Article

Policy Brief: Right-to-Work Legislation and Union Membership in the US

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Abstract
Union membership rates have been declining in the US since around 1950. After Congress allowed states to pass Right-to-Work (RTW) laws in 1947, 27 states have enacted legislation that outlaws the requirement of joining a union as a condition of employment. Existing research suggests that these RTW laws increase the free-rider problem for union organizations and reduce union membership, therefore decreasing union bargaining power and both union and nonunion wage rates. The value of unions in the US labor market is not the focus of this brief, although I give some background on that issue as motivation. Past literature has yielded suggestive results, but more recent literature employs modern research designs that plausibly conclude RTW diminishes union membership and union power in states after it is enacted.

Keywords: Unions, Policy Analysis, Economic History, Right-to-Work Legislation

1. Background

1.1. Union Decline

Labor organizations have been around in the US since the 1780s, but union membership as a proportion of the non-agricultural workforce fluctuated greatly before the 1940s, growing in intense spurts and falling just as quickly (Rosenbloom 2006). At its peak in 1945, over one third of non-agricultural workers were union represented (Rosenbloom 2006). After remaining strong in the 1950s, union percentage in the United States has been declining and sits now at around 12.1% of the workforce (Bureau of Labor Statistics). Unions have been a staple institution in the blue-collar workforce in America, but if the trend continues, union existence is at risk.

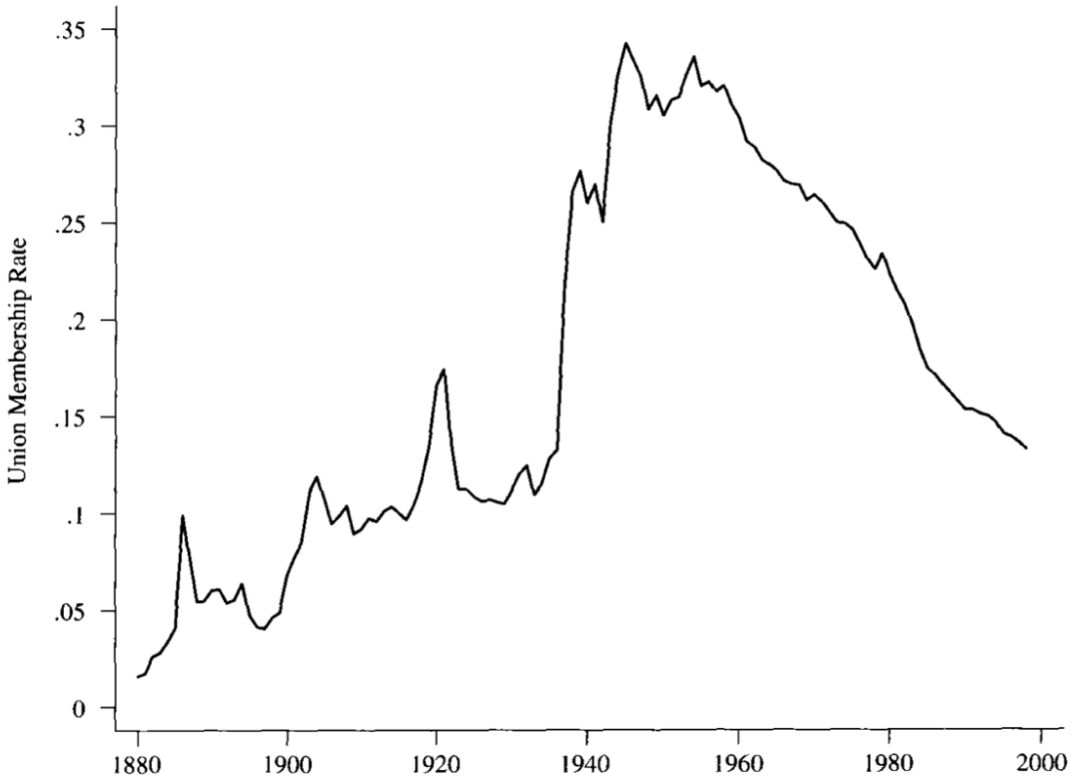

Figure 1: Union Membership Rate, Non-Agricultural Workers, 1880-1998*,* from Farber and Western (2001)

