

TALES FROM THE TRENCHES, a regular column that appears in *The Red Rock Review* (Arizona), offers an inside look at the everyday lives of American workers and the issues that affect them. Recipient of a 2005 National Federation of Press Women award, it is designed to champion the working poor, restore dignity to humble professions, empower workers by educating them about their rights and promote a spirit of solidarity in all professions.

Boon or burden: the truth about right-to-work laws

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In our glorious fight for civil rights, we must guard against being fooled by false slogans such as 'right to work.' It provides no rights and no work. Its purpose is to destroy labor unions and the freedom of collective bargaining. We demand this fraud be stopped.

— Martin Luther King Jr.

Rights have little to do with it.

In fact, a better phrase for right to work states might be “right to work for less.” But just exactly what does “right to work” (RTW) mean and how does it affect local workers?

RTW is a labor law term used to describe state provisions that ban any requirement of union membership or financial dues obligations as a condition of employment. Arizona’s RTW law was incorporated into the state’s constitution more than 50 years ago during an era when unions represented approximately one-third of the workforce. The law states:

No person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor organization, nor shall the State or any subdivision thereof, or any corporation, individual or association of any kind enter into any agreement, written or oral, which excludes any person from employment or continuation of employment because of non-membership in a labor organization.

In other words, if you work in a RTW state and your fellow employees form a union, you can’t be fired for not joining. At the same time, you are entitled to the same union benefits as your dues-paying co-workers at no cost. It’s that plain and simple. Or is it?

RTW laws currently exist in 28 states, mostly in the South and West, including Arizona. At best, they ensure that workers who choose not to join a union at an organized workplace remain entitled to the terms of a union-negotiated contract. At worst, RTW could be labeled an oxymoron, robbing employees of their rights to collective bargaining power on the job.

“It gives employers all the power,” said Phoenix labor attorney Mike Keenan. “Without the muscle of union representation, workers have no power to negotiate better pay. Right-to-work laws simply keep wages down.”

Statistics prove that RTW states lag in per capita income, unemployment benefits, health insurance coverage and strong enforcement of health and safety laws. And, according to Keenan, the true purpose of the law has been misconstrued. “To fully understand it,” he said, “you have to go back to the origins of the federal law.”

A Tumultuous History

RTW became a political issue as a result of the 1935 National Labor Relations Act (NLRA), through which Congress gave organized labor statutory sanction to get workers fired for refusal to join a union.



In 1947, an NLRA revision, known as Section 14(b) of the Taft-Hartley Act, gave states permission to enact RTW laws “to protect the rights of the public in connection with labor disputes affecting commerce” at a time when 35% of private-sector workers nationwide (compared to 9% today) were union members.

Over the course of nearly two decades following the enactment of Taft-Hartley, union lobbyists fought to repeal the RTW provision but never succeeded. Consequently, the issue was effectively off the table in Congress for the remaining decades of the 20th century.

What, then, is the relevance of state RTW provisions today when union membership remains at an all-time low and the federal NLRA already protects workers who reject it? According to proponents, it’s to protect workers against “forced unionism.” But labor leaders disagree, citing RTW as a clever campaign to destroy union presence in America. Like Martin Luther King Jr., they decry it as fraudulent.

“They make it sound like you have rights, but you don’t,” said Mike Vespoli, community affairs director of the United Food and Commercial Workers Local 99 in Phoenix. “Right to work is a discriminatory law against labor organizations because it gives employees access to expensive union services without having to pay for them via union dues. The non-union member reaps all the benefits of union representation without cost, weakening labor’s resources and campaign efforts.”

Vespoli points that Section 7 of the NLRA already prohibits discrimination against non-union employees, without loopholes to close or ambiguities to clarify. Therefore, RTW provisions add nothing to the protection that already exists under federal law.

According to Vespoli and other labor leaders, the real issue with RTW is payment for union services, thanks to business efforts to diminish union presence and thereby erode workers’ pay. They claim that the government’s failure to raise minimum wage since 1997 has resulted in the lowest buying power of Americans since the Great Depression. Corporate campaigns designed to tarnish labor’s image emphasize corruption and greed while failing to highlight that, without unions, workers wouldn’t even have a weekend in the first place.

