



# Protecting Workers by Strengthening the Right to Organize

BY RICHARD D. KAHLLENBERG AND MOSHE MARVIT

In Dr. Martin Luther King's final march, on behalf of striking sanitation workers in Memphis, the civil rights leader's grace note was his belief that the advancement of economic justice and racial justice were inextricably intertwined. As he had previously told the AFL-CIO, "Our needs are identical with labor's needs: decent wages, fair working conditions, livable housing, old age security, health and welfare measures, conditions in which families can grow, have education for their children, and respect in the community. . . . The duality of interests of labor and Negroes makes any crisis which lacerates you a crisis from which we bleed." In his final Sunday sermon at the National Cathedral, Dr. King called his vision of economic justice nothing less than his "last, greatest dream."

Unfortunately for our country, Dr. King's final dream has still gone unfulfilled. While the Civil Rights Act in 1964, and its expansion in 1991, among other victories, have advanced racial justice by leaps and bounds, by contrast, since the 1960s, the American labor movement has seen enormous setbacks. Labor once dreamed that, with the vanquishing of Jim Crow, the racism that had kept working-class whites in the South from uniting with blacks would diminish and Southern states could be unionized; but organized labor did not conquer the South. Instead, to a significant degree, Southern anti-union practices have spread through much of the country. From its peak in the mid-1950s, organized labor has declined from more than one-third of private sector workers (and one-half of the industrial workforce) to less than one-tenth. Today, even public sector unionism is under attack in several

states and from the U.S. Supreme Court. Meanwhile, economic inequality has skyrocketed to the point that the top 1 percent of Americans own more than the bottom 90 percent, and income from productivity gains have gone almost exclusively to the top 10 percent. Economists agree the two phenomena are connected, and that rising economic inequality in America is due in some significant measure to the weakness of the American labor movement.

A key difference between the two movements has been their degree of protection under federal law. Whereas the Civil Rights Act, under its 1991 amendment, includes the awarding of not only back pay but compensatory and punitive damages of up to \$300,000, as well as the opportunity for legal discovery and access to jury trials for racial discrimination in the workplace, the National Labor Relations Act of 1935 (NLRA) has proven largely ineffectual in protecting workers from being disciplined or fired for trying to organize a union. Under the NLRA, processes of enforcement are lengthy and arduous; opportunity for discovery is extremely limited; and jury trials are not an option. Faced with the prospect of having to negotiate substantial wage and benefit increases with a union, businesses have a strong financial incentive to fire organizing employees and risk paying the penalties as a cost of doing business. Labor lawyer Thomas Geoghegan writes in his 1991 book, *Which Side Are You On?:* "An employer who didn't break the law would have to be what economists call an 'irrational firm.'"

To adequately defend labor organizing and the dignity of work, Congress should extend significant protections—modeled after those in the Civil Rights Act described above—to workers attacked for organizing. Such a law would not only give workers a private right of action to collect damages—it could also spawn a cultural shift in employer behavior. Employers who are found guilty of racial or gender discrimination are today seen to have done something shameful, a seismic shift from the days when some business routinely discriminated based on race or national origin. Modeling labor organizing protections after civil rights legislation could, over time, bring about a cultural shift in which the country sees corporations that fire employees for trying to form a union, join the middle class, and have a say in the workplace, as morally suspect—as they already are seen in Europe.

Americans long to be part of something larger than themselves, and just as promoters of equal educational opportunity and a cleaner environment have characterized their causes as part of this generation's civil rights Movement, so labor organizing—which shares with the civil rights movement the basic quest for human dignity—has a very strong claim to that mantle. In Memphis, Martin Luther King understood that the fate of the labor movement and the civil rights community were inextricably bound. Now is the time to give organized labor the same protections found in the Civil Rights Act itself.

## Notes

1 Richard D. Kahlenberg and Moshe Marvit, "A Civil Right to Organize," The Century Foundation, January 23, 2013, <https://tcf.org/content/commentary/a-civil-right-to-organize/>.

2 Ibid.

3 Ibid.

4 Ibid.

5 Ibid.

6 Ibid.

7 Ibid.