

The History of Roman Catholic High School Teachers' Unions and the Right to Organize: Is There a Future?

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Abstract: This paper provides a historical survey of the court cases giving Roman Catholic high school teachers the right to organize and the resistance from Catholic school administrations and local Church leadership in this quest for justice. The paper will present the rich tradition of Roman Catholic social justice teaching on behalf of the worker and the rights of unions to exist without fear of reprisals, via the documents of the Church, and the failure of educational and ecclesial leadership to uphold these teachings as it applies to Catholic high school unions.

Introduction: Catholic Social Justice Teaching on the Rights of the Worker

The social justice teaching of the Catholic Church, especially as it concerns labor and the rights of workers and unions, is considered the most extensive among all of the Christian churches. Starting with *Rerum Novarum* (*On the Condition of Labor*) written by Pope Leo XIII (1891) and leading up to *Caritas in Veritate* (*Charity in Truth*) written by our current Pope Benedict XVI (2009) the social teachings of the Church continue to address issues of labor, the rights of workers, and unions to exist without fear of reprisals.

On February 16, 2011, Milwaukee Archbishop Jerome E. ListECKI, President of the Wisconsin Catholic Conference, issued a statement to members of the state Legislature's Joint Committee on Finance outlining Catholic Church teaching on the rights of workers (*The Compass* 2/16/11). In it he quotes the papal encyclicals written by Pope Benedict XVI (2009) and Pope Leo XIII (1891).

He wrote, "As Pope Benedict wrote in his 2009 encyclical, *Caritas in veritate*:

Governments, for reasons of economic reality, often limit the freedom or the negotiating capacity of labor unions. Hence traditional networks of solidarity have more and more obstacles to overcome. The repeated calls issued within the Church's social doctrine beginning with *Rerum Novarum* (80), for the promotion of workers' associations that can defend their rights must therefore be honored today even more than in the past, as a prompt and far-sighted response to the urgent need for new forms of cooperation at the international level, as well as the local level (#25).

The *Code of Canon Law* of the Catholic Church (1984) calls for the following of Church teaching on labor and the need to pay a just wage in Canon 1286.

The *Catechism of the Catholic Church* (1994) upholds social justice teaching regarding Article 7, "The Seventh Commandment" in the subsection "Economic Activity and Social Justice" in paragraphs 2426-2436. Included in this section are paragraphs that call for a just

wage (2434), recourse to strike (2435), failure to pay social security contributions and harm brought about by unemployment on the individual and his/her family (2436).

Rerum Novarum: The Magna Carta of Catholic Social Justice Teaching

In paragraph #3, Pope Leo describes the “misery and wretchedness pressing so unjustly on the majority of the working class” due to the vacuum left after the “ancient workingmen’s guilds were abolished in the last century, and no other protective organization took their place.”

Paragraph #20 addresses the issue of a just wage and speaks to the millions of jobs today that pay minimum wage, poverty level wages without benefits and that constitute wage theft. “To defraud any one of wages that are his due is a great crime which cries to the avenging anger of Heaven.”

Paragraph #49 authorizes the rights of unions to exist:

The most important of all (workplace associations and organizations) are workingmen's unions, for these virtually include all the rest. History attests what excellent results were brought about by the artificers' guilds of olden times. Such unions should be suited to the requirements of this our age - an age of wider education, of different habits, and of far more numerous requirements in daily life.

Centesimus Annus (The Hundreth Year) and a Just Wage

One hundred years after *Rerum Novarum*, Blessed Pope John Paul II emphasized the need for a just wage and the role of unions in negotiating these wages and work conditions in *Centesimus Annus* (1991).

Furthermore, society and the State must ensure wage levels adequate for the maintenance of the worker and his family, including a certain amount for savings. This requires a continuous effort to improve workers’ training and capability so that their work will be more skilled and productive, as well as careful controls and adequate legislative measures to block shameful forms of exploitation, especially to the disadvantage of the most vulnerable workers, of immigrants and of those on the margins of society. The role of trade unions in negotiating minimum salaries and working conditions is decisive in this area (15).

