Kevin Carson
Labour Struggle in a Free Market
July 24th, 2008

Retrieved on 30/08/2019 from c4ss.org/content/34897

usa.anarchistlibraries.net

Labour Struggle in a Free Market

Kevin Carson

July 24th, 2008

One of the most common questions raised about a hypothetical free market society concerns worker protection laws of various kinds. As Roderick Long puts it,

> In a free nation, will employees be at the mercy of employers?… Under current law, employers are often forbidden to pay wages lower than a certain amount; to demand that employees work in hazardous conditions (or sleep with the boss); or to fire without cause or notice. What would be the fate of employees without these protections?

Long argues that, despite the absence of many of today's formal legal protections, the shift of bargaining power toward workers in a free labor market will result in "a reduction in the petty tyrannies of the job world."

> Employers will be legally free to demand anything they want of their employees. They will be permitted to sexually harass them, to make them

> perform hazardous work under risky conditions, to fire them without notice, and so forth. But bargaining power will have shifted to favor the employee. Since prosperous economies generally see an increase in the number of new ventures but a decrease in the birth rate, jobs will be chasing workers rather than vice versa. Employees will not feel coerced into accepting mistreatment because it will be so much easier to find a new job. And workers will have more clout, when initially hired, to demand a contract which rules out certain treatment, mandates reasonable notice for layoffs, stipulates parental leave, or whatever. And the kind of horizontal coordination made possible by telecommunications networking opens up the prospect that unions could become effective at collective bargaining without having to surrender authority to a union boss.

This last is especially important. Present-day labor law limits the bargaining power of labor at least as much as it reinforces it. That's especially true of reactionary legislation like Taft-Hartley and state right-to-work laws. Both are clearly abhorrent to free market principles.

Taft-Hartley, for example, prohibited many of the most successful labor strategies during the CIO organizing strikes of the early '30s. The CIO planned strikes like a general staff plans a campaign, with strikes in a plant supported by sympathy and boycott strikes up and down the production chain, from suppliers to outlets, and supported by transport workers refusing to haul scab cargo. At their best, the CIO's strikes turned into regional general strikes.

Right-wing libertarians of the vulgar sort like to argue that unions depend primarily on the threat of force, backed by the state, to exclude non-union workers (see here and here). With-

laws, and of SLAPP lawsuits. All we'll leave in place, out of the whole labor law regime, is the provisions of Norris-LaGuardia taking intrusion by federal troops and court injunctions out of the equation.

And we'll mop the floor with your asses.

> "In the past, workers would just swallow all the insults and humiliation. Now they resist," said Jenny Chan, chief coordinator of the Hong Kong-based pressure group Students and Scholars against Corporate Misbehavior, which investigates factory conditions in southern China.
>
> "They collect money and they gather signatures. They use the shop floors and the dormitories to gather the collective forces to put themselves in better negotiating positions with factory owners and managers," she said.
>
> Technology has made this possible.
>
> "They use their mobile phones to receive news and send messages," Chan said "Internet cafes are very important, too. They exchange news about which cities or which factories are recruiting and what they are offering, and that news spreads very quickly."
>
> As a result, she says, factories are seeing huge turnover rates. In Houjie, some factories have tripled workers' salaries, but there are still more than 100,000 vacancies."

The AFL-CIO's Lane Kirkland once suggested, half-heartedly, that things would be easier if Congress repealed all labor laws, and let labor and management go at it "mano a mano." It's time to take this proposal seriously. So here it is — a free market proposal to employers:

We give you the repeal of Wagner, of the anti-yellow dog provisions of Norris-LaGuardia, of legal protections against punitive firing of union organizers, and of all the workplace safety, overtime, and fair practices legislation. You give us the repeal of Taft-Hartley, of the Railway Labor Relations Act and its counterparts in other industries, of all state right-to-work

out forcible exclusion of scabs, they say, strikes would almost always turn into lockouts and union defeats. Although this has acquired the status of dogma at Mises.Org, it's nonsense on stilts. The primary reason for the effectiveness of a strike is not the exclusion of scabs, but the transaction costs involved in hiring and training replacement workers, and the steep loss of productivity entailed in the disruption of human capital, institutional memory, and tacit knowledge.

