Reining in the "Union Threat": Right-to-Work Laws in South Dakota

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With other western and southern states, South Dakota was on the cutting edge in passing legislation that curbed union power during and immediately after World War II. In 1943, Colorado became the first state to enact such a measure. Florida and Arkansas soon followed suit, and in 1945 the South Dakota legislature passed a similar anti-union law, referring it to a general election vote.[1] None of these states had encountered serious labor-management problems; all of their economies were basically agrarian. Why, then, did they enact these laws? One scholar has described the statutes as signals of a "deep cleavage" between labor unionists and other elements in the population over the "legitimate function of labor organizations and the extent to which they should be permitted to operate as self-governing bodies."[2] In conservative, predominantly Republican South Dakota, the message such laws conveyed to labor organizers proved to be more important than their actual economic impact.

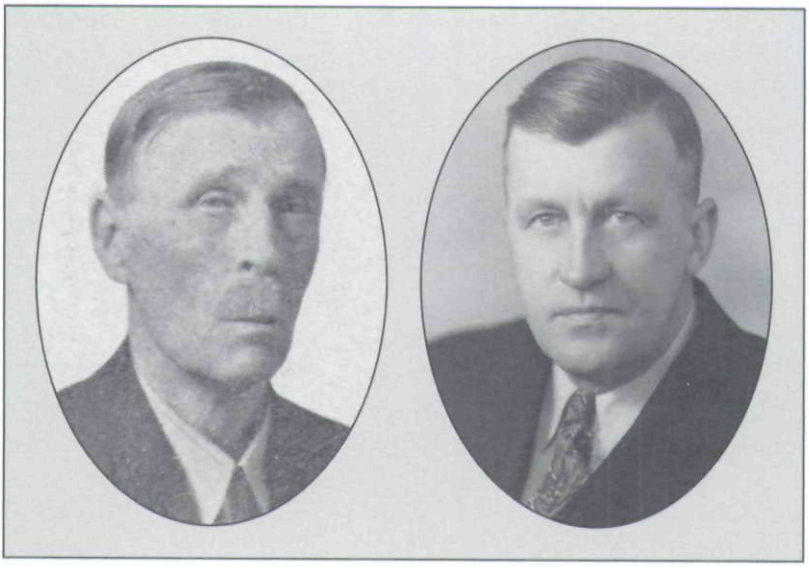
1. South Dakota, *Laws Passed at the Twenty-ninth Session of the Legislature* (1945), ch. 80, p. 79.

2. E. Merrich Dodd, "Some State Legislatures Go to War-on Unions," *Iowa Law Review* 29 (Jan. 1944):174. James R. Essinger's "The Right-to-Work Embroglio," *North Dakota Law Review* 51 (1975):571-95, is a useful legal analysis of state right-to-work laws.

These so-called right-to-work laws (union leaders labeled them "right to wreck" because they did not guarantee jobs, as their name suggests, but protected an individual's right not to be forced to join a union) arose out of the labor strife of the Great Depression, especially the sit-down strikes of 1937 in the automobile industry. A good deal of violence was connected with these strikes through which workers attempted to secure the fundamental goal of recognition for their union, the United Auto Workers (UAW). During World War II, work stoppages and wildcat strikes in the railroad and mining industries, particularly the 1943 walkout of John L. Lewis's coal miners, aggravated the public perception that labor was overstepping its bounds. Congress and the public expressed outrage that workers would strike industries vital to the war effort while American soldiers fought and died "to preserve their freedoms." Lewis's response that more miners were being killed in the United States than American soldiers in the European theater of operations aroused even greater hostility among what author Richard R. Lingeman has termed "the many solid folk—the Babbitts, the farmers, the great amorphous small-business class."[3]

The Greater South Dakota Association followed the lead of its parent, the United States Chamber of Commerce, and the National Association of Manufacturers in promoting the antiunion right-to-work laws. In addition, private groups often assisted right-wing politicians in writing these statutes. South Dakota State Federation of Labor president Albert J. Maag believed that Harry F. Klinefelter, director of the American Citizens Association, was helping legislators in Pierre just as leaders of the

3. Richard R. Lingeman, *Don't You Know There's a War On?: The American Home Front, 1941-1945* (New York: G. P. Putnam's Sons, 1970), p. 145.



The antiunion bill that farmer-legislators John L. Sims (left) and Charles Bruett (right) introduced in 1943 presaged national right-to-work laws.

