Louisiana Law Review

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

The Case Against the So-Called Right to Work Act

William J. Dodd

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Act 252 of 1954, referred to as "Louisiana's Right to Work Law," was without question the most controversial legislative problem considered during the 1954 legislative session. The act is class legislation and may well result in a disruption of the otherwise harmonious labor relations that have existed in Louisiana up to the present time. Without attempting to go into the reasons why the sponsors and backers of this legislation promoted its passage, let us look at the harm the enforcement of this act can bring to labor relations in Louisiana. Briefly, the following indictments can be brought against this so-called "Right to Work" act:[1]

It will disrupt the harmonious relations presently existing between labor and management and unreasonably restrict employees in the exercise of freedom of speech and communication by forbidding picketing or other lawful means of communicating the facts regarding labor disputes.

It will compel union members to work side by side with non-union employees, contrary to the established traditions and policies of organized labor and will raise a serious question of involuntary servitude, prohibited by the Thirteenth Amendment to the Federal Constitution.

It will restrict employers and subject them to penalties when they, in the course of bona fide attempts to recruit quali-

* Member, Dodd, Hirsch & Barker, Baton Rouge, La.

1. Space limitations have prevented giving more than a summary of the subject in a symposium of this type. No attempt has been made to refer to the already growing legal literature on the subject of right to work legislation. For more detailed analyses of the issue the reader is referred to the following: Rose, *The Right to Work: It Must Be Supreme over Union Security*, 35 A.B.A.J. 110 (1949); Gilbert, *The Right to Work: A Reply to George Rose*, 35 A.B.A.J. 465 (1949); Cox, *Federalism in the Law of Labor Relations*, 67 HARV. L. REV. 1297, 1333 (1954) (advocating the repeal of Section 14(b) of the Taft-Hartley Act, the provision which impliedly authorizes the states to enact such laws); Clawson, *Union Security Clauses and the Right to Work*, 30 CAN. B. REV. 137 (1952); Note, *Union Security Agreements under the "Right to Work" Statutes*, 36 VA. L. REV. 477 (1950).

The Louisiana act is discussed in detail in Keenan & Lang, *The Louisiana Right to Work Law—Some Comments as to its Scope and Effect*, 2 LA. B.J., No. 1, p. 3 (1954), and the Alabama act is discussed in 6 ALA. L. REV. 129 (1953).

fied personnel, find themselves trying to hire union men of known qualifications, to the exclusion of non-union personnel whose qualifications are doubtful.

It will outlaw the use of the union label and expose employers to liability under the act, in the fulfillment of contracts calling for the production of union-made goods.

It will invalidate collective bargaining agreements and, thereby, disrupt the harmonious industrial relations which have been fostered by such agreements.

It will place a union-busting weapon in the hands of employers who desire to depart from the national policy of promoting industrial peace through collective bargaining.

In discussing the above indictments in more detail, I would say that the adoption of this law will seriously encroach upon the contractual practices of employers and unions and will prohibit their arriving at agreements through the peaceful processes of collective bargaining in their mutual self-interest. It seems that in this period of our history, when so many informed persons decry the encroachment of government upon the affairs of business and individuals, our legislature has gone out of its way to impose restrictions upon both the employer and the employee. This act unduly restricts the rights of employees to bargain collectively through their unions on the false premise that the right to work is an inherent and inalienable right.[2] The proponents of the act did not or would not consider the fact that the right or privilege of a man to work is a restricted right or privilege and that dozens of conditions are placed upon this right or privilege by the employers. Age, education, health, experience, sex and, in some instances, race and even religion are conditions placed upon employment by the employer. Comparisons and examples tending to show that the right to work is similar to the political right to vote are absurd when one understands and notes the numerous conditions an employer places upon the employment he offers to his employees. There was no inherent right to work before the passage of Act 252 of 1954, and there is no such right to work since its passage.

While some employers charge that the union shop creates a labor monopoly, destroys discipline and efficiency and leads to dictatorial or arbitrary practices, many employers take the posi-

2. For a scholarly analysis and comparative law treatment of the right to work as a substantive guarantee of employment, see Lenhoff, *The Right to Work: Here and Abroad*, 46 ILL. L. REV. 669 (1951).

tion that the union shop has definite advantages. They point out that it eliminates factual strife by giving the exclusive bargaining agent an assured status and thereby places responsibility for the conduct of rank and file employees squarely on the shoulders of the one union in the plant. It seems very shortsighted for the legislature to deny, through this act, representatives of labor and management the privilege of continuing to enjoy the advantages which many of them have discovered and are discovering in the device of a union shop.

