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IF WE CAN WIN HERE: THE NEW FRONT LINES OF THE LABOR MOVEMENT

Fran Quigley. Cornell University
Press, 2015. 209 pages.

Ece Bicen[†]

Fran Quigley's *If We Can Win Here: The New Front Lines of the Labor Movement* explores the lives of service-sector workers in today's America. Even though Quigley focuses on the working people of Indianapolis, he acknowledges that the issue is far more severe and widespread.

It is worth noting that the author is far from an ordinary observer. Professor Quigley teaches at Indiana University's Robert H. McKinney School of Law, where he runs a legal clinic serving low-income workers in Indianapolis. In the course of writing this book, he accompanied workers and union organizers with a notebook in hand for over a year and a half. In that sense, this is not a standard book on workers' rights, but an intimate chronicle that calls attention to the struggles of today's service-sector workers.

The book starts with a description of the life of a hotel worker in Indianapolis, Keisha Johnson. Johnson is a room attendant at a Westin Hotel and has worked there for almost five years. She is expected to clean up to eighteen rooms a day, each in ten minutes. She is not provided with a mop or a broom and has to do work on her "hands and knees."¹ She earned \$7.50 per hour when she first started working there and received her most recent raise at \$9.27 per hour.² She describes her tips as "unpredictable" and "often . . . nonexistent."³ Further, she is unable to afford the premiums for the cheapest health insurance offered by the Westin.⁴

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[†] LL.M. 2018 (U.C. Berkeley).

1. FRAN QUIGLEY, *IF WE CAN WIN HERE: THE NEW FRONT LINES OF THE LABOR MOVEMENT* 3 (2015).

2. *Id.* at 3.

3. *Id.*

4. *Id.*

Quigley reminds the reader that “[t]he mythology of the American Dream would suggest that all this hard work must be allowing Johnson to move up the economic ladder,” but points out that maybe this “American Dream” is not true after all.⁵ Although Johnson’s wages easily exceed the federal and state minimum wage of \$7.25 per hour, they are far below the \$17 per hour living wage, which is the minimum cost of supporting a two-person family in Indianapolis.⁶ This situation “leaves Johnson in the most vulnerable position in the U.S. economy: too poor to pay all her bills but with a reliable paycheck for her creditors to garnish.”⁷ Johnson states, “Someday, I want to be one of those moms who can send kids to college and have all the bills paid. Why can’t I do that as a housekeeper?”⁸ This leaves the reader wondering: how could she, and indeed other housekeepers like her, achieve this goal?

Quigley signals the answer, and the primary subject matter of the book, by explaining the efforts to organize Indianapolis hotel workers into a union. It has not been an easy task, and efforts have not yet “broken through.”⁹ However, Quigley is optimistic as he talks about the bright spots, such as the union-supported legislative campaigns that led to successful wage and hour litigation against contractors who instructed hotel workers to work off the clock.¹⁰ Although the first collective bargaining agreements negotiated by Indianapolis-area service-sector workers did not include significant increases in wages, they did “significantly increase access to benefits and enshrine seniority rights and grievance procedures that boost job security.”¹¹ This hopefully suggests that collective bargaining agreements are likely to be significantly improved during upcoming negotiations.¹²

Quigley also provides the reader with a background of the labor movement in order to illustrate why unionization is necessary from a historical point of view. He begins by explaining how the manufacturing industry was at the core of the twentieth-century labor movement and how this has changed with the impact of globalization and the advancement of technology, which has made it easier for corporations to shift jobs to countries that allow lower wages and less worker protection than the U.S. requires.¹³ Consequently, while the number of non-farm workers employed

5. *Id.*

6. *Id.* at 4.

7. *Id.*

8. *Id.*

9. *Id.* at 7.

10. *Id.*

11. *Id.*

12. *Id.* at 7–8.

13. *Id.* at 14.

in manufacturing has decreased, the number of workers employed in the service sector has increased.¹⁴

This has led to an inevitable decrease in the number of unionized workers. According to the U.S. Bureau of Labor Statistics, only 6.6 percent of American workers in the private sector belonged to unions as of January 2013.¹⁵ Service-workers face a series of work-related challenges that workers employed in the modern U.S. manufacturing industry no longer face as often. In addition to receiving low wages, workers often work without benefits, are almost never unionized, and find it difficult to get full-time work.¹⁶ Home care workers, for example, receive wages just over the federal poverty line, which hurts not only workers and their families, but also home care clients who experience the ill effects of high turnover.¹⁷ Indeed, according to a University of California study, “significant wage increases for home care workers in San Francisco led to a 31 percent decrease in worker-initiated turnover.”¹⁸ Organized labor seems to be “powerless to reverse or even slow down” this worrying trend, which has led to allegations that “twenty-first century U.S. workers no longer need unions.”¹⁹

