

REVITALIZING THE LABOR MOVEMENT

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About Us

The Undergraduate Labor Institute is a labor policy think-tank run by Cornell undergraduate students. We aim to research and create a collaborative policy document each semester, based on a curated theme associated with changes and problems in the workplace.

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Introduction

By: Richard Green

The Undergraduate Labor Institute's focus on the world of work has come from an understanding that labor is directly tied to one's wellbeing, and that acquiring and maintaining decent labor can be one of the most decisive challenges in the life of any American. As such, there have been various iterations of what may be referred to as a "labor movement," whether it has been to bolster unionization in the late 19th and mid-20th centuries, to pass New Deal era legislation such as the National Labor Relations Act in 1935,¹ or to fight for living wages in various industries. However, the labor movement has been steadily declining since the 1950s, and in the last 40 years, the number of workers covered by a collective bargaining agreement has more than halved so that only 12.1% of workers in the U.S. are currently unionized.² On the other hand, since 1979, whereas productivity has increased by almost 70%, wages have only increased by 11.6%, while prior to 1979, wage and productivity growth were almost directly proportional.³ It is no coincidence that upon a decrease in representation, workers were more prone to being compensated less for more work.

In recent years, various actors have sought to revitalize the labor movement. From attempts to unionize private sector industries with powerful systemic barriers such as big technology, to public sector work such as teacher's unions, to even alternative strategies outside of unionization,

people are making it clear that the status quo must be changed. At the same time, however, history often repeats itself with barriers to the renewed labor movement, as not only do employers consistently find ways around laws protecting employees, but oftentimes, the employees in precarious situations work for the government that fails to provide them with proper avenues of representation. Whereas employees are often indoctrinated into believing that unionization or outside representation is a fruitless endeavor, employers often understand that the most effective way for employees to ensure their work is decent is to act collectively. This ideological discrepancy is at the heart of recent attempts to revitalize the labor movement. Raising class consciousness is essential to collective action, and collective action is essential to reversing the systemic inequities at the bargaining table.

Eugene V. Debs stated that "While there is a lower class, I am in it, while there is a criminal element, I am of it, and while there is a soul in prison, I am not free." This sentiment is reflected in the new attempts to organize workplaces that have built up advanced anti-unionization techniques. There is a focus on inclusion that prior labor movements have lacked, and an admirable hope in the face of grandiose adversity.

A forceful challenge to the state's complicity in allowing employers to mistreat and undervalue those who keep society running is long overdue, and there is an especially adamant refusal among workers to tolerate constant jabs at their dignity. Our analysts have worked diligently to provide detailed accounts of injustices against those who turn our society's gears and have set forth to research policies that would help undo the burdens that prevent people from having adequate representation at work. We hope to instill our readers with a certain consciousness about the various inequalities that workers have to process on a daily basis and come to the understanding that standing against injustices is best done collectively.

Endnotes

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1 Struggling Union Case Study

By: Sara Javkhan, Heman Asibuo, Lilly Thomalla,

Introduction

The famous yellow taxi has been an important fixture of New York City, but recent setbacks have severely weakened the historic taxi industry and the workers involved within it. The taxi industry has been in the midst of a crisis due to drivers being forced to take out hundreds of thousands of dollars in loans to obtain a medallion, a license to operate a taxicab. Ride-sharing services such as Uber and Lyft have removed much of the customer base for the traditional taxi industry. This emergence has also made it more difficult for taxi drivers to pay off their loans from buying medallions. Additionally, the COVID-19 pandemic has exacerbated these challenges and further weakened the industry. All of these factors in tandem have created a crisis for the city's taxi drivers.

In an industry that has long provided economic stability for its drivers — particularly for immigrants who make up the majority of drivers in the industry — these setbacks have threatened the industry's existence. However, there are short- and long-term policy solutions that can mitigate the financial troubles of the industry and create a more stable industry in the era of Uber and Lyft.

Historical Context

The New York City taxi industry had its origins in 1907. These gas-powered taxis replaced hansom cabs powered by horses. Taxi cabs quickly sprang up throughout the city, with 15,000 cabs on the streets by 1923.¹ Many more cabs appeared throughout the 1920s and 1930s. The lack of oversight and regulation of the early industry prompted the city to set a quota on the number of medallion permits that could be sold. Over the years, the industry has evolved as the demand for cabs grew in a rapidly expanding city. The taxi driving profession has also become dominated by immigrants — particularly those from South Asian countries. Taxi driving has long been seen as a stable and decent line of work, attracting many newly arrived immigrants seeking economic opportunity.

The taxi industry has a history of union activity, especially in recent years. The Transit Workers Union received recognition in 1937 and represented 28 fleets.² However, this union contract lasted two years and subsequent attempts to unionize failed. In 1965, a successful unionization drive led by the Electrical Workers Union and Central Labor Council resulted in organizing 82 fleets. However, the economic recession of the 1970s, as well as the rise in leasing medallions weakened union activity.

The establishment of the New York Taxi Workers Alliance in 1998 has helped taxi workers in their pursuit for greater compensation and benefits. In 2011, the NYTWA was recognized by the AFL-CIO — the first AFL-CIO union for independent contractors. Still, struggles remain for the taxi industry and union as it grapples to compete with platform driving service companies, fight for medallion debt relief, and navigate working in a pandemic.

Over the last several years, rideshare platforms called “Transportation Network Companies” (TNGs) like Uber and Lyft have taken over the for-hire driving services industry. It is an attractive alternative to taxis for consumers, because calling an Uber is often cheaper and more convenient than scheduling a taxi ride. TNGs are able to charge a lower price than taxis because their drivers are “self-employed” and don't have the right to unionize under the National Labor Relations Act.³ Taxi drivers, on the other hand, are wage-employed workers, and can be represented by taxi or other labor unions. These unions are still advocating for the rights of their members and hope to continue to do so.