Christian American Association had played an active role in promoting right-to-work legislation in Texas.[4]

South Dakota lawmakers dabbled in right-to-work legislation during the 1943 session, when Republican representatives Charles Bruett of Fulton and John L. Sims of Woonsocket introduced House Bill (HB) 195, the first section of which required union officials to file annual financial reports with the secretary of state.[5] Joseph A. Padway,

4. Summary of Legislative Activity, n.d., Box 2, Anti-Labor Law Folder, Albert J. Maag Papers, Richardson Archives, I. D. Weeks Library, University of South Dakota, Vermillion, S.Dak. (hereafter cited as Maag Papers). George Norris Green describes the Christian Americans as one of several "huckster groups" who claimed credit for antiunion laws in the South and "several western states," but he makes no direct connection between this group and the American Citizens Association (Green, *The Establishment in Texas Politics: The Primitive Years, 1938-1957* [Westport, Conn.: Greenwood Press, 1979], pp. 58, 61-62).

5. South Dakota, *Proceedings of the House of Representatives, Twenty-eighth Session* (1943), p. 410, *Laws Passed* (1943), ch. 86, p. 93.

general counsel of the international American Federation of Labor (AFL), described the entire bill as "loose and amateurishly drawn," but section one genuinely upset him. It would extend an unfair advantage to employers at the bargaining table, allowing only one side of a labor dispute to know the financial situation of the other.[6]

Section two declared that "no officer, agent, or employee of any labor union shall enter, without the consent of the owner or operator, in or upon any ranch, farm, feed yard, shearing plant, or other agricultural premises for the purpose of collecting dues, fines or assessments, or to solicit membership . . . or promote any strike."[7] As the AFL counsel noted, it would be "highly probable" that if any South Dakota ranch or farm were organized, one or more of the employees would be a union officer or agent because of the small number of members in each unit in the state. Thus, under the proposed law, the employee would either have to resign his union position or terminate his employment.[8] Section three forbade picketing any of the agricultural enterprises mentioned above. Another section outlawed the boycotting of farm commodities that had been produced by nonunion labor or interfering with their movement to market.[9]

Representative Grover Lothrop of Aberdeen, one of only six Democrats in the seventy-five-member house, spoke out against the measure, arguing that if the legislature was going to "step on labor . . . [it] ought to step on some of the rest." Calling the American Bar Association "the greatest closed shop there is" because "you can't practice in South Dakota unless you belong," Lothrop sug-

6. Joseph A. Padway, "Analysis of House Bill No. 195," Box 2, Anti-Labor Law Folder, Maag Papers.
7. South Dakota, *Laws Passed* (1943), ch. 86, p. 93.
8. Padway, "Analysis."
9. South Dakota, *Laws Passed* (1943), ch. 86, p. 93.

gested that this and similar organizations ought to be checked as well.[10]

House Bill 195 passed by a lopsided vote of fifty-one to twenty-three, even though the house's six Democrats were joined by five urban and twelve rural Republicans.[11] The bill then went to the senate, where a key amendment was added after a brief debate. "Except as specifically provided in this chapter," the amended section eight read, "nothing herein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this chapter be so construed as to invade unlawfully the right to freedom of speech."[12] The senate accepted the amended bill by a vote of thirty-one to three (the three "no" votes were all from Democrats), and the house later agreed to the addition.[13] If one interprets the phrase "the right of individuals to work" as a primitive right-to-work clause, this measure would be the first right-to-work law enacted in the nation, predating Colorado's 1943 act by a few weeks and Florida's statute of 1944 by one year.

Joseph Padway, AFL chief counsel, considered the law "very anti-labor" and recommended that state labor officials push for a voter referendum. In any case, he thought it "very probable" that the law would be declared unconstitutional "as either being too vague and indefinite or as a denial of the right of freedom of speech." Padway also questioned whether the financial disclosure requirement would withstand judicial scrutiny, claiming that the section "is lacking in definiteness, and fails to define any of the terms used therein."[14] On the strength of Padway's legal opinion and the wording of similar laws in other states, AFL president William Green sent letters to state

10. *Rapid City Daily Journal*, 2 Mar. 1943.
11. South Dakota, *Proceedings of the House* (1943), pp. 793-94.
12. South Dakota, *Proceedings of the Senate, Twenty-eighth Session* (1943), p. 835.
13. Ibid., p. 875.
14. Padway, "Analysis."

