

**CATHOLIC SOCIAL DOCTRINE
AND
WORKER JUSTICE:**

A Call to the Common Good

July 2008

CATHOLIC SCHOLARS FOR WORKER JUSTICE

*Promoting Catholic Social Teaching on the Indispensable Role of Unions for Every
Profession*

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INTRODUCTION.

The recently published *Compendium of the Social Doctrine of the Church*¹ is a remarkable summary of 2000 years of official Catholic teaching on justice and peace issues. Concerning the role that labor unions play in civil society, the *Compendium* teaches that labor unions “are a positive influence for social order and solidarity, and are therefore an *indispensable element of social life*.” (305, emphasis in original) The *Compendium* further states that “this makes the practice of solidarity among workers more fitting and necessary than ever.” Labor unions, rather than being a relic of the industrial age, have spread to every contemporary profession. Teachers, health workers, airline pilots, farm workers, civil servants, janitors, and police are some of the many professions that bargain collectively today. All of these unions play a significant role in the pursuit of the common good, and society would be the poorer if they did not exist. The Catholic Church teaches that “*unions have the duty of acting as representatives working for ‘the proper arrangement of economic life’*” and must play an active role “in the whole task of economic and social development and in the attainment of the universal common good.” (*Compendium*, 307)

As we note below (see number 3), it is a mistake to think that Catholic Social Teaching on workers’ rights began in 1891 with the publication of *Rerum Novarum*. It is also a mistake to hold that Catholic teaching on human work, economic justice, and workers’ rights is limited to Catholics alone. The Catholic tradition is based on a rich humanistic philosophical tradition that is found in the wisdom of such great thinkers as Aristotle (Greek), Avicenna (Muslim), and Maimonides (Hebrew), all of whom had an influence on the great medieval scholastic, St. Thomas Aquinas. Catholic teaching is also rooted in the Hebrew prophets, the teaching of Jesus Christ, and in the rich tradition of the Catholic Church. Hence, we believe that the Church’s views on human work have universal applicability. Workers everywhere and of every faith or no faith can benefit from the wisdom that is found in Catholic Social Doctrine on human work. Consequently, we intend to work with all people of good will -- no matter their religious affiliation -- in our common quest for social justice.

It is with a considerable amount of sadness and embarrassment that we note that some Catholic employers – despite the Church’s exceptionally strong support for labor unions – often act no differently than their secular counterparts when it comes to unions. These employers must be called to justice; they must come home to the tradition. We also want to be clear that we applaud Catholic employers – and they are many – who respect and encourage workers’ rights to organize and to form unions. Indeed, we believe that Catholic employers should employ an “ethic of welcome” when workers inform them of their intent to organize. Clearly, there is an *a priori* presumption *for* labor unions in Catholic Social Doctrine.

Regrettably, however, attacks on unions and the contribution they make to the common good are more virulent and sophisticated than ever. A whole industry has developed internationally offering employers “union avoidance” strategies that seek to prevent, block, or bust unions among workers.² These firms make millions and millions of dollars attempting to destroy unions

¹ Pontifical Council for Justice and Peace. (2004) *Compendium of the Social Doctrine of the Church*. Libreria Editrice Vaticana. United States Conference of Catholic Bishops, Washington, D.C.

² To understand the historical development of “union avoidance” firms (the term “strike management” is also sometimes used) see: J. Logan. (2006) “The Union Avoidance Industry in the United States. *British Journal of Industrial Relations*, 44:4: 651-675. See also Marty Levitt & Terry C. Toczynski. (1993) *Confessions of a Union Buster*, Crown Publishers, and Robert Michael Smith. (2003) *From Blackjacks to*

and to change or to subvert civil laws that protect workers' rights. This assault on workers and unions is an attack on human dignity itself. Some employers and "union avoidance" firms are shattering the very foundation of a social order that is based on the right to association, a just wage, medical benefits for a worker and her or his family, job security and finally "the right to a pension and to insurance for old age, sickness, and in case of work-related accidents." (*Compendium*, 301) When sponsors, trustees, CEOs, and other administrators in Catholic institutions hire or cooperate with "union avoidance" firms, in our judgment these individuals stand in serious ethical violation of Catholic Social Doctrine. Their actions may even constitute personally culpable participation in social sin.