In *Forming Consciences for Faithful Citizenship* (2007) the U.S. bishop’s state:

Catholic social teaching supports the rights of workers to choose whether to organize, join a union, and bargain collectively, and to exercise these rights without reprisal... Workers, owners, employers, and unions should work together to create decent jobs, build a more just economy, and advance the common good (76).

What isn’t mentioned by the U.S. bishops is what happens when workers “choose” to organize or join a union.

91% of employers require employees to attend a one-on-one meeting with their supervisors where they are told why unions are bad and why they should vote against the union. 51% of employers illegally coerce union opposition through bribes and favors.

30% of employers illegally fire pro-union employees. 49% of employers illegally threaten to eliminate all workers' jobs if they join a union (Bobo 2009, 86).

While it is clear from the introduction that Catholic social justice teaching fully supports the rights of workers and unions, some Catholic institutions have been part of the statistics that contradict the social justice teachings of the Catholic Church in the preceding paragraph. The second part of this paper will examine the historic court cases that gave Catholic school teachers the right to organize and participate in collective bargaining despite opposition from the hierarchy of the Catholic Church in the United States. Despite the court cases giving Catholic teachers the right to unionize the majority of Catholic schools are non-union and examples of Catholic unions that have ceased to exist are included with concern for the future of Catholic school unions. The paper will conclude with some signs for a hopeful future.

Historic Court Cases for Catholic School Teachers

The implementation of Catholic social justice teaching regarding the right to organize began to take place in Catholic schools in the late 1950's and early 1960's due to the popularity found in public schools (James 2004; Russo and Gregory 1999). It was only with the help of court decisions that Catholic school teachers' unions were able to exist and it is likely the failure of court decisions to decide on behalf of Catholic school teachers unions that will lead to their demise.

Lemon v. Kurtzman (1971)

While not directly related to issues of collective bargaining this case is "frequently cited in most of the state and federal court decisions involving collective bargaining in Catholic schools (James 2004)." This case involved additional state payments of salaries to teachers of secular subjects in non-public schools in Rhode Island and Pennsylvania. Religion teachers teaching religion courses were not entitled to the state reimbursements. The U.S. Supreme Court ruled that the cumulative effect of the laws was to foster excessive entanglement between government and religion, and was ruled unconstitutional (Ibid. 2004).

The court established three tests for a law to survive the Establishment Clause prohibition of the Constitution: "First the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally the statute must not foster an excessive government entanglement with religion (Lemon v. Kurtzman, 1971, p. 635; Ibid. 2004)."

Catholic Bishop v. National Labor Relations Board (NLRB) (1977)

This case involved two Catholic high schools in the Archdiocese of Chicago, and five diocesan Catholic high schools in the FortWayne/South Bend diocese who sought to be certified as collective bargaining units by the National Labor Relations Board (NLRB) with unions in Illinois and Indiana representing lay teachers employed in Catholic schools. The NLRB certified the unions but the employers contended that the NLRB should decline jurisdiction based on its own rules and based on First Amendment prohibitions against government entanglement established in the Lemon v. Kurtzman case. This case is the first example of the Catholic

hierarchy and administrations of these seven Catholic schools failing to uphold the Catholic social justice teachings of the Church that support the rights of workers to unionize.

The issue of jurisdiction was rejected since the NLRB accepted jurisdiction over schools where instruction was not limited to religious subjects in earlier court cases. But, the Seventh Circuit Court of Appeals and the United States Supreme Court ruled in favor of the Catholic Bishops of Chicago by ruling the NLRB had no authority over religious schools (Ibid.). The significance of this “decision ended federal involvement in the oversight of labor relations within Catholic schools by the NLRB (Ibid.)” The outcome of this case could be seen as a victory for the Catholic hierarchy but a loss of credibility regarding the failure to uphold Catholic social justice teaching regarding the rights of workers to organize into unions without fear of reprisals.

