

THE AMERICAN LABOR MOVEMENT'S STRUGGLE TO REMAIN RELEVANT

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“Organized labor. Say those words and your heart sinks.” So begins Thomas Geoghegan’s account of his experience as a labor lawyer in an era when organized labor is in decline. Geoghegan portrays labor’s struggle to regain a prominent place in American society as a noble cause, one worth fighting for, but sees the window of opportunity closing. Indeed, he predicts, “One day I will wake up and the unions will be gone, completely gone...I look in my open grave and see a future of workmen’s comp. I see old skulls, old bones of workers” (Geoghegan 1992: 1). The state of organized labor in America clearly gives Geoghegan reason to worry. When his book was published in 1992, the percentage of eligible workers represented by unions had dropped precipitously from a peak of 32.5 percent in 1953 to approximately 16 percent. That figure was down from 20-25 percent in 1982, and as Geoghegan surveyed the future, he lamented, “Maybe it will drop to 12. Once it drops to 10, it might as well keep dropping to zero” (Geoghegan 1992: 1). In the intervening 12 years, the overall percentage of unionized employees has dropped to 13.5 percent, and in the private sector, the percentage has shrunk to 9 percent. (Wheeler 2002: xiii).

What has caused such a monumental decline? There is widespread agreement that the causes have been both external and internal. Externally, there has been a fundamental shift in the American economy from manufacturing to service-based jobs. Since labor has heretofore achieved its most significant gains by organizing production workers, it appears to be having difficulty transitioning to large-scale, service sector organization. Globalization has made capital more mobile, thus allowing employers to transfer high wage American jobs to countries with lower wage rates and fewer government regulations. The political environment has increasingly favored capital, so that labor laws originally designed to protect labor against the excesses of capital have been gradually amended to impede the right of workers to organize and engage in collective

bargaining. Consequently, some workers believe they stand a better chance of achieving gains in the workplace by means of individual negotiation with their employers rather than collective bargaining. It is argued that this is because workers have lost confidence in the ability of unions to secure workplace gains and/ or because employers have made efforts to accommodate workers’ needs in an effort to avoid unionization. (Yates 1998: 135-137).

The internal causes of labor’s decline are said to relate primarily to its willingness to enter into a cooperative relationship with capital in the years following World War II. In an effort to establish labor peace during that period, corporate leaders agreed to recognize the legitimacy of labor and bargain in good faith over key issues such as wages and hours. For its part, labor agreed not to interfere with management prerogatives, thus giving it relative autonomy in day-to-day business operations, and to refrain from striking during the life of the collective bargaining agreement. This so called “corporate agenda” enabled unions to achieve substantial gains for their members in terms of core issues such as wages, hours, and fringe benefits, but it forced them to abandon the wider mission which had been the root of their success in the first place. Instead of continuing to push for widespread social reforms that would strengthen the rights of all workers, unions focused on servicing their own members’ interests. This led them to abandon their efforts to organize new members and created union bureaucracies dedicated to maintaining the status quo. The leaders of these bureaucracies became politically powerful and began to distrust those within the labor movement who sought to disrupt the balance of power established between labor, management, and government. Labor was no longer sure it wanted an active rank and file advocating strikes and other forms of direct action. Whereas economic action had been a key component of labor’s success during the first half of the twentieth century, such ideas were suddenly seen

as too radical and potentially harmful to the gains labor had won for its members.

For nearly a quarter century following World War II, the compromise between labor and management produced positive economic results. The higher wages gained by workers produced a burgeoning middle class, and the resulting increase in economic consumption led to a corresponding increase in production. When the post-war economic boom ended (as a result of overproduction and increasing global competition), capital began to look for a way to offset falling profits. It attempted to cut the wages and benefits it had freely given workers as part of the so called “labor-management accord” and initiated campaigns to impede new unionization efforts and destroy existing unions. Having developed cumbersome bureaucracies fully committed to “service unionism”, labor was ill-equipped to respond to capital’s retreat from the accord. Its ineffectiveness in opposing capital’s anti-union campaigns eventually led workers to believe they might be better off negotiating with their employers individually. Thus, it is suggested that the shift in labor’s internal organization from being an engine for social change to being an anti-democratic bureaucracy has been a key factor in its decline (Yates: p.135-143).

In light of these developments, there has been widespread debate concerning the future of organized labor in America. Like Geoghegan, many are resigned to labor’s extinction. Labor scholars have begun to ascribe to the theory long espoused by the business community that the rise of organized labor was a necessary response to the excesses of the industrial age, that it was highly successful in establishing basic workplace rights and raising the standard of living for millions of working class Americans, but that it has become obsolete in an era where individualism and a global economy rule the day. Others assert that labor has historically experienced periods of decline but has always been able to revive itself when economic conditions force workers to consider the merits of collective action. The optimists argue that as long as the employer-employee relationship exists, employees will be compelled to keep their employers in check through some form of collective action; they will never abandon unionism entirely because the

alternative would be complete employer dominance. Which of these views is correct? Have unions in America become obsolete? Have they lost their ability to represent workers’ interests in a meaningful way in the current political and economic environment? What, if anything, can they do to return workers’ rights to the forefront of the American political and social agenda? These questions are the focus of this paper.

In determining whether organized labor is capable of adequately representing workers’ interests, it will first be useful to try to define those interests, both from labor’s perspective and from the perspective of workers themselves. In a 1994 report entitled, “The New American Workplace: A Labor Perspective”, the Executive Council of the AFL-CIO presented its view of workers’ priorities and the role of organized labor in facilitating those priorities:

“The moment has come for unions to insist upon the right of workers to anticipate in shaping the work system under which they labor and to participate in the decisions that affect their working lives. Unions have an equally important role to play in assuring that workplace change plants strong roots. Unions provide a check on managers and owners who waver in their commitment to the new work order or who seek to revert to old ways” (AFL-CIO 1994: 14).