As scholars who are thoroughly familiar with Catholic Social Doctrine on human work we cannot be silent in the face of these assaults on human dignity. We stand in solidarity with workers on every continent who may be shunned, or fired, or jailed, or tortured, or even killed for the advocacy of social justice and the right to organize unions. Rather than divide worker from employer, we seek to be agents of reconciliation that will create justice for all sides in a struggle. Those who are part of the problem should be invited to be part of the solution.

Finally as scholars who are committed to Catholic teaching on justice, we acknowledge the presence of sin in all human social institutions. Labor unions have, at times, misrepresented their workers and some have served as union busters in their own right. While we acknowledge the presumption for unions in Catholic thought, we do not intend to turn a blind eye to corruption or injustice in any union. Lastly, we acknowledge our own sin and humbly pray that, despite our own faults, we may be instruments of God's saving justice for the world.

Some employers – including Catholic employers – acknowledge the right of workers to form unions but are quick to add that workers also have the right *not* to form unions. Far from being "necessary" for a just social order as found in Catholic Social Doctrine, unions are merely utilitarian choices that are a matter of "prudential judgment." Consequently, the decision for or against unions is purely a matter of pragmatism absent any moral dimension. This amoral approach to unions ignores ethical judgments about the social good of unions and logically leads to a mechanistic approach to unions that concentrates on matters of law and custom rather than on moral duty. Hence, civil law and its procedures become the primary determinant of whether workers should, or should not, form unions to bargain collectively with their employers. Freedom of association and the right to a just wage -- the philosophical and moral foundations for all union activity – become a question of what is found in the civil law rather than in divine law or the natural moral law. Consequently, the civil law is sometimes used to deny workers the moral right to form unions. Civil law, in short, trumps the moral law. The result is moral chaos. Absent a moral compass, employers *and* workers are cast at sea on a rudderless ship that is doomed to sink all.

There is a better way.

The Catholic philosophical and theological tradition calls all of us to realize that the civil law is legitimate only when it is rooted in divine or natural law. Hence, we begin this document with a discussion of the distinction between divine law and civil law. We then discuss the essential role that unions play in Catholic Social Doctrine. Next, in the context of the United States, we examine the role that the National Labor Relations Act (NLRA) and the National Labor Relations

Briefcases: A History of Commercialized Strikebreaking and Unionbusting in the United States, Ohio University Press.

Board (NLRB) have played in promoting workers' rights and, sadly at times (on the part of the misuse of the NLRB), in frustrating those rights. Finally, we conclude with a brief discussion of the Employee Free Choice Act that we believe will restore workers' rights to form unions and serve as a powerful motor for the universal common good. This is an outline of our discussion:

1. The Primacy of Divine Law
2. The Subsidiary Nature of Civil Law
3. The Indispensable Role of Labor Unions in Catholic Teaching
4. The NLRA and the NLRB
5. The Employee Free Choice Act

We turn now to a discussion of each area.

1. THE PRIMACY OF DIVINE LAW.

Jesus makes it very clear that all earthly needs and desires must be subordinate to the reign or the kingdom of God. In Matthew 6:33 Jesus tells us: "But strive first for the kingdom of God and his righteousness, and all these things will be given to you as well." In addition, in the Lord's Prayer Jesus instructs us to pray: "Your kingdom come, your will be done, on earth as it is in heaven." (Matthew 6:10) Indeed, **Primum Regnum Dei** -- First the Reign of God -- would be an appropriate motto for any Catholic institution.

The *Catechism of the Catholic Church*³ tells us the "way" or the path to the reign of God: "The Decalogue, the Sermon on the Mount, and the apostolic catechesis describe for us the paths that lead to the kingdom of God." (1724) Natural or moral law that informs and directs our ethical behavior flows from the divine law, the "kingdom of God."

The *Catholic Catechism* states the relationship between the moral law and divine inspiration:

The moral law is the work of divine Wisdom. Its biblical meaning can be defined as fatherly instruction, God's pedagogy. It prescribes for man the ways, the rules of conduct that lead to the promised beatitude; it proscribes the ways of evil which turn him away from God and his love. It is at once firm in its precepts and, in its promises, worthy of love. (1950)

Most importantly, the *Catholic Catechism* tells us that:

The moral law finds its fullness and its unity in Christ. Jesus Christ is in person the way of perfection. He is the end of the law, for only he teaches and bestows the justice of God: "For Christ is the end of the law, that every one who has faith may be justified." (1953)

For Catholics, no law can be higher than divine law since obedience to that law leads the way to "beatitude" or salvation.

