A "RIGHT-TO-WORK" LAW IS WRONG FOR MISSOURI

REMARKS TO LABOR LEADERS
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I have always believed that the labor movement is ultimately engaged in a continuing war of ideas and this is especially so on the issue of a so-called Right-to-Work ("RTW") law.

I was actively engaged in the successful effort against RTW in 1978 and have followed subsequent RTW campaigns in other states. In all of these battles there is plenty of deception and demagoguery from anti-union, anti-worker forces starting with the very deceptive slogan of "Right-to-Work" itself. There is also widespread confusion about exactly what union security is and what a so-called RTW law actually does. And if we're going to win a war of ideas – and we've got to win this one – we must have a clear understanding of what the battle involves. After all, in a war of ideas knowledge is power. So let's get right down to it.

Union security and so-called RTW laws can only be understood in historical context.

Under the original National Labor Relations Act of 1935 (also known as the Wagner Act) a closed shop arrangement was permitted. A closed shop

arrangement is an agreement between an employer and a union that employees must be members of the union at the time of their initial hire.

But 12 years later the closed shop was outlawed by the Taft-Hartley Act of 1947 and replaced instead with a union shop arrangement under which a collective bargaining agreement may provide that an employee must become a member of the union within a specified period of time after being hired – currently 30 days generally, 8 days in the case of the construction industry.

I should note that with one exception federal labor law preempts state law which is to say that states cannot regulate matters covered by federal law. The one exception is Section 14(B) of Taft-Hartley which permits states to altogether outlaw union security agreements. Thus a so-called RTW law is one authorized by Section 14(B) of Taft-Hartley.

A couple of footnotes to the Taft-Hartley are in order. First, this law was vetoed by Harry Truman but his veto was overridden by a Republican-dominated Congress. For many years after the 1947 enactment of Taft-Hartley it was a central goal of organized labor and the Democratic Party to repeal it or at least repeal Section 14(b). But it's still on the books 63 years later.

Second, and this fact is not generally known, the Taft-Hartley law originally required a separate vote of employees before a union could even seek to negotiate a union security clause. The hope and expectation of the anti-union proponents of

Taft-Hartley was that employees would seldom authorize a union to negotiate a union security law. They were wrong. In 97% of the elections held employees voted to authorize union security.

In the face of this overwhelming desire by employees for union security, Congress repealed this separate-authorization provision of Taft-Hartley in 1951.

What we've just talked about is the statutory framework, but union security and so-called RTW laws can only be fully understood with reference to two decisions of the United States Supreme Court. In its General Motors decision in 1963 the Supreme Court held that compliance with a union security obligation did not require an employee to join the union but only required the employee to pay initiation fees and dues. An employee who meets the financial obligations of union membership but who chooses not to become a union member is known as a "financial core" member.

In the case of Communications Workers v. Beck, a case initiated and sponsored by the notoriously anti-union National Right to Work Legal Defense Foundation, the Supreme Court held that a union security clause obligates an employee only to pay for the representational activities of the union (such as contract negotiation and enforcement) and cannot require an employee to pay for the non-representational activities (such as political donations).

One final legal principle is essential to understanding union security: under federal law when a union is the bargaining representative it is required to fairly, and without discrimination, represent all employees in the bargaining unit, irrespective of whether they are members of the union.

Considering all of this, at the end of the day a union security clause is a provision in a collective bargaining agreement where each employee is merely obligated to pay his or her fair share for the representational activities the union is obligated to provide. Nothing more, nothing less.

The assertion that union security involves compulsory union membership is pure myth; and the argument that union security forces an employee to finance political activities to which he is opposed is a flat out lie. It is also important to remember that union security can only exist when the union and the employer agree to include it in the collective bargaining agreement – there is no way a union can unilaterally impose union security.

A RTW law is one which prohibits an employer and a union from including a fair share union security provision in a collective bargaining agreement. A Right-to-Work law is a wholly unnecessary, one-size-fits-all workplace regulation which abridges the freedom to contract of the employer, the union and the employees. Opposition to workplace regulation and restrictions on the freedom to contract have historically been central tenets of conservative business doctrine.

But those advocating so-called RTW laws – no doubt blinded by their deep hatred of unions – fail or refuse to see that they are acting at odds with principles they profess to cherish. There's a word for this: hypocrisy.

But we must be mindful that the individuals and groups determined to cripple or destroy collective bargaining in Missouri do not speak for all employers and business associations – in fact, I believe they are a minority. Unions recognize that there is a difference – a big difference – between being pro-employee and anti-employer. The late economist, John Kenneth Galbraith, always a friend of labor, was right when he said that there are no strong unions without strong employers.

Conversely, responsible employers and business groups recognize that being pro-company and being anti-union are two completely different things and recognize employees as assets not adversaries. That these enlightened perceptions exist on both sides is reflected in the constructive labor-management partnerships which exist in many industries in this state, partnerships which would be undermined if not destroyed by a RTW law.

There is a powerful case against a so-called RTW law, a case which I believe will resonate with diverse elements in Missouri including those to which our Republican friends in the general assembly will listen.

It consists of four primary arguments. First, it is fundamentally unreasonable and deeply unfair to enact a law which requires some employees to

pay for the representational costs of others who opt to take a free ride. Should the public policy of Missouri be to encourage freeloaders in the workplace or elsewhere? I think not.

Second, all evidence overwhelmingly establishes that the standard of living in the 22 states with RTW laws is lower, way lower. Workers in free bargaining states make in excess of $5,000 more per year than their counterparts in RTW states. In RTW states, significantly more people have no health insurance. Poverty and infant mortality rates are substantially higher and, stunningly, the rate of workplace deaths is 52.9% higher in RTW states. I think most would agree that we should do better than this in Missouri.

Third, RTW states spend less on education, have fewer students proficient in math and reading and have proportionately fewer residents with high school and college degrees. Will all of this lead to the highly-skilled workforce which all business groups say is absolutely necessary for economic progress? Give me a break.

The fourth and final point involves a frequently asserted argument by proponents of RTW: that it somehow helps the economy of a state despite all of the evidence we've just discussed. This argument, which has never been factually demonstrated, has been recently, comprehensively and decisively debunked. In the first scholarly analysis of the effect of RTW laws on the economies of states which

appeared in the May, 2009 edition of the Review of Law and Economics, Professor Lonnie Stevans found that there is no difference in business formations in RTW states versus free bargaining states. He concluded by observing:

> [f]rom a state's economic standpoint, being right-to-work yields little or no gain in employment and real economic growth.

Were many of the proponents of RTW intellectually honest they would forthrightly admit that they do not believe collective bargaining is good for Missouri or America and that their goal is to weaken if not eliminate unions. Of course we will never hear such candor from them. Instead, as always, they will claim to be protecting the freedom of employees, but if RTW involves employee freedom then why has there never been a RTW campaign generated by the grass roots activities of employees; such campaigns are always generated by individuals and groups who have never accepted the role of organized labor in America. The truth is employees do not want or need a RTW law and the proponents know it.

It is richly ironic that many of the proponents of RTW sanctimoniously regard themselves as the supreme champions of freedom and liberty. Freedom and liberty are implicated in the RTW debate but not in a way they understand. As Ronald Reagan once said: "Facts are stubborn things." And the stubborn and, indeed, indisputable fact is that collective bargaining and vital unions are a

cornerstone of free societies everywhere. It is in the totalitarian countries without freedom and liberty where unions are weak, non-existent or government-dominated.

This is a fight about what kind of state Missouri is to be. I am proud to stand with you as we protect Missouri from those determined to turn it into northern Mississippi.