



Freedom of Choice, Business Climates, and Right to Work Laws

Author:
Leo Troy

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NATIONAL INSTITUTE FOR LABOR RELATIONS RESEARCH

5211 Port Royal Road, Suite 510

Springfield, Virginia 22151

Tel: 703-321-9606

Fax: 703-321-7143

Research@nilrr.org

www.nilrr.org

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Contents

Title Page	i
Table of Contents	ii
About the Author	1
About the Organization	1
Executive Summary	2
Introduction: The Scope Of Freedom of Choice	3
How Do Right to Work Laws Apply to Freedom of Choice?	4
Do Right to Work Laws Affect Business Climates?	5

About the Author

Leo Troy is a professor of Economics at Rutgers University-Newark. He has published widely in the field of labor for more than half a century. His work has appeared in leading journals in the U.S. and the U.K. His recent books include *The Twilight of the Old Unionism* (M.E. Sharpe, 2004) and *Beyond Unions and Collective Bargaining* (M.E. Sharpe, 1999).

About the Organization

The National Institute for Labor Relations Research is an organization whose primary function is to act as a research facility for the general public, scholars and students. It provides the supplementary analysis and research necessary to expose the inequities of compulsory unionism.

The Institute is classified by the Internal Revenue Service as a Section 501(c)(3) educational and research organization. Contributions and grants are tax deductible under Section 170 of the Code and are welcome from individuals, foundations and corporations. The Institute will, upon request, provide documentation to substantiate tax-deductibility of a contribution or grant.

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Nothing here is to be construed as an attempt to aid or hinder the passage of any bill before Congress or any state legislature.

Executive Summary

The ideals of an open society require the protection of freedom of choice in personal, political and economic relationships. Federal policies that force employees to pay dues or fees to a union as a condition of employment directly restrict the individual employee's economic freedom. And their effective scope is actually much wider.

Union officials and the union bureaucracy routinely spend compulsory dues and fees to advance political and ideological causes that are at odds with the views of roughly 40% or more of forced-dues paying employees. Right to Work laws address such conflicts between individuals and unions by assuring individuals the right to decide for themselves whether or not to join or financially support a union.

Besides protecting personal freedom, Right to Work laws have a significant impact on business and economic behavior. No one seriously contests the fact that private-sector business and job growth are far more rapid in Right to Work states than in non-Right to Work states.

Right to Work laws are strongly correlated with faster growth in jobs, aggregate real personal income, and access to private health insurance, as well as other social benefits. While it is difficult to quantify the exact extent to which Right to Work laws are responsible for such trends, Right to Work laws alone are excellent predictors of "overall business climate favorability."

I. Introduction: The Scope Of Freedom of Choice

Freedom of choice encompasses, or should encompass, personal, political and economic relationships if it is to fulfill the ideals of the open society: “minimizing misrule and maximizing the freedom of individuals”¹ One of the most important relationships is between workers and their employers. When unions represent the workers, new dimensions are frequently introduced: compulsory membership, dues payments, and dues collections. The implications of these compulsory relationships are not limited to the employment relationship, but extend to personal and political freedom of choice.

This is so because unions, in their role as political institutions, challenge the open society goals of “minimization of misrule” and “maximization of freedom.” Union officials and the union bureaucracy routinely spend members’ compulsory dues and endorse political candidates and causes without regard to the political preferences of the membership. Even in the rare instances where union officials and bureaucracy avoid or claim to avoid spending employees’ dues or fees for political purposes, substituting funds raised from voluntary contributions, they endorse and support politicians and policies, again without consulting members.

Irrespective of the source and amounts of their financial assistance to preferred candidates and policies, unions provide in-kind contributions. Indeed, the value of unions’ in-kind contributions to favored candidates and policies dwarfs their reported political financial commitments. In testimony before U.S. Senate and House committees² and in publications, I have reported my estimate of in-kind contributions in presidential cycle years to be worth anywhere from “nearly \$300 million to \$500 million.”

Exit polls demonstrate that members are frequently at odds with the organization’s political endorsements. In 2004, President Bush received 40% of the votes from all union households and 38% of union members’ votes, according to the final estimate reported by CNN. Reagan received an even higher share of the union household vote 20 years earlier. If the voting profile of union households differentiated private- from public-sector union members, it would doubtless show Bush received well in excess of 40% of *private*-sector members’ votes in 2004. Reagan probably received over half in 1984. In the 1984 election, the media blurred private-sector union members’ voting preference by referring to Reagan’s union member supporters as “blue collar workers.”

¹ These expressions are derived from the work *Philosophy and the Real World: An Introduction to Karl Popper*, by Bryan Magee, ISBN: 0875484360 (Chapter 6).

