

Right-to-Work Laws Revisited: Implications for Human Resource Professionals

**David M. Savino
Ohio Northern University**

After several decades of relatively little movement in the area of Right-to-Work (RTW) laws, the last few years have been very active, as it has reached the top of many political agendas of Midwestern states located in what is known as the rust belt region. With the increased activity of the passage of RTW laws in three Midwestern states over the last four years increased attention is now being paid to the current phenomenon as well as prospects in other industrial states where unions are still very much present. This then brings the key issue to mind as to why this is now occurring and what implications it has on the state of the worker-management relationship for the future.

Keywords: right-to-work, employment labor law, worker rights, union security agreements, taft-hartley act

INTRODUCTION

Despite the spirited opposition of President Truman in 1947, a proposed law known as the Labor-Management Relations Act, also known as Taft-Hartley, was passed by Congress. It was the will of Congress to ultimately see the bill become law despite President Truman's veto of the bill's initial offering. For a significant period before the Taft-Hartley Act became law labor unions and workers had a decided advantage in their relationship with their employers. The National Labor Relations Act of 1935, also known as the Wagner Act, created what many believed was an unfair advantage that developed an out-of-balance working relationship that favored unions. To some extent, this was generally accepted at the time to deal with the effects of the Great Depression as well as the rebuilding of the average American's confidence in the future during poor economic times. Besides supporting the rights of the workers the programs of President Roosevelt's New Deal addressed uncertainties in banking, the stock market, and farming. However, twelve years after the passage of the Wagner Act and with the end of World War II the time seemed right to solidify the rights of management in the post-war economy of the late 1940s. The passage of the Taft-Hartley Act in 1947 seemed to signal a better balance of power between the key parties in the economy with legal remedies offered to both union and management when it came to the rights of each side as well as the ability to pursue accusations of unfair labor practices committed by the other side.

After the Wagner Act had established the right to organize unions, file unfair labor practices against management, and the protective oversight of the National Labor Relations Board (NLRB) the Taft-Hartley Act conversely outlined management rights, the ability to file unfair labor practices against unions, and workers and the very subtle mention of various management rights that encouraged limiting union power and union reversals. Although vague in its description it soon became clear the Taft-Hartley Act provided opportunities to facilitate union decertification and the intention to cede authority to the States in matters

of union membership and employment contracts (Roudebush, 2014). Although it is obvious that the Taft-Hartley Act did not create the concept of Right-to-Work states, since Florida enacted its law in 1943, it was very clear that the movement was given the green light to continue as ten states already had enacted Right to Work laws (Pearson, 2012). The early states that enacted RTW laws were mostly located in the southern, southeastern, and some western sectors of the United States where industry was not prevalent, and unions were not known to exist in great numbers or to have any real economic power (Hicks, 2012). Many saw the adoption of RTW laws in these areas as a way to minimize the chance of sustained unionization efforts along with the chance of inflaming racial tensions especially in the Deep South (Roudebush, 2014). After the initial flurry of around the time of the passage, the Taft-Hartley Act very few states passed RTW laws from 1955 to 2012 (National Right to Work Committee, 2015). However, since 2010 the existence of employment concerns, the Republican victories in the midterm elections, and the presence of several vocal Midwestern Republican governors have all served to reinvigorate interest in RTW legislation (Roudebush, 2014).

THE RIGHTFUL CLAIM TO LIBERTY

Over the years it has been very interesting to witness the respective claims made about the rights of workers and management as participants in our economic system and the nature of work and its structure. Both sides seem to have a claim to the high ground of individual liberty as related to their positions in the relationship. While unions like to portray collective bargaining as a basic civil liberty akin to rights such as the freedom of speech and religion, management sees the exemption from compulsory union membership as advocated by RTW laws as a way to battle the loss of individual liberty and to guarantee freedom of association (Barro, 2011; Roudebush, 2014).

For unions, the concept of collectivism has served them well in terms of real and perceived strength along with bargaining power. Senator Robert Wagner of New York, who was the sponsor of the Wagner Act, believed that workers needed to have the freedom to join together and enjoy the benefits of collective bargaining (Roudebush, 2014). Despite this, Americans seem to favor individualism in the workplace and view RTW laws as limiting a real loss of individual choice. A recent Gallup poll indicated that 71 percent of American workers favor RTW laws and value the idea that they have a choice of where their money goes versus being required to pay union dues (Sherk, 2014). Over the years many believe that the Taft Hartley Act used regulation to curtail union domination of a worker's economic life (Roudebush, 2014).

