Right To Work Legislation

Overview:

Before the 1930s there were few laws regulating the employer-employee relationship. At the time leading to the twentieth century in America, most workers were in a position of bartering for their labor in anything but an Adam Smith free market. History is replete with examples of where this type of labor market did not work to the benefit of the worker because the market favored the employer. What eventually followed was a condition that led to riots and strikes beginning with the 1892 Homestead Strike at Carnegie Steel and the Pullman strike a year later. This environment led to workers organizing and forming unions. The National Labor Relations Act of 1935 (Wagner Act) was the first major piece of legislation affecting the worker-employee relationship. The Wagner Act allowed union representation where a small majority of union members could force workers to join the union or lose their jobs. The “closed shop”, permitted under the Wagner Act, allowed the union to control who was hired since union membership was required for employment. Union power grew with several large strikes after WWII. The 80th Congress in 1947 enacted the Taft-Hartley Act in an effort to reign in some of the union power. Section 14b of the Taft-Hartley Act allows the states to pass right-to-work laws which outlaw union shop collective bargaining agreements.

While the 1935 National Labor Relations Act allowed unions to collectively bargain for private sector workers, unions did not represent public sector employees until Wisconsin enacted collective bargaining laws covering public sector employees in 1959. According to the American Bar Association, ten states do not have laws addressing collective bargaining of governmental workers or expressly prohibit it. Around 1970, according the Bureau of Labor Statistics, unions represented 1/3 of the private sector employees. With a decline in numbers in private sector membership and steady growth in the public sector unions; today only about 7% of private sector employees are union members while about 36% of public sector employees belong to unions. Taken together, according to the Department of Labor Statistics, in 2013 12.3% of private and public Wisconsin workers were members of unions.

In the Wisconsin legislative session of 2011-12, Wisconsin addressed collective bargaining of most governmental workers in Act 10. Various public safety employees were not covered by the passed legislation. Wisconsin is now in a position to examine the possibility of enacting RTW legislation affecting the private sector unions.

Liberal View:

The Liberal view is that it is the role of government to protect the worker from corporations and business owners seen by the liberal as driven solely by profit. Unions are then seen as a right bestowed by government in order to empower the laborer. They see right-to-work laws as an attempt to weaken the unions financially and reduce the collective bargaining influence.

Conservative View:

The Conservative view is that workers have a right, both morally and legally, to join a union. The worker, however, also has the right to refuse to join a union and to refuse to contribute financially to union activities that they do not support.

Pro Right to Work:

- Citizens should have the right to choose whether or not to join a union.
- Workers should be able to elect not to financially support positions with which they disagree.
- Right-to-Work laws will attract manufacturers to the state.
- RTW will make unions more accountable because unions will have to actively recruit workers through showing value.

Con Right to Work:

- Right-to-work states have lower wages on average than states without right-to-work laws.
- RTW will lower wages and benefits of workers and will generally lower the standard of living.
- Weakens workplace protections
- Unions providing bargaining for workers will benefit those non-union and non-contributing workers (free riders).
- Right-to-work laws will not attract new jobs to the state.

Existing Law:

There are currently 24 states that have right-to-work laws and all have had to conform to the individual state constitutions.

SCOTUS Rulings:

1937 - Virginian Railway v. System Federation
https://supreme.justia.com/cases/federal/us/301/1/case.html

> The court held that the employer had an obligation to meet with the representative of the union, precluding a “company union”.

NLRB v. Jones & Laughlin Steel Corp
https://supreme.justia.com/cases/federal/us/301/1/case.html

Relates to interstate commerce and to the right of employees to self-organize

1949 - Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525
http://www.oyez.org/cases/1940-1949/1948/1948_47

The Court ruled that state Right- to-Work laws are constitutional.

1949 - Algoma Plywood Co. v. Wisconsin Bd., 336 U.S. 301
https://supreme.justia.com/cases/federal/us/336/301/case.html

The Court held that the National Labor Relations ("Wagner") Act permitted state Right-to-Work laws even before Congress passed the 1947 Taft-Hartley Act amendments. “the bill does nothing to facilitate closed shop agreements or to make them legal in any State where they may be illegal;… it does not interfere with the status quo on this debatable subject”

1954 - Radio Officers' Union v. National Labor Relations Board, 347 U.S. 17
https://supreme.justia.com/cases/federal/us/347/17/

The Court ruled that compulsory unionism agreements may not be used "for any purpose other than to compel payment of union dues and fees," that is, that employees may not be required to be formal union members and abide by internal union rules to keep their jobs.

1963 - National Labor Relations Board v. General Motors, 373 U.S. 734
https://supreme.justia.com/cases/federal/us/373/734/

The Court reiterated that the "union shop" is "whittled down to its financial core," that is, unions may require payment of initiation fees and dues as a condition of employment, but may not require formal membership.

1977 - Abood v. Detroit Board of Education, 431 U.S. 209
https://supreme.justia.com/cases/federal/us/431/209/case.html

The Court unanimously agreed that "a union cannot constitutionally spend [objectors'] funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative."