Clearly, then, the AFL-CIO argues that workers want a greater voice in determining the terms and conditions of their employment. It further asserts that unions have a vital role to play in checking or limiting capital’s ability to maximize profit at the expense of workers. In a recent interview, AFL-CIO president John Sweeney provided a more detailed explanation of labor’s goals for the future, identifying several key areas of concern and laying out strategies to deal with them. Concerning the effect of globalization on American workers, Sweeney explained:

“The essence of our fight is to promote the Declaration of Fundamental Principles on Rights at Work, the International Labor Organization standards that include the rights to collective bargaining, not to be discriminated against in employment, to reject child labor, and to refuse forced labor. Our

aim is not to impose our standards on other countries, but to make sure that human beings are treated as having rights, and have the opportunity to join unions if they desire to” (Wheeler 2002: 218).

Commenting on the AFL’s political goals, Sweeney noted that labor has helped Democrats gain seats in Congress in every election from 1996 to 2000 and predicted that increasing political activism on the part of union members would bolster labor’s efforts to achieve electoral victories in the future (Wheeler 2002: 217). At an AFL-CIO labor lawyers conference in April of 2004, Sweeney once again stressed the need to mobilize union support for Democratic candidates and get out the vote on election day. He presented a ten-point strategy for achieving these goals, including: 1. Recruiting key contacts at local and worksites, 2. Distributing leaflets at all union worksites, 3. Maximizing contact through union publications, 4. Mailing frequent communications from local union presidents and other leaders, 5. Updating local member lists, 6. Increasing voter registration by 10 percent, 7. Conducting a massive get-out-the-vote effort, 8. Building rapid response networks in the workplace, and 10. Linking politics to organizing. (AFL-CIO 2004: 1-5).

Finally, Sweeney alluded to what has clearly been the centerpiece of his reform agenda since he assumed the presidency in 1995: the need to move away from the “service and bargaining model” (wherein unions focus primarily on servicing the needs of their members through the collective bargaining process) and toward an intensive effort to organize new members. He noted that if the AFL-CIO could achieve its goal of organizing 1 million new members annually, it would be able to “hold its own as a percentage of the workforce.” He then noted that it was currently close to organizing about half that number, or 500,000 new members annually (Wheeler 2002: 218).

Sweeney’s comments on labor’s objectives are significant because they reveal what could be viewed as a relatively conservative reform agenda. Certainly, Sweeney is not advocating a radical departure from the way labor does business or a full-scale revolt against corporate America in response to decades of union-busting, wage and benefit cuts, plant closings, and the more recent

phenomena of job relocation and outsourcing. Given labor’s seemingly limited objectives, it may be reasonable to assume that at least some of Sweeney’s goals are attainable in the near future. For example, it is not hard to imagine imminent success in the political arena. The American economy has experienced a recession in the last three years accompanied by significant job loss, and although recent economic indicators suggest that a recovery is in the offing, job creation continues to lag behind. The other key issue in the current election season is the ongoing war on terror and the occupation of Iraq. Given the American public’s mixed feelings about these issues, a political shift is possible. Where Republicans have managed to hold onto their political power base since the landmark election of 1994, it is conceivable that labor’s electoral efforts will pay dividends in November 2004.

It is also reasonable to envision a scenario in which the AFL’s efforts to bring the Declaration of Fundamental Principles on Rights at Work to the attention of employers around the world are successful. Many nations throughout the world currently recognize and abide by the five principles enunciated in the Declaration, and because labor’s stated goal is simply to increase awareness of the Declaration (rather than trying to enforce it), the goal may be reachable.

The AFL’s success in meeting its organizing goals is less certain. In order to effectively organize 1 million new members annually, labor will have to overcome several longstanding problems. It will have to wage a successful public relations battle to dispel the notion that American unions are too bureaucratic and corrupt, that they are, in effect, just another corporation whose leaders seek to benefit themselves at the expense of their members. Further, it will have to convince workers that it can be a more effective vehicle for promoting workers rights and achieving gains in the workplace.

Even assuming that labor can achieve these goals, the next question becomes whether they are consistent with the needs and desires of workers. What do American workers want, as defined by the workers themselves? An extensive survey of worker preferences published in 1998 reveals that workers want a system of labor-management relations somewhat different from the one that

now exists. First, they want a greater ability to participate in decisions that affect their lives at work; they believe that such participation will make them happier as individuals and make the organization for which they work for more productive and profitable. They believe that worker participation should take several different forms. On some issues, such as sexual harassment and general workplace grievances, they prefer dealing with their employers individually rather than as a group of employees. On issues such as wages, benefits, and health and safety in the workplace, they show a preference for collective action. Though about one third of workers believe their employers are unsympathetic to their needs in the workplace and strongly resist sharing power, they nevertheless seek a cooperative relationship with their employers. They believe that developing an openly hostile labor-management relationship is counterproductive for them as individuals and for the enterprise as a whole. They further believe that any kind of workplace organization will be more successful if it enjoys management participation and support. While some express a preference for unionization, others prefer some form of labor-management committee in which workers and managers make joint decisions regarding workplace rules and procedures. Included in such a committee structure would be a mechanism for resolving workplace disputes through independent arbitration rather than management discretion. Furthermore, they believe such a committee system would better allow them to achieve gains in the workplace than additional government regulation. Essentially, then, workers want a varied system of participation and representation with a more cooperative and equal relationship to management, but a majority appear to want it without government interference or a union. In other words, they believe they can get what they want from their employers without significant help from external forces (Freeman and Rogers 1999: 4-8).

These statistics appear to validate the view held by some commentators that organized labor has become obsolete. Pointing to the fact that roughly two thirds of all non-union employees would choose not to vote for a union, and citing the statistics regarding the desire for less external interference, they argue that American workers

have fully embraced the notion of individualism in the workplace. They assert that the conditions which contributed to the meteoric rise of unions in the 1930s and 40s have vanished, never to return, because workers have more individual bargaining power than they did half a century ago and employers have learned how to deal with their employees in ways that makes unions unnecessary (Wheeler 2002: 5). However, the data collected by Freeman and Rogers also clearly shows that workers do not feel they have an adequate voice at work, do not have faith in management's willingness to share decision-making power, and support changing the system by which workplace decisions are made. Those statistics support the view that unions are unlikely to become totally extinct. Indeed, many labor analysts suggest that "as long as people procure their livelihood by working for wages and salaries, they will recognize, sooner or later, the futility of appealing to their employers as individuals" (Aronowitz 1998: 7).