RIGHT-TO-WORK LAWS: EQUALITY AND EQUITY

Since the passage of Wisconsin's Right-to-Work (RTW) law early in 2015, the question continues to arise as far as the lasting effect of such regulation on the quality of the working relationship and the general implications on the notions of equality and equity. The forces seen in Wisconsin to pass RTW in 2015 were driven to a great extent by the reaction to the generous benefits given to its public employees while the state budget was clearly in crisis several years before (Barro, 2011). Although the political pronouncements and policies in Wisconsin all suggested freedom and choice for the workers the feeling is that in no small part it was driven by the need of Governor Walker to fuel his political need for power in his state as well as his national aspirations in the 2016 presidential election (Booth, 2015).

The role played by RTW laws is an interesting one when considering the economic realities in the states where they exist. There seems to be a legitimate concern on the part of some as to how these laws increase the economic divide between the American middle class and the economic elites (Checchi et al., 2008). Strong unions are thought to help to level the playing field through standardizing compensation, negotiating more generous wages for lower-paid workers, and enforcing demands of wage equity across the range of the average workers to corporate leaders and stockholders (Kogan, 2015). RTW laws may seriously threaten workers as to how they are to successfully make wage gains, sustain themselves and counteract the destabilization of the middle-class which perpetuates the gap between the haves and have-nots (Booth, 2014). While there is strong evidence that the passage of the RTW laws has contributed greatly to general

economic inequity through the steady decline of the power of organized labor in the American private sector over the last sixty years, many believe that other factors are just as important. Much of the inequality and inequity seen has also been brought about by anti-labor public policy, globalization, deregulation, immigration, technological change, and the evolving norms of executive compensation (Hacker and Pierson, 2010; Krugman, 2007). Also, not to be ignored is the phenomenon that several have noticed that American workers of the 21st Century are less inclined to join groups or organizations. In an unusual observation of American social patterns, Robert Putnam (2001) found that while many Americans still bowl they prefer to do it alone and not in leagues as in the past in addition to not joining service organizations, recreational groups leagues, and civic organizations as did previous generations.

Foreign companies such as Volkswagen continue to invest in facilities in RTW states in the South and have a relatively free hand in paying wages that are lower than in the traditional industrial states which have encouraged several northern states to pass RTW laws just in the past few years (Gordon, 2014). RTW Laws may not only put downward pressure on wages, but it also causes some more qualified workers to migrate to other states where wages are higher in addition to eroding the purchasing power of those who stay behind (Chowdhury, 2015). Despite this the workers at the Volkswagen plant in Chattanooga, Tennessee voted down the United Auto Workers bid to unionize the plant in early 2014 (Walker, 2014). So it seems that many workers agree with and support RTW situations and to some extent see unions as a detriment to economic development.

On the other side of the argument, evidence has been forwarded which suggests positive and significant gains for the states that have RTW laws. Several studies have found that RTW states have some definite advantages based on several metrics. For example, RTW states have performed well since 1990 with gains in total employment, population, and nominal personal income (Hicks and LaFaive, 2013). Gains of as much as 26 percent in the cumulative growth of employment in the manufacturing sector have been reported in states with RTW laws (Barro, 2011).

While advocates of RTW acknowledge lower average wages in their states, the chances of job creation are greater due to business-friendly policies which will ultimately increase the tax base with new work opportunities and to facilitate the removal of those on unemployment (Roudebush, 2014). One thing seems to be very true in the attempts to determine the ultimate impact of RTW laws on a state's economy and calculated growth or rates of decline. The impact of RTW laws is usually very difficult to disentangle with other factors that may exist such as business-friendly policies, unique elements of the state of unionism in various geographic areas, and the existence of larger macro factors such as globalization, political trends, and public policy (Hicks, 2012).

THE RIGHT-TO-WORK MOVEMENT AND HUMAN RESOURCE IMPLICATIONS

The changing political and economic climate of the first decade of the early 21st Century provided renewed vigor in the RTW movement. Because of the degree of interest in RTW regulations and legislation many Human resource professionals, especially those in traditional unionized states took notice. Many of those in state government along with corporate interests saw the great opportunity for economic growth through both domestic means and via foreign investment. The economic recession of 2008 along with some political disagreements solidified the trend of Republican-controlled legislatures as well as the election of several Republican governors in the industrial Midwestern states. The efforts of Governor Scott Walker in Wisconsin in 2011 had some impact on the political actions taken in Ohio, Indiana, Michigan, Kentucky, and Missouri over the next few years. Except for Ohio, and Missouri where RTW is subject to ballot initiatives, all these states had RTW laws in place by 2016 with future efforts undertaken in Pennsylvania, Illinois, New Mexico, Oregon, Missouri, and West Virginia (Booth, 2014). The important question to ask at this point is what does the future hold? There is a great amount of interest in the momentum built in terms of how far it may go. However, despite several recent RTW successes, the prospects in other states are varied.

