

2005

## An American Tragedy: The Decline of U.S. Unionism and Its Human Rights Implications

Peter Zwiebach

*Deputy County Attorney for Nassau County*

Follow this and additional works at: <https://digitalcommons.du.edu/hrhw>



Part of the [Human Rights Law Commons](#), [Labor and Employment Law Commons](#), and the [Work, Economy and Organizations Commons](#)

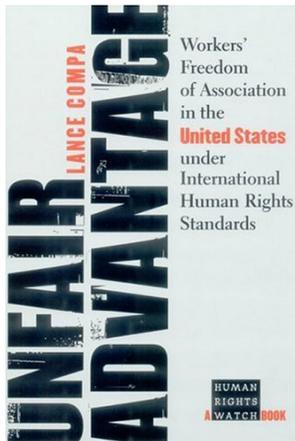
---

### Recommended Citation

Zwiebach, Peter (2005) "An American Tragedy: The Decline of U.S. Unionism and Its Human Rights Implications," *Human Rights & Human Welfare*: Vol. 5 : Iss. 1 , Article 27.

Available at: <https://digitalcommons.du.edu/hrhw/vol5/iss1/27>

This Review Essays is brought to you for free and open access by the Josef Korbel School of International Studies at Digital Commons @ DU. It has been accepted for inclusion in Human Rights & Human Welfare by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).



## An American Tragedy: The Decline of U.S. Unionism and its Human Rights Implications

By Peter Zwiebach

**Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards** by Lance Compa. Ithaca: Cornell University Press, 2004. 220pp.

*What does labor want? It wants the earth and the fullness thereof. There is nothing too beautiful, too lofty, too ennobling unless it is within the scope and aspiration of labor's aspirations and wants. We want more schoolhouses and less jails more books and less arsenals more learning and less vice more constant work and less crime more leisure and less greed more justice and less revenge in fact, more of the opportunities to make childhood more joyful womanhood more beautiful and manhood more noble.*

— Samuel Gompers, First President of the American Federation of Labor. Response to the question: “What does labor want?” August 28, 1893.

The right to join a union is a key human right.<sup>1</sup> This right is at risk in the United States largely as a result of the long-term effect of weak legislation coupled with the abuse, by private employers, of even the paltry protections offered workers. This article traces the devaluation of organized labor in the U.S. and argues for the importance of organized labor as an economic and political right and as a necessary, though not sufficient, requirement for the protection of human rights.

Labor rights are central to human rights advocacy. Work is a key force in our lives and, as a result, the conditions of work are among the most significant elements in determining an individual's quality of life. Moreover, employment and economic rights have a direct impact on the ability of people to exercise other rights. Income (and its reliability), job security or lack thereof, safety and health at work, and scores of other issues that arise in the workplace are directly connected to one's ability to make effective use of other basic rights.

The Labor Movement's assertion of rights in the workplace can bring to the fore the issue of private power and its effect on human rights in a unique and effective way. Unions not only challenge private power; they offer a possibility of a change in value systems away from an individualistic ethos to one more centered on solidarity and justice. Unions offer the potential to curb private economic power in significant ways, and their mere existence can limit private

<sup>1</sup> See e.g. Universal Declaration of Human Rights article 23, paragraph 4; International Covenant on Economic, Social and Cultural Rights, article 8; International Covenant on Civil and Political Rights, article 22; Annex to the Constitution of the International Labour Organization Article III(e); ILO Conventions 11, 84, 87, 98, 135, 141, 151, and 154.

economic power in ways that no other human rights organization can. Because of this inherent potential, the right of unions to exist has never been fully accepted by employers in the US. This abuse and its results are painstakingly documented in two reports for Human Rights Watch authored by Lance Compa: Unfair Advantage: Workers' Freedom of Association in the United States Under International Human Rights Standards and Blood, Sweat and Fear: Workers' Rights in U.S. Meat and Poultry Plants.

