

## Relations industrielles Industrial Relations



*The Blue Eagle at Work: Reclaiming Democratic Rights in the American Workplace*, by Charles J. MORRIS, Ithaca N.Y.: Cornell University Press, 2005, 328 pp., ISBN 0-8014-4317-2.

Jean Gérin-Lajoie

La citoyenneté au travail ? Réflexions sur le milieu de travail de l'avenir

Citizenship at Work? Thinking the Workplace of the Future

¿La ciudadanía laboral? reflexiones sobre el medio laboral del futuro

Volume 60, Number 4, Fall 2005

URI: <https://id.erudit.org/iderudit/012346ar>

DOI: <https://doi.org/10.7202/012346ar>

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Publisher(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (print)

1703-8138 (digital)

[Explore this journal](#)

Cite this review

Gérin-Lajoie, J. (2005). Review of [*The Blue Eagle at Work: Reclaiming Democratic Rights in the American Workplace*, by Charles J. MORRIS, Ithaca N.Y.: Cornell University Press, 2005, 328 pp., ISBN 0-8014-4317-2.] *Relations industrielles / Industrial Relations*, 60 (4), 823–825.

<https://doi.org/10.7202/012346ar>

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Enforcement, however, does not just come through conflict. In the most successful cases, the organizers engage in both inside and outside strategies to win implementation.

Luce's book is an important contribution to the literature on public policy and social movements. Her many case studies and in depth discussions of living wage enforcement strategies will be

of most interest to advocates directly involved in living wage campaigns. Her broader analysis of the role of advocates in policy implementation, however, has implications for a wide range of public policies. Luce provides a compelling case for the role of an organized citizenry in policy enforcement.

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***The Blue Eagle at Work: Reclaiming Democratic Rights in the American Workplace,***

by Charles J. MORRIS, Ithaca N.Y.: Cornell University Press, 2005, 328 pp., ISBN 0-8014-4317-2.

In this volume, the author hurls a cannonball at the heart of the usual application of the National Labor Relations Act (NLRA) by the National Labor Relations Board (NLRB). The impact of his self-qualified "iconoclastic thesis" is such that the puzzled reader may wonder: which is more likely to shatter—the cannonball or the target?

The author's core thesis is that the original and accurate reading of the NLRA gives statutory protection to minority bargaining, for members only, in workplaces where there is no exclusive/majority bargaining agent. Hence, with or without majority representation, employees have the right "to bargain collectively through representatives of their own choosing," and it is an unfair labour practice for an employer "to interfere with, restrain, or coerce employees in the exercise" of that right.

The author is acutely aware that his advocacy of minority bargaining in work places where there is no exclusive/majority bargaining agent, shatters an application of the NLRA covering most of three-quarters of a century. Thus his analysis consists of three main parts. The first part is historical, bearing mostly on the National Industrial Recovery Act of 1933, hence the "Blue

Eagle" in the title. The second part is legal, and bears on the statutory content of the existing NLRA. The third part deals with the present-day implications of getting his thesis accepted, and the foreseeable implications should it be accepted in fact.

The first part includes a fascinating survey and analysis of the years preceding the 1935 Wagner Act: the years when industrial unionism was hatched in the United States; the years of the struggles between company unions and independent—from the employers—unions; the years of members-only minority attempts at collective bargaining, and of many strikes. The author devotes his considerable talents and efforts to these issues. At the same time, he devotes less effort to the framework of these issues, namely the industry-wide Codes issued by the Federal Government, preferably but not necessarily espousing the terms of mutual agreements between employers and employees' representatives, dictating for all firms and employees wages, hours and labour standards, and deserving the symbolic pennant of government approval: the Blue Eagle. It was this power of dictating that was judged unconstitutional by the Supreme Court, as exceeding the authority of

the Federal Government over interstate commerce. These dictating powers of the Federal Government had obviously been inspired by those of various non-federated European Governments, still commonplace to this day in continental Europe. In North America, the only vestige of such power lies in a rather obscure piece of Québec legislation initially adopted in 1934, but with limited current coverage.

This first part of the book also includes an excellent account of the gradual disappearance of members-only agreements, following the passage of the Wagner Act in 1935. Initially, most of the new industrial unions signed mostly members-only agreements. Such were the benchmark agreements of 1937 at U.S. Steel, other steel companies, General Motors, and Chrysler. The legality of such agreements was upheld by the Supreme Court. Left unsettled, however, was the issue of whether bargaining was compulsory with a minority union. To this day it remains unsettled. For the author, this early practice is of major importance to its present-day relevance and to his advocacy. Such minority agreements disappeared rapidly because they became brief stepping-stones to exclusive majority certifications by the NLRB, whether by elections or card-checks. The win-rates of unions before the Taft-Hartley Act of 1947 exceeded 80%. This was a short-lived success for the unions which erased minority bargaining—"a sleeping giant waiting to be reawakened," in the author's words.

