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OPINION

How 'Right to Work' Became Politically Possible

The AFL-CIO's failure to get Taft-Hartley repealed in the 1960s was a turning point for organized labor.

By **PAUL MORENO**
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Last week Wisconsin became the 25th right-to-work state. Under the bill signed into law by Republican Gov. Scott Walker, workers cannot be forced to join a union or pay dues as a condition of keeping their jobs.

This year also marks the 50th anniversary of the Great Society, the wave of liberal legislation enacted by the 89th Congress under the legendary browbeating of President Lyndon B. Johnson. There is no small irony here, because organized labor, the most powerful interest group in the mid-20th century Democratic Party—was the wallflower at the Great Society party. Unions hoped to make it impossible for states to adopt right-to-work laws yet failed. Unions were simply left behind amid other liberal priorities, and their failure helped put unions on the defensive—where they still are, at least in the private economy.

The cornerstone of American labor law is the 1935 National Labor Relations Act, called the "Wagner Act" after its Senate sponsor, progressive Democrat Robert F. Wagner of New York. The legislation was deliberately one sided, subjecting employers to a series of obligations, including the duty to bargain with whatever organization the majority of employees chose. The legislation outlawed certain employer labor practices and established the National Labor Relations Board to interpret the law, particularly to define and police "unfair labor practices."

Unions of the old American Federation of Labor and the newer Congress of Industrial Organizations took advantage of the law and organized millions of workers, especially

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those in the mass-production industries of autos, steel and meatpacking. By 1945 the two had taken in one-third of the private workforce, helped along by government-contracting provisions passed during World War II.

The AFL and CIO were determined to lock down the gains they made during the war. They engaged in a "strike wave" in 1945-46 that threatened to cripple the already difficult postwar reconversion to a peacetime economy. Even liberal President Harry Truman went to court for an injunction to break the coal strike, and he was about to ask Congress for extraordinary power to break the railroad strike when the railroad brotherhoods gave in.

The public sense that unions had become too powerful led to the election of Republican majorities in 1946, the first GOP Congress since 1928. "Had Enough?" was their campaign slogan. They enacted the Labor-Management Relations Act in 1947, known as the Taft-Hartley Act.

Though labor leaders denounced the law as a "slave labor act," Taft-Hartley preserved the fundamentals of the Wagner Act while leveling the playing field. It outlawed the closed shop, for example, where an employer could only hire union members; strikes between rival unions; and certain kinds of secondary boycotts such as sympathy strikes.

After Taft-Hartley, workers could not be required to maintain membership in a union (after being hired), although if they quit the union they could still be required to pay an agency fee—that portion of the union dues used only for collective bargaining. But Taft-Hartley included a provision called section 14(b) that allowed states to abolish any requirement that workers join a union or pay any dues. This "right-to-work" provision was adopted by many states, mostly in the South and West. Unions complained that 14(b) allowed nonunion workers a free ride, enjoying the benefits of unionization without paying for them.

The AFL-CIO—the two federations merged in 1955—constantly called for the repeal of Taft-Hartley, especially 14(b), though a coalition of Midwestern Republicans and Southern Democrats prevented it. Unions finally had an opening to get rid of 14(b) when the Democratic Party won an overwhelming majority in Congress in 1964.

LBJ had other plans, though, and he entreated the AFL-CIO to wait until the other big pieces of Great Society legislation had passed. Big Labor had another enemy in the powerful chairman of the House Education and Labor Committee, Harlem's Adam Clayton Powell Jr. For years Powell insisted that the 14(b) repeal be coupled with a provision against union racial discrimination. Powell eventually yielded; the law passed the House, but in October 1965 Senate conservatives filibustered the repeal.

Private unions were further weakened by post-Great Society liberalism. The Civil Rights Act of 1964 was interpreted in a way that undermined union seniority rights that acted in a discriminatory manner. Environmental and safety legislation pounded American manufacturers and reduced employment. The Immigration Act of 1965 began a wave of immigration that made the American labor market more competitive. The most powerful growth in organized labor was in the public sector, where unionization was legalized in the 1960s. The AFL and CIO became overshadowed by a host of new liberal interest groups.

And that is how what in 1965 would have been considered unimaginable—that Michigan and Wisconsin could be open-shop states—came about.

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