Freedom for Workers

BY CHARLES W. BAIRD

In my January/February column this year I explained why I believe that, given the existence of the National Labor Relations Act (NLRA), which regulates American labor-management relations, a classical liberal should support a national right-to-work-act. Last year *Freeman* book review editor George Leef published *Free Choice for Workers: A History of the Right to Work Movement* (Jameson Books). This is a superb account of a key part of the continuing struggle to defend the unalienable right of all workers to decide individually whether to be represented by, and to support, any third party in bargaining with their employers over wages, salaries, and other terms of employment.

The three most egregious impositions of the NLRA are exclusive representation, union security, and mandatory good-faith bargaining. Leef has little to say about the first and the last, although he defeats the case for the latter with a clever analogy to bargaining in the housing market. Union security has always been the primary concern of the National Right to Work Committee and its sister organization, the National Right to Work Legal Defense Foundation. Union security is the means by which the NLRA empowers unions to force workers who have already been forced to accept unwanted union representation to pay for that representation or be fired from their jobs. Leef begins by destroying all the hoary arguments by which unionists try to justify this legalized extortion and brilliantly deploys all the counterarguments. He then tells the right-to-work (RTW) story in crisp, entertaining, and informative prose.

The RTW movement was begun by railway workers who resented attempts by some railway unions to monopolize labor representation in that industry after the passage of the Railway Labor Act in 1926. With the onset of the Great Depression, Herbert Hoover placed the independence of individual workers in even greater jeopardy when he signed the Norris-LaGuardia Act (1932). The hegemony of unions over individual workers was completed by enactment of the NLRA (1935). The 1947 Taft-Hartley amendments to the NLRA did almost nothing to defend all workers' right to make choices for themselves. The infamous "except" clause that was added to Section 7 of the NLRA gave forced-dues extortion more apparent legitimacy than it ever had. Under Section 7 workers may refrain from union activities except when unions can prevent them from doing so by union-security agreements with employers. Apparently to make up for that bit of duplicity, a majority of the 1947 Congress added Section 14(b), which stipulates that individual states have the power to proscribe union-security arrangements within their respective jurisdictions.

One of Leef's most dramatic stories is his account of the 1965 attempt by President Lyndon Johnson and the Democrat-controlled Congress, at the behest of the AFL-CIO, to repeal Section 14(b). He likens it to World War II's Battle of Midway, with the union behemoth as the Japanese navy and the National Right to Work Committee and its indefatigable president, Reed Larson, along with Senator Everett Dirksen of Illinois, as the vastly outnumbered American fleet headed by Admiral Spruance. The unions and their political sycophants thought they had won the battle before it began. They completely discounted the ability of the Committee to arouse public opinion and grassroots activism against repeal. Nor did they worry about the minority of politicians (of both parties) who opposed repeal. With public-opinion polls it had commissioned, the Committee was able to convince a reluctant Senator Dirksen to lead a successful filibuster against the repeal. Leef's telling is filled with nail-biting suspense and high drama. Dirksen and the Committee defeated repeal in 1965 and again in 1966.

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In numerous other legislative battles, both in Congress and state legislatures, Leef exposes what can only be called hypocrisy. Most Democrats openly opposed RTW and still do. In contrast, many Republicans—in Congress and the White House (especially Presidents Nixon, Ford, and both Bushes)—claimed to support worker freedom of choice; but when it was time actually to vote or to take some executive action they cowered before the AFL-CIO. This, too, continues to be the case.

Two attempts at labor law "reform"—that is, making it easier for unions to capture forced dues-payers—during the Carter and Clinton years are especially interesting. The filibuster to stop "reform" in 1978 survived six cloture votes before the union-owned politicians were forced to concede defeat.

The National Right to Work Legal Defense Foundation, which Leef tells us was patterned after the NAACP Legal Defense Foundation, was created in 1968 to carry the battle against worker coercion into the courts. The Foundation has been astonishingly successful at the Supreme Court—for example, in those cases in which the Court ruled that unions may not collect money from unwilling workers for their political and ideological spending. This effort began with railway- and airline-industry cases, continued with government-sector cases, and culminated for most private-sector workers with the famous *Beck* case in 1988.

Alas, victory in the Court does not automatically translate into victory in practice. Even some in the Reagan administration were reluctant to enforce the *Beck* decision. The first President Bush refused to do anything to enforce *Beck*, except at the last minute before the 1992 election when he was trailing Clinton in the polls. All he could summon the courage to do then was to require federal contractors to post *Beck* rights in the workplace. President Clinton rescinded that order as soon as he took office. The National Labor Relations Board, whose continued existence depends on coercive unionism, still resists enforcing *Beck*.

Leef tells many other stories. Among them, the attempts by unions to harass the Committee with the help of the IRS and the Federal Election Commission are especially maddening. I will close with a story Leef doesn't tell.

FDR Infuriates the Unions

Section 7(a) of the 1933 National Industrial Recovery Act (NIRA) permitted individual workers to decide for themselves whether to have any union represent them. The unions fought hard to take this right away. On March 1, 1934, Senator Robert Wagner introduced a bill that would have done so. On March 25 President Roosevelt approvingly announced the settlement of a nationwide labor dispute in the auto industry that endorsed free choice for workers. The union establishment was furious, but without Roosevelt's support Wagner's 1934 bill died. In 1935 Wagner came back with a new bill which, among other things, stipulated that union representation must be decided by majority vote among workers in their respective workplaces. The winning union would become the exclusive bargaining agent for all workers who were eligible to vote. This bill became the NLRA on July 5, 1935, with Roosevelt's signature.

What accounts for Roosevelt's change of heart between March 25, 1934, and July 5, 1935? I think it was spite. On May 27, 1935, the U.S. Supreme Court ruled that NIRA was unconstitutional. This was the cornerstone of Roosevelt's feckless attempts to do something about the Great Depression. He was furious with the "nine old men" on the Court who opposed his corporatist ideas about how an economy should be run. The Wagner bill was consistent with those ideas, and many of those who opposed the Wagner bill were openly jubilant over the Court's NIRA decision. Roosevelt could have seen support of Wagner's bill as a way to get back at his political enemies.

George Leef and I agree that by any reasonable reading of the Constitution the NLRA is unconstitutional. It should be repealed. In the meantime all who subscribe to the freedom philosophy owe Reed Larson, the Committee, and the Foundation a great debt of gratitude for their persistent defense of worker freedom. A national right-to-work act would be a fitting tribute.