However, Quigley believes it is not too late to reverse course. He posits that unionization can improve today’s service sector jobs just as it did with manufacturing jobs decades ago.²⁰ Large corporations that employ low-wage service workers are capable of paying better wages: one statistic shows that among the fifty largest low-wage employers, approximately two-thirds earn greater profits today compared to before the 2007–09 recession.²¹

Hence, Quigley suggests that the solution lies in convincing corporations to invest their earnings in their workers. There is no doubt this will require the assistance of unions. He offers confrontation as an effective method, as endorsed by Mike Biskar, the lead organizer in Indianapolis for the UNITE HERE labor union. Biskar states: “[UNITE HERE is] picking fights instead of just worrying about problems.”²² Another strategy is to fight employers through national political elections. However, unions like UNITE HERE tend not to spend time on politics and point to their record of successful organizing through direct confrontation.²³ Despite this, persuading workers to confront their employers is not always easy. This is especially true in cities like Indianapolis that, to quote Indiana University Professor Tom

14. *Id.* at 15.

15. *See id.* at 15.

16. *See id.* at 16.

17. *See id.* at 108–112.

18. *Id.*

19. *Id.* at 16.

20. *Id.* at 17.

21. *See id.*

22. *Id.* at 33.

23. *See id.*

Marvin, have “a dominant culture that values avoiding confrontation.”²⁴ A senior union organizer explains it this way: “Indianapolis was too far north for the great battles of the civil rights movement, and too far south for the great battles of the labor movement.”²⁵

Mobilizing workers to confront employers is unfortunately only one of the many obstacles that stand in the way of unionization. Another existing obstacle is related to the demographics of the workforce. Sixteen percent of the United States’ workforce are foreign-born persons, and approximately one out of three immigrant workers is undocumented.²⁶ Aside from wage theft and other unfair treatment, immigrant workers are also threatened by deportation in the event they do not comply with the unjust practices of their employers.²⁷ While this may automatically lead one to assume that immigrant workers are less inclined to unionize, immigrants have been perceived by some scholars to be more open to unionization compared to U.S.-born workers.²⁸ This may be because “[c]ompared to U.S.-born workers, immigrants have been found to have deeper social networks and to think of their individual fate as more intertwined with the conditions endured by other community members,” which makes them valuable agents of unionization.²⁹

Another obstacle facing workers is that the legal framework itself places tough restrictions on unionization. U.S. labor law provides little meaningful protection for workers who advocate for union representation.³⁰ There is no punitive sanction for employers who fire workers for union activity under the National Labor Relations Act (NLRA). As a result, employers merely face the risk of owing back wages, minus any pay the workers may have earned in the interim.³¹ Under these circumstances, U.S. law is arguably highly anti-worker and creates a hostile environment for organized labor.³² Quigley again provides an apt quote from Biskar summing up the dilemma: “When will labor laws improve and when will politicians stand up for workers? . . . When workers are organized.”³³

Throughout the book, Quigley illustrates that unionization is not a one-way street. Examples of this are situations where progress stalls even after a promising negotiation on the heels of a successful worker organization. Quigley tells the story of Butler and Marian University campus workers employed by Aramark, where the universities raised workers’ wages right

24. *Id.* at 24.

25. *Id.*

26. *See id.* at 38–39.

27. *See id.* at 43.

28. *See id.* at 40–41.

29. *Id.* at 40.

30. *Id.* at 76.

31. *See id.*

32. *Id.*

33. *Id.* at 80.

after the union won recognition.³⁴ The message to the workers was clear: “the union would not get them a better deal than the company would provide on its own accord.”³⁵ Later at the bargaining table, the universities stated they did not intend to further increase wages, after which negotiations became “rare and unproductive.”³⁶ Workers then found themselves being “blackballed” from summer work at other locations served by Aramark.³⁷ These workers instantly began to think that “the union [is] making things worse, not better.”³⁸ It was not until after several worker demonstrations that the union and the universities began to negotiate once more. Even though union organizers say that “nothing organizes [workers] like winning,” Quigley reminds the reader that what may seem like a victory may have undesirable results.³⁹

Currently, a variety of factors make it extremely difficult to build the solidarity necessary to form a union.⁴⁰ For instance, while the fast food and low-wage retail industries are amongst the fastest growing sectors of the U.S. economy, they are also highly resistant to traditional union organizing models due to the use of temporary workers and high rates of turnover.⁴¹ Further, “[e]ven when old-school labor organizing efforts are possible, they are plagued by employer intimidation and retaliation that is barely discouraged under existing U.S. labor law.”⁴²

However, workers are still willing to band together in solidarity, the results of which are evident in the recent proliferation of alt-labor groups.⁴³ Commonly called “worker centers,” alt-labor groups advocate for workers outside of the traditional union structure.⁴⁴ Alt-labor is free from the restrictions imposed on unions. For example, although the NLRA prohibits unions from engaging in a secondary boycott,⁴⁵ the Coalition of Immokalee Workers was able to successfully organize a nation-wide secondary boycott against Taco Bell because the Coalition was not a union but rather an alt-labor group. In this situation, Taco Bell was a major buyer of tomatoes produced by growers who consistently underpaid their farmworkers.⁴⁶ The

34. *Id.* at 145.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 88.