Medallions

Over the years, prices for these highly-sought after medallions rose dramatically — causing taxi drivers to take out loans for hundreds of thousands of dollars and leaving many of them in deep financial trouble. This is the result of predatory lending practices and a lack of regulatory oversight.

A medallion is a permit to operate a taxicab. In New York City it is illegal to operate a taxicab without one of these medallions. The current medallion system was established in 1937 through the Haas Act. This put a quota on the total number of medallions that could be sold.⁴ The act also required that drivers pay an annual fee in order to keep their medallions. Prior to the act's

passing, there was more supply of taxi cabs than demand, which made it especially difficult for taxicab drivers to make sufficient income. By limiting the number of medallions, taxi drivers were able to make more money and city streets became less crowded. The original quota was set at 13,595, but this number went down during World War II.⁵ Even though the population of New York City has increased since then, the number of medallions has stayed roughly the same — as of today, there are 13,587 medallions. A regulatory body, the Taxi and Limousine Commission, was established in 1971 as a response to the rise in unregulated driving services. In 1979, a change was made that allowed drivers to lease medallions for shifts at a time.⁶ Over time, more taxi drivers began leasing medallions from large cab companies instead of buying them on their own, but buying a medallion was a symbol of success for these drivers aspiring to make a comfortable living.

The average taxi driver in New York City takes out nearly \$500,000 in loans just to finance their medallion. The price of a medallion has increased significantly over the years but has recently dropped off. In 1937, the cost of a medallion was \$10. By 1985, medallions could be sold for up to \$100,000. And by 2014, a new record was set with someone paying \$1.3 million for the highly coveted medallion.⁷ Medallions were once a safe investment for drivers since the value of these medallions would increase steadily over time. A driver could have a decades-long career in driving and be able to cash out hundreds of thousands of dollars at their retirement.

However, the medallion lending industry heavily inflated prices — causing a speculative bubble to form.

This bubble eventually burst. By November 2019, the average cost of a medallion had dropped down to \$164,518.⁸ For some drivers, their medallions were now worth a lot less than what they had bought them for. As a result, many drivers have found it more difficult to pay back their loans — especially as ride-sharing apps provide increased competition.

The medallion lending industry is behind the formation of the medallion bubble. Lenders in the industry became less stringent in the way they gave out loans. They reduced the down payment of these loans, eventually phasing it away entirely.⁹ This practice made it so that people who were unqualified to borrow money could, which set a dangerous precedent. A New York Times investigation discovered that these lenders would urge their clients to refinance their loans, add additional fees, increase interest rates, and extend the length of the loans.¹⁰ Immigrant drivers who did not speak English well enough were especially vulnerable to predatory lending practices. Some signed agreements not knowing that they were buying a medallion.¹¹ The same New York Times investigation discovered that one Pakistani immigrant believed he was just buying a car but ended up taking out a \$780,000 loan for a medallion. These measures increased the earnings for lenders while putting borrowers at greater risk for financial devastation.

Before the bubble burst, drivers would use a majority of their monthly wages toward paying off their loans. When the bubble burst and medallion prices decreased substantially, borrowers had rates

on their loans so high that some even declared bankruptcy.¹² To this day, many drivers still find themselves struggling to make ends meet as they are burdened with hundreds of thousands of dollars in debt from making their medallion purchase. The New York Taxi Worker Alliance (NYTWA) has been fighting for the city government to take sweeping action to help indebted taxi drivers. Currently, they are calling for debt restructuring, as well as other measures that will alleviate pressure on drivers who are still obligated to make monthly payments on their medallions.

Ride sharing platforms

Taxi drivers have been negatively impacted by the growing TNG market because their customer base is much smaller than it used to be. While overall hourly wage per capita in the United States increased slightly from 2005 to 2016, the hourly wage for taxi drivers decreased by 7.6 percent in the same time period.¹³ As Uber entered the market, drivers' incomes began to decline. With a growing reliance on technology to attract customers, many of the older taxi drivers are left blindsided because they had been earning a sufficient income for decades before Uber and Lyft existed. Knowledge about the most efficient routes and years of experience were valuable to customers, but that is no longer the case. The proportion of self-employed drivers compared with wage-earning drivers almost doubles from 8.6 percent to 15.2 percent from 2005 to 2016. This is because Uber and Lyft drivers are considered “self-employed.” These changes in worker classification of for-hire vehicle drivers

and their wages reveals significant impacts that rideshare companies had on the TNG industry.¹⁴ In 2014, getting a ride through a rideshare app accounted for 8 percent of business traveler ground transportation, and taking taxis accounted for 37 percent. Four years later, ride-hailing accounted for a whopping 70.5 percent of the same market, and taking taxis was down to 6 percent of business traveler ground transportation.¹⁵ The growing use of apps like Lyft and Uber have serious implications for the future of taxi drivers and the for-hire driving industry overall.

Another important aspect to the rideshare business is the opportunity for customers to discriminate based on age, race or gender. In a traditional taxi service business model, one would call a taxi company to schedule a ride or hail a cab. With a driver's profile on one's app, it gives the person the opportunity to cancel and call a new ride if they do not approve of the person hired to drive them. Black drivers receive worse tips and are more likely to be stiffed than white drivers, and women drivers are more likely to avoid profitable but dangerous areas when working as a rideshare driver.¹⁶ Uber and Lyft also require their drivers to provide their own car, which is a significant barrier to entry, and provides the opportunity for customers to make assumptions about one's competency based on what car their driver has and how it is maintained. While the profession of being a for-hire vehicle driver used to provide immigrants with a path to a respectable income, rideshare companies have provided more avenues to reduce taxi driver's incomes and avenues to achieving success in the American job market.

