

The Right to Strike

by Oso Bear

Abstract: Workers in the U.S. basically do not have the right to strike, if by “right” one means an activity that is protected by law. Although the 1935 NLRA legalized workers’ right to form unions, the 1947 Taft-Hartley Act makes most strikes and boycotts and other solidarity actions by workers illegal, except for ritual or symbolic strikes. However, workers have defied this law in the 1980s and 90s.

Do U.S. workers have the right to strike?

If by the “right” to strike one means a legal right, a legal protection, then the answer must be an almost complete “No.”

Have U.S. workers gone on strike then? Yes, many times, including many tremendous upheavals. But these strikes have almost never been legal. They have been met with mass firings, court injunctions, astronomical fines, police and National Guard (Army) repression.

There is the illusion, the propaganda, that labor is free in the U.S., an illusion that the union leaders also adhere to for the most part. If by a strike one means the periodic trade union bargaining strike which takes the existing power relations between employers and labor as a given, then there is a limited legal right to strike—as long as the strike remains symbolic, and the employer is not prevented from replacing the strikers and resuming work if he so desires. If this happens and the strikers attempt to effectively shut down production, then this strike too quickly becomes illegal.

This is the reason strikes in the U.S., unless they are merely symbolic rituals between union bureaucracies and employers, tend to be very long. The recent Southern California supermarket strike just ended after five and a half months. The Detroit Newspaper strike lasted five and a half years, from 1995 to 2000. Strikes become lockouts as employers “permanently replace” workers. Any attempts to keep out replacement workers (“scabs”) are swiftly met by court injunctions and police and National Guard troops. Throughout the 1980s and 90s most of these long battles have resulted in crushing defeats for the workers. But in some of these fights workers came up with new tactics, and defied the employers, the courts and their laws. In some cases, these new tactics brought victory to the workers.

The NLRA legalizes strikes

What are the laws governing labor strikes in the U.S.?

Until 1935 all strikes were illegal, that is to say, they had no protection under the law. That did not stop workers from striking. It was the wave of city-wide general strikes and factory occupations in 1933 and 1934 which moved the U.S. government to pass the National Labor Relations Act (NLRA) in 1935, controlling workers, their unions, and strikes.

Section 7 of the NLRA protects the right of workers to form unions, bargain collectively, “and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection...”, which has been interpreted to mean the right to strike.

The right to strike was then limited mostly by union leaders themselves, who in exchange for certain concessions from the employers pledged to prevent strikes for the life of the contract. As Jeremy Brecher wrote in his book, *Strike!*, “(This) flows from a core function of unionism—

setting the terms on which workers will submit to the employers' authority. This function can be carried out only if the workers do in fact submit."

Such no-strike clauses in union contracts are almost universal today, with the exception of small militant unions like the IWW. That means that one obstacle to strikes in the U.S. is the union bureaucracy, which itself prohibits strikes by its members until the expiration of the contract. A strike against the employer and the union is called a "wildcat" strike, and there are many instances when unions such as the United Auto Workers attacked wildcat strikes violently, breaking the strike and getting the workers fired. This was seen especially in the 1970s, in the auto industry. Other large wildcat strikes in the 1970s were those of the Postal workers and of Teamster freight truckers.

Taft-Harley: "the slave-labor bill"

In 1947 the right to strike was severely limited, all tactics that could make a strike effective were declared illegal, and the 1935 right to strike remained a mere formality. This is the law of the U.S. to this day.

Following a strike wave involving millions of workers after the end of World War II, the U.S. Congress amended the NLRA with the passage of the Taft-Hartley Act in 1947. The unions called this law the "slave-labor bill"

Where the NLRA had prohibited several "unfair labor practices" by employers, Taft-Hartley added a long a list of "unfair labor practices" by unions. Mass picketing, workplace occupations (such as the famous sit-down strikes that had led to the creation of the industrial unions), secondary boycotts, solidarity strikes, and general strikes were all made illegal. Under the law unions can be prosecuted, enjoined, and sued in court for any of these activities.

Taft-Hartley attacked the heart of workers' struggles, by taking aim at solidarity and the way past struggles were won by spreading the strike to other workers. The labor laws make the old refrain of the labor movement, "An injury to one is an injury to all," a crime by prohibiting secondary boycotts and solidarity strikes. A secondary boycott is when workers call on the workers at other companies to not handle goods produced by scabs, or call on consumers to not shop at a store that handles those goods. A solidarity strike is when workers at one company go on strike to support workers at another company.

In 1959 the Landrum-Griffin Act further barred union solidarity actions by prohibiting them from making "hot cargo" agreements, forcing union workers to handle products made by scabs from other companies on strike, or be fired.

Government employees barred from striking

Taft-Hartley also made any strikes by employees of the federal government illegal. State and local government employees are not covered by the NLRA, and in most states are prohibited from striking. In New York State, the Taylor Law makes public employee strikes illegal, and fines any worker who strikes two days' pay for every one day off the job.