The second part of this volume deals with the legal aspects of minority bargaining. It includes an exhaustive review of statutory language, of court decisions, and of U.S. obligations under international law. After considerable research, the author reports with assurance that there are no court or NLRB decisions that an employer has a duty to bargain *only* with a majority union. "There has also never been an adjudication of

the more specific issue of whether an employer has an obligation to bargain collectively on a members-only basis with a union that represents a minority of its employees where a Section 9(a) majority representative has not been designated." The author concludes that the slate is clean.

The third part deals with the implementation of minority bargaining and its aftermath. The author does not advocate legislative changes. Rather, he does advocate reinterpretation of existing statutes, regulations, and practices. He presents various routes available through the NLRB General Counsel, the NLRB itself, and the courts. He forecasts heavy doses of employer objections and court litigations. For instance, he documents thirteen findings of violations by Wal-Mart of the NLRA, as reported by the NLRB or its judges, from 2001 through 2004. Because of the foreseeable costs, he expects initial attempts at minority bargaining to be undertaken by established large unions, able to shoulder such costs. He envisions many-faceted attempts to organize members-only unions, to secure recognition from recalcitrant employers, and to achieve legal enforcement of compulsory bargaining under existing statutes. Once such legal enforcement has been achieved, the bargaining involved would not be contract bargaining as we know it. It would be ad hoc bargaining on specific issues, such as disciplinary procedures or another twenty-odd issues, which are listed by the author. The author views such members-only bargaining as a possible stepping-stone to exclusive majority contract bargaining, as during the thirties. During this transitional period, the survival of a minority union would require strong rank-and-file participation, payment of even minimal dues, an active steward network, and if possible, community support. Depending on circumstances, a minority union could also benefit from spousal of employee involvement to enhance productivity. In

any event, its goal would be to promote Senator Wagner's dream of industrial democracy, and to reclaim meaningful democratic rights in the American workplace.

At this point the reviewer has rounded up a wonderful advocacy of an organizing and judicial renewal in American labour and its collective bargaining. The author's scholarship, research, and grasp of issues are impressive. They make for fascinating reading, for which the author can be heartily commended, and deserves our best wishes of successful implementation.

Whence, thus, the gnawing feeling that successful implementation will face roadblocks even more daunting than those admirably acknowledged by the author? These will be from three sources, in my opinion. The first source is the common hesitancy about future plans and forecasts. The second source is the tremendous weight upon an even agile mind, of the conventional wisdom of three-quarters of a century, that compulsory collective bargaining is dependent on a majority union status. The third source is more fundamental. It flows from the very title selected by the author for his volume: "The Blue Eagle at Work." The stark reality is that there is no Blue Eagle at work in the United States today.

The Blue Eagle was the symbolic icon or pennant of a Federal Government

industrial Code edicted with or without agreement between management and labour. Indeed, minority unionism and bargaining was rife, as the writer rightly documents. But, at the same time, such minority presence was only the trigger for a government edict dictating wages, hours, and labour standards. Such is the case today in several countries in continental Europe. Such was the case as well, for several years, but less so today, in the obscure Québec context of "decrees," similar to the defunct "Codes" of the United States. Today, in the United States, such government power no longer exists. Consequently, the Blue Eagle can not be revived. It cannot fly again.

Thus the question arises. Can minority members-only collective bargaining resurrect today in spite of its initial link to a disappeared Blue Eagle framework, and to its residual after-glow in the steel and automobile labour agreements of 1937? Is the disappearance of the initial Blue Eagle fatal to minority unionism and members-only collective bargaining? Or can these be revived in today's world, and so reclaim meaningful democratic rights in the American workplace, a cherished objective of the author? Which of the two, of the cannonball or the target, will shatter? *Les paris sont ouverts.*

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***Le travail non qualifié : permanences et paradoxes,***

sous la direction de Dominique MÉDA et Francis VENNAT, Paris : La Découverte, Collection « Recherches », 2004, 426 p., ISBN 2-7071-4468-1.

À l'heure où les mutations de l'économie amènent une prolifération de recherches sur les travailleurs du savoir, la publication de ce livre sur le thème du travail non qualifié nous ramène à une réalité encore bien présente dans les milieux de travail. Issus d'un programme de recherche de la Direction de l'animation de la recherche, des

études et des statistiques (DARES), les travaux de ce livre ont été alimentés par cinq laboratoires de recherche français. Le programme voulait faire le point sur cette catégorie d'emploi caractérisée par sa recrudescence en France depuis le milieu des années 90 et dont l'évolution était aussi marquée par un fort taux de chômage. Un autre objectif était de