² See, e.g., my testimony before the House Oversight Committee, March 21, 1996.

In contrast to the voting behavior of private union members, organized government employees doubtless gave Bush's and Reagan's opponents more than half of their votes. Right to Work laws address such conflicts between individuals and unions because they assure individuals the right to decide for themselves whether or not to join or financially support a union.

II. How Do Right to Work Laws Apply to Freedom of Choice?

Right to Work laws directly deal with compulsory union membership and dues. Their effective scope is actually wider.

Right to Work laws go to the heart of free choice in the governance of industrial relations. An opportunity for more open labor relations, and therefore in the wider sense for a more open society, appeared with the enactment of the first state Right to Work laws in the mid-1940's. Congress explicitly recognized states' authority to enact such laws when it amended the National Labor Relations Act in 1947. But the NLRA did not implement a federal policy of freedom of employee choice in union membership and dues payment. Instead, Congress left it up to the several states to implement that policy.

In states without Right to Work laws, collective bargaining agreements could continue to require membership in the bargaining representative, the union, as a condition of employment. Even in non-Right to Work states, the NLRA did nominally ban "closed shop" agreements requiring job seekers to join a union before they could be hired. But in practice it reinstated them with the euphemistic new label of "pre-hire agreements." The original and the amended NLRA exempted all public employees (and employees subject to the Railway Labor Act) from coverage. However, Right to Work laws have been interpreted to cover public employees of state and local governments.

The significance of the new policy of freedom of choice, authorized by states and sanctioned by Congress, can be assessed by contrasting the status of workers under collective bargaining agreements over the decade after the validation of the NLRA in 1937 to 1947, when the amended act was adopted over a presidential veto. During that decade, unions had almost unchecked power to deprive members not only of membership, but of their jobs. Under a union shop agreement, employment was conditioned on members remaining "in good standing." Workers could lose their membership in good standing not only by refusing to pay dues to a union they didn't want, but also by saying or doing anything that displeased union officials. Once an employee was deprived of membership status, a union could demand his dismissal, and under the law employers were compelled to comply.

Union officials could deprive members of their membership, and, therefore, of their employment, for any reason, however frivolous. Thus, with the sanction of government (unions could not violate the original NLRA, only employers could), in that era it could

reasonably be said that a union member had fewer rights with respect to his union than with respect to the government of the United States.³

The amended NLRA curtailed the power of a bargaining representative to deprive a worker of both his membership in good standing and his employment. Similar curtailment was imposed on employers. Nonetheless, it would take a hardy personality to challenge a wrongful action by the union. By flat-out denying unions the power to get employees fired, the presence of a Right to Work law obviates the playing out of such a scenario.

III. Do Right to Work Laws Affect Business Climates?

Beyond their effects on individualism, Right to Work laws have significant impacts on business and economic behavior. This section reviews empirical studies on their effects on business climates. Currently, 22 states have Right to Work laws.⁴ Additionally, there is consideration of these laws in at least a half-dozen state legislatures. A key issue in these considerations is the effect of Right to Work laws on business investment and employment: Do Right to Work laws play a significant role in convincing businesses to locate and/or expand in a particular state?

Two *opponents* of Right to Work laws, business professor Raymond Hogler and economist Robert LaJeunesse, have reported: “A number of studies present statistical data substantiating the point that right to work states create and retain more manufacturing jobs.”⁵

Their finding on manufacturing jobs applies to private-sector jobs in general. During the decade 1995-2005, private-sector employment increased more in Right to Work states, compared to non-Right to Work states (20.2% vs. 11.3%).⁶ Furthermore, reports of the U.S. Census Bureau indicate the number of people covered by job-based private health insurance grew faster between 1994 and 2004 in Right to Work states than in non-Right to Work states, 13.8% compared to 6.7%.⁷

However, it may be asked, are Right to Work laws an important factor promoting a favorable climate for business, or is the climate coincidental? In 1996, Dr. Thomas J. Holmes of the Federal Reserve Bank of Minneapolis examined the relationship between Right to Work laws and the overall business climate and found a high correlation between Right to Work legislation and a favorable business climate:

³ Under closed shop agreements, and continuing under “pre-hire agreements”, the union determines who is employed.

⁴ To view a map showing the current Right to Work states, visit <http://www.nrtw.org/rtws.htm> on the web site of the National Right to Work Legal Defense Foundation.

⁵ “Oklahoma’s Right to Work Initiative: Labor Policy and Political Ideology,” *Labor Law Journal*, Fall 2002, pp. 109-121.