For example, various groups in several states have been actively campaigning for the support of RTW law passage. Here is a brief review of what is currently happening in a few key states;

Ohio: There are urgings that Ohio should get on board with RTW efforts or be left behind. With some evidence of real gains made in job, wage, and economic growth along with good-paying jobs in states that have passed RTW, Ohio runs the risk of losing out on available skilled labor and economic opportunities to neighboring states and may be left behind (Myers, 2015). However, because this must be placed on the ballot for voter review may make this a difficult prospect. A labor measure on public-sector labor reforms that were put into effect in Wisconsin was overwhelmingly voted down in Ohio in November 2011 with the defeat of Senate Bill 5. Besides, Governor Kasich has repeatedly said that RTW legislation is not on his political agenda (Thurber, 2015).

Pennsylvania: After witnessing successes in Indiana and Oklahoma proponents of Right-to-Work in Pennsylvania cited increases in jobs and capital investment and the potential to increase the state's population as primary reasons to support its passage (Pennsylvania Right to Work, 2015). However, the current governor has been characterized as a union-friendly Democrat who may serve as a firewall against RTW passage in the short-run (Wilson, 2014).

Illinois: The current climate in Illinois seems to echo the feelings in Ohio. Issues such as increased inequality, reduced worker wages, and benefits seem to top the list of why it may not happen very soon there because some see RTW as a measure to further widen these areas of disparity (Manzo et al., 2013). Also, the Illinois legislature by its nature seems less inclined to pass RTW legislation leaving it to local right-to-work zones and regional pockets of interest (James, 2015).

Missouri: An April 2014 survey conducted by American viewpoint reported that 60 percent of Missouri residents wanted an RTW measure (Zinnen, 2015). After the Missouri state legislature passed a RTW bill in May 2015, Governor Jay Nixon vetoed it in June and it was not overridden by Missouri lawmakers in September 2015 (Stuckey, 2015). The Missouri state legislature passed a right-to-work bill in 2017, but the law was rejected in a 2018 referendum by 67.5 before it could take effect and is set to be voted on again in November 2020 (Rowden, 2020).

West Virginia: The Workplace Freedom created a RTW law in West Virginia in 2016. However, in February 2019 a judge ruled RTW to be unconstitutional which ultimately was upheld to be constitutional by the West Virginia Supreme Court in April 2020 (Carter and Moore, 2020).

CONCLUSIONS

With the renewed recent interest in RTW, it becomes extremely important for many to consider whether or not it is a mutually exclusive proposition. There seems to be an active debate that while RTW benefits management it at the same time diminishes the role of unions and the quality of work-life of the employees. With the passage of RTW in each state, it makes it more difficult for unions to maintain their numbers and position of power (Booth, 2015). While supporters claim more worker flexibility opponents point to a reduction of financial viability and associated declines in collective bargaining and the loss of curtailed earned benefits and hard-fought wage gains (Collins, 2012). Ultimately it seems very difficult to extensively assess the potential effects of expanding RTW because of the intertwined nature of all of the economic factors at play along with the unique features and characteristics of each state involved. Because no consensus may be reached soon it appears it could be years before the real impact of the RTW movement, especially recent efforts, will have on organizations, workers, unions, and each of the localized economies.

