

## The Economic Case for Right-to-Work Laws

By Paul Kersey

*Summary: Federal labor law is rooted in flawed and outdated assumptions. Analysis of the most recent data demonstrates that right-to-work states have superior average rates of business productivity, state-level economic growth and job-creation, and a lower cost-of-living that mitigates lower nominal wage rates.*

The late Sen. Paul Tsongas (D-MA) once said, “You cannot redistribute wealth you never created. You can’t be pro-jobs and anti-business at the same time. You cannot love employment and hate employers.”

Currently 22 states have right-to-work laws<sup>1</sup>, which guarantee workers the right to determine individually whether or not they will join or otherwise support a labor union. (See chart on page 3.) While right-



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**At job fairs like this one in Syracuse, New York, applicants cannot afford to be shut out of the job market because of laws favoring labor unions. Right-to-work states produce more jobs and enjoy greater productivity.**

<sup>1</sup> Because most of this paper will look at economic trends over the last twenty years, Idaho, which passed its right-to-work law in 1985 will be disregarded and Oklahoma, which passed its law in 2001, will be treated as a non right-to-work state, unless otherwise noted.

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to-work laws are not a panacea—there are right-to-work states that struggle economically, and non-right-to-work states that have prospered—a look at the economic record shows that states with right-to-work laws have generally outperformed or kept pace with non-right-to-work states in nearly every statistical area of interest to employers or employees.

Why? Workers and management relate to one another in ways that are more far complicated than any antagonistic, two-party “zero sum game.” But that model underlies the seventy year-old National Labor Relations Act (NLRA) with its provisions for forced unionism. While em-

ployees and employers may often find themselves at cross-purposes, it is equally true, as Tsongas asserted, that employees cannot prosper unless their employers prosper too.

Under the NLRA, when a union is recognized as representative of a bargaining unit, the contract it negotiates covers all employees in the bargaining unit. Most union contracts include a clause specifying that all bargaining unit members must either join the union or pay an “agency fee” that is typically equal or nearly equal to full union dues. Workers who do not support the union, even the unions’ most vocal critics, are not exempt from these

provisions.

However, states are permitted to pass right-to-work laws that prohibit agency-fee clauses. In states that pass such laws, workers are still covered by collective bargaining agreements regardless of their support or opposition to the union, but individual employees get to choose whether they will join and pay dues to the union.

The regulatory scheme established by the NLRA, including the provisions for forced dues, was intended to accomplish two goals. First, the NLRA was intended to foster the creation of strong unions, with substantial legal powers, that could counterbalance a labor marketplace in which employers were thought to be in a position to dictate terms to employees. Second, unions were expected to raise wages generally, and thus redistribute wealth from business owners to workers.

But the economic record of the last 20 years demonstrates that the labor market has grown more complicated than what drafters of the NLRA imagined. Analysis of the most recent data demonstrates that right-to-work states have superior rates of business productivity, state-level economic growth and job-creation. That's not only an argument for passing state—and ultimately federal—right-to-work laws. More importantly, it shows that the National Labor Relations Act has gone too far in shifting power to unions.

### Increased Productivity

Employers naturally want the highest

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level of productivity—the “best bang for the buck”—in every aspect of their business, whether in sales, labor or acquisition of materials and equipment. High productivity allows companies to charge lower prices for their products and services, allowing them to compete for more customers and increase their sales and profitability.

Union contracts can affect both the cost and effectiveness of labor. According to

unions. That gives more money to union officials while reducing their accountability to the rank and file. Economist and Mackinac Center scholar William Wilson has argued that because unions in non-right-to-work states are not accountable to individual workers, they are more likely to negotiate “rigid... employee contracts [that] have the perverse effect of reducing the pay of the most productive workers while increasing compensation for less

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**Right-to-work states are in a stronger position to compete in the emerging global economy because unions cannot take their members for granted. They will have to bargain with employers for more flexible contracts that reward productive workers.**

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an Employment Policy Foundation (EPF) analysis of U.S. Bureau of Labor Statistics data, union weekly earnings are higher than non-union weekly earnings by varying degrees: from a little over 3 percent in mining and services, to 6.3 percent in manufacturing, to as much as 51.8 percent in construction. The potential for unions to improve workers' standard of living here is obvious. But these numbers overstate the value of unionization to workers.