1.2. Why Should Policymakers Care? The Value (or Disvalue) of Unions

In a theoretical framework viewing unions as merely a monopolist of labor supply, union organizations raise wages above the economically efficient level, creating market distortions that lower productivity and output (Freeman and Medoff 1979). This view centers around a competitive labor market and firms operating at a perfectly competitive equilibrium. However, very few firms in the United States operate at a perfectly competitive equilibrium. Most firms accrue some economic profit that is larger than their operating costs. By requiring higher wages and benefits for employees, unions can take a larger slice of the firm's pie, but at the expense of upper management. According to price theorists from the '50s, firms may simply hire fewer employees in response to the unions' demands for higher wages (Meyers 1959).

Since the key tenet of union demands is wages, labor economists often examine wage effects, particularly inequality. In their paper, "Unions, Norms and the Rise in U.S. Wage Inequality," Western and Rosenfeld document that from 1937 to 2007, private sector union membership declined from 34% to 8% for men and 16% to 6% for women, while inequality in hourly wages increased by over 40% during this period. Western and Rosenfeld claim that the decline

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in organized labor explains 1/5th to 1/3rd of the growth in inequality in the US, and this claim is supported by other works which have found that unions historically reduce inequality (e.g., Freeman and Medoff 1984, Collins and Niemesh 2019, Farber et al. 2021). If policymakers are concerned about rising income inequality, bolstering unions is a natural answer. In the 1980s, labor economists developed more nuanced views of organized labor institutions, rather than just focusing on theoretical market distortions. In their seminal book published in 1984, "What do Unions do?" Richard Freeman and James Medoff look further than just the "monopoly face" of unions and describe social benefits due to the "collective voice" face, including more fringe benefits, less employee turnover, and higher economic efficiency within a firm. According to them, "On balance, unionization appears to improve rather than to harm the social and economic system" (pg. 19). If Freeman and Medoff are to be believed, the decline in unions and union power is certainly cause for concern in the 21st century.

1.3. Right-to-Work (RTW)

In 1935, Congress passed the National Labor Relations Act (also known as the Wagner Act), establishing rules for which employees of a firm can unionize and how they engage with their firm in collective bargaining (Herrick 1946). Collective bargaining is the process through which union organizations negotiate wages, benefits, and workplace conditions that apply to all covered employees. The NLRA also gave protections to unions and union-seeking employees from interference by employers, such as employment termination because of union activities (Herrick 1946). A key component of the NLRA was that it institutionalized the legality of closed shops, where being a union member is required for employment within a firm. This changed with the passage of the Taft-Hartley Act in 1947, which outlawed closed shops and gave states the power to pass RTW laws (Ellwood and Fine 1987). RTW legislation outlaws the existence of so-called union shops within a state, allowing workers to decline union membership in all settings if they choose. Union shop arrangements are similar to closed shops, requiring that nonsupervisory workers must join (and pay dues to) the representing union within a specified period of time after employment (Carroll 1983). After Taft-Hartley, the union shop arrangement became a tool for unions to finance their activities and strengthen their negotiating power by increasing membership. With more union members, a local organization's threat to strike or picket their workplace becomes more dangerous to the firm. RTW laws abolish the union shop arrangement, removing an important tool for union organizations to maintain power.

The details of RTW implementation fall to the states that pass it and how they structure legislation. Generally, state RTW laws cover collective bargaining agreements (CBAs) that are negotiated, re-negotiated, or extended after the law is enacted (see National Conference of State Legislatures for a database of bill language). CBAs can vary in length and are typically multi-year contracts, so some union shops may stick around after RTW is passed because the law applies only to new negotiations. Recent research on a sample of CBAs from 1988 to 2016 found that the typical contract length is three years (Chava et al. 2020). Thus, the opportunity to leave an individual's union organization and stop paying union dues may not come until sometime after RTW passage. Additionally, if a worker is already a union member, the responsibility falls on that individual to formally leave the union. RTW does not automatically strip union membership from workers, that decision to leave must be undertaken by the worker. Estimates on the number of union members who then leave their union after the passage of RTW is a gap in the existing literature and remains an open question.