The *Catholic Catechism* in establishing the principle of civil disobedience states quite clearly the relationship of divine law to civil law:

³ Libreria Editrice Vaticana. (1997) *Catechism of the Catholic Church*. Second Edition. Washington, D.C.: The United States Catholic Conference.

The citizen is obliged in conscience not to follow the directives of civil authorities when they are contrary to the demands of the moral order, to the fundamental rights of persons or the teachings of the Gospel. (2242. Emphasis added)

Hence, there exists a hierarchy of law in Catholic theology. The divine law always takes precedence over the civil law.

(An explanation of the hierarchy of “different expressions” of moral law in Catholic teaching is found in the *Catholic Catechism*, 1950-1974, specifically 1952. For a detailed analysis of Catholic teaching on the relationship between divine or natural law, and civil or positive law, see the *Compendium of the Social Doctrine of the Church*, 396-400. See also: 93, 140-142, 153, 172, 294, and 388.)

Finally, there is no obligation in Catholic Social Teaching or Canon Law that requires Catholic institutions to employ the civil law to implement the tenets of divine law. Therefore, an institution that employs civil law (or a civil law firm) must be careful to insure that the processes and methods of the civil law (or law firm) do not inhibit or frustrate divine law, or the natural moral law that flows from it.

2. THE SUBSIDIARY NATURE OF CIVIL LAW.

The Church teaches that civil law is legitimate only when it is rooted in the natural law and, because of that, the civil law will always be subsidiary, or subordinate to, natural law. (Subsidiary in this context means secondary or auxiliary; it should not be confused with the *principle of subsidiarity*.) Since the natural law flows from eternal law, it follows that Catholics are obliged to obey the civil law only if it is in conformity with the will of God. Further, the Church teaches that civil authority “*must enact just laws, that is, laws that correspond to the dignity of the human person and to what is required by right reason.*” (*Compendium*, 398. Emphasis in original) Hence, civil law can be a valuable adjunct to the moral law. Civil law, however, can also be abused if the law or specific legal processes are not rooted in the eternal law and, therefore, contradict the natural moral law.

The Church has long taught that civil laws that are not rooted in the moral law must be resisted and disobeyed. In fact, there is a long tradition in Catholic doctrine recognizing that an unjust law is no law at all. In the words of St. Thomas Aquinas:

Human law is law insofar as it corresponds to right reason and therefore is derived from the eternal law. When, however, a law is contrary to reason, it is called an unjust law; in such a case it ceases to be law and becomes instead an act of violence. *Summa Theologiae*, I-II, q. 93, a. 3

It follows, then, that Catholics have an obligation to resist or disobey unjust civil laws. In the words of the *Compendium*: “*Recognizing that natural law is the basis for and places limits on the positive (civil) law means admitting that it is legitimate to resist authority should it violate in a serious or repeated manner the essential principles of natural law.*” (400. Emphasis in original)

This is not to denigrate or minimize the beneficial role of civil (positive) law in pursuit of the universal common good. The civil law and law officers can do much to produce a socially just and equitable society. When some in the legal profession, however, use the civil law to thwart the rights of workers they interfere with the natural moral law. This is a matter of grave concern for it threatens the very livelihood of workers and their families. Catholics, in particular, who

employ the civil law to frustrate worker rights and the contribution that labor unions make to the common good, demonstrate, at a minimum, ignorance of Catholic teaching on the central importance that unions play in the wider economic and social order.

3. THE INDISPENSABLE ROLE OF LABOR UNIONS IN CATHOLIC TEACHING.

The Church's commitment to justice for poor and abused laborers far predates the publication of Pope Leo XIII's encyclical *Rerum Novarum* in 1891. What is today called the "preferential option for the poor" is rooted in the passion of the Hebrew Prophets for social justice, in the Good News of Jesus in the New Testament, in the Patristic and Medieval reprimands against rapacious wealth, and in the Modern and Contemporary periods in Church history that have challenged the world, in the words of the *Compendium of the Social Doctrine of the Church*, to create a "civilization of love."

