

Problems of Labor Law

The most popular misconception in the American labor movement is the idea that the working class can make real gains within the framework of the legal system. This misconception hinges on ignorance of how the official channels actually operate. For decades, the state unions have focused all of their work on maneuvering within the legal system. This takes multiple forms. They petition the national and state Labor Relations Boards for recognition and hash out grievances and contracts in mediation and arbitration. They spend millions lobbying the Democrats to pass the PRO Act or lobbying the Republicans to pass the Faster Labor Contracts Act.

For decades, this has been the dominant strategy in the labor movement, with absolutely nothing to show for it except for historically low union density ^[1] and a historically low working-class share of wealth. ^[2] The state union officials and their revisionist hangers-on have essentially reversed cause and effect regarding mobilizing the masses: instead of mobilizing workers to extract concessions from employers and the government by force, they mobilize workers to petition for concessions. This is a demonstrably failed strategy that hinges on an idealist view of the law within class society. It will be shown precisely how at every step the law is biased against working people, and consequently, how only the New Labor line of independent, class-conscious organizing shows the way forward for the American labor movement.

Problem 1: Unequal Opportunity

The first problem is internal to the language of the law itself, which is that labor law within US capitalism is written so as to grant maximum freedom to capitalist enterprise while shielding them from liability. The working class, conversely, shoulders the entire burden of protecting their rights, and maintains the hostile legal system through taxation, without receiving any guarantees whatsoever that they can exercise their rights unmolested.

In economics, there is a concept called opportunity cost. This is the cost in any decision of not pursuing the next best option. When most workers see a legally questionable management action or are affected by a legally dubious adverse employment decision, they do a quick and simple arithmetic in their head: *is the amount of effort required to fix this worth it or should I just move on to something else?* Almost universally, the conclusion is, “There’s no guarantee this would ever get fixed, the only guarantee is I would lose my time, therefore, no point pursuing legal recourse.” This is the first problem any worker trying to extract concessions through the legal system runs into: an extremely unequal cost-benefit balance that comes from using the legal channels. This inequality is baked into the language of the law.

The fact is that labor law is intended to be “remedial”, not “punitive”. This has been stated many times in the history of the National Labor Relations Board, most plainly in *Republic Steel Corporation v NLRB* (1940): “The Act is essentially remedial. It does not carry a penal program declaring the described unfair labor practices to be crimes... The remedial purposes of the Act are quite clear.” In other words, the NLRB’s goal is only to recuperate wrongful losses. The remedial-punitive distinction essentially places worker and employer in two distinct legal categories: a worker who steals their employer’s property can face arrest and criminal prosecution, but an employer who steals wages from their worker only has to deal with back pay and a potential fine. In fact, in 2025, the Department of

Labor recovered only \$259m in back wages owed to workers.^[3] This is compared to an estimated \$8b annually in *minimum wage violations alone*.^[4] It's a strange kind of "remedy" that doesn't even scratch the surface of the problem!

In fact, even some bourgeois legal scholars are aware of this imbalance. For instance, Michael Weiner writing in the *UCLA Law Review* admitted, "Empirical evidence suggests that the NLRA has failed to deter the unfair labor practices it purports to ban..." This was in service to the following thesis: "It is the contention of this Comment that the distinction between permissible 'remedial' measures and impermissible 'punitive' measures is a chimerical one that has left in question the extent to which deterrence is a valid basis for the fashioning of remedies under the Act. The *Republic Steel* rule, and the concomitant question of the scope of the Board's remedial authority, has resulted in confusion and inconsistency, and has played no small part in the Board's inability to deter unfair labor practices effectively."^[4b] Weiner laments the "confusion and inconsistency." The distinction is neither confusing nor inconsistent: employer crimes and unlawful labor practices are simply viewed differently by the justice system than "real" crimes, like selling controlled substances. One is serious and needs to be punished, whereas one is not so serious and only needs to be "remedied".

The liberal Economic Policy Institute stated in no uncertain terms, "There are literally no monetary penalties against employers that illegally retaliate against workers for exercising their NLRA rights... A second consequential shortcoming of the NLRA's anti-retaliation protections—and where it falls short of other anti-retaliation laws—is its lack of a mechanism for workers to pursue their cases on their own if they choose... A third shortcoming in the NLRA is that it lacks provisions for ensuring that workers with meritorious cases get their jobs back on an interim basis while their cases are pending. Under the current system, cases take many months, and sometimes years, to resolve. The NLRB investigates a worker's charge, determines whether the charge has merit, files a complaint, and then litigates the case before an administrative law judge. The parties can then seek review of the administrative law judge's decision by the National Labor Relations Board. In the meantime, the worker is out of work and losing pay. This creates a huge incentive for employers to drag out proceedings, especially because, as previously noted, at the end of the day, if the employer is found liable for violating the law, it faces no monetary penalties, only the requirement to deliver back pay minus deductions." In short, "The NLRA provides no real deterrent to employers retaliating against workers and interfering with their rights."^[4c]

This creates an extremely unequal opportunity cost. A random worker has to spend hours filing complaints, gathering evidence, and appearing to testify just for a chance at *maybe* getting what they should have gotten in the first place. On the other hand, any corporation can deploy their army of attorneys, political connections, and in some cases, actual criminals to make processing the claim as difficult as possible for the worker. The corporation is virtually guaranteed to get away with whatever they are doing thanks to the "remedial" doctrine, and stand to gain millions or even billions of dollars for flouting the rules, while on the other hand, workers are incentivized to simply give up their claims since the chance of revindication is so remote and the actual reward is so limited. The fact that workers have very limited access to legal resources, are generally ignorant concerning issues of jurisdiction and the actual language of relevant statutes, and lack personal connections with individuals in the state which the "captains of industry" enjoy—all this virtually bars them from participation in the legal

system which supposedly guarantees their rights. On the other hand, employers are incentivized to break the rules by the legal system's leniency.