The data indicates that 90 percent of current union members are confident in and satisfied with their union. The data further indicates that one third of non-union members see the formation of the union as a viable option and would vote in favor of one (Freeman and Rogers 1999: 69). An additional 12 percent of those who would vote against the union cite management opposition as their reason for doing so. Absent such opposition, they said they would change their position and vote in favor of the union (Freeman and Rogers 1999: 87). Combining these numbers, Freeman and Rogers estimate that approximately 44 percent of all private sector workers would like to be represented by a union (Freeman and Rogers 1999: 89). And as Aronowitz points out, at least a portion of those who currently believe they can get what they want from their employers by negotiating with them individually are bound to be disappointed when they discover their employer's intransigence. Add to that the fact that not all employers will agree to establish labor-management committees featuring joint decision-making on key workplace issues, and the inevitable conclusion is that at least some portion of the American workforce will see the need to organize a union in an attempt to force the employer to recognize certain basic worker rights. If nothing else, the idea that union contracts

require the employer to show just cause before it fires someone is sufficient reason for workers to favor unionization. Thus, it appears unlikely that the basic concept of unionization in accordance with the rules set forth in the National Labor Relations Act will vanish entirely from the American workplace. However, the larger question is whether labor is capable of achieving its stated goal of helping workers participate in the decisions that affect their working lives and provide a check on capital when it oversteps its bounds. I argue that to meet these objectives, labor must achieve greater parity with capital; however, that will be impossible to do in the absence of a dramatic economic collapse similar to the Great Depression. The fundamental principles of capitalism are too firmly embedded in the American consciousness. The American people will only question the validity of the capitalist ideal if it completely collapses. Therefore, absent some sort of cataclysmic economic event, labor will most likely be relegated to its familiar role of an anti-establishment organization which will have only a marginal effect on the operation of capitalist principles. Perhaps the most effective way to support this theory is to undertake a brief examination of the history of the American labor movement.

Beginning in the latter half of the 19th century, several influential labor unions competed with each other for the allegiance of the nation's working class and, in so doing, defined the limits of American unionism. In the 1880s, The Knights of Labor rose in response to the infusion of unskilled and semi-skilled workers into a newly industrialized workforce. Rapidly expanding markets caused employers to engage in cutthroat competition characterized by lower prices and, consequently, lower wages. This downward pressure on wages led unskilled and semi-skilled workers, many of whom were newly arrived immigrants, to demand a labor organization which would address the growing imbalance between labor and capital. The Knights of Labor took up their cause. During the same period, the American Federation of Labor focused exclusively on organizing skilled workers, who had been intermittently successful in gaining wage and hour concessions from their employers but were not organized under a single umbrella. The AFL sought was to harness the power of skilled workers

to affect significant change in wages, hours and terms of employment, but believed that any attempt to include the growing class of unskilled and semi-skilled workers would detract from this goal.

The demise of the Knights of Labor stemmed primarily from the fact that their goals were too broad and unfocused to wage an effective battle against capital. They sought to educate their workers on economics and politics so they would be prepared to lead society, and their ultimate goal was the formation of worker cooperatives in which workers would share ownership of the means of production. The Knights believed that without worker cooperatives, organized labor would not be able to successfully achieve its goals because it would forever be in opposition to the most powerful force in American society: capital (Wheeler 2002: 98). The Knights ultimately failed because they could not make the idea of worker cooperatives a reality. Attempting to organize and educate unskilled, semi-skilled, and skilled workers was a monumental task. The AFL presented a better alternative for skilled workers because they had more bargaining power which with they could force employers to grant concessions. And the Knights lack of focus and organization made them an easy target for employer attacks. Indeed, one of the key factors contributing to their decline was the media's portrayal of the Knights as the primary cause of the Haymarket Riot of 1886, in which several Chicago police officers were killed. Though it was later discovered that the riot was led by a group of anarchists who had no affiliation with the Knights, the press targeted them as the perpetrators and succeeded in turning public opinion against them. Ultimately, the Knights' idea of comprehensive social change was defeated by forces which favored the proliferation of capitalism. Conversely, the AFL continued to grow during this period because they sought to work within the capitalist system to achieve gains for skilled workers.

The competition between the Knights and the AFL provided an early indication of the extent to which labor could affect change in its relations with capital. However, it was the historic political shift that occurred in the aftermath of the Great Depression that truly defined the limits of labor's

influence. When Franklin Roosevelt was elected to the presidency in 1932, he promised a revolutionary economic and political agenda that would lift American out of the Depression. As part of this agenda, he openly challenged big business and sought to replace laissez-faire economics with a system of government regulation that would put a floor on prices and wages and a ceiling on hours. Upon signing the National Industrial Recovery Act, Roosevelt proclaimed, “No business which depends for existence on paying less than living wages to its workers has any right to continue in this country.” (Lichtenstein 2002: 25). In 1935, Congress passed the National Labor Relations Act, which gave workers the right to “form, join or assist labor organizations, bargain collectively through representatives of their own choosing, and engage in concerted activity for (their)...mutual aid or protection.” It enforced those rights by requiring employers to bargain collectively with their employees and proscribing employer unfair labor practices (Hardin 1992: 28). The following year, during his 1936 re-election campaign, Roosevelt continued his assault on corporate America: “Organized money are unanimous in their hatred for me, and I welcome their hatred. The forces of selfishness and of lust for power have met their match” (Lichtenstein 2002: 46). Such rhetoric emboldened organized labor not just to push for the usual improvements in wages and hours, but to think in terms of much larger social change in which “the responsibilities and expectations of American citizenship—due process, free speech, the right of assembly and petition—would now find their place in the factory, the mill, and the office” (Lichtenstein 2002: 32). Surveying the newly formed political landscape, CIO president John L. Lewis confidently challenged capital: “Let him who will, be he economic tyrant or sordid mercenary, put his strength against this mighty upsurge of human sentiment now being crystallized in the hearts of thirty million workers who clamor for the establishment of industrial democracy and for participation in its tangible fruits” (Lichtenstein 2002: 32).

