

Right to Work and Michigan Labour

by Roland Zullo

The incorporated right to work (hereafter RTW) movement has scored a victory in Michigan. On the heels of the 2012 election, during a lame duck session in which house Republicans held a 64 to 46 advantage over Democrats, the Michigan legislature passed two bills; one to enact RTW for public sector unions and the other for private sector unions. The private sector bill passed 58 to 52, with no votes from Democrats, and was quickly signed into law by Governor Rick Snyder without any formal public discussion or debate. Nefariously, the law was attached to an appropriations bill, which by Michigan law prevents opponents from taking the issue to a popular referendum.¹ This effectively means RTW will be central to the partisan dialogue leading up to the 2014 elections, when organised labour will try to “reward friends and punish enemies” at the ballot box in a repeal effort.

To appreciate why RTW is controversial – why labour opposes RTW and corporate activists spend lavishly to pass RTW – one must understand the legal distinction between “bargaining unit member” and “union member” in US labour law. The two classifications are not equivalent and persons in the bargaining unit are not compelled to be union members. In the US, to simplify labour-management relations and limit union raiding, labour unions have the exclusive right to negotiate on behalf of the bargaining unit members they organise. Unions do not, however, determine bargaining unit composition. The National Labor Relations Board (NLRB), or similar agency at the state level holds final judgment over bargaining unit membership, where determination is based on “community of interest” criteria; for example similar skills, proximity, management oversight, and so forth. At any given workplace, if a job matches those criteria, the person holding that job becomes part of the bargaining unit, regardless of how that individual may feel about unionisation. Then, if a majority of workers in the prospective bargaining unit unionise (usually through an NLRB supervised election), the new organisation must represent all fairly and without prejudice. This “50% plus 1” method of determining union coverage nearly guarantees the presence of a minority group opposing unionisation. Further, often a person gains union coverage by accepting employment at a worksite that is already unionised, without ever having the opportunity to vote for or against unionisation, and these individuals might also oppose unionisation.

Once a bargaining unit is organised, unions cannot deny representation services to persons in the unit who do not want to be union members; discriminatory behaviour is discouraged by civil

lawsuits under duty of fair representation provisions. Thus a union is obligated, for instance, to defend a non-member during a disciplinary hearing which, if the case goes to arbitration, might cost the union tens of thousands of dollars. Bargaining unit members who refrain from becoming union members lose some rights, for example they cannot vote in union leadership elections or run for union office, but they obtain all the benefits and protections in the labour-management contract.

So what happens to a bargaining unit member who rejects union membership? In a non-RTW state, a labour union and employer can negotiate a range of contract provisions (called union security clauses) that require covered persons to pay dues. Unions want union security clauses because they are an efficient method for collecting the finances necessary to run their organisations. In non-RTW states, unions typically prefer “union shop” terms that require every person benefiting from representation to pay union dues. At a minimum, represented non-members are required to pay an amount that covers the expense of negotiating and administering the labour agreement (referred to as collective bargaining activities). In RTW states, the parties are barred from negotiating union security clauses, making the default the “open shop”, where the payment of dues by bargaining unit members is optional. Between these two policy poles are arrangements that require covered persons to pay a proportion of full dues, or even to allow objectors to contribute dues to charity. Such arrangements are, however, proscribed under the new Michigan law.

This extended explanation is needed to clarify what the phrase “right to work” means. In the US, RTW has little to do with the right of a person to seek and accept gainful employment. The phrase has dubious origins, but scholars have linked the term with the corporate “open shop” movement of the early 20th century, which aimed to weaken unions by encouraging “at-will” employment terms; contracts, usually unwritten, between individuals and employers. Corporate US has historically advocated for the “freedom” of individual contract when faced with the threat of collective action by workers. Prohibiting union security clauses and thus allowing persons to refrain from financially supporting labour unions does favour the indi-

vidual over the collective. Once union security clauses are in place, non-payment of dues can become a dischargeable offence. Someone seeking to avoid paying union dues in that context has three options: (1) exit their job, (2) convince union leadership to negotiate an open shop, or (3) persuade fellow workers to decertify the union. The viable option for dissenters is to work elsewhere. Thus RTW is the right to work in a unionised setting, and reap the benefits of collective representation, without having to contribute toward the cost of obtaining those benefits. Labour unions prefer the phrase “right to free-load”.

