



**Taking Back**  
the **Workers' Law**

HOW TO FIGHT THE  
ASSAULT ON LABOR RIGHTS

**ELLEN DANNIN**

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## CONTENTS

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## **FOREWORD**

*David E. Bonior*

**T**his book addresses two concerns that have been at the heart of my work in public service for the past thirty years: the importance of citizenship and the meaningfulness of work. In many ways, citizenship and work are inextricable. When I conversed with new immigrants in the congressional district that I represented for nearly twenty-six years, I was consistently reminded of how much they wanted to be valued as contributing members of American society and saw their jobs as the primary medium for adding value to their new communities and homeland.

But when workers are prevented from exercising their democratic rights, it becomes nearly impossible to establish dignity in other critical spheres of their lives. As Ellen Dannin states, "The National Labor Relations Act says that the private workplace is not truly private because what happens at work does not remain there. It spills out into society, and society as a whole pays the price for inequality."

Verna Bader, for example, a 72-year-old grandmother and machinist from Taylor, Michigan, tried to form a union to address \$5-per-hour pay and unsafe working conditions that included maneuvering around exposed live wires. In 1992, she and five other machinists in her department were fired after they stood up for themselves and voted to form a union at Taylor Machine Products.

When she fought the company for illegally firing her, the National Labor Relations Board ordered the company to pay her lost earnings. Adding

insult to injury, however, the Board allowed this issue to drag out for over a decade. The Agency failed to fully implement the values that underlie the law and to recognize the importance of a timely payment, ensuring that the spirit of the Act and its underlying values were upheld. This book demonstrates that this is a common occurrence. More than twelve years after the order was issued, Verna Bader finally received the restitution she deserved. Her victory was bittersweet. In the end, she “won,” but the wait almost destroyed her faith in American justice, and understandably so. As Dannin argues, “Our work lives become incorporated into our intimate physical and mental selves. Over time, the undemocratic workplace grinds away at the belief that we have a right to participate in the decisions that affect our lives and societies.”

Today’s labor law, signed by President Franklin D. Roosevelt seventy years ago, embodied the profound aspiration of providing “industrial democracy” to American workers such as Bader. The centerpiece of workplace democracy was and remains the ability of workers to form unions and collectively bargain with their employers.

The Wagner Act, known more prevalently today as the National Labor Relations Act, created the National Labor Relations Board to administer and enforce the law. The NLRB is charged with upholding the law’s underlying values of democracy, fairness, and justice. These underlying values have the power to transform our workplaces, empowering workers with the necessary skills to be active citizens in democracy. By shining light on these tenets of the Act, Ellen Dannin’s book examines how the potential value of the NLRA transcends the workplace by serving, more broadly, as a barometer of the health of our democracy.

Until we recognize the interplay between citizenship and work, we will compromise American democracy and undermine its advancement. It is well documented that union membership enhances people’s ability to be better citizens of a democracy. As Dannin notes, we know that union members vote, volunteer, and participate in politics and civic life in percentages far higher than those for unorganized workers. And, as Dannin asks with prescience, “If workers are told that their participation, involvement, intelligence are not wanted, will they try to increase their participation, involvement, or intelligence? Can a democracy exist when this is its raw material?”

In his *Washington Post* column on September 9, 2004, David Broder drove

home the reason why protecting workers is so important. In it, he makes the link between the near decline of liberal legislation, the decline of organized labor, and the decline of liberal legislation on Capitol Hill, it did not confine its own members. It was at the forefront of housing programs, and a host of other programs that affect the whole community. And because of this, it has been largely ignored.

This is a critical time for American unions. Tremendous resistance by emerging anti-union consultant industry, and the decline of unions without fear of reprisal. A National Labor Relations Board union campaign at a single factory in 2004 allegedly paid \$2.3 million to the law firm of illegal campaign tactics is now so common that in only a few minutes, a worker is fired or discriminated against, and his or her freedom of association is violated.

As if this were not enough of a challenge, the economy have shifted employment away from the manufacturing sector to the largely nonunion service sector. As of 2004, only 8 percent of employees were union members. And in the service sector, only 8 percent of employees were union members.

Given the challenges to workers’ freedom of association now more than ever, we would expect that the National Labor Relations Board under the administration of George W. Bush, the Board has issued decisions of the law and fail to make the law work for workers. The Board has limited protection for teaching and research assistants, and has weakened the rights of nonunion workers. The Board has also weakened the rights of nonunion workers to demand aid and protection on the job. The Board has also weakened the ability of employers to demand aid and protection on the job. The Board has also weakened the ability of employers to demand aid and protection on the job.

In the midst of this crisis in work, a controversial argument: take back the

allowed this issue to drag out for over a year to implement the values that underlie the law. The promise of a timely payment, ensuring that the values were upheld. This book demonstrates the importance of the law. More than twelve years after the law was passed, she received the restitution she deserved. She had waited almost a decade, and understandably so. As Dannin's book is incorporated into our intimate physical and democratic workplace grinds away at the law, it anticipates the decisions that affect our lives.