The Church's longstanding commitment to social justice is neither a fad nor is it peripheral to the Gospel. In the words of the 1971 World Synod of Bishops: "Action on behalf of justice and participation in the transformation of the world fully appear to us as a constitutive dimension of the preaching of the Gospel." (*Justice in the World*, Introduction, emphasis added)

Because of its conviction that the natural moral law is rooted in the eternal law, the Church has from its earliest days recognized the right of free association that can never be abridged by civil law. During the Medieval period recognition of the right to free association extended to merchant and craft guilds each of which united to seek benefits for their members and, because they were inspired by Catholic teaching, for the common good of society. In optimal circumstances, merchant and craft guilds worked together for fair prices and quality products for consumers, as well as for just wages and job stability for workers.

In addition to the right of free association, the Church has always called for a just wage for workers (sometimes called a "fair" or "living" or "family" wage). The tradition that demands just wages for workers is rooted in the Book of Deuteronomy (24:14-15) and is expressed in the New Testament in the Book of James: "Listen! The wages of the laborers who mowed your fields, which you kept back by fraud, cry out, and the cries of the harvesters have reached the ears of the Lord of hosts." (5:4) In the Patristic and Medieval periods of Christian history the payment of an unjust wage was often linked to the avarice of the rich who assaulted the dignity of workers by stealing their just wages for themselves. A just wage is defined in the *Catholic Catechism*:

A *just wage* is the legitimate fruit of work. To refuse or withhold it can be a grave injustice. In determining fair pay both the needs and the contributions of each person must be taken into account. "Remuneration for work should guarantee man the opportunity to provide a dignified livelihood for himself and his family on the material, social cultural and spiritual level, taking into account the role and the productivity of each, the state of the business, and the common good." Agreement between the parties is not sufficient to justify morally the amount to be received in wages. (2434)

The *Catholic Catechism* states unequivocally that among the "sins that cry to heaven" is "the cry of the foreigner, the widow, and the orphan and injustice to the wage earner." (1867, emphasis added) In this context, particularly noteworthy is the statement in the *Catechism* that the refusal to pay a just wage "can be a grave injustice." (Emphasis added) Catholic teaching, in fact, defines a "grave" violation of God's law as a mortal sin. The *Catechism* tells us: "*Mortal Sin* destroys charity in the heart of man by a grave violation of God's law; it turns man away from

God, who is his ultimate end and his beatitude, by preferring an inferior good to him.” (1855, emphasis added) A just wage, then, is a salient feature of Catholic teaching on human work and the rights of workers and no faithful Catholic can accept any law or policy that tolerates the payment of an unjust wage. The letter and the spirit of Catholic Social Teaching demands that employers must pay just wages and workers should settle for nothing less than just wages.

The ancient traditions of free association and a just wage logically come together when workers freely organize associations to pursue their common welfare. Today, these successors to medieval craft guilds and trade associations are most commonly referred to as “workmen’s associations” or “labor unions” or simply “unions.” The modern labor union originated in the Industrial Revolution when hourly wages replaced barter or shared revenue as a means of remuneration.

While the Industrial Revolution produced great wealth and power for capitalists, it also resulted in abject poverty for workers. In the 19th century, workers often toiled 60 plus hours a week for wages that could hardly feed themselves, let alone their families. Many were injured on the job and there was no legal protection against the abuses of their employers. Unions were forbidden and the courts, the police, and even the army were used to suppress worker demands for dignity and justice that free association could bring them. Slowly in some places and rapidly in others, the Catholic Church began to speak out for workers. Church leaders in Germany (Bishop Wilhelm Emmanuel von Ketteler), England (Cardinal Henry Edward Manning), and the United States (Cardinal James Gibbons) stood with workers and urged the recognition of independent unions that must be chosen by workers. Dedicated lay people, religious sisters and brothers, and priests frequently and courageously championed the rights of workers in word and deed.

It was in this context that Pope Leo XIII in *Rerum Novarum* (1891) endorsed “workmen’s associations” as “the most important” of all “institutions and organizations which afford opportune assistance to those in need.” After endorsing the “excellent results” of “artificer’s guilds of a former day,” Pope Leo states that, “it were to be greatly desired that they (workmen’s associations) should multiply and become more effective.” (36) (Emphasis added.) (A discussion of the development of Catholic Social Teaching since *Rerum Novarum* is found in the *Compendium of the Social Doctrine of the Church*, 89-104.)

