

## **'Right-to-work': The issue that won't die - A historical perspective**

Charlie A. Scontras, Special to the Sun Journal

Phoenix-like, "right-to-work" measures have again surfaced in the state Legislature. Such measures are designed to prohibit employers from negotiating union security clauses by which all who benefit from union bargaining agreements pay their share of the costs involved in the union's legal obligation to represent all workers.

The words "right-to-work" carry the emotional freight that one attributes to the personal guarantees associated with the Bill of Rights. In reality, they have nothing to do with the the idea that one has a right to a job.

The phrase "right-to-work" has been found to be so misleading and confusing, that in 1954 the Supreme Court of Idaho refused to permit the term to be part of the title on an initiative measure proposed to voters in that state.

In 1963, the U.S. Supreme Court ruled that workers cannot be legally required to join a union as part of the collective bargaining agreement. In addition (1988), a union cannot require a non-union member to pay for any union activity that is "unrelated to collective bargaining, contract administration, and grievance adjustment." Labor organizations, however, have long viewed those who do not share in the burden of collective representation at the workplace as freeloaders.

Critics of "compulsory unionism" offer a generic argument: "Who should decide which individual should join any organization? It is our individual and God-given freedom to choose for ourselves." This argument has a universal ring of truth. Individual choice, as generally viewed, is the essence of freedom. This brand of "right-to-work" advocate will also assert that he/she is not opposed to labor unions, but only "compulsory" union membership — a seemingly perfect marriage of individual freedom and collective action. For unions, however, this translates into acceptance of unions -- as long as they are powerless "paper tigers."

Others use the "right-to-work" argument as a means of taking the punch out of the labor movement's economic and political muscle. The "right-to-work" argument and the language of individual freedom serve as a thinly veiled ideological opposition to the collective voice of workers and the labor movement, a "deceptive misnomer," and a "loaded slogan aimed at killing labor unions." "Right-to-work" is a "right-to-wreck," measure, a "union busting" tactic, as well as a sanctuary for workers who evade personal responsibility for benefits gained through the collective efforts of others.

This thread of the tapestry of generic arguments in support of "right-to-work" is generally endorsed by those who view the labor movement as a challenge to employer's sovereignty over the workplace and find it expeditious to argue that the organized labor is the dialectical opposite of individual freedom, a favorable business climate, and economic progress.

In today's universe of the global corporations, global marketplaces, global factories, and global hiring halls, the "right-to-work" arguments are increasingly linked to employer demands for "flexibility," which often translate into demands for changes in union work rules, or no union presence in the workplace.

### **Controversy's roots run deep in state and national history**

The roots of the controversy reach deep into state and national history. Organized workers in Maine and the nation were longtime veterans of ideological opposition when, in 1903, a young National Association of Manufacturers coined the phrase "open shop." Helmsman of the organization, David Parry, announced that the principles and demands of organized labor were incompatible with the "individualistic social order," and that "the greatest danger" to it "lies in the recognition of the union."

His message was carried in the columns of the local press and adopted by the Maine members of NAM. Local "citizens' alliances" that heralded the open-shop message were laced together into the Citizens' Industrial Association of America, whose first leader was also leader of NAM. There was no mistaking the orchestrated effort of the business community to hobble the labor movement.

In 1920, American employers adopted the "American Plan," which supported the open shop and condemned the "un-American" closed shop, a phrase which clearly labeled "compulsory unionism" as being unpatriotic and a foreign import. In 1920, the Associated Industries of Maine, the first statewide organization of manufacturers, endorsed the open shop. Emblazoned on its letterhead, which read like a "who's who" of Maine industry, were the words, "We stand squarely for the American open shop." In the 1920s, local manufacturing centers, such as those in Lewiston and Auburn, that sought to attract industry by generating a "favorable business climate," echoed that sentiment and proudly boasted they were "union-free."

In 1921, the national Chamber of Commerce joined the crusade for the open shop and free labor. There was no mistaking the orchestrated effort of the business community to hobble the labor movement. Employer sovereignty over workers and the workplace was seemingly assured, and the enemy of individual freedom and economic progress shackled by the "American Plan." The calls for individual freedom of contract along with calls for limited government tended to tilt the economic arena into the hands of concentrated private power, which history has demonstrated could be as arbitrary and capricious as any unbridled government.

### **Taft-Hartley or 'Slave Labor Act'**

Twelve years after the passage of the National Labor Relations Act (1935) which served as the "Magna Carta" of the American labor movement, the "right-to-work" sentiment flowered with the passage of the Taft-Hartley law in 1947. Taft-Hartley restrained the collective strength of workers by, for example, prohibiting sympathy strikes, secondary boycotts, and secondary picketing, banned the closed shop and permitted states to ban the union shop by enacting "right-to-work" legislation. From the day of its enactment, organized labor referred to the Taft-Hartley law it as "The Slave Labor Act," and consistently fought for its repeal.

The reaction against organized labor penetrated the boundaries of Maine. In 1947 former Portland City Manager James E. Barlow spearheaded a drive in the Legislature for "An Act to Protect the Right to Work."

