Questioning “Right to Work”
Is “Right to Work” Right for New Mexico?

By: Alicia Smith and Alan Webber
One New Mexico

Working Paper #1 for New Mexico’s Future
February 2015

Introduction

In 2015, with Republican Susana Martinez re-elected to a second term as New Mexico’s Governor and Republicans in control of the State House of Representatives for the first time since the Eisenhower 1950s, so-called “right to work” legislation has emerged as one of the highest priorities for the legislative session.

Republicans and their financial and ideological backers promote making New Mexico a “right to work” state as a sure-fire way to get the State’s economy moving.

The Republican mayor of Albuquerque has suggested that at least a dozen out-of-state companies would have come to New Mexico if we were a “right to work” state—a claim not uncommon to other states where the “right to work” debate has occurred.

Some conservative observers blame Tesla’s decision not to come to New Mexico on the fact that Nevada is—and New Mexico is not—a “right to work” state.

Right-wing think tank writers have offered national statistics to make the case that states that adopt “right to work” laws end up with more jobs and a stronger economy because of their policies.

Some writers have even argued that “right-to-work” legislation isn’t anti-organized labor—everyone wins when a state adopts “right to work” legislation.

With a critical debate looming, we set out to explore the issue.

What does “right to work” legislation actually say and do?

How does it change existing labor law?

What is the origin and history of “right to work” legislation?

What is the actual track record of “right to work” legislation? Does it lead to more jobs? Does it produce a higher standard of living?

When a state adopts "right to work" legislation, who wins? And who loses?

Most important, is "right to work" a policy that is right for New Mexico?

What Is—And Isn't—Right To Work?

In a 2012 Washington Post column journalist Ezra Klein pointed out the first and most cogent fact about the policy called "right to work": "The term 'right to work' is a triumph of framing."

Wrote Klein, "Such laws do not, in fact, give you the 'right to work.' They give you the right to refuse to pay union dues when you work for a union shop, even though you get the wages the union bargained for, and the benefits the union bargained for, and the grievance process the union bargained for."

So to begin, what does existing labor law say? And what doesn't it say?

The first and most important fact is this: *Under federal law today, no American worker can be forced to join a union.* Unions do negotiate "security agreements" with employers; under those agreements, even non-union members are assessed a fee to cover the costs of the union's bargaining activities. The idea is a simple one based on fairness: Non-union members who get the benefit of union bargaining that delivers higher wages and better benefits should contribute to the cost of delivering those improved outcomes.

States that adopt "right to work" laws make this kind of union agreement illegal. As a result, workers in unionized businesses can benefit from the terms of a union contract without paying any of the associated costs. Since, under federal law, unions must represent all workers covered by a contract whether those workers are members of the union or not, "right to work" laws essentially offer a free ride to individuals who work in a union shop but do not support the union.

This disparity raises the so-called "free rider" issue: Should workers who get the benefits of union bargaining activities be given a free ride—enjoying the advantages that come from union bargaining but paying nothing to achieve those outcomes?

Today, 24 states have enacted "right to work" laws. The majority of those states date back to 1947, for reasons that we'll explore as we examine the history of "right to work" legislation.

One challenge to a serious discussion of the issue is a clear understanding of the terms that apply to labor law. Here are some key definitions:

A Closed Shop: A closed shop is a form of union security agreement under which an employer agrees to hire only union members; employees must remain members of the union at all times in order to remain employed. *The closed shop was outlawed under the Taft-Hartley Act adopted by the federal government in 1947.* Today, anyone who argues that "right to work" legislation is needed to end the requirement that a worker join a union to be employed is simply factually inaccurate.

A Union Shop: A union shop is a form of union security agreement under which an employee may be hired without being a member of the union but must join the union after a certain period of time post-employment. *A 1985 Supreme Court decision, "Pattern Makers v. NLRB," held that a union member may resign any time without notice, thereby enabling a worker to work during a strike without being subject to sanctions from a union.* This ruling effectively ended the union shop. This is another labor law problem that "right to work" won't fix—because it isn't a problem.

The Agency Shop: The agency shop is a form of union security agreement where the employer may hire union or non-union workers and employees need not join the union in order to remain employed. However, the non-union worker must pay a fee to cover the costs of collective bargaining. This is what "right to work" laws seek to do away with—it opens the door to every worker opting for the "free rider" status.