It is basically impossible for the average full-time wage worker to understand how to navigate the official channels and keep up with developments in labor law. On the other hand, every corporation has teams of lawyers dedicated exclusively to dodging liability and finding loopholes in the law. The possibility of an employee recuperating losses versus the possibility of an employer "getting away with it" are so imbalanced as to render the actual language of the law irrelevant in most cases. In any case, when an employer or labor representative does something they aren't supposed to, they don't openly advertise, "This is the statute I'm breaking, this is who to go to about that, this is my full legal name." More often than not, a worker will perceive something is wrong, bring a complaint to the relevant regulatory agency, who will then tell the worker why it is actually not an issue.

Indeed, the Equal Employment Opportunity Commission has become the standard bearer of "not worth it to file." The EEOC was created by title VII of the Civil Rights Act to investigate and resolve unlawful employment practices. Sixty years later, 42% of working women say they have faced discrimination on the job because of their gender.^[5] Yet more than a third of EEOC filings in 2022 were for *retaliation*^[6]—meaning that out of the tiny number of workers who try to address workplace discrimination through the official channels, they end up in an even more precarious position than before. Why? Because the first step in any EEOC investigation, outlined in Title VII, is, "The Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days..." What possible reaction could be expected other than the employer immediately covering their tracks and isolating (or worse) their victim?

For most of 2025, the EEOC *and* the NLRB lacked quorum. This created a massive backlog in those agencies of complaints and petitions that were simply not being processed for months. What happened to those workers who filed? Were they expected to just not work or work in unlawful conditions for 8 months in the hope that eventually the vacant positions would be filled and their complaints maybe resolved? Obviously they can't do that. When charges are filed, life goes on, and workers still have to pay their bills. The reality is that more than a third of workers are only one paycheck from poverty^[7] and so are not interested in a prolonged legal battle.

This system also incentivizes the state unions, who accept these perverse incentives, to devote significant resources towards developing large legal departments of their own in order to navigate the system and engage with management's lawyers during bargaining. By embracing and supporting the rules put in place by the bourgeoisie, the state unions become enforcers of bourgeois legality over the workers, telling them what can and cannot be demanded according to what the bourgeois state says is allowed. On the other hand, when the legal system *does* theoretically allow for a mass mobilization of the workers to demand more, the state unionists reject this because it would require spending money and time organizing. This is exactly what happened during the COVID crisis. Even though many contracts, including at UPS, allowed for renegotiations and/or strike action in case of a national emergency, instead the largest unions signed memoranda of understanding with the employers and worked with the Trump Industry Groups to keep workers on the job.

In other words, employment law has created a paradoxical situation in the labor movement where the official labor mediation system provides very poor concessions, but because the state unionist political line is dominant, the establishment unions spend enormous amounts of money on lawyers and legal fees in order to protect their privileged position instead of actually organizing workers themselves.

This leads to constant humiliation of the state unions by the businesses they baselessly expect good faith bargaining from. Just recently, the Teamsters at Cargill were locked out of the Fort Morgan, CO plant, several months after their collective bargaining agreement expired. Instead of preparing a strike ahead of time in case of negotiations collapsing, or to hedge their bets in case of bad faith bargaining by Cargill, the Teamsters did nothing, *won* nothing, and are now filing Unfair Labor Practice charges. ^[7b] The famous PATCO strike led to the complete smashing of that union by the Reagan administration and its replacement by the scab NATCA. Less famously, PATCO had endorsed Reagan prior to the strike and even after the strike tried to disavow it, claiming to an administrative law judge:

“PATCO contends that the only record evidence of strike activity involves various PATCO locals rather than the national PATCO organization, and that while certain videotaped statements of PATCO's national president were introduced into evidence, they are insufficient to establish that the national PATCO organization called or participated in a strike. Moreover, it is asserted that there was no evidence as to when such statements by [national president] Poli were made. Specifically with respect to the allegation of a section 7116(b)(7)(b) violation [illegal strike action by federal employees], PATCO further contends that it cannot be found to have condoned the strike because there was no evidence as to when such statements by Poli were made. Specifically with respect to the allegation of a section 7116(b)(7)(b) violation, PATCO further contends that it cannot be found to have condoned the strike because there was no evidence that the national PATCO organization was aware of it.” ^[7c]

Isn't this a weird epilogue to one of the worst episodes in the US labor movement? PATCO, after years of suffering overwork in the understaffed air traffic control towers in the country, successfully organizes a mass strike in violation of federal law. Then, when it doesn't work, PATCO disavows... the local branches and the members? But again, this is the backwards logic of the law. From PATCO president Poli's perspective, it was smarter to denounce the strike and deflect responsibility in order to maybe salvage PATCO's certification than denounce the Reagan administration, self-criticize, and consolidate the wildcatters into a new labor organization. Instead of preparing the masses to solve the problems facing the labor movement—including bad faith bargaining by capitalists—the state unions do nothing, then when they are unable to fulfill their promises to the members, run to the courts begging for help. Naturally, this goes nowhere because there is no law obligating businesses to make concessions to workers or union officials.

