John P. David: Right-to-work argument a fallacy, undemocratic, too

An important concept in economics is the "Fallacy of Composition." If one person stands up at a basketball game, the person can see better. If everyone stands up, the advantage is lost. In fact, if the person is short, the situation will backfire and be worse.

This principle is applicable to much of the "war on working families" legislation that is being introduced this session. By trying to snooker an advantage over other states, the eventual result is that everyone else copies and the result simply means that those who benefit laugh their way to the bank. By cutting a business tax, providing a massive tax incentive subsidy, repealing prevailing wage laws, or passing so-called "right-to-work" legislation, no so-called "economic advantage" will last.

This is not the first time that the West Virginia Legislature has considered so-called "right-to-work" legislation. In the past it has been rejected for four basic reasons. It does not mean that every worker has the right to a job and to receive work at fair wages, reasonable hours and under decent labor standards. It does not mean that every worker has a right to secure employment with proper provisions for paid vacations and insurance safeguards against sickness and old age. It does not mean that every worker is protected against arbitrary discharge. It does not mean to strengthen the individual worker's bargaining position through a union of choice.

Historically, the "right-to-work" movement had its roots in extreme pro-segregationist and redbaiting elements in the 1940s South. According to the Institute of Southern Studies, Vance Muse founded the Christian American Association in 1936 with backup from Southern oil companies and Northern industrialists, including Fred Koch, who founded the John Birch Society and was the father of the conservative Koch Brothers who currently are funneling exorbitant funds to change the national political landscape to their way of thinking.

There are basic moral and legal issues with "right-to-work" legislation. First, "right-to-work" laws are a violation of the letter and spirit of the Constitution, which delegated to the federal government the power to regulate commerce. In this context, both the Wagner Act and the U.S. Supreme Court consistently ruled that States may not adopt their own codes of labor relations.

In 1947, Congress carved out and barely overrode President Truman's veto with one exception. The exception was Section 14 (b) of the Taft-Hartley Act that permitted states to outlaw voluntary discussion of certain union security clauses during collective bargaining negotiations.

Under federal law, contract negotiations are divided into three categories, namely what must be discussed (wages, laws and working conditions), what may be discussed (fringe benefits/services and union shop security clauses) and what may not be discussed (activities that violate other statutes). In essence, right-to-work legislation gags voluntary discussion of certain union shop security clauses and moves the topic from "may be voluntarily discussed" to "may not be discussed."

To be more clear, the term "union shop" specifically refers to one of a number of different types of union security clauses. A "union shop" clause is a permitted but not mandated bargaining item. A "union shop" security clause may or may not be negotiated in a collective bargaining agreement. A "union shop" security clause, which specifically states that after a period of time all employees in the

bargaining selected by the majority must become union members and help pay for provided services, cannot be legally negotiated in right-to-work states. The clause, however, is permissible under federal law and can be negotiated in all other states, such as West Virginia, if both parties agree to it. However, since the clause is not a mandatory bargaining item, either side can request that the item be removed from the bargaining table during negotiations.

Second, "right-to-work" laws are undemocratic. Under the Wagner Act and provisions of the National Labor Relations Board, a union cannot be legally recognized as the bargaining agent unless it obtains 50 percent plus 1 vote of those deemed eligible to participate in a NLRB supervised election. If recognized, the union had to represent all the employees, even those opposed. Thus, "right-to-work" laws aren't fair to dues-paying members since non-union employees obtain a "free ride" to the benefits negotiated by the union.

If a worker who is represented by a union and doesn't pay dues is fired illegally, the union must use its time and money to defend him or her, even if that requires going through a costly, time-consuming legal process. Because the union represents everyone, everyone benefits, so everyone should share in the costs of providing these services. The same is true for negotiated wages, hours and working conditions, which must apply to both those who voted for and against union representation. Nonmembers who are represented by a union can even sue the union if they think it has not represented them fairly.

Currently, the nation has a federal holiday in honor of Martin Luther King Jr., who won the Nobel Peace Prize in 1964. For many, it is a "Day On, not a Day Off" to do community service and reflect on King's messages that dealt with many topics, including fairness, respect and the fight for social and economic justice. As a civil rights leader, he spoke out against "right-to-work" laws, stating:

"In our glorious fight for civil rights, we must guard against being fooled by false slogans, such as 'right to work.' It is a law to rob us of our civil rights and job rights. Its purpose is to destroy labor unions and the freedom of collective bargaining by which unions have improved wages and working conditions of everyone. Wherever these laws have been passed wages are lower, job opportunities are fewer and there are not civil rights."

Studies clearly show that business decisions are not swayed by a workplace clause that does not even need to be on the negotiating table. Business looks for attestable criteria like a workforce that is educated, healthy, trainable and drug-free. To claim that so-called "right to work" is a panacea for prosperity is economic dishonesty and political deception. There is no question that West Virginia needs jobs and economic revitalization, but we must invest in people and work together in this effort as well as in concert with federal trade policies to ensure that we succeed without division and without squeezing those who have little to give more.

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