What's The History of "Right to Work"?

Here's one way to understand the history of "right to work": Think about "the good," "the bad," and "the ugly."

The Good

In 1935, largely in response to the ongoing impact of the Great Depression on millions of Americans, the entrenched and growing power of big business and the indifference of business leaders to the plight of workers, the 74th Congress enacted the National Labor Relations Act, a foundational statute for much of 20th century labor law. Also known as the "Wagner Act," in honor of New York Senator Robert Wagner who championed the measure, the law guaranteed the basic rights of private sector employees to organize into trade unions, engage in collective bargaining for better wages and working conditions and take collective actions including strikes to achieve increased bargaining parity with their employers. The Act pre-empted state regulation of labor relations in interstate commerce; the goal of its sponsors was to develop a body of national labor law that would protect workers across state lines.

Republican members of Congress mounted intense opposition to the law. After its passage, Republicans encouraged employers to refuse to comply and supported the filings of numerous injunctions to prevent implementation of the Act. Notably, the American Liberty League called the Act a "threat to freedom" and "socialist"—a precursor to the language used today to support "right to work" legislation. The constitutionality of the law was finally decided by the Supreme Court in the 1937 decision in the case, "National Labor Relations Board v. Jones & Laughlin Steel Corp."

Over the next decade, unions became a strong, organizing force for American labor. Many economists and political scientists acknowledge that unions were essential to the building of American infrastructure and the creation of a strong middle class. Through collective bargaining, unions introduced concepts of fair wages, workplace safety, the 40-hour work week, vacation time and other benefits. Men and women were able to work at jobs that guaranteed higher wages, safer working environments, and better benefits including pensions.

But the drumbeat of opposition never totally stopped and the corporate world, bent on higher profits, continued the push to weaken the unions.

The Bad

In the decade after the passage of the NLRA, union power increased throughout the industrial northern tier of the country. At the same time, unions were having a more difficult time gaining ground in the South. In the spring of 1946 the Congress of Industrial Organizations (CIO), with $1 million and 250 organizers set out to organize at least 1 million workers across the South. The American Federation of Labor (AFL) pledged its support and Operation Dixie was born—an attempt to move union power into the textile industry.

Unfortunately, “Operation Dixie” not only failed to meet its objectives but also had disastrous consequences for the national labor movement. The operation was considered a failure, largely because of Jim Crow laws and deep-seated racial strife in the South. As the CIO began Operation Dixie, southern Democrats joined northern Republicans in voting for the 1947 Taft-Hartley Act to cripple union organizing attempts. As historian Tami Friedman has noted, “While the measure is often seen as the work of a Republican-dominated Congress, southern Democrats were instrumental in its passage.”

The Labor Management Relations Act of 1947, better known as the Taft-Hartley Act, imposed restrictions on the activities and power of labor unions. Labor leaders called it the “slave-labor bill”; before becoming law the Act had to overcome a veto by President Harry S. Truman who argued that it was “a dangerous intrusion on free speech” and that it would “conflict with important principles of our democratic society.”

The Act was seen as a means of demobilizing the labor movement by prohibiting the closed union shop, putting restrictions on rights of unions to strike, and ceding to the states the power to further restrict union activity without regard to interstate commerce.

Ultimately, the Taft-Hartley Act gave birth to the “right to work” movement.

The Ugly

In a 2012 article for Dissent Magazine entitled, “The Ugly Racial History of Right to Work,” Richard Kahlenberg and Moshe Marvit describe the unabashed racism at the core of the “right to work” law.

One key driver was a Texas white supremacist named Vance Muse, who, as Kahlenberg and Marvit report “hated unions in part because they promoted the brotherhood of workers across racial lines.”

Shortly after the passage of the NLRA in 1935, Muse said, “From now on, white women and white men will be forced into organizations with black African apes whom they will have to call ‘brother’ or lose their jobs.”

Unions were strong advocates for racial as well as economic justice, in part because racial discrimination inhibited worker solidarity and union organizing. Southern segregationists knew this, which is why they eagerly signed on to “right to work” efforts to weaken unions.