“Although it is true that only about 20 percent of American workers are in unions, that 20 percent sets the standards across the board in salaries, benefits and working conditions,” said political columnist Molly Ivins. “If you are making a decent salary in a non-union company, you owe that to the unions. One thing that corporations do not do is give money out of the goodness of their hearts.”

Union-busting: the RTW way

According to labor relations attorney Dona Nutini, RTW laws are a bad deal for workers because they restrict their right to union representation and lower the average pay. Without unions to represent them, workers cannot bargain for better wages and benefits, they lack the ability to handle grievances and can easily be fired. Furthermore, Nutini said, collective bargaining agreements give workers provisions and arbitration agreements to ensure they aren’t wrongfully terminated.

“It’s devious,” declared Vespoli. “If people didn’t have to pay taxes for city services, most would reap the benefits without coughing up a cent, eventually destroying government. But RTW laws are like saying it’s voluntary to pay for costly union services without supporting their political, legislative or charitable activities. The law is designed to burden unions by usurping their resources and eventually disintegrating them by undermining external organizing campaigns.”

The NLRA was designed to mitigate the organizing battles of a bygone era, and therein lies the problem – federal law requires unions to serve non-members under a collective bargaining agreement in an organized workplace.

“It weakens the unions in regard to their negotiating capabilities and reduces the flow of income coming in, impacting their political power,” said James Craft, a professor at the University of Pittsburgh’s Katz Graduate School of Business, who specializes in union and labor issues.

But Vespoli claims unions support the NLRA because it contains provisions that counteract at-will employment laws. “You can’t be fired for organizing in Arizona or any other state because it’s a violation of the NLRA and basic First Amendment rights,” he said. It’s no coincidence that some employer groups, big business and ultraconservative lawmakers back RTW laws because they destroy unions and depress wages.”

Proof of the pudding

According to the Bureau of Labor Statistics, quality-of-life issues such as health care, education, worker safety and income suffer greatly under RTW laws. Their studies indicate that in RTW states -

- workers earn about \$6,257 less a year than those in other states
- women and Afro-American workers earn 30 percent less

- Hispanic workers earn 45 percent less
- 21 percent more workers lack health insurance
- the rate of workplace death is 51 percent higher
- approximately \$1,700 less is spent per elementary and secondary pupil than other states
- the infant mortality rate is 17 percent higher, and
- the poverty rate is 12.5 percent compared with 10.2 percent in other states.

Overall, the benefits enjoyed by union workers in other states far outweigh those of non-unionized, RTW employees. For example, more than 33% of union workers receive family health insurance coverage fully paid by their employers as opposed to an abysmal 7% for RTW employees. At the same time, more than 70% of union workers have defined-benefit pension plans versus the mere 16% of their non-union RTW counterparts.

RTW in Sedona

Firefighters and Safeway employees are some of the few workers who enjoy union privileges in Sedona while 65% of the workforce engaged in tourism-related industries remains unrepresented. A random survey of local food service, hospitality, retail and transportation employees revealed that most would welcome the opportunity for union representation. While some said that they are treated well by their employers, others expressed dismay over the lack of wage negotiation and grievance mediation. All withheld their identities for fear of reprisal for speaking out.

“Whenever there’s a problem, I have no one to fight my battles,” said a local food service worker. “If we question a policy regarding hours or pay, it’s made clear that it’s not a subject for discussion. There are definitely laws being violated, but they know they can get away with it because there’s no one monitoring them. We’d love a union but we know we’d get fired for trying to get one in here.”

One Jeep driver complained that he isn’t paid for on-call hours and wonders if it’s legal. “My pay hasn’t risen in two years but my expenses have, especially gas and housing,” he said. “If I had a union, I’d probably have an annual cost-of-living increase and be able to discuss my on-call hours. But we’re all just glad to have our jobs right now,” he added, referring to the industry’s recent layoffs.