Problem 2: Unrealistic Evidentiary Standards

If a worker does figure out how they were mistreated and brings a claim to the appropriate legal body, they then have to contend with the absurd evidentiary standards of employment law.

For many employment law cases—for instance, disparate treatment cases—there must be established intent. This standard is extremely difficult to meet for multiple reasons. For one, employees do not have access to the internal communications where intent is most likely to be established (for instance,

personal text messages between managers.) Employees are put in a position where they have to hope that the EEOC (or whoever) will accept their case *prima facie* and subsequently uncover evidence of intent which has to be presumed to exist. (Prima facie means “at first sight”, the plaintiff must provide some evidence of their claim so the case can move forward.) Secondly, in large corporations like UPS (who have been repeatedly dragged to court over discrimination), employees have multiple managers who all have their own responsibilities and intentions, and rarely get to see how those managers interact with other employees. Theoretically, it is the union’s job to bridge this gap and gather evidence to back up system-wide grievances, but in the case of the state unions—who have also been repeatedly dragged to court over discrimination—they instead function like corrupt police responsible for maintaining labor peace, including by warning management who the problem employees are through the grievance system. Workers are legally obligated to exhaust the grievance system before bringing a breach of contract to the courts (see for instance *Tortolano v. Lemuel Shattuck Hospital* from 2018), which screws them because: 1. the grievance system is overseen by the very people accused of misconduct, i.e. corporate and state union representatives who have an interest in protecting their CBA 2. the grievance system is not anonymous, exposing the employee to retaliation 3. the initial grievance has to spell out the employee’s issue which essentially warns the company how they need to start covering their tracks and 4. grievance panel hearings’ evidentiary standards are lax, to say the least, often putting the aggrieved worker in a battle of “he-said-she-said” with the employer.

The need to prove intent (in some cases) and prove that the administrative remedies already failed (in others) are only a part of the issue. In arbitration cases, there are *no evidentiary rules at all*. An arbitrator meets with both parties, who are each given the chance to explain why their final offer makes the most sense, and then the arbitrator picks one. This means that in arbitration, what matters most is not the actual facts, but the ability to appeal to the biases of the arbitrator. In one instance at a Connecticut Bar Association employment law symposium, an attorney asked an arbitrator how do they know what either side is saying is even true—to which the arbitrator responded, “We just do.” That is how seriously the people making decisions that affect the livelihoods of thousands of people take the facts of arbitration cases.

Not only this, but evidence that is found to be inconvenient to an employer in court can simply be disqualified by judges. *Wal-mart Stores, Inc v Dukes* (2011) litigated the issue of certifying a class of more than a million women who suffered monetary losses due to discrimination in Walmart’s employment practices. Dukes showed Walmart systematically did not promote women, and that her male coworkers doing the same job as her were paid more. Note that, “These plaintiffs, respondents here, *do not allege that Wal-Mart has any express corporate policy against the advancement of women. Rather, they claim that their local managers’ discretion over pay and promotions is exercised disproportionately in favor of men, leading to an unlawful disparate impact on female employees...*” [emphasis added] Simple and straightforward, one would think: Walmart does not need to have a formal policy of discrimination against women in order to illegally do so, and Dukes and company alleged that to their knowledge there was no such formal policy, but that nonetheless male employees were systematically promoted and given raises over female employees for no lawful reason, which gave rise to their legal claim.

In order to prove that the class of women Walmart employees had a matter of fact common to the entire class, Dukes had: “statistical evidence about pay and promotion disparities between men and women at the company, anecdotal reports of discrimination from about 120 of Wal-Mart’s female employees, and the testimony of a sociologist, Dr. William Bielby, who conducted a ‘social framework analysis’ of Wal-Mart’s ‘culture’ and personnel practices, and concluded that the company was “vulnerable” to gender discrimination.” *Again*, simple and straightforward, one would think. Not so for the Supreme Court, unfortunately: “The only corporate policy that the plaintiffs’ evidence convincingly establishes is Wal-Mart’s ‘policy’ of allowing discretion by local supervisors over employment matters. On its face, of course, that is just the opposite of a uniform employment practice that would provide the commonality needed for a class action; it is a policy against having uniform employment practices... To be sure, we have recognized that, ‘in appropriate cases,’ giving discretion to lower-level supervisors can be the basis of Title VII liability under a disparate-impact theory.... To the contrary, left to their own devices most managers in any corporation—and surely most managers in a corporation that forbids sex discrimination—would select sex-neutral, performance-based criteria for hiring and promotion that produce no actionable disparity at all...” In other words, Walmart did not have a centralized discriminatory policy, but rather let each store figure it out for themselves, which—accidentally!—had the same outcome as if they did have a centralized policy of disparate treatment. And in spite of the fact that the court had already ruled that this distinction doesn’t matter, the court ruled against certifying the class on the *assumption* that Walmart managers were acting in good faith. Since Walmart had circulated an internal memo asking its managers not to treat their employees in a discriminatory way, that was all the evidence the court needed. The fact is that the Supreme Court of the American capitalist state was never going to side with 1.5m working women over Walmart, even if Dukes had entered a statement from Walmart into evidence saying “We discriminate against our women employees.”