It is important to note that the majority of states that currently have “right to work” laws on the books enacted those laws in the 1940s and 1950s. Of the seventeen states that had legally required segregation prior to the “Brown v. Board of Education” decision in 1954, twelve today are “right to work” states. According to the Bureau of Labor Statistics, the eleven states with the lowest rates of unionization are North Carolina, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, Virginia, Tennessee, Texas, Oklahoma, and Florida. All of these states were formerly segregated.

Today “right to work” laws (including state constitutional amendments) exist in the following states:

(Note: states marked with an asterisk passed right to work legislation prior to 1960; the majority of these states enacted right to work laws in 1947.)

Alabama*
Arizona*
Arkansas*
Florida *
Georgia*
Idaho (1985)

Indiana (2012)
Iowa*
Kansas*
Louisiana (1976)
Michigan (2012)
Mississippi*
Nebraska*
Nevada*
North Carolina*
North Dakota*
Oklahoma (2001)
South Carolina*
South Dakota*
Tennessee*
Texas (1993)
Utah*
Virginia*
Wyoming

What Does a Real Case Study Show?

According to a 2011 Economic Policy Institute white paper, "Does Right-to-Work Create Jobs?" written by Gordon Lafer and Sylvia Allegretto, the clearest case study for states currently considering "right to work" legislation is Oklahoma, which became a "right to work" state in 2001.

Lafer and Allegretto begin their consideration of the Oklahoma case by noting that, historically, Oklahoma's employment picture mirrored that of the rest of the country, but with a consistently lower rate of unemployment for the last 20 years due to a concentration of jobs in oil and gas as well as government and military service. As far as bringing outside industry into Oklahoma, before adopting "right to work" legislation, the state successfully attracted roughly 600 new companies over the prior 20 year span using a simple, straightforward approach: cash.

"In the early 1990s," the authors write, "Oklahoma adopted a unique policy of rebating 5% of payroll costs—in cash, no strings attached—to employers who created new jobs. In 2009, the state established a double incentive—10% cash back on payrolls for companies that create high-paying jobs. Boeing's decision to move 550 jobs from California to Oklahoma, for instance, was driven not by labor law but by these incentive payments."

With a strategy in place that appeared to be working—by the year 2000 Oklahoma's unemployment rate was a mere 3%—why did the state adopt "right to work" legislation?

Apparently not because of expert economic advice or the actual experience of elected officials. According to Lafer and Allegretto, "The year before the referendum (on "right to work"), the Oklahoma League of Economists reported that its members ranked education reform as the single most promising policy the state could pursue, and that a strong majority believed right-to-work would have no positive impact on the state's economy."

The argument most often repeated in support of adopting the new policy was that, by becoming a "right to work" state, Oklahoma would attract more manufacturing businesses to the state.

Advocates of "right to work" insisted that the measure would vastly expand the universe of manufacturing firms that would put Oklahoma on the list of possible locations—and that otherwise, the state would be automatically ruled out as a possible relocation site.

One supporter testified before the Oklahoma State Senate that the state would see "eight to ten times as many prospects if right to work passes." Another consultant testified that, "When companies start looking for a relocation site, the second most important criteria they list is whether a state is a right-to-work state . . . ." Even Oklahoma's Governor made the same expansive claims: "If we don't pursue right to work," said Governor Frank Keating, "we are redlined."

The law was passed; Oklahoma became a "right to work" state—and the results are now there to be examined: Not only has manufacturing employment not increased in Oklahoma, even worse, after increasing for the previous 10 years, it has fallen since "right to work" was adopted.

Lafer and Allegretto write, "In the decade following adoption of the new law, however, manufacturing employment declined sharply and has never regained its pre-right-to-work level. Oklahoma ended the decade with 123,000 residents employed in manufacturing, nearly 50,000 less than when the law was voted in."

What about the bold claims that, by becoming a "right to work" state, Oklahoma would be putting out the welcome mat for firms looking for a new location? Did "right to work" produce a groundswell of businesses moving to Oklahoma?

Not according the EPI white paper: "Not only was there no dramatic increase in the number of new firms moving into the state, but the rate of new arrivals actually decreased following the adoption of right-to-work. In the decade preceding right-to-work, Oklahoma welcomed an average of 48 new firms per year, creating a total of nearly 6,500 new jobs each year during the 1990s. In the 10 years that the state has operated under its right-to-work law, however, the average number of jobs brought into the state has been one-third lower (averaging 4,244 from 2001 to 2010) than when Oklahoma was a non-RTW state."

