$36,617	\$47,502	13.1	12.3
Maryland	12.6	\$857	\$50,579	\$64,186	9.4	9.1
Massachusetts	16.6	\$945	\$56,267	\$59,373	10	10.3
Michigan	18.8	\$771	\$43,645	\$45,994	8.6	16.2
Minnesota	15.1	\$801	\$45,319	\$56,090	10.3	11.0
Missouri	9.4	\$681	\$40,022	\$48,769	7.1	14.6
Montana	13.9	\$626	\$33,762	\$40,437	16.7	15.1
New Hampshire	10.8	\$839	\$44,932	\$64,131	11.1	8.5
New Jersey	19.3	\$886	\$55,168	\$64,777	9.7	9.4
New Mexico	6.7	\$694	\$38,529	\$43,542	9.8	18.0
New York	25.2	\$782	\$57,739	\$50,216	10.7	14.2
Ohio	14.2	\$707	\$40,900	\$45,879	7.1	15.2
Oregon	17.0	\$740	\$40,757	\$49,098	11.7	14.3
Pennsylvania	15.0	\$740	\$44,829	\$48,172	8.6	12.5
Rhode Island	17.9	\$789	\$43,439	\$51,634	12	11.5
Vermont	12.3	\$745	\$38,778	\$52,318	12	11.4
Washington	20.2	\$844	\$47,470	\$60,392	9.8	12.3
West Virginia	13.9	\$684	\$36,897	\$40,490	7.6	17.7
Wisconsin	15.2	\$744	\$39,131	\$51,237	6.7	12.4
Average, Free-Bargaining	15.1	\$771	\$44,707	\$52,513	9.9	12.8

DATA SOURCES: See footnotes #3, 9 - 12, & 15, respectively.

*Data for 2007.