In short, evidentiary standards in employment law vary from non-existent for employers in arbitration cases to heavily biased against employees who are given an unrealistic burden to prove employer wrongdoing. On the other hand, employer liability can be deflected simply by telling managers not to break the law.

Problem 3: The “Equality” Problem

Treating unequal parties equally just reproduces inequality. This basic logic has always eluded the courts. As Lenin said in *The State and Revolution*, “All law is an application of an equal measure to different people who in fact are not alike, are not equal to one another. That is why the ‘equal right’ is violation of equality and an injustice.”

To try to solve this issue as it relates to employment discrimination, the Supreme Court established what is called “burden-shifting” in *McDonnell Douglas Corp. v. Green* (1973). What this means is, first, the plaintiff must show some kind of adverse action by their employer. If they do this, the burden of proof shifts onto the employer, who then must prove they had some lawful reason for taking the action. (For example, not promoting a woman to a management position because she is regularly late for work.) If they are able to provide a lawful justification for their adverse action, then the burden once

again shifts onto the plaintiff, who then must prove that this justification is pretextual, that is, just a cover for discrimination. But this does not even come close to solving the problem.

The facts of Green's case, which originated the framework, show how circular this logic is. Green was an employee who alleged employment discrimination by McDonnell Douglas Corp. Green took part in an anti-racism protest against his employer which disrupted their operation briefly. Subsequently, McDonnell Douglas refused to hire him for a job, citing his participation in disrupting their operation. This is a chicken-egg issue: if McDonnell Douglas Corp had operated equitably from the start, there would have been no protest, and therefore no alleged disruption by Green, and therefore no lawful justification to not hire him. But here is how the Supreme Court understood it: "There are societal, as well as personal, interests *on both sides of this equation*. The broad, overriding interest, shared by *employer, employee, and consumer*, is efficient and trustworthy workmanship assured through fair and racially neutral employment and personnel decisions." [emphasis added] Isn't this odd? It was Green who was fighting on behalf of the "societal interest" of "fair and racially neutral employment". And it was Green who was arrested for this activity, and it was the court who found the arrest a valid reason not to hire him! The so-called "burden-shifting" logic ensures that the burden is *always on the victim of an adverse employment action*, whether it is in proving harm resulting from an employment action, proving one's membership in a protected class, or proving intent on the part of the employer.

Actually, it gets even more absurd. The Department of Justice admits they have no conception of what constitutes *an employer adverse action or harm in the first place*: "With respect to what constitutes adverse action or 'harm,' there are 'no bright-line rules,' *Wanamaker v. Columbian Rope Co.*, 108 F.3d 462, 466 (2d Cir. 1997), so courts and agencies must make that determination in each case."^[8] How is an employee supposed to prove to the state that they suffered harm as a consequence of a decision made by their employer when *the state can't even tell employees what constitutes harm*? The reality is the state doesn't have a functional definition of harm or adverse action because *they don't need one* because they aren't prosecuting employers for it anyway.

Employment law is similar to contract law in the sense that the court takes as its premise two parties—employer and employee—entering a mutually beneficial agreement for the duration of the employment. The idea that employer and employee contractually deal with each other as equals is simply absurd. Employers have wide discretion when it comes to decision making, as the law is written so as not to disrupt the so-called "entrepreneurial prerogative of management". (That is, the "right" of management to run their shop in a way that maximizes profit.) On top of this, the courts have established the principle of "industrial common law". Corporations, through the power of past practices, are able to determine their own rules provided they don't flagrantly contradict some statute. The courts have given employers' excuse of "this is how we've always done it" an actual legal basis, commonly known as "the law of the shop". This doctrine was plainly expressed in *United Steelworkers of America v Warrior and Gulf Navigation Company* (1960): "The labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law—the practices of the industry and the shop—is equally a part of the collective bargaining agreement although not expressed in it." *Theoretically* this doctrine is extended to employees as well. But it's just absurd to pretend that a single employee, or even a shop full of employees with decades of experience working for a company, has the

same ability to dictate industrial common law as a nation-wide company that has been around for a century or longer.

Problem 4: Ideological Problem in Interpretation

Thus far it has been shown that workers face nigh-insurmountable obstacles in starting a case and in proving their claims, and even so, must contend with the logical inconsistencies of a legal system based on the principle that all parties are equal in the eyes of the law. But that is not all. There is also the problem of the ideology of the people *interpreting the law*, which in our case means the bourgeois ideology of capitalist bureaucrats.