That's because surveys of unionized and non-unionized firms show that unionization *reduces* the productivity of labor, which ultimately determines the rewards to labor. Economist Barry Hirsch of Florida State University studied labor productivity at companies with varying levels of union representation. He found that, depending on the percentage of workers unionized, unionization reduced the value added per hour of labor by as much as 6.5 percent (*Labor Unions and the Economic Performance of Firms*, W.E. Upjohn Institute, 1991). It should be noted that Hirsch did not measure increased wages and benefits, but simply the reduced productivity for each man-hour of labor. And the increased costs Hirsch detected do not necessarily translate into improvements in workers' standard of living.

In effect, by allowing mandatory unionism, non-right-to-work states subsidize

productive workers” (*The Effect of Right to Work Laws on Economic Development*, Mackinac Center, 2002).

This effect can be seen in the per-unit labor cost index calculated by the independent research firm Economy.com for the year 2000. The index is created by a formula that measures labor compensation (wages and benefits) compared to labor productivity, while accounting for each state's production of goods and mix of industries. The index shows the relative cost of labor for an average product in each of the 50 states.

Per unit labor costs are generally lower for right-to-work states, Wilson reports. States with right-to work laws averaged 93.2, with a high of 101.7 in Virginia and a low of 71.9 in South Dakota. In states *without* right-to-work laws, per-unit labor costs range from a low of 76.1 in New Mexico to a high of 110.4 for New Jersey. The average was 98.0.

Of course, unit labor costs are affected by a range of variables besides unionization: they include culture, infrastructure, education, and availability of capital. All affect both the cost and productivity of labor. But the presence of a right-to-work law does affect productivity in a significant and positive way. It allows businesses in right-to-work states to be more cost effective, competitive and profitable. Busi-

ness owners are the most obvious beneficiaries, but increased productivity benefits workers as well.

Maximizing productivity will become even more important for employers and employees as international trade brings new competition and new opportunities. This doesn't mean workers will be forced to settle for lower wages. It means higher wages will have to be earned through higher productivity and quality rather than as the result of contract negotiations and demands. Right-to-work states are in a stronger position to compete in the emerging global economy because unions cannot take their members for granted. They will have to bargain with employers for more flexible contracts that reward productive workers.

### Stronger Economic Growth

Business productivity has broader economic consequences. Because businesses in right-to-work states are likely to have higher profits and faster growth that, in turn, makes right-to-work states more attractive to new and expanding businesses

It's difficult to quantify this advantage. Dennis Donovan, a corporate location expert, estimates that one-third of manufacturers that can choose the state where they will locate require it to have a right-to-work law. He told the *Wall Street Journal* last year that another 20 percent use the law as a "very important criterion" in determining whether and where they move their facilities.

Gross State Product (GSP) measures the total of all goods and services produced in a state in a given year. Between 1981 and 2001 (the last year for which GSP is available) the economy of the average right-to-work state expanded by 236 percent, while that of the average non-right-to-work state grew by 221 percent, according to the U.S. Bureau of Economic Analysis.

The trend points to even greater gains for right-to-work states in the future. Divide that 20-year period in half and you find that from 1981 to 1991 non-right-to-work states actually had a modest advantage in GSP growth—91 percent to 86 percent. But from 1991 to 2001 the economy of the average non-right-to-work state

slowed down, growing by only 68 percent. The average right-to-work state still grew by a healthy 78 percent, a full 10 percentage points of additional economic growth.

Of all the non-right-to-work states, Colorado had the strongest growth record between 1991 and 2001: Its economy expanded by 119 percent. It's worth noting that Colorado does have a "Labor Peace Act" requiring a majority of workers within a bargaining unit to approve any forced dues clause in a collective bargaining agreement — a modest limitation on forced dues unique to the state. Moreover, Colorado is the scene of a long-running effort to pass a right-to-work law. Indeed, it is the state most likely to pass the next such law. But Colorado's torrid growth was nonetheless surpassed by right-to-work Arizona, with 124 percent growth, and by right-to-work Nevada, with 135 percent growth. Colorado's growth was nearly matched by two other right-to-work states: Georgia and Utah.