Nicole Fortin, Neil Lloyd, and Thomas Lemieux describe RTW as a "profoundly partisan policy", and this is an accurate description (Fortin et al. 2022, pg. 5). Most of the states that passed RTW after 2000 passed it immediately after Republicans took control of the state legislature, the state senate, and the governorship, giving them the ability to pass legislation without any approval from state-elected Democrats (Fortin et al. 2022). This is not surprising considering organized labor in the US has staunchly opposed RTW efforts, especially in recent years. Since the New Deal period (1933-1939), organized labor has been closely tied to the Democratic Party, directing campaign contributions overwhelmingly to Democrats as well as providing volunteers for grassroots campaigning efforts (Francia, 2010).

Currently, 27 states have active RTW laws. Most of these states passed their legislation shortly after Taft-Hartley legalized it, in the period 1947-1960. RTW is not just an antiquity of the 20th century though, it is still a prevalent

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policy debate at the state level today. Kentucky passed RTW in 2017, West Virginia in 2016, and the Missouri state legislature passed RTW in 2017 before it was overturned via ballot referendum in 2018. Proponents of RTW cite increased freedom for employees and job creation, while opponents believe that it inherently undermines union power and leads to lower wages (Eren and Ozbeklik 2016).

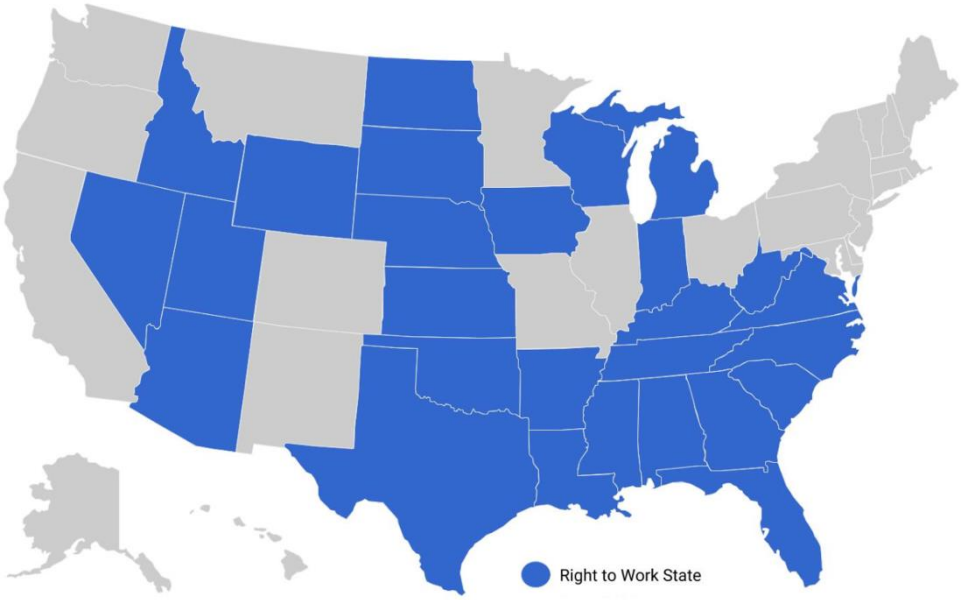

Figure 2: A map of current RTW states. Source: National Right to Work Legal Defense Foundation

2. Theories on RTW Effects

2.1. The Free-Rider Problem

By outlawing union shops, RTW has the potential to increase union organizations' free-rider problem (Moore and Newman 1985). The free-rider problem occurs when individuals receive all the benefits associated with joining a group while bearing none of the associated costs. In the case of union membership, benefits include higher wages and fringe benefits on average, while the main cost is union dues (Freeman and Medoff 1984). A portion of a union member's paycheck goes to the union organization representing them to keep the organization operational, while non-members don't contribute to the union's finances. Union shops limit free-riding by forcing employees to officially join the union and pay member dues as a condition of employment, therefore bearing their individual costs and eliminating free-riders (Moore and Newman 1985). Under RTW laws, employees can join a unionized firm and be covered by the negotiated CBA while simultaneously not paying union dues. Organizing employees and bargaining on behalf of them takes time, effort, and money on the part of a union organization. With more free-riders, the strain on finite union resources increases, potentially diminishing the quantity of union services offered (Moore and Newman 1985). The free-rider hypothesis maintains that due to RTW, the opportunity to free-ride on union benefits arises, leading to a lower equilibrium level of unionization in RTW states (Moore and Newman 1985). If the free-rider hypothesis is correct, we should expect to see fewer union services and lower unionization rates in states that pass RTW due to RTW implementation (Moore and Newman 1985).