The *Vaca* decision is a great example of this. *Vaca v Sipes* (1967) established the standard for wrongdoing in state unions, namely, that the union officials have to be shown to make decisions that are “arbitrary, discriminatory, or in bad faith.” At the same time, *Vaca* established that union officials have discretion when it comes to deciding what grievances to pursue and how far: “it does not breach that duty merely because it settles a grievance short of arbitration...” In other words, while unions have the duty to fairly represent their members, they do not have any legal obligation to actually pursue the members’ grievances.

Think about what this means in closed shops where the union is certified as the exclusive agent of an employee. The most common way union officials screw their own members is by systematically failing to pursue their grievances. By banning “arbitrary, discriminatory, or bad faith” treatment *but giving union officials the prerogative of which grievances to contest*, the court essentially signed off on union officials’ ability to be negligent in their “representation” of union members. The union officials just have to make sure their treatment of the members can be passed off as “reasonable” in court and takes place within the bounds of an established grievance process. Collusion between union officials and businesses in sabotaging workers’ claims in the grievance process is commonplace in large shops with poorly trained management. Union officials are always eager to settle because it makes their job easier. Workers need to be protected from this. But the backwards ideology of the justices turned this into “*we need to protect the union officials*” from the members suing them for failing to adequately represent them and prematurely settling grievances!

Religious freedom is another concept that has been totally turned on its head by the legal system. Oppression of religious minorities in the US has always been an issue, from General Order 11 expelling Jews from Union territory in the South during the Civil War to the lynching of Sikhs after the 9-11 attacks. Yet *Burwell v Hobby Lobby Stores, Inc* (2014) is an example of how “religious freedom” in the context of employment law actually means “freedom for corporations to pick and choose which laws to follow.” This case litigated the issue of whether or not the Religious Freedom Restoration Act allowed for-profit companies to refuse to cover the cost of contraceptives for their employees, which was required by the Affordable Care Act. Hobby Lobby had a choice between paying for their employee’s insurance (and by extension, contraceptive care they protested on religious grounds) or paying a fine (which was lower than the average cost of providing insurance incidentally). The court found that not only was Hobby Lobby’s religious freedom violated—never mind the religion of their employees, of course—but that the ACA fine violated the least-restrictive-means standard! The HHS, of course, argued that Hobby Lobby had no basis to claim their employees’ healthcare decisions violated the

Hobby Lobby owners' religious freedom. The court, on the other hand, stated: "HHS argues that the connection between what the objecting parties must do and the end that they find to be morally wrong is too attenuated because it is the employee who will choose the coverage and contraceptive method she uses... The belief of the Hahns and Greens [business owners] implicates a difficult and important question of religion and moral philosophy, namely, the circumstances under which it is immoral for a person to perform an act that is innocent in itself but that has the effect of enabling or facilitating the commission of an immoral act by another. It is not for the Court to say that the religious beliefs of the plaintiffs are mistaken or unreasonable. ... The Court's 'narrow function . . . is to determine' whether the plaintiffs' asserted religious belief reflects 'an honest conviction,' *id.*, at 716, and there is no dispute here that it does." So, because the employer "honestly"—in the eyes of the court—believes his employees will go to hell for using contraception, and by extension so will he by doing business with the insurer that covers the contraception, the *laws must be made to conform to his will*, not the other way around. This case is brilliant because it lays bare the ideological premise of the court. Liberal analysis of the case generally focuses on the "corporations have freedom of religion" aspect of it. More fundamental than that is the fact that the business is identified entirely with its private owners, who are given unlimited prerogative in how the business operates on the basis of "religious freedom".

U.S. v Skrametti (2024) is even further confirmation of the ideological tilt of the court. At issue was the legality of banning the use of certain medications/procedures for transgender minors seeking to use them for gender-affirming care. This is blatantly age discrimination (since the healthcare was specifically banned for minors only, not transgender adults) and sex discrimination (*Copeland and Bostock* established that discrimination against transgender people is necessarily sex-based discrimination). Clearly, the law was passed with the specific intent of discriminating against transgender youth, as treatments like puberty blockers and hormone supplements weren't banned outright *but specifically their use in trans healthcare*. Why was this allowed? Because the long-term ideological project of the justices requires sacrificing healthcare on the altar of profit and "religious freedom", and this decision serves the court as a step towards upholding a total ban on transition-related care. The arguments the court marshaled in defense of this decision are incredible. This is how delusional the highest court in the land is: "The court next declined to recognize transgender individuals as a suspect class, finding that *transgender individuals are neither politically powerless nor a discrete group defined by obvious, immutable, or distinguishing characteristics.*" [emphasis added] And further, in Thomas' concurring opinion: "There is no medical consensus on how best to treat gender dysphoria in children. ... There are particularly good reasons to question the expert class here, as recent revelations suggest that leading voices in this area have relied on questionable evidence, and have allowed ideology to influence their medical guidance." Doctor Clarence Thomas is apparently very worried about medical consensus, but not worried enough to notice that "allowing ideology to influence medical guidance" is *precisely what the Tennessee bill he is upholding accomplishes*. The transphobes who authored the bill had no interest in the medical consensus in favor of gender-affirming care for children experiencing gender dysphoria. Yet the Court shamelessly pulled out that exact argument on their behalf, even going further to claim, "Transgender individuals have not been subjected to a history of discrimination that is comparable to past discrimination against the groups we have classified as suspect or 'quasi-suspect.'" It's worth noting that the decision itself refers to "sex transition treatments" instead of gender-affirming healthcare. Did they just not notice that this