It's fair to say that while a right-to-work law does not guarantee that a state's economy will boom, during the 1990s states whose economies shined brightest were overwhelmingly right-to-work.

### Job Availability

For decades, union officials dismissed right-to-work laws as "right-to-starve" or "right-to-work-for-less." These epithets reflected their confidence in the New Deal-era understanding of labor relations that is the foundation of the NLRA. From this perspective, right-to-work laws weaken unions, encourage disunity among workers, and denying unions financial resources. They inevitably lead to lower wages and more difficult working conditions.

The reality, however, is far different. Right-to-work laws produce economic tradeoffs. Deny unions the power to collect mandatory dues and you weaken their negotiating power, but the evidence demonstrates that you spur higher worker productivity and statewide economic growth. Right-to-work laws increase the demand for labor, making workers more scarce and therefore more valuable. Look at the economic record: It shows that right-to-work laws benefit workers in a critical

area—the availability of jobs.

During the last 20 years, right-to-work states have been superior job producers, according to the U.S. Bureau of Labor Statistics. Between 1982 and 2002 the average right-to-work state increased its job rolls by 62 percent. By contrast, the average non-right-to-work states increased jobs by only 42 percent. This differential has been consistent throughout the two decades. Between 1982 and 1992 right-to-work states outperformed non-right-to-work states in job creation 28 percent to 21 percent. From 1992 to 2002 the typical right-to-work state increased its job rolls by 26 percent, while non-right-to-work states added only 18 percent more jobs. (Oklahoma is excluded from these calculations because it became a right-to-work state at the end of the period.)

In his report last year on the economic

## Right-to-Work States

Alabama  
Arizona  
Arkansas  
Florida  
Georgia  
Idaho  
Iowa  
Kansas  
Louisiana  
Mississippi  
Nebraska  
Nevada  
North Carolina  
North Dakota  
Oklahoma  
South Carolina  
South Dakota  
Tennessee  
Texas  
Utah  
Virginia  
Wyoming

effect of right-to-work laws, Wilson examined job growth in manufacturing and construction. He found that right-to-work states had significant advantages. Between 1970 and 2000 the average right-to-work state increased its manufacturing jobs by 1.5 percent annually. Manufacturing jobs in non-right-to-work states decreased by 0.2 percent. During the same period construction employment increased an average of 2.96 percent annually in right-to-work states compared to 1.99 percent in non-right-to-work states.

Stronger job growth means lower risk of unemployment. Wilson reports that between 1978 and 2000 the average unemployment rate for non-right-to-work states was 6.3 percent, while the unemployment rate for right-to-work states was only 5.8 percent. The pattern continues to hold in the most recent state unemployment figures available. In September 2003 the average unemployment rate for right-to-work states (including Idaho and Oklahoma) was 5.1 percent compared to 5.7 percent for non-right-to-work states.

### **Worker Compensation**

Here the record is admittedly cloudier, but there are strong arguments that workers in right-to-work states have an advantage here as well.

In nominal dollar amount, it seems that right-to-work states pay workers lower wages. Per-capita disposable income in 2002 averaged \$27,476 for workers in non-right-to-work states, but the average for right-to-work states (excluding Oklahoma) was only \$24,335—11.4 percent lower—according to federal statistics.

However, straight dollar-for-dollar comparisons can be deceiving. Cost-of-living differences can give workers with smaller salaries more purchasing power and a higher standard of living.

Two researchers have found that workers in right-to-work states actually have more take-home pay after you account for local taxes and the cost of living. Economist James Bennett of George Mason University examined wages and cost of living in 311 metropolitan areas and found that workers in right-to-work states had \$2,852 in additional annual purchasing power (*A Higher Standard of Living in Right-to-*

*Work States, National Institute for Labor Relations Research, 1994*). David Kendrick of the Public Service Research Foundation repeated Bennett's methods but focused on nine Midwestern states. He found that the adjusted income was \$1,145 more in the right-to-work states (*Midwest Right-to-Work States Still Outperform Forced Union States in Jobs and Real Income, National Institute for Labor Relations Research, 2001*).

