A Second Look at the Workplace Democracy Plan

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The Bernie Sanders presidential campaign presents socialists with an unprecedented opening for explicitly socialist politics. And Sanders' Workplace Democracy Plan (WDP) represents a coherent set of policies through which to examine that opportunity. In a recent *Jacobin* article, Barry Eidlin calls the plan the "most serious, comprehensive, and equitable plan for promoting workers' rights ever proposed by a major US presidential candidate." If the Sanders campaign and the WDP does represent such an opportunity, then surely socialists should use it for maximum effect. With that in mind, let's talk about the ways that the WDP could be pushed in a more socialist and rank-and-file direction.

Let's be honest: Sanders' WDP is in part aimed at securing endorsements from union officials. Whether that's a good or bad thing depends on your opinion about the possibility of a Sanders presidency—something I won't address here. Despite their reduced numbers, unions still have the ability to generate votes. Union households turned away from Hillary Clinton in 2016, helping deliver the White House to Trump. AFL-CIO President Richard Trumka has said, "We're setting the bar high—higher than it's ever been." Trumka continued, "If you want our endorsement … show us that you're unambiguously pro-worker and pro-union." Securing union endorsements would represent no small step toward putting Bernie Sanders in the White House.

At the same time, a fundamental tenant of the "rank-and-file strategy" is to build the "militant minority" on the shop floor, not to "permeate" the upper echelons of the union officialdom. This strategy recognizes that, although the union leaders should represent their members' interests, bureaucratic organization and imperatives often create a divergence between the interests of leaders and "the ranks." Since the WPD is pitched in part to the union leadership, this warrants us taking a bit more critical eye toward it.

Recently, I wrote an essay for *Catalyst* about how socialists should approach the issue of labor law reform. That essay provides the framework by which we can evaluate the WDP through a socialist lens. The bottom line is that we have to pay attention to the form, not just the content, of labor law. For example, specific provisions establishing rights protective of workers have been used, in statute

and case law, to deprive workers of the freedom to engage in a variety of strike actions. My conclusion was that we should be wary about labor rights. This is because rights are claims people can make upon the state to take action. This means labor rights involve substituting state power for worker power. Instead of rights, socialists should focus more on expanding labor freedoms. This does not mean that we should categorically eschew all labor rights—something that would impossible as well as self-defeating under capitalism—nor that we can somehow free ourselves from the confines of labor law under actually existing capitalism. Rather, in concrete, it means we should prioritize the elimination the various bans on strikes that exist under current labor law, and that stifle autonomous working-class organization and formation. This perspective is applied to the WDP in what follows.

The Good

Let's start with the good of the WDP. At the top of the list are the provisions that expand workers' freedom to strike. The best idea of the whole proposal is the elimination of the ban on secondary boycotts. Federal law currently outlaws actions and even speech by workers' and unions' that pressure clients or suppliers—"secondary" actors—of companies with whom there is a "primary" dispute. Perhaps no other provision of US labor law has done more to inhibit coordinated action by workers across companies and to create a fractured and weak labor movement. The WDP would also legalize the right to strike for federal workers.

More complicated is the WDP's promise to ban the permanent replacement of striking workers. There is no doubt that the use of permanent replacements has substantially weakened the power of the strike. But the real problem is not so much the employer's right to hire permanent replacements. It's the labor law's effective banning of mass strikes and mass picketing that hinders workers efforts to picket and demonstrate against strikebreakers. Section 8(b)(1) of the National Labor Relations Act prohibits workers from interfering with other workers' rights *not* to join or assist labor unions. While on its face this language is neutral, in practice it essentially guarantees that employers get a police escort for scabs. A better proposal to rebuild direct, worker power would be to repeal Section 8(b)(1) rather than to ban permanent replacements. This would limit the ability of the state to step in on an employer's side in a labor dispute.

Another notable positive is the plan's call to "work with the trade union movement to establish a sectoral collective bargaining system that will work to set wages, benefits and hours across entire industries, not just employer-by-employer." The current, dominant practice of firm-level or workplace-level collective bargaining is another chief source of labor's strategic weakness, and is the result of a long and tortured trade-union and government-policy history. Countries with sectoral, or broader-based, bargaining have lower wage inequality and often (although this isn't guaranteed) stronger labor movements. Sectoral bargaining prevents a "race to the bottom" in union standards and pay, which is not only good for workers but also builds solidarity and a broader, class-based consciousness. A plan to move collective bargaining to a sectoral level would be a very good thing.

On the other hand, the WDP is extraordinarily vague about what its vision of sectoral bargaining looks like. The bullet point says the plan will "[c]reate a sectoral collective bargaining system with wage boards to set minimum standards across industries." It's not clear if wage boards *are* the sectoral collective bargaining system or if they will come *in addition* to it, as a "minimum" backstop. The main concern here is that wage boards are less sectoral *collective bargaining* and more sectoral *government wage setting*. We should be skeptical of any proposal that further distances the determination of working conditions from workers themselves or the organizations that are closest to them, i.e., unions.