In 1937, the newly formed United Auto Workers seized upon the momentum created by the New Deal and Roosevelt’s re-election to stage a “sit-down” strike at the General Motors Corporation in Flint, Michigan. At the time, GM

was the largest and most profitable corporation in America, with 110 manufacturing plants nationwide, a quarter of a million employees, and half a million stockholders. It was, in short, “the perfect exemplar of how and why American business (was) big” (Lichtenstein 2002: 48). By physically occupying more than a dozen GM plants across the nation over a six-week period, the strikers were successful in halting production and inflicting significant financial damage on the corporate giant. Eventually, GM reached a settlement with the UAW in which it agreed to recognize the union as the exclusive bargaining representative of its employees and negotiate on a multiplant basis. More significantly, workers gained the right to complain to management about arbitrary supervision and onerous work rules without fear of retribution. The phenomenal success of the GM strike created sense of optimism and self-confidence among workers nationwide, and union membership swelled. From 1933 to 1937, American unions recruited 5 million new members, 3 million of which joined in the several months following the GM strike (Lichtenstein 2002: 51).

Despite the tremendous momentum of the labor movement during this period, its growth was hampered by internal divisions and the retaliatory actions undertaken by capital. The Congress of Industrial Organizations had taken up the cause of unskilled and semi-skilled workers in the aftermath of the Knights of Labor and aligned itself closely with the Roosevelt administration. The AFL opposed the CIO’s brand of unionism because it believed labor should remain independent from government. It objected to the NLRA’s intrusion into labor-management relations because it did not believe government should have the right to determine the appropriate size and makeup of a union’s bargaining unit or mandate elections to determine the will of workers in that unit (Lichtenstein 2002: 65). As a result, the AFL initially denounced the NLRA as “left wing” and actually aligned itself with conservative politicians and businessmen in an effort to revise the Act. The AFL also bought into the aggressive anti-Communist sentiments of these conservative groups, and together they began to attack the CIO for including radical communist elements within its ranks.

Corporate America was understandably alarmed by the success of the labor movement and sought to neutralize its gains at every turn. Alfred Sloan, president of GM, characterized capital's view of the labor insurgency, saying, "It took 14 years to rid this country of prohibition. It is going to take a good while to rid the country of the New Deal, but sooner or later the ax will fall and we'll get a change." The change came in the form of Republican majorities in both houses of Congress in 1946, followed by the passage of the Taft-Hartley Act in 1947. By banning secondary boycotts, establishing the right of workers not to join unions (which led to the enactment of right-to-work laws and the elimination of closed shop and union shop agreements), overturning the Norris-Laguardia Act (which restored the courts' authority to issue injunctions to enjoin certain types of union activity), and establishing procedures through which employers could decertify unions which had previously won an election, Taft-Hartley was a welcome first step in capital's drive to re-assert its dominance over labor. The fact that labor ultimately failed to maintain its position of power despite the overwhelming economic and political advantages it derived from the Great Depression and the New Deal indicates that its chances for revival in the current environment are slim.

In addition to the weight of historical trends, there appear to be inconsistencies between the traditional structure and function of American unions and the workplace organization currently preferred by many workers. Though labor has correctly identified the primary complaint of most workers (lack of the ability to participate in the decisions that affect their working lives), the preference of many workers to be able to negotiate individually on some issues and collectively on others with minimal interference from external groups such as government and unions creates an obvious conflict. Many workers simply do not see the need for a union as long as they believe some alternate form of collective action is possible. If workers believe they can come together informally to negotiate with management on certain key issues, the alternative of formally establishing a union through the NLRB, creating a perpetually adversarial relationship with their employers, and paying dues to support a collective bargaining process in which they have little or no

involvement is less appealing. Indeed, workers who are skeptical about union representation believe, in varying percentages, that collective representation is often inferior to handling workplace problems on their own, that having a union creates too much tension in the company, which they don't like the way unions operate, and that unions are too weak to help workers (Freeman and Rogers 1999: 86). As noted earlier, because management is bound to resist the idea of ad hoc collective bargaining or labor-management committees in which decisions are made jointly by workers and managers, traditional unionism will remain an option for some workers, but its incompatibility with many workers' ideal workplace organizational structure may make it a second alternative rather than a preference.

Turning to the goals themselves, it appears that labor's relatively conservative reform agenda may be inadequate to address the needs and desires of American workers in the current economic environment. Though labor's list of initiatives to protect and strengthen worker's rights is extensive, it may be useful to consider the three major goals mentioned by AFL-CIO president John Sweeney in his June 2001 interview. Since it formed an alliance with the Democratic Party during the Roosevelt Administration, a primary goal of labor has been to elect Democrats to state and local legislatures as well as Congress and the White House. This has been a particularly urgent priority since the onset of labor's decline in the early 1970s because labor has blamed the decline, in large part, on the glaring deficiencies in American labor law. As such, labor believes legal reform is the key to turning the tide against anti-union employers and reviving the movement. A brief overview of the NLRA and the procedures through which it governs labor-management relations will be instructive in understanding labor's complaints about the current state of the law.

In 1935, a progressive Congress passed the National Labor Relations Act to enable workers to organize and assert their rights against dominant employers. A decade later, a more conservative legislature sought to neutralize the effects of the NLRA with the passage of the Taft-Hartley Act. Since then, labor has discovered that the framework established by these two bills puts

workers at a distinct disadvantage in organizing workers and resisting management's efforts to divide and conquer them.