Unions for taxi drivers that advocate for worker's rights and provide protections for self-employed taxi drivers would help improve working conditions for for-hire vehicle drivers and improve their income. Taxi drivers are at a crossroads now because if they decided to work for a company like Uber or Lyft, they would not make as much money as they did in the taxi business, but their customer base is much smaller now that rideshare companies exist.¹⁷ Technology is important in today's society, so people will continue to use Uber and Lyft. By classifying drivers as wage-earners, they have the opportunity to unionize and potentially advocate for better wages, which would in turn raise the cost of a ride for a customer. Taking a taxi could become a substitute for TNGs and restore the customer base taxi drivers used to have.

Covid-19 Pandemic

At the beginning of the pandemic, many economies were near collapse, consequently the taxi industry was also affected. With the fall in tourism and closure of office spaces in New York City, yellow cab drivers continue to hit record lows. During the first week of March 2020, there was an 80% decrease in cab rides. A year later, and the plight of low wages continue to affect working-class cab drivers. The Pandemic Unemployment Assistance program helped alleviate some of the issues of poor cash inflow for many cab riders. Unfortunately, the weekly benefit of \$600 expired by the end of July of 2020.¹⁸ In addition to their reduced revenue, taxi drivers have the extra costs of observing safety precautions. Provisions such as protective screens, sanitizers, masks, gloves and disinfectant wipes are bought with their disposable

income. Despite their efforts to reduce the spread of the virus, taxi drivers cannot force passengers to follow CDC guidelines. Ride-share companies such as Uber and Lyft, require both passengers and drivers to wear masks and maintain distance. Passengers that refuse to wear masks are reported and required to take a picture wearing a face covering on all future rides. Requirements such as these prevent the spread of coronavirus. Though, unfortunately, taxi drivers are not awarded the same safety. Stronger taxi unions would be able to bargain for funding for such safety precautions. Stronger taxi unions would be able to bargain for funding for such safety precautions. New York State has extended vaccine eligibility to sixteen-year-olds, and non-New York residents are now eligible for vaccination.¹⁹ Nevertheless, the increased accessibility to Covid-19 vaccinations should increase overall ridership in New York.

Policy Recommendations

The industry is in dire need of comprehensive reform in order to sustain itself and continue providing reliable jobs to its workers. As the industry continues to grapple with the loss of demand for rides due to the emergence of ride-sharing applications and the COVID-19 pandemic, more support must be given to the thousands of drivers who struggle to make ends meet. Many drivers still owe considerable amounts of money from their medallions so one proposal that may be greatly beneficial for drivers is to implement a comprehensive loan forgiveness program. This could consist of refinancing existing loans to have lower interest rates.²⁰ This is a solution that the

NYTWA has been advocating for in the past couple of years. Another proposal is to establish better policies to restrict predatory lending practices. Measures can be implemented to prevent unqualified borrowers from taking out loans that they're unable to pay back.²¹

Endnotes

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2 Big Tech Unionization

By: Julianna Fabrizio, Liam Farrell, Aidan Foley, and Jayla Frith

While union membership continues its decade-long decline, workers are still fired up and speaking out. The resurgence of interest in unions and workplace representation, especially within key companies, will shape the future of labor in the United States. According to the Bureau of Labor Statistics, 10.8% of wage and salary workers in the U.S. were members of unions versus 20.1% of union membership in 1983.¹ Historically, unionization among engineering and technology institutions has been slow and rare. At times when union efforts were strong in the areas surrounding Silicon Valley, efforts to organize companies within Silicon Valley proved unsuccessful. Historically, tech companies have stereotyped unionization of a company as a representation that things were going wrong at the company. Therefore, management has given their employees the ability to rise in rank earlier on in their career, decentralized management structures, competitive pay, and benefits to discourage unionization efforts.² With these incentives, companies hope their employees feel that they have a shared stake in their company's success, limiting further demands. For example,

executives at the Amazon facility located in Bessemer, Alabama set up an anti-union website and held mandatory captive-audience sessions on company time in hopes of discouraging workers from joining union efforts.³ Google's Director of People Operations is quoted as saying that strong efforts have been made to foster a supportive environment for employees, that they support worker's protected labor rights, and that they want to continue discussing issues that arise directly with the employees.⁴ Many employers at both Amazon and Google have mentioned that their main priority is discussing matters directly with their employees, rather than going through unions, in order to resolve workplace issues. For much time, these practices used by employers in tech industries were effective in preventing large-scale unionization of white-collar jobs held by more privileged employees. However, some workers are advocating for change.⁵

The cultural divide between unionized blue-collar workers and non-organized white-collar workers has made unionization difficult for the latter. A closer look at that divide amongst workers within Silicon Valley reveals that

employees at Google and Facebook have median salaries that are five times more than typical wages of security guards contracted from outside agencies. The myth of meritocracy thrives within tech, where hard work and specialization create an environment in which workers view the company as their top priority and push aside all else. It has come to societal attention that organizing goes beyond fighting for wages and perks, so there should be a fight for equity, ethics, and labor rights at many jobs that are considered white-collared where there are privileged employees with already-high wages.⁶ Organizers face the responsibility of convincing all tech workers that they are in the same fight together, beyond salary numbers and skill sets.

Amazon and Google are some of the nation's largest high-tech employers, and they have avoided unionization of their workers.⁷ Many of these companies say that they do not need collective bargaining because the company already provides what unions are asking for. However, the so-called "best companies to work for" often provide great benefit packages but lack equity and ethics within the organization.