1984 - Ellis v. Brotherhood of Railway, Airline and Steamship Clerks, et al.
http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=466&invol=435

> “When employees object to being burdened with particular union expenditures, the test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.”

1986 - Chicago Teachers Union v. Hudson . .
https://supreme.justia.com/cases/federal/us/475/292/

> Court held that under an agency agreement, procedural safeguards are necessary to prevent compulsory subsidization of activities of the union which the non-union objector may find objectionable.

1988 - Communications Workers v. Beck
http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=487&invol=735

> "..authorizes the exaction of only those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'"….As a result, private sector employees have the same right not to subsidize union non-bargaining activities as railway, airline, and public employees, and are entitled to the procedural protections outlined in Chicago Teachers Union v. Hudson.

1998 - Marquez v. Screen Actors Guild
https://supreme.justia.com/cases/federal/us/525/33/case.html

> The Court declared that, if a union negotiates a compulsory unionism provision, it must notify workers that they may satisfy its requirement merely by paying fees to support the union's "representational activities" in collective bargaining and contract administration without actually becoming members.

2014 – Harris v. Quinn
http://www.politico.com/story/2014/06/supreme-court-harris-v-quinn-ruling-108428.html#ixzz3NzUfPiMy

> June 2014--By a 5 to 4 vote, the Justices ruled that home health care workers in Illinois did not have to financially support a union they did not wish to join. Justice Alito said “…no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support.”

Additional Reading:

New Hampshire Union Leader Charles Grubbs opinion piece:
http://www.unionleader.com/article/20130214/OPINION02/130219608/0/news01

Economic Policy Institute: Ross Eisenbrey http://www.epi.org/people/ross-eisenbrey/

Economic Policy Institute: http://www.epi.org/issues/right-to-work/

Economic Policy Institute: Gordon Lafer http://www.epi.org/files/2011/BriefingPaper326.pdf

Constitutionality:

The constitutionality of right-to-work laws has been established and about half of the several states already have these laws in place. RTW laws assure freedom of association and freedom of choice with respect to one's labor.

Relationship to the Founding Principles of the Republic:

Right-to-work legislation is a state's right and a right of every citizen.

Effect on Wisconsin:

Most proponents of right-to-work laws predict that a state will be more attractive to manufacturers when workers have a choice to belong to a union. To some extent this is probably true, however many studies point out that there are many factors influencing location of a business. After examining studies on the effect of RTW laws on recent states that adopted them, it appears that large economic changes are not likely initially.

Position of WiGOL:

The Wisconsin GrandSons of Liberty believes in free markets, the limited role of government adhering to the principals of the Constitution, state's rights and the right of personal freedom. We base our position concerning RTW laws on the above attributes. One could argue that the initial formation of a labor union was an attempt to create a free market of labor with the collective of workers bargaining with the employers. However, in the 1940s the power shifted considerably in the union direction, and after WWII several national strikes adversely affected the general population. In 1947 the Republican controlled 80th Congress enacted the Taft-Hartley Act with language that allowed individual states to legislate right-to-work laws. Over the next forty-five years 21 states enacted RTW legislation, however, during the last 20 years only 3 additional states were added; Michigan being the last.

Right To Work Legislation

Wisconsin has addressed most issues relating to public sector labor unions with the passing of Act 10, and now is in a position to examine the issues concerning the unions that represent the private sector. In Wisconsin, for the most part, the private sector unions can be divided into those representing workers who work in the service industry, manufacturing and those working in the construction industries. This is an important distinction because the construction industry unions have evolved into a system that trains and often employs workers, supplying them on a contractual basis. Additionally, it seems logical to argue that union membership of the service and construction industries has little effect on growing the number of jobs in those fields or attracting new businesses to Wisconsin. However, having RTW laws in Wisconsin could attract a manufacturer willing to compete with a union attempting to organize a shop. In every case RTW would give workers the choice to join a union only if they found it beneficial for them. The private sector unions also deal with the provision of health insurance, retirement accounts, vacation pay and base pay.

Most proponents of right-to-work legislation believe that the buying power and living conditions in a state will increase as new industries enter the state because of the labor force and wage environment. Most opponents argue that wages will decline and the quality of the workforce will deteriorate. For the sake of argument, let's predict that neither extreme will happen and that the effect of RTW in Wisconsin will be neutral on attracting new businesses, worker wages, quality of workforce and buying power of households. Then going back to the original principles of freedom that we hold, the argument becomes a moral one. We base our position on the right of the worker to be free to choose union membership without coercion, and the freedom to choose whether or not to support certain activities of a labor union. We also stress that all workers should have this basic freedom. The Wisconsin GrandSons of Liberty believes that a very deliberate and well-planned process should be started in the Wisconsin legislature that would eventually result in right-to-work legislation for all private sector workers. We see this as a necessarily slow process because of the complexity of training and transitioning this segment of Wisconsin's workforce. Careful planning would result in a law that would cover all private sector workers without the need to exclude those in any particular industry.