

“Right to Work” is Still Wrong



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Introduction

While the Republican Party's Presidential candidate professed to be concerned somehow about fairness for employees during the 2016 campaign, the Republican Party's platform has expressed the exact opposite view. In short, the Republican Party has adopted an array of policies aimed at undermining workplace fairness in fundamental ways. For example, the Republican Party's platform attacks the use of the Fair Labor Standards Act¹ to protect employees, seeks to end prevailing wages under the Davis Bacon Act,² strives to abolish project labor agreements that have improved compensation and other working conditions across the country, and demands the enactment of a national “right to work” law.³

Vice President Mike Pence, who ushered in anti-labor legislation while Governor of Indiana, has been working closely with Speaker of the House Paul Ryan, another corporate-sponsored politician, to prepare and push through the Republican Party's policy agenda regarding workplace rights and responsibilities.⁴ A national “right to work” law sits high on that agenda.⁵

The public debate about “right to work” has often been as misinformed as the impact of such initiatives has been negative. Recent events in Indiana, Kentucky, Michigan, Ohio, and Wisconsin exemplify this reality. Therefore,

it is important to understand what “right to work” actually would mean for employees in Minnesota and elsewhere when evaluating the best way forward.

I. “Right to Work” Is Still Based On A Falsehood And Would Encourage Freeloading In The Name of Freedom

Many supporters of “right to work,” and even coverage by reputable media outlets, have regularly framed “right to work” laws as necessary so employees have the “freedom” not to be union members in a unionized workplace. Both Federal and State laws have long established, however, that employees do not have to be union members in a unionized workplace.⁶ In fact, both Federal and State laws enable employees to refuse to join unions at the outset of employment, or subsequently to withdraw their membership in a union that represents employees in their workplace.⁷

Importantly, a union has a legal obligation to represent the interests of employees who refuse to join, or who withdraw membership in, the union in a workplace where those employees' coworkers are members of that union.⁸ For example, unions still have to file and pursue grievances on behalf of non-union employees in a unionized workplace and to bargain with the employer regarding safety,

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wages, healthcare, and other terms of employment for those non-union employees just as unions do for its members.⁹

Because the vast majority of union dues go to representational activities, such as handling grievances and collective bargaining, both Federal and State laws recognize that non-union employees – who necessarily benefit from union representation in a given workplace – must still pay a portion of the union dues paid by union members.¹⁰ Otherwise, those non-union employees would be getting something – in fact, a lot – for nothing.

Nonetheless, employees who choose not to be in the union representing them and their coworkers often still end up being free-riders to a certain extent. For example, based on our observations, unions typically dedicate well over 90% of union dues to representational services as opposed to political or charitable contributions. Under existing State law, however, non-union public employees only have to pay – at the most – 85% of the union dues that their union coworkers pay.¹¹ In short, non-union employees in a unionized workplace receive all of the benefits of union representation while paying substantially less than their union coworkers for the same benefits.

II. The Practical Impact Of “Right to Work” Around the Country: Still Less Safety, Less Employment Opportunity, And Less Workplace Democracy

Given that employees already have the right not to be in a union despite working in a unionized workplace and, further, the right not to pay for political contributions by unions, “right to work” would change the law in only one meaningful way. Specifically, “right to work” would allow employees to receive *all* of the benefits of union representation without paying for *any* of those benefits.

The “right to work” approach, then, resembles allowing someone to opt out of paying taxes necessary to provide for first responders, safe roads, good schools, clean drinking water, and other public services that benefit everyone. Such a scheme makes no sense.