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2.2. The Taste Hypothesis

A large problem that researchers face when investigating the effects of RTW is that RTW laws are not randomly distributed across the US. For a state to pass RTW, voters must elect politicians that will support RTW. Workers, and thus voters, might be predisposed to favoring RTW because of underlying anti-union preferences, creating a strong correlation between other factors that lead to anti-union preferences and the presence of RTW (Moore and Newman 1985). Looking back at *Figure 2*, RTW laws dominate the South, and the South has historically had smaller union membership compared to the rest of the country (Friedman 2000). This could be due to institutional and social factors that lead to anti-union sentiment among a majority of workers. A strict interpretation of the taste hypothesis would suggest that the passage of RTW merely reflects worker preferences and will provide no substantive change to union membership or wages after it is implemented in any state, given that it has been passed by that state (Moore and Newman 1985). However, the taste hypothesis could be at play to varying degrees in different states. If RTW is implemented in a state with high levels of pro-union preferences, we would expect to see a larger impact on unionization rates and union wages in the pro-union state than a state in the South, where anti-union preferences are probably high.

2.3. The Bargaining Power Hypothesis

The bargaining power hypothesis maintains that passing RTW legislation directly reduces a union organization's bargaining power, lowering the union sector's ability to negotiate wages and benefits, therefore lowering union wages and also lowering the benefits of becoming a union member compared to a state without RTW (Chava et al. 2020). The bargaining power hypothesis predicts a similar outcome to the free-rider problem in which the passage of RTW would reduce unionization rates and union benefits in a state (Moore and Newman 1985). While still a predicted treatment effect of RTW, the bargaining power argument operates through a different channel than the free-rider problem. The key difference being that this is a direct impact on bargaining power rather than a result of individual workers not wanting to bear individual costs. Both effects would change the individual decision making for a worker, leading more workers to choose not to become a union member, but the manner in which these effects enter a worker's decision making are different. Under the bargaining power hypothesis, union bargaining power drops, reducing the worker's expected benefit of joining a union, leading to a lower unionization rate (Moore and Newman 1985). With the free-rider problem, RTW wouldn't directly reduce union bargaining power and thus wouldn't reduce the worker's expected benefit of joining a union. Instead, the worker can experience the same expected benefit of joining a union without actually joining and paying dues since the worker would still be covered by a union-bargained CBA.

3. Literature Review

3.1. Ellwood and Fine (1987) – The Impact of Right-to-Work Laws on Union Organizing

In their paper, Ellwood and Fine look at RTW's impact on the flow of workers into union membership in the ten years after a state passes RTW legislation. Rather than just looking at aggregate levels of union membership in RTW states, these authors exploit the flow into new membership because it should be more sensitive to changes in the union environment, and it also predicts future membership rates. The authors present a model where existing union workers leave the union sector (through retirement or employment change), forcing unions to organize new members to maintain their relative composition in the labor force. For example, if union members make up 20% of the workers in the auto industry, the union sector must add new members each year to offset workers leaving the union sector. This becomes especially important during times of employment growth. If employment is rising in the auto industry, enough employees must join the union sector to offset workers leaving and the growth of the nonunion sector, and maintain the relative union composition of 20%. Maintaining relative composition is key because any reduction in the proportion of union to nonunion workers decreases the bargaining power of all union organizations. With a higher availability of nonunion workers, it is easier for firms to substitute for nonunion labor, reducing the power of union organizations to negotiate higher wages and benefits. The rate at which union workers leave the workforce may be

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slow, thus, level changes in union membership will probably be less sensitive to RTW in the short run. Changes in worker expectations and preferences about unions should immediately manifest after RTW laws are passed and can be measured through inflows of new union members. Therefore, Ellwood and Fine's paper benefits from the examination of flows, instead of levels of membership immediately after RTW passage. To measure these flows, the authors use data on the number of workers newly organized through National Labor Relation Board certified elections.

