How The National Labor Relations Act Succeeded

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Conventional commentary contends that The National Labor Relations Act (NLRA) has failed. Conservative analysts object to certain rights granted to workers to organize unions. Liberal analysts focus on the decline in private sector union membership from 35 percent in the 1950s to less than 10 percent today as obvious evidence of failure.

But Michael Wachter, Professor of Law and Economics at the University of Pennsylvania Law School, argues in the current issue of *Regulation* that the two stylized facts emphasized in conventional commentary are, in fact, essential components of the labor law's success. The NLRA, as amended by the Taft-Hartley amendments of 1947, has been "exceedingly successful" because the combination managed to end a long era of industrial warfare and create a system in which union representation was not necessary to create employer-employee trust.

How could a law that increased union rights end up making unions irrelevant? The Wagner Act, which created the NLRA in 1935, had two goals that its supporters thought were complementary: end violent strikes and increase the bargaining power of workers to equal that of employers. The Wagner Act restricted the tactics employers could use against unions and created a federal right to organize and strike peacefully. The result was higher unionization rates and higher relative wages. But the higher costs increased management resistance to union demands and the rate of strikes increased. To be sure the strikes were mostly peaceful, but the NLRA failed to achieve its foremost goal of industrial peace even though union representation was at its peak.

Congress reduced the advantages given to unions in the Taft-Hartley Amendments enacted in 1947, which allowed the open shop and "right to work" legislation. These amendments brought the employer-union relationship into greater balance, and enhanced the existence of nonunion sector, particularly in southern states. Over time the number of strikes dramatically decreased.

While conventional liberal analysis sees workers in the nonunion sector as vulnerable to employer opportunism, the threat of unions makes the nonunion sector work for employees. Companies without unionized workforces have distinct cost advantages over unionized companies. Thus the threat of unionization is itself a check on predatory employer practices. Employers and employees in the nonunion sector have developed an institutional relationship that benefits both parties in order to avoid the high explicit and transaction costs of unionization.

The NLRA succeeded not by increasing unionization but by creating incentives for the transformation of the nonunion sector from dysfunctional and strike filled to a sector with largely “self enforcing norms that constrain management.”

Today, the threat of unionization is enough of an institutional backstop to prevent predatory employer practices without the need for an actual unionized workforce. Unions increase wages and benefits and reduce profits as well as increase the transaction costs of operating a firm. Firms understand this and treat their employees so as to avoid this scenario. The NLRA succeeded, and managed to undermine the same unions it had assumed were necessary for industrial peace and worker prosperity.