A major barrier to unionization in Big Tech has been the lack of protections for the industry's many temp workers. U.S. labor law currently does not have provisions to protect independent contractors, and its bargaining protections for subcontractors do not extend far. Google, for instance, employs more temp workers, vendors, and contractors (TVCs) than full-time employees, yet these TVCs are not entitled to the benefits, wages, or job security of Google's full-time employees.⁹ TVCs at Alphabet, Google's parent company, face similar job vulnerabilities. Without a

union or collective body, these workers have little to no recourse when it comes to challenging labor violations.

Rather than organize only the full-time employees or abandon organizing efforts altogether, Alphabet workers decided to take a nontraditional route to unionization and publicly launched the Alphabet Workers Union (AWU) on January 4, 2021.¹⁰ As opposed to the traditional unions of the past, the AWU does not seek federal ratification or even bargaining agreements with Alphabet. The AWU's vice chair, Chewy Shaw, has said of the union, "We're not going to make our growth and collective action dependent on labor law."¹¹ AWU leaders emphasize that their power is not derived from existing labor law but rather their strength in solidarity; the union plans to use this power to amplify the voices of those who have previously been silenced by large corporations such as Alphabet and promote better working environments for all.¹² It is this attitude of "employees first and union politics second" that sets the AWU apart from other traditional unions.

While there are certainly many positive aspects of finding innovative ways to represent workers who have previously been silenced, full-time employees face a tradeoff between standing in solidarity with TVCs and strengthening bargaining power with their employers. The AWU may be more representative of the workers at Alphabet, but its lack of official recognition by the company restricts its bargaining power. At the same time, despite current challenges, the AWU is a pivotal model of nontraditional unionization that has a great deal of potential to spark widespread change in the future of organized labor.

Perhaps one of the most important and consequential fights for tech unionization recently took place within Amazon. The focal point of the

the unionization drive came from a warehouse in Bessemer Alabama, where approximately 5,800 employees currently operate the BHM1 fulfillment center.¹³ The National Labor Relations Board (NLRB) announced that out of 3,041 potential valid votes, 1,798 workers voted against forming a union, while 738 workers voted in favor.¹⁴ As with every unionization effort, there were a variety of competing interests between employers, employees, and outside influencers.

The major players in this unionization battle were the executives at Amazon, the warehouse workers, politicians, and other big tech firms. The union vote tally represents a victory for Amazon executives, as the company avoids the potential costs and troubles with unionization.¹⁵ It seems that Amazon executives can decompress and regroup for now, although more unionization attempts are inevitable. Additionally, warehouse workers played an essential role as the key fighters and organizers for the unionization attempt.¹⁶ They make out to be one of the clear losers in the fight despite the vote tally suggesting otherwise. Part of the reason for the failed unionization attempt among workers is that they feared high union dues and that the union would not provide meaningful benefits.

Notably, several politicians have spoken out in favor of the unionization attempt, including President Biden and Senator Bernie Sanders (I-Vt.).¹⁷ Both leaders argue that employees should have to exercise their right to unionize without fear of retaliation from employers. While this attempt at unionization has failed, it does not mean

progressive politicians will stop fighting for the promotion of labor rights — especially in the rapidly growing tech sector. Other tech companies have seen similar pushes among employees for unionization, and such companies will likely view the Alabama failed unionization attempt as a lesson moving forward. At the end of the day, these are rich and powerful corporations who are fully willing and able to expend resources to shut down unionization attempts.

This battle at Amazon has major implications for the larger U.S. labor movement, especially for blue collar workers working for tech companies. There has been a growing shift in the labor movement toward unionization within tech companies as they continue to grow and acquire more power. While this does represent a blow to warehouse workers who were hoping to unionize, it is just the beginning of a growing fight for employee rights and representation, marking an important time in United States labor history. Major tech firms must grapple with the fact that their employees' needs must be met. The very fact that there was a vote in Bessemer suggests that there is support and momentum behind the movement that will likely grow in the future.¹⁸ Thus, while Amazon executives and managers may have won this battle, there is a much larger war to come.

Amazon workers will likely need to adjust their strategy moving toward future unionization attempts. Potential issues with this attempt include gaining the support of President Biden too late. Stuart Appelbaum, President of the Retail Wholesale and Department Store Union, will look

to regroup and redefine the labor movement with the help of President Biden. Biden and other Democrats have sought to extend labor rights through unionization and higher minimum wage standards.¹⁹ If the president reassures his commitment to supporting unions, Amazon warehouse workers can use his support to muster bargaining power and further promote the union drive.

There were several major issues with the unionization campaign that can be resolved moving forward. For one, there was an inaccurate number of total employees listed. The Retail, Wholesale, and Department Store Union (RWDSU) claimed there were 1,500 workers at the warehouse while Amazon responded that there were around 5,800. This prompted a legal dispute as Amazon claimed that if the union believed there were only 1,500 eligible voters, they would not pass the 30% threshold needed to hold an official union election. Additionally, there was confusion and controversy over the issue of paying union dues. Union organizers such as Appelbaum suggested that “Amazon is trying to make dues the issue, even though people don’t have to pay dues.”²⁰ While this is a true statement, successful union campaigns against large corporations have relied heavily on union dues. Thus, sending mixed messages to employees created ambiguity as to what actually needed to be done in order to have a successful unionization attempt. Furthermore, successful union campaigns rely on house calls, which are physical visits to the employees home so union managers can discuss unionization away from the company's surveillance. However, due to COVID-19, there were no house calls between employees and

union organizers, leading to ineffective communication and support. Lastly, the effort lacked a majority public structure test, which entails a majority of eligible voters signing a petition or taking public photos to express their support for unionization. The RWDSU Amazon union managers were unable to do this because they had to protect employees from being fired and could not do anything in public.²¹

Moving forward, unions will need to adjust their strategies to overcome such pitfalls. Winning a decisive and difficult union battle requires the support of internal voters more than outside influencers. At the end of the day “Workers watching coworkers take a stand in large numbers is what wins, not rallies with out-of-state superstars, not famous football players, not famous actors and actresses, not even Bernie Sanders or the president of the United States.”²² Thus, union organizers must make a concentrated effort to gain support of its eligible voters to muster support for change.