contradicts their claim that the ban has nothing to do with sex discrimination? Of course not. The arguments provided are just a post hoc rationalization of the Republican Party's attack on transgender people. This is clear from the constant goal-post shifting: trans people haven't been discriminated against historically and therefore aren't a protected class, "detransitioners" exist (according to Barrett's concurring opinion—in reality these are just cisgender people) therefore transgender people aren't a definite, immutable class at all, but even if they were the law isn't discriminatory towards them because states have the right to regulate healthcare, but even if it was discriminatory it would be good because gender-affirming care might be harmful. (This possibility is floated in Barrett's concurring opinion.) There is nothing the transgender or medical community could have said that would have changed this verdict.

An example of this in recent employment law is Trump's unilateral termination of federal collective bargaining agreements. There is nothing in the Constitution that enables the President to terminate collective bargaining agreements established between an executive branch agency and its employees. Yet Executive Order 14251 says, "It is also hereby determined that Chapter 71 of title 5, United States Code, cannot be applied to these agencies and agency subdivisions in a manner consistent with national security requirements and considerations [statute on Federal Service Labor Management Relations]... 1-401. The Department of State. 1-402. The Department of Defense ... 1-403. The Department of the Treasury, except the Bureau of Engraving and Printing. 1-404. The Department of Veterans Affairs. 1-405. The Department of Justice. 1-406. Agencies or subdivisions of the Department of Health and Human Services... 1-407. Agencies or subdivisions of the Department of Homeland Security... 1-408. Agencies or subdivisions of the Department of the Interior... 1-409. The Department of Energy..." Etc. So Trump signed an executive order simply exempting everyone in the executive branch from federal employment law, virtually nullifying the statute. And what is the state union answer to their contracts being terminated for no reason? Challenge it in court! And, naturally, the Ninth Circuit Court of Appeals found in *AFGE v Trump* (2026): "The panel held that on this record the government has shown that the President would have taken the same action even in the absence of the protected conduct. Executive Order 14,251 discloses no retaliatory animus on its face and instead expresses that the President's primary concern with union activity was its interference with national security. Accordingly, because Executive Order 14,251 has a legitimate grounding in national security concerns, apart from any retaliatory animus, the government on the existing record has shown that the President would have taken the same actions in the absence of the asserted retaliatory intent." ^[9b] In other words, the executive order circumventing the law *could have been illegal* if it were undertaken with "retaliatory intent" against the specific unions that had the bargaining agreements. But since in the eyes of these judges, Trump "has a legitimate grounding in national security concerns"—which is absurd considering the full list of affected agencies and the actual material of the CBAs—federal employment law is meaningless. What the "national security concerns" are in the National Science Foundation is anyone's guess.

In short, the actual law gets thrown out the second it conflicts with the ideology of the people tasked with interpreting it. The failure of the entire government to do anything about Trump's decades-long crime spree is proof of this. Contrast the lax attitude taken towards the racketeering and corruption activities of the Trump Organization or the sex trafficking activities of the Epstein organization with the rush to throw out the NLRB-certified collective bargaining agreements of hundreds of thousands of

federal employees on the basis of absolutely nothing. The law is interpreted in the US by people whose sole belief is in Trump and Trump's alleged mandate from heaven to lead American imperialism to a new Golden Age—if one minute he says this is legal and that is criminal, and then the next minute says this is criminal and that is legal, his judges make it their mission to justify it. The difficulties of working in such a system are readily acknowledged by the American Bar Association, who admitted, “We see wide-scale affronts to the rule of law itself...”^[9c] Why should workers take employment law seriously when even the attorneys admit the legal system is dysfunctional? It simply does not make sense to hinge the success of the labor movement on the decisions of judges who are fanatically dedicated to preserving the rights of the bourgeoisie—and specifically Trump personally—above all else.

Problem 5: Practical Problems in Enforcement

The final problem, and the one most abstracted from the letter of the law, is the issue of the practical enforcement of the law. As President Andrew Jackson said after *Worcester v Georgia* (1832), “The decision of the supreme court has fell still born, and they find that it cannot coerce Georgia to yield to its mandate.” In other words, it is not the legal decisions that matter so much as the ability to enforce them. Who gets hauled before the courts by the police, who gets thrown in jail, who gets beaten or shot in the streets, and who gets away are very much practical problems the state decides on.