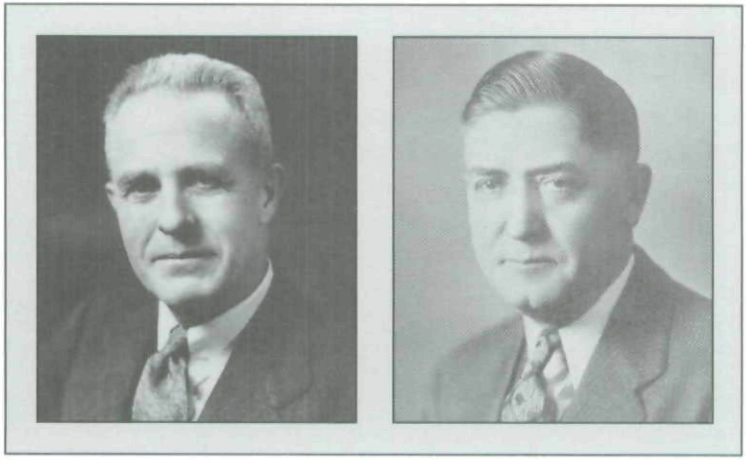
federations in Arkansas, Colorado, Idaho, Kansas, South Dakota, and Texas, urging them to "refrain from complying with these laws until a court of last resort" had passed on their validity.[15]

Meanwhile, the *Rapid City Daily Journal* lauded the financial reporting requirement of the new law as a way to curb the "scandalous greed and graft" of labor leaders in handling the funds contributed by rank-and-file union members. The *Sioux Falls Daily Argus-Leader*, South Dakota's largest newspaper, editorialized that the statute was "an extreme measure" but assured readers that it was "a prominent indication of the public reaction to some of the excesses of organized labor leaders." If "reasonable" unions call this unfair, the editor smugly asserted, "ask them what they have done to express their objection" to the corrupt behavior of some of their leaders.[16]

15. William Green to South Dakota Federation of Labor officers, 22 Apr. 1943, Box 2, Anti-labor Law Folder, Maag Papers.

16. *Rapid City Daily Journal*, 5 Mar. 1943; *Sioux Falls Daily Argus-Leader*, 5 Mar. 1943.

South Dakota Federation of Labor president Albert J. Maag (right) and Governor Merrell Q. Sharpe (left) disagreed over the probable effects of right-to-work legislation.



As Padway had predicted, state circuit judge Lucius J. Wall declared the picketing provisions of the law unconstitutional because the term "agricultural" was defined so broadly that it would prevent packers, canners, truckers, retailers, and other middlemen from organizing. At the same time, he upheld the requirement for unions to file the names and addresses of their officials.[17]

The State Federation of Labor decided to challenge the law in another way. In a letter, federation president Albert Maag warned Governor Merrell Q. Sharpe that the law would not only hurt unions but could harm farmers as well. He reminded Sharpe that during the last harvest union members had organized groups from the cities to do farm labor in the evenings as a patriotic gesture. The new law, Maag contended, would prevent such activity during the coming harvest. The labor leader reminded the governor that he had asked him to veto the bill, a request he refused. Sharpe responded that he "could not find any record" of a requested veto but did remember Maag visiting his office and asking him to work against its passage. The governor had stayed out of the fight, believing, he wrote, that the legislature should decide the issue. The governor now sought the advice of state attorney general George T. Mickelson, who found nothing in the law to prevent citizens from helping with "necessary farm work in the war emergency," Sharpe reported. Maag publicly responded that he would not "take very seriously" the attorney general's opinion, but nothing resulted from the ploy.[18]

17. Judge Wall's decision was reported in the *Unionist* (Omaha, Nebr.), 5 Jan. 1945. I am grateful to Professor William C. Pratt of the University of Nebraska-Omaha for bringing this citation to my attention. For the legal citation, *see* Harry A. Millis and Emily Clark Brown, *From the Wagner Act to Taft-Hartley: A Study of National Labor Policy and Labor Relations* (Chicago: University of Chicago Press, 1950), p. 326n.24. Wall's decision was not appealed to the state supreme court because, apparently, the attorney general believed he had a weak case.

18. Maag to Sharpe, 3 May 1943, Sharpe to Maag, 10 May 1943, miscellaneous newspaper clippings, all in Box 2, Anti-labor Law Folder, Maag Papers.