Ultimately, the future of unions within Big Tech companies remains unknown. Employees at such companies are truly in uncharted territory, as the recent drives to seek unionization are largely the first of their kind. However, it’s unclear that most workers at companies like Alphabet and Amazon even want to be represented by a union. The votes from the union election at Amazon’s warehouse in Bessemer, Alabama show that “70.9% of valid votes counted were against the union.”²³ This result is obviously not what union activists at Amazon and across the country were hoping for; in fact, it is a crushing defeat. Employees at the Bessemer factory

overwhelmingly voted against unionization, which spells trouble for the fate of unionization in Big Tech companies and in the United States at large. Are workers really content with the jobs companies like Amazon and Alphabet are providing? Or are they being misled or unjustly interfered with to convince them otherwise?

Two of the most powerful tools that unions have to promote their members' interests are striking and collective bargaining, however, these tactics are not always successful. In order to propose policy solutions, it is crucial to first analyze the methods used by Alphabet Workers Union (AWU) and Retail Wholesale and Department Store Union (RWDSU) to achieve union members' objectives. As previously mentioned, the AWU is a minority or solidarity union, meaning that they do not go through the National Labor Relations Board (NLRB) and hold a vote to convince the majority of employees to sign on. They also do not represent workers in terms of bargaining with employers. Using this structure as a tactic allows for less emphasis on politics and negotiations and a greater initial push for employee organizing. It also allows workers at Google to create a long-lasting environment that fosters sustained activity rather than just moving on after negotiating a contract. These types of efforts work towards change beyond workers' pay, as these unions aim to address workplace issues such as diversity and sexual harassment amid pay discrimination.²⁴

In contrast to Alphabet's solidarity approach to

organizing, the Retail Wholesale and Department Store Union chose a more traditional route for unionizing Amazon's Bessemer facility. The retail union's first strategy was to assemble groups within the region that would support their organization efforts, many of whom ended up coming from poultry plants. This spurred more than half of the staff at the Bessemer warehouse to sign cards, which prompted the NLRB to schedule a unionization vote for the Amazon facility in Bessemer.²⁵ Organizers pitched their promises that the union would provide them with better overall working conditions, including better pay and more respect. However, workers voted against forming a union by an overwhelming amount.²⁶ The failure to unionize Amazon's Bessemer factor leads RWDSU and other unions in the tech world back to the drawing board to think of informal strategies that will aid leverage. Should Amazon workers consider the Alphabet Workers Union approach of organizing workers a Google to form a minority union? Minority unions only represent those who opt in by joining. Therefore, starting as a minority union at these companies could be a powerful tactic to gain worker support for unionization before launching a formal campaign with the NLRB to form a majority union.²⁷ This tactic would allow those already in the minority union to show the value of collective negotiating power to new recruits and lead to successful votes in a unionization election.

The Retail Wholesale and Department Store Union has announced that they are filing

claims with the National Labor Relations Board (NLRB), citing Amazon's "lies, deception and illegal activities."²⁸ Even if Amazon lawfully won the vote in Bessemer, their battle against unionization is far from over. This union drive may have emboldened Big Tech workers across the country seeking representation. The RWDSU has heard from "more than 1,000 Amazon workers at other facilities who are interested in unionizing," showing growing support for union representation within the company.²⁹

However, the most important step at this stage is ensuring that employees' voices are heard fairly. As such, Congress must pass legislation that would bar technology companies like Alphabet and Amazon from interfering with workers' unionization attempts, including PRO Act. The legislation, formally known as H.R. 842—the Protecting the Right to Organize [PRO] Act of 2021—aims to protect workers seeking to organize and empower them to fight against unjust actions by their employers.³⁰ Some of the provisions in the act allow unions to bypass right-to-work laws to ensure collection of dues, outlaw employer interference (such as company-sponsored anti-union meetings), and establish monetary fines against companies and employers that violate workers' rights.³¹ These measures, among others, serve to strengthen unions across the United States and lower barriers that are preventing many workers from organizing. The PRO Act is supported by President Biden, a long-standing ally of organized labor, and has passed the Democrat-controlled House. President Biden has

said that "nearly 60 million Americans would join a union if they get a chance, but too many employers and states prevent them from doing so through anti-union attacks."³² The PRO Act would enable American workers to engage in unionization efforts without the previously tolerated scrutiny that has plagued organized labor for decades. Now, however, the legislation faces its greatest challenge yet: getting through the Senate. Popular support for unions is at a record high today, but Republican support for the PRO Act in Congress still remains very low.³³ The best way that labor advocates can help the legislation pass is by engaging in grassroots efforts to try and sway their Senators' stances on the bill. Constituents can write letters, participate in demonstrations and organize their peers to drive support for this historic piece of legislation.

Workers at companies like Alphabet and Amazon are facing largely uphill battles in their fight for unionization, and legislation like the PRO Act can help them level the playing field and organize on fair terms and without illegal interference. However, only time will tell if unionization in Big Tech and across the United States can prevail.