In the over 100 years since the publication of *Rerum Novarum*, no council, no pope, no synod, no episcopal conference, no bishop has ever rescinded or challenged these words. Indeed, in documents and statements far too numerous to discuss in this document, the Magisterium has amplified and strengthened its support not only for the numerous rights that natural law confers on all workers, but also for the essential role that labor unions play in securing these rights.

In 1965 at the Second Vatican Council, Catholic bishops from all over the world spoke of the essential right of workers to form unions:

Among the basic rights of the human person must be counted the right of freely founding labor unions. These unions should be truly able to represent the workers and to contribute to the proper arrangement of economic life. Another such right is that of taking part freely in the activity of these unions without fear of reprisal. *The Church in the Modern World* (68)

The contribution of labor unions to the “proper arrangement of economic life” is pivotal in Catholic teaching since all organizations exist not only for themselves, but also to serve the

common good. Hence, should labor unions disappear, the proper order of economic life would be damaged and, consequently, the common good would be diminished.

In several encyclicals, most notably *Laborem Exercens* (1981), Pope John Paul II stated his strong support for labor unions through his conviction that unions are “an indispensable element in social life”; and that they are “indeed a mouthpiece for the struggle for social justice.” Further, Pope John Paul stated that “...it is clear that even if it is because of their work needs that people unite to secure their rights, their union remains a constructive factor of social order and solidarity, and it is impossible to ignore it.” (20, emphasis added)

In *Economic Justice for All* (1986), the Bishops of the United States confirmed this teaching in the context of our own country when they wrote:

The Church fully supports the right of workers to form unions or other associations to secure their rights to fair wages and working conditions...No one may deny the right to organize without attacking human dignity itself. Therefore, we firmly oppose organized efforts, such as those regrettably now seen in this country, to break existing unions and prevent workers from organizing. Migrant agricultural workers today are particularly in need of the protection, including the right to organize and bargain collectively. U.S. labor law reform is needed to meet these problems as well as to provide some timely and effective remedies for unfair labor practices. (104) Denial of the right to organize has been pursued ruthlessly in many countries beyond our borders. We vehemently oppose violations of the freedom to associate, wherever they occur, for they are an intolerable attack on social solidarity. (105, emphasis added)

The U.S. bishops also comment on the social purpose of union:

The purpose of unions is not simply to defend the existing wages and prerogatives of the fraction of workers who belong to them, but also to enable workers to make positive and creative contributions to the firm, the community, and the larger society in an organized and cooperative way. (304, emphasis added)

The *Compendium of the Social Doctrine of the Catholic Church* summarizes the many contributions that labor unions make to the common good. Unions have an important and essential role to play in education, in public matters, and in the political arena. We read:

Beyond the function of defending and vindicating, unions have the duty of acting as representatives working for “the proper arrangement of economic life” and of educating the social consciences of workers so that they will feel that they have an active role, according to their proper capacities and aptitudes, in the whole task of economic and social development and in the attainment of the universal common good. Unions and other forms of labor associations are to work in cooperation with other social entities and are to take an interest in the management of public matters. Union organizations have the duty to exercise influence in the political arena, making it duly sensitive to labor problems and helping it to work so that workers’ rights are respected. (307, emphasis in original)

This teaching constitutes the core of Magisterial instruction on the numerous contributions that labor unions make to the rights of workers and to the wider social order. The right to form unions -- like the right to a family wage, and to pensions, and social insurance -- is foundational or essential to Catholic teaching on the rights of workers.

All of the rights of workers are integral to one another in Catholic Social Teaching. That is, the integrity of Catholic teaching on worker's rights would be destroyed if even one of these rights were to be abolished. The entire structure by which workers participate in the workplace is undermined when any of these rights are threatened. Catholic Social Teaching holds that the right to form unions is an unqualified right of the workers themselves. The right to form unions derives from natural law; it is never a right that is conferred by the state, the employer, or any external party. On a more insidious level, the integrity of workers' rights in Catholic teaching would also be attacked if, through the skillful misuse of the processes of a good civil law, the end result is the avoidance, or diminution, or nullification of workers' rights. Catholics are obliged to use moral means to achieve good ends.