“Without my union, I would’ve lost my raises and my health benefits,” said a veteran Safeway employee who belongs to the United Food and Commercial Workers union Local 99. “My dues are a great investment and come back to me tenfold. I honestly don’t know how other workers are hacking their jobs without a union to back them up.”

Some workers voice dismay over the fact that unionized supermarket workers earn more than twice the average wage of many Sedona employees. But one administrative staff member summed it up this way: “Maybe they deserve to make 15 bucks an hour. I guess the problem is that a college-educated professional like myself should be making \$30 an hour instead of eight.”

Many local workers expressed frustration about their lack of voice on the job or management’s indifference to their wages. Apprehension about being fired for organizing a union is widespread, even when informed it’s their right under federal law.

“We have no rights,” said one bartender. “The NLRA is like the Constitution. We have freedom of speech on paper but try exercising it at your job and you’re on the street. Plus it’s a right-to-work state; whaddya expect?”

Employment at will or at whim?

“The phrase right-to-work has become a catch-all euphemism for the diminishing rights of workers across the board,” said Keenan, who specializes in employment law. “Workers get confused and think right-to-work is the same as employment at-will. But there’s a big difference between the two laws.”

Many people incorrectly believe RTW means that you can be fired without explanation. That falls under the state’s Employment at Will provision, whereby employment is voluntary and both employees and employers are free to terminate the working relationship whenever and for no reason whatsoever. In other words, you can be fired for no reason but you can’t be fired for the wrong reason (gender, race or religion).

While some employers exercise this right by issuing terminations or layoffs without warning, most employees feel coerced to give two weeks notice for fear of backlash when seeking future employment references, thereby forfeiting their at-will rights under the law.

“Very few workers exercise their at-will employment rights,” said Nutini. “They don’t realize they can quit anytime without notice. They also don’t realize that right-to-work laws don’t mean they *can’t* organize. Many employers don’t understand the law either, that it doesn’t insulate them from an organizing campaign. Having good employee relations is the best protection against a union drive.”

Wolves in sheep's clothing?

Why does the RTW issue continue to generate so much controversy in an age when unions have such a weak presence in the workplace?

Americans still think of unions as they were in the 1930s – a powerful and sometimes corrupt force that robs them of dues and offers little in return. However, unions are now re-emerging as necessary weapon to protect workers from corrupt corporations and government policies, such as the recent loss of overtime pay. Yet employees still shun union dues and end up making \$10,000 less for lack of bargaining power.

While labor struggles to clear workers' negative perception of unions, business and government have launched a powerful pro-RTW campaign to discourage workers from organizing, cleverly disguised under the misnomer of the National Right to Work Legal Defense Foundation and the National Right to Work Committee. With an annual budget of \$15 million backed by giant corporations such as Wal-Mart, these two union-busting entities are fanatically anti-labor and working feverishly against workers' rights.

"They're really just a front group for the worst kind of employers who oppose workers' democratic right to form unions at every opportunity," said Ron Gettelfinger, president of the United Auto Workers.

According to the UAW, these two RTW organizations refuse to reveal their funding and spent 11 years in court fighting to keep their donor lists secret, arrogantly ignoring a court order to provide the information. In their press releases, they proclaim themselves as a "national workers' rights group" while issuing propaganda that support RTW laws and union-busting activities.

"I don't think they should mask exploitation of working people as freedom," said Thomas P. Cronin, president of American Federation of State, County, and Municipal Employees (AFSCME), District Council 47. "The late great Ray Charles and even Stevie Wonder could see through this charade."

The battle wages

In order to understand the role of economic analysis in the RTW debate, it is important to understand the main arguments marshaled by both supporters and opponents of RTW laws.

Opponents claim that workers benefit from union representation and therefore should be required to pay such costs. RTW laws create "free riders," or employees who receive the benefits of a bargaining contract while escaping any financial obligation to reimburse the union. They also cite that unions ensure far greater wages and benefits for workers while right-to-work laws weaken the union's ability to protect them from management exploitation, thereby reducing workers' economic gains.

