Whose Rights?: Litigating the Right to Work, 1950-1980


Sophia Z. Lee

“We’re Working to Protect Human and Civil Rights for America’s Wage Earners,” read a 1972 pamphlet for the National Right to Work Committee’s Legal Defense Foundation, Inc. (“Legal Foundation”). Inside, under a header titled “Employment Discrimination,” the pamphlet provided snapshots of a number of the Legal Foundation’s cases, including its support for “Mexican-American grapeworkers” and “a Black Philadelphia movie projectionist.” In presenting its legal arguments, the Legal Foundation pamphlet, like much of its litigation, publicity, and fundraising, relied heavily on constitutional law developed by civil rights lawyers over the previous thirty years. The pamphlet’s use of race and a civil rights framework was no accident. In fact, when the National Right to Work Committee (“Right to Work Committee”) created its Legal Foundation in the late 1960s, it had self-consciously modeled the foundation on the leading civil rights legal organization, the NAACP’s Legal Defense Fund, Inc.

For years, the Right to Work Committee and its supporters had borrowed civil rights law to advance their anti-union claims. But by the mid-1960s, the Right to Work Committee began a concerted effort to link its agenda to the rights claims of the black freedom struggle. Awkward at first, across the 1970s, the Right to Work Committee and its Legal Foundation made increasingly savvy use of black workers’ support as they styled themselves civil rights champions. Their burgeoning litigation docket was their most direct link to this civil rights tradition. Their cases borrowed and built on civil rights advocates’ constitutional theories, often featured African-American and Latino plaintiffs, and fed the organization a popular rights- and freedom-based language for its battle against “compulsory unionism.”

Labor historians have looked at radical and democratic movements within labor during this period, but paid less attention to the use anti-union activists made of these trends, harnessing them to promote their right-to-work agenda. Political historians have studied conservatives’ anti-union mobilization in the wake of the New Deal, but have not yet focused on these organizations’ litigation agendas. Legal historians, for their part, have looked at conservative legal countermobilization, but have focused on later periods. Others have illuminated how changes in the law and legal culture in the 1950s and 1960s disadvantaged unions, but we know little about how conservative groups organized to create and make use of these changes.

This paper tells the story of right-to-work litigation from its early roots in the 1950s through its growing success in the 1970s. It pays particular attention to how these litigators and the organizations that supported them harnessed the legal claims and political cache of the civil rights movement along the way. It argues that, while this litigation did not produce all the favorable doctrines right-to-work lawyers expected, it nonetheless greatly benefited their movement. These cases attracted publicity and put labor unions on the defensive. In addition, they provided a particularly resonant platform for promoting right-to-work politics to black workers, helping feed growing tensions in the labor-civil rights alliance. The paper also demonstrates that conservative legal countermobilizers learned the art of adopting and redeploying liberal legal tropes as early as the 1960s. Finally, it suggests that right-to-work litigators’ adoption of this civil rights mantle has influenced how labor historians look back on civil rights lawyering more generally.