Faithful Catholics have a duty, not merely to passively acknowledge Catholic teaching, but rather to actively support Magisterial teaching on labor rights (or any other aspect of Catholic teaching). Catholics, in short, have a duty to encourage workers to pursue a just wage, unemployment insurance, pensions, health insurance and to the right to form labor unions. Faithful Catholics should support workers in their efforts to organize unions and should stand with them when they are attacked by employers and "union avoidance" specialists who seek to prevent or bust unions.

Finally, some employers are concerned about the number of workers that constitutes the group seeking to engage in a dialogue about the best way for workers to choose, or not to choose, a union. Catholic Social Teaching does not address a minimum number of workers that is necessary to begin a dialogue with an employer on union representation. We must, therefore, rely on the spirit of Catholic Social Teaching on this matter. We believe it is quite clear that each individual worker is a child of God who must be treated with respect and dignity whether she or he acts in large or small groups. Consequently, respect for the right to organize labor unions in Catholic Social Teaching begins with just one worker. Union movements often begin with small numbers because a good many workers are intimidated and live in fear that they may be shunned, or disciplined, or fired for publicly or even privately supporting union representation. We also believe the spirit of Catholic Social Teaching rejects policies or statements that dismiss or disparage any worker or union that seeks a dialogue with an employer concerning worker choice on union representation. Indeed, the spirit of all Catholic teaching is motivated by the words of Jesus in describing the Last Judgment: "Truly I tell you, just as you did it to one of the least of these who are members of my family, you did it to me." (Matthew 25:40)

4. **THE NLRA AND THE NLRB.** The National Labor Relations Act (1935) was justly hailed as the "Magna Carta" of worker rights in the United States. We are pleased to note the positive influence that the U.S. Bishops' "Program of Social Reconstruction" (National Catholic War Council, 1919) and the writings of Fr. John A. Ryan had on this legislation. This influence was also made possible, of course, by the encyclicals *Rerum Novarum* (1891) and *Quadragesimo Anno* (1931). Many of the rights accorded to workers in Section 7 of the NLRA strongly resonate with Catholic Social Teaching.

In fact, however, the National Labor Relations Board, the regulatory agency created to administer the NLRA, has at times actually been used to frustrate and nullify the very rights that the NLRA recognized. The emergence of the secret ballot election is a case in point. While the secret ballot union election was not required by the 1935 Wagner Act, its use subsequently emerged in a context in which employers generally respected free union elections. That is no longer the case.

Many union elections in the United States are anything but free today, as Human Rights Watch⁴ and other groups have documented. One can hardly state an election is “free,” for example, in which the parties do not have equal access to the voters or the means to communicate with them; in which they do not enjoy equal free speech rights; where there are no campaign finance regulations; where voters are regularly subject to intimidation and coercion; and where election results can be ignored or, if accepted, contested and appealed for months if not years to come.

Under the banner of “free” elections management lawyers, displaying a perverse creativity worthy of the Sophists of old, have misused the process by challenging anything they could: the size or composition of the bargaining unit; an individual’s status as an “employee” under the NLRA; an individual’s eligibility to vote in the representative election; the conduct of the election; and the outcome of the election based on the pre-election conduct of the union, etc. While such challenges arise procedurally in the context of the NLRB-conducted elections, they are not inherent in secret ballot elections *per se*. Instead, they are tactics employed in furtherance of a “union avoidance” strategy that has as its object denying workers union representation. These tactics frustrate the true purpose of a secret ballot election.

As a consequence, unions today are understandably reluctant to agree to the exclusive use of a NLRB secret ballot election process as a means of demonstrating majority support for a union because of the considerable advantages afforded the employer in that process. In addition to the above described legal maneuvering employers may, for example: (1) threaten or intimidate workers; (2) prevent union organizers from visiting the work site; (3) allege that workers will lose benefits under a union contract; (4) socially ostracize, discipline, or fire union supporters; (5) reward or promote employees who express opposition to the union; (6) promise to make short term improvements in compensation and other terms and conditions of employment; (7) promise workers a greater role in making decisions that affect their work lives in order to negatively influence a union election; and (8) challenge any NLRB ruling that favors the workers or the union.

