

Right to Work/ “Fair Share” Background

Congress enacted the NLRA on July 5, 1935. It was welcomed at the time and for numerous years later as the Magna Carta of American labor. Passage of the NLRA energized union formation. Successful unionizing efforts quickly followed in the automotive, electrical, manufacturing, rubber and steel industries. Union rolls reached 35 percent of the work force by 1945.

The heart of the NLRA is in Section 7:

“Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.”

To give teeth to the new right to collective bargaining, the act established the National Labor Relations Board (NLRB). The NLRB is charged with several responsibilities:

- It endeavors to preclude or remedy inequitable labor practices committed by either employees or unions. It can issue "cease and desist" orders against unethical practices, including pressuring employees, bias against union members, and refusal to meet at the bargaining table with employees.
- When requested, it conducts elections to determine the employee representatives for collective bargaining.
- The NLRB also can request that the federal courts sanction board rulings.

The president appoints the five board members and their general counsel, with the consent of the senate. Each board member serves a five-year term. The general counsel has a four-year term.

The Taft-Hartley Act, an amendment to the National Labor Relations Act (NLRA), was passed in 1947 to restore a more balanced relationship between labor and management. It gives employees the right to refrain from participating in union activities and adds a series of prohibited unfair labor practices by unions. Section 14(b) allowed states the ability to enact Right to Work laws. **A right-to-work law secures the right of employees to decide for themselves whether or not to join or financially support a union.**

On April 28, 1947, the Fifty-Second Iowa General Assembly approved Senate File 109 – Labor Union Membership. Senate File 109 became Iowa Code Chapter 731, Iowa’s right-to-work statute.

Iowa Code Chapter 731 guarantees that no person can be compelled, as a condition of employment, to join or not to join, nor to pay dues to a labor union.

In 1959, Congress imposed further union restrictions with the Landrum-Griffin Act, the last significant revision of the NLRA.

The Taft Hartley Act of 1947 established what is known as exclusive representation. At its core, exclusive representation means that unions have a monopoly in the workplace in which they are organized. Exclusive representation allows unions to be the SOLE negotiator on behalf of the employees. That's ALL employees – even the ones who are not union members. This is true regardless of a state's right to work status. Somehow, the unions have defined their monopoly status as a “benefit” to Iowa workers.

The heart of organized labor's argument is that they assert that the NLRA, through exclusive representation, *forces* them to represent non-members in collective bargaining.

Here's the truth: unions fought for the right to represent everyone. But, in order to get the right of exclusive representation they had to agree to represent all employees, both union and non union alike. Exclusive representation means they can keep competing unions out. It also means that the workers can no longer represent themselves. Unions fought for the ability to take away the rights of individual workers to negotiate for themselves. And they won.

Non-union members are being held hostage by this forced union representation. They are not “free riders” but “captive passengers”. These workers did not ask to be represented. In most cases, they do not want to be represented. They certainly do not approve of the forced financing of union political activities that occurs in non-Right to Work states. Many non-members have more faith in their own ability to negotiate salary, benefits and other job related duties.

In fact the Supreme Court acknowledged in the 1944 *J.I. Case Co. v. NLRB* decision that many workers could get better pay and benefits by bargaining individually, but found that federal labor law would not permit such bargaining without union officials' consent. The "practice and philosophy of collectivism [monopoly] bargaining looks with suspicion on such individual advantages," explained the Court opinion.

More on exclusive representation:

WHAT IS "EXCLUSIVE REPRESENTATION"? "Exclusive representation" gives unions the power to represent all employees in a company's "bargaining unit" -- including employees who oppose the union and do not want its "services." This monopoly bargaining power is a special privilege granted to union by federal law.

From: <http://www.ecouncil.org/rtw.htm>

“Federal law allows unions the special power to create “exclusive representation” agreements with employers. If they choose to create these exclusive representation agreements, they are indeed required to represent all members, both dues paying members and free riding members alike. However, it does not appear that unions are actually required to set up these exclusive agreements

Justice William Brennan's 1962 opinion for the unanimous U.S. Supreme Court in *Retail Clerks v. Lion Dry Goods* which acknowledged not only exclusive contracts representing all of the workers but also the possibility of members-only contracts representing some of the workers: (Greer, Union Representation)

Section 301(a) of the Labor Management Relations [Taft-Hartley] Act, 1947, which confers on federal district courts jurisdiction over suits "for violation of contracts between an employer and a labor organization representing employees in an industry affecting" interstate commerce, applies to a suit to enforce a strike settlement agreement between an employer in an industry affecting interstate commerce and local labor unions representing some, but not a majority, of its employees. (Greer, Union Representation) The term "labor organization representing employees," as used in 301(a), is not limited to labor organizations which are entitled to recognition as exclusive bargaining agents of employees. (Greer, Union Representation)

Therefore, it appears that unions are not required by law to enter into exclusive bargaining agreements with their employers, and that if they wanted to they could form member-only bargaining agreements in which they only represent their members, only their members are required to pay union dues, their contracts only pertain to their members, and other people are allowed to work for the employer independent of the union."