Other very good parts of the WDP include the more directly economic proposals, such as those to

protect pensions and provide a fair transition to Medicare for All. I will not say more about these here, except to point out that Sanders is, very savvily, seeking to avoid that conflicts with unions that arose under the Affordable Care Act with the so-called "Cadillac" health-care plans.

The Bad

Now let's turn to the bad. The first two bullet points of the Sanders' plan are a replay of the Obama-abandoned Employee Free Choice Act, and represents the union leadership's preferred model of labor law reform. The first point would permit union "certification" by the government conditioned on the union's obtaining a majority of signed authorization cards. Current practice requires a union to receive a majority of votes in a National Labor Relations Board-supervised election, a process fraught with employer interference and legal-bureaucratic delay. But the more fundamental problem is the government's supervision of this process, not the method by which unions are selected by workers. Because a government-controlled process for union recognition exists, labor law bans (in Section 8(b)(7)) the use of strikes by employees where the objective is to organize, demand recognition, or bargain with an employer. This puts workers at the mercy of a bureaucratic process outside their control. The existence of any such process should be objectionable to socialists. Simply changing the specifics of the bureaucratic method of selecting (or not) the union will do little to alter this relation of dependency. It would be better to remove the ban on strikes to organize or demand recognition so that workers could control the process themselves.

The plan's second provision calls for a guaranteed "first contract" through compulsory mediation or, failing that, binding arbitration. This too was a central feature of the EFCA, and, like so much else in current labor law and many common proposals for labor law reform, it contemplates substituting government action for worker action. Current labor law goes out of its way to substitute bureaucratic process for worker power, as just illustrated with the union recognition process. That substitution is the fundamental reason why it is so difficult for unions to achieve a first contract, even after workers have voted in favor of a union. Since rank-and-file action plays so little role in the *recognition* stage of union formation, it's no wonder that employers are so willing to resist unions at the collective *bargaining* stage. Compulsory mediation and binding arbitration won't fix any of this. These proposals are fantastic, however, for a union leadership that wants to free itself from being dependent on a source of power that flows from workers themselves. If workers are free to strike for union recognition, they will also have the power to strike for a first contract.

The Ugly

And then there's the ugly. A number of provisions are even harder to characterize as either "bad" or "good." Companies that merge should absolutely be required to honor existing collective agreements, but this problem will largely be solved if we move to a genuine system of sectoral bargaining which will require *all firms* in an industry to abide by the sector agreement, regardless of a contractual relationship or history between a specific union and a firm, and especially if that agreement was backed up by the power to strike. The same goes for employers using franchising and subcontracting to avoid responsibility and liability. The provision to provide for termination only for "just cause" is likewise ambiguous. "Just cause" was the practice for decades (and still is) under the US tradition of workplace-level bargaining. Although it provides some security to the worker, it does so by binding the workers' fortunes with those of the firm, splintering working-class consciousness. "Just cause" also tends to favor labor market "insiders" over "outsiders," those with the means and ability to enforce such provisions, further stratifying the labor market, often along lines of race, gender, and other oppressed identities. A federal job guarantee and more adequate funding for unemployment insurance would be a better way to provide security in the labor market. The WDP also calls for extending labor rights to historically excluded workers, like domestic workers. Whether this is a good thing depends on whether the above-mentioned changes are made.

For example, excluded or misclassified workers do not receive the protections of the NLRA, but they are also not subject to the secondary-boycott ban. Finally, I also have misgivings about the elimination of "right to work." There is no doubt that the assault on union security is meant to crush what remains of the labor movement. But unions in most other parts of the world, including virtually all of Europe, long ago abandoned union-security agreements. In fact, union-security is part-and-parcel of the US's narrow and self-defeating model of workplace-level bargaining.

Conclusion

Sanders' Workplace Democracy Plan represents a bold break with past labor law. Instituting sectoral bargaining, eliminating the ban on secondary boycotts, pushing back against the use of permanent replacements (in whatever form)—these would be solid, concrete, and crucially important steps forward, remarkable in the context of contemporary US politics if ever implemented, even partially. But if we truly want to analyze labor law reform through a socialist perspective, we also need to think beyond whether this or that labor law rule favors workers or not. We also need to think about how and by whom those rules are enacted, administered, interpreted, and enforced: by the capitalist state or by workers and their institutions themselves? Thus, Eidlin only gets it half right when he says that Sanders' plan, by being unambiguously pro-worker, goes beyond the view of the "state as an ostensibly 'neutral' arbiter to balance labor and management's competing interests." The illusion of state neutrality lies not in the fact that the state always takes one side or the other when it comes to the class struggle. Rather, the illusion is that the state, on balance, will not systematically favor the interests of capitalists: "the working class cannot simply lay hold of the ready-made state machinery, and wield it for its own purposes." Unless that principle is adhered to, we may get labor rights, and these may benefit the working class in material ways, but they will be fundamentally limited because they will be rights interpreted and enforced by the capitalist state, unable to transcend the logic of capitalism itself. We need to allow workers as much space as possible to create, interpret, and enforce their own version of labor relations, and this can be done by emphasizing and going beyond the best parts of the WPD: give back workers the freedom to strike.

This essay was also posted, in slightly different form, on the Jacobin website.