Clayton Sinyai

More Perfect Unions

THE NEED FOR NEW LABOR LAWS

In 1934, as a Senate committee debated a measure to protect the right of workers to form unions, the U.S. Catholic bishops weighed in on the debate. John Burke, CSP, speaking on behalf of the bishops' Administrative Committee, addressed a letter to the senators:

> The worker's right to form labor unions and to bargain collectively is as much his right as the right to participate through delegated representatives in the making of laws which regulate his civic conduct. Both are inherent rights. The worker can exercise his God-given faculty of freedom and properly order his life in preparation for eternity only through a system which permits him freely to choose his representatives in industry.

There was nothing particularly novel about the principles Burke expressed. His letter was submitted along with the text of *Quadragesimo anno* ("the fortieth year"), Pope Pius XI's 1931 social encyclical, which commended the role of trade unions in social life. The title of that encyclical referred to the fortieth anniversary of Pope Leo XIII's elegant *Rerum novarum* (1891), the foundational text of Catholic social thought in the modern age. Reflecting on how the modern economy too often allows the rich and powerful an opportunity to exploit working people, Leo took comfort in the proliferation of "workingmen's unions" that helped ameliorate labor conditions. "There are not a few associations of this nature," the pope observed, "but it were greatly to be desired that they should become more numerous and more efficient."

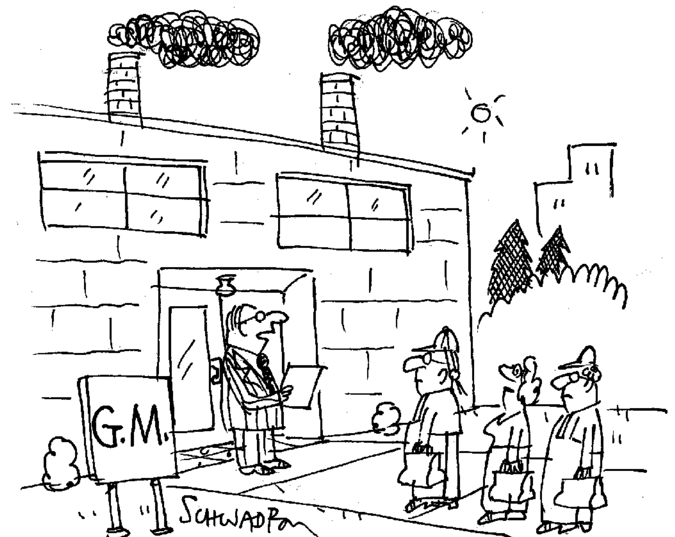
Yet such associations are dwindling in the United States—falling from approximately 35 percent of private-sector wage earners in the decades after World War II to less than 10 percent today. Why? In large measure, unions have declined because of employers' illegal actions to obstruct the workers' right to organize.

The National Labor Relations Act—or the Wagner Act—was signed in 1935 to give workers an orderly and safe method to determine whether they wanted to negotiate with their employers collectively, as a union, or individually. Now organized workers enjoy numerous advantages over their nonunion counterparts: a written contract that secures fair and equitable treatment and prevents favoritism; a collective voice in the workplace; and, not least of all, superior wages and benefits. The U.S. Department of Labor reports that American union members earned an average annual salary of about $45,000—hardly a princely sum, but a solid 25 percent more than what nonunion workers earn. Unsurprisingly, in the wake of the Wagner Act, millions of American workers rushed to form unions.

But the Wagner Act relied almost entirely on moral suasion for its effect. It was probably too much to expect that reverence for the law would restrain employers when the penalties for violating the act were so minor—and the rewards so great. Wagner was further weakened by a set of postwar amendments known as the Taft-Hartley Act, which, among other things, curtailed the ability of unions to strike and made it easier for employers to meddle in employees' decisions about organizing. Since unionization could cost corporations thousands of dollars per year, an industry of "union avoidance" experts soon blossomed. They advised:

• Firing union supporters early, because it is the best way to intimidate workers into abandoning an organizing campaign. (In Fiscal Year 2007 the U.S. National Labor Relations Board awarded back pay to 29,559 workers in such cases.) The action is flagrantly illegal, but it usually works. And it's a relative bargain when compared to the potential cost of collective bargaining.