There are several lessons suggested by Oklahoma's experience. The first is that, after examining the measures by which to evaluate "right to work" as an economic strategy—unemployment rate, the number of manufacturing jobs, relative job growth and unemployment compared to neighboring states, the number of firms moving into the state—the authors conclude that nothing "provides any evidence whatsoever that right-to-work has increased job growth in Oklahoma."

It is fair to say that the factors that influence economic development are a good deal more complex than the simplistic "one size fits all" approach offered by "right to work" legislation.

The second conclusion is that, at its core, "right to work" is a race to the bottom—but against other parts of the world where the bottom is a good deal deeper than in the United States.

The EPI paper says, "On the eve of Oklahoma's referendum, one scholar of location decisions warned that 'right-to-work laws are a welcome mat for companies who care most about low-wage, unskilled labor and who are committed to a region only until they are able to relocate someplace where the laws protecting workers are even weaker.'" In fact, between 2001 and 2008, the authors estimate, trade with China cut employment in Oklahoma by more than 20,000 jobs, as companies closed up shop and moved to an even cheaper, lower-wage location.

Third, becoming a "right to work" state is not even a marketable advantage. Today, Oklahoma's economic development materials don't mention its standing as a "right to work" state. Instead, the state lists as reasons for companies to do business there are its central geographic location, its access to national and international markets, the quality of its workforce, its infrastructure and transportation system—the actual issues that drive business decisions.

What Does the Record Show?

The basic argument made by proponents of "right to work" legislation is that organized labor is bad for business; that the way to create jobs is by cutting wages and benefits for workers and increasing profits for businesses. By calling the laws "right to work," proponents can wrap their argument in language that suggests that every American has the "right to work"—and should not be precluded from working by protections demanded by labor unions.

Opponents argue that "right to work" is code for an ongoing anti-organized labor campaign, designed to destroy the power of unions to demand better wages, improved working conditions and better benefits—the fundamental reasons for unions to exist, and the basis for the original Wagner Act in the days of the New Deal.

Beyond the example of Oklahoma, what does the record show? What can be learned by looking at studies of the economic impact of "right to work" laws around the country?

The truth is the data are inconclusive, at least insofar as actual job creation is concerned. Studies vary widely and often do not or cannot quantify other factors that impact jobs, wages and benefits for employees.

The National Right To Work Committee, a right-wing lobbying group based in Washington, D.C. states that "families in right to work states enjoy a higher standard of living than do those in non-right to work states and have (on average) greater after tax income and purchasing power." This "fact" is attributed to "independent studies"—but no such studies are ever identified in their literature.

On the other hand, the Economic Policy Institute found that wages and benefits are lower in "right to work" states. When it comes to job creation, said the EPI study, the evidence is mixed: "By the end of 2010, both the highest and lowest state unemployment rates were found in right-to-work jurisdictions."

According to a paper done by the Center for American Progress, "An Indiana Chamber of Commerce-commissioned study found right-to-work states had higher employment growth between 1977 and 2008 compared to states without right-to-work law, but much of that growth could be attributed to other factors. Those factors included the states' infrastructure quality and even its weather . . . ."

The most definitive study was done in 2000 by Thomas J. Holmes, an associate professor of economics at the University of Minnesota. In his paper, "The Location of Industries: Do States' Policies Matter?" Holmes says that national organizations such as the National Right-to-Work Committee supporting "right to work" laws claim that the policy attracts industry. But, says Holmes, "statistics about the growth of manufacturing jobs do not prove the committee's case for right-to-work laws."

Since World War II, Holmes says, manufacturing has shifted for reasons that have nothing to do with states' policies, including the rise of trucking over railroads and the advent of air conditioning that has produced a population shift to sun-belt states.

According to Holmes, the data indicate that jobs in manufacturing in "right to work" states rose at a slightly higher pace than those in non-right-to-work states, driven by business's preference for low taxes, low regulations and their resistance to union pressure for higher wages. At the same time, however, wages in "right to work" states are, on average, lower.

In 2012, the Congressional Research Service, citing data from the Bureau of Labor Statistics, reported that the average wage in "right to work" states was $42,465 compared with $49,495 in "labor security" states.