A review of the cases decided under the similar Virginia act indicates that our Louisiana act poses a serious threat to the exercise of free speech and press through the method of picketing. The Supreme Court of the United States in the case of *Plumbers Union v. Graham*[3] recognized this clear threat to constitutional liberties and, by a divided opinion, sustained the application of the Virginia statute over the free speech objection only when a majority of the Court was able to conclude that "[p]etitioners here [the union and its members] engaged in more than the mere publication of the fact that the job was not 100% union."[4] In this instance, union pickets carried a sign which read simply "This Is Not a Union Job. Richmond Trades Council."[5] Yet, the Court held that the union, by the mere use of this sign, had made an alleged request of the employer that he discharge non-union workers and on that ground sustained the injunction granted under the statute.

The Louisiana statute, Section 9, goes so far as to make it a violation of the law even to threaten to violate any provision of this act and gives to the threatened party injunctive relief.

Employers, particularly those who employ skilled craftsmen, are naturally interested in recruiting competent and qualified personnel. For this reason, it has been the established practice in Louisiana for many years for employers to recruit personnel through the labor unions in the locality where they operate. Employers know from experience that they may call upon and receive from the labor unions competent, trained and qualified personnel and thus avoid the risk of loss, which usually attends the hiring of inexperienced and unqualified personnel. That the new act may result in loss to Louisiana employers is illustrated

3. 345 U.S. 192 (1953).
4. *Id.* at 200.
5. *Id.* at 195.

by *Finney v. Hawkins.*[6] In that case, Finney, who operated a print shop, entered into a contract to print a labor law journal for the Newport News Building and Construction Trades Council. The contract stipulated the employment of union labor in the printing of the journal. Finney, who wanted the job, suggested that his one non-union employee join the union and, when the employee refused, Finney fired him. Finney received the contract, completed it and, thereafter, the discharged non-union employee brought an action under the Virginia statute against his employer and the Building Construction Trades Council for damages resulting from his dismissal. Under the Virginia statute, he was awarded damages. The same could happen in a similar situation here in Louisiana and could deprive Louisiana businessmen of jobs which require the union label.

In many instances, goods manufactured in Louisiana must be sold in other states. In every instance in which jobbers and sales outlets require the union label on the goods delivered to them, Louisiana industries will, if this act is enforced, be prevented from manufacturing and selling products that require a union label.

Probably the worst feature of the Louisiana act is the harm it can bring through the enforcement of its union-busting provisions. If the provisions of this act are strictly enforced, the wage scales, working conditions and lack of employee benefits found in the plants and on the jobs of our worst employers in any given competitive industry will, in time, become standard for that industry. This cannot fail to bring about a gradual lowering of wages and working conditions under the so-called "Right to Work" act.

This act disregards the will of the majority of the workers in a given industry or plant on the false assumption that the minority is thus being protected. Actually, it is and always has been standard American practice for the majority to rule so long as no inalienable or inherent rights of the minority are jeopardized. No one, including the sponsors of the so-called "Right to Work" act, has offered a reasonable explanation for its protection of free riders who are willing to accept all the benefits, including good wages and working conditions, that are bargained for by the union, without the free riders' paying any dues or assisting in the efforts to obtain such benefits and conditions.

6. 189 Va. 878, 54 S.E.2d 872 (1949).

In conclusion it can be said that there was no reason for the passage of this drastic and restrictive piece of legislation. Its potentialities for harm are as great for the employer who wants to compete in the national markets as they are for the employees. This type of legislation seems to be confined almost wholly to the agricultural states of the union—an attempt by the employers of farm labor to kill any unionization of farm labor or personnel who work in agricultural pursuits. In attempting to legislate a wage ceiling and status quo, and to set up working conditions for agricultural personnel, the sponsors of this act have crippled and, in my opinion, disrupted labor relations in our fast growing industrial state. This may very well cost Louisiana many hundred millions of dollars in the coming years.