



6-1-1999

Review Essay of Richard Vigilante's Strike: The Daily News War and the Future of American Labor

Daniel J. Gifford

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Daniel J. Gifford, *Review Essay of Richard Vigilante's Strike: The Daily News War and the Future of American Labor*, 72 Notre Dame L. Rev. 255 (1996).

Available at: <http://scholarship.law.nd.edu/ndlr/vol72/iss1/7>

This Book Review is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

A Review Essay of Richard Vigilante's *Strike: The Daily News War and the Future of American Labor*

Daniel J. Gifford*

Richard Vigilante has combined in this book an intense and dramatic account of a major strike, complete with character portraits of the leading actors, with interpretations of the events and insights into the operations of the labor movement on several levels.

On one level, Vigilante sees the Daily News strike as representative of the conflict between craft-union organization and changing technology. As Vigilante puts it, Taylorism—the dominant mode of organizing productive work during the early decades of this century¹—sought to identify the one “best” method of performing any work-related task. The craft unions responded to the challenge of Taylorism by guaranteeing that their members would perform these identified tasks at the high standards which Taylorism required.² But they would do no more. Taylorism simultaneously defined the minimum level of performance and set the limits of employee obligations. The world view was one of boundaries set in advance, one consistent with sets of rigidly defined work rules and jurisdictional boundaries between the various crafts.

This was the world of the newspaper unions: the Newspaper Guild, the mailers' union, the pressmen's union, the paper handlers', the printers', the stereotypers', the machinists', the electricians', the photoengravers', and the drivers' unions. When Vigilante visited the Daily News, even his crossing of the plant floor required negotiation with different union representatives as he moved from the spatial domain of one union to that of another.³ The separate union organizations reinforced the structure of boundaries, predetermined tasks, and work rules defining the limits of obligation and responsibility.

Obligation and responsibility were especially limited in this world. The workers' responsibilities were confined to defined tasks: neither they nor their union bore responsibility for the success (or failure) of the enterprise. This perspective afflicts (or has afflicted) unions beyond those involved in newspaper publishing. It is the traditional labor-union perspective: success in the product market is the company's problem. Of course, this perspective denies a major part of the larger reality, because

* Robins, Kaplan, Miller & Ciresi Professor of Law, University of Minnesota. A.B. Holy Cross College 1953; J.D. Harvard University 1958; J.S.D. Columbia University 1981. I gratefully acknowledge helpful comments on an earlier draft of this review from Professors Steve Befort, Jim Chen, Daniel A. Farber and Leo Raskind.

¹ FREDERICK WINSLOW TAYLOR, *THE PRINCIPLES OF SCIENTIFIC MANAGEMENT* (1911). For a general discussion of Taylorism, see JAMES G. MARCH & HERBERT A. SIMON, *31-40 ORGANIZATIONS* (2d ed. 1993).

² RICHARD VIGILANTE, *STRIKE: THE DAILY NEWS WAR AND THE FUTURE OF AMERICAN LABOR* 48-49 (1994).

³ *Id.* at 57.

the jobs of the workers depend upon the company's success. Like the state of denial initially afflicting those suffering a tragic loss, however, the workers' vision was limited to what they found palatable.

Vigilante views this model of limited obligation as enormously destructive. It underlay the unions' approach to bargaining with the Daily News and thus was a proximate cause of the strike and its aftermath. It also underlies much that is wrong with labor/management relations throughout the United States. Vigilante offers several critiques of this limited-obligation model. The first is that changing technology has made the model obsolete. Under an earlier technology, the printers' union possessed the power to shut down the plant. That power arose from the relative scarcity of skilled printers. The printers could exploit that power by forcing the company to bear the full responsibility for the continuance of the enterprise. Within wide limits, the union could assert demands and let the company figure out how to live with them. Since the mid 1970s, the printers' power has been eroded by the electronic typesetting adopted by newspaper publishers.⁴ This erosion was not immediately recognized by either the unions or the New York publishers. By the time of the strike, however, the technology-driven power shift away from the printers' union was incorporated into the News' bargaining strategy. The phenomenon by which union power is undercut by changing technology is, of course, not limited to newspaper publication. Similar power shifts have taken place (and are taking place) in manufacturing. Caterpillar Inc., for example, once was dependent upon teams of highly skilled tool-and-die makers whose work, in large part, is now performed by computer-controlled machines.⁵ This shift in power appears to have been reflected in the December 1995 decision of the United Automobile Workers to discontinue its seventeen-month strike at Caterpillar.

