How to Win

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"It was the best of times, it was the worst of times," wrote Charles Dickens of revolutionary France. "It was the spring of hope, it was the winter of despair." Too melodramatic for our twenty-first-century taste, perhaps, but not without a kernel of truth when applied to the contemporary labor movement this political season.

On the one hand, something is stirring in the land. The red-state teacher strikes, the Democratic sweep in the 2018 midterms, the Los Angeles teachers' historic victory in early January, and the organizing success unions have enjoyed among millennial wordsmiths in media, both dead tree and on the web, testify to the spread of the union idea in even the most unexpected venues. In 2018 more workers took part in strikes than in any year since 1986. Fully 62 percent of Americans support unions, according to a recent Gallup poll, a number that has increased 14 points over the last decade. Among young adults under the age of twenty-nine, some surveys have found that more identify as socialists than as supporters of capitalism.

Meanwhile, in a surprise to almost everyone, left and right, the Supreme Court's *Janus* decision, which outlaws "agency fees," has not generated a public employee rush to "opt-out" of paying union dues, a prospect much anticipated by right-wing legal warriors in the Freedom Foundation and other anti-union entities. On the eve of their successful strike in January, the United Teachers Los Angeles (UTLA), a union long targeted by the right, had actually increased its dues-paying membership in the post-*Janus* months.

The 2018 election reinforced the critical role unions play in electing progressive, pro-worker candidates. In Michigan and Pennsylvania, union-household voters made up 25 percent of the electorate and helped sweep Democrats to victory up and down the ballot. And as the presidential campaign heats up, Democratic candidates are competing with each other to stake out policy terrain on the left. Elizabeth Warren and Bernie Sanders have both put forward programs that borrow from both European social democracy (worker representatives on corporate boards, universal health provision) and FDR's early New Deal (higher taxes on the rich, massive

At the March for Public Education in Los Angeles, weeks before the city's teachers went on strike (Ronen Tivony/NurPhoto via Getty Images)

infrastructure spending, higher social security benefits, and the reregulation of Wall Street).

But, on the other hand, this moment is also a long "winter of despair" when it comes to a revival of trade unionism and collective bargaining, especially in the private sector, where union density is a vanishingly small 6.4 percent. Despite the remarkable victory of union school teachers in California and elsewhere and the inspiring success of union hotel workers, nurses, and a few other militant labor organizations, the union movement remains essentially stalemated in the private sector, certainly when it comes to making the kind of organizing breakthroughs and qualitative bargaining advances that were a hallmark of labor activism between 1934 and 1973. Unemployment is low, wages are barely advancing, unions are viewed in a quite favorable light, and a new generation of young and energetic organizers have been hired onto union staffs, but it still remains incredibly difficult to organize new workers or win a decent first contract.

The future for traditional, enterprise-based unionism looks bleak, not because workers don't want to be represented in a collective fashion, but because opponents of unionism—among employers, politicians, anti-union law firms, the conservative judiciary—have had decades to perfect their legal and organizational weapons so that today even the most robust and imaginative organizing drive can be defeated if corporate executives are willing to spend enough money, retaliate against employees wishing to organize, appeal any pro-union NLRB or Court decision, and delay, delay, delay. And of course, all this implies that workers know who is their real boss. The rise of fissured employment—subcontracting, franchising, and the corporate transformation of millions of workers into "independent" contractors—has obscured where power, money, and responsibility lie in the employment relationship.

Under the system of firm-centered organizing envisioned by the Wagner Act and diabolically refined by the NLRB and the judiciary, virtually any employer can thwart the unionizing efforts of even the most enthusiastic and dedicated set of organizers. In consequence, says Larry Cohen, former president of the Communications Workers of America (CWA) and current board chair of Our Revolution, "It is now clear that enterprise-based organizing and bargaining in the U.S. has a dim future." David Rolf, the Seattle labor leader who pioneered the Fight for $15 movement, concurs. Of collective bargaining and private sector unionism he has said, "The twentieth-century model is dead. It will not come back."

Thus when and if liberals and labor partisans win power in a post-Trump America, they will not try to "revitalize" the labor movement. For more than half a century, from the mid-1960s effort to ban right-to-work laws through the Obama-era attempt to pass the Employee Free Choice Act, labor has sought to make the Wagner-era system of enterprise unionism actually function. None of these legislative reforms passed, but even if they had, their impact on labor's capacity to organize and bargain for a better work life would have been marginal. The structures of capital have shifted too much, the managerial mindset has become too hostile, and the nation's legal regime governing collective bargaining has become ossified, if not an outright employer weapon.