With the strike is organized in depth, with multiple lines of defense — those sympathy and boycott strikes at every stage of production — the cost and disruption have a multiplier effect far beyond that of a strike in a single plant. Under such conditions, even a large minority of workers walking off the job at each stage of production can be quite effective.

Taft-Hartley greatly reduced the effectiveness of strikes at individual plants by prohibiting such coordination of actions across multiple plants or industries. Taft-Hartley's cooling off periods also gave employers advance warning time to prepare for such disruptions, and greatly reduced the informational rents embodied in the training of the existing workforce. Were such restrictions on sympathy and boycott strikes in suppliers [not] in place, today's "just-in-time" economy would likely be far more vulnerable to disruption than that of the 1930s.

But long before Taft-Hartley, the labor law regime of the New Deal had already created a fundamental shift in the form of labor struggle.

Before Wagner and the NLRB-enforced collective bargaining process, labor struggle was less focused on strikes, and more focused on what workers did in the workplace itself to exert leverage against management. They focused, in other words, on what the Wobblies call "direct action on the job"; or in the colorful phrase of a British radical workers' daily at the turn of the century, "staying in on strike." The reasoning was explained in the Wobbly Pamphlet "How to Fire Your Boss: A Worker's Guide to Direct Action":

> The bosses, with their large financial reserves, are better able to withstand a long drawn-out strike than the workers. In many cases, court injunctions will freeze or confiscate the union's strike funds. And worst of all, a long walk-out only gives the boss a chance to replace striking workers with a scab (replacement) workforce.
>
> Workers are far more effective when they take direct action while still on the job. By deliberately reducing the boss' profits while continuing to collect wages, you can cripple the boss without giving some scab the opportunity to take your job.

Such tactics included slowdowns, sick-ins, random one-day walkouts at unannounced intervals, working to rule, "good work" strikes, and "open mouth sabotage." Labor followed, in other words, a classic asymmetric warfare model. Instead of playing by the enemy's rules and suffering one honorable defeat after another, they played by their own rules and mercilessly exploited the enemy's weak points.

The whole purpose of the Wagner regime was to put an end to this asymmetric warfare model. As Thomas Ferguson and G. William Domhoff have both argued, corporate backing for the New Deal labor accord came mainly from capital-intensive industry — the heart of the New Deal coalition in general. Because of the complicated technical nature of their production processes and their long planning horizons, their management required long-term stability and predictability. At the same time, because they were extremely capital-intensive, labor costs were a relatively modest part of total costs. Management, therefore, was willing to trade significant wage increases and job security for social peace on the job. Wagner came about, not because the workers were begging for it, but because the bosses were begging for a regime of enforceable labor contracts.

de facto labor union. And it has achieved victories through "associates" picketing and pamphleting stories on their own time, through swarming via the strategic use of press releases and networking, and through the same sort of support network that Ronfeldt and Arquilla remarked on in the case of the pro-Zapatista campaign. By using negative publicity to emabarrass the company, the Association has repeatedly obtained concessions from Wal-Mart. Even a conventional liberal like Ezra Klein understands the importance of such unconventional action.

The Coalition of Imolakee Workers, a movement of Indian agricultural laborers who supply many of the tomatoes used by the fast food industry, has used a similar support network, with the coordinated use of leaflets and picketing, petition drives, and boycotts, to obtain major concessions from Taco Bell, McDonalds, Burger King, and KFC. Blogger Charles Johnson provides inspiring details here and here.

In another example of open-mouth sabotage, the IWW-affiliated Starbucks union publicly embarrassed Starbucks Chairman Howard Schultz. It organized a mass email campaign, notifying the board of a co-op apartment he was seeking to buy into of his union-busting activities.

Such networked labor resistance is making inroads even in China, the capitalist motherland of sweatshop employers. Michel Bauwens, at P2P Blog, quotes a story from the Taiwanese press:

> "The factory closure last November was a scenario that has been repeated across southern China, where more than 1,000 shoe factories — about a fifth of the total — have closed down in the past year. The majority were in Houjie, a concrete sprawl on the outskirts of Dongguan known as China's "Shoe Town."