Ellwood and Fine use a state cross-section analysis for all 50 states 1951-1977, with dummy variables for 5-year intervals after RTW passage in a state. They include a variety of state-level controls to account for many other determinants of union membership, such as employment growth rates, proxies for union support/anti-union sentiment, and proxies for business cycles to name a few. Interestingly, after the rest of their controls are added, the region dummy for the South becomes positive and statistically insignificant. There exists large discussion in union literature on market factors and anti-union sentiment in the South, usually producing a negative, statistically coefficient whenever a South region dummy is included in statistical analysis (eg Carroll 1983, Farber 1984). Their South coefficient being positive implies that the authors' model successfully accounts for variation in worker union preferences with other observable state characteristics. In addition to this, the authors conducted a robustness check with seven states in which they had better data availability. Using their previous specification with a leading indicator for RTW passage, they found no evidence of a pre-trend in labor organization that could bias their results. Indiana, which passed then later repealed RTW, offers particularly good evidence that the presence of RTW had a distinct effect on union organizing rates (see Fig. 3).

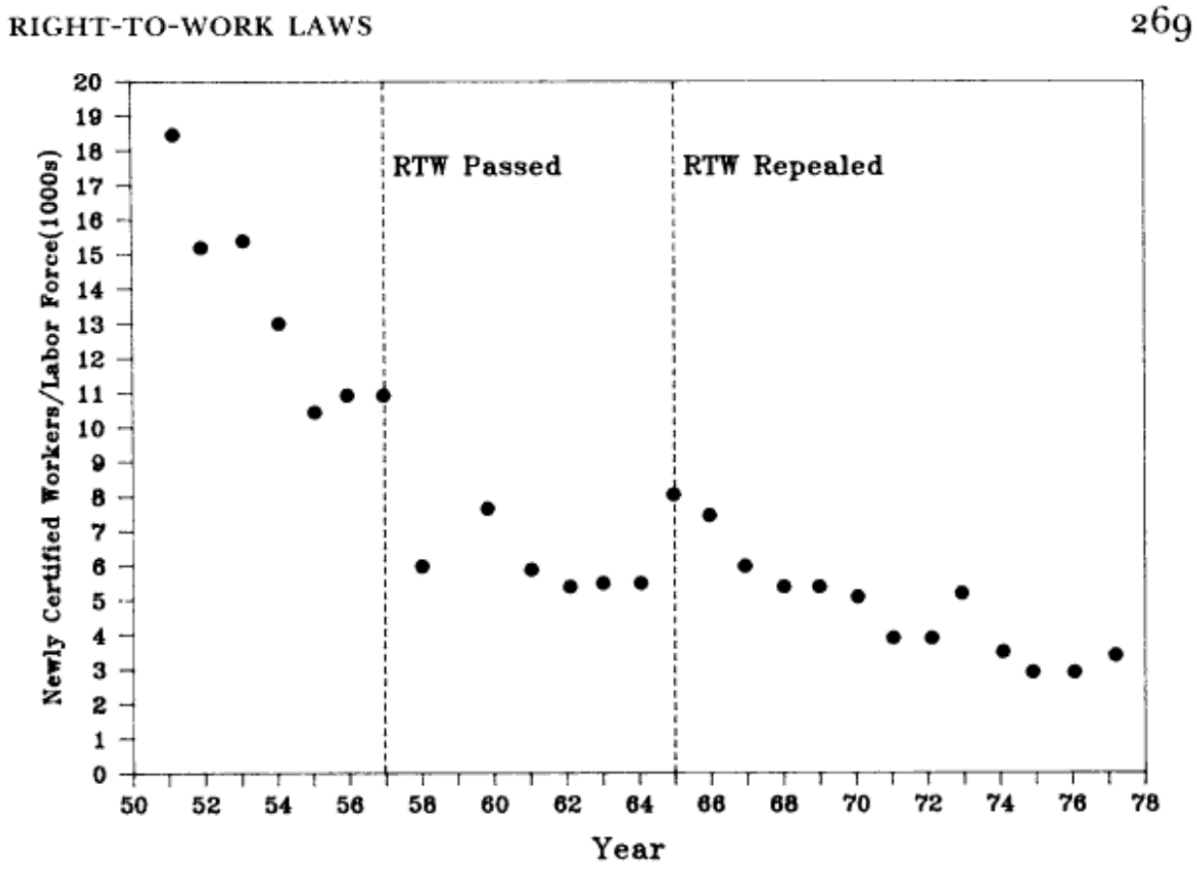

Figure 3: Organizing in Indiana: 2-Year Moving Averages*,* from Ellwood and Fine (1987)