⁶ See <http://data.bls.gov/cgi-bin/dsrv?sm> to locate annual employment data up through 2005 for the 50 states. Oklahoma, which adopted its Right to Work law in 2001, is excluded from this calculation.

⁷ See <http://www.census.gov/hhes/www/hlthins/historic/index.html>, Table HI-4, for state health-insurance data. Oklahoma is once again excluded from this calculation.

States that have right-to-work laws tend to adopt other pro-business policies compared with states that do not have these laws. . . . One well-known ranking is the one constructed by the Fantus company [now Deloitte and Touche's Fantus Corporate Real Estate Solutions]. . . . Though somewhat dated, the Fantus index was constructed in a more comprehensive way than more recent alternatives. Then ranking was based on 15 different aspects of state policy, including labor-market policies, unemployment compensation taxes, corporate income taxes, and so forth. The striking thing about [the Fantus index] is the extremely high correlation between business climate ranking and the presence of a right-to-work law. This occurs even though right-to-work law status counts for only one of the 15 different criteria in the index, and the 15 different categories were equally weighted.⁸

Last year, Stanley Greer, senior research associate for the National Institute for Labor Relations Research, updated and expanded upon Holmes' observation by reviewing recent surveys which rated business climates in states and/or metropolitan areas and found that: "every credible one shows jurisdictions where employees' Right to Work is legally protected clustered in the highest ranks."⁹

In particular, Greer cited a 2005 study conducted by *Forbes* that rated the attractiveness of large and smaller metropolitan areas "for business and careers." Economy.com of Westchester, Pennsylvania, and Bert Sperling, a consultant located in Portland, Oregon, assisted in that study. *Forbes* included business and living costs, assessed the education levels of the work force, the growth of jobs and income, patterns of migration, and quality-of-life issues. Significantly, *Forbes* found that "eight of the nine top-ranking large metro areas and six of the nine top-ranking smaller metro areas included in the study" were located in Right to Work states. Thus, Greer concluded that Right to Work laws by themselves are "excellent predictor[s] of overall business climate favorability."

More than 60 years after the first Right to Work laws were enacted, legitimate differences of opinion still exist about the extent to which they are responsible for the generally faster economic growth of the states where they are on the books. However, the evidence shows that Right to Work laws are strongly correlated with faster growth in jobs, aggregate real personal income, and access to private health insurance, as well as any number of other social benefits. As Aldous Huxley observed, "Facts do not cease to exist because they are ignored."

⁸ Thomas J. Holmes, "The Effect of State Policies on the Location of Industry: Evidence from State Borders," Federal Reserve Bank of Minnesota Research Department Staff Report 205, Minneapolis, revised September 1996, pp. 7-8.

⁹ Stan Greer, "The Economic Benefits of a Michigan Right to Work Law," National Institute for Labor Relations Research (NILRR), Springfield, Va., November 2005, p. 6. NILRR is affiliated with, but legally separate from, the National Right to Work Committee.



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THE PROBLEM

Organized labor has had a profound economic and political impact on the institutions of American power. Yet the far-reaching ramifications of that impact are largely unknown to the public. Academic interest in labor unions and labor relations is at its lowest point in decades.

While there has been a notable proliferation of private interest groups in recent years, none has exposed the excesses of America's union establishment from an academic perspective. Consequently, not enough light has been shed on one of the few remaining forms of tyranny left in America: compulsory unionism.

THE NEED

Labor policy in America has not reflected the will of its citizenry for decades because Big Labor's support in the academic community has allowed it to control debate. As a result, labor unions have not been subjected to the same degree of scrutiny as their counterparts in the corporate world.

In many cases, the interests and concerns of Americans who support the right to work without compulsion are ignored for lack of an academic support structure. Freedom of association has diminished because its proponents frequently are without the analysis and research necessary to effectively make their case.

Obviously, there is an urgent need for an organization that will draw together scholars and economists to perform objective and revealing research into the practices of America's labor unions. The National Institute for Labor Relations Research is such an organization.

THE PROGRAM

1. The Institute's primary function will be to act as a research facility for the general public, scholars and students. It will provide the supplementary analysis and research necessary to expose the inequities of compulsory unionism.

2. It will publish monographs, brochures and briefing papers designed to stimulate research and discussion with easy-to-read summaries of current events. The Institute will also conduct nonpartisan analysis and study for the benefit of the general public.

3. It will render aid gratuitously to individuals suffering from government over-regulation of labor relations and will provide educational assistance to those individuals who have proved themselves worthy thereof.

It is high time that self-interested union officials be confronted with the facts on how their brand of unionism has failed to improve general conditions for workers. With an intensive program of study and education, the National Institute for Labor Relations Research intends to do just that.

Contributions to NILRR Are Tax Deductible

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