It was sweeping in nature since it would ban the closed shop, the union shop, and maintenance of membership contracts, and would make illegal secondary strikes and boycotts, sympathy strikes and jurisdictional strikes, the dues check-off system, and even picketing around agricultural premises. At the same time, Rep. Foster F. Tabb, R -Gardiner, reintroduced a bill which would have outlawed the closed shop, but was amended to permit the union shop. The Barlow measure was defeated, but the Tabb bill was enacted. Under the state constitution, the Barlow bill was to have been submitted to the electorate.

Union attorneys maintained that both the Tabb and Barlow bills should be on the referendum ballot since the Tabb bill was an amended version of the Barlow bill. The state Supreme Court agreed. On Sept. 13, 1948, against a background in which Maine citizens had been showered with unprecedented, nonstop partisan messages to win their "hearts and minds," the controversial and contentious measures were defeated by a 2 to 1 majority.

The contemporary "right-to-work" movement, linked most closely to the National Right-to-Work Committee which was organized 1955, is a descendant of the open shop and the "American Plan" of earlier years. By August 1956, its educational radio series entitled "The Blessings of Liberty" which touted the virtues of right-to-work, aired on Maine radio stations. In January 1958, state labor officials expressed concern that "there were indications that there will be another attempt to pass another "right-to-work" bill, while the Maine State Labor News noted that a "Right-To-Work" effort was launched in a "score of state capitals" via the initiative and referendum route.

As if to lend credence to such concerns, the NRWC appealed for financial support for its cause and its educational program to supply students with "factual documented informational material to offset" the propaganda of its opposition. Plans were laid for a "Right-to-Workshop" meeting which was expected to bring together "right-to-work" advocates from the entire continent.

### **1960 and winter of labor's discontent**

By the winter of 1960, Maine labor officials expressed alarm at the activities of the National Association of Manufacturers and the Chamber of Commerce which were "madly running around setting up schools, not only for management personnel, but employees in the plants." Literature from the NRWC e.g. reached Maine. This included pieces such as, "A Labor Government In America?" which advocated freedom from union bosses and their political ambitions of "political supremacy," and called for workers to join its "fight to outlaw compulsory union memberships and restore to American workingmen their freedom of choice."

A statewide organization, Maine Citizens for Right-to-Work, was created in the early 1960s, and the disciples of "right-to-work" reminded all of its presence as new "right-to-work" measures were launched, but were defeated.

The arguments for and against “right-to-work” don’t change much, but the political winds do. Witness, for example, a glance at the roster of those in opposition to the “right-to-work” proposals of the 1960s: Republican Gov. John Reed; Republican Marion Martin, commissioner of Labor; Reed appointee, Lloyd K. Allen, Maine commissioner of economic development; Republican Sen. Margaret Chase Smith; Republican Congressman Stanley Tupper; Democratic Sen. Edmund Muskie; state leaders of both political parties, church leaders who believed “right-to-work” legislation violated Christian principles of industrial democracy, and spokespersons for some Maine manufacturers.

The NRWC proved its commitment to its cause. In 1968, the National Right-To-Work Legal Defense and Education Foundation, Inc. contacted Maine firms in its struggle against “compulsory unionism.” In 1974 the “fair share” contract provision, requested by the Maine State Employees Association in its first contract, failed to win passage on the grounds that it interfered with freedom of choice.

In 1975, labor leaders reported that the NRWC was “stepping up its campaign in Maine.” In the fall of 1977, the Maine AFL-CIO took note of the “considerable evidence” in the form of questionnaires and mail which was “flooding the state” and that the NRWC “may be considering Maine as a prime target” to launch an effort to ban “compulsory unionism.”

In 1979 Maine was targeted once again, and discussions of “the evolving threat of the New Right” filled the air. In January 1979, a state right-to-work chapter of the New England Citizens For-Right-To-Work had been organized, but was unsuccessful in securing its legislative goals in Maine.

The volatile issue surfaced again in 1981 when four “right-to-work” measures were introduced but failed to pass.

In 1990 the NRWC wrote to local unions seeking to disengage members from their own organizations. Legislative skirmishes involving “right-to-work” efforts resurfaced again in 1999.

In 2003, during the administration of Democratic Gov. John Baldacci, advocates of public unionism for state employees were able to secure “fair share” contributions from all new hires. Two years later, a new contract required all state employees to join the union or pay dues. That rekindled the flame of right-to-work opponents, and the 10,600 members of the MSEA and the 1,160 members of the AFSCME braced themselves for a new round of ideological resistance as the National Right-To-Work Legal Defense Foundation filed suit in the U.S. District Court in Portland in 2005 on behalf of state employees who refused to pay their “fair-share.”

The court ruled that the Maine State Employees Association protected the constitutional rights of all the state workers when it incorporated service fees as an integral part of its collective bargaining agreement. While it became illegal in 2007 to fire a public employee because of refusal to pay a service fee, the state itself could collect the fee, a gesture that was repugnant to advocates of individual choice and the “involuntary garnishment of wages.”

In 2011, with the blessings of Republican Gov. Paul LePage, the “right to work” movement once again emerged with full legislative force in Maine. Its current expression can be found in the four “right-to-work” measures now before the Legislature.

For organized labor, “right-to-work” legislation undermines the ability of labor and management to bargain freely, and thus serves to “weaken the best job security protection workers have -- the union contract.” For advocates of the labor movement, only the collective mind, muscle, and voice of workers can protect and enhance their interests, since isolated individuals are powerless to realize systemic and policy changes that affect their lives.

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