Vigilante's second critique of this model of limited obligation is that it is morally corrosive. The limited responsibility imposed by the Taylorite work ethic is inconsistent with collective goal orientation. And collective goal orientation, in Vigilante's view, engenders personal fulfillment. At the time of the strike, the Daily News was owned by the Chicago Tribune. The Tribune operated a modern plant in Chicago and wanted to put a modern plant in New York. Contrasting the Chicago Tribune's state-of-the-art plant which has no union-imposed work rules with the News' obsolescent New York plant burdened with complicated job descriptions and work rules, Vigilante sees more than differences in technology. In Chicago, where the workers move from task to task as the productive demands of the moment require, the workers gain satisfaction from participating in a productive enterprise. In New York, where the workers' responsibilities are limited to defined tasks, they lack that sense of personal fulfillment. The frustration of the New York workers is compounded with a suppressed sense of guilt when they are paid, under the union contract, for work which they do not perform.

4 *Id.* at 97.

5 Peter T. Kilborn, *Union Capitulation Shows Strike Is Now Dull Sword*, N.Y. TIMES, Dec. 5, 1995, at A18.

The higher sense of personal fulfillment in Chicago is not unrelated to the difference in technology: the modern technology in place in Chicago requires a flexible workforce, one unencumbered by rigid work rules. Thus the work rules effectively bar the introduction of the new technology as well as bar the worker cooperation and flexibility that permeate the Chicago plant, the cooperation and flexibility which engender feelings of participation and fulfillment.

Vigilante employs a theological metaphor to assess the relationship between workplace organization and personal fulfillment. Here he contrasts a Calvinist respect for work, regardless of its content, with what he sees as a traditional Catholic denigration of the intrinsic value of work.⁶ According to Vigilante, work, assessed from a Catholic perspective, was valuable only as it reflected God's glory. Vigilante sees this theological difference reflected in the different workplaces operated by the Chicago Tribune. In the Tribune's Chicago plant, workers obtained personal fulfillment in their work, a sort of Calvinist "salvation" through rewarding work, whereas in the rule-bound New York plant, workers were unfulfilled and guilt-ridden. This Protestant/Catholic metaphor in some ways is less apt than a metaphor related to the contrast between a traditional, status-oriented culture where roles are rigidly defined and permanent, on one hand, and the dynamic culture of the present, on the other hand, where—especially in the workplace—roles are continually in flux and the demands for flexibility are insistent. Vigilante sees working class culture—especially ethnic Irish working class culture—as more like the former than the latter: more rigid than dynamic; oriented to the past rather than to the future. Indeed, Vigilante invokes the culture of a traditional society as a referent when he suggests that the grudging rule-bound commitments which the New York workers made to their employer were reminiscent of the way exploited tenant farmers related to their absentee landlords in nineteenth-century Ireland. Noting that the bulk of the News' employees were ethnic Irish, Vigilante suggests the possibility that the employees' cultural history may have reinforced the union ethic at the News.

Vigilante uses these religious and cultural metaphors to shed light upon the needs and opportunities of the workplace and upon the responses of workers and their unions to these needs and opportunities. Today's workplace is subject to constant change. Technology is changing. Customer needs and desires are shifting. The pressure from competitors is unrelenting. Success demands flexibility and commitment to the success of the enterprise. The labor union that periodically exploited opportunistic power to rewrite quasi-permanent work rules is a relic of the past. Labor unions today are required to cooperate with employers to ensure the success of the enterprise, and with it, the prosperity of their members.

Like the workers whom they represent, the unions manifest a limited vision when they opt for bounded obligations. As the workers' obligations extend only to defined tasks, ignoring the problem of how the tasks fit into the production scenario, so the unions are concerned with the terms and conditions of employment, ignoring the impact of wage rates, work rules

6 VIGILANTE, *supra* note 2, at 51-53.

and organization upon the success of the company. In years past, the unions successfully pressed for more jobs and higher wage rates. Now, with changing technology undermining the unions' power and the company hard pressed by rivals, union officials are willing to sacrifice the jobs of their members. The bargaining thus follows its accustomed course: more jobs and higher wages in good times; layoffs but no wage reductions in bad times. This scenario never benefited workers generally; it merely provided a script for shifting benefits from workers with less seniority to workers with greater seniority. In industries involving nontraded⁷ goods such as newspapers, the harm was confined to the class of less senior workers. Vigilante, of course, does not comment on traded-goods industries. In those industries, however, this scenario resulted in significant erosions of the comparative advantages in international trade of this nation's most efficient industries: by forcing the wage rate up in the most profitable industries, those industries became saddled with differentially high labor costs.⁸ While the currency markets would adjust for labor costs generally, they do not adjust for differentially high labor costs in particular industries. Thus labor union strategy—which in the past has focused single-mindedly upon the short-term benefit of their most senior members—has undermined the strongest parts of this nation's employment base.⁹