On the large scale, there is the constant issue of agency staffing and equipping. As noted above, for most of 2025 the EEOC and NLRB lacked quorum. This effectively paused the work of those bodies and created a massive backlog. Of course, “real” law enforcement—meaning the gargantuan local, state, and federal agencies tasked with defending private property and oppressing the masses—has never and would never pause their work. There are 26 NLRB regional offices in the US, with one to two dozen staff each, tasked with investigating unfair labor practice charges. Less than one thousand investigators nation-wide charged with investigating (note: investigating, not violently arresting alleged perpetrators) ULPs, compared to 36,000 uniformed police officers *in just New York City*.^[10] Both violent crime and property crime are at historic lows for the US^[11], yet spending on law enforcement continues to hit historic highs.^[12] Employment law enforcement is not one percent as well-funded or staffed as law enforcement agencies tasked with protecting property. President Trump would never deploy troops to defend workers' wages despite billions in theft every year, and nobody would ever expect him to. Nor would anyone expect the NLRB's regional offices to invest in military-grade firearms and vehicles to violently crack down on Unfair Labor Practices. It is absurd to even consider. Yet ICE is given billions to do exactly that for routine immigration and customs investigations. Why? Because in US class society undocumented workers are subjected to a much higher rate of exploitation and subsequently require much more force to be kept in line, while management, the imperialists, and their cronies are legally given free rein to ride roughshod over the working class.

In fact, contemporary American law enforcement was built on opposition to the labor movement and Communism. The Federal Bureau of Investigation was founded to crack down on political dissidents and the very first state police agency was the Pennsylvania State police, founded as a response to the Anthracite Strike of 1902. The Communist Control Act was passed in 1954 to provide legal backup for the earlier purge of Communists from civil institutions, particularly the labor unions. The U.S. Attorney

General during the Russian Revolution, Thomas Gregory, approved of the formation of the American Protective League, a vigilante secret police backed by auto executive Henry Ford and advertising executive Albert Briggs to crack down on anti-war and pro-labor/Socialist dissent.^[12b] In short, when the law fails in some way to advance the interests of the bourgeoisie, the law is either changed, ignored, or circumvented entirely.

Inside the labor movement, laws just aren't applied to pro-capitalist union officials. Consider the Teamsters' RICO case. The whole point of RICO was to dismantle criminal enterprises. Instead, the government *took over* this criminal enterprise in order to maintain labor peace in the logistics industry. Through the Consent Decree, the government established formal control over the union through the obviously conflicted Independent Review Board, which included Anheuser-Busch board member (the Teamsters maintain a CBA with Anheuser-Busch) and former CIA and FBI director William Webster. The IRB was a joke, and the Independent Disciplinary Officer (the successor to the IRB) continues to assert ongoing criminal activity (mainly embezzlement of union funds), and in spite of this, the Teamsters are allowed to operate with the blessing of the NLRB! None of the current UPS workers voted to certify the IBT as their exclusive bargaining agent (except for the tiny number of technical specialists the IBT recently recruited) and only a minority of them voted in favor of the current CBA—and even those votes were coerced—and UPS blatantly ignores the CBA in its day-to-day functioning, yet the state considers the CBA legitimate. Why? *Because as long as enough UPSers worship the CBA and follow the Teamsters, there can be no strike action*, which is the *actual* basis of the NLRA. [See *A Worker's Intro to the NLRB*.] Even though the CBA was approved by a known criminal organization with a tenuous connection to the UPS workers, and its language contradicts the rights supposedly enshrined in the NLRA, it is considered legitimate by the state because it serves its purpose of hindering the labor movement in the logistics industry. The agreement is enforced *only to the exact extent* that it insures against strike action.

Thus, the sum total of *the text of employment law is filtered through the actual practical fact of enforcement*. The NLRB only has powers of "investigation and hearings". When it comes to defending private property, expect armed goons kicking in your front door. When it comes to defending labor rights, the most you can expect from the NLRB is investigations, hearings, a cease and desist order, or reinstatement with or without back pay. Since the NLRB "is intended to prevent and remedy unfair labor practices, not to punish the person responsible for them", the Board will give you a stern talking to if you violate employee's rights, very stern indeed!

Conclusion

The letter of the law, the legal process for resolving claims, evidentiary standards, the ideological obstacles raised by judges and arbitrators and mediators, and finally, the law enforcement agencies—all these forces are arranged against the working class. The reliance on the legal system to supposedly "defend existing gains" is totally fallacious. The revisionist organizations that promote this line are exploiting the ignorance of the masses regarding the actual functioning of the official channels. The fact is that law enforcement takes away the masses' rights by force and the legal system codifies their

status as wage slaves. Every step in the legal process is meant to be a barrier protecting the ability of the bourgeoisie to buy labor cheaply.

The revisionist organizations active in the labor movement are stuck in the swamp of legalism. For example, this is how the revisionist Communist Party USA characterizes the class struggle: “‘What you win on the shop floor or in your contract, the boss can take away in the legislature.’ This expresses the totality of the class struggle — it’s economic, it’s political, it’s legal, it’s social.”^[13]

Actually, far from being the totality of the class struggle, this is the totality of the liberal outlook on the working-class. The working-class is supposed to confine itself to haggling collective bargaining agreement details and lobbying, while exploitation and oppression go on uninterrupted. And the revisionist Jacobin is even more crude: “Kautsky rejected the relevance of an insurrectionary strategy within capitalist democracies. His case was simple: the majority of workers in parliamentary countries would generally seek to use legal mass movements and the existing democratic channels to advance their interests. ... History has confirmed Kautsky’s predictions.”^[14] This is just not true. History has shown that the “existing democratic channels” are not a viable vehicle for advancing the interests of the majority of workers. What differentiates a useless liberal like this from a militant labor organizer is the liberal's disbelief in the masses and their misplaced confidence in the ability of "existing democratic channels" to advance the interests of the workers. Anyone with any knowledge of employment law knows it was not written to advance the interests of the working class.