One might ask whether the plight of U.S. unions and the U.S. worker deserve vigorous attention by human rights advocates as a matter of international human rights.<sup>2</sup> After all, the plight of U.S. unions and workers is not as serious as it is in many less wealthy and less democratic nations. But the problem of U.S. workers and their unions does require the immediate attention of human rights advocates. As an initial matter, the level of suppression is greater and working conditions across much of the U.S. worse, than might be supposed.

In addition, the status of the human rights regime in the U.S. is of particular significance to U.S. residents because it is the protection of those human rights over which U.S. residents have the greatest control. If the U.S. cannot protect human rights at home, it cannot effectively advocate for them abroad. This fact adds an international dimension to the fight for labor rights in the US. Not every polity has equal influence in the world. Some, by virtue of their size, population, economic influence, the ideological power of their professed ideals, or some combination of these, have far-reaching influence in the world, both directly upon other nations and in the formation of international bodies and standards. The actions of the United States, and the state of human rights within the United States, have significant international repercussions. Therefore, the state of human rights in the United States is of particular concern. A strong and effective labor movement is a necessary precondition for the existence of meaningful human rights in the US, and for the protection of worker rights and economic rights in the world. The fact that the existence of a renewed U.S. labor movement is not, in-and-of-itself, a sufficient precondition for such a result is not an argument against devoting our energy to building one.



In the United States workers are routinely fired for attempting to organize unions. Workers are routinely intimidated and harassed if they engage in anything that could be seen as collective activity. Workers who actually exercise their right to strike their employer are often permanently replaced. The inadequacy of U.S. labor law, and the open flouting of a law even that inadequate management, has led to the virtual elimination of successful organizing drives—especially in large bargaining units—and to the decimation of union strength. Studies have shown the strength of management resistance to be the single most important factor in determining the success or failure of an organizing drive (Bronfenbrenner 1994; Comstock 1994). The inequality in treatment before the law is clearly demonstrated by the fact that there are substantial penalties for unions that refuse to comply with the law, but no serious penalties for employers who refuse to obey the law (Weiler 1990).

---

<sup>2</sup> The international dimension is outlined in Unfair Advantage, where Compa begins his study by situating U.S. labor law and practices within the proper global context. He gives a brief, but thorough, summary of international law and norms concerning labor rights, and US treaty obligations and non-treaty commitments (40-50).

The existence of organized labor is a direct challenge to private (i.e., non-governmental) power. This challenge is one of the central reasons for the virulence of employer opposition to labor rights. Unions challenge private power directly in terms of day-to-day control of the workplace. And unions challenge private power, particularly property rights, as that power interacts with other rights and values. Organized labor holds out the possibility of an alternate organization of the community, one that does not rely on a mythology of unconnected independent beings, but rather one that recognizes the interconnectedness of all people and the integration of political, social and economic rights.

In the United States, absent a union contract, employment is nearly always governed by the common law doctrine of “employment-at-will.” This doctrine holds that an employer who hires an employee may terminate the employee *for any reason or for no reason at all*. Because workers may quit a job at any time and for any reason, U.S. courts have traditionally held that the employer must be able to fire the employee at any time and for any reason.<sup>3</sup>

Legalities aside, the cold, hard reality is that this “contract” is non-existent. In the chalkboard world of the economist, labor is mobile and labor markets are balanced because workers have the right to leave any job and take another if the conditions do not suit them. In reality, most people do not have the choice of where to live and for whom to work. In reality, most people lack transferable job skills and have child care and family obligations. Most people simply cannot move around to test their labor value on the open market.<sup>4</sup> Employees simply do not have the contracting power of employers. If the employment relationship is a contract, it is a contract of adhesion.

*Although ideology might trumpet the employment contract as the “personal and voluntary exchange of freely bargained promises,” the mythological nature of such arrangements was clearly recognized. Adam Smith, who has no doubt been more widely discussed than read, early recognized that “it is not . . . difficult to foresee which of the two parties must, upon all ordinary occasions, have the advantage in the dispute, and force the other into a compliance with their terms” (Atleson 1983: 12).*

A union, by its mere existence in the workplace, can eliminate this power imbalance and force the employer to negotiate on “all the ambiguous sections or unanticipated questions” (Atleson 1983: 13) that the employer had previously decided unilaterally.