Examining all 50 states, Ellwood and Fine found dramatic falls in organizing rates immediately after passage, with more moderate effects in later years. Within the first five years after RTW passage, inflows of union members were reduced by 50%, and between 5-10 years after passage, it was reduced by roughly 25%. After 10 years of passage,

the estimates became statistically insignificant. While the long-run levels of union organizing after RTW implementation are unknown, there is a sharp decline in new employees entering union membership in the short-run. This immediate drop could reflect workers' perceived strength of unions after RTW is passed, believing that unions will lose power, thus lowering the benefits of becoming unionized and shifting individual workers' decision-making away from union membership, even if they weren't previously a union member. This drop could also reflect the decision making of previously indifferent workers, who were forced to join a union in a union shop. Now, with RTW outlawing union shops, they join the union firm as a free-rider and don't become a union member. Ellwood and Fine do mention the psychological factor of perceived union strength being important in the willingness of activists and union members to organize, but they do not mention the potential increase in the free-rider problem. Unfortunately, since they measure aggregate inflows at the state level, Ellwood and Fine can't distinguish between these two groups of workers. In either case, RTW states saw a decrease in the inflow of new members. Down the road, this will lead to smaller relative union membership and less bargaining power. Ellwood and Fine predict that this initial shock reduces long-term union membership by 5-10%. Although some other factors could influence this estimate of long-term reduction, states that passed RTW laws experienced a decrease in membership flows in the short run, thereby diminishing union bargaining power and their ability to improve worker welfare. Ellwood and Fine do not employ a research design and their results are merely observational, so their results should be interpreted cautiously. However, these results agree with the view that RTW diminishes union membership.

3.2. Chava et al. (2020) – The Economic Impact of Right-to-Work Laws

Chava, Danis, and Hsu also deviate from using CPS data and instead opt to investigate the effects of RTW on union wages through CBAs. With this data, the researchers only look at effects on union members. Chava and his colleagues look at five states that introduced RTW legislation between 1988 and 2016: OK, IN, MI, WI, and WV. By examining CBAs, the researchers can isolate only union wages and measure the impact of RTW with less noise than aggregate wage data for a state. Although the researchers cannot observe specific wage levels using the CBAs, they can observe reductions in wage growth, which would decrease future wage levels.

With this data, Chava et al. tests RTW's impact on union organizing efforts with a Difference-in-Difference design to measure the number of CBAs filed per state per year, using the passage of RTW as treatment. They found that on average, the number of CBAs filed per year fell by 7.75 for RTW states compared to non-RTW states. This is half of the average CBAs filed per state per year, which suggests that RTW reduces the number of CBAs by almost half. There could be other factors such as state industry composition that correlates with reduced CBAs and the passage of RTW, but these results still offer convincing evidence that RTW has an effect on union organizing. The CBA data also allows the researchers to look at the free-rider problem by measuring the fraction of workers covered by the CBA and the fraction of union members. While the number of CBAs fell, the proportion of CBA-covered workers to union members increased, implying that RTW legislation exacerbates the free-rider problem for union organizations. Both the reduction in CBAs and the increase in the free-rider problem are consistent with the view that the passage of RTW laws decreases union bargaining power.

Unfortunately, the researchers can't distinguish between workers who left their union after RTW versus workers who were never union members but are then covered by a CBA after RTW. Thus, they can't investigate the question of how RTW changes the individual decision-making of would-be union workers and would-be non-union workers in the absence of RTW. This question is a potential avenue for future research and would further our understanding of who RTW really impacts.

