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Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards

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the culture and media industries, and when it develops its own media.

Framed makes an important contribution to understanding how media framing works, and it clarifies in some ways why the American labor movement is shrinking and beleaguered. Rooting it in a sharper discussion of how and why the media operate the way they do, and what unions should do about it, would have made it stronger.

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Economic and Social Security and Substandard Working Conditions

Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards. By Lance Compa. Ithaca, N.Y.: ILR Press (an imprint of Cornell University Press), 2004. 220 pp. ISBN 0-8014-8964-4, \$16.95 (paper).

Unfair Advantage, first published in 2000 and now re-issued in a paperback edition with a new foreword and conclusion, constitutes a solid body of research and scholarly reflection on U.S. workers' right to freedom of association. To evaluate the extent to which this freedom is recognized and honored in the United States in practice, the author refers not only to national law, but also to the standards and instruments set by international and regional bodies, including the International Labour Organization's Conventions and principles on freedom of association, the U.N. International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights, the American Convention on Human Rights, the European Union's Charter of Fundamental Social Rights of Workers, and the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises. Moreover, *Unfair Advantage* describes a series of national trade statutes that place freedom of association at the core of U.S. relations with trading partners, thus underscoring the importance the U.S. government itself attaches to these principles, most especially confirmed by its commitment to the labor principles set out in the North American Agreement on Labor Cooperation,

the labor side of the North American Free Trade Agreement.

Having provided this background, the author describes the challenges U.S. workers face in trying to exercise their fundamental right of freedom of association, and then suggests ways to improve the protection of this right. Compa presents his findings and recommendations very early in the book, leaving the more detailed reading to serve as backup. The findings cover a variety of concerns for the true state of protection of trade union rights in the United States relating to rampant anti-union discrimination, an overwhelming imbalance in the communication power of employers, heated and bitter union election campaigns, delays in redressing violations, limited definitions of bargaining units leaving workers in newly evolving employment relationships without the fundamental right to bargain collectively, NLRB staff and budget constraints, insufficient remedies for "surface bargaining" (bad faith bargaining, in which one party merely goes through the motions), the exclusion of important categories of workers from the protection afforded by the National Labor Relations Act (NLRA), the effective nullification of the right to strike through the use of permanent replacements, and the special vulnerabilities of immigrant workers.

The author carefully chose the cases supporting these findings with an eye to providing examples from diverse sectors, areas of the country, and types of workers. To his credit, in so doing, he took care not to narrow the focus by raising issues applicable only to particular individuals or contexts. Rather, his examples demonstrate that freedom of association is relevant to all workers; no worker is invulnerable to attacks on this right, nor do infringements stop at state borders.

The methodology used for the case studies was a sound one: only cases in which the NLRB had issued a complaint finding merits in charges brought against an employer were used, and where cases went before an Administrative Law Judge or were appealed to the NLRB or the federal courts, the "last best" documented evidence and determinations were used. Extensive direct quotation from the workers concerned provides a podium for these ordinarily unheard and unheeded voices—but the author provides balance by also giving a fair hearing to employers in these cases. In each instance, employers were asked for interviews, and the opinions of those who agreed to talk were quoted at length.

The author's recommendations for redress-

ing the imbalances noted, and his discussion of obstacles to the full exercise of freedom of association, could serve as a good starting point for U.S. industrial relations specialists to address what the government itself described in a 1999 report to the ILO as “aspects of [the] system that fail to fully protect the rights to organize and bargain collectively of all employees in all circumstances.” Compa’s thoughtful recommendations reflect a significant effort to resolve the infringements and inequities noted not with an external model, but rather with proposals carefully crafted to take into account the rights of employers and the particular national context within which such solutions would need to work, delicately balancing competing rights and interests.

For example, when he examines the “imbalance in communication power” and section 8(c) of the NLRA, known as the employer free speech clause—repeal of which has been called for by many workers’ advocates—Compa acknowledges employers’ right to communicate, while arguing that the *balance* of rights accorded employers and employees is lopsided in favor of the former. He thus calls for “more free speech for workers, not less free speech for employers”; in particular, he recommends workplace access for union representatives, as well as closer scrutiny by the NLRB to guard against the potentially coercive effect of employers’ information campaigns. While those in the labor field may be divided on the extent to which one basic right (freedom of speech) can be legitimately used to counter the exercise of another basic right (freedom of association), Compa’s carefully tailored suggestions taking into account the rights and interests of both parties define some common ground that could encourage dialogue. Given the large number and many types of violations the NLRB has identified over the years, as shown by statistics cited throughout the book, such a dialogue should be welcome.

The introduction to the 2004 edition of *Unfair Advantage* describes the progress that has been made since 2000 in some of the cases studied. Some of these cases were resolved, wholly or partly, and it is worth reflecting on what elements favored resolution. Unfortunately, some cases of continued violation are also noted.

The book’s international perspective is reinforced with a summing up (also in the introduction) of recent views on the *Hoffman Plastic* case by the Inter-American Court of Human Rights (IACHR) and the ILO’s Committee on Freedom of Association (CFA). The IACHR advi-

sory opinion held that undocumented workers were entitled to the same labor rights, including wages owed, protection from discrimination, health and safety at the workplace, and back pay, as citizens and others working lawfully in a country, and the ILO’s CFA considered that the remedies available under U.S. law for “illegal dismissals of undocumented workers [were] inadequate to ensure effective protection against acts of anti-union discrimination.” These two positions from international bodies go yet another step toward formally affirming the status of freedom of association as a fundamental human right.

The concluding chapter in the 2004 edition, while noting that progress is slow, argues that “a climate changing effect is under way that could help move U.S. labor law toward a human rights foundation.” The author’s brief for analyzing U.S. labor law from a rights perspective versus an economic perspective harmonizes with and complements his case-specific arguments. In addition, reinforcing the universal nature of freedom of association, Compa cites the recent use of regional bodies and instruments, or legal decisions emanating from other national jurisdictions that protect this freedom. These examples add force to the argument for placing this freedom among the fundamental principles at work, as the ILO has done for over half a century. The human rights approach taken to workers’ rights of freedom of association and collective bargaining has, I am sure, already begun to foster “new ways of talking and thinking about labor law in the United States,” as demonstrated in the recent debates recounted in the introduction.

This second edition of *Unfair Advantage* not only permits a renewed dissemination of the important work carried out by Lance Compa and Human Rights Watch to uncover many unknown nooks and crannies of U.S. labor law and practice, but also advances the debate on workers’ rights as human rights. It opens areas to public exposure and discussion that have all too often been the exclusive domain of little-known specialists.

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Fighting for a Living Wage. By Stephanie Luce. Ithaca, N.Y.: ILR Press (an imprint