

United States: Labor law reform and class struggle - Myths and reality

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After defeat of the Retail, Wholesale, and Department Store Union (RWDSU) organizing drive at the Amazon warehouse in Bessemer, Alabama, the attention of the labor movement has turned to reforming the legal framework for union recognition and collective bargaining in the U.S.—reforming the National Labor Relations Board (NLRB). While commentators are divided in their assessment of RWDSU strategy and tactics in Bessemer, almost all agree that current labor law allowed Amazon to engage in all sorts of anti-union “dirty tricks” to intimidate workers. These included “captive audience meetings,” threats of layoffs and closings, locating ballots boxes in a mail-in election in areas controlled by the employer, and the like. Even though some of these tactics may be technically illegal, employers use them with impunity knowing that they will not be penalized. For the official leaderships of both the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Change to Win federation, the solution is the Protect the Right to Organize Act. The PRO Act would ban many anti-union tactics and impose penalties on employers who violate labor law.

There is a broad consensus on the centrality of winning the PRO Act—stretching from the halls of academia through the leadership of the labor movement to sections of the socialist Left. This consensus is based on the idea that labor law reform is a prerequisite for revival of the labor movement. According to this way of thinking, without changes in labor law to protect workers’ right to organize against employer harassment and threats, strikes and union density—the percentage of workers in unions—will continue to decline.

The common sense of the labor movement and the Left is based on an understanding of the last great breakthrough for private sector workers in the U.S.—the industrial workers’ movement in the 1930s. The success of the CIO in organizing mass production industries (auto, steel, rubber, electrical and machine making, mining, longshore and warehousing) was result of the “pro-labor” policies of the Roosevelt administration. Most academics and labor activists claim that Section 7a of the National Industrial Recovery Act (NIRA) passed in June 1933, and the National Labor Relations Act (NLRA) passed in 1935, created a more favorable legal and political environment for industrial workers to organize. These academics and activists argue that the legal and political changes enabled workers to breach the anti-union ramparts of large-scale, capital-intensive industry.

This common sense explanation is not sustained by a systematic examination of the historical evidence. Section 7a, despite the creation of the National Labor Board in July 1933, had no enforcement mechanisms. Compliance with the NIRA guarantee of the right to organize was completely voluntary on the part of capital. Rather than promote collective bargaining, Federal mediation—what labor activists of the time called the “National Run Around”—generally resulted in agreements to defer recognition strikes in exchange for promises of negotiations and union

recognition elections. Most of those negotiations and elections never occurred. The NLRA provisions for elections to determine exclusive collective bargaining rights remained unenforced before the Supreme Court upheld its constitutionality May 1937. The handful of representation elections held under the NLRA prior to the Supreme Court ruling remained subject to court challenges until the Supreme Court ruled.

Table I: Strikes, Strikers & Days on Strike, 1930-1934

Years	Strikes	Strikers	Strike Days
1930	637	183,000	3,320,000
1931	810	342,000	6,890,000
1932	840	324,000	10,500,000
1933	1,695	1,170,000	16,900,000
1934	1,856	1,470,000	19,600,000
1935	2,014	1,120,000	15,500,000

Source: Bureau of the Census, Historical Statistics of the United States: Colonial Times to 1970, Part 1 (Washington DC: Bureau of the Census, 1975), 179.

Table II: Union Membership, 1930-1938

Year	Membership
1930	3,401,000
1931	3,310,000
1932	3,050,000
1933	2,689,000
1934	3,088,000
1935	3,584,000
1936	3,989,000
1937	7,001,000
1938	8,034,000

Source: Bureau of Labor Statistics

In reality, both Section 7a and the implementation of the NLRA were responses to—rather than the causes of—industrial working class militancy in the 1930s. As unemployment began to fall in 1932, workers renewed strike activity in the months preceding the passage of the NIRA. The number of strikes increased 30 percent from 1930 to 1932, and jumped another 50 percent in 1933—with most strikes taking place in the first half of 1933, before the NIRA was passed. The number of work-days on strike also jumped by 67 percent between 1930 and 1932, and grew another 38 percent in 1933. Coal miners, organized in the Communist-led National Miners Union (NMU) and the United Mine Workers (UMW) of the AFL, struck in 1932 and early 1933. Auto workers at Briggs Manufacturing, Murray Body, and Hudson Motors in Detroit, Willis-Overland in Toledo, Chevrolet in California, and White Motors in Cleveland struck during the winter and early spring of 1933. Similarly, the biggest jump in union membership came in 1936-1937, from less than 4 million to over 7 million members.

As Michael Goldfield demonstrates, this growth was the result of major strikes that swelled the ranks of the new industrial unions—starting with the Goodyear strike in February and March 1936 and culminating in the Flint sit-down strikes in the winter of 1936-1937 which established industrial unionism in the auto industry and forced U.S. Steel to recognize the Steel Workers Organizing

Committee. These strikes took place despite the weakness of labor law and the willingness of employers to unleash violent repression against their recalcitrant workforces. These strikes and the growth of the CIO took place before the May 1937 NLRB v. Jones & Laughlin Steel Corporation Supreme Court decision which upheld the constitutionality of the NLRA, allowing it to be operationalized.

Strategically placed workers organizing in their plants combined with mobilization of allies among the unemployed, other workers, and farmers in mass, militant, often illegal strikes...produced the CIO and forced implementation of labor law reform