The difficulties begin before an election is ever held. Union organizers will first ask employees to sign authorization cards showing their support for the union. If less than a majority of employees agree to sign, the union must petition the National Labor Relations Board for an election to determine whether the union will be certified as the employees' official representative for collective bargaining purposes. If a majority sign cards, the employer has the option of accepting the union as the employees' official representative without a certification election. However, it may also decline to accept the cards as proof of employee support and may ask for an election. Employers routinely refuse to acknowledge union authorization cards, even if 100 percent of the employees sign, because they are able to delay union certification by contesting the legitimacy of employee support for the union (AFL-CIO 2004: Employee Free Choice Act). It may further delay the election by challenging the appropriateness of the bargaining unit. The longer the employer is able to delay the election, the more time it has to convince workers that they are better off without the union. In making its case, the employer is permitted to disseminate anti-union information suggesting that bad things will happen if the union is elected. It may hold captive audience meetings in which the negative aspects of unionism are highlighted while simultaneously prohibiting union organizers from entering the premises for the purpose of presenting pro-union information. It may not legally threaten workers with dismissal or fire them for supporting a union drive, but the Board imposes no penalty for such illegal actions. A worker who is threatened or fired for union activity will eventually be reinstated, but determining whether the employer has acted illegally may take months or years. In the meantime, the worker is without a job. (Yates 1998: 137). If the employee decides to return to his job following reinstatement, he may be punished by the employer for bringing his complaints to the Board in the first place and may eventually be fired again for his union activity, though the employer's official explanation will be that he was fired for something else. Essentially, then, the employer has a host of options at its

disposal, both legal and illegal, to hinder the election process before a single vote is cast. The mere fact that the employer can significantly disrupt the process before it has begun may convince some workers that organizing will be more trouble than it's worth.

If the union somehow avoids all these obstacles and is successful in holding and winning an election, the employer may then hinder the collective bargaining process by refusing to engage in constructive contract negotiations. An employer's outright refusal to bargain with the union constitutes an unfair labor practice, but it is free to be as obstinate as possible during negotiations to ensure that no agreement is reached on subjects that may be essential to the formation of the contract. By engaging in these tactics, particularly while negotiating the first contract between the two sides, the employer may be successful in destroying the employees' confidence in the newly elected union's ability to operate effectively for its members. If member support begins to erode, the employer may call for a decertification election. If, after all this, the employer is unsuccessful in breaking the union, it has the option of punishing or firing union supporters. Again, while such tactics clearly contravene the NLRA, employees must wait months or years for the NLRB to resolve their cases. And even if the employer is found to have committed an unfair labor practice, the remedy simply entails reinstating the fired employee with back pay. The NLRA provides no mechanism for punishing offending employers.

The multitude of tactics at the employer's disposal to prevent the union from forming or successfully achieving gains for its members has convinced labor that American labor laws need to be changed to put unions on equal footing with management. It has supported an expedited NLRB hearing process so that workers who are punished or discharged as a result of union activity are enumerated or reinstated more quickly. Violating employers would be charged with unfair labor practices in a more timely fashion so they are less willing to continuously violate the law. Labor has also focused on lobbying Congress to pass legislation imposing substantial financial penalties on employers found to have willfully violated the NLRA by punishing workers for

participating in union activity, hindering the election process, or refusing to bargain in good faith.

Labor's most recent legislative effort, introduced in Congress in November 2003 and sponsored by Senator Edward Kennedy (D-Mass.) and Congressman George Miller (D-Calif.), seeks to remedy three key problems. The Employee Free Choice Act would provide for certification of a union if the NLRB finds that a majority of employees in an appropriate unit has signed authorizations designating the union as its bargaining representative. It would ensure that if an employer and a union are engaged in bargaining for their first contract and are unable to reach agreement within 90 days, either party may refer the dispute to the Federal Mediation and Conciliation Service for mediation. If the FMCS has been unable to bring the parties to agreement after 30 days of mediation, the dispute would be referred to arbitration and the results of the arbitration would be binding on the parties for two years. Finally, it would impose stronger penalties on employers for violating the NLRA while employees are attempting to organize a union or negotiate a first contract. Specifically, it would require the NLRB to seek a federal court injunction against an employer whenever there is reasonable cause to believe that the employer has discharged or discriminated against employees, threatened to do so, or engaged in other conduct that significantly interferes with employee rights during an organizing or first contract drive. Additionally, it would increase the amount an employer is required to pay when an employee is illegally discharged during an organizing campaign or first contract drive to triple back pay. Civil penalties of up to \$20,000 would also be imposed on employers found to have willfully or repeatedly violated employees' rights during an organizing drive or first contract drive (AFL-CIO 2004: Employee Free Choice Act).

Despite the inequities in the law and labor's consistent support for proposed legislation such as the Employee Free Choice Act, I argue that Congress will not likely enact major labor law reform now or in the foreseeable future. Further, even if labor was somehow successful in passing meaningful reforms like those proposed in the current legislation, it is questionable whether such

reforms, groundbreaking though they would be, would reverse the tide of employer dominance in labor-management relations. Why? The history of labor law reform since 1947 provides insight on this question.

Following the passage of the Taft-Hartley amendments, labor strongly condemned them as "Slave labor laws" and worked steadfastly for their repeal. When Harry Truman won the presidency in 1948 and the Democrats swept both houses of Congress, labor concluded that conditions were ripe for the extinguishment of Taft-Hartley. Despite the favorable political landscape, labor's absolute insistence on a complete repeal of the amendments rather than the more moderate set of reforms proposed by President Truman proved too much for mainstream members of Congress. As a result, Taft-Hartley remained on the books (Hardin 1992: 46-47). Aside from the Landrum Griffin Act, which addressed corruption in organized labor and amended several minor provisions of Taft-Hartley, the next major attempt to enact labor law reform did not occur until 1978. The Labor Law Reform Bill sought to address several of the most egregious inequities in the law by speeding up schedules for conducting union representation elections and stiffening penalties for employers who opposed union organizing by illegal means. The law would have required employers to compensate illegally discharged employees with double back pay and would have barred flagrant offenders from receiving government contracts. Though the bill had the support of President Carter and Democrats controlled both houses of Congress, members of the Senate who opposed the reforms conducted a five-week filibuster. After six unsuccessful attempts at invoking cloture, the legislation was recommitted to the Senate Human Resources Committee and died (Hardin 1992: 67-68).

