Louisiana Law Review

Volume 15 | Number 1
Survey of 1954 Louisiana Legislation
December 1954

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Louisiana has become the seventeenth state to enact a "Right to Work" statute, protecting the individual's right to work regardless of his membership or non-membership in a labor union.[1] It is believed Louisiana's Act 252 of 1954, R.S. 23:881-888, adequately states its own case and that no extensive argument is required to justify the wisdom of the legislature in enacting this statute.

Background of the Act

It has long been a matter of public policy that a contract prohibiting union membership as a condition to obtaining or maintaining employment is an improper restriction on the freedom of employees, and by express statutory enactments such contracts are forbidden.[2] With this as a premise, it cannot be denied that a contract requiring union membership as a condition of employment constitutes an element of compulsion irreconcilable with the basic principles of freedom which form the foundation of our form of government and society.

In recent years numerous labor disputes and costly strikes have arisen over the closed and union shop[3] and other forms of

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1. Thirty-three states have legislation affecting closed shop and union security provisions, but only 17 of these states have what may properly be termed "Right to Work" laws fully protecting the individual's right to work regardless of union membership: By constitutional provision and statute—Arizona (1946), Arkansas (1944), Florida (1944), Nebraska (1946), and South Dakota (1946). By statute—Alabama (1953), Georgia (1947), Iowa (1947), Louisiana (1954), Mississippi (1954), Nevada (1952), North Dakota (1948), North Carolina (1947), South Carolina (1954), Tennessee (1947), Texas (1947), and Virginia (1947).

2. La. Acts 1914, No. 294, p. 602, LA. R.S. 23:824 (1950). Federal statutes—National Labor Relations Act, as amended by the Labor Management Relations Act, 61 STAT. 136 *et seq.* (1947), 29 U.S.C. § 141 *et seq.* (1952); Norris-LaGuardia Act, 47 STAT. 70 *et seq.* (1932), 29 U.S.C. 101 *et seq.* (1952); Railway Labor Act, 44 STAT. 577, as amended, 45 U.S.C. 151 *et seq.* (1952).

3. "Closed Shop"—a form of so-called "union security" in which the employer obligates himself to hire and retain in his employ only union members.

"Union Shop"—a form of so-called union security in which union membership is a condition of continued employment although not of original employment. Under a union shop clause all employees must become members of the contracting union at a specified time, usually 30 days, after their original employment or after the execution of the agreement.

compulsory union membership, many of which have assumed nation-wide proportions. Through so-called "union security" clauses,[4] unions have been able to exercise great and monopolistic power over the individual worker's right to obtain and maintain employment. Evils and abuses have necessarily followed. As a result our legislative bodies have felt impelled to devise means of curbing this monopoly.

In 1947 Congress became partially awakened to the evils of compulsory unionism, and in the enactment of the Labor Management Relations Act (Taft-Hartley Act) prohibited the closed shop. However, this prohibition relates only to industries affecting interstate commerce and specifically exempts agricultural workers.

The Taft-Hartley Act does not bar the union shop, but by Section 14(b) it expressly sanctions state "Right to Work" laws which prohibit the union shop as well as other forms of compulsory unionism.[5] Congress therefore has recognized the need, on the state level, for laws banning all forms of compulsory union membership, while regulating practically all other phases of labor-management relations in industries affecting interstate commerce.

Substance of the Act

The significant provision found in all "Right to Work" statutes is that no person shall be denied employment because of non-membership in a labor union. There are some dissimilarities in other provisions of these statutes in the completeness of the description of coverage, definitions, enforcement and penalties for violations. However, basically, they are similar.

The Louisiana act is taken in large part from the Virginia "Right to Work" statute.[6] The only significant difference is that the Virginia statute provides that a violation constitutes a crime, whereas the Louisiana statute contains no penal provision. The language of the Louisiana statute is simple and its full import is well stated in the declaration of public policy contained in

4. "Union-Security Clause"—provision in union contract that fixes the position of the union in the plant and its relation to the workers in their jobs. Examples are "closed shop," "union shop" and "maintenance-of-membership" clauses.

5. Labor Management Relations Act, 61 STAT. 151 (1947), 29 U.S.C. § 164(b) (1952): "Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

6. VA. CODE 40:68 *et seq.* (1950).

Section 1, which provides that: "It is hereby declared to be the public policy of Louisiana that the right of a person or persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization."