Catholic High School Association (CHSA) v. Culvert (1985)

In 1968, the State of New York enacted legislation in 1937 similar to the Wagner Act/NLRB (1935) and amended the legislation in 1968 to include charitable, educational, and religious organizations. Shortly after this, the Lay Faculty Association (LFA) petitioned the State Board for certification to represent 11 archdiocesan high school teachers as the exclusive bargaining agent. The petition was certified and from 1969 until 1980 the LFA and CHSA representing the Archdiocesan schools engaged in collective bargaining agreements governing the “secular terms and conditions of lay teachers’ employment (Catholic High School Association v. Culvert 1985, 1163; Ibid.)”

A rider to the agreement included the following statement: “certain areas of Canon Law, ecclesiastical decrees and religious obligations that cannot be subject of negotiations” and included this example giving reason for discharge “if a teacher were to teach that there was no God, the discharge would not be subject to the grievance procedures (Ibid., 1163; Ibid.)”

In 1980, the LFA filed unfair labor practices when the CHSA locked out 226 teachers who protested the schools’ unilateral decision to implement a policy which would require teachers to cover the classes of absent teachers (a policy that continues to this day, saving the schools thousands of dollars from having to pay substitute teachers).

The LFA also alleged that the CHSA sent letters to teachers urging them to pressure individual teachers into accepting the CHSA offer and added other unilateral decisions. While the District Court followed the decision of Catholic Bishop v. NLRB regarding the issues of entanglement, the United States Second Circuit Court of Appeals reversed and remanded the District Court ruling. The Second Circuit Court of Appeals ruled “It is a fundamental tenet of the regulation of collective bargaining that government brings private parties to the bargaining table and then leave them alone” and furthermore, the court rejected the “likelihood of entanglement” in favor of one where the Church must show “the coercive effect of the enactment as it operates” in the practice of religion (Catholic High School Association v. Culvert 1985, 1168; Ibid.). As a result of this decision the LFA and other Catholic school teachers’ unions in the state of New York would have access to State Labor Boards.

Future court cases in Minnesota, New York and New Jersey would result in court decisions giving Catholic lay teachers' unions the right to collective bargaining "regarding secular conditions of the contract such as salary, benefits, and quite possibly a narrow definition of work conditions that do not encroach upon the religious freedom of the school (James 2004)." Despite the progress made by these historic court decisions, it was soon discovered how quickly Catholic school teachers unions could lose the right to unionize along with all of the gains gotten over the years of collective bargaining.

The End of the Boston Archdiocesan Teachers Association (BATA) in the Archdiocese of Boston

In 2004, the Archdiocese of Boston announced that eight regional Catholic high schools would become new, independent entities that would be run by independent boards of trustees. At the expiration of the teachers' August 31, 2004 contract each of the eight boards decided not to negotiate, thus ending a collective bargaining process that had lasted 38 years. In June, 2004, BATA filed a lawsuit claiming that the boards of trustees served as an "alter ego" of Archdiocesan Central High Schools Inc., which is the branch of the archdiocese that handled the negotiations with the teachers for the past 38 years. The loss of the rights of the previous contract left the teachers without any standards for working conditions such as class load and preparation time, sick and personal leave days, salary scale, health insurance and job security. All of these were rights of workers previously mentioned in Catholic social justice teaching beginning with *Rerum Novarum* and other documents.

One of the main reasons the Archdiocese of Boston was able to get away with this reversal of Catholic social justice teaching was because the union was not protected by state law. A bill was introduced by a group of Massachusetts state legislators that would give employees at nonprofit institutions, including Catholic school teachers, the right to unionize (Massey 2004). It did not matter that Catholic social justice teaching since 1891 already recognized this right. The bill was later dropped when the *Alter Ego v. Successor* agreement case was dropped by the teacher's union.

Scranton Diocese Association of Catholic Teachers (SDACT) in Diocese of Scranton

On January 24, 2008, the diocese of Scranton, Pennsylvania, announced it would no longer recognize SDACT as a collective bargaining unit. The decision to restructure the schools led to the bargaining relationship coming to an end in 2006. From 1978-2007, the union negotiated contracts with diocesan schools. Teachers in 9 of the 10 high schools and all large elementary schools in the diocese were represented (Hall 2/3/2008). Michael Milz, the union President, was terminated from his position after more than 30 years of service in the diocese. The diocese justified his termination by stating he did not have enough seniority at his school Holy Redeemer in Wilkes-Barre despite his work in the diocese for 34 years (Hall 6/11/08).