Clearly, then, labor has been unsuccessful in affecting meaningful labor law reform, even when the political climate appears to lean in its favor. These failures indicate that even Democrats, long said to be the political ally of organized labor, have thus far been unwilling to abandon the capitalist ideal in favor of a more socially progressive labor agenda. Indeed, as previously alluded to, the Democratically controlled Congress

of 1948 considered labor's demands for complete repeal of Taft-Hartley too radical to entertain.

In a 2000 Discussion Paper entitled "Toward a New Labor Law," the Labor Party of America concluded that labor's failure to enact labor law reform "will not be reversed with more money, better lobbying, or stronger electioneering. The fact is that, absent very extraordinary circumstances, business interests hold a veto power over labor rights legislation in this country. This is because business occupies a 'privileged position' in our political system. Public officials need cooperation from business, and they cannot afford to take it for granted. In short, government leaders can usually afford to stiff unions, but they must do what it takes to obtain the cooperation of business" (Labor Party 2000: 2).

The Labor Party's solution to this problem is to circumvent the political process by invoking constitutional principles. It argues that rather than engaging in the futile process of trying to pass reform legislation, labor should rely on well established democratic principles that supersede legislation and will never be repealed, namely the First Amendment rights of free speech and assembly. It asserts that if these rights were properly applied to workplace issues, the impediments to organizing, collective bargaining, and economic action that currently exist under national labor legislation would be swept away by the freedoms guaranteed by the Constitution. Workers would be able to form an organization without interference by employers, card checks and election procedures would be unnecessary because the freedom to associate would not require them, and employees could freely strike or picket their employers without fear of retaliation. Further, they could urge other employers' workers to boycott their employer's goods until it agreed to settle their dispute fairly (Labor Party 2000: 2-3). This view is shared by a number of international labor scholars and used to criticize the American system of labor relations.

In a paper entitled "Choice or Voice?: Rethinking American labor policy in light of the international human rights consensus", Dr. Roy Adams argues that collective bargaining can rightly be viewed as a basic human right rather than a privilege conferred on workers by law. He asserts that collective bargaining is consistent with

the notion of freedom of association, which has been recognized as a fundamental human right by governments and humanitarian organizations around the world, including the International Labour Organization, the Organization for Economic Cooperation and Development, and the World Trade Organization. In 1998, the ILO published the Declaration of Fundamental Principles and Rights at Work, which lists five core rights as fundamental human rights. They are: freedom of association, effective recognition of the right to collective bargaining, the elimination of all forms of forced compulsory labor, the effective abolition of child labor, the elimination of discrimination in respect of employment or occupation. Adams suggests that the freedom to associate and the attendant right to collective bargaining have been universally recognized as human rights because of the belief that work is a fundamental tenet of human existence which should not be subject to exploitation and control by those who own the means of production. Consequently, he argues that workers have an inalienable right to have a voice in determining the terms and conditions of their employment, and such a right should not be subject to choice. Adams makes the analogy to a nation that has chosen a democratic form of government, asserting that once democracy is established, "no representation as an option should not be given legitimacy." Similarly, he argues that the right not to engage in collective bargaining should not be presented as a viable option. Clearly, an individual can make his own decision not to participate in a democratic society or not to engage in collective bargaining, but once society has extended the right to engage in these activities and affirmed the value of such rights, it should not then encourage people not to exercise them. Rather, societal institutions should do all in their power to facilitate the free exercise of conferred rights, making the process so easy and so common that it becomes a normal function of society (Adams 2001).

Defenders of the American system counter that collective bargaining need not be considered a basic human right because it is not a necessity of human existence; thus, people should have the freedom to choose whether to bargain collectively or individually with their employer. Furthermore, it is argued that freedom of association means

having the right to choose not to associate. If individuals are given the right to engage in collective bargaining, they should have the freedom to choose whether they will exercise that right (Adams 2001).

Convention 87 of the International Labour Organization calls for freedom of association and protection of the right to organize. Convention 98 establishes principles with respect to the right to organize and bargain collectively. The United States is one of the few countries in the world that has refused to ratify either convention, which may not be surprising given that it is one of the few countries that appears not to be in compliance. Clearly, the United States would take issue with this contention, citing the First Amendment to the Constitution and the National Labor Relations Act as affirmative examples of its support for the ideas contained in the conventions. There are two potential flaws in this line of reasoning. First, if one agrees with Adams' assertions regarding the inalienable right of workers to have a voice in the terms and conditions of their employment, the right to bargain collectively should not be a choice. Second, even if a worker's right to choose is considered a valid proposition, it can be argued that the way in which American courts and the National Labor Relations Board have interpreted the NLRA leaves workers with very little real choice. That is, because the NLRA has been interpreted to favor employers, workers do not see collective bargaining as a viable choice and are thus deterred from attempting to form or join unions. This inevitably leads them to choose individual bargaining as the most effective way to achieve optimal gains in the workplace. As more and more people choose individual bargaining, those observing trends in union participation conclude that people prefer bargaining individually rather than collectively and that they are consciously exercising their freedom to choose and associate. Having conferred on its people the right to choose whether to bargain collectively, it is argued that the American system of collective bargaining is legitimate and in compliance with world standards.

Assuming that the American system violates international labor standards, there are several reforms that might help close the gap. First, the United States could implement NLRA reforms

which have long been proposed by American labor advocates, including interim reinstatement of discharged workers pending NLRB proceedings, increased workplace access for union organizers, tougher penalties for unfair labor practices, procedures for quicker elections and the efficient resolution of election disputes, reversal of the permanent-strike breaker doctrine, and first contract arbitration. There are two basic concerns with such reforms. First, while they would undoubtedly be welcome changes, evidence suggests that they might have minimal effect on union participation rates. Several Canadian provinces have enacted reforms such as card check certification, quicker election certification votes, first contract arbitration, and stiff and rapid sanctions against violators of Canadian labor rules. No Canadian jurisdiction permits permanent strike replacements, and several forbid the employer to hire strike replacements at all. Despite these seemingly far-reaching reforms, 8 in 10 Canadian workers are non-union. The union participation rate in the U.S. is 9 in 10 without such reforms (Adams 2001).