Since Chava et al. find evidence that suggests a potential reduction to union bargaining power, they then turn to findings on union wages and firm response, looking at RTW as a shock to bargaining power. The researchers found an immediate reduction in wage growth, but no long-term effects. This is not surprising, as a year-after-year reduction in wage growth would compound, greatly reducing wage levels and making firms uncompetitive in hiring. The initial shock occurs within a year of passage and reduces wage growth by 0.6 percentage points for RTW states compared to non-RTW states. Although the researchers are limited by their data and can't observe wage levels, the reduced growth for just one year predicts reduced wage levels in the union sector for future years. Using a different data set

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of firm-level accounting data, the authors turn to another important discussion – how firms respond to the passage of RTW. It is important to note that this firm-level data set also includes nonunion firms. This is beneficial since it provides some indication on how the whole market would react. A classic supply/demand model for the labor market predicts that a decrease in employee wages would increase the number of people employed. Following their earlier findings of reduced union wage growth, Chava et al. supports this framework and found that RTW is associated with a 1.66% increase in a firm's employment growth. In addition to this, they found that RTW is associated with an increase in CEO compensation for all firms and higher profitability for firms with large labor costs. If policymakers are concerned with rising wealth inequality, the increase in CEO compensation is also cause for concern if union workers are simultaneously experiencing decreased wage growth. Supporters of RTW legislation typically argue that by limiting union power, it helps firms maximize their profits and stay competitive. This paper provides evidence that RTW may be beneficial to firms in the state by improving profitability. These effects on the firm also reflect the expected results of RTW undermining union bargaining power. Union members and union organizations lose out on wage growth while executives and firms benefit.

3.3. Farber (2005) – Nonunion Wage Rates and the Threat of Unionization

The labor market is interconnected, and wages and benefits in the union sector impact wages and benefits in the nonunion sector. Like much of the debate around organized labor, researchers have proposed different theoretical frameworks for the effects of unionization on wages of nonunion workers. With the spillover effect, if union organizations raise union wages, firms would reduce employment, then displaced union workers would move to the nonunion sector and depress the equilibrium wage. With the threat effect, nonunion firms must remain competitive in recruiting labor and mitigate desires of employees to unionize. They will respond to union wage gains by offering nonunion employees higher wages. In the real-world, both effects are probably present, but an important question arises as to which has a larger effect. Measuring the threat effect is difficult since researchers can't get into the minds of wage-setting firms, but Farber tries to isolate it through various proxies, including the predicted probability that someone will be a union member, the passage of RTW laws, and industry deregulation. He uses CPS data from 1977 to 2002.

First, Farber creates a predicted probability of an individual being a union member. He uses demographic information, year, industry that an individual works in, and state of residence to create a probability that a person in the data set is a union member. The idea is that employers also observe all this information and can also predict an individual's union probability. If someone is more likely to be a union member, there is a higher threat effect, and they should see higher wages. Farber compares predicted probability and wages within industry and within states to control for other unobserved factors that could bias his results. Using this proxy, he found no substantial threat effect present.

Next, Farber looked at the passage of RTW in Idaho (1985) and Oklahoma (2001) as policy shocks that reduce the threat effect. As Ellwood and Fine and Chava et al. showed, RTW seems to reduce union bargaining power. After the passage of RTW, nonunion firms should conclude that unions are weaker and reduce their wages because the threat effect is weaker. Compared to other states, the wages of nonunion workers fell by 4.2 percentage points after RTW was passed in Idaho, while union wages saw no significant change. There were no significant findings for Oklahoma, but Farber acknowledges that this could be because he only had one year of data after Oklahoma passed RTW. It is also possible that the taste hypothesis was in play for Oklahoma, which had a lower rate of unionization when RTW was passed than Idaho (6.7% compared to 11.6%). The results from Idaho are suggestive that the threat effect exists and that RTW reduces the union threat, particularly since union wages saw no change in the same time period.