> a contract is bargained. We need to return to the sort of rank-and-file on-the-job agitating that won the 8-hour day and built unions as a vital force….
>
> Minority unionism happens on our own terms, regardless of legal recognition….
>
> U.S. & Canadian labor relations regimes are set up on the premise that you need a majority of workers to have a union, generally government-certified in a worldwide context[;] this is a relatively rare set-up. And even in North America, the notion that a union needs official recognition or majority status to have the right to represent its members is of relatively recent origin, thanks mostly to the choice of business unions to trade rank-and-file strength for legal maintenance of membership guarantees.
>
> The labor movement was not built through majority unionism-it couldn't have been.
>
> How are we going to get off of this road? We must stop making gaining legal recognition and a contract the point of our organizing….
>
> We have to bring about a situation where the bosses, not the union, want the contract. We need to create situations where bosses will offer us concessions to get our cooperation. Make them beg for It.

But more than anything, the future is being worked out in the current practice of labor struggle itself. We're already seeing a series of prominent labor victories resulting from the networked resistance model.

The Wal-Mart Workers' Association, although it doesn't have an NLRB-certified local in a single Wal-Mart store, is a

The purpose of the Wagner regime was to divert labor away from the asymmetric warfare model to a new one, in which union bureaucrats enforced the terms of contracts on their own membership. The primary function of union bureaucracies, under the new order, was to suppress wildcat action by their rank and file, to suppress direct action on the job, and to limit labor action to declared strikes under NLRB rules.

The New Deal labor agenda had the same practical effect as telling the militiamen at Lexington and Concord to come out from behind the rocks, put on bright red uniforms, and march in parade ground formation, in return for a system of arbitration to guarantee they didn't lose all the time.

The problem is that the bosses decided, long ago, that labor was still winning too much of the time even under the Wagner regime. Their first response was Taft-Hartley and the right-to-work laws. From that point on, union membership stopped growing and then began a slow and inexorable process of decline that continues to the present day. The process picked up momentum around 1970, when management decided that the New Deal labor accord had outlived its usefulness altogether, and embraced the full union-busting potential under Taft-Hartley in earnest. But the official labor movement still foregoes the weapons it lay down in the 1930s. It sticks to wearing its bright red uniforms and marching in parade-ground formation, and gets massacred every time.

Labor needs to reconsider its strategy, and in particular to take a new look at the asymmetric warfare techniques it has abandoned for so long.

The effectiveness of these techniques is a logical result of the incomplete nature of the labor contract. According to Michael Reich and James Devine,

> Conflict is inherent in the employment relation because the employer does not purchase a specified quantity of performed labor, but rather

> control over the worker's capacity to work over a given time period, and because the workers' goals differ from those of the employer. The amount of labor actually done is determined by a struggle between workers and capitalists.

The labor contract is incomplete because it is impossible for a contract to specify, ahead of time, the exact levels of effort and standards of performance expected of workers. The specific terms of the contract can only be worked out in the contested terrain of the workplace.

The problem is compounded by the fact that management's authority in the workplace isn't exogenous: that is, it isn't enforced by the external legal system, at zero cost to the employer. Rather, it's endogenous: management's authority is enforced entirely with the resources and at the expense of the company. And workers' compliance with directives is frequently costly — and sometimes impossible — to enforce. Employers are forced to resort to endogenous enforcement

> when there is no relevant third party…, when the contested attribute can be measured only imperfectly or at considerable cost (work effort, for example, or the degree of risk assumed by a firm's management), when the relevant evidence is not admissible in a court of law…[,] when there is no possible means of redress…, or when the nature of the contingencies concerning future states of the world relevant to the exchange precludes writing a fully specified contract.
>
> In such cases the ex post terms of exchange are determined by the structure of the interaction between A and B, and in particular on the strategies A is able to adopt to induce B to provide the desired

Regarding this last, it's pretty easy to compile a devastating email distribution list with a little Internet legwork. You might include the management of your company's suppliers, outlets, and other business clients, reporters who specialize in your industry, mainstream media outlets, alternative news outlets, worker and consumer advocacy groups, corporate watchdog organizations specializing in your industry, and the major bloggers who specialize in such news. If your problem is with the management of a local branch of a corporate chain, you might add to the distribution list all the community service organizations your bosses belong to, and CC it to corporate headquarters to let them know just how much embarrassment your bosses have caused them. The next step is to set up a dedicated, web-based email account accessed from someplace secure. Then it's pretty easy to compile a textfile of all the dirt on their corruption and mismanagement, and the poor quality of customer service (with management contact info, of course). The only thing left is to click "Attach," and then click "Send." The barrage of emails, phone calls and faxes should hit the management suite like an A-bomb.