Is there a road forward, modeled on movements like the Fight for $15 and the campaigns against sweatshops, foreign and domestic? Many labor partisans think "sectoral bargaining" could be an answer for our times. Sectoral bargaining encompasses an effort to win better wages and working conditions in an entire occupation or industry, usually in one state or city. Instead of a collective bargaining contract, the goal is standard-setting laws enacted either by the legislature or through an agency—a "wage board" or other tribunal—that sets wages and working conditions once all the stakeholders have had their say. This is social bargaining with the state on behalf of all workers. Just as civil rights laws apply to all workplaces regardless of the attitude of workers or employers, so too would a wage board promulgate a set of work standards that are equally universal, at least within the industry and region over which the board has jurisdiction. Such systems were pioneered in northern Europe where peak associations of capitalists and unionists hammer out an incomes policy that sets a national or regional framework, which is then refined in a more decentralized fashion to account for historic industrial and occupational patterns and new economic conditions. In the United States we had something close to this system during the height of the New Deal when government entities, from the Depression-era "codes of fair competition" through Second World War labor boards, established uniform wage and union status guidelines in the auto, steel, rubber, trucking, electrical, and food processing industries, and also including such highly competitive and low-wage sectors as textiles and garment manufacturing. Legal scholar Kate Andrias recounts, in this issue of *Dissent*, how wage boards were a vital and integral part of the 1938 Fair Labor Standards Act during its first decade of existence.

Of course, if unions are large, powerful, and economically ambitious it is possible and often preferable to construct a sectoral bargaining regime without assistance from the state. As Walter Reuther, the visionary UAW leader, put it in the late 1940s, "I'd rather bargain with General Motors than the U.S. government. . . . General Motors has no army." During the 1950s and 1960s such "pattern bargaining" created a set of sectoral wage and benefit standards whereby key agreements, such as the 1950 UAW-GM "Treaty of Detroit," were replicated, not only by Ford and Chrysler, but throughout mass production industry. Bargaining in steel, coal, commercial construction, and short-haul trucking was even more centralized, with a committee representing the entire industry sitting down with a big union like the United Mine Workers or the Steelworkers to structure a work regime for hundreds of thousands. Jimmy Hoffa, for all his faults, used militant strike tactics and a strategic negotiating strategy to create a series of regional collective bargaining regimes that standardized wages and working conditions throughout an historically fragmented trucking industry. He even brought incomes for Southern over-the-road truckers up to Northern and Western standards in the 1960s.

That system collapsed in the 1970s and 1980s when deregulation, deindustrialization, global competition, and the growth of employer anti-unionism put wages and other work standards back in competition between one firm and another. The few remaining examples are found in key occupational niches: major league sports, the Hollywood talent guilds at the major studios and broadcast networks, and West Coast longshore. And the teacher strikes that recently swept West Virginia, Oklahoma, and Arizona were also a species of sectoral bargaining, in which negotiations took place not with the individual county boards of education, but at the state capital where the real money and power were concentrated.

But the private sector is a harder nut to crack, and like the teacher strikes, it requires the active engagement of the state to make sectoral bargaining once again work. The Fight for $15 could only succeed when the struggle moved to the political realm, where states and municipalities passed ordinances mandating higher wages. Such initiatives might well be given more of a "bargaining" flavor in states, like New York, California, New Jersey, Massachusetts, North Dakota, and Colorado, where wage boards still exist. They were put in place during the Progressive Era when they were designed to raise standards for workers—mainly women—in what were then called the sweated trades. And they still work. In New York, a 2015 wage board held an extensive series of hearings, during which it heard from workers, employers, academics, and politicians before authorizing a $15 hourly minimum wage for fast-food workers, phased in first in New York City and then more slowly in the rest of the state. And such state-mandated standards are not just for low-wage workers: in the construction trades, "prevailing wage" standards insure that on big government projects occupational wages of up to $80 an hour are paid to skilled craftsmen, union or not.

Given this successful precedent, a push for additional state-level wage boards may well be on the liberal agenda, and not just for fast-food workers. Nursing homes, retail, warehouses, and home healthcare are largely non-union, low-wage sectors of the economy that could be covered by such government agencies. Indeed, state and municipal regulation has already begun for some gig economy workers whose actual employment status has been so contested. In contrast to the federal laws governing collective bargaining, such state-level initiatives are not "preempted" by the National Labor Relations Act. Seventy years ago, labor partisans saw such "preemption" as a great legal and legislative victory because it prevented reactionary politicians in places like Texas or Mississippi from enacting their own state-level obstacles to union organizing and bargaining. But as the decades passed this federal displacement of state activism soured as the courts reinterpreted the meaning of the Wagner Act so as to turn labor's magna carta into an employer weapon. In contrast, states retain the right to set wages and directly regulate other aspects of American work life, which is why we have so many different minimum wage and rest break standards all across the land.

