

## Mitchell's Musings 12-24-12: Paychecks and Balances

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Much has been written about the legislature in Michigan, traditionally a highly-unionized state, enacting a “right-to-work” law. The phrase, “right to work,” sounds as if the law was some sort of full employment act, guaranteeing employment to everyone who wants a job. But that is not the meaning. Under such state laws, workers who are represented by unions cannot be required to be members or to pay union dues or even “agency” fees.<sup>1</sup> The union, however, is obligated by law to represent such workers in bargaining, grievances, etc., under the “duty of fair representation.” There is a long history of debate about such laws and the arguments surrounding them are well known.

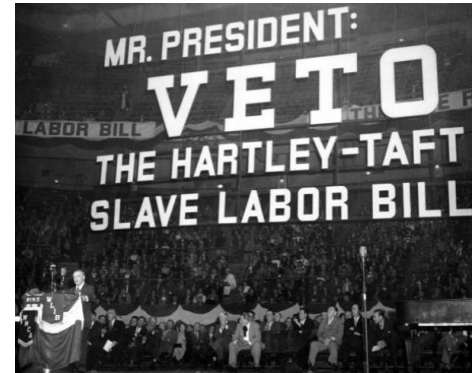
In the past, however, the debate has largely been partly framed as a civil liberties issue – can or should the government force someone to be a member of, or even pay agency fees to, a private organization, even if that person benefits from that organization? (The debate is generally posed as freedom of association vs. free riders.) Or the controversy has been framed as an economic issue: Do such laws weaken unions so that a) employers are attracted to right-to-work states (job creation) or – related – b) do they lower labor costs? (Unions refer to such laws as “right-to-work-for-less.”) Note that much of the debate occurred after the passage of the 1947 Taft-Hartley Act, a time when much of the south was under one-party rule by segregationist, conservative Democrats – the so-called “solid south.” Taft-Hartley made such state laws – which might otherwise have been precluded by federal pre-emption in the regulation of collective bargaining – legal under its section 14b.

The Taft-Hartley Act was passed over the veto of President Truman and represented a major modification of federal labor law – the 1935 Wagner Act in particular - regarding unions and collective bargaining. Originally, the entire law was the target of a union campaign for repeal. When it became clear that total repeal was unlikely to happen, section 14b and right-to-work laws became the favored union target. But beyond issues such as freedom of association vs. free riders and issues (a) and (b) above, there was not much more to the debate. And 14b was never repealed.

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<sup>1</sup> For the record, it should be noted that even if there is no right-to-work law and even if the union contract says all workers represented must become members, a worker cannot be forced to be a union member under court decisions. That is, the clause can legally say that membership is required but it cannot be enforced. Workers in such situations can be required to pay fees, typically something less than full membership dues, that are linked to the cost of representation but do not include union political action. Where there is no right-to-work law, unions can bargain for a union shop - but with no guarantee that the employer will agree – (which ostensibly requires new hires to become members), an agency shop (which ostensibly requires nonmembers to pay full dues), or a maintenance of membership clause (which ostensibly requires union members to remain members during the life of the contract). Taft-Hartley forbids “closed shops” in all states (whether or not they have right-to-work laws). Closed shops required that new hires already be union members. Some closed shops in industries such as construction continued *de facto* despite the Taft-Hartley ban. Nowadays, since we no longer have labor reporters who know much about unions and bargaining, I heard one radio reporter report on the Michigan right-to-work law as a ban on closed shops.

After the Taft-Hartley/14b flurry of interest, the right-to-work issue largely disappeared. But it was resurrected in the 1990s in a more political context in the form of proposed state “paycheck protection” laws. Such laws ban union dues – typically deducted from paychecks – from use in political campaigns. California has had three variants of such laws placed on the state ballot by initiative, all of which have been rejected by voters, most recently in November 2012. Basically, such laws are not about job creation or labor costs or freedom of association. They are about defunding Democrats. Of course, in the past when the south was all-Democratic, defunding Democrats was not the goal.



From the conservative viewpoint, labor unions tend to support liberal candidates and give most of their political contributions to Democrats. With the rise of public sector unionism, roughly in the 1960s and 1970s, and the longstanding downward trend in private unionization, unions have become identified with government. If you don’t like government, you also don’t like unions and the candidates they support. You don’t like their influence in state legislatures, city councils, school districts, or – for that matter – at the federal level.<sup>2</sup> So anything that impedes their ability to act politically is something you favor.

An interesting question in the face of current low unionization rates (so that most voters are not unionized or don’t belong to households of union workers) is why voters in states such as California decline to enact such laws. Is it because they are “pro-union” despite having no union connection? Is it because they favor everything that unions do? Such motivations seem unlikely. I suspect that the median (and therefore nonunion) voter views unions as a “special interest,” just as the business community is composed of “special interests.” Thus, voters in Michigan, before the legislature acted, declined to support a union-backed ballot measure that would have put collective bargaining as a right into the state constitution and likely have precluded enactment of a right-to-work law. The union-backed measure was seen as the product of a special interest group. But voters probably would have rejected a right-work-law ballot measure if it had been offered to them directly, particularly had union-backed measure not been offered.

My guess is that anti-union laws that seem aimed at defunding Democrats were rejected in California because, although unions are seen by voters as a special interest, they are also seen as a *different*

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<sup>2</sup> At the federal level, in the 2007-8 election cycle, Political Action Committees (PACs) aligned with unions gave 93% of their contributions to Democratic candidates for the House and Senate. Source: U.S. Department of Commerce, *Statistical Abstract of the United States 2012* (Washington: GPO, 2011), p. 264.

special interest from those in the business community.<sup>3</sup> There is a long American tradition of constitutional “checks and balances” with the three branches of government checking each other. The concept was translated into economic terms in the 1950s by John Kenneth Galbraith who viewed “big business,” “big labor,” and “big government” as countervailing forces. Big labor is not so big anymore, but it still can mobilize dollars and in-kind services on behalf of political figures and causes.

In California, at least, the median voter is a Galbraithian, even if he or she has never heard of Galbraith. The California voter may feel that unions are too powerful or have their own special interests at heart. But nonetheless, the California voter worries about what would remain of the political scene if unions were withdrawn from the fray, leaving the field only to business-oriented special interests?<sup>4</sup>

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<sup>3</sup> The latest paycheck protection initiative on the California ballot, Proposition 32 of November 2012, received 43% of the vote.

<sup>4</sup> I have posted TV ads for various propositions that were on the November 2012 ballot in California on YouTube in three parts. The second part at <http://www.youtube.com/watch?v=QhNcGqZPTHs> includes the paycheck protection (Prop 32) ads, pro and con. After the election, one union ran a radio thank-you ad to voters who rejected Prop 32. It can be heard at <http://www.youtube.com/watch?v=7RREP1WdBes>.