Conceptually what is at work is Mancur Olson’s (1965) economic-based theory on collective action.² Any organisation producing a non-excludable good³ must contend with the classic collective action problem: how to finance organisational activities when persons with access to the good have an incentive to refrain from paying. The existence of “free riders” – persons who enjoy the good without contributing – reduces resources, causing the organisation to underperform in its objectives. And by increasing the cost burden for persons who contribute, free-riders decrease the likelihood of organisational formation, and hasten organisational extinction. Union representation in the workplace is a non-excludable good, since all persons in a bargaining unit, members and objectors are entitled to the rights and benefits of coverage. For organised labour, RTW laws exacerbate the collective action problem by making it easy for persons benefitting from union representation to refrain from paying toward its cost. Consistent with Olson’s theory, unions are weaker and less effective in RTW states.

In application, unions are affected in two general ways by RTW law. First, because objectors pay nothing, unions suffer a direct reduction in dues revenue. The average loss is around 15%, but this figure can vary widely across contexts. In cases where unionists have a strong craft identity, RTW will have a minimal effect on membership rates. In situations where there is rapid employment turnover (e.g. grocery industry) or significant internal membership conflict, the figure will be greater. Unions that have especially high turnover, such as graduate student unions, might simply fold. It remains to be seen how RTW will affect the United Auto Workers in Michigan, given the 2008 agreement that resulted in a two-tier wage system, whereby new hires receive hourly pay that is roughly half of senior members. Two-tier wages were a condition placed on the 2008 auto bailout, and a difficult pill to swallow for the UAW. Disparity in compensation between first and second tier members may now motivate defection among workers in the second tier; it will certainly pressure the UAW to close the wage gap.

Second, RTW changes the way that unions spend resources. Unions in RTW states must continually organise represented persons in order to sustain an active membership and recruit objectors. One might argue such activities make the union more responsive to members (a line frequently used by advocates of RTW), but there is no convincing evidence that covered persons are better off in RTW states. Unions in RTW states often hold more social gatherings or might take on projects meant to impress members, rather than advance the labour movement. The organisation becomes member-focused, as opposed to movement-focused, and activities such as political advocacy and new member organising decline. One of the most commonly voiced objections to unions made by bargaining unit members is that resources are spent to elect undesirable politicians or to advance unworthy causes. The RTW laws enable a worker to withhold dues to a union based on such political objections.

Reducing organised labour’s political power in society is the main agenda behind the RTW movement. Yet for Michigan the strategy might backfire. Political scientists have long ago established that political inclinations are deeply embedded, and often expressed through political party support. In any given election, roughly one-third of unionists vote for Republican candidates. The allure is complex, but certainly gun ownership rights, religious issues such as abortion and school prayer, and beliefs about the scope and size of government draw many unionists into the Republican camp. This pattern can be disrupted, however, when politically conservative union members who value union representation believe their organisations are threatened. The passage of RTW in Michigan – especially the undemocratic process in which it occurred – might be the spark that mobilises conservative unionists and their supporters into progressive action. The task of convincing unionists of important differences across the political parties has been made easier by RTW. We will have to wait until election 2014 to find out what the RTW provocation will bring.

¹ Republican supporters of RTW had reasons for employing this tactic. In 2012, a popular referendum was used to overturn the Emergency Manager Law, also supported by Republicans and signed by Snyder. Polling in Michigan generally shows that when the issue is explained, the majority of citizens oppose RTW laws.

² Olson, Mancur (1965) ‘The Logic of Collective Action: Public Goods and the Theory of Groups’, Cambridge, MA: Harvard University Press

³ “Non-excludable good” refers to products or services that, once developed, can be broadly accessed or enjoyed by persons who had no role in creating or financing the good.

Roland Zullo is an Assistant Research Scientist at the Institute for Research on Labor, Employment and the Economy at the University of Michigan. Zullo researches union strategy, privatization, outsourcing, political mobilization, collective bargaining, and critical pedagogy.