The American Federation of Teachers (AFT) is hardly an anti-union source. It regularly calculates a statewide cost-of-living index, which it uses to compare state teacher salaries. According to the AFT's index, the cost of living is 11 percent lower in the average right-to-work state than in the average non-right-to-work state, a difference that nearly cancels out the apparent difference in per-capita disposable income. Apply the AFT's 2001 cost-of-living index—the most recent available—to per-capita disposable income for 2002, and you will find that the gap in average salaries shrinks from \$3,141 in nominal dollars to only about \$250.

Unions exaggerate when they claim that right-to-work laws lower worker pay. While wages tend to be higher in strictly nominal dollar terms for workers in non-right-to-work states, in terms of actual purchasing power the difference is modest. It may even favor workers in right-to-work states.

### **Flawed Federal Laws**

Many advocates of federal labor law assume that strong unions are needed so that there is a balance in economic power between employers and employees. They regard right-to-work laws as a barrier to better labor relations. But the economic record of the last 20 years shows that the conventional understanding of labor relations is flawed or outdated. Right-to-work laws offer significant advantages to workers.

The economic record shows that unions in non-right-to-work states are a drag on their economies, retard economic growth and slow the creation of new jobs. Perhaps they improve the incomes of those who are able to find work (certainly dollar amounts for compensation are higher), but

the higher cost of living in non-right-to-work states cancels out most of the wage increase. The "economic power" justification for mandatory unions does not hold.

If the old paradigm of powerful employers imposing their will to lower wages on their workforces were still valid, then one would expect strong unions to shift wealth from business owners to workers. But the higher cost of living in non-right-to-work states suggests that unions in these states no longer transfer wealth. They merely increase nominal income, and tack on the increased cost of labor to the cost of goods and services. The resulting price inflation cancels out any gains made at the bargaining table.

Union officials in right-to-work states are less powerful to be sure, but the increased labor productivity of right-to-work states makes workers themselves more valuable. As the demand for labor increases across all wage levels, more jobs are created. The increased availability of jobs, in turn, means workers have more options. Workers who are unsatisfied with their current level of income or working conditions have the freedom to change jobs, increasing their own leverage in dealing with employers. In other words, right-to-work laws may "weaken" unions, but they do not necessarily strengthen employers at workers' expense. Instead, these laws appear to make labor itself more valuable, strengthening individual workers.

The goal of the National Labor Relations Act was to empower unions to protect workers in a dangerous labor market where employers held the upper hand. But much economic data now suggests that unions are a disruptive, not equalizing, force in the labor market. If unions harm worker interests overall, then labor law reform may need to go beyond the passage of right-to-work laws.

Current labor law gives union officials many extraordinary legal privileges: They include the right to represent non-members or even workers opposed to unions in contract negotiations. Outside of right-to-work states, unions are guaranteed a substantial revenue stream because the payment of membership dues does not

require the consent of actual union members. But the economic record of the last 20 years shows that union power, especially in non-right-to-work states, does not advance employee interests.

Workers have lost confidence in the union movement. Between 1981 and 2001 private-sector union membership declined from 19.1 million to 16 million, in spite of 30 million more jobs nationwide. The percentage of union members in the workforce dropped from 23.9 percent in 1981 to 18.2 percent in 1991, to 14.8 percent in 2001. Declines in union membership occurred across the board, in right-to-work states (including Idaho and Oklahoma) and non-right-to-work states.

Union spokesmen often claim that organizing workers has become more difficult because of new and unethical employer tactics. But the basic law and process of union organizing campaigns has not changed since 1947 when the Taft-Hartley Act was passed.

The demonstrated linkage between

right-to-work laws, high productivity and job creation calls the National Labor Relations Act into question. The NLRA assumes the interests of employers and employees are in conflict. But if right-to-work laws encourage more flexible contracts that improve productivity and benefit employers and employees alike, then the case is strong for allowing even greater flexibility, perhaps by allowing individual workers to "opt out" of collective bargaining entirely.

An "opt-out" provision would allow employers to reward highly productive workers. It would force unions to win the best terms possible for all workers, knowing that members who are dissatisfied have the option of trying for a better deal. Of course, labor reforms such as an "opt-out" provision and a right-to-work law would lead to unions with less money and fewer legal prerogatives. But unions would also have a clear mission: representing the best interests of workers.