The second problem with such NLRA adjustments is that they would not change the American view that workers should be able to choose whether to engage in collective bargaining. Without addressing the choice issue, collective bargaining in the U.S. will continue to fall short of international standards.

Solutions that would more thoroughly address the choice issue are reflective of European collective bargaining models. Congress could create employee representative councils comprised of delegates elected by employees in a particular company for the purpose of co-determining, with management, a wide range of workplace issues. In Germany, for example, representative councils work with management to create workplace policy on a wide range of important issues, including training, health and safety, the implementation of employment legislation, and the implementation of collective bargaining agreements negotiated on a multi-employer basis by trade unions. Companies may not lay off workers without council consent (subject to arbitration), and individual discharges may be vetoed by the council (again, subject to arbitration) (Adams 2001).

Other collective bargaining practices commonly found in Europe that could improve collective bargaining in the U.S. include placing worker representatives on corporate boards, implementing a system of national multi-employer bargaining, establishing statutorily wage councils (run jointly by management and workers) for the purpose setting wage policy, and establishing joint health and safety committees. Finally, a statutorily prescribed policy of instant recognition of collective bargaining units would have a significant impact on the issue of choice in the American system.

Because the introduction of these kinds of significant changes in collective bargaining policy would undoubtedly be resisted at first, the key to successful implementation is to promote them in a way that makes them an accepted part of the collective bargaining system in America, just as they are in Europe. To do this, labor would have to abandon its allegiance to the American system of labor relations and return to the socially progressive agenda that characterized the movement in the late nineteenth and early twentieth century. But as history has shown, labor has suffered its most crushing defeats when it has adopted such an agenda; therefore, a return to progressivism is unlikely absent extraordinary economic circumstances which open the door for such change.

While the AFL-CIO supports the arguments advanced by Dr. Adams and has endorsed both the International Labor Organization's Conventions calling for freedom of association in the workplace and the Declaration of Fundamental Principles and Rights at Work, its goal is merely to make employers around the world aware of the Declaration's provisions and convince them to operate their workplaces in accordance therewith. Since there is no practical way to enforce democratic principles in the workplace, labor's promotion of the Declaration and other worker rights proposals as a response to globalization will inevitably be inadequate to meet the needs of American workers.

I have thus far argued that three of labor's primary goals (organizing of 1 million new members annually, enacting meaningful labor law reform, and softening the effects of globalization through the promotion of international worker

rights) are either unachievable absent an extraordinary shift in economic circumstances or, if achievable, are unlikely to reverse capital's dominance over workers. However, many scholars disagree with this assessment and have predicted the resurgence of labor if certain conditions are met. It is essential, therefore, to address the validity of these counter-arguments.

First, it may be argued that the cataclysmic economic event which I deem necessary for change is, in fact, upon us. Indeed, economic conditions in America today are eerily similar to those which lead to the Great Depression. As in the late 1920s, Americans are working an increasing number of hours without experiencing a corresponding rise in income. The disparity between rich and poor is growing, with the incomes of the wealthiest Americans occupying an increasing percentage of the nation's overall wealth. And falling incomes among the middle and lower classes have resulted in diminished economic consumption (Wheeler 2002: 26). Why, then, is labor finding it difficult to promote a more socially progressive agenda and achieve greater parity with capital? The answer may simply be that we haven't yet experienced the kind of economic meltdown that distinguished the Depression years. When three out of ten people on the block have lost their jobs and fallen on hard economic times, the remaining seven are not prepared to rebel against a social and economic system that has historically produced favorable results. When everyone on the block is out of work, they all have no alternative but to reexamine the wisdom of the system that has brought them their current circumstances.

Notwithstanding a second Great Depression, what if labor could somehow overcome the tremendous obstacles to enacting labor law reform and create a system with automatic card check certification, first contract arbitration, a ban on permanent strike replacements, and stiffer penalties for labor law violators? Labor strongly argues that such changes in the law would enable it to achieve relative parity with capital and establish an environment conducive to workplace democracy and worker rights. However, as previously noted, the enactment of many of these policies in Canada has only slightly increased union participation rates. This may indicate that

greater government intervention, while certainly helpful in balancing inequities in labor-management relations, cannot completely nullify the debilitating effect of strong employer opposition. It may be that government intervention is only truly effective where employers have come to accept unions as part of the economic environment.

If these assumptions about employer opposition are correct, what if the American system of labor relations could be modified to reflect those found in Europe? In Sweden, for example, government has ensured full employment through progressive taxation while statutorily regulating many aspects of the labor-management relationship. Government regulation has provided workers with protection against arbitrary dismissal, accidents and illness at work (through health and safety regulations), and declining wages (through a standardized minimum wage, wage indexation, social security benefits, etc.). It also plays a vital role in the collective bargaining process by regulating the terms and conditions through which unions and management negotiate employment agreements. Government involvement in the bargaining process essentially provides workers with greater protection against potential domination at the hands of employers. These additional protections for workers create a level of socio-economic equality foreign to free market economies. In exchange, the government allows management broad discretion to manage their businesses as they see fit, and the private ownership of capital is largely preserved (Gray 1998: 167).

In Germany, the market economy is characterized by a comprehensive welfare state and a business structure in which workers participate in deciding how the workplace with operate. Such a business model creates greater equality among workers and employers than exists in the United States. There is also industry-wide collective bargaining over wages, benefits, and conditions of employment, and a high degree of job security, both of which are secured through national legislation. When German workers lose their jobs, the government pays them about two-thirds of their incomes in unemployment benefits. Furthermore, the value of human labor is not measured solely in terms of productivity. Indeed,

the slash and burn mentality so prevalent in the American economy is subordinate to the theory that peoples' value as employees extends beyond the amount they produce on a daily basis. The chairman of the Siemens Corporation, one of the world's premier electronics companies, has reportedly stated that "the hire and fire principle does not exist here, and I never want it to." (Gray 1998: 169).

