



Demanding Fairness on the Job – New Uses for an Old Law

Jessica Garrick, University of Michigan

American workers can find themselves treated unfairly on the job. Historically, unions helped them fight back – especially after the National Labor Relations Act of 1935 codified collective bargaining rights and gave a boost to union organizing from the 1930s to the 1960s. But today U.S. unions are in sharp decline and cannot defend employee rights in many workplaces.

Yet all is not lost, because the same 1935 law that protects the right to unionize also protects non-unionized workers who act together to demand fairness on the job. With the help of community groups and legal clinics, employee groups around the country are using the old law to fight for workplace protections and justice in new ways.

How Does the National Labor Relations Act Protect Non-unionized Workers?

Section 7 of the National Labor Relations Act guarantees the right of workers to form and join unions and pursue collective bargaining. The same provision also guarantees workers the right to seek “mutual aid or protection” through “other concerted activities” regardless of whether they plan to organize a union. The implications of this “concerted activities clause” are far-reaching:

- Workers can act together to voice concerns about their working conditions. For example, they can ask to meet with their employers in groups, sign petitions, or stage walkouts. Individuals who try to encourage group action, or who act in defense of their coworkers, are also protected.
- Workers are legally protected if they jointly protest a variety of substandard working conditions – not only outright illegal conditions but also those that are undesirable or unjust.
- When employers retaliate against workers who have used their Section 7 rights, they are engaged in an illegal and unfair labor practice under existing labor law.
- Whether unionized or not, workers who experience unfair labor practices can complain to the National Labor Relations Board – the federal agency that enforces the 1935 law. Workers who are illegally dismissed (for example, for organizing a protest) may be reinstated and awarded the back wages they would have received. By awarding back wages, the Board both compensates workers and punishes employers who violated worker rights.

How Groups of Workers Exercise Their Rights

As cases brought to the National Labor Relations Board document, worker groups have used diverse tactics to protest many kinds of unfair conditions.

- Groups of workers have protested conditions ranging from sexual harassment, racial discrimination, and the firing of coworkers or supervisors to schedule changes, the illegal nonpayment or underpayment of wages, and unhealthy or unsafe working conditions.
- Workers have acted in a variety of ways – from writing petitions and demanding meetings with managers, to walking out and approaching government agencies for help.

When protestors experience retaliation and turn to the Board, it works in various ways:

- Employers can choose to settle with the workers, and the agency will help the parties reach an agreement.

- If mediation fails, an attorney from the Board itself will argue on behalf of the workers in front of an administrative law judge.
- If either party appeals the judge's decision—the case will be heard by the Board itself.

Data made available by the Board suggest that aggrieved workers win the vast majority of cases.

Who Helps Non-union Workers?

Various community organizations and professional legal clinics are working to inform and support non-union workers. Some groups help workers who face retaliation after protests:

- The Equal Justice Center of Austin, Texas, went to bat for immigrant factory workers who had protested management's refusal to pay them overtime wages.
- In 2002, Baltimore's Public Justice Center helped a group of workers in a nearby distribution center who were fired after requesting a meeting about discriminatory pay practices.

Other organizations encourage workers to form committees and demand change:

- The New Mexico organization *Somos un Pueblo Unido* has helped immigrant service workers form committees to protest wage theft, sexual harassment, and unhealthy working conditions.
- The Western North Carolina Workers' Center has helped poultry workers act together after aggressive antiunion efforts blocked organizing attempted by the Laborers International Union.

A New Era for Asserting Worker Rights

Until recently, the National Labor Relations Board did little to promote the exercise of longstanding rights by non-unionized workers. But that is beginning to change. The Board has issued a requirement that employers inform workers of their rights, and has also announced an educational campaign of its own. On June 18, 2012, the Board launched a new website highlighting instances of non-union Section 7 cases from around the country.

While U.S. legal protections already on the books are by no means unlimited, they offer the victims of unscrupulous employers a potentially invaluable means of redress. As public interest lawyers, community groups, and non-unionized workers realize the potential of the 1935 labor law's "concerted activity" clause, they are bringing cases to a National Labor Relations Board newly open to supporting non-unionized workers. If the new beginnings can be sustained, they will lead to a better era, not only for employees without unions, but also for principled employers who should not have to compete on an uneven playing field with unscrupulous firms that violate elementary worker rights to fairness and safety.

The Board has [a new website](https://scholars.org) promoting the right to concerted activity.