So what model will labor need to follow, in the vacuum left by the near total collapse of the Wagner regime and the near-total defeat of the establishment unions? Part of the answer lies with the Wobbly "direct action on the job" model discussed above. A great deal of it, in particular, lies with the application of "open mouth sabotage" on a society-wide scale as exemplified by cases like McLibel, Sinclair, Diebold, and Wikileaks, described above.

Another piece of the puzzle has been suggested by the I.W.W.'s Alexis Buss, in her writing on "minority unionism":

> If unionism is to become a movement again, we need to break out of the current model, one that has come to rely on a recipe increasingly difficult to prepare: a majority of workers vote a union in,

> the United States and abroad, and the effort to suppress access to them caused them to rocket across the Internet, drawing millions of hits on other web sites.

This is what's known as the "Streisand Effect": attempts to suppress embarrassing information result in more negative publicity than the original information itself.

The Streisand Effect is displayed every time an employer fires a blogger (the phenomenon known as "Doocing," after the first prominent example of it) over embarrassing comments about the workplace. The phenomenon has attracted considerable attention in the mainstream media. In most cases, employers who attempt to suppress embarrassing comments by disgruntled workers are blindsided by the much, much worse publicity resulting from the suppression attempt itself. Instead of a regular blog readership of a few hundred reading that "Employer X Sucks," the blogosphere or a wire service picks up the story, and tens of millions of people read "Blogger Fired for Revealing Employer X Sucks." It may take a while, but the bosses will eventually learn that, for the first time since the rise of the large corporation and the broadcast culture, we can talk back — and not only is it absolutely impossible to shut us up, but we'll keep making more and more noise the more they try to do so.

To grasp just how breathtaking the potential is for openmouth sabotage, and for networked anti-corporate resistance by consumers and workers, just consider the proliferation of anonymous employernamesucks.com sites. The potential results from the anonymity of the writeable web, the comparative ease of setting up anonymous sites (through third country proxy servers, if necessary), and the possibility of simply emailing large volumes of embarrassing information to everyone you can think of whose knowledge might be embarrassing to an employer.

> level of the contested attribute, and the counter strategies available to B….
>
> An employment relationship is established when, in return for a wage, the worker B agrees to submit to the authority of the employer A for a specified period of time in return for a wage w. While the employer's promise to pay the wage is legally enforceable, the worker's promise to bestow an adequate level of effort and care upon the tasks assigned, even if offered, is not. Work is subjectively costly for the worker to provide, valuable to the employer, and costly to measure. The manager-worker relationship is thus a contested exchange. [Samuel Bowles and Herbert Gintis, "Is the Demand for Workplace Democracy Redundant in a Liberal Economy?," in Ugo Pagano and Robert Rowthorn, eds., Democracy and Effciency in the Economic Enterprise.]

Since it is impossible to define the terms of the contract exhaustively up front, "bargaining" — as Oliver Williamson puts it — "is pervasive."

The classic illustration of the contested nature of the workplace under incomplete labor contracting, and the pervasiveness of bargaining, is the struggle over the pace and intensity of work, reflected in both the slowdown and working to rule.

At its most basic, the struggle over the pace of work is displayed in what Oliver Williamson calls "perfunctory cooperation" (as opposed to consummate cooperation):

> Consummate cooperation is an affirmative job attitude–to include the use of judgment, filling gaps, and taking initiative in an instrumental way. Perfunctory cooperation, by contrast, involves job performance of a minimally acceptable sort….

> The upshot is that workers, by shifting to a perfunctory performance mode, are in a position to "destroy" idiosyncratic efficiency gains.