40. *See id.* at 51.

41. *Id.*

42. *Id.*

43. *Id.* at 52.

44. *See id.* at 52.

45. A secondary boycott is when a union tries to achieve its goal with the targeted company by directing pressure toward a second company. *Id.* at 53.

46. *Id.*

boycott proved to be successful when in 2005, Taco Bell agreed to buy tomatoes only from growers that paid higher wages, a victory that was possible because of the involvement of an alt-labor group rather than a union.⁴⁷

Aside from dealing directly with the employers, the alt-labor movement also has notable success in campaigns that aim to amend laws to benefit a broad spectrum of low-wage workers.⁴⁸ For example, advocates of the alt-labor movement in Indianapolis pushed for an increase to the federal minimum wage through holding press conferences, writing opinion editorial articles, and visiting the offices of Indiana's congressional delegation.⁴⁹ These kinds of activities inspire and encourage unions like UNITE HERE to take similar actions. To draw attention to poor wages and working conditions, UNITE HERE convinced the Indianapolis City-County Council to propose the "Hotel Worker Tax Relief" legislation, which provides a tax refund of \$200 to hotel workers earning less than \$25,000 a year.⁵⁰ Although the tax relief plan was voted down, UNITE HERE continues to advocate for workers.⁵¹

Quigley also touches upon other hardships faced by the alt-labor movement. Lack of sufficient funding and governance by staff rather than members (according to research, democratic unions lead to a stronger sense of solidarity⁵²) are just a few of many challenges.⁵³ Movements like the "Fight for 15" campaign, however, which advocate for a \$15 per hour wage for fast food industry workers, prove that this method can be successful. Under federal law, workers may protest unfair labor practices without risking their jobs.⁵⁴ On the other hand, workers risk the threat of permanent replacements if they strike only to protest wages.⁵⁵ Consequently, "[i]n the Fight for 15 model, community supporters are recruited in part to help support the picket line and in part to assist with the strikers' return to work."⁵⁶ In the words of one labor activist, the Fight for 15 is "a march on the media" because strikes serve as the visuals of a worker protest designed by professional media consultants rather than "a march on the boss."⁵⁷ The goal is "noisy and embarrassing exposure of worker exploitation" that inspires large corporations to seek peace with their employees outside the ordinary

47. *Id.*

48. *Id.* at 54.

49. *Id.* at 55.

50. *Id.* at 58.

51. *Id.* at 61.

52. *Id.* at 54.

53. *Id.*

54. *Id.* at 64.

55. *Id.*

56. *Id.*

57. *Id.* at 65.

union process.⁵⁸ As one fast food worker recounts, “Reggie [the owner] does not make his money if the worker and his colleagues do not make the Big Macs.”⁵⁹ Throughout the book, Quigley provides the reader with scenes from the fights of UNITE HERE throughout Indianapolis. However, he shows that not all unionization battles can be won. While UNITE HERE enjoyed substantial victories for campus workers and food-service workers, they still have a long ways to go with regard to the hotel workers of Indianapolis.

Quigley concedes that the road ahead will be tough. Union organizers must confront multiple issues at once, including human psychology— “[s]ocial science research shows that most workers fear conflict in the workplace.”⁶⁰ However, Quigley assures the reader that the fight is worth it and that there is hope. He explains that many economists and scholars believe that service-sector workers will dictate the future of the U.S. labor law movement: “After all, cleaning bathrooms and washing dishes are jobs that cannot be outsourced to a Bangladeshi sweatshop or to a call center overseas.”⁶¹ Also, many of the service-sector employers are making profits and can afford to pay better wages and provide better benefits to their employees.⁶² Quigley harkens back to the successes of the manufacturing workers of the twentieth century and ruminates whether it is possible for the service-sector workers to follow the same path. He is optimistic: “I hope the answer is yes.”⁶³

This book adopts a practical, rather than theoretical, approach to illustrating the past and current struggles in U.S. labor law. Real-life stories are more effective in relaying the injustices of unfair employment practices and rallying action against poor treatment. But will workers like Keisha Johnson, the hotel worker, ever reach a point where she feels like “one of those moms” who can easily send her kids to college and have all the bills paid too? While Quigley appears hopeful, it appears that even he is unsure of what it will take to achieve that reality.

Ece Bicen, LL.M. 2018 (U.C. Berkeley)

58. *Id.*

59. *Id.* at 69.

60. *Id.* at 165.

61. *Id.*

62. *Id.*

63. *Id.*