Vigilante faults the unions—and the prevailing union ethic—for their emphasis upon worker solidarity: a concept premised upon a static understanding of the relevant technology and, consequently, of fixed relations between employers and workers. This is the solidarity of Durkheim,¹⁰ the world of Weberian managers,¹¹ and of workers performing unchanging tasks in a Taylor-designed production format. Indeed, its origins can be traced back to the medieval guilds where craftsmen shared a common outlook and offered mutual support. The guilds, however, were cartels and the object of a cartel is to enhance the welfare of its members by restricting output. This is where the guild ethic of the labor unions fails. A restrictive output strategy in today's highly competitive marketplace is not likely to work, either for producers or their unionized employees. In either case, it would cost the employer its market share and the employees their jobs. Unions which follow such a strategy may produce short-term benefits for some workers, but ultimately are likely to hurt the larger class of workers which the strategy is overtly designed to help.

Even allowing for its static limitations, union solidarity as seen by Vigilante exhibits a darker side, a side tinged with petty (and sometimes not so petty) corruption. Prior to modern technology, the printers were critical to the production of a newspaper. The printers' union exploited that power, forcing the company to accept more printers than the company

7 Traded goods are goods which compete with goods produced abroad. Nontraded goods are those which do not compete with goods produced abroad. See, e.g., ANNE O. KRUEGER, EXCHANGE-RATE DETERMINATION 27 & n.17 (1983).

8 Daniel J. Gifford, *Redefining the Antitrust Labor Exemption*, 72 MINN. L. REV. 1379, 1424 (1988).

9 *Id.* at 1423-28.

10 EMILE DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* (2d ed. 1947).

11 MAX WEBER, *THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION* (2d ed. 1957).

needed. When technology changed, that situation was exacerbated. Yet the company could not reduce its workforce without union consent. As a result, workers often spent most of their day out of the plant, "on call" for emergencies, but not working. The solidarity ethic approved of this arrangement, seeing no moral problem in this kind of featherbedding, in which workers accept pay for work they do not perform. According to Vigilante, the workers transferred their guilt into hostility towards their employer.

Although contemporary economic conditions call for a movement away from the model of limited obligation and towards a cooperative work ethic, American labor law is not yet attuned to the new reality. Indeed, the National Labor Relations Board (the NLRB) has construed the National Labor Relations Act (the NLRA) as forbidding the implementation of so-called "quality circles," organizational devices which encourage discussions among workers and between workers and management representatives as a means of improving quality.¹² Vigilante, who focuses upon the newspaper industry in his book, does not address the issue of quality circles. He does, however, show us other ways in which the NLRA fosters confrontation rather than cooperation. These have to do with the way the law affects bargaining strategy.

Although the NLRA was designed to alleviate labor unrest by encouraging bargaining, Vigilante shows us ways in which the law in fact discourages accommodation and compromise. Thus, according to Vigilante, Daily News counsel Robert Ballow felt compelled by the law to assert from the outset the company's most aggressive bargaining position, refusing to concede even uncontroversial issues like the union dues checkoff. Moreover, Ballow would not concede any point until an entire bargaining package could be agreed upon.¹³ This strategy was necessary, Ballow believed, to maintain the company's bargaining position. For the company to concede an issue and later withdraw the concession would expose it to a determination of the NLRB that the company had engaged in "regressive bargaining," an event that could be an unfair labor practice,¹⁴ which in turn could have profoundly serious consequences for the company.

Thus, as Vigilante points out, if the company's bargaining tactics are later construed as having involved unfair labor practices, then a strike which follows may be ruled an unfair labor practices strike (rather than an economic strike) with the result that the company is exposed to extensive monetary liability. Thus the law itself compels the company to take unduly harsh and uncompromising bargaining positions. These effects are exacerbated when the union is the weaker party. In that case, the law encourages the company to take hard and uncompromising positions for the additional reason of forcing an impasse in the negotiations. When an impasse

12 E.I. du Pont de Nemours & Co., 311 N.L.R.B. 893, 897 (1993); *Electromation, Inc.*, 309 N.L.R.B. 990, 997 (1992). In these cases the NLRB employed rationales which would effectively bar quality circles by construing them as employer-dominated labor unions. See WILLIAM B. GOULD IV, *AGENDA FOR REFORM* 140-41, 262 (1993) (discussing the *Electromation* decision).