We recognize that some of these actions are illegal – and immoral – but, sadly illegal methods often serve as the rule rather than the exception in contested labor relations. In addition, we understand that some employers regard penalties or fines received from illegal labor practices as an acceptable business cost for “union avoidance.” The NLRB process can take years before an election is ordered and even then an employer can ignore the results with impunity and renew its legal challenges in court if the NLRB attempts to enforce an order to bargain.

Since the “secret ballot” NLRB process so strongly favors a positive outcome for the employer, it is understandable that many employers insist that the only acceptable venue through which workers may express themselves is through a NLRB sponsored election. Some employers insist, for example, that they will follow the “letter and the spirit of the National Labor Relations Act with regard to all aspects of labor relations.” Consequently, rigid and exclusive policies like this preclude alternative legal, or community-based, or ecclesiastical methods of dispute resolution which are also sanctioned under the law. This means that employers refuse to engage in negotiations with workers directly or reject conciliation, mediation, binding arbitration, third party intervention, or any other form of dispute resolution including those recognized by and acceptable to the NLRB. Also, the primary and exclusive commitment to employ the civil law

⁴ See, among other Human Rights Watch reports on violations of workers’ rights in the United States: *Unfair Advantage* (2000), *Blood, Sweat, and Fear* (2004), and *Discounting Rights: Wal-Mart’s Violation of US Workers’ Right to Freedom of Association* (2008). These documents are found under “Labor Rights” on Human Rights Watch’s website, www.hrw.org.

and processes by Catholic employers also excludes the possibility of ecclesiastical arbitration as found in canons 1713-1716 of the 1983 *Code of Canon Law*. (We cite these canons because they can easily be adapted to labor disputes.)

A commitment on the part of employers to insist that workers express their desire to join a union exclusively through the NLRB secret ballot election process interferes with the workers' own free choice not to utilize the NLRB. These employers leave the workers no choice in this matter. There can hardly be a “free” election where one side dictates the conduct of an election. This policy employs the civil law to frustrate and deny the natural moral law. The decision to form a union and the manner in which that decision is expressed belongs to the workers alone. Employers, of course, have a right to freely express their opposition to a union but they have no right to tell workers how to decide for or against a union.

In addition, since the 1980's several administrations have appointed members of the National Labor Relations Board who harbor openly hostile attitudes toward workers' rights. In decision after decision in recent years (from graduate students to nurses), the NLRB has consistently decided against worker rights. No wonder workers and unions are reluctant to approach the NLRB while employers, with a good deal of enthusiasm, hold out exclusively for NLRB secret ballot elections. What was intended to be a fair process has become tainted by partisan political ideology. Recent rulings by the NLRB that inhibit workers' rights to form unions are an insult to the letter and the spirit of the NLRA.

Concerning workers at Catholic hospitals, we fully support the USCCB document “A Fair and Just Workplace: Principles and Practices for Catholic Health Care”⁵ when it states: “Firms that have a record of tactics or guidance that violates Catholic social teaching and the principles outlined in these reflections are not appropriate for Catholic health care. This is true of firms and individuals who advise either management or unions.” (IV)

We encourage employers and workers to follow the process that “A Fair and Just Workplace” recommends when workers initiate an organizing campaign. We read in “Respecting Workers’ Choice on Unionization”:

When an organizing campaign is initiated, all parties should address the concerns of workers and their right to participate in the decisions that effect (sic) them without impugning the motives of others. Consistent with the requirements of labor law and according to the principles of Catholic teaching, all parties should agree on ground rules for how the union and management will meet with workers, distribute materials, make public statements, and ultimately what process will be used for workers to make their final decision. (IV, emphasis added)

This process has already met with limited success. Where it is successfully employed rancor and acrimony between employers and workers are dramatically reduced and this respectful process can produce reconciliation and harmony in the workplace. This process, because it recognizes the legitimate role that employers and unions play in civil society is beneficial to all: directors, managers, employees, and – most importantly -- the patients they serve. When this process is followed employers have no need of “union avoidance” consultants, and workers do not have to resort to a strike. Hostility and mutual disrespect between employers and workers always results in damage to the parties involved and to the institutional mission. Mutual agreements based on

⁵ Office of Social Development and World Peace. (1999) “A Fair and Just Workplace: Principles and Practices for Catholic Health Care.” Washington, D.C. United States Conference of Catholic Bishops

respect for the legitimate role that all parties play in society results in an advance of the universal common good.