The uproar over the labor injustice would lead to the eventual resignation of Bishop Joseph Martino that was accepted in August, 2009. His successor Bishop Joseph C. Bambera has not restored the union. The Vatican upheld the decision made by the Diocese of Scranton (Fraga 2011). While the diocese of Scranton may consider this a victory, it only serves as a

greater example of union busting and a loss of credibility and failure to uphold Catholic social justice teaching.

Lay Faculty Association (LFA) LIUNA Local 255 in Archdiocese of New York

Following the script or precedence to reverse Catholic social justice teaching, in Boston and Scranton, the Archdiocese of New York announced January, 2009, that the ten Catholic high schools of the LFA would become independent entities and cease to be run by the Catholic High School Association (CHSA). By September, 2009, all of the rights the teachers had over the last 40 years were unilaterally stripped away. Terms and Conditions were unilaterally imposed upon the teachers without any negotiation with the LFA. The LFA filed an unfair labor practice charge contesting the independence of the 10 schools from the Archdiocese of New York. At the end of the 2009 school year, LFA President, John Fedor, was terminated from his Hall of Fame teaching career at John S. Burke Catholic High School after 41 years. There is no more egregious union busting action, taken by an employer, then when a Union President is fired. The fear of reprisals is felt by the rest of the union members. Real or imagined, reprisals impose a psychological violence upon the victims of the reprisals and violate the sanctity of their conscience.

As result of the teachers not having a contract affective September, 2009, all union dues deductions were stopped. Given the choice between bills, food and union dues many teachers stopped paying union dues. The failure of the labor courts to act and make decisions within a reasonable time frame added to the legal bills of the union. The administrations and new Board of Directors chose to retain the same Archdiocesan Attorney that represented the schools as the CHSA. Only after two of the Principals were sued, over the Terms and Conditions imposed upon the teachers, did two schools, Maria Regina and Archbishop Stepinac High School, change attorneys. The LFA believes the change of attorney has resulted in successfully negotiated contracts for these two schools.

In August, 2011, the LFA agreed to drop the alter ego v. successor agreement case in order to settle contracts with five schools. What occurred over the last year, 2011-2012, is three of the LFA schools voted to decertify from the LFA choosing to have no union affiliation. All three of these schools had a history of letting teachers go involved in union activity and were unwilling to negotiate due to suspect petitions signed by faculty members. An additional school is pending a similar decertification vote.

Signs of Hope for Catholic Social Justice Teaching

The future of Catholic schools and Catholic school teachers' unions can look bleak in light of this paper. Catholic social justice teaching should be enough but it does not appear to apply to Catholic school teachers. Giving Catholic school teachers the right to organize is the hope for the future.

The LFA was extremely grateful for a letter of support written by Catholic Scholars for Worker Justice, under the leadership of Chairman Joe Fahey. The labor disputes of the LFA have been followed by the Catholic Labor Project of the Catholic Labor Network, Interfaith Worker Justice and the Labor Religion Coalition of Greater New York. Even this type of attention has not seemed to make a difference with the Catholic hierarchy given the refusal to

allow adjunct teachers the right to organize at Manhattan College and Duquesne University. As long as remedies amount to a slap on the wrist, or a posting of an Unfair Labor Practice charge, the Church and the most unscrupulous of employers will continue to fail to uphold Catholic social justice teaching and thus fail to practice what the Church preaches.

Bibliography

Pope Benedict XVI. *Caritas in Veritate (Charity in Truth)* www. Catholiclabor.org

Blaire, Stephen Most Reverend. “*Letter to Archbishop Jerome E. ListECKi of Milwaukee in Support of His Statement on the Rights of Workers.* Committee on Domestic Justice and Human Development. 2/23/11

<http://www.usccb.org/sdwp/Archbishop-ListECKi-support-FINAL.pdf>

Bobo, Kim. *Wage Theft in America. Why Millions of Working Americans Are Not Getting Paid—And What We Can Do About It.* New York: The New Press, 2009.