13 VIGILANTE, *supra* note 2, at 138-39.

14 See, e.g., *Valley West Health Care, Inc.*, 312 N.L.R.B. 247 (1993), *enforced*, 67 F.3d 307 (9th Cir. 1995).

is reached, the company is free to impose its last offer.¹⁵ Thus the company is encouraged to take positions it believes will be unacceptable to the union in order to reach an impasse. Second, the company is encouraged to offer as little as possible because at an impasse, the company cannot impose a settlement more adverse than its last offer. These constraints on company bargaining arise from the law. The irony, of course, is that the law is intended to bring the parties together. Rather, the law encourages the company to be unreasonable.

Finally, Vigilante pinpoints the role of violence in labor/management relations as well as society's ambivalence toward it. The strategic variable in the success or failure of the strike was the ability of the company to put the newspaper in the hands of retail vendors. This is where the company lost. Vigilante reports that widespread and systematic violence or the threat of violence by the drivers successfully prevented vendors from accepting papers. Many of these vendors were particularly vulnerable people: recent immigrants from the Middle East or the Indian subcontinent who had learned to fear violence in their original homelands and who were unsure of the extent to which the police would protect them in their new homeland. Yet at the same time that the violence was succeeding, public figures including political leaders like Governor Mario Cuomo and religious leaders like Cardinal O'Connor were denying its existence. Vigilante asserts that these individuals knew better but denied knowledge of its existence. He refers to the widespread denial as the "New York wink," a practice in which millions of people refused to acknowledge publicly an unseemly practice which they all knew was occurring. Even more unsettling, Vigilante asserts, was the active participation of the *New York Times* in the suppression of the news about the violence while actively casting doubt upon its existence.¹⁶

The ambivalence of public attitudes towards violence manifested in the context of the Daily News strike replicates a similar ambivalence during the sit-down strikes of 1937 when the automobile industry was organized. The union prevailed because Michigan Governor Frank Murphy was unwilling to use force to evict the workers from the plant.¹⁷ When General Motors realized that its property rights would not be enforced, it agreed to recognize the union. Other auto companies followed General Motors' example of recognizing the United Automobile Workers. (Ford, however, held out until 1941.) United States Steel capitulated three weeks after General Motors. The remainder of the steel companies followed suit. To a significant extent, the unionization of America's mass-production industry rests upon an original act of violence and public acceptance of that violence. Vigilante, who seems to like theological metaphors, might be in-

15 See, e.g., International Ladies' Garment Workers' Union, 306 N.L.R.B. No. 52 (Jan. 31, 1992).

16 These claims that the *Times* played less than an even-handed role in reporting the strike are not the only recent assertions of skewed reporting by that paper. Recently the validity of the *Times* reporting of the so-called Whitewater affair has been questioned in *Harper's Magazine*. Gene Lyons, *Fool for Scandal: How the "Times" Got Whitewater Wrong*, HARPER'S MAG., Oct. 1, 1994, at 55.

17 MELVYN DUBOFSKY, *THE STATE AND LABOR IN MODERN AMERICA* 140-42 (1994).

clined to call Governor Murphy's acquiescence in union violence the "original sin" of the union movement.¹⁸ Yet Murphy was rewarded for this act of acquiescence by being appointed to the U.S. Supreme Court. Is there irony in the fact that the politician who ignored the law was elevated to the institution which bears ultimate responsibility for assuring that the law is implemented? Or is the world of labor relations more complex and subtle than this superficial reading of history would suggest?

The attractiveness of Vigilante's book lies in his ability to add layers of analyses and interpretation to his factual narrative. The work ethic of the Daily News employees was corrupted by the bargaining model: the union demanded and received set hourly wage rates, a specified number of jobs, and work rules which defined the allocation of tasks, the methods of performance, and the limits of obligation. These ways of resolving the relations of the workers with their employer created an environment of preset obligations and limits on those obligations. Workers were interested in receiving as much as possible and in contributing as little as possible. This bargaining model also reflects the traditional perspective of craft unions. It may also be consistent with maximizing the power and importance of union officials, who mediate changes in compensation and work rules, while preserving the prerogatives of the most senior union workers.

