



Why Workplace Organizing Remains Essential for Workers and the Fight against Rising U.S. Economic Inequality

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In April 2016, nearly 40,000 workers at Verizon went on strike for 45 days, winning a contract settlement to protect their jobs and incomes. For the past several years, workers at Walmart and in the fast food industry have conducted widespread, short walkouts to protest working conditions. These actions suggest Americans are still willing to mobilize on the job to defend their rights and improve wages and benefits. But most workers face an uphill battle, in large part because the rules governing labor relations in the United States have become radically tilted to their disadvantage.

Backsliding in U.S. Labor Rules

In key respects, the United States has recently gone back to a pre-New Deal era of workplace governance. Prior to the 1930s, American unions confronted a legal environment that historians have described as “judicial repression.” During that time, federal courts repeatedly struck down workers’ rights to organize and act collectively, making unions themselves all but illegal. Workers fought back in dramatic and frequently bloody skirmishes, but the institutional rules undercut their struggles.

The 1935 National Labor Relations Act brought important improvements in worker rights. By creating a process for legally recognizing unions and managing private-sector labor conflict, it helped foster a historic democratization of American workplaces and created a new balance of power between employers and workers. Workers’ rights to strike were an important part of the new system. Although New Deal labor laws established procedures for peaceful bargaining, these were backstopped by a federally-protected right to strike.

From the beginning, though, employers fought to regain crucial advantages. In 1938, the Supreme Court ruled that while workers could not be fired for striking, they could be “permanently replaced” – a distinction with little difference. For much of the post-World War II era, employers generally accepted unions in sectors where they were already established. But in 1981, President Ronald Reagan fired the striking federal air traffic controllers, signaling a critical turn in the federal government’s attitude toward workers’ rights. Taking this cue, employers quickly adopted more aggressive tactics against unions and strikes.

Since the 1980s, pro-business decisions by the National Labor Relations Board and the federal courts have turned the New Deal labor order upside down. At the bargaining table, employers’ threats to replace workers are backed by legal rules giving management increased power to declare an impasse and unilaterally impose its last offer to workers. Employers can re-classify jobs to erode the scope of positions covered by collective bargaining rules, and replace union jobs with lower-paid, non-union positions.

In today’s tilted field of U.S. labor relations, even highly profitable employers can make extraordinary economic demands backed by threats to outsource or sub-contract work. Strikes have been transformed from a legitimate and important form of worker leverage into high-risk confrontations that may leave workers without gains or jobs. At stake are not just the dollars and cents on the table but whether employers will continue to bargain in good faith at all.

In effect, the twenty-first century United States has turned back to labor policies that resemble those in the pre-New Deal era of judicial repression. Governments may not now send in troops, but they tightly restrict collective bargaining rights and let employers seek ruinous legal and financial penalties to threaten unions. During the 1970s, an average of 289 major work stoppages involving 1000 or more workers occurred annually across the country. By the 1990s stoppages declined to about 35 per year – and in 2015 there were only a dozen stoppages.

Why Workers Still Need Unions and Legal Workplace Rights

As organizing for collective bargaining has become harder, labor activists have increasingly turned to community-based tactics – especially to advance the interests of marginalized workers like immigrants (including the undocumented), day laborers, domestic service workers, taxi drivers, and other workers in low-wage, informal or precarious jobs. While important, such efforts usually organize away from workplaces, for instance in worker centers in immigrant neighborhoods. They often work in alliance with churches, advocacy groups, and corporate responsibility campaigns addressed to the consuming public. Instead of using traditional strikes, such campaigns often target local and state governments, seeking enforcement of employment laws or enactment of “living wage” ordinances and other reforms.

New community strategies have won important victories – such as securing millions of dollars in unpaid wages or claims for compensation for overtime violations. In just a few years, the “Fight for \$15” has galvanized popular support for a higher minimum wage in New York State, California, and in major cities like Seattle and Washington, DC. Nevertheless, the new forms of advocacy cannot replace the power of union organization and collective bargaining. Without leverage on the job, workers are left reliant on the courts, regulatory agencies, and public opinion to enforce basic labor standards. And without union member dues collected through employer payrolls, organizations devoted to helping workers depend on uncertain external funding.

Recent policy shifts under the Obama administration had begun to move back to a more level field for workers. In May 2016, the National Labor Relations Board announced certain limits on employers’ right to hire permanent replacements, a first step in restoring the right to strike. Additional Board decisions recognize the rights of temporary workers to bargain collectively alongside full-time employees, and hold giant corporations that outsource to sub-contractors or franchisees potentially responsible for employment conditions in those venues. Such legal reforms alone won’t turn the back tide of rising U.S. economic inequality, but they are crucial to help today’s workers secure gains and restore a democratic balance in the workplace. Despite its populist campaign promises, however, the current Trump administration threatens to reverse these advances. That makes it all the more important to fight for fair “rules of the game.”

Read more in Chris Rhomberg, *The Broken Table: The Detroit Newspaper Strike and the State of American Labor* (Russell Sage Foundation, 2012); and “The Return of Judicial Repression: What Has Happened to the Strike?” *The Forum: A Journal of Applied Research in Contemporary Politics* 10, no. 1 (May 2012): 1540-8884.