Catechism of the Catholic Church. San Francisco: Ignatius Press, 1994.

Catholic Bishop v. NLRB, 440 US 490 (1979) <http://supreme.justia.com/us/440/490>

U.S. Catholic Bishops, *Economic Justice for All*, 1986. www.catholiclabor.org

U.S. Catholic Bishops. *Forming Consciences for Faithful Citizenship*, 2007.

www.catholiclabor.org

Catholic Bishops of New York State. “*Our Cherished Right, Our Solemn Duty.*” New York State Catholic Conference, October 8, 2010.

Catholic High School Association v. Culvert, 753 F. 2d 1161 (1985).

Catholic Scholars for Worker Justice. “*Union busting is a Mortal Sin.*”

www.catholicscholarsforworkerjustice.org

Code of Canon Law. Latin-English Edition. Washington, DC: Canon Law Society of America, 1984.

The Compass. “Archbishop ListECKI outlines church teaching on rights of workers.” February 15, 2011.

The Compass. “Wisconsin Sisters issue statement in support of workers.” February 26, 2011.

Fahey, Joseph. “Worker Justice.” *Network Connection.* Fourth Quarter, 38, no. 4 (2010): 7.

Fraga, Brian. “Union, yes. But when the Church is employer?” Catholic teaching supports Labor unions. But in practice, Church institutions sometimes push back.
Our Sunday Visitor Newsweekly, April 17, 2011

Faulkner, H.U., Ph.D. ed. *Studies in History, Economics, and Public Law*, 73: Columbia University. http://en.wikipedia.org/wiki/chartism#cite_note-faulkner-11 http

Hall, Hofius, Sarah. “Teachers question diocese’s support of organized labor: Instead of Recognizing union, diocese will create employee relations program.”
The Sunday Voice, February 3, 2008.

Hall, Hofius, Sarah. “AFL-CIO rips into Scranton diocese over layoff of union chief.”
The Times Tribune.com, June 11, 2008.

Heine, Joy, and Cynthia Brooke, ed. *A Worker Justice Reader: Essential Writings on Religion and Labor. Interfaith Worker Justice.* Maryknoll: Orbis Books, 2010.

Hershey, William. “Ohio Catholic bishops oppose elimination of collective bargaining.” *Dayton Daily News*, March 1, 2011.

Higgins, George G., Msgr., and Boyle, William. *Organized Labor and the Church.* New York: Paulist Press, 1993.

James, John T. “Collective Bargaining in Catholic Schools: What does governance have to do With it?” *Catholic Education: A Journal of Inquiry and Practice*, 8, no 2 (2004): 208-

233.

Pontifical Council for Justice and Peace. *Compendium of the Social Doctrine of the Church*.

2004.

Pope John XXIII. *Pacem in Terris (Peace on Earth)* 1963. www.catholiclabor.org

Pope John Paul II. *Centesimus Annus (The Hundreth Year)* 1991. www.catholiclabor.org

Pope John Paul II. *Laborem Exercens (On Human Work)* 1981. www.catholiclabor.org

Lemon v. Kurtzman, 403 U.S. 602 (1971). <http://supreme.justia.com/us/403/602/case.html>

Massey, Joanna. "Teachers quitting over stalled contract talks: Union sues to force

Church to negotiate." *Boston Globe*, September 5, 2004.

Murphy, William F. "USCCB Labor Day Statement 2010: A New Social Contract for Today's

New Things." *Origins: CNS Documentary Service* 40, no. 13 (September 2, 2010)

193-197.

Pope Leo XIII. *Rerum Novarum. 1891*. www.catholiclabor.org

Respecting the Just Rights of Workers: Guidance and Options for Catholic Health Care and

Unions. USCCB Committee on Domestic Justice and Human Development: Washington,

DC: June 22, 2009.

Russo, C.J. and David Gregory. "An update on collective bargaining in Catholic Schools."

School Business Affairs 65, no. 4 (1999): 14-19.