He correctly identifies changes in technology as representing the core of current changes in the workplace. New technologies generally demand flexibility and are incompatible with work rules designed for a static workplace. The present work environment demands a cooperative spirit, an ability to adapt to change, a willingness to cooperate in the larger productive enterprise. Whether the vision of union officials is sufficiently broad is an open question.

Vigilante is at his best when he narrates and provides us with an overlay of ethnic and quasi-philosophical gloss on his story. In the latter pages of his book, he directs us to the large issues about the future of work and of unions. Here, I believe, his goals exceed his grasp. Much as he would like to develop one, Vigilante does not have a coherent view of the future of labor relations.

Yet many of his insights suggest a broad outline for future labor relations. Thus Vigilante's contrast between the self-fulfilling work ethic of the Tribune and the grudging world of metes-and-bounds obligations of the News, a world which induces self-hatred instead of fulfillment, is suggestive of the need for a new model of labor/management relations based upon partnership and shared rewards. Such models can be found in many of the more advanced labor practices. They are found in varying degrees at General Motors' Saturn plant, at the General Motors-Toyota joint venture,¹⁹ and in Whirlpool Corporation's reorganized operations.²⁰

18 My colleague Jim Chen has employed a similar metaphor to illuminate the unsavory beginnings of this nation's agricultural policies. See Jim Chen, *Of Agriculture's First Disobedience and Its Fruit*, 48 VAND. L. REV. 1261, 1274 (1995).

19 WILLIAM B. GOULD IV, AGENDA FOR REFORM 123-31 (1994) (discussing labor/management relations at the Saturn plant and at the GM-Toyota joint venture).

20 Mary Rowland, *Taking Care of Labor at Whirlpool*, N.Y. TIMES, Mar. 5, 1995, § 3, at 13.

American companies can also find models of cooperative labor/management behavior abroad.²¹ All of this, of course, is beyond the scope of Vigilante's provocative book. He points us in the right direction: cooperation rather than confrontation, and shared participation in collective goals. Other nations have been able to facilitate workplace accommodation and change better than the United States. In Japan, for example, workers cooperate with the changes which advances in technology require. As a result, wages in Japan have risen dramatically while unemployment has remained consistently low. The techniques employed in Japan to achieve these results include the payment of substantial amounts of worker compensation in the form of annual bonuses,²² thus encouraging workers to identify their welfare with that of the company. This device also enables Japanese companies to weather downturns in the business cycle better than their American counterparts, because their labor costs can adjust to business conditions. Conversely, Japanese workers fear unemployment less than their American counterparts because of their employers' commitments to maintain their jobs, commitments which are easier to incur with the flexible Japanese wage structure. Again, the Japanese have been able to avoid the differentials in wage costs in their manufacturing industries which have adversely affected the trading positions of unionized American industries.

European nations have employed a variety of policies to encourage labor management cooperation. In Germany, this cooperation has been encouraged through worker participation in management, both at the plant and enterprise levels.²³ In a number of European nations, so-called "neo-corporatist" labor policies have fostered social compacts among employers, comprehensive labor unions and the state under which the long-term interests of labor and the working classes are reconciled with the interests of industry and the public. Neither the Japanese nor the European models may fit the highly individualistic American cultural milieu, but they need to be studied. American labor law and policy are obsolete relics of the depression era.²⁴ Vigilante has given us a case study of how the NLR works in practice. As a nation, we need to examine the deficiencies in our existing laws and institutions, to examine the responses of others to similar problems, and then creatively to redesign our laws and institutions for an age of rapidly changing technology and intense global competition.

21 Clyde W. Summers, *Comparison of Collective Bargaining Systems: The Shaping of Plant Relationships and National Economic Policy*, 16 COMP. LAB. L.J. 467 (1995).

22 JUNICHI GOTO, LABOR IN INTERNATIONAL TRADE THEORY 65 (1990).

23 Clyde W. Summers, *Worker Participation in the U.S. and West Germany: A Comparative Study from an American Perspective*, 28 AM. J. COMP. L. 367, 375, 384 (1980).

24 Jim Chen & Daniel J. Gifford, *Law as Industrial Policy: Economic Analysis of Law in a New Key*, 25 U. MEM. L. REV. 1315, 1333-35 (1995); Daniel J. Gifford, *Labor Law and Its Reform*, 80 IOWA L. REV. 201, 207-10 (1994) (reviewing WILLIAM B. GOULD IV, *AGENDA FOR REFORM* (1993)).