The next legislative session, held in 1945, saw action on explicit right-to-work legislation. By that time, the anti-union movement was gaining momentum despite the fact that Florida's highest court had struck down that state's law. The AFL refused to help state federations fight these laws at their source—the state legislatures—although it was willing to assist in court actions challenging them. Florida labor leaders had warned AFL president William Green of the dangers of this strategy, predicting that it would lead to widespread state and national antiunion legislation, but to no avail.[19]

The 1945 South Dakota State Legislature was even more heavily Republican (thirty-five to zero in the senate and seventy-two to three in the house) than it had been two years earlier. In mid-session, the exclusively Republican House Committee on Labor introduced HB 78, a measure providing that "no person shall be denied employment because of membership in or affiliation with or resignation from a Labor Union, or because of refusal to join or affiliate with a Labor Union." Nor could corporations, individuals, or associations "enter into any contract written or oral, to exclude from employment members of a Labor Union or persons who refuse to join a Labor Union or because of resignation from a Labor Union." Violators would be fined three hundred dollars and/or serve ninety days in jail.[20] The South Dakota right-to-work measure passed with the overwhelming vote of sixty-seven to seven in the house, where five Republicans joined two

19. Gilbert J. Gall, *The Politics of Right to Work: The Labor Federations as Special Interests, 1943-1979* (Westport, Conn.: Greenwood Press, 1988), pp. 19, 21-24, 26. This work is the definitive study of the right-to-work movement.

20. South Dakota, *Laws Passed* (1945), ch. 80, p. 79. The aim of the South Dakota right-to-work law was similar to that of the amendment Democratic senator Millard Tydings of Maryland introduced in the National Labor Relations Act (Wagner Law) debates of 1935. His change, which was backed by the National Association of Manufacturers and rejected in the senate, would have made it unlawful for any person "to coerce employees in their right to work or to join or not to join any labor organization" (Irving Bernstein, *The New Deal Collective Bargaining Policy* [New York: Da Capo Press, 1975], p. 115n.12).

rural Democrats in opposing the bill. Two of the Republican opponents were from Mitchell; the other three were rural representatives. The senate accepted the proposal thirty to zero.[21]

In addition, the legislature approved House Joint Resolution No. 3, which proposed putting the following constitutional amendment on the general election ballot of 1946: "Nor shall any person be deprived of life, liberty or property without due process of law. The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization."[22] Surely some legislators saw the irony of adding a right-to-work provision to the due-process-of-law clause in the state bill of rights, but they gave no voice to it. By a vote of sixty-five to nine, this resolution passed the house on the same day as HB 78; the senate accepted both by a vote of thirty-one to two.[23]

The measures again won endorsements from the state's major newspapers. While the *Rapid City Daily Journal* admitted that adopting a right-to-work law "would seem to be going a bit too far," it also stated that "compelling any area or business to submit to a closed shop by executive order is worse, for it reduces democracy to dictatorship and free men to the compulsion of buying the right to work." Just before the election of 1946, the *Sioux Falls Daily Argus-Leader* editorialized that "in view of the excesses of despotic labor leaders in some parts of the country and the possibility that such leaders may become active here when the Missouri River development program [Pick-Sloan Plan] begins, the proposed safeguard is in order."[24]

21. South Dakota, *Proceedings of the House* (1945), pp. 272-73, *Proceedings of the Senate* (1945), p. 456.
22. South Dakota, *Proceedings of the House* (1945), p. 274.
23. Ibid.; South Dakota, *Proceedings of the Senate* (1945), p. 457.
24. *Rapid City Daily Journal*, 13 Feb. 1945; *Sioux Falls Daily Argus-Leader*, 2 Nov. 1946.

Unfortunately for the unions, John Lewis and the United Mine Workers (UMW) again made national news just before the 1946 elections. The lurid headlines announcing a UMW appeal of fines imposed for violating an injunction against striking government-operated coal mines helped to convince voters that irresponsible labor leaders needed to be controlled. Nationally, the 1946 elections helped Republicans to capture control of both houses of Congress for the first time since 1932. The following June, a more conservative Congress passed the Taft-Hartley Act outlawing a number of union practices, including the closed shop, and providing for an eighty-day injunction against strikes that endangered public health and safety. In South Dakota, the right-to-work amendment passed by a vote of 93,035 to 39,257. Nebraska and Arizona also approved right-to-work laws in these off-year elections.[25]

Still not finished with labor unions, the South Dakota legislature enacted three more antiunion laws during the 1947 session. Republicans still controlled the senate thirty-five to zero, but the number of Democrats in the house was up to four. Senate Bill (SB) 224, an exact replica of the right-to-work clause proposed for the constitution, was introduced as an enabling statute in case HB 78 proved insufficient. The second bill, SB 225, permitted unions to sue and be sued, a measure of improbable value because unions could already be sued under existing state statutes. The third, SB 226, forbade mass and "stranger" picketing, defining mass picketing as over five percent of the first one hundred workers on a picket line and one percent over one hundred. "Stranger" picketing

25. South Dakota, *Laws Passed* (1947), ch. 315, p. 5. The *United States News* for 15 November 1946 noted that South Dakota had "reinforced" its right-to-work law with a constitutional amendment (p. 52). For a political history of the Taft-Hartley Act, *see* R. Alton Lee, *Truman and Taft-Hartley: A Question of Mandate* (Lexington: University of Kentucky Press, 1966).

