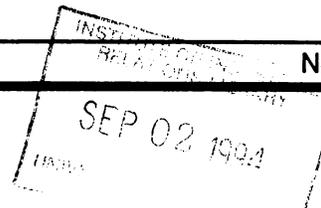


# Reporter

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## UNIONS AND DEMOCRACY

by *Marty Morgenstern*

**T**he president of the Solidarity union in Katowice, Poland proudly told a group of visitors from the U.S. how his members responded to the repression and price increases of the martial law period with a militant strike. He pointed dramatically to a huge wall banner, emblazoned with the number 37, as he denounced the former government officials who had singled out and fired 37 of the miners who lead the fight for a living wage. Solidarity members thought we would be shocked to hear that workers were fired for striking. It was they who were shocked to learn that in the U.S. today an employer could, and probably would, fire the lot of them — with little fear of government intervention. Our labor laws not only bend to permit such disgraceful employer behavior, they severely limit and restrict union rights of free speech and association, leaving organizers unprotected by law and labor organizations subject to crippling fines and penalties for activities that other groups have a constitutionally protected right to undertake.

Most Americans are themselves not quite aware of the perverse fact that workers in these United States are often permanently separated from their paychecks solely because of involvement in a perfectly legal, union-authorized job action. Even our schools and universities teach that as citizens of a democratic nation our right to strike has been protected by law since the days of the New Deal.

### Fired Strikers Have No Legal Recourse

It is, in fact, illegal for an employer to fire or punish anyone for participating in such protected union activity as an economic strike. Unfortunately, our courts have found that it is also permissible for an employer to hire replacements for striking workers. Not just temporarily, until the strike is over, but permanently. A union member participating in a duly authorized strike for higher wages or benefits can not be fired for such action. But an employer can fill the union member's position with a permanent replacement. That leaves the mem-

ber on a recall waiting list, without a job, a paycheck, medical coverage, pension or any other employee benefits.

When that happens, there is no legal recourse. Even an offer to come back on the employer's terms won't guarantee a return to work. Once a permanent replacement has been hired, you can be denied re-employment until such time as management decides there is a vacancy that you are qualified to fill. For most replaced workers, that time never comes. Unionists know that in recent years this is exactly what happened to hundreds of bus drivers at Greyhound and pilots at Eastern Airlines, to mention only two of many such cases. UAW members recently ended an 18 month strike at Caterpillar on management's original terms in the face of their threat to begin hiring permanent replacements.

Try to explain the distinction between being fired and being permanently replaced to a class of high school students. They laugh. The youngsters, especially if you happen to be in an

inner city school, know what the loss of a salary can mean. They see at once that being a replaced worker is not an honor they are interested in achieving. What does the students' reaction say for the future of our union movement?

### **Safeway and Summit Used Other Loopholes**

The permanent replacement loophole is not the only maneuver for getting rid of unions that our current laws permit. Recent events here in Northern California provide some other examples. Last year Safeway Stores decided to move its Bay Area warehouse some 50 miles east to Tracy, Ca. When Teamster members refused to accept diminished wages and working conditions at the new facility, the giant grocery chain created non-union contractor, SDMI, to take over the warehouse. Safeway built and owns the new warehouse. It owns all of the inventory, equipment, furniture, and supplies, right down to the last pencil and memo pad. It owns the trucks, and the trucks deliver to the same stores they always delivered to because Safeway is the only customer this new contractor has. The warehouse is managed by a man who had been the operations manager for Safeway.

Stuart Weisberg, chief counsel of the Congressional committee that looked into the matter said that SDMI is "a paper shell, a puppet of Safeway . . . used to insulate them from a labor dispute." Nevertheless Safeway's lawyers can safely guarantee corporate management that our courts will find nothing wrong with this union busting or "union taming effort." A U.S. corporation can get out of a lawful and binding agreement, and many of its other legal obligations to its workers, by simply "contracting out" labor services to a third party that the company has itself created out of whole cloth. Farm workers have long been subject to the dictates of labor contractors who profit by supplying cheap migrant labor to agribusiness. Now we seem to be witnessing efforts to extend this disgraceful system throughout the corporate community.

In this case the Teamster union did not strike. Instead it was able to use a carefully constructed consumer boycott to prevent Safeway from seriously reducing wages and working conditions. But most union boycotts run afoul of labor law and those that don't often fail. Moreover, Safeway achieved one major goal: it is no longer the legal employer, the new Teamster contract is with SDMI an outfit that is, at best, nothing more than a labor contractor.

Last summer's hospital strike by five Oakland unions demonstrates another serious labor problem. Summit, an amalgamation of what were once three separate hospitals, insisted that its unions surrender the right to observe each other's picket lines, or have contracts with common expiration dates. Having merged itself into a powerful force, the new medical conglomerate sought to isolate the individual labor organizations so it could deal with each separately and on its own terms. Seventeen hundred employees went without a paycheck and patients and the community were forced to endure the trauma of a major hospital strike, while the corporate bureaucracy paid extra high wages to out-of-state workers brought in to cross the picket line. These maneuverings were all an attempt to deny

to workers the legal right to respect a picket line, the very right Americans praised Polish workers for using so effectively against their own government.