If workers do benefit from right-to-work

laws, then it's clear that both labor unions and federal labor policy have lost their way. The superior economic performance of right-to-work states suggests that the modern union movement is harming those it is pledged to serve. That workers themselves have lost enthusiasm for union representation is even more evidence that change is needed.

There is no shortcut to winning workers' confidence; it can't be awarded by government or conceded by employers through collective bargaining. It must be earned. The best hope for the labor union movement will be to return to the real-world interests of working men and women. The best way for state and federal lawmakers to encourage this is to enact reforms that empower individual workers. Right-to-work laws are a good place to start.

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# Labor Notes

## **National Education Association Audited by IRS**

The IRS is investigating the National Education Association's finances, after the tax-exempt union reported no political spending despite allocating millions of dollars to help friendly candidates get elected. NEA president Reg Weaver vowed the union "will not be silenced" and will "vigorously defend our constitutional right to speak to our members about the role of politics in public education." The audit is in response to complaints from the Landmark Legal Foundation, which has collected hundreds of NEA documents showing expenses to help candidates, published political training guides and compiled information on teachers' voting behavior. The IRS requires tax-exempt organizations to report any expense "intended to influence the selection, nomination, election or appointment of anyone to a federal, state or local public office."

## **Unions Battle Over Iowa Campaigns**

This month's Iowa caucus to select the state's Democratic nominee for president is fueling a bitter divide between the 21 working-class unions that have endorsed Rep. Richard Gephardt (D-MO) and the three major unions that have endorsed former Vermont Gov. Howard Dean. "It's trench warfare now," said Larry Scanlon, political director of the American Federation of State, County and Municipal Employees (AFSCME), which promised to spend more than \$1 million in Iowa and moved 90 full-time staff to the state to support Dean. Gephardt's backers, who acknowledge fewer funds but count on their larger combined membership of 95,000, are broadcasting television advertisements and mailing thousands of brochures. Union leaders are angry with each other: Teamsters president James Hoffa accused AFSCME president Gerald McEntee and Andrew Stern, president of the Service Employees International Union (SEIU), of dividing "the family of labor" by endorsing Dean. AFL-CIO political director Steve Rosenthal said gloomily to the *New York Times*, "There will be some wounds from this."

## **Unions Accuse Gephardt Employee of Making Threats**

AFSCME's McEntee and SEIU's Stern complained last month that Joyce Aboussie, a longtime aide to Gephardt in St. Louis, threatened the bargaining rights of Missouri state employees if the unions actively promote Dean's candidacy in the state. Aboussie allegedly warned the union leaders that she would prod state legislators to repeal Missouri Gov. Bob Holden's 2001 executive order granting collective bargaining rights to state employees. Holden urged "my friends who believe in the rights of workers [to] resolve their differences."

## **AFL-CIO Sues Bush Administration Over Financial Disclosure Rules**

The AFL-CIO is suing Labor Secretary Elaine Chao to halt a new regulation that requires unions to disclose details about their finances, calling the Secretary's actions "arbitrary, capricious and in excess of her statutory authority." Although the Labor Department is "confident" that it will prevail in court, the case could delay the rule from taking effect. Unions currently are not required to file a report until March 2005; delaying that deadline could allow them to avoid detailing expenses in 2004, an election year. The stalling effort seems to follow a pattern: The AFL-CIO recently admitted that unintentional "human error" caused it to fail to report expenses for lobbying Congress since 2001, including the period when the federation lobbied hard against financial disclosure requirements.

## **Democratic NYC Councilwoman Takes on Teachers Union**

Eva Moskowitz, a Democrat who chairs the New York City Council's education committee, has chided politicians for failing to take on the unions that have created the problems in the city's 1,200 public schools. Moskowitz held four days of hearings on union mandates—such as requiring certain vending machines in teachers' lounges, determining how high a custodian can paint a wall before hiring a painters' union, and limits on the number of floor tiles that can be replaced. Moskowitz determined that "many of these rules are indefensible." The *Wall Street Journal* called them "insane."