Labor in the U.S. has continually challenged, albeit often unsuccessfully, the prerogatives of private power and the ability of private property rights to trump human rights. For Example, unions have challenged an employer’s right to limit access to the employer’s property. Unions have fought the employer’s right to sell its business, to shut down operations, and to subcontract work—

---

<sup>3</sup> The incoherence of this seemingly neutral doctrine has been summarized this way: “[T]raditional contract notions might suggest that all the ambiguous sections or unanticipated questions dealing, for instance, with the level of energy to be expended, working conditions, disciplinary authority, and employee integrity, could not be exclusively and authoritatively interpreted by the employer” (Atleson 1983: 13). That is, if the employment relationship were indeed a contractual relationship, as is suggested by the employment-at-will doctrine, employees would have the power to negotiate with the employer as to the terms and conditions of their employment, which is rarely, if ever, the case.

<sup>4</sup> Moreover, in the international context, immigration is controlled and workers cannot simply follow the work across borders.

particularly in an effort to take advantage of lower wages. Unions have also sought to enforce universal standards of wages and working conditions across industry, regardless of the union membership of those affected. Unions have sought the ability to engage in work stoppages in support of other workers, including workers in other countries. Unions have also attempted to assert a right to strike in protest of human rights violations in other countries.

Moreover, unions have the potential for developing a social movement that is broader than any other organization. For instance, in the late 1930s and early 1940s in Memphis, locals of the Congress of Industrial Organizations (CIO) established co-ops and buying clubs, worked to stop evictions, reorient federal farm policy, and organized in the community for improvements in schools and for voting rights for African-Americans (Honey 1993: 132).

Over the past several decades such challenges to private corporate power have been blunted. The percentage of people in unions has steadily shrunk in the face of a coordinated assault by employers and their political allies. This degradation of labor rights is part and parcel of an attack on democratic rights in general. As the private power of corporations once again becomes unchecked at the workplace, the accompanying concentration of wealth and evisceration of the welfare state is assumed. Indeed that is precisely what has accompanied the assault on unions in the US. The concentration of private wealth and power has inexorably lead to private control over the public sphere, as individuals are left to combat a corporate agenda of “free” trade and globalization that eliminates all economic rights (save trade rights) and circumscribes civil and political rights as needed to further the corporate global agenda.

Compa’s Unfair Advantage details these current depredations, and it illustrates the hostility in the U.S. to labor rights. The most awful aspect is that the law governing labor rights, inadequate as it has always been, has been continually whittled away. So even as management violates the law, the law itself continues to be eviscerated. Compa documents anti-union campaigns replete with egregious violations of the law across the country and in every type of industry. Repression of unions is shown against service sector workers in Florida and San Francisco; against food processing workers in Detroit and North Carolina; against manufacturing workers in Maryland, New York, Illinois and Louisiana; against agricultural workers in Washington and North Carolina; and against contingent workers for Microsoft and Airborne Express.

The assault continues: to cite but a single example, in *First Legal Support Services, LLC and Warehouse Union Local 6, International Longshore and Warehousemen’s Union, AFL-CIO*, 342 N.L.R.B. No. 29 (June 30, 2004) the National Labor Relations Board (NLRB) held that, despite an earlier factual finding by an administrative law judge (ALJ) that the employer committed outrageous and pervasive unfair labor practices that justified a bargaining order, the Board refused to issue a bargaining order.<sup>5</sup> The ALJ found that pro-union employees had been fired while others were threatened with discharge, made to sign independent contractor agreements, and offered bribes to oppose the union.

---

<sup>5</sup> First Legal Support Services, at 17-18. The ALJ found that the employer’s conduct qualified as a “category one” violation under the Supreme Court’s decision in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), meaning a violation so outrageous and pervasive that a representation election has been rendered impossible (*NLRB v. Gissel Packing Co.* at 613).