He quotes Peter Blau and Richard Scott's observation to the same effect:

> ...[T]he contract obligates employees to perform only a set of duties in accordance with minimum standards and does not assure their striving to achieve optimum performance.... [L]egal authority does not and cannot command the employee's willingness to devote his ingenuity and energy to performing his tasks to the best of his ability.... It promotes compliance with directives and discipline, but does not encourage employees to exert effort, to accept responsibilities, or to exercise initiative.

Legal authority, likewise, "does not and cannot" proscribe working to rule, which is nothing but obeying management's directives literally and without question. If they're the brains behind the operation, and we get paid to shut up and do what we're told, then by God that's just what we'll do.

Disgruntled workers, Williamson suggests, will respond to intrusive or authoritarian attempts at surveillance and monitoring with a passive-aggressive strategy of compliance in areas where effective metering is possible — while shifting their perfunctory compliance (or worse) into areas where it is impossible. True to the asymmetric warfare model, the costs of management measures for verifying compliance are generally far greater than the costs of circumventing those measures.

As frequent commenter Jeremy Weiland says, "You are the monkey wrench":

> Their need for us to behave in an orderly, predictable manner is a vulnerability of theirs; it can

use of the trial as a platform, drew far, far more negative attention to McDonalds than the pamphleteers could have done without the company's help.

In 2004, the Sinclair Media and Diebold cases showed that, in a world of bittorrent and mirror sites, it was literally impossible to suppress information once it had been made public. As recounted by Yochai Benkler, Sinclair Media resorted to a SLAPP lawsuit to stop a boycott campaign against their company, aimed at both shareholders and advertisers, over their airing of an anti-Kerry documentary by the SwiftBoaters. Sinclair found the movement impossible to suppress, as the original campaign websites were mirrored faster than they could be shut down, and the value of their stock imploded. As also reported by Benkler, Diebold resorted to tactics much like those the RIAA uses against file-sharers, to shut down sites which published internal company documents about their voting machines. The memos were quickly distributed, by bittorrent, to more hard drives than anybody could count, and Diebold found itself playing whack-a-mole as the mirror sites displaying the information proliferated exponentially.

One of the most entertaining cases involved the MPAA's attempt to suppress DeCSS, Jon Johansen's CSS descrambler for DVDs. The code was posted all over the blogosphere, in a deliberate act of defiance, and even printed on T-shirts.

In the Alisher Usmanov case, the blogosphere lined up in defense of Craig Murray, who exposed the corruption of post-Soviet Uzbek oligarch Usmanov, against the latter's attempt to suppress Murray's site.

Finally, in the recent Wikileaks case, a judge's order to disable the site

> didn't have any real impact on the availability of the Baer documents. Because Wikileaks operates sites like Wikileaks.cx in other countries, the documents remained widely available, both in

Let's review just what was entailed in the traditional technique of "open-mouth sabotage." From the same Wobbly pamphlet quoted above:

> Sometimes simply telling people the truth about what goes on at work can put a lot of pressure on the boss. Consumer industries like restaurants and packing plants are the most vulnerable. And again, as in the case of the Good Work Strike, you'll be gaining the support of the public, whose patronage can make or break a business.
>
> Whistle Blowing can be as simple as a face-to-face conversation with a customer, or it can be as dramatic as the P.G.&E. engineer who revealed that the blueprints to the Diablo Canyon nuclear reactor had been reversed. Upton Sinclair's novel The Jungle blew the lid off the scandalous health standards and working conditions of the meatpacking industry when it was published earlier this century.
>
> Waiters can tell their restaurant clients about the various shortcuts and substitutions that go into creating the faux-haute cuisine being served to them. Just as Work to Rule puts an end to the usual relaxation of standards, Whistle Blowing reveals it for all to know.

The Internet has increased the potential for "open mouth sabotage" by several orders of magnitude.

The first really prominent example of the open mouth, in the networked age, was the so-called McLibel case, in which McDonalds used a SLAPP lawsuit to suppress pamphleteers highly critical of their company. Even in the early days of the Internet, bad publicity over the trial and the defendants' savvy

> be exploited. You have the ability to transform from a replaceable part into a monkey wrench.