The remaining provisions effectuate this public policy, provide the specific acts which constitute a violation, and provide remedies to insure enforcement. Section 2 prohibits any agreement or practice which denies to any person the right to obtain or maintain employment because of non-membership in a labor union. Section 3 prohibits any agreement or practice designed to cause or which does cause any employer, whether or not a party to the agreement, to violate the act. Thus, this provision makes unlawful agreements with or economic pressure on one employer designed to compel another employer, such as a subcontractor or supplier, to violate the act. Section 4 makes unlawful lockouts, strikes, picketing, or other similar conduct a purpose or effect of which is to cause a violation of the act. Section 5 provides that no person shall be required by an employer to become or remain a member of any labor union as a condition of employment. This section, in large part, is a restatement of Section 2, and constitutes an express prohibition of the closed and union shop contract. Section 6 prohibits any employer from requiring a person to abstain or refrain from union membership as a condition of employment. Thus, Sections 5 and 6 specifically prohibit compulsion either as to union membership or non-union membership. Section 7 prohibits any employer from requiring any person to pay dues, fees or other charges to a labor union as a condition of employment. Section 8 grants to any person who is denied employment or continuation of employment in violation of the act the right to recover damages from the violator of the act. Section 9 authorizes injunctive relief from violations or threatened violations of the act. Section 10 provides that nothing in the act shall be construed to deny or abridge the right of employees to bargain collectively.

Under Section 11 the act is not applicable to contracts existing on its effective date (July 28, 1954). It does apply to all contracts entered after the effective date or to any renewal or extension of any existing contract.

Scope of the Act

The statute applies to "the right of a person or persons to

work" in Louisiana, without exception, and, therefore, affects all employers, employees and labor unions in the state, whether their activities relate to interstate commerce or solely to intrastate commerce. Its scope could be narrowed only if its provisions were found to be in conflict with federal law. However, there is no conflict with the National Labor Relations Act, as amended by the Taft-Hartley Act, which is the federal law generally regulating labor relations in all businesses affecting interstate commerce. As previously indicated, the Taft-Hartley Act expressly recognizes the right of states to enact "Right to Work" laws. A possible conflict lies in the limited area of labor relations of those interstate carriers affected by the Railway Labor Act.[7] The effect of such a conflict has been adjudicated by the courts of several other jurisdictions with no unanimity of judicial thinking.[8] One state district court has recently held the union shop provision of the Railway Labor Act unconstitutional.[9]

Constitutionality of the Act

The unconstitutionality of "Right to Work" laws has been vigorously and repeatedly urged by labor unions. It has been charged that such laws deny freedom of speech, the sanctity of contracts and other constitutionally guaranteed rights. The complete fallacy of these contentions has been conclusively established by the Supreme Court of the United States, which has upheld such statutes in several decisions rendered in recent years.[10]

In *Lincoln Federal Labor Union, AFL v. Northwestern Iron & Metal Co.*,[11] the Supreme Court, in sustaining the constitutionality of the Nebraska and North Carolina "Right to Work" statutes, discussed every conceivable point on which the statutes could be challenged. The Court particularly held that these statutes (1) do not abridge freedom of speech, (2) do not illegally impair obligations of contracts, (3) do not deny equal protection of the law to unions as against employers and non-union

7. 44 STAT. 577, as amended, 45 U.S.C. § 151 *et seq.* (1952).

8. Hanson v. Union Pac. R.R., 24 CCH LABOR CASES ¶ 68,095 (Neb. St. Dist. 1954); Allen v. Southern Ry., 114 F. Supp. 72 (W.D.N.C. 1953); Matter of Florida East Coast Ry., debtor, 24 CCH Labor Cases ¶ 67,806 (U.S.D.C.S.D. Fla. 1953).

9. Sandsberry v. Gulf, Colorado & Santa Fe Ry., 25 CCH LABOR CASES ¶ 68,128 (D.C. Potter County, Texas 1954).

10. Local Union No. 10 v. Graham, 345 U.S. 192 (1953); Lincoln Federal Labor Union v. Northwestern Iron & Metal Co. and Whitaker v. North Carolina, 335 U.S. 525 (1949); American Federation of Labor v. American Sash & Door Co., 335 U.S. 538 (1949).

11. 335 U.S. 525 (1949).

workers, (4) do not deny liberty without due process of law. The Court further held that "[t]here cannot be wrung from a constitutional right of workers to assemble to discuss improvement of their own working standards, a further constitutional right to drive from remunerative employment all other persons who will not or cannot, participate in union assemblies."

In the *Lincoln Federal Labor Union* case Mr. Justice Frankfurter, in a strong concurring opinion, while not assuming the advocacy of "Right to Work" laws, advanced numerous arguments to indicate their inherent wisdom. He pointed out "the experience of countries advanced in industrial democracy, such as Great Britain and Sweden, where deeply rooted acceptance of the principles of collective bargaining is not reflected in uncompromising demands for contractually guaranteed security."[12] The opinion, by footnote, quoted the provision of the Universal Declaration of Human Rights of the United Nations that "No one shall be compelled to belong to an association." Mr. Justice Frankfurter also quoted extensively from the late Mr. Justice Brandeis, who before becoming a Supreme Court Justice, had been a staunch promoter of unionism. Mr. Justice Brandeis in a discussion entitled "Peace with Liberty and Justice," in summing up his views on unionism, had stated:

> "It [the union] need not include every member of the trade. Indeed, it is desirable for both the employer and the union that it should not. Absolute power leads to excesses and to weakness: Neither our character nor our intelligence can long bear the strain of unrestricted power. The union attains success when it reaches the ideal condition, and the ideal condition for a union is to be strong and stable, and yet to have in the trade outside its own ranks an appreciable number of men who are non-unionist. In any free community the diversity of character, of beliefs, of taste—indeed mere selfishness—will insure such a supply, if the enjoyment of this privilege of individualism is protected by law."[13]

