Understanding "Right-to-Work" Laws

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"Right to Work" is kind of a misnomer that can cause considerable confusion in trying to understand the legal issues that surround shop clauses in the context of collective bargaining. Here's the straight poop:

1) Under the Wagner Act (1935), a union, once certified, is authorized to act as the exclusive bargaining agent which negotiates on behalf of all employees in the collective bargaining unit (usually similar workers at the same employer or site), whether or not all such employees are union members. Thus, both union members and non-members obtain the same benefits of any employment contract negotiated by the union with the employer.

2) In order to avoid this potential "free rider" effect, which undercuts any incentive to join the union and pay dues, unions typically attempt to negotiate some form of "shop clause" with the employer. These clauses were authorized under the Taft-Hartley Act (1947), and typically require one of the following:

A) That all employees in the bargaining unit be union members or join the union within a limited time frame in order to keep their jobs once they are hired (known as a "union shop" clause); *or*

B) That all union non-members pay a fee (usually the same as the amount of union dues) entitling them to the services of the union as its bargaining representative (known as an "agency shop" clause).

[Note that clauses requiring union membership as a prerequisite to obtaining a job--"closed shop" clauses--were made illegal in 1959 by the Landrum-Griffin Act, except as to the construction industry (don't ask why).]

3) Section 14(b) of the Taft-Hartley Act allows individual state legislatures to enact state statutes, referred to colloquially as "right to work" laws, which override the foregoing provisions of federal law, and prohibit compulsory union membership clauses in collective bargaining agreements. These laws create tacit, automatic "open shop" clauses in all union employment contracts which operate in these "right to work" states.

4) There are currently 21 so-called "right to work" states, most of which are located in the south or Rocky Mountain areas (Midwestern and Northeastern "rust belt" states, where unions have typically gained a stronger power base than elsewhere, are usually not "right to work" states).

5) California is NOT a "right to work" state. Interestingly enough, Cal. Labor Code Sections 921-923 (enacted in 1937 shortly after the Wagner Act) explicitly recognize the "helplessness of individual unorganized workers," and prohibit, as contrary to public policy, contracts between current or prospective employers and employees which prohibit or require union membership as a condition of employment. However, case law has interpreted this prohibition NOT to apply to closed shop agreements reached as part of a union collective bargaining agreement, largely due to subsequent passage of the Taft-Hartley Act, as discussed above.

HOPE THAT CLEARS EVERYTHING UP!!