At this point, some libertarians are probably stopping up their ears and going "La la la la, I can't hear you, la la la la!" Under the values most of us have been encultured into, values which are reinforced by the decidely pro-employer and anti-worker libertarian mainstream, such deliberate sabotage of productivity and witholding of effort are tantamount to lèse majesté.

But there's no rational basis for this emotional reaction. The fact that we take such a viscerally asymmetrical view of the respective rights and obligations of employers and employees is, itself, evidence that cultural hangovers from master-servant relationships have contaminated our understanding of the employment relation in a free market.

The employer and employee, under free market principles, are equal parties to the employment contract. As things normally work now, and as mainstream libertarianism unfortunately take for granted, the employer is expected as a normal matter of course to take advantage of the incomplete nature of the employment contract. One can hardly go to Cato or Mises.Org on any given day without stumbling across an article lionizing the employer's right to extract maximum effort in return for minimum pay, if he can get away with it. His rights to change the terms of the employment relation, to speed up the work process, to maximize work per dollar of wages, are his by the grace of God.

Well, if the worker and employer really are equal parties to a voluntary contract, as free market theory says they are, then it works both ways. The worker's attempts to maximize his own utility, under the contested terms of an incomplete contract, are every bit as morally legitimate as those of the boss. The worker has every bit as much of a right to attempt to minimize his effort per dollar of wages as the boss has to attempt

to maximize it. What constitutes a fair level of effort is entirely a subjective cultural norm, that can only be determined by the real-world bargaining strength of bosses and workers in a particular workplace.

And as Kevin Depew argues, the continued barrage of downsizing, speedups, and stress will likely result in a drastic shift in workers' subjective perceptions of a fair level of effort and of the legitimate ways to slow down.

> Productivity, like most "financial virtues," is the product of positive social mood trends.
>
> As social mood transitions to negative, we can expect to see less and less "virtue" in hard work.
>
> Think about it: real wages are virtually stagnant, so it's not as if people have experienced real reward for their work.
>
> What has been experienced is an unconscious and shared herding impulse trending upward; a shared optimistic mood finding "joy" and "happiness" in work and denigrating the sole pursuit of leisure, idleness.
>
> If social mood has, in fact, peaked, we can expect to see a different attitude toward work and productivity emerge.

The problem is that, to date, bosses have fully capitalized on the potential of the incomplete contract, whereas workers have not. And the only thing preventing workers from doing so is the little boss inside their heads, the cultural holdover from master-servant days, that tells them it's wrong to do so. I aim to kill that little guy. And I believe that when workers fully realize the potential of the incomplete labor contract, and become as willing to exploit it as the bosses have all these years, we'll mop

the floor with their asses. And we can do it in a free market, without any "help" from the NLRB. Let the bosses beg for help.

One aspect of direct action that especially interests me is so-called "open-mouth sabotage," which (like most forms of networked resistance) has seen its potential increased by several orders of magnitude by the Internet.

Labor struggle, at least the kind conducted on asymmetric warfare principles, is just one subset of the general category of networked resistance. In the military realm, networked resistance is commonly discussed under the general heading of Fourth Generation Warfare.

In the field of radical political activism, networked organization represents a quantum increase in the "crisis of governability" that Samuel Huntington complained of in the early '70s. The coupling of networked political organization with the Internet in the '90s was the subject of a rather panic-stricken genre of literature at the Rand Corporation, most of it written by David Ronfeldt and John Arquilla. The first major Rand study on the subject concerned the Zapatistas' global political support network, and was written before the Seattle demos. Loosely networked coalitions of affinity groups, organizing through the Internet, could throw together large demonstrations with little notice, and "swarm" government and mainstream media with phone calls, letters, and emails far beyond their capacity to absorb. Given this elite reaction to what turned out to be a mere foreshadowing, the Seattle demonstrations of December 1999 and the anti-globalization demonstrations that followed must have been especially dramatic. There is strong evidence (which I discussed here) that the "counter-terrorism" powers sought by Clinton, and by the Bush administration after 9/11, were desired by federal law enforcement mainly to go after the anti-globalization movement.