General Observations

Every conceivable argument has been advanced by the opponents of "Right to Work" legislation against the wisdom of its enactment and the disastrous consequences which might result therefrom. It has been charged that such laws will destroy col-

12. *Id.* at 548.
13. *Id.* at 551-52.

lective bargaining, will interfere with an employee's right to join a labor union or participate in union activities, will permit employer discrimination against unions, will destroy the power of unions, and will provoke low wage rates and standards of living. Each of these contentions when analyzed is found to be based on an erroneous concept of the meaning and significance of the law. These arguments will continue to be advanced by those who feel that organized labor should not be regulated in its monopolistic practices, as industry has been. A mere reading of the act discloses it does nothing more than prohibit the evils of compulsory unionism and union monopoly, and does not impair or affect the many legitimate practices of organized labor to achieve its objectives.

The act does not affect the right of employees to join a union or retain their union membership. As indicated above, it expressly provides to the contrary. The act does not interfere with the right of employees to bargain collectively through representatives of their own choosing. Section 10 of the act expressly guarantees this right.

The act does not permit an employer to discriminate against an employee who is a member of a union. It expressly provides that no person shall be required to give up union membership as a condition of employment.

The power of unions will not be affected. Any particular union which through proper and intelligent leadership and effective collective bargaining has won the support of the employees it represents will not be affected by the act. The act does prohibit any labor union from securing the aid of an employer to force the employees to join the union as a condition of their employment.

The act does not and cannot destroy the legitimate gains attained by labor unions for their members, nor does it preclude future gains. Labor unions are free to continue all legitimate practices and procedures, through collective bargaining and the exercise of economic strength, to improve the living standards and working conditions of their members.

A comparison of wage increases in areas which have "Right to Work" laws with those in areas which do not have such laws clearly shows the fact that there is no relationship between wage increases and "Right to Work" laws. As an illustration, United States Department of Labor Bulletin No. 1152, entitled "Union

Wages and Hours: Building Trades—July 1, 1953," compiled by the Bureau of Labor Statistics of the United States Department of Labor, indicates wage increases in the major building trade groups in fifty-two larger cities of the nation between July 1952 and July 1953. Twelve of these fifty-two cities are in states which had "Right to Work" laws.[14] The average percent of increase in the twelve "Right to Work" cities was 5.58, well above the national average of 5.2 in all of the fifty-two cities.

Other figures compiled by the Bureau of Labor Statistics of the United States Department of Labor, showing the average weekly and hourly earnings of production workers in manufacturing industries for selected states and areas during the period 1947 to 1952, also indicate the complete lack of relationship between wage rates and "Right to Work" laws.[15] It is interesting to compare the 1950 and 1953 average hourly earnings of these production workers in Louisiana with those of the neighboring state of Texas. The average hourly earnings in Louisiana in 1950 were $1.25 and in 1953 had increased to $1.41. Louisiana had no "Right to Work" act during this period. The average hourly earnings in Texas in 1950, where a "Right to Work" law was enacted in 1947, were $1.35 and in 1953 had increased to $1.57.

It is contended by opponents of "Right to Work" legislation that the closed shop and the union shop constitute nothing more than majority rule and that this majority rule in labor relations is similar to that in our democratic processes. Under the closed shop and union shop concept of majority rule, all minorities are eliminated, and membership in the majority organization is made compulsory. It thus becomes obvious that the so-called majority rule, as practiced in compulsory unionism, is in fact a one-party rule. This is in direct conflict with the accepted democratic principles of this country.

As indicated at the outset, it is believed the statute adequately presents its own case. The great majority of the people

14. BULLETIN No. 1152, UNION WAGES AND HOURS: BUILDING TRADES—July 1, 1953, Table 6 (Bureau of Labor Statistics, U.S. Dep't of Labor, 1953): Atlanta, Ga.—6.2%; Charlotte, N.C.—5.4%; Dallas, Texas—6.3%; Des Moines, Iowa—4.3%; Houston, Texas—3.7%; Jacksonville, Fla.—6.8%; Knoxville, Tenn.—4.2%; Little Rock, Ark.—8:4%; Memphis, Tenn.—6.4%; Omaha, Neb.—6.3%; Richmond, Va.—4.2%; San Antonio, Texas—4.8%.

15. HOURS AND EARNINGS, INDUSTRY REPORT, Annual Supplement Issue, April 1953, Table 7 (Bureau of Labor Statistics, U.S. Dep't of Labor, 1953).

of this nation have repeatedly and effectively expressed their abhorrence of compulsion and monopoly. The enactment by the Louisiana legislature of a "Right to Work" law, eliminating compulsion in the exercise of the individual's right to obtain gainful employment and prohibiting monopoly in labor, is but a further manifestation of this thinking and policy.