Response to
"Democratizing the Demand for Workers' Rights
Toward a Re-framing of Labor's Argument"

by Lance Compa

Joseph A. McCartin's essay makes a valuable contribution to debates on labor movement revival. He sees danger in labor advocates' new focus on human rights, and calls instead for making a renewed (and perhaps re-phrased) notion of "industrial democracy" labor's central theme.

I appreciate McCartin's insights but disagree on emphasis. International human rights instruments and international labor rights law have created careful definitions of the right to organize and the right to bargain collectively. Arguing from a human rights base, advocates can identify violations, name violators, demand remedies, and specify recommendations for change. Reports and advocacy by Human Rights Watch, American Rights at Work, the AFL-CIO's Voice@Work campaign, and others are doing just that.

Industrial democracy is too diffuse a concept to sustain organizing, bargaining, and labor law reform campaigns. In McCartin's primary use of the term, it means majoritarian democracy: "the pro-union majority against the anti-union minority." But that is already built into our labor law system. The 1935 National Labor Relations Act (NLRA) requires majority support in a bargaining unit to negotiate for a contract binding all workers. Majority rule is also built into most union constitutions for electing leaders, setting bargaining demands, and ratifying contract terms. Calling for industrial democracy in these terms is pushing an open door.

Industrial democracy can also mean workplace democracy, with workers gaining a greater voice in business decisions. Beyond that, it implies internal union democracy, with fair leadership elections and protection for union dissidents. All these are important, but with such dispersed meanings, industrial democracy lacks the precision and unifying force of the human rights argument, especially in a campaign setting.

Labor Law's Original Sin
International human rights were not developed enough in the 1930s to serve as a rights foundation for labor law. U.S. labor law and practice are set on an economic policy foundation, not a fundamental rights foundation. Congress based passage of the NLRA on the Constitution's commerce clause, saying that workers needed protection for organizing and bargaining to reduce industrial strife and promote freer flowing interstate business. Congress could have based the law on fundamental rights under the First Amendment's promise of speech and association, the Thirteenth Amendment's affirmation of free labor, or the Fourteenth Amendment's guarantee of equal protection of the laws. It did not. The Supreme Court upheld the constitutionality of the NLRA in 1937, saying the law reduces strikes, not that it protects basic rights.

Without grounding in basic rights, workers' organizing and bargaining were vulnerable to shifts in the economy and in economic policy. When economic policies and values moved away from social solidarity toward market triumphalism, employers argued, and courts accepted, that
workers' organizing and bargaining interfered with "the free flow of commerce." So court decisions allow employers to "predict" workplace closure if workers choose a union, as long as they don't "threaten" closure—a distinction only judges could appreciate.

Employers can refuse to bargain with unions over workplace closures because the Supreme Court said they need secrecy, speed, and efficiency in responding to market conditions. Employers can bar union organizers' presence on publicly accessible areas to communicate with workers because common law property rights prevail over workers' organizing rights. Undocumented workers illegally fired for union organizing cannot be reinstated or get back pay because immigration policy trumps the NLRA.

Fundamental rights were not an issue in these and other court decisions that undermined labor law. Calling for industrial democracy cannot remedy these wrongs. Law matters. Law constrains and channels workers' exercise of organizing and bargaining rights. Labor law reform is daunting, but needed. These and other ravages of our labor law violate international human rights standards on workers' organizing and bargaining. Calling for U.S. labor law and practice to comply with international standards—starting with the modest Employee Free Choice Act—begins to address these problems.

**Reality Check**

All this is not meant to overstate the case for human rights or to reject McCartin's insights into the importance of nurturing the democracy theme. Just as "industrial democracy" likely might not have resonated as much among rank-and-file workers as it did among labor intellectuals, "human rights" is still an abstraction for most workers. Labor advocates cannot just cry "human rights, human rights" and expect employers to shape up or Congress to enact the Employee Free Choice Act.

Labor advocates' human rights focus is still new and may not show results soon. Still, many unions are finding the human rights theme one that resonates and advances their campaigns: the United Food and Commercial Workers in a hog-slaughtering plant in North Carolina, the American Federation of State, County and Municipal Workers in a hospital workers' organizing campaign in Chicago, Teamsters in a drive to help port truck drivers stand up to big container shippers, and many others. Perhaps in the years ahead, with some victories to show from a human rights base in its organizing and bargaining campaigns, the labor movement and its allies can advance a rights-centered public policy agenda raising economic and social rights under international human rights standards.

**The "Right-to-Work" Sham**

I don't agree with McCartin's argument that a focus on workers' human rights creates space for the National Right to Work Committee's "rights" talk, which is pure fiction. This committee only cares about blocking dues payments so unions will be divided and weak, and its entire argument is based on a lie. There is no compulsory unionism in the United States.

Under the law, no one can be compelled to join a union against his or her will. The law only requires non-members to pay an amount equal to union dues, not to join the union, and only when a union and an employer agree on such a requirement. Then, as long as non-members tender the dues-equivalent payment, they cannot be fired even if they never join the union.

Such voluntary agreements between unions and employers are not mandated by law in "union shop" states like New York and California. They are only prohibited in "right-to-work" states like North Carolina and Texas. This is the essence of the "right-to-work" concept, which has nothing to do with rights and nothing to do with work. It has everything to do with preventing unions and employers from voluntarily agreeing that all workers who benefit from collective representation will share the cost of representation (non-members can get a rebate for the proportion of their dues-equivalent payments not related to the union's representation role).

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