All this opens the door to a new season of liberal-labor statecraft that puts high on its agenda the kind of wage boards discussed above. The Center for American Progress, a think tank with close ties to Obama and Clinton circles, is on board, likewise the Sanders and Warren campaigns, and of course advocacy of a $15 minimum wage is now standard fare for almost every Democrat, although the demand is less radical today than when it was introduced six years ago, in part because living costs have risen. Wage boards and a higher minimum wage are a natural fit for a leftward shifting Democratic Party: it is a policy issue legitimized by history and current circumstance; large numbers of low-wage workers will benefit; and employer opposition will be muted because such governmental initiatives take wages out of competition throughout an entire labor market. If a union organizing drive were to force a handful of McDonald's restaurants in Manhattan to offer higher wages, while the rest pay two or three dollars less, then one can be sure that those franchisees will scream bloody murder in the months before they close up shop. But if every fast food eatery in the borough pays the same wage, then burger prices might rise a bit, but the competitive field remains flat and equitable.

Moreover, such sectoral bargaining is a tool that has the capacity to ameliorate the employment fissuring that has been the bane of so many organizing drives. If a wage board mandates that all janitors, home health-care workers, or all warehouse employees are paid the same, then unions can avoid the near-impossible task of organizing the multitude of contractors and subcontractors in those industry sectors. Indeed, some of these subcontractors are likely to welcome a state-imposed wage standard, which would stop the chiseling and constant spin-off of fly-by-night firms whose only competitive advantage is the exploitation or self-exploitation of those who work for them.

Finally, wage boards seem to offer an alternative to the social strife, the outright class conflict, that has made even the most liberal Democrat wary of too close an identification with union organizing campaigns, contract fights, and the strike itself. These governmental wage-setting institutions promise to realize one of the more problematic ideas held out by the original Wagner Act. That 1935 law was premised, in part, upon the theory that social harmony might be achieved when and if capital and labor met on somewhat equal terms—both would be organized—and thereby both had the incentive and the power to construct a set of social bargains, with the strike weapon held largely in reserve. But if U.S. employers ever thought this policy regime a good idea, they reject it today. In the private sector, certainly, and often in the public as well, managers seek domination and unitary rule. Unions therefore are in the business of creating class conflict, when and if they have the chance, because it is only under such adversarial conditions that managers are incentivized to recognize the more advanced claims of their employees.

Liberal politicians may well offer support for contemporary strikes and organizing drives, but the turmoil created by union activism often plays havoc with a candidate's effort to build a constituency as broad and inclusive as possible, even when, in the abstract, they stand with working people. Strikes are messy and often end in a partial victory or divisive defeat. Many people, and not just those in the managerial strata, are repelled by such social conflict. So while Democratic Party liberals may join the occasional picket line, they hesitate to identify their campaign with the fate of a union struggle. Though the Fight for $15 has, from the beginning, framed its demands as "$15 and a union," the wage plea has captured far more attention than the call for union rights. When it comes to the latter, most Democratic politicians hesitate to put themselves squarely on the side of all those shrill and disruptive organizers. Instead they use distancing rhetoric, with appeals to create a "level playing field" between management and labor, or they seek to avoid the conflictual narrative altogether by just condemning income inequality, tax breaks for the rich, and the role of the "billionaire class" in election campaigns.

Unionism, even when its chief objective is a higher wage for union men and women, embodies far more than a mechanism for ameliorating income inequality. It raises consciousness among its members, creates an oppositional and continuously active locus of power in a society otherwise dominated by capital, and it has the capacity to mobilize the community as well as its own members for social struggles, thereby demonstrating both social solidarity and a progressive vision of what would constitute a good society. All this was brilliantly demonstrated during the teacher strikes that swept the nation in 2018 and early 2019.

Wage boards do none of this, and while the Fight for $15 campaigns have often been genuine social movements, they have not won for SEIU, the key funder and organizer of that movement, more than a handful of new members. And this is crucial, because without organization and the dues flow to sustain it, the labor movement will come to resemble a philanthropic foundation that makes incremental social changes, but is incapable of building a self-sustaining movement.

Without unions to institutionalize them, waves of activism dissipate. The energy that went into the first Obama campaign evaporated after the thrilling election celebrations. The Occupy movement in 2011 fizzled when the tents cleared. And the contemporary anti-Trump resistance lacks an organizational structure independent of the people it has put into office. In contrast, effective trade unionism contributes not only to the mobilization of voters at the climax of a campaign season, but in the aftermath as well, when the political and organizational trench warfare continues in a large array of legislative chambers, administrative agencies, and community political institutions. In recent years the right—through megachurches, the National Rifle Association, and ad hoc donor formations—has proven far more potent than the left in this kind of continuous partisan warfare.

Now that the nation and the labor movement is shifting to the left, progressives need to push forward policies and politics that actually strengthen those working-class institutions so they can both play a vigorous role in raising wages—by themselves or through state agencies—and begin to win the adherence of those elements of the working class who have defected. The union movement, indeed democracy itself, has always advanced when will and circumstance conjoin to create a great leap forward, as in the Civil War, the New Deal, and the sixties. A new era of state-mandated sectoral bargaining may well be part of that reinvigoration, but its promise will fall short without the rebirth of a set of working-class organizations that give ordinary men and women their own voice and the power to make it persuasive.

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