Four and one-half years later, the NLRB merely ordered the employer to post a notice promising to stop the practices!

It is the workers who suffer the injuries from the degradation of the law. In Blood, Sweat and Fear Compa details the savage reality of workers in U.S. meatpacking plants. I quote him at length:

*A special investigative report in 2003 by the Omaha World-Herald documented death, lost limbs, and other serious injuries in Nebraska meatpacking industry plants since 1999. Much of the evidence involved night shift cleaners, most of them undocumented workers. OSHA documents dryly recorded what happened:*

*“Cleaner killed when hog-splitting saw is activated.”*

*“Cleaner dies when he is pulled into a conveyer and crushed.”*

*“Cleaner loses legs when a worker activates the grinder in which he is standing.”*

*“Cleaner loses hand when he reaches under a boning table to hose meat from chain.”*

*“Hand crushed in rollers when worker tries to catch a scrubbing pad that he dropped.”*

*In all, the report concluded, nearly one hundred night shift cleaning workers in the state meatpacking industry suffered amputations and crushings of body parts in the period (1999-2003) reviewed by the investigative team. These severe injuries are just the tip of an iceberg of thousands of lacerations, contusions, burns, fractures, punctures and other forms of what the medical profession calls traumatic injuries, distinct from the endemic phenomenon in the industry of repetitive stress or musculoskeletal injury.*

*Eric Schlosser documented a similarly gruesome string of deaths in the mid-1990s:*

*At the Monfort plant in Grand Island, Nebraska, Richard Skala was beheaded by a debiding machine. Carlos Vincente . . . was pulled into the cogs of a conveyer belt at an Excel plant in Fort Morgan, Colorado, and torn apart. Lorenzo Marin, Sr. fell from the top of a skinning machine . . . struck his head on the concrete floor of an IBP plant in Columbus Junction, Iowa, and died. . . . Salvador Hernandez-Gonzalez had his head crushed by a porkloin processing machine at an IBP plant in Madison, Nebraska. At a National Beef plant in Liberal, Kansas, Homer Stull climbed into a blood collection tank to clean it, a filthy tank thirty feet high. Stull was overcome by hydrogen sulfide fumes. Two coworkers climbed into the tank and tried to rescue him. All three men died (Compa 2004: 30-31).*

The meatpacking industry of Upton Sinclair’s The Jungle is anything but a thing of the past.<sup>6</sup>

There is an unfortunate tendency among those of U.S. who advocate for human rights to view the advancement of those rights as naturally ordained and to view the improvement of conditions of democracy as teleologically imperative. This is simply untrue. There is no reason to believe that the

---

<sup>6</sup> Sinclair’s 1906 novel depicts the life and work of workers in Chicago’s meatpacking plants at the beginning of the twentieth century. The book’s harsh depiction of the meatpacking industry helped spur federal legislation to regulate the industry.

horrifying working conditions of the 19<sup>th</sup> and early 20<sup>th</sup> century cannot recur. Indeed, as shown above, many already have. When viewed as an historical matter, the period of relative stability in labor rights in the United States from about 1945-1980 can be seen as a relatively brief interregnum in an otherwise sordid and violent history of repression.



During the 19<sup>th</sup> century, the Labor Movement in the United States continually attempted to organize on a national scale. Such organizations as the National Labor Union and the Knights of Labor articulated broad social, political and economic goals. Such broad social movements, however, proved unable to survive in the bitterly hostile and frequently violent world of U.S. labor-management relations. They were suppressed, often with state-sanctioned violence. The relatively well known railway strike of the 1890s and the Homestead steel strike of the 1890s are just two examples of the use of deadly armed force to suppress strikes. The American Federation of Labor (AFL), founded in 1881, was able to withstand the fury of private power in the United States because of its narrow focus and essentially conservative nature. The AFL approach had both great strengths and great weaknesses.

The AFL organized around two major principles. The first was that the battle between employer and employee was centered at the workplace. This meant that community organizing, electoral politics and social reform were secondary to the establishment of collective bargaining agreements between unions and employers.