Finally, Farber uses deregulation in the airline (1978), trucking (1979), and telephone (1984) industries during this period as a shock that reduces the threat effect. The CPS collects information on the industry that a person works in, and Farber uses this to compare nonunion wages in an industry that deregulated to other industries, five years before and after deregulation occurred. Regulation adds to union power in an industry by installing higher costs to entry for nonunion firms. After deregulation, it would be easier for nonunion firms to enter, decreasing union power

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and the power of any unionization threat. Farber found that the wages of nonunion workers fell in trucking and telephone, compared to other industries. Airline nonunion wages did not fall, but they did not keep pace with union wage growth. These results could be due to the threat effect, but they could also be due to other factors associated with deregulation like increased competitiveness, requiring firms to offer lower wages across the board.

3.4. An Interpretive Note on Farber

RTW stands out in Farber's proxies because it was the only selection that yielded results consistent with the threat effect. Passage of RTW is an obvious signal to firms that union power has decreased, making it easy for them to identify a decrease in the threat of unionization. The predicted probability method found no results. From the standpoint of a researcher, it may be easy to predict the likelihood of unionization based on observable characteristics, but this is probably very difficult for a firm. Therefore, firms probably don't realize the changes in threat through small changes in predicted probability and will not adjust their wages. Deregulation provides some evidence that a threat effect exists, but RTW is a clearer signal to firms. From the passage of RTW, nonunion firms believe that union power falls, leading them to not offer higher wages to compete with union firms.

3.5. Other Literature

There is a wide range of other literature which finds no effects of RTW on union membership, but this research relies on changes in levels of union membership, rather than flows into membership (Moore and Newman 1985, Farber 1984). RTW effects on levels of union membership could take a long period of time to materialize, opening the door for market factors and other general trends to dilute the effect. Meanwhile, Ellwood and Fine's findings that flows into union membership immediately change after RTW passage suggest a direct link between future union membership rates and RTW legislation.

Very recently, Nicole Fortin, Neil Lloyd, and Thomas Lemieux began investigating the effects of RTW with more rigorous empirical methodologies. Fortin et al. (2022) focuses on five states that have adopted RTW since 2011. In their working paper "Right-to-Work Laws, Unionization, and Wage Setting," they use an Event Study design paired with a Difference-in-Difference analysis, then confirm their findings using industry unionization rates by state as a measure of differential exposure to RTW. The idea behind the differential exposure design being that RTW will have a larger impact on industries with a higher unionization rate. They support the conclusions of Ellwood and Fine and Chava et al., finding that their research designs "provide evidence that RTW laws reduce unionization rates and wages." (Fortin et al. 2022, pg. 31). Fortin et al. benefits from their use of microdata, allowing the researchers to examine heterogeneity in RTW impact across industries with different union densities. They find that RTW had its largest impact on high-unionization industries, supporting the internal validity of their differential exposure design and providing some insight on state characteristics that could affect the magnitude of RTW's impact (Fortin et al 2022).

4. Conclusion

Since the 1950s, unions have been losing power in the US. Even though Farber and Western, in their paper, "Accounting for the Decline of Unions in the Private Sector, 1973-1988," attribute most of the modern decline to broad market trends like globalization, there is still some hope for a union presence in America. While market trends limit unionization numbers, policymakers can choose to counteract these broader effects or exacerbate them. Ellwood and Fine, Chava et al., and Farber found evidence that RTW laws undermine union bargaining power and increase the free-rider problem, thus diminishing union membership, union wage growth, and even nonunion wage rates. Fortin et al. provides more robust evidence that RTW decreases union membership rates and union power. If you place confidence in the conclusions of Freeman and Medoff and believe that unions improve our social and economic systems, then RTW legislation across the US is certainly cause for concern.

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Aside from Fortin et al., most existing research on RTW has examined aggregate effects at the state level, measuring union organizing rates or average changes in worker wages. Theories have been proposed on how RTW can change an individual worker's calculus of whether to be a union member or not, but empirical evidence on rates of compliers (those who decide to leave their union after RTW) is almost nonexistent to my knowledge. Measuring rates of compliers and further investigating how RTW changes individual decision making is an opportunity for future research and would aid in our understanding of how RTW affects a state's labor market. Additionally, the new cluster of states that have passed RTW since 2010 provide an opportunity to examine RTW's effects in states with potentially different levels of union preference among workers. Michigan and Wisconsin, historic union strongholds, passed RTW in 2013 and 2015 respectively and created an opportunity to look at RTW in states with a history of strong union organization.

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