This law was applied against New York City transit workers in 1980 when they struck for 11 days. In 1999 and again 2002, Mayor Giuliani obtained an injunction making it illegal for transit workers to even mention the word "strike" and threatening the union with fines of one million dollars the first day of a strike, and doubling each following day. In addition individual workers were to be fined \$25,000 the first day, \$50,000 the second day, \$100,000 the third, and so on. There were no strikes.

Strikes can only be symbolic

By outlawing mass picketing and any attempt to prevent scabs from taking one's job or to stop goods from coming in or out of a company, Taft-Hartley reduces strike activity to a token picket line that is tolerated as long as it does not actually stop business. In effect, you are free to strike in the sense that you are free to quit your job and see yourself replaced, and just as you are free to choose to starve yourself.

In addition, under Taft-Hartley the President has the power to make any strike illegal by declaring that it affects national health and safety, and can force an 80 day "cooling off" period. This has been done in coal, airline, railroad, and other strikes.

Another provision of Taft-Hartley is the misnamed "right-to-work" law, which enables states to pass laws prohibiting union shop agreements. Twenty states, mostly in the South and West, have such laws. Under these laws, a worker can enjoy the benefits and gains won by a union, as well as utilize a union's grievance procedure, but never have to belong to the union or pay dues towards its upkeep, which divides workers and weakens unions.

The Southern California supermarket strike, which ended this March, lasted five and a half months, and ended in defeat for the workers, because of these laws which prevented them from shutting down the supermarkets. They had the right to picket, but not to be effective, not to prevent scabs or trucks from crossing their picket lines. The UFCW (United Food and Commercial Workers) did not challenge these rules, did not risk injunctions and fines, did not spread the strike throughout the country, did not engage in secondary boycotts, and so the supermarkets continued to operate, and the strike dragged on. On the contrary, the UFCW signed contracts with the same employers in other locations such as Tennessee and Mississippi, undermining their own strike, and permitted union scabbing by Teamster supermarket warehouse drivers.

Workers challenge the laws

But there have also been labor struggles that challenge these laws.

Many of these have used a number of tactics developed after President Reagan fired the nation's air traffic controllers when they went on strike in 1981, an event often seen as the opening shot in an all-out war on labor by U.S. corporations in the 1980s, 90s, and continuing today.

Since striking often meant being permanently replaced by scabs, workers began to use "in-plant" campaigns in the 1980s, similar to the old IWW tactic of "striking on the job". This was also called "running the plant backwards", with slowdowns and work-to-rule actions, T-shirt days, other group actions and meetings. Other new tactics were "corporate campaigns", usually together with forming community-labor coalitions, to target corporations and their boards of directors through community pressure. Non-violent civil disobedience was also borrowed from other movements as a new tactic for labor. For the first time in decades, U.S. unions also began to see the need for global solidarity in labor struggles, whether it was European unions supporting the Ravenswood Aluminum workers in West Virginia, or the Steelworkers supporting Coca-Cola workers in Colombia.

A fight-back that galvanized workers across the country was the struggle of Local P-9 in Austin, Minnesota in 1984. These workers defied their UFCW leaders to resist wage cuts and other drastic concessions at their Hormel meatpacking plant. Their wives began to picket the

plant three times a week, they organized a food and clothing exchange, and they reached out to churches, community groups and other unions. They began a boycott of the First Bank Systems, Hormel's biggest shareholder. This boycott was declared illegal under Taft-Hartley. In August of 1985, the workers struck and started a nationwide Hormel boycott. Soon there were 42 independent "P-9 Support Committees" around the country. After the UFCW ordered P-9 back to work, they voted overwhelmingly to ignore the order, and 6,000 supporters from around the country defied 300 National Guardsmen and a court injunction in April, 1986, to try to shut down the plant with mass picketing. In all, 3,000 local unions sent material support and tens of thousands of supporters visited and offered help. Peace groups trained workers in civil disobedience tactics. Ultimately the strike was crushed by the UFCW, but the struggle of P-9 went on to stimulate other fight-backs.

Another famous workers' struggle took place in Decatur, Illinois, in the 1990's. In this town of 84,000, three hard-fought strikes came to overlap. Strikes at Caterpillar, Bridgestone/Firestone tires, and A. E. Staley, a corn-syrup processor, started separately, but quoting Jeremy Brecher, "they became intertwined in a manner resembling a regional mass strike." Wildcat strikes at Caterpillar, in-plant campaigns, mass picketing at Staley by 7,000 supporters, corporate campaigns, work-to-rule, civil disobedience: all these tactics were used. Again, it was union leaders who shied away from more mass picketing and a citywide general strike. These strikes were also crushed.

One strike that was victorious was that of the United Coal Miners (UMWA) against Pittston, Virginia's largest coal operator. Pittston wanted to do away with the eight-hour day and work the mines seven days a week. Seventeen hundred miners struck in April 1989. In this struggle, the union supported the workers, who blocked roads, mines and coal trucks, with over 1,000 arrested in one week. There were wildcat sympathy strikes of 46,000 coal miners in 11 states, and 30,000 supporters visited "Camp Solidarity" between June and September of 1989. The union was fined \$60 million. Finally, after a four-day occupation of Pittston's key coal treatment plant by 99 workers, protected by 5,000 supporters, Pittston gave in.

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