Union members, like these John Morrell & Co. employees returning to work in Sioux Falls after a 1935 strike, lost ground under the right-to-work legislation of the 1940s.

referred to those persons who were not "bona fide" employees of the picketed employer. All three bills passed the upper house with little opposition; in fact, only two senators voted against the picketing proposal. Senate Bill 224 passed the house fifty-six to eighteen; SB 225 was accepted by a margin of forty-eight to twenty-four; and the vote on SB 226 was forty-nine to twenty-four. Three small-town Democrats voted "no" on all the proposals. Of the twenty-one Republicans who rejected the picketing bill, five were from Aberdeen, Mitchell, Sioux Falls, and Huron, and the rest were rural legislators.[26]

The Reverend E. C. Antrum of Pierre testified before a legislative committee that passage of these measures "would be playing into the hands of the reactionary group."[27] Evidently, Antrum was unaware that he was talk-

26. South Dakota, *Proceedings of the Senate* (1947), pp. 688-89, 709; *Proceedings of the House* (1947), pp. 950, 982-83.

27. *Sioux Falls Daily Argus-Leader*, 3 Mar. 1947.

ing to the "reactionary group." Francis K. McDonald, secretary-treasurer of the State Federation of Labor, argued that the laws would violate the 1932 Norris-La Guardia and 1914 Clayton Anti-Trust acts limiting the courts' authority to issue injunctions in labor disputes. He vowed that the federation would fight to refer the bills to the electorate.[28] Kenneth Kellar of Lead, representing the Homestake Mining Company, responded that the right-to-work bill was "a civil liberties bill," not an employers' bill. He added that he considered union threats to put the acts to a statewide referendum "attempts to coerce the legislature." Both sides in the debate claimed high moral ground, arguing that the bills should be enacted or defeated for "the boys who fought and died in the recent war."[29]

Representative Charles J. Lundberg of Groton, one of the Republicans who had opposed the picketing bill, termed the measure a violation of the First Amendment. Lundberg argued that unions had destroyed sweatshops, forced industry to adopt safety measures, and raised the standard of living for laborers. Republican Representative Fred N. Dunham of Wessington Springs did not dispute these claims but retorted, "They also gave us John L. Lewis," whose appeal of fines for violating the injunction against striking government coal mines had recently made headlines.[30] Representative Cleland A. Polley of Lead went even further, raising the specter of communist influence. Reading a letter from state Communist party leader Clarence H. Sharp, who opposed SB 224, Polley stated, "We all know the Communists are strongly entrenched in leadership of all our unions."[31] In the end, however, most solons admitted that they had voted for the measures because the right-to-work proposal had garnered such a large vote in the 1946 state elections.[32]

28. Ibid., 1, 3 Mar. 1947.
29. Ibid., 3 Mar. 1947.
30. Ibid., 6 Mar. 1947.
31. *Rapid City Daily Journal*, 5 Mar. 1947.
32. *Sioux Falls Daily Argus-Leader*, 8 Mar. 1947.

State federation leader Albert Maag labeled the 1947 acts "Slave Labor Laws," a phrase the unions would also apply to the Taft-Hartley Act passed by Congress later that year. Herbert Thatcher, a lawyer for the international AFL, sent an analysis of the laws to Eugene C. Mahoney, the state federation's Sioux Falls attorney, and recommended testing the constitutionality of both the right-to-work constitutional clause and the 1947 right-to-work act. Thatcher believed SB 225 to be constitutional but held that "insofar as it attempts to extend to peaceful picketing, . . . [SB 226] should be contested when and if the occasion arises." The provision against mass and "stranger" picketing was, in his opinion, "clearly unconstitutional."[33] During every legislative session for several years, union leaders tried in vain to get these laws repealed.