Every Marxist knows that, “The executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie.” [*The Communist Manifesto*] But even non-Marxist “rank and file” workers understand the basic idea that the capitalist state isn’t there to serve them. Every aspect of the law is rigged against the working class and that is *precisely why the state unions prefer it over mobilizing the masses*. The law has no existence outside of the special bodies of armed men that enforce it. As there is no special army aimed at protecting the rights of the people, the limited concessions that have been granted to the masses stand on nothing but the goodwill of the state, which lessens day by day. This is why, to the average observer, the union leaders seem to be stupidly aiding in the destruction of their own organizations—shooting the horse they are riding as it were—but this is simply the perverse logic of state unionism. Either side with the workers and face removal from union office by the state, or side with the state and watch your position steadily erode. The revisionists try to forestall both of these outcomes by mobilizing the masses within the framework of the state unions, buying the union officials time by increasing their bargaining power in the eyes of the bourgeoisie (i.e. “would you rather deal with me or millions of rebellious workers”). But this strategy is more and more expensive and less and less effective as shown by the “historic wins” of 2023. [See *Political Economy of the American Labor Movement*.]

The state unions worship labor law because it enshrines their domination of the masses. Its essential content is corporatization of the masses, which means clearly delimiting their rights and then placing them into the custody of a third party to be sold off. The largest private sector collective bargaining agreement in the US is the United Parcel Service-International Brotherhood of Teamsters agreement, and this agreement specifically bans UPS workers from striking or making their own agreements with UPS, rights that are supposedly protected by the NLRA. That is why the legislative solutions state unionists put forward are focused entirely on expanding the existing framework, which allows them to

establish obligatory wage deductions and profit off betraying the masses' interests. This is also why organizations like the Democratic Socialists of America—whose “highest national priority is to pass the PRO Act” [see *DSA: Bourgeois Center in the Labor Movement*]—play a reactionary role in the labor movement.

Are we saying never use the official legal channels? No. The fact is, at some stage in any campaign they will have to be contended with, and there are certainly concessions that can be won through them. What we *are* saying is that *organizers must clearly communicate the limits of working within these channels* to the masses and their organizing must *firstly be based in the class-conscious mobilization of the masses*, and any use of the official channels must be a *secondary aspect of the campaign*. Nobody knows this better than the workers of the New Labor Organizing Committee. Time and again organizing campaigns get derailed by revisionists who demand the workers limit their demands to what is acceptable to the arbitration boards or the local government or whoever, and then they fail to even achieve those, and subsequently the workers are so demoralized they give up on collective struggle altogether. Workers must understand the limits of employment law in order to mobilize the masses outside of the framework of the established labor institutions, including the labor regulatory agencies, the state unions, the reformist caucuses, and the revisionist parties.

For employment law to function as anything more than a hypocritical cover for imperialist domination of the labor movement, there needs to be a large and well-trained group of people in the shops who are all-round knowledgeable and can mobilize the masses of workers to solve their collective problems. The name for this kind of institution is labor union. The state unionists think they can skip over this part of the labor movement by dealing with the bourgeois state and employers directly, but they can't. This produces constant vacillations on their part between promoting labor law reform like the PRO Act as the ultimate saving grace, and begging the masses to mobilize themselves as their only salvation. Think about how pointless it is to focus on reforming the NLRB as a central issue for the labor movement right now. What evidence is there justifying the working class staking their livelihoods on these institutions? Does it really make sense to preach to the workers, "We have to go along with this, it's these meager concessions or nothing?" At what point does trashing the existing collective bargaining framework become simpler than tinkering with it? The two biggest reform efforts are the Faster Labor Contracts Act, which just forces workers to accept arbitration's decision for a first contract if they can't get one otherwise, and the PRO Act, which makes it easier to set up state union bargaining units. Is this really the best that can be done right now after a string of alleged “historic victories” and “the most pro-labor president”? The reformists who champion these measures are utopians. They think tinkering with labor law, and specifically by expanding its worst aspects like obligatory membership and arbitration, will improve the condition of the working-class. In reality, these measures only improve the ability of the bourgeoisie to control the working-class.

What needs to be done is new forms of organization must be developed that enable the working class to build popular unions that are capable of mobilizing large numbers of wage workers, especially the lowest wage workers, while still being able to function within the outdated and restrictive framework of American employment law. This is the challenge the NLOC is working to overcome. Too many campaigns are lost the moment the legal system gives a modicum of recognition to a labor organization as part of a strategy of co-optation—Amazon, Starbucks, REI, the list goes on. Other campaigns fail

because they turn the principle of independence into a dogmatic rejection of any permanent structure—see the wildcat movements over the last several decades. The potential and need for unity is there, but nothing will happen until the masses reject the dogma of state unionism which has trapped them in a hostile legal system designed to restrict their rights and the progress of the labor movement.

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