In 2009, Lonnie Stevans of Hofstra University wrote that, "wages and personal income are both lower in right-to-work states, yet proprietors' income is higher. As a result, while right-to-work states may maintain a somewhat better business environment relative to non-right-to-work states, these benefits do not necessarily translate into increased economic verve for the right-to-work states as a whole—there appears to be little 'trickle-down' to the largely non-unionized workforce in these states."

At the same time, the EPI paper outlined unanticipated economic impacts from a state adopting "right to work" legislation. For example, lowering wages and benefits for workers also results in lower tax revenues for local and state government. Lower-wage companies also tend to be less committed to any one location: they will move to the next low-wage location rather than showing any loyalty to a community. Moreover, a low-wage strategy has serious implications for the rest of a state's economy. The EPI calculates that for every $1 million in wage cuts to workers, $850,000 less is spent in the economy; a loss of $850,000 in local spending translates into a loss of six jobs.

Finally, while it is difficult to demonstrate that "right to work" produces a significant increase in employment, it is clear that "right to work" decreases earnings: the average worker in "right to work" states makes roughly $1,500 less than workers in other states. In addition, workplace safety declines in "right to work" states: The rate of workplace deaths is 52.9% higher in "right to work" states, where there is less union representation to provide safeguards. Health care is also an issue in "right to work" states: People in "right to work" states are 23.7% more likely to be uninsured and their children are 38.7% less likely to be insured.

In the end, as reported in a 2012 AP article, "It's nearly impossible to show impact of right-to-work laws on state economies. The evidence on the issue is abundant but also conflicting and murky. The clearest conclusion is that the economies of states respond to a mix of factors ranging from the swings in the national economy to demographic trends." Or, as noted above in the paper by Holmes, changes in transportation, in technology, in energy price, and in population distribution.

Further obscuring a clear answer is the "difficulty of distinguishing the effects of RTW laws from state characteristics as well as other state policies that are unrelated with these laws," write economists Ozkan Eren and Serkan Ozbeklik who conducted a major study in 2011 of the "right to work" laws in Oklahoma and Idaho.

What we do know is that for major industries the key factors in choosing locations tend to be such issues as access to a well-educated workforce, a well-developed transportation infrastructure, and proximity to key markets—not a "right to work" law.

What's Fact? And What's Fiction?

As the "right to work" issue heats up in the 2015 legislative sessions, a lot of myths will be advanced by proponents of the law. They include:

Workers in states without "right to work" laws are forced to unionize to get a job.

Under federal law, workers at any workplace always have the option as to whether to join a union or not. "Right to work" laws allow workers to benefit from union representation without having pay any kind of a fee for that representation.

“Right to work” laws create higher wages, which in turn help grow the economy.

The Economic Policy Institute has studied the impact on wages of “right to work” laws across the country. They concluded that “right to work” leads to a 3% decrease in hourly wages and a decrease in benefits for all workers—union and non-union. In 2012, McClatchy Newspapers reported that “numerous studied have found that wages for both union and non-union workers are lower in states with right-to-work laws.”

Other studies have found that workplace safety suffers in “right to work” states where workers are less likely to secure job safety enhancements beyond federal and state regulations.

In addition, the Congressional Research Service (CRS) has reported that “right to work” laws lower wages for union and non-union workers by an average of $1,500 a year and decrease the likelihood that employees will get health insurance or pensions through their jobs. Further, the CRS report stated that, “by lowering compensation, the RTW laws have the indirect effect of undermining consumer spending, which threatens economic growth. For every $1 million in wage cuts to workers, $850,000 less is spent in the economy which translates into a loss of six jobs.”

“Right to work” leads to higher employment.

In 2012, the Center for American Progress published a report titled “Right-to-Work 101” which debunked the myth that “right to work” leads to higher employment.

While the real intent of “right to work” is to undermine unions and reduce wages, the report says, “this low-road strategy for job creation just doesn’t pan out. In Oklahoma, the first state in the wave of 21st century RTW legislation, researchers found that the number of companies relocating to Oklahoma and the total number of manufacturing jobs in the state fell by about a third since it adopted the law in 2001.”

“Right to work” laws protect workers from supporting political spending.

Advocates of “right to work” use this argument to suggest that workers will no longer have to pay union dues that go to political causes they don’t personally support. A Wall Street Journal editorial in 2012 claimed that, “If states adopt right-to-work laws, unions could not coerce workers to join and pay dues that they then funnel to politicians who protect union power.”