5. THE EMPLOYEE FREE CHOICE ACT.

Although government legislation and enlightened employers have made significant contributions to a better life for workers, labor unions are the major reason that a middle class emerged in the United States. One hundred years ago unions were engaged in such “radical” activities as demanding a 40-hour, 5-day work week; a just wage, workmen’s compensation for injuries on the job; health benefits, vacation pay, and an end to child labor. The fact that some of these demands became law through governmental intervention is due in no small part to the activity of labor unions. Although it is used as a slogan, the phrase “Unions: the folks who gave you the weekend” sums up just one of the positive contributions that unions have made for all workers (employers and managers included). The empirical evidence that documents the numerous benefits that labor unions have made for workers and their families, for safety in the workplace, and to the common good is voluminous and far too extensive to discuss in this document. (Our website, www.catholicscholarsforjustice.org, cites many studies that document the benefits that unions make to workers and society.)

If unions have done so much good for society then why are there, not more of them? It is not because workers in large numbers don’t want to join unions but because the lethal combination of hostile public policy, the misuse of the NLRB, and the rise of “union avoidance” firms have made it extremely difficult for workers to freely and simply select a union. As we discussed above, employers can intimidate, delay, and refuse to negotiate anywhere along the process that leads to a union. They can -- and some do -- make life a living hell for workers who want to organize. The system is badly broken and begs to be fixed.

It is time to restore the right of a worker to choose to be represented by a union – a right that was intended by the National Labor Relations Act. This will be accomplished by passing and signing into law the Employee Free Choice Act (EFCA).

The Employee Free Choice Act: (1) provides for union certification if a majority of workers sign cards indicating that they want a union; (2) strengthens the weak penalties for violating workers’ legal rights; and (3) provides for arbitration of an initial contract if the parties cannot negotiate one on their own. In essence, the law accepts signed cards as a legally acceptable venue for workers to choose a union. Workers still have the right, if they wish, to request an election, but signing cards is an equally valid way for them to choose union representation. EFCA is simple, direct, and fair. It is an essential first step in a process of restoring worker dignity in the United States.

Catholic Scholars for Worker Justice believes EFCA strongly reflects Catholic teaching on workers’ rights. The very first act of the Steering Committee of Catholic Scholars for Worker Justice at our inaugural meeting at the Labor Guild in Weymouth Massachusetts was to endorse (with modifications) this historic legislation on May 22, 2008.

(See our website, www.catholicscholarsforjustice.org for our complete statement. See also on our website links to “pro” and “con” EFCA literature.)

This concludes our discussion of Catholic Social Doctrine and Worker Justice. The Catholic faith that unites us inspires us to have hope for the future, and love for all. We know that, in the end,

we will be measured by love especially for the weak, the broken, and the powerless among us and that includes workers everywhere. We adopt the inspiring words on a “civilization of love” from the *Compendium of the Social Doctrine of the Church* as our own:

“In order to make society more human, more worthy of the human person, love in social life – political, economic and cultural – must be given renewed value, becoming the constant and highest norm for all activity. ‘If justice is in itself suitable for ‘arbitration’ between people concerning the reciprocal distribution of objective goods in an equitable manner, love and only love (including that kindly love we call ‘mercy’) is capable of restoring man to himself.’ Human relationships cannot be governed solely according to the measure of justice. ‘Christians know that love is the reason for God’s entering into relationship with man. And it is love which he awaits as man’s response. Consequently, love is also the loftiest and most noble form of relationship possible between human beings. Love must thus enliven every sector of human life and extend to the international order. Only a humanity in which there reigns the ‘civilization of love’ will be able to enjoy authentic and lasting peace.’ In this regard, the Magisterium highly recommends solidarity because it is capable of guaranteeing the common good and fostering integral human development: love ‘makes one see in neighbor another self.’” (*Compendium*, 582, emphasis in original)

The views expressed in this document represent the professional judgment of Catholic Scholars for Worker Justice. CSWJ is an independent organization and does not speak in an official capacity for the Roman Catholic Church.

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