The second principle was that the labor supply could only be effectively controlled by those workers who possessed some skill, and who therefore could not be easily replaced by employers. So the AFL focused on maintaining control over the supply of labor and the ability to strike economically at employers. Prior to the National Labor Relations Act, or Wagner Act, of 1935,<sup>7</sup> companies could legally bring in scabs (i.e., strikebreakers), often with the open protection of the state and federal governments. The use of the National Guard and the U.S. Army to break strikes was not uncommon. In addition, employers routinely resorted to state court injunctions to prohibit picketing, using the state police power to enforce such bans. Therefore, no strike could be successful unless either a company was prevented from using scabs, or the workers who were on strike could not be replaced. The legality of force to break strikes and to disperse picketing eliminated the first option in all but the rarest of cases. So any strike was doomed unless the employer was unable to effectively replace strikers. These facts led to a focus on organizing highly skilled workers into locally-controlled guild-like organizations, called craft unions. The result was a weak national organization and a failure to address issues affecting unskilled or semi-skilled workers on an industry-wide basis.

---

<sup>7</sup> Passed in 1935, the Wagner Act banned the most serious employer anti-union practices. Section 8(a)(2), for example, made the company union a violation. Sections 8(a)(1) and 8(a)(3) made discrimination on the bases of concerted activity or union membership illegal. Section 8(a)(5) made it an unfair labor practice to refuse to bargain with unions, and Section 9(a) made majority unions the sole representative of the workers, ending the common management practice of bargaining with several organizations in order to destroy solidarity. Most important, the Wagner Act established an independent oversight body, the National Labor Relations Board (NLRB), whose purpose was to investigate unfair labor practice charges, run union elections, and had the power to order companies who violated the law to bargain with their unions.

This strategy has been justly criticized for creating an “aristocracy of labor” that undercut workers’ solidarity in general, and permitted or encouraged racism and sexism. As defenders of the AFL point out, it is also true, however that the AFL in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries faced certain realities not of its own making, and that the AFL, alone among U.S. labor confederations, was able to survive prior to the reforms of the 1930s.

World War I created the first opportunity for labor to act with federal protection, and the results were startling. When the U.S. entered the war in 1917, President Wilson, in need of labor’s support, created the National War Labor Board (NWLB), an official body composed of workers representatives, management, and the public. In exchange for a no-strike, no-lockout pledge, the NWLB ensured rights to organize and to a living wage. It also guaranteed that existing collective bargaining agreements would continue in force, the eight-hour day would be employed when possible, and women would receive equal pay for equal work. During the war years unions gained more than one million members.

The end of the war brought the end of the NWLB and a return to the open warfare on labor rights—with predictable results. The state turned its power against labor, and in particular the socially-conscious unionism of the Industrial Workers of the World (IWW).<sup>8</sup> A “red-scare”, consisting of anti-Bolshevik propaganda and the Palmer raids<sup>9</sup>, helped to effectively destroy the IWW and made it difficult for any union to articulate a broad social message without being branded communist.<sup>10</sup>

Employer violence combined with the open-shop drives of the 1920s kept labor on the defensive and wreaked a devastating toll on the membership of the AFL. The steel strike of 1919 and its violent repression encapsulate this perfectly. In the summer of 1919 over 350,000 steelworkers went on strike to demand recognition of assorted AFL unions as their collective bargaining representatives. Local police and employer thugs broke the picket lines and brought in scabs. The ensuing violence led to the imposition of martial law and the use of federal troops to keep the peace in many steel towns. This seemingly neutral exercise of police power naturally had the effect of helping U.S. Steel crush the strike. The report for the Protestant-led Inter-Church World Movement summed it up saying: “The United States Steel Corporation was too big to be beaten by 300,000 workingmen. It had too large a cash surplus, too many allies among other businesses, too much support from government officers...too strong influence with social institutions” (Dubofsky and Dulles 2004: 221).