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3 Labor Law

By: Edgar O’Connell, Tyler Pearce, and Jessica Zand

Introduction

Passed in 1935 at the height of the New Deal, the National Labor Relations Act (NLRA) lays the foundation for the modern collective bargaining landscape. Labor was hopeful that the NLRA would be structured effectively to augment unionization. Many provisions of the new law were innovative at its time of passage, including sections for assessing whether employees wanted to be represented by a union, requirements that employers bargain with a selected union, and extensive enumeration of employee rights. Most promisingly, the NLRA was structured to be applied by expert agencies as opposed to the courts, which have historically misrepresented labor. However, key provisions of the NLRA that were thought to pave the way for unionization and collective bargaining are not ideal for protecting workers. Under the auspices of the NLRA, exclusion of agricultural and domestic employees during the New Deal Era still lingers, highlighting the racist origins of the act. Additionally, the NLRA is plagued by the elaborate role of the judiciary, common law and political influences, and inconsistent policies set forth in general prose. By examining the NLRA’s history and lack of enforcement power, we explore legal alternatives to the NLRA that may provide a more equitable avenue for workers to pursue justice.

History

To understand the NLRA, it is important to take account of the political atmosphere that created it. The NLRA became law in 1935 as part of President Franklin Delano Roosevelt’s New Deal. Designed to combat the economic hardships of the Great Depression, the New Deal proved to be a boon for many American workers. However, the New Deal was not an unambiguously well-intentioned cure-all for the working class. Rather than uproot the capitalist system that had led to worker exploitation and the Great Depression in the first place, the New Deal addressed symptoms of the issue. Instead of purging society of the capitalist virus, the New Deal acted as an Aspirin and lowered the American worker’s fever.

Of course, the New Deal did not aid every American worker equally. Instead of ensuring that all workers could enjoy the same liberties, New Deal programs continually excluded Black workers. This is certainly the case with the NLRA. For instance, Section 2(3) of the NLRA reads: “The term ‘employee’ . . . shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home.”¹ While this section does not specifically name Black workers, Black workers were intentionally and effectively singled out. At the time the bill was passed, “Black employment in the South was disproportionately concentrated in unskilled agricultural and domestic labor.”²

In fact, exploitation of Black workers in agricultural and domestic work had been central to the Southern economy and culture ever since slavery.³ To ensure that Southern Democrats in Congress, who were in favor of maintaining this racist status quo, would vote to pass the NLRA, President Roosevelt did not push to make the bill less racist. “President Roosevelt simply would not embrace civil rights or egalitarian measures because they endangered the coalition necessary to enact his legislative agenda.”⁴ The racism of southern legislators directly led to domestic workers and agricultural workers being excluded from the NLRA. This exclusion is still law today.

In 1947, twelve years after the NLRA passed, Congress created the Taft-Hartley Act. This new law amended the NLRA and limited the power of the labor movement. One provision of the Taft-Hartley Act “prohibited secondary boycotts, making it unlawful for a union that has a primary dispute with one employer to pressure a neutral employer to stop doing business with the first employer.”⁵ In other words, Congress outlawed workers from using their power of solidarity actions or sympathy strikes. The Taft-Hartley Act limited the tools workers could use to achieve better workplace rights and conditions.

Additionally, the Taft-Hartley Act “granted states the power to pass laws that outlaw the union shop, a contract provision that requires new employees to join and pay dues to the union.”⁶ In other words, the Taft-Hartley act paved the way for the “right-to-work laws” that have been devastating to the U.S. labor movement. By allowing employees to enjoy the benefits of working in a unionized workplace, such as higher wages and better working conditions, without paying union dues, right-to-work laws have incentivized workers to be free riders. This leaves unions weaker than they would have been had every employee enjoying union benefits paid their dues. In this way, the Taft-Hartley Act has severely

weakened unions and the labor movement in general.

Weakened Enforcement Power of the NLRA

Several factors contribute to the National Labor Relations Board’s (NLRB) weakened enforcement power and biased interpretation of the NLRA, including lack of permanent injunction power, common law influence, political motivations, and general language and inconsistent statutes.

The notion that the courts would have no role in enforcing the NLRA was unrealistic.⁷ Although originally deemed the primary enforcer and interpreter of the collective bargaining process in 1935 by Congress, the NLRB is still heavily influenced by the court’s agenda. According to Section 10 of the NLRA, the NLRB can seek temporary injunctions against employers and unions for unfair labor practices.⁸ The NLRB’s lack of plenary authority—the legal power to take action on certain issues without limitations—has resulted in the increased role of courts in determining the legislative language of the NLRA and the legality of strikes. Thus, the courts are primarily responsible for harmonizing the NLRA with other labor-related statutes and policies, which evidently has been done in accordance with employers’ rights.

Early cases involving the NLRA have emphasized the weight of an employer’s property rights—the right to prohibit non-employee union organizers—over the rights of workers.⁹ Setting the stage for the current landscape of employer friendly interpretation of the NLRA, *NLRB v. Fansteel Metallurgical Corporation* (1939) asserted that the NLRB had no power to order an employer to reinstate fired workers after a sit-down strike, even if the employer’s illegal actions caused the strike. Prior to this case, the court solely interpreted the NLRA through the lens of the Commerce Clause, demonstrating strong deference to the NLRB as well as upholding constitutionality.¹⁰

Fansteel represents a shift in constitutional reasoning, promoting the application of evidentiary standards to the NLRB's actions, which weakens the enforcement power of the NLRB and imposes a less stringent interpretation of the NLRA. Currently, courts continue to cite *Fansteel* to benefit employers, strip influence away from the NLRB, and further diminish the power of strikes.¹¹