Defenders of RTW laws argue that workers who refuse to join unions mainly do so because they just do not value the services that unions perform and/or because they disagree with the political causes that unions support with their dues. These proponents claim that statistics prove that RTW jurisdictions have fewer work stoppages and greater economic vitality.

But for whom? Statistics also point to economic depression in RTW states. Labor union leaders typically seek the repeal of RTW laws because when workers are given a free choice, studies indicate the majority opt for unions.

"The problem we have now is that corporate-dominated bodies are in control of federal boards, such as the NLRB, that control workers' rights," said Vespoli. "And there have been no changes to RTW labor laws since the 1940s. It's a socio-political concert that is eroding the middle class due to the loss of labor unions."

Light at the end of the tunnel

According to American Rights at Work, an organization that "promotes public policy to protect workers against hostile employers and inadequate labor laws that impede their rights," every 23 minutes, a worker is discriminated against or fired for union activities, even though prohibited by federal law. The group reports that there have been more than 9,000 *reported* workers' right violations in the U.S. so far this year.

The Employee Free Choice Act proposes to fix the broken process through which workers form unions but faces bitter opposition by a Republican Congress and RTW organizations. In declaring his support of the act, Sen. Ted Kennedy (D-Mass.) stated:

"For too long, we have acquiesced in the anti-labor, anti-worker, tactics that are far too prevalent in the workplace. For decades, labor unions have led the fight for the eight-hour day, and the 40-hour week, for overtime pay, for the minimum wage, for safe and healthy workplaces, for health insurance, for retirement security and many other basic rights. We like to think that workers are free to join a union, but too often that basic aspect of freedom is denied in our modern society. At a critical time like this when we

are fighting for the basic freedoms of other peoples in other lands, we cannot fail to take a stand for the basic freedoms of the millions of American workers who depend on us to protect their rights at home.”

In today’s hostile workplace climate, any acceptance of unions, or “the folks who brought you the weekend,” appears to be lukewarm at best. One would think legions of workers would be fighting for such rights at a time when pensions, health insurance and wages are falling along the wayside – particularly in at-will employment states, where employees are tossed out on the street with the trash, without notice, just cause or sometimes without their pay. Such behavior toward workers was recently demonstrated during some local restaurant closures that failed to give workers any warning or any due pay.

“Employers harass and intimidate workers even though it’s a violation of the Wagner Act,” said Vespoli. “Fear is a great motivator.”

But it is fear of an impoverished life that should be motivating workers to unite. If local workers want an end to the vicious cycle of juggling two or three low-paying jobs, without health insurance or any hopes of a prosperous retirement, perhaps they need to mobilize and seek the support of organized labor.

The debate surrounding RTW principles often centers on emotional rhetoric. Only the reader can deduce whether RTW is a right or a “fright.” For now, the jury is out across America as well as Sedona. Perhaps when workers can clear their negative perception of unions, the folks who brought them the weekend can also bring them back a life.

RTW EMPLOYEE TOOL BOX

- Put your tax dollars to work. Call the U.S. Dept. of Labor in Phoenix for info about wages, hours and working rights under both state and federal labor laws at 602-640-2995 or visit www.dol.gov.
- Educate yourself. Is an employer required by law to pay you accrued vacation time upon your termination or resignation? No! Read the *Guide to Workplace Law – Everything You Need to Know about Employer and Employee Rights* by The American Bar Association or check out Employee Rights in Plain English at <http://employeeissues.com>.
- Take action. Check out the Working Families E-Activist Network at <http://www.unionvoice.org/wfean> and www.purpleocean.org to learn about your working rights and what you can do to protect them. Call AFL-CIO Arizona at 602-631-4488 or HERE/UNITE at 602-306-1848.
- Urge your senators and congressmen to support the Employee Free Choice Act. Visit www.americanrightsatwork.org for more info.
- To learn more about Arizona’s right-to-work laws and other statutes, go to www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=23 and scroll down to Chapter 8, Article 1, Title 23-1301.