---

<sup>8</sup> Unlike the AFL, the Industrial Workers of the World (the “IWW” or the “Wobblies”) were a socialist-allied union organized on a mass basis. The IWW was the subject of massive repression before and during the War, not least because of its leaders’ outspoken anti-war stance. The near total annihilation of the Wobblies served as a confirmation to the AFL of its conservative strategy.

<sup>9</sup> The Palmer Raids, named after Woodrow Wilson’s Attorney General A. Mitchell Palmer, were a series of deportations and prosecutions during the period 1919-1921. The Palmer Raids targeted radicals of all stripes and focused mainly on non-citizens, who had fewer constitutional protections than U.S. citizens.

<sup>10</sup> The AFL’s narrow focus on workplace bargaining allowed it to survive this onslaught, but its historic unwillingness to build bridges aided the general rout of labor in the 1920s, as natural allies in the working class, especially among African-Americans and poor farmers, failed to see any connection between their struggles and the struggles of labor.

During the Great Depression, faced with increasing volatility and radicalization of U.S. workers, Congress began to pass protective labor legislation.<sup>11</sup> In 1932 Congress passed the Norris-LaGuardia Act, which outlawed “yellow-dog” contracts (agreements by workers to never join a union), and banned federal courts from enjoining union picketing except in certain specific circumstances. While Norris-LaGuardia did not actually provide unions with the tools they needed to organize, and did not strip the employers of their most potent weapons (company unions, sheer terror and violence, outright refusal to bargain, etc.), the law did provide labor with a chance to engage in strike activity without being immediately suppressed by the state. Given the number of strikes that had been enjoined prior to Norris-LaGuardia, this was no small victory.<sup>12</sup>

Organizing, however, remained almost impossible without some way of ensuring employer fairness in dealing with unions and preventing fraudulent employer unions and violence. The findings of the LaFollette Civil Liberties Committee shed some light on the depth of management resistance to unionization. The Youngstown Sheet and Tube Company, for example, had over 1,000 guns and 10,000 rounds of ammunition on hand in 1937, while Republic Steel was the largest buyer of gas weapons in the U.S. (Dubofsky and Dulles 2004: 263). There was further documentation of companies using violence, harassment, labor spies, and spending huge sums of money in order to remain union-free.

The sea change in U.S. labor-management relations was the National Labor Relations Act (NLRA), also known as the Wagner Act, with its establishment of the National Labor Relations Board (NLRB). The early NLRB was an adequately staffed and effective protector of labor rights. One study of the early NLRB estimates that from 1935 to 1945 the organization disestablished 2,000 company unions, ordered the reinstatement of 300,000 workers with \$9 million in back pay, and held 24,000 elections covering 6 million workers (overall union win rate in these elections was approximately 84 percent) (Dubofsky and Dulles 2004: 265).

In addition to putting an end to outright employer violence and intimidation, the Wagner Act permitted unions to expand beyond the defensive organization typified by the AFL. The Congress of Industrial Organizations (CIO) was a group of unions that split from the AFL to pursue an industrial union model. The CIO advocated broad-based membership, including multiracial membership, on an industry-wide model. Therefore, all autoworkers were organized into the United Autoworkers Union (UAW), as opposed to the AFL model of organizing by craft (electricians in the electricians union and machinists into the machinists union.) So, too, many AFL unions, notably the International Brotherhood of Teamsters and the International Ladies Garment Workers’ Union, began organizing along industry-wide lines.

In 1932 fewer than 3 million workers were organized. By the end of 1937 the CIO claimed a membership of 3.7 million and the AFL of 3.4 million—a remarkable turnaround in just five years. In addition, these new recruits included large numbers of African-Americans, immigrants, and women (Dubofsky and Dulles 2004: 282).

---

<sup>11</sup> Dubofsky and Dulles estimate that in the second half of 1933 over seven percent of the workforce was involved in some type of strike action, a remarkable number. (Dubofsky and Dulles 2004: 256)

<sup>12</sup> The use of injunctions to crush strikes rose precipitously through the decades culminating in the 1920s when approximately 25 percent of strikes were enjoined (Forbath 1991: Appendix B, 193-198).