Besides creating basic unfairness, “right to work” has meant less safety, less employment opportunity, and less workplace democracy in States that have adopted such an approach. According to the data from the Current Population Survey of the United States Bureau of Labor Statistics, for instance, the rates of workplace injuries and deaths are much higher in “right to work” States.¹²

Government data also shows that wages are not only substantially lower in “right to work” States, but the wage gap between women and men and between people of color and whites is far greater there.¹³ These disparities exist after controlling for a full complement of individual demographic and socioeconomic factors as well as for macroeconomic indicators.¹⁴ In addition, fewer employees have healthcare coverage in “right to work” States according to a study by the Economic Policy Institute.¹⁵

Despite such “cost savings” for employers in “right to work” States, “right to work” laws do not boost job or income growth.¹⁶ Before Indiana adopted the “right to work” approach, the last State to do so was Oklahoma. Since adopting “right to work” a decade ago, Oklahoma has witnessed a 1/3 drop in manufacturing jobs and a 1/3 drop in new companies coming to the State to open businesses there.¹⁷ Not surprisingly, business surveys confirm that “right to work” laws rank low among the considerations for companies in deciding where to locate.¹⁸

“Right to work” laws have also compromised workplace democracy by silencing the voices of employees. Because of the free-riding “right to work” has caused, unions have less resources to give voice to employee concerns in the workplace and otherwise to advocate for greater fairness in the workplace and beyond.¹⁹ In that regard, it warrants emphasizing that unions played an instrumental role in passage of the Occupational Health & Safety Act, the Family and Medical Leave Act, and the Voting Rights Act, among other vital public policies codified by Congress or State legislatures.²⁰

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In addition, “right to work” States have unionization rates far less than what the popular will demands. Approximately 60% of employees want to belong to a union, but less than 6% are members of unions in “right to work” States.²¹ The unionization rate in free-bargaining States is generally higher than in “right to work” States, but it is still less than what employees want.²²

The democracy gap in the workplace should not be surprising given that employers fire or otherwise retaliate against

approximately 25,000 employees *each year* for supporting or seeking to join a union.²³ By contrast, there have been reportedly 12 instances of union coercion in obtaining signed union authorization cards in nearly **80 years** – that is, since Congress established the existing labor law regime.²⁴

III. The Nationally Coordinated Campaign For “Right to Work” Still Raises Concerns As Much About Democracy In The United States As It Does About Democracy In The Workplace

It is not mere coincidence that certain legislators from Minnesota to New Mexico and from Alaska to New Jersey are simultaneously demanding adoption of “right to work” provisions.²⁵ This effort has been coordinated and aggressively advanced by the American Legislative Exchange Council (“ALEC”), which absurdly has been designated a charity for tax purposes.²⁶

As the Minnesota Association for Justice recently documented, ALEC is a group that has been funded and led by corporations like Wal-Mart, ExxonMobil, AT&T, State Farm, Johnson & Johnson, and Koch Companies.²⁷ ALEC holds private meetings at luxury resorts for corporate agents and allied State legislators to draft pro-corporate “model” legislation that those State legislators then seek to pass in their respective States.²⁸ Approximately 20 legislators from Minnesota have been active recently with ALEC.²⁹

ALEC reportedly has over 1,000 of its “model” bills introduced in State legislatures every year, with one in every five actually becoming law.³⁰ ALEC’s arsenal of anti-employee “model” bills seek, among other things, to eliminate living-wage protections, prevailing-wage laws, and better minimum-wage standards.³¹

Among its anti-employee initiatives, ALEC has recently made “right to work” a priority just as the Republican Party overall has done. A consortium of purported charities like ALEC, including the Council of State Governments (“CSG”), have also dedicated considerable resources toward imposing similar pro-corporate laws in States across the country.³² Consequently, the “right to work” proposals around the nation have been strikingly similar.³³

In short, “right to work” not only threatens workplace democracy, it reflects the subversion of political democracy.³⁴ As the nationally coordinated “right to work” campaign illustrates, corporate agents now draft self-serving legislation in secret meetings with State legislators who, upon return to their respective States, essentially become lobbyists for the corporate funders and leaders of ALEC, CSG, and allied special interest groups. Such a campaign evidently serves the interests of the proverbial 1% rather than the general public.³⁵

Conclusion

“Right to work” is based on the falsehood that an employee working in a unionized environment must be a union member and pay for the union’s political contributions. Moreover, adoption of “right to work” nationally would likely cause a significant reduction in workplace safety, opportunity, and democracy – as has already occurred in States that have adopted “right to work” laws. In sum, the “right to work” scheme should be understood for what it is – a corporate giveaway contrary to the public interest and the general welfare. **T**



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