



Canadian Centre for
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Everyone benefits, everyone pays

It's becoming difficult to keep up with the alarming developments unfolding in the US. But one in particular should be of great concern to Canadian workers. According to the Economic Policy Institute, the recent Supreme Court (SC) decision "bars unions from requiring workers who benefit from union representation to pay their fair share of that representation". This decision will wipe millions of dollars from public sector unions' balance sheets, adding to the long list of growing challenges unions are facing in the US.

The reasoning behind this decision is often referred to as the 'right to work' (RTW) – referring to the odd idea that being required to pay union fees somehow prevents you from working. At issue really is whether some workers, who don't want to pay fees to the unions that represent them, have the right to free ride on those workers who willingly pay.

RTW is not new to the US, although for decades it was contained mostly within the boundaries of the former slave-holding states. Now 24 states, including previous highly unionized states like Michigan, have enacted RTW legislation. This new SC decision means that RTW will now apply to states with large public-sector unions that did not have RTW laws.

Arguments against RTW deserve repeating. When a majority of workers democratically vote to form a bargaining unit, the minority that was opposed does not have to join the union. But because the union will be incurring expenses to the betterment of all the workers (non-members cannot be exempted from any gains the union wins), the non-members cannot opt out of paying union fees. By ensuring that the non-members cannot free ride on the financial contributions of members, the sustainability, or security, of the union is protected.

You cannot stop paying taxes because you did not vote for the government in power, and similarly, those with a vested interest in better wages and benefits cannot stop paying union fees just because they don't want to be members of the union. The SC decision tramples the union security principle, putting the very survival of US public sector unions at risk. According to the Economic Policy Institute:

This [decision] will lead to reduced power—at the bargaining table and in the political process. It will have profound implications for not just the 6.8 million state and local government workers covered by a union contract, but all 17.3 million state and local government workers and indeed for every working person throughout the country.

Should Canadian workers be concerned? So far in Canada, right to work campaigns – and there have been many – have not succeeded. Our Rand Formula has protected union security for over 70 years.

In 1946, Justice Ivan Rand delivered his famous arbitration decision that ended the strike at Windsor's Ford Motor Company. Workers there were striking to force the company to implement a union security policy.

Justice Rand understood the need for unions:

Labour unions should become strong in order to carry on the functions for which they are intended . . . [They are meant] to secure industrial civilization within a framework of a labour-employer constitutional law on a rational economic and social doctrine.

Rand acknowledged that workers need a mechanism by which they can level the playing field: "Certainly the predominance of capital against individual labour is un-

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IN LABOUR ISSUES

“When union density is high, other democratizing influences like progressive taxation and better income security programs are more prevalent.”

questionable.” The leveling mechanism he implemented in 1946 is known as the Rand Formula, or ‘dues check off’.

Dues check off compels the employer to deduct union fees from all workers’ pay and submit them to the union. The requirement is based on the simple premise that everyone benefits, everyone pays.

The formula has survived all legal challenges. A 1991 Supreme Court of Canada decision ruled that the Rand Formula did not encroach on individual freedoms guaranteed by the Charter of Rights and Freedoms. The decision also confirmed that union representation “carries the hallmark of democracy.”

Employers wield immense power over the amount and hours of pay, access to benefits, health and safety on the job, scheduling and many other workplace conditions. Understanding this imbalance of power, American Supreme Court judge, Justice Louis Brandeis notably declared in the early 20th century that collective bargaining by unionized workers was the “. . . means of providing for workers in industry the sense of work, of freedom, and of participation that democratic government promises them as citizens.”

Industrial and political democracy are closely related. When union density is high, other democratizing influences like progressive taxation and better income security programs are more prevalent. Workers who participate in democratic processes at work are more likely to vote in political elections and be better informed about issues at large. The decline of democracy in the US is arguably at least partly attributable to the alarming loss of unionized workers in that country.

The growing number of American states

that have enacted right to work policies, coupled now with this latest SC decision, is seriously eroding unions’ ability to protect workers, union members or not. A recent study noted in the Winnipeg Free Press estimated that eventually US public-sector unions could lose more than 700,000 members and that the attendant loss of political power could suppress wages.

Concerns about wages are not exaggerated. Not only are median wages in RTW states well below the rate in the rest of the country, union density is around half when compared to states that are RTW-free.

Canadian workers must not assume that RTW will never come to Canada. Provinces like Alberta, Ontario, Saskatchewan and even Manitoba have flirted with the idea. Powerful, corporate-funded groups like the Fraser Institute and the Canadian Labour Watch Association are constantly advocating for RTW legislation. Of more recent concern is the election of Doug Ford in Ontario, and the real possibility that Jason Kenny – previously part of Stephen Harper’s anti-union federal government - will be elected Premier in Alberta in 2019. If Kenny wins, workers in four contiguous provinces will be under the rule of decidedly conservative, anti-union governments.

Any moves to bring RTW to Canada will be met with intense resistance that could end up in the Supreme Court of Canada yet again. For the sake of all workers, we can only hope that Justice Rand’s long shadow (so described by Debra Parks in her 2003 paper) continues being cast over a majority of Canadian Supreme Court judges.

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References available upon request.