CIO unionism provided an historic opportunity in the U.S. for full-blown human rights campaigns that challenged the fundamental organization of American society. As Robert Rodgers Korstad explains in his searing study of the tobacco workers' union in North Carolina in the 1940s:

*Local 22 had never limited itself to workplace demands. . . it had taken up broader civic issues, supporting the federal government's wartime price controls, helping to defend [a worker] against a death sentence on a false rape charge, backing a black candidate for the Board of Alderman, and joining forces with the city's dynamic young ministers to help blacks register to vote (Korstad 2004: 251).*

In 1947, after ten years of union gains, and in the face of increasing CIO strength and its announced plans to begin organizing the South, Congress passed the Taft-Hartley Act, or the Labor-Management Relations Act. Taft-Hartley was clearly anti-union in its aims and intentions. Nevertheless, commentators (who are mostly pro-management but also include some who are pro-labor) point to the fact that unionization rates grew for several years even under the new law. Unionization in the U.S. peaked in 1954, some seven years after the enactment of Taft-Hartley. Therefore, they argue, the Taft-Hartley Act could not be more than incidentally responsible for the decline in unionism.

These arguments miss the point entirely. Taft-Hartley helped destroy unions in America over the long term by instituting certain practices and outlawing others, both of which subtly changed the balance of power in labor-management relations and gradually put the government in the role of assisting management. These shifts were not always immediately apparent, but have been immensely destructive. It is only in retrospect, in works such as Compa's, that the full effect can be measured.

Several sections of Taft-Hartley in particular have contributed to the whittling away of labor rights in the U.S. Section 14(b) of Taft-Hartley permitted states to maintain so-called "right-to-work" laws, which prohibit unions from automatically collecting dues from all employees in a shop after winning recognition. In a vacuum, they sound positively democratic, allegedly preserving freedom of choice for each employee. In reality, these laws are merely another form of employer intimidation. As Compa demonstrates, U.S. employers often use savage anti-union techniques prior to an election. Many people vote "No Union" in elections simply out of fear. Absent right-to-work laws, the union, if it is able to win recognition in the first place, can "force" all employees to pay dues. But this "forcing" is almost always simply a convenient way for workers to join the union, without having to actually thumb their nose at the employer. In a right-to-work state, however, the employer campaign of intimidation can continue unabated. In a right-to-work scenario, joining the union is a public act of defiance—a much more significant step than a secret ballot vote. Right-to-work legislation has been integral in firms' decisions to move production facilities to the South and the Southwest, where right-to-work legislation is common.

Section 8(b) of Taft-Hartley banned many union direct-action pressure tactics, such as secondary boycotts (picketing a company's main business partners or customers), sympathy strikes (striking in solidarity with another organization or cause), and mass picketing to name just a few. Later enactments, such as the Landrum-Griffin Act, placed severe penalties on unions which engaged in such tactics. These prohibitions have greatly hampered unions' ability to act in solidarity with other unions or human rights organizations. The bans on direct action also forced unions to disconnect union direct action from political fights, and limited picketing and strikes solely to issues of the individual union's contract.

Finally, by permitting employer anti-union campaigns, Section 8(c) of Taft-Hartley paved the way for today's union busters. The fact that the current sophisticated union-busting firms of the 1980s and 1990s did not spring up fully formed in 1947-48 does not mean that Taft-Hartley is not responsible for their existence. Subsequent amendments which added substantial penalties for unions that refused to comply with the law, but included no serious penalties for employers who refused to obey the law, essentially gave employers the green light to ignore their obligations under the law. Thus the government now is in the role of strongly enforcing the law against one party, the union, while ineffectually standing by while management does exactly as it pleases.

Of course, as Compa and others have noted, some of the most troubling provisions of U.S. labor law predate Taft-Hartley. The two most significant of these are the exclusion from coverage of large numbers of workers (such as agricultural workers and domestic workers) and the doctrine of permanent replacement of striking workers. The exclusion from coverage of workers meant that while it is not illegal for those workers to join a union, there is no legal protection for them if they choose to do so. The effect of this is to make it all but impossible for those excluded to unionize.