### **As Unions Slide, Wages and Democracy Decline**

There are a host of other long standing problems with our labor laws. When a union is trying to organize a workplace, the employer is free to call "captive audience" meetings, mandatory assemblages in which employees are subjected to arguments on why they should vote against the union. Union organizers are not only denied such a privilege, they are barred from the premises and members who organize are often harassed on the job. Even the traditional right to talk and leaflet at the front gate has been eaten away by huge gated parking lots and decisions in which organizers have been excluded from the "private" sidewalks and parking lots of public shopping malls. As a result, a worker who signs a card in support of a union representation election today has about one chance in 20 of actually ending up being represented by a union. The worker has about the same chance of being illegally fired for supporting the union.

Unions can not refuse to work on products made by non-union workers or by scabs during a bona fide strike. In construction, where projects are done by many sub-contractors, workers can not refuse to work with non-union workers or picket a gate used by fellow unionists when protesting the use of non-union workers in place of union craftspeople. Yet no law prevents non-union contractors from refusing to deal with employers whose employees are unionized.

When the United Mine Workers struck the Pittston corporation in Virginia in 1989, union members at other coal mines emulated Solidarity by engaging in sympathy strikes, while still other union supporters joined in mass picketing and sit down efforts at Pittston. The courts issued an injunction against these efforts. Ultimately, thousands were arrested and millions upon millions of dollars in fines were levied against both the union and the picketers. Six years earlier a blast had killed seven miners in a Pittston mine. The company was charged with violating federal law in connection with the explosion and fined \$47,000. No one was arrested.

Secondary boycott provisions of Taft-Hartley (the 1947 revisions to the National Labor Relations Act) lead to dramatic restrictions of the First Amendment rights of unions. When the president of the International Longshoremen's Association told longshoremen that, in protest for the invasion of Afghanistan, they shouldn't unload Soviet goods, he was enjoined. This legal action was taken and stood even though only speech was involved — no picket lines were established and no workers were prevented from working. No other organization in this country is similarly denied the right to political expression.

The problems outlined here are not new, nor are they the only problems facing unions today. However, since President Reagan (a great supporter of workers rights abroad) fired most of the nation's air traffic controllers for having the audacity to defy his back-to-work command in 1981, more and more

employers have been emboldened to replace strikers and attack basic worker rights.

Is it any wonder then that our unions have lost two-thirds of their members since the days when 35% of the workforce was organized or that we have fewer members, per capita, than any other highly industrialized nation? Hardly more than one private sector worker in ten is in a union today, and credible researchers tell us that by the year 2000 only 5 to 7% of American business is likely to be unionized. Yes, five percent. As it now stands, the union movement will have a smaller percentage of the workforce organized when this century ends than it had when it began.

Gerald McEntee, the president of one of our largest unions, the American Federation of State County and Municipal Employees, AFL-CIO, points out that "Labor's numbers will continue their relentless slide until most unions and the AFL-CIO itself give organizing a much higher priority and the resources required." It is certainly true that labor bears the first and primary responsibility for rebuilding its own movement.

### **U.S. Labor Laws Need Changing**

Yet that fact does not absolve citizens or political leaders from the responsibility to support a legal system that protects a worker's right to join and participate in a labor organization. American political leaders have long maintained that unless free trade unions flourish within its borders, a nation can not call itself a true democracy. Unions, not laws organize workers. The labor movement will always have to rely on its own resources and energy to get the job done, and there will always be powerful anti-union forces for them to contend with.

Adversity is no excuse for failure. The efforts at Pittston, and here in California, were achieved not because of the law but despite it and sometimes in defiance of it. But with the organizational rights of American workers as badly flawed as they are today, it is almost impossible for unions to make consistent gains. Unless the situation is corrected we will fail to meet our own definition of a democratic nation.

Our newly elected President has made some promises, especially in the area of permanent replacements. Having a President who expresses such concerns is a good starting point, but in politics concerns must take the form of action to have any meaning. And that is not likely to happen until the voting public joins with organized workers in demanding that the Congress and President Clinton change the unfair laws and practices that inhibit the ability of American workers to exercise internationally accepted organizational rights. At the very least, there must be an end to the permanent replacement of economic strikers, an end to the firing with impunity of workers who get involved in organizing their fellow workers, and the law must be changed to guarantee fair and speedy representational elections. Repeal of the so-called right-to-work laws that allow states to prohibit union shop agreements would also help.

Unions must redouble their organizing efforts and investments if they are to stay alive and functioning, no less regain the effectiveness that once made American wages and working conditions the world's envy (today we rank 13th as wage earners). Reforming our corrupted labor laws and practices is another crucial step. Unions represent an essential ingredient of our democratic system, if they fail to survive, all Americans lose.

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