The NLRA was developed to supersede judicial commitment to common law, intending to support the rights of employees to strike and bargain collectively. However, common law dictates that employers are owners of employment, and by virtue of their ownership employers have the right to set wages and working conditions, dismiss employees for any reason (at-will employment), blacklist employees that support unions, and refuse to address the presence of a union.¹² Emphasizing application of common law principles, the Supreme Court reasoned in *NLRB v. Mackay Radio & Telegraph Co.* (1938) that employers had the right to protect their businesses by hiring strikebreakers and were not bound to discharge those workers when the strike ended.¹³ This decision established a method for employers to replace strikers and inhibit their employment after a work stoppage, severely weakening the power of strikes. Although extremely controversial and outlawed in many countries, strikebreakers are used very frequently in the United States today, demonstrating the salient and judicially recognized employer interest in labor law set forth by *Mackay Radio & Telegraph Co.*¹⁴

Since its passage, the NLRA has been politically motivated, resulting in NLRB decisions that neglect the realities of labor-management relations and are dependent on the presidential appointment process.

The NLRB is governed by five people and a General Counsel who are all appointed by the president. Moreover, the NLRB and General Counsel are appointed to limited terms of five and four years, allowing for extensive political influence.¹⁵ Although the NLRA has never explicitly required political balance of the NLRB, it is clear that different presidential administrations could initiate policy changes through changes in the NLRB's composition, leading to the characterization of the NLRB as a "seesaw."¹⁶ In 1947, the Taft-Hartley amendments to the NLRA expanded the NLRB from three to five members, citing principles of neutrality with the hope of decreasing polarization within the NLRB's makeup.¹⁷ However, shortly after this amendment's passage, Eisenhower's appointments to the NLRB emphasized that presidents are bound to appoint members with labor attitudes similar to their own. The Eisenhower administration filled three vacancies with chairmen that mirrored Eisenhower's pro-employer views, promoting expansive protections of employer free speech rights.¹⁸ Additionally, the Kennedy administration filled two NLRB positions, representing another shift in NLRB ideology that favored collective bargaining by intensifying regulation of employer representation in election campaign speeches and loosening restrictions on union secondary boycotts.¹⁹ More recently, the Trump administration's appointees to the NLRB demonstrated anti-worker and anti-union attitudes by halting all union elections, allowing employers to file petitions to get rid of unions.²⁰ As a response, the Biden administration ousted two members of the NLRB that Trump appointed, hoping to create a Democrat-appointed majority NLRB.²¹

Clearly, the political makeup of the NLRB has substantial influence on labor policies, accentuating deference to presidents with little or no labor background.

Throughout history, the NLRA has been interpreted to support competing viewpoints of labor, facilitated by broad language and inconsistent policies and statutes. For example, the NLRA contains contrasting language about employees' right to strike in Sections 7, 13, and 8. Section 7 of the NLRA (interfering with employee rights) reiterates a broad right to "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."²² Aligning with this provision, Section 13 states that "nothing in this Act . . . shall be construed so as either to interfere with or impede or diminish in any way the right to strike."²³ Although the language of Sections 7 and 13 seems to support employees who want to strike, it contrasts with the language of Section 8, which deems the strike an illegal labor practice, explicitly stating that employees cannot engage in a strike in which the firm's products fail to be sold, handled, or transported.²⁴ The provisions of Section 8 are violated in any strike in which the strikers attempt to prevent pickups or deliveries to the place of employment. Given that in most strikes, deliveries are prevented by strikers, the NLRA contains language that simultaneously recognizes the right to strike and, if interpreted in a literal sense, inhibits almost all strikes.²⁵ Therefore, the general language and inconsistent policies of the NLRA have allowed

courts and the NLRB to put their anti-union and employer property right viewpoints into practice to hinder unionization.

As a result of employer-weighted judicial attitudes and legal restraints, collective bargaining and strikes have been significantly reduced in the United States. When it has not been shut down by legal intransigence, collective bargaining has been successful in attaining significant employee rights, including bargained-for pensions, supplemental benefits, a system of dispute resolution, and job stability.²⁶ Despite these achievements, the courts have backed away from collective bargaining and increased the rights of employers to prohibit collective bargaining. Moreover, employees that strike face a plethora of legal sanctions and penalties that make the right to strike risky and costly, as courts have imposed heavy fines, martial law, and criminal indictments on strikers. Additionally, union leaders have been arrested and convicted for crimes that usually contain little to no evidence of misconduct.²⁷ Overall, the anti-labor trend of the law has caused employees to rarely engage in strikes, collective bargaining to become ineffective, and inevitably, and unionization to significantly decline.

Labor Law Reform

The National Labor Relations Act, as mentioned before, has many issues. From the start, it excluded large classes of workers such as agricultural, domestic, as well as government workers. While some of these groups have protections in state and other federal regulations, the NLRA has always been

somewhat exclusionary. The NLRA is enforced by the National Labor Relations Board, which some argue is in desperate need of reform.

The NLRB, while beneficial to labor relations, is severely plagued with issues. The process of filing a claim through the NLRB takes many months.²⁸ This brings some level of concern, as labor law claims are usually filed for actions that have already taken place, and in some instances the person is fired from their employment. This wait of multiple months can have many ramifications on the claimant, as a long period of unemployment (if the case) can be detrimental to personal finances and social well-being.