So, too, the doctrine of permanent replacement states that while it is illegal to be fired for striking, a worker can be permanently replaced while on strike. The subtle difference is that a fired worker has no right at all to reinstatement while a permanently replaced worker can retain a place on a list to be hired if there is a vacancy. It is a distinction without a difference. Moreover, permanent replacements can vote in an election to decertify the union, but after one year on strike permanently replaced workers cannot do so. However, in the absence of the Taft-Hartley amendments, unions would have had the ability to neutralize these legal defects, for example by staging a sympathy strike or secondary boycott against employers who resorted to such tactics. Either way, the combination of judicially created law with statutory loopholes for employers has created a situation in the United States where labor rights are in danger of being extinguished for all practical purposes.

The results of this management offensive can be seen in Compa's works, and are becoming clearer daily in the United States where corporate mergers rage unchecked, medical care is in crisis, retirement security is rapidly vanishing, media concentration provides only a corporate view of the world, wealth concentration is reaching Gilded Age levels, and the fiscal policy of the nation is being subordinated to the desires of a tiny wealthy elite. What organizations do people have to respond to this assault, and to help individuals understand where their interests lay? What mass-based response is available to those individuals slowly being squeezed by the corporate global agenda? The answer appears to be that, at least for the moment, right-wing fundamentalist churches are rushing to fill the void and to provide an explanatory framework for people to make sense of the world. This framework propounds a narrow, exclusionary and anti-Enlightenment apocalyptic vision of the world. This is an impending catastrophe for human rights in the United States. A rebirth of unions is an indispensable beginning for human rights advocates to challenge this descent. But before we can begin to rebuild organizations designed to challenge a society categorized by unchecked greed and self-interest, it is important to understand the extent of the problem and how we got here. These reports by Human Rights Watch are invaluable to such a venture.

## References

- Atleson, James B. 1983. Values and Assumptions in American Labor Law. Amherst: University of Massachusetts Press.
- Bronfenbrenner, Kate L. 1994. "Employer Behavior in Certification Elections and First-Contract Campaigns: Implications for Labor Law Reform," in Sheldon Friedman et al. (eds.) Restoring the Promise of American Labor Law. Ithaca: ILR Press.
- Compa, Lance. 2004. Blood, Sweat and Fear: Workers' Rights in U.S. Meat and Poultry Plants. New York: Human Rights Watch.
- Comstock, Phil and Maier B. Fox. 1994 "Employer Tactics and Labor Law Reform," in Sheldon Friedman et al. (eds.) Restoring the Promise of American Labor Law. Ithaca: ILR Press.
- Dubofsky, Melvyn and Foster Rhea Dulles. 2004. Labor in America (7<sup>th</sup> ed.). Wheeling: Harlan Davidson, Inc.
- Forbath, William. 1991. Law and the Shaping of the American Labor Movement. Cambridge: Harvard University Press.
- Honey, Michael. 1993. Southern Labor and Black Civil Rights: Organizing Memphis Workers. Urbana: University of Illinois Press.
- Korstad, Robert Rodgers. 2003. Civil Rights Unionism: Tobacco Workers and the Struggle for Democracy in the Mid-Twentieth-Century South. Chapel Hill: University of North Carolina Press.
- Levitt, Martin Jay and Terry Conrow. 1993 Confessions of a Union Buster. New York: Crown.
- Sinclair, Upton. 1981. The Jungle. New York: Bantam Dell Publishing Group.
- Weiler, Paul C. 1990. Governing the Workplace: The Future of Labor and Employment Law. Cambridge: Harvard University Press.

---

*Peter Zwiebach is a Deputy County Attorney for Nassau County. He has previously worked as a labor organizer and a labor lawyer. The views expressed in this article are entirely his own.*

© 2005, Graduate School of International Studies, University of Denver.