Unions in South Dakota and across the country suffered another setback with passage of the Labor-Management (Taft-Hartley) Act of 1947. On 31 January 1945, right-to-work forces, pressed by the National Association of Manufacturers and the United States Chamber of Commerce, had attempted to amend the Manpower Utilization (Selective Service) Act then pending in the United States House of Representatives with the following statement: "Provided, That every person assigned to employment under this section shall have the right to join any union or organization of employees, but no such person shall be obliged to join any union or organization as a condition of his employment if he should not freely choose to do so."[34] The effort failed 142 to 178, but two years later, Representative Fred A. Hartley, Jr., a New Jersey Republican, rewrote the proposal as section 14(B) of the Taft-Hartley Act. "Nothing in this Act," the wording now stated, "shall be construed as authoriz-

33. Thatcher to Mahoney, 26 Apr. 1947, Box 2, Anti-labor Law Folder, Maag Papers.

34. U.S., Congress, Senate, *Congressional Record*, 79th Cong., 1st sess., 1944, vol. 91, p. 644.

ing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." Section 14(B) thus recognized the states' authority to enact antiunion security laws and dashed union leaders' hopes that an appeal to preempt state labor laws could be made to the Supreme Court. Unions continued to lose ground on the issue for another decade. Following the elections of 1958, when three more states put right-to-work proposals on the ballot, a total of nineteen states, primarily in the South and West, had right-to-work laws.[35]

The South Dakota experience with antiunion legislation proved that Florida labor leaders had been correct in warning AFL president William Green that, if initially successful, the movement would gain momentum. Those pressing for right-to-work legislation found fertile ground in politically conservative, Republican-dominated South Dakota. Antiunion laws also reflected the political conservatism of the World War II and postwar period. During the Cold War era, with the attendant hysteria of McCarthyism, antiunion sentiment and Communist baiting often went hand in hand.

South Dakota voters also reacted to the banner headlines reporting waves of urban strikes during late 1945 and 1946. The two leading newspapers of the state typically represented the rural, antiunion biases of their readers. The only discernible voting pattern regarding these laws points to a breakdown along political lines. The few Democrats in the legislature consistently opposed the measures, sometimes joined by a few Republicans. One might be tempted to conclude that Republicans from South Dakota's larger towns were more pro-labor (or,

35. U.S., *Statutes at Large*, vol. 41, pt. 1, Act of 23 June 1947, p. 151. *Business Week* for 14 June 1947 (pp. 90-96) noted that seventy-four antiunion bills were introduced in thirty-five of the forty-three state legislatures meeting in 1947 after passage of the Taft-Hartley Act.

rather, less antiunion), but the relatively large number of small-town Republicans who voted against some of this legislation (particularly the picketing measure) contradicts this conclusion.

What effect did these laws have on South Dakota's industrial development and labor-management relations? Probably little, even though both sides predicted dramatic results. In 1957, state Federation of Labor president Albert Maag criticized the legislature for appropriating $133,000 to help the South Dakota Industrial Development Expansion Agency recruit new industries. "Their main sales talk is that our state has a Right to Work Law," Maag lamented. He also lambasted state officials for boasting about the state's having the fewest number of strikes in relation to the number of urban workers, laws that favored management, and the least amount of regulation of business as indicated by dollars budgeted.[36]

Even though lawmakers thus believed in the effectiveness of right-to-work legislation, studies dating from the 1950s through the 1970s indicate no consensus about its economic impact. One group of investigators holds that the financial importance of right-to-work laws was minimal, while another insists that they had a negative impact on union membership and power. Other studies show little correlation between right-to-work laws and wage levels or increased industrial development.[37] In South Dakota, the obvious conclusion is that conservative politicians used antiunion proposals to appeal successfully to their like-minded constituents, but those laws had little or

36. South Dakota Federation of Labor, "Slave Labor Laws Enacted by the 30th Session of the Legislature," Summary of Legislative Activity, 1945, Box 6, 1945 Legislative Session Folder, Maag Papers.

37. Gall, *Politics of Right to Work*, p. 6. An example of the no-impact argument appears in Keith Lumsden and Craig Petersen, "The Effect of Right-to-Work Laws on Unionization in the United States," *Journal of Political Economy* 83 (Dec. 1975):1, 237-48. James W. Kuhn, "Right-to-Work Laws—Symbols or Substance?", *Industrial and Labor Relations Review* 14 (July 1961):587-94, argues the opposite viewpoint.

no economic impact, largely because of the state's predominantly agrarian nature. Such laws were, however, highly symbolic of a widespread reaction against the rise of labor power.

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