Effects of Right to Work Laws on Employees, Unions and Businesses by John W. Cooper

In his 1993 book *Agenda For Reform*, Stanford law professor and former union lawyer William Gould, who went on to serve for four years as the Clinton appointed Chairman of the National Labor Relations Board (NLRB), acknowledged that federal law "permits 'members-only' bargaining without regard to majority rule or an appropriate unit and without regard to exclusivity."

In delivering the opinion of the court for the 1938 case *Consolidated Edison Co. v. NLRB*, Chief Justice Charles Evans Hughes was crystal clear:

Under Section 7 [of the National Labor Relations Act] the employees of the companies are entitled to selforganization, to join labor organizations and to bargain collectively through representatives of their own choosing. The 80 per cent of the employees who were members of the [International] Brotherhood [of Electrical Workers union] and its locals had that right. They had the right to choose the Brotherhood as their representative for collective bargaining and to have contracts made as the result of that bargaining.

On this point the contracts speak for themselves. They simply constitute the Brotherhood the collective bargaining agency for those employees who are its members. . . . Upon this record, there is nothing to show that the employees' selection as indicated by the Brotherhood has been superseded by any other selection by a majority of employees of the companies so as to create an exclusive agency for bargaining under the statute, and in the absence of such an exclusive agency the employees represented by the Brotherhood, even if they were in the minority, clearly had the right to make their own choice.

Twenty-three years later, the Supreme Court resoundingly confirmed that members-only bargaining has remained permissible under the National Labor Relations Act (NLRA) since the substantial amendments of 1947 and 1959.

In 1961's *International Ladies' Garment Workers' Union v. NLRB*, the Court found that recognizing a minority union as an exclusive representative violated the NLRA as amended by 1947's Taft-Hartley Act, but also found that bargaining with a members-only union would not violate the amended NLRA if there were no exclusive representative.

More information can be found in: [Union 'Representation' Is Foisted On Workers -- Not Vice-Versa](#)

Visit www.nllrr.org for additional information.

Organized Labor points to the NLRA for evidence that they are bound by law to represent non-union employees and have no choice in the matter. That is detailed below. However, as Chief Justice Hughes demonstrated in 1938 in *Consolidated Edison Co. v. NLRB* and as the SCOTUS reveals in 1961's *International Ladies' Garment Workers' Union v. NLRB* and Justice Brennan points out in the 1962 SCOTUS decision in *Retail Clerk's vs. Lion Dry Goods*, that is not necessarily the case.

From the Basic Guide to the National Labor Relations Act:

http://www.nlr.gov/nlr/shared_files/brochures/basicguide.pdf

Section 9(b)(3) of the National Labor Relations Act:

Duties of bargaining representative and employer. Once an employee representative has been designated by a majority of the employees in an appropriate unit, the Act makes that representative the exclusive bargaining agent for all employees in the unit. As exclusive bargaining agent it has a duty to represent equally and fairly all employees in the unit without regard to their union membership or activities. Once a collective-bargaining representative has been designated or selected by its employees, it is illegal for an employer to bargain with individual employees, with a group of employees, or with another employee representative.

If you want to read more about so-called “Fair Share” and Right to Work, please consult the following:

North Dakota Case right on point. Information relating to what other states have done. .

<http://www.court.state.nd.us/court/opinions/8966.htm>

US Supreme Court decision indicating that “agency shop” (also called fair share) clauses violate RTW laws.

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=373&invol=746>

US Supreme Court decision making it crystal clear that union “membership” is really about paying money – either dues or fees – to the union. The essence of union membership is really about money, not about actual membership. I think you can easily point to this case and draw the conclusion that “fair share” repeals RTW.

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=373&invol=734>

Recent Arizona Court of Appeals decision (2006) that makes it perfectly clear the agency fees and fair share violate RTW. The union cleverly attempted to say that “fair share” is different than agency fees. Pay special attention to top of page 24 – the court discusses that the union knew going in that it would have to bear the costs of non-members when it organized in Arizona.

<http://www.cofad1.state.az.us/opinionfiles/CV/CV040766.pdf>

Here a Nebraska Attorney General opinion that states that “fair share” would violate their Right to Work law. While Nebraska’s law is constitutional, rather than statutory, the point is still the same: “fair share” violates RTW.

<http://ago.nol.org/local/opinion/index.html?topic=details&id=1493>