The most obvious problem associated with implementing these kinds of labor relations systems is that they are socialist. As Thomas Geoghegan notes in "Which Side Are You On", "the whole thrust of organized labor is...well, not socialism" (Geoghegan 1992: 6). History shows that labor's previous attempts to overthrow capitalism and replace it with a socially progressive economic system have ended in disaster. Consequently, asking whether the American system can be modified to look more like a European-style social democracy appears futile. However, if such a revolution were to occur, organized labor in the United States would most likely experience a level of strength similar to unions in Europe, and its goals of increasing worker participation and strengthening worker rights would largely be realized. Again, the primary reason for such success would be the absence of employer opposition.

In terms of organizing new members, what if unions could successfully offset the devastating membership losses it has suffered in the industrial sector by organizing the burgeoning class of white collar and service sector workers? Would that spur labor's revival? White collar workers have traditionally been more difficult to organize because they have tended to view their interests and abilities as being different from those of blue collar workers. They have traditionally identified themselves more with managers because they are generally better educated and believe their superior skill sets will enable them to rise to the ranks of management or negotiate effectively with management for what they want. That perception has been gradually eroded by increasingly limited opportunities for advancement among white collar workers and the outsourcing of these jobs to cheaper labor markets. As a result, white collar workers are now more likely to identify with traditional blue collar issues such as promotional

opportunities and job security, and thus may be an ideal organizing target. (Wheeler 2002: 73) Still, their organizing preferences tend to differ from those of blue collar workers. Their emphasis on individualized rewards and promotions leads them to form unions that: 1. bargain only for minimum wage levels, leaving room for individual bargaining for wages above these levels, 2. encourage other forms of participation along with bargaining, 3. downplay seniority and put more emphasis on merit, 4. rarely seek finely specified work rules, 5. minimize the strike in favor of publicity and lobbying, and 6. are relatively decentralized (Wheeler 2002: 58). The practices typical of these “associational” unions are consistent with the organizational preferences identified by Freeman and Rogers in that they emphasize individualism, cooperation, and decentralization. This presents two problems for unions. First, unions would have to completely reinvent themselves by relinquishing control over most aspects of the collective bargaining process. If they agreed to abide by the above principles, they would no longer have the power to bargain for premium wages, seniority, or specific work rules. They would be forced to abandon the collective bargaining process completely whenever the members decide to bargain individually and would be able to call a strike only as a last resort. Given the workers’ preference for individual action and the union’s limited ability to act on behalf of the members, workers might well question the wisdom of having a union at all. And they would certainly question the wisdom of paying union dues for so little benefit. As the Freeman/ Rogers survey indicates, workers in this situation might decide that they can just as effectively engage in occasional collective action without the formality of a union.

The second potential problem with organizing private sector professional employees on a large scale is that it would most likely require changes to the NLRA’s rules regarding subjects of bargaining. Section 9(a) of the Act provides that representatives designated or selected by the employees in an appropriate bargaining unit shall be the exclusive representative “for the purpose of collective bargaining in respect to rates of pay, wages, hours, or other conditions of employment.” The NLRB and the Supreme Court have subsequently used this language to establish a

distinction between mandatory and permissive subjects of bargaining (Hardin 1992: 595). It is argued that the failure of the NLRA to require bargaining on permissive subjects such as the basic policies of work organization makes it ill-suited to collective bargaining for professional employees because it is those subjects with which professional employees are most concerned. Additionally, the Act’s rules establishing the union as the exclusive representative of all employees runs counter to the preference of many workers to bargain individually and create informal collective bargaining arrangements as necessary (Wheeler 2002: 74).

A similar argument is made with regard to “geographical/occupational unionism“, which involves organizing workers along occupational lines regardless of their geographic location. While such an organizational tactic allows unions to expand the scope of their organizing campaign and attract new members, the NLRA limits “network-based” or “multiemployer” bargaining. For this to be a viable organizing alternative, the Act would have to be changed to permit employees of different employers to bargain jointly with those employers (Wheeler 2002: 52). Given the difficulties labor has encountered trying to amend the NLRA, such change is unlikely.

CONCLUSION

“Labor thinks of itself, consciously, as being as American as apple pie. But it is not. Go to any union hall, any union rally, and listen to the speeches. It took me years to hear it, but there is a silence, a deafening silence, on the subject of individualism. No one is against it, but it never comes up. Individualism is for scabs. This country is set up for scabs. Crossing a picket line, making your own deal. America is the land of opportunity. The subversive thing about labor is not the strike, but the idea of solidarity.” (Geoghegan 1992: 5). Thomas Geoghegan thus encapsulates the premise of this paper. I have argued that individualism will always prevail over the social progressivism embodied by the American labor movement. The latter is rooted in the idea that “an injury to one is an injury to all”, but in America, it is simply more appealing to believe that each of us has the ability to get what we want on our own and that, once we get it, we

shouldn't have to share it with anyone. The history of the labor movement shows that any attempt to replace capitalism with social democracy will be met with defeat, even when the very foundations on which capitalism is based have collapsed. Consequently, the most viable solution to the problem of employer domination may be a return to the idea of worker cooperatives advanced by the Knights of Labor. If workers are able to assume ownership of the means of production, they are no longer in opposition to management because they are management. However, in a system where some are employers and others are employees, the best labor can do is to continue advocating for the right of workers to participate in the decisions that affect their lives at work and to promote a more equitable society. In ordinary economic times, it is not likely to fully achieve these goals by organizing new members or electing pro-labor politicians or supporting fundamental workplace rights abroad, although it must try. In extraordinarily hard economic times, it must take advantage of its elevated position in society to establish basic workplace rights that cannot be taken away, even when the economy recovers and labor is once again relegated to underdog status. The minimum wage, the eight hour day, unemployment insurance, and workplace health and safety laws are proof that labor has the ability, under certain circumstances, to strengthen workers' rights. As Geoghegan notes, "A union movement in America will always be a scandal. But, at the very least, we want to be cut in on the deal" (Geoghegan 1992: 6). If labor cannot successfully change the system, it must do what it can to be "cut in on the deal."

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