Of course, under current federal law, workers who don’t want full union membership pay only that share of dues used directly for the representation of union membership for collective bargaining. Unions are obligated to tell all covered employees that they have the option of paying only for collective bargaining representation. This requirement, established by a Supreme Court decision in the case of “Communications Workers of America v. Beck” and known as “Beck rights”, mandates that unions collect from non-members only those fees and dues necessary to do collective bargaining work.

“Right to work” as an economic development strategy will lead to a high quality of life in those states that adopt the legislation.

In fact, nothing could be farther from the truth. In a recent comprehensive study of the quality of life in all 50 states, the Organization for Economic Cooperation, using nine objective measurements, ranked the 10 best and 10 worst states. Here’s what they found:

The 10 States With the Worst Quality of Life

10. Georgia	(Right to Work)
9. New Mexico	
8. Louisiana	(Right to Work)
7. South Carolina	(Right to Work)
6. Oklahoma	(Right to Work)
5. Tennessee	(Right to Work)
4. West Virginia	
3. Arkansas	(Right to Work)
2. Alabama	(Right to Work)
1. Mississippi	(Right to Work)

The 10 States With the Best Quality of Life

10. Wisconsin	
9. Washington	
8. Maine	
7. Massachusetts	
6. Colorado	
5. North Dakota	(Right to Work)
4. Iowa	(Right to Work)
3. Vermont	
2. Minnesota	
1. New Hampshire	

Very simply, 8 out of the 10 states with the worst overall quality of life are “right to work” states. On the other hand, 8 out of the 10 states with the best quality of life are not “right to work” states.

If there is a correlation, it is the opposite of what proponents of “right to work” argue.

“Right to work” states are experiencing higher job growth than “non-right to work states.”

This is one of those facts that is accurate—but not true. The suggestion is that “right to work” states are growing because of “right to work.” But when you look at the states involved and the facts behind their growth, the reality has nothing to do with “right to work.”

For example, North Dakota leads the nation in job growth—because of the boom in oil and gas prompted by fracking. Oklahoma has seen a spurt in job growth—because of the sudden improvement in that state’s mining operations. The reality: those jobs have to be in North Dakota and Oklahoma because that’s where the energy deposits and mines are—not because those two states are “right to work” states.

The EPI white paper on “right to work” refutes this claim with good humor: “. . . in 2000-2009 the states whose names started with the letters N-Z had an average employment growth rate almost nine times higher than states whose names started with A-M. Yet no one would suggest that Indiana and Kentucky could improve job growth by changing their names.”

Is “Right to Work” Right for New Mexico?

The first question is, what will it take to get New Mexico’s economy moving forward?

There is no doubt that New Mexico’s economy is in neutral. We are “the hole in the donut,” as the states around us experience a more rapid recovery from the Great Recession, greater job growth and expanding economies. In contrast, New Mexico is stagnant, losing people who are bailing out of the state to look for jobs in other parts of the country.

The second question is, is “right to work” legislation the right answer?

Based on studies, white papers, accumulated data and economic analysis, the evidence shows that passing “right to work” legislation will do nothing to improve New Mexico’s economy. In fact, it appears that the real motive behind “right to work” legislation isn’t an attack on unemployment in New Mexico—it’s an attack on organized labor in New Mexico. In other words, it’s about politics not economics.

At the same time, the studies cited above do suggest a way forward to improve the New Mexico economy: Like most states in this country that are adapting to a new economy driven by knowledge, technology, innovation, speed and global competition, to grow new jobs New Mexico needs to invest in critical resources—education at all levels and of all kinds, high-speed internet connectivity, improved transportation access including air service, workforce training and development, growth of existing small and medium size businesses, and promotion of entrepreneurship and startups.

A legislative session devoted to arguing “right to work” is a waste of time, energy, opportunity and political capital.

We should be looking for ways to make the critical investments that give New Mexico a shot at winning in the economy of the future, rather than wasting time on the politics of the past.

About the Authors:

Alicia Smith is a policy analyst and writer with years of experience working at the state and federal level.

Alan Webber is a businessman and entrepreneur and founder of One New Mexico, a non-profit organization committed to creating a better future for New Mexico.