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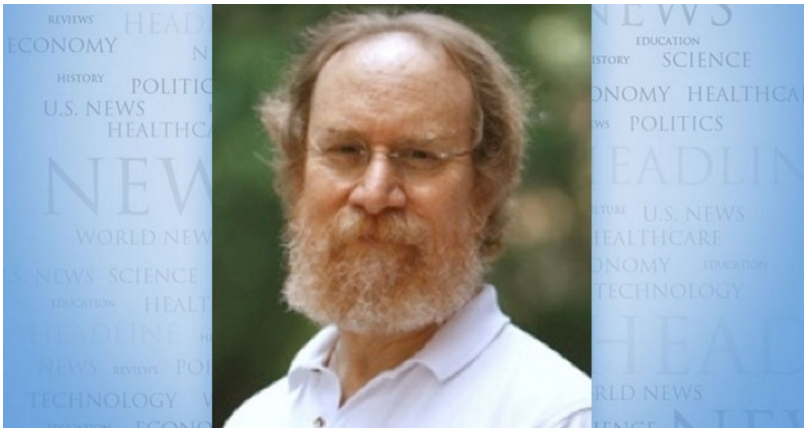
The Fight Over Right-to-Work



The “right-to-work” issue is back. When a state passes a right-to-work law, as Michigan did this month, employers in that state can no longer agree to require workers to pay union fees as a condition of employment. Supporters of right-to-work see it as a way to protect workers from being forced to support unions against their will.

Many opponents of right-to-work counter that the laws let workers free-ride off dues-paying colleagues and reap the benefits of union services. Thus, those opponents claim the laws are intended to weakens unions.

Right-to-work can’t be understood without first understanding the wider federal labor-law regime. In 1935 the National Labor Relations Act (or Wagner Act) became law under the New Deal. Among other things, it decreed that when a majority of workers in a company vote for a union, their employer must bargain with it “in good faith” and that all workers must support it financially, even those choosing not to join. This law violates free-market principles, including freedom of association, which includes the freedom to abstain from association.

More than a decade later Wagner was amended by the Taft-Hartley Act to ameliorate what many saw as union excesses. Provision 14(b) permits states to pass right-to-work laws, which ban agreements that make paying union fees a condition of employment.

Thus, right-to-work is a creature of the Wagner Act. After World War II, a repeal or a major modification of Wagner might have been possible, but too-clever politicians instead chose to give states the option to enact right-to-work laws. Some Wagner

opponents thought this was a serious mistake, because it took pressure off the intrusive national labor-relations regime.

But maybe it wasn't a mistake; maybe it was a calculated move to salvage Wagner, albeit with modification. That's a reasonable inference, but to see it, a deeper analysis of Wagner is necessary. That law is typically considered a pro-labor, anti-business law. But it's not so simple. For one thing, radical labor activists, such as the Wobblies (the Industrial Workers of the World) opposed the act. On the other hand, important parts of the big-business elite had long lobbied for a labor law similar (but not identical) to Wagner through the American Association for Labor Legislation. The Wobblies might have had Adam Smith's dictum in mind: "Whenever the legislature attempts to regulate the differences between masters and their workmen, its counsellors are always the masters."

Why would big business want a labor-relations law that interfered with the free market? Big business was no friend of the free market, and some of the business elite was willing to make concessions to labor for "industrial peace." By that, they had in mind an end to unannounced walkouts (wildcat strikes), work showdowns, secondary strikes along the supply chain, and sympathy boycotts. These and similar tactics were favored by the Wobblies. The Wagner-Taft-Hartley regime outlawed those actions and imposed federal rules governing union certification through supervised elections, cooling-off periods before strikes, and federal mediation. Labor leaders, despite their hostile rhetoric toward employers, became the enforcers of union contracts — to the outrage of labor radicals.

At the time Taft-Hartley was drafted, some

advocates of the free market opposed it on principle, because forbidding a particular kind of agreement between an employer and a union violated free-market principles. They argued that the remedy for compulsory unionism was to repeal offending laws like Wagner rather than to pass a new law interfering with freedom of contract.

One free-market advocate, Percy L. Greaves Jr., pointed out that government intervention on behalf of labor was a response to earlier government privileges for business. "Most such intervention," Greaves said, "was planned to help organized 'labor' and the other large groups that had suffered when employers were in the saddle and obtaining favorable intervention for themselves." Greaves was echoing President Grover Cleveland, who in 1888 similarly attributed the rise of radicalism in America to government privileges for "combined wealth and capital." In light of that, he argued, the cure was to abolish corporate privileges and remove the excuse for countervailing privileges.

All government favors, which are rooted in force, should be ended, leaving labor and management to negotiate in peace in a competitive marketplace. Right-to-work enlarges government's role and affirms the mistaken philosophy that it has a place in labor relations.

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