President Franklin D. Roosevelt's seventy-first aspiration of providing "industrial democracy" to workers, as Bader notes, is the centerpiece of work. It is the ability of workers to form unions that empowers them and their employers.

Equally important today as the National Labor Relations Board to administer the law is the Department of Justice, charged with upholding the law's fairness, efficiency, and justice. These underlying values are the foundation of our workplaces, empowering workers and citizens in democracy. By shining light on the law, Dannin's book examines how the potential of workplace democracy by serving, more broadly, as a model for democracy.

Between citizenship and work, we will find that the law can undermine its advancement. It is the law that enhances people's ability to be citizens. As Dannin notes, we know that union membership has increased in politics and civic life in percentages and workers. And, as Dannin asks with her book, how can we increase their participation, involvement, and democracy exist when this is its raw

September 9, 2004, David Broder drove

home the reason why protecting workers' rights to form unions is so important. In it, he makes the link between "the decline of progressive politics, the near decline of liberal legislation, and the steady weakening of organized labor." He goes on to say that "when labor lobbied powerfully on Capitol Hill, it did not confine itself to bread-and-butter issues for its own members. It was at the forefront of battles for aid to education, civil rights, housing programs, and a host of other social causes important to the whole community. And because it was muscular, it was heard and heeded."

This is a critical time for American workers and the future of their unions. Tremendous resistance by employers, with help from the flourishing anti-union consultant industry, has inhibited workers' ability to form unions without fear of reprisal. A *New York Times* article exposed an anti-union campaign at a single factory in South Carolina where the employer allegedly paid \$2.3 million to the law firm that ran the campaign. The use of illegal campaign tactics is now so widespread that every twenty-three minutes, a worker is fired or discriminated against for attempting to exercise his or her freedom of association.

As if this were not enough of a challenge to workers, trends in the economy have shifted employment away from the heavily union manufacturing sector to the largely nonunion service sector, contributing to declining union representation. As of 2004, only 12.5 percent of the American workforce belonged to a union. And in the private sector, which the Act covers, only 8 percent of employees were union members.

Given the challenges to workers' efforts to form and sustain unions, we would expect that the National Labor Relations Board would act to protect the freedom of association now more than ever. But under the presidency of George W. Bush, the Board has issued decisions that narrow the protections of the law and fail to make the Act more relevant for today's workers. The Board has limited protections for disabled workers, graduate teaching and research assistants, and temporary employees. Its decisions have weakened the rights of nonunion workers to join together for mutual aid and protection on the job. The Board has also taken steps that could undermine the ability of employers and unions to reach private agreements on the recognition process that could further industrial peace.

In the midst of this crisis in workplace democracy, Dannin advances a controversial argument: take back the Workers' Law. She calls on workers'

rights advocates to reclaim the very words and enunciated values that form the basis of the Act and to insist that courts of law base decisions on the actual tenets of the Act. The controversy lies not in the crisis itself but in the solution Dannin offers to advance the rights of workers. Years of frustration on the part of those who have witnessed the transformation of the law from one that addresses the imbalance of power between employees and employers to one that exacerbates it has led to calls to scrap the Wagner Act altogether. Some suggest creating stronger labor laws at the state level.

Having firmly established the significance of workers' rights in American democracy, Dannin turns her attention to proposing concrete actions. She calls for workers' rights advocates to pressure the judiciary to make rulings consistent with the values laid out in the Act, such as the importance of modeling democratic citizenship at the workplace and allowing freedom of association to flourish regardless of whether it occurs in a community hall or at a workplace.

Some may agree with Dannin and follow her into the legal battle she proposes, and others will not. But none can doubt her resolve to address one of the most pressing issues of our time: the social inequity that results from the violation of workers' human rights. I welcome her ideas and the spirit with which she offers them to us. We need more scholars and practitioners to follow her lead and use their energy and skills to find solutions.

## ACKNOWLEDGMENTS

The ideas that became this book were in my head long before the first word was written. For many years, I was one of labor academics and practitioners who argued for a new Workers' Law. The expertise needed to write such a law was too daunting to take on by myself. For many years, University Press told me I should—and I should have listened. She had a point. If the work was ever to be done, I owe Fran an enormous debt. She has demanded to help me get out a book I could not write myself.

In fact, I did not take on this project alone. Many people read all or part of my work and offered able comments and criticisms. All of them have helped. There is no greater gift to a writer than the gift of a reader. I owe Robert Baillie, David Bonior, Fred Iversen, and Michael Yates for their comments and criticisms.

After Christopher David Ruiz Carrillo, I was supported in this project by making a panel on Labor and Employment Section panel at the American Schools conference in January 2005. I have had that session taped for publication in *Public Management Policy Journal*.

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After Christopher David Ruiz Cameron read the first few chapters, he supported me in this project by making the book the centerpiece for the Labor and Employment Section panel at the Association of American Law Schools conference in January 2005. He and Martin Malin also arranged to have that session taped for publication in the *Employee Rights and Employment Policy Journal*.

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