REFERENCES

- Barro, R. (2011). Unions vs. the Right to Work. *The Wall Street Journal*. Retrieved February 28, from <http://online.wsj.com/article/SB10001424052748704150604576166011983939364.html>.
- Booth, J.E. (2015). Workers need to question whether right to work laws are promoting their rights or stripping them away. USApp–American Politics and Policy Blog. *The London School of Economics and Political Science*. Retrieved August 26, 2015, from <http://blogs.lse.ac.uk/usappblog/2015/05/13/workers-need-to-question-whether-right-to-work-laws-are-promoting-their-rights-or-stripping-them-away/>
- Carter, M., & Moore, B. (2020). West Virginia Supreme Court Upholds Right-to-Work Law. *National Law Review*. Retrieved July 24, 2020, from <https://www.natlawreview.com/article/west-virginia-supreme-court-upholds-right-to-work-law>
- Checchi, D., Garcia-Penalosa, C., Petrongolo, B., & Zweimuller, J. (2008). Labour Market Institutions and Income Inequality. *Economic Policy*, 23(56), 601-649.
- Chowdhury, A. (2015). The Potential Effects of a Right to Work Law in Wisconsin. Retrieved August 27, 2015, from <http://www.scfl.org/wordpress/wp-content/uploads/RTW-Law-in-Wisconsin-Chowdhury.pdf>
- Collins, B. (2012). *Right to Work Laws: Legislative Background and Empirical Research*. Congressional Research Service, Cornell University.
- Erb, M. (2015, February 2). W.Va. lawmakers, unions clash over Right to Work. *Parkersburg News and Sentinel*.
- Gordon, R. (2014). The Demise of U.S. Economic Growth: Restatement, Rebuttal, and Reflections, No. w19895. *National Bureau of Economic Research*.
- Hacker, J., & Pierson, P. (2010). *Winner-Take-All- Politics: How Washington Made the Rich Richer-And Turned Its Back on the Middle Class*, New York, NY, Simon & Shuster.
- Hicks, M.J. (2012). Right-to-Work Legislation and the Manufacturing Sector. *Center for Business and Economic Research Miller College of Business, Ball State University*. Retrieved August 20, 2015, from <http://goo.gl/yMgHb>
- Hicks, M., & LaFaive M. (2013), Economic Growth and Right-to-Work Laws, *Mackinac Center for Public Policy*.
- James, B. (2015). 5 States That Could Be the Next ‘Right To Work’ Hot Spots. *Law360*. Retrieved September 25, 2015, from <http://www.law360.com/articles/628794/5-states-that-could-be-the-next-right-to-work-hot-spots>
- Johnson, S. (2015, September 8). MetroNews West Virginia Polls finds solid support for right-to-work. *MetroNews West Virginia*.
- Kogan, V. (2015, July 27). Do Anti-Union Policies Increase Inequality? Evidence from State Adoption of Right-to-Work Laws. Retrieved August 24, 2015, from <http://hr.cch.com/ELD/SSRN-id2636487.pdf>
- Krugman, P. (2007). *The Conscience of a Liberal*. New York: W.W. Norton & Company.
- Manzo, M., Zullo, R., Bruno, R., & Quesada, A. (2013). The Economic Effects of Adopting a Right-to-Work Law: Implications for Illinois. *Policy Brief*, University of Illinois at Urbana-Champaign.
- Myers, B. (2015). Right-to-Work is right for Ohio. *Dayton Daily News*. Retrieved September 4, 2015, from <http://www.daytondailynews.com/news/news/opinion/right-to-work-is-right-for-ohio/nktrQ/>
- Pennsylvania Right to Work. (2015). What does “right to work” mean? Retrieved August 25, 2015, from <http://www.parighttowork.org/rtw/>
- Pearson, M. (2012). What's the 'right-to-work' battle all about? *CNN*. Retrieved September 1, 2015, from <http://www.cnn.com/2012/12/11/us/right-to-work-q-and-a/>
- Putnam, R. (2001). *Bowling Alone: The collapse and revival of American community*. New York: Simon and Schuster.
- Roudebush, K.J. (2014). What Does Right to Work Mean? *Quest Club Papers*. Retrieved August 31, 2015, from <http://contentdm.acpl.lib.in.us/cdm/ref/collection/p16089coll2/id/29930/>

- Rowden, T. (2020). *Republican initiative measures would put RTW, prevailing wage ban in Missouri Constitution*. Retrieved May 18, 2020, from <https://labortribune.com/republican-initiative-measures-would-put-rtw-prevailing-wage-ban-in-missouri-constitution/>
- National Right to Work Committee. (2015). State Right to Work Timeline. Retrieved September 1, 2015, from <https://nrtwc.org/facts-issues/state-right-to-work-timeline-2/>
- Sherk, J. (2014). Right-to-Work Laws: Myth vs. Fact. *Heritage Foundation*. Retrieved September 1, 2015, from <http://www.heritage.org/research/reports/2014/12/right-to-work-laws-myth-vs-fact>
- Stuckey, A. (2015, September 17). Right to work' measure dies in Missouri House. *St. Louis Dispatch*.
- Thurber, M. (2015). Ohio lawmaker optimistic state can pass right-to-work law. *Ohio Watchdog.org*. Retrieved September 17, 2015, from <http://watchdog.org/234132/ohio-right-to-work-2/>
- Walker, B. (2014). Right-to-Work Legislation Showing solid gains. *Action Institute Power Blog*. Retrieved September 10, 2015, from <http://blog.acton.org/archives/72333-right-work-legislation-showing-solid-gains.html>
- Wilson, R. (2014, December 3). After Republican wins, right to work bills on the agenda. *The Washington Post*. Retrieved September 28, 2015, from <http://www.washingtonpost.com/blogs/govbeat/wp/2014/12/03/after-republican-wins-right-to-work-bills-on-the-agenda/>
- Zinnen, S. (2015). Right-to-Work in Missouri Depends on A Handful of Republican Legislators. *The Daily Caller*.