• If workers produce a stack of authorization cards (which authorize a representative to bargain on their behalf) indicating that most of them want to unionize, employers should demand an NLRB-supervised election. That will mean a secret-ballot election sponsored by the Labor Board will have to take place, but the campaign will hardly resemble the kind of elections Americans are familiar with. In the weeks or months before the vote, the company has exclusive access to laborers at their workplace, making it easy for the company to threaten layoffs or closings—with no chance for union representatives to respond.



"Your health and pension benefits will remain intact, but we have eliminated your salary."

SCHWADRON

D87

You spray always too far off
as if the sun whose only crop
is light and side to side

—you tune the nozzle
for that distant evening
when the first plow

cut open the night sky
and the Earth was born
with no turning back

—what you hear are streets
row by row, frail, their hills
allowed to fall

and without any shade: paving
is all it takes, the grass
made whole, already spreading out

and nobody dies anymore, your belly
lasts, covered with the same dust
all roads return to

for the slab smoothed down
by road crews and rakes: the black hair
beginning to stir, the breasts

become another heart
already trembling, filled
by a garden not yet green

torn apart by a touch
almost morning and roads
for the first time endless.

—Simon Perchik

• If workers persist in voting for union representation, all they have earned is the right to bargain. Firms can then stall, evade, drag out the negotiations, and make sure things go nowhere. If the company doesn't sign a first contract the union cannot be firmly established. In at least one-third of cases where workers have chosen union representation, the employer has successfully avoided that first contract.

To combat such abusive tactics, more than 230 U.S. House members united behind the Employee Free Choice Act of 2007. The key provisions were fairly simple. First, in an attempt to make employers think twice before breaking the law, workers would become eligible for triple back pay if they were illegally fired for exercising their right to organize. Second, workers—not employers—would have the option of choosing whether to demonstrate majority support for a union by conducting a NLRB-sponsored election or by presenting authorization cards. Finally, if workers and employers could not reach agreement on a first contract, binding arbitration would be available as an alternative. The legislation passed the House by fifty-six votes, but big business rallied its supporters in the Senate to filibuster EFCA and prevent it from coming up for a vote.

Now EFCA is back, and antilabor business leaders are spending huge amounts of money to stop it. Groups like the U.S. Chamber of Commerce, the Retail Industry Leaders' Association, and the antiunion construction-industry group Associated Builders and Contractors shelled out more than $100 million to hammer EFCA supporters in the 2008 Senate elections. Expensive TV ads from corporate fronts like the so-called Coalition for a Democratic Workplace claim to protect workers' "rights" to a secret ballot.

Of course, Catholic trade unionists like me can't raise hundreds of millions of dollars to lobby Congress, but we can draw sustenance from our faith. After all, Catholic teaching on the right of workers to organize has been admirably consistent over the past century. In John Paul II's 1981 encyclical *Laborem exercens*, he emphasizes that labor unions are "indeed *a mouthpiece for the struggle for social justice*" and "an indispensable element of social life."

More recently, auxiliary Bishop Gabino Zavala of Los Angeles observed:

> The right of workers to organize and join unions is essential to the dignity and welfare of workers, and it is a right that today is radically threatened.... The Employee Free Choice Act intends to address and counter some of the more egregious violations of workers' dignity that are today pervasive for so many workers.... As a people of faith, we are committed to the health of our nation, its economy, and to the working men and women who provide us with indispensible goods and vitally necessary services, we make this appeal to the conscience of every member of the United States Congress to vote in favor of the Employee Free Choice Act, to ensure the democratic right of workers to form unions, to secure the health of our economy and our society by promoting and defending the dignity of every worker. ■

Clayton Sinyai *is the author of* Schools of Democracy: A Political History of the American Labor Movement *(Cornell, 2006) and a member of the Catholic Labor Network, the U.S. affiliate of the World Movement of Christian Workers.*