One of the proposed and developing reforms is the PRO Act. The PRO Act, or the Protecting the Right to Organize Act, is one of the main proposals for labor law/labor relations reform and is sponsored by Representative Bobby Scott of Virginia. It is a crucial piece of legislation that aims to expand labor protections regarding employees' rights to unionization and collective bargaining.²⁹ It expands the definition of "employer," creating a national model of California's ABC test. It also "expands unfair labor practices to include prohibitions against the replacement of, or discrimination against, workers who participate in strikes."³⁰

With California's ABC test, workers will be considered employees and not independent contractors unless the hiring group satisfies the following conditions. Firstly, the worker "is free from control and direction of the hiring entity in connection with the performance of the work . . ."³¹ Secondly, the worker "performs work that is outside of the usual course of the hiring entity's business."³² Thirdly, the worker is "engaged in an independently

established trade, occupation, or business of the same nature . . . as the work performed."³³

However, there are some challenges with the implementation of the ABC law. Some people such as musicians who are now qualified as employees and not as independent contractors have had their earnings impacted due to the additional costs that employees incur. Despite this, California's ABC test and AB-5, for the most part, have worked well and have protected and strengthened the rights of workers.

There are other potential/additional solutions that have been proposed. Most of these solutions are direct reforms to the National Labor Relations Act as well as the National Relations Board. Regarding the National Labor Relations Act, there are calls by some for it to include those excluded workers, as they are some of the most vulnerable to labor relations changes and would benefit from additional protections in the workforce. Regarding the National Labor Relations Board, there have been calls to make it less/non-partisan. Currently, the Board is made up of five members, and in an ideal situation, three of the members are part of the party who holds the Presidency, and the other two are part of the opposition. Having this partisan split does create some issues when it comes to controversial labor law issues, such as employee classification.

It is also necessary to reduce the role of the courts in interpreting labor law. Amending Section 10 of the NLRA to give the NLRB plenary authority to take action against employers for unfair labor practices could help organized labor to avoid judicial intervention. In turn, the NLRB would be less influenced by the courts' views of desirable labor

policy. Additionally, overturning the Mackay doctrine, which allows employers to hire other workers to replace strikers, would facilitate strikes by permitting employees to strike without the fear of losing their jobs.³⁴ The NLRB could achieve this by returning to the earlier, legislative standard in which employer's rights to permanently replace strikers was restricted on the basis that it encroached upon employee protected rights. It is also important to amend Section 8 of the NLRA to legalize union boycotts and allow strikers to use economic pressure to achieve labor goals. This would require the courts to re-conceptualize the relationship between the NLRA and the First Amendment, as employer free speech has historically been given tremendous weight in preventing strikes and unionization.³⁵ Finally, the general language of the NLRA has allowed the NLRB and the courts to apply their own anti-union and employer-friendly agenda into the law. Incorporating specific diction in the NLRA could circumvent the broad interpretation of the act that in many cases has been used to subvert pro-labor policies.³⁶ An example to draw from is the Norris-LaGuardia Act, which contains carefully constructed statutes that imposed strict legal limitations on the use of court injunctions against strikes.³⁷

Conclusion

The NLRA and the NLRB are decades-old institutions of labor law and labor relations in the United States. Both provide and enforce workers' ability to unionize in their workplace with the goal of strengthening the worker while being fair to the

employer. However, there are many issues with the NLRA/NLRB, partly stemming from its racially charged history and newer factors that weaken the power that it held. There will also be an analysis of potential remedies for the situation that are desperately needed to ensure the vitality of the unionized American worker.

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An Analysis of the Varying Power of Public Sector Unions

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Background: Public Sector Unions

This paper will provide a case study of two different public sector unions—teachers unions and police unions—to assess the unique role unions play in the public sector. While all unions facilitate collective bargaining and improve the working conditions of their membership, public sector unions serve the dual role of influencing policy by lobbying and other forms of political participation. Public-sector unions are significantly distinct from private-sector unions as they represent the interests and priorities of their employees and exert influence on American taxpayers’ opinions. However, anti-union sentiments have grown since the 1980s, and public-sector unions face unique critiques from public spectators due to the nature of public employees to serve public needs.

Teachers unions specifically are prone to attacks from the public due to the dual nature of their role: to protect both teachers and students.¹ In fact the two dominant national teachers unions, the American Federation of Teachers (AFT) and the National Education Association (NEA) have defended both teachers and more generally public education since the 20th century.² Since the Great Recession, there has been a bipartisan attack on Teachers Unions. Teachers unions and public sectors unions have been labeled a more privileged class that is

overpaid and over benefited.³ Prior to the Recession, many simply held the belief that public sector unions were over benefited, not overpaid.⁴ These attacks have come from both the right and the left, while before the Recession attacks of public sector unions usually only came from the right. Critics on both sides also argue that teachers unions have gotten too powerful and make it nearly impossible to get “bad teachers” out of the classroom.⁵ These arguments, however, are outdated. In reality, teachers unions have lost a substantial amount of bargaining power over the past forty years.⁶

On the other hand, police unions stand out as a success story within an environment of declining labor power. However, their exorbitant power has rendered them the subject of public critique in the face of Black Americans’ ongoing struggles for equality and justice. Much of the authority vested within police unions is a direct result of public policy drafted to shield incompetent officers from the consequences of the very laws they are sworn in to enforce. While policy is not solely to blame, police unions have flexed their strength, time and time again, in order to influence politicians into meeting their demands. Police unions’ power has afforded the union excessive discretion to defend criminals in uniform from facing civil prosecution in police brutality cases.

A comparative analysis of the size and scope of teachers unions and police unions reveals the drastic power differences between the two. The excessive influence retained by police unions comes at the expense of public safety and true criminal justice. On the contrary, teachers’ unions have made concessions towards school boards and have seen decreasing membership over the past forty years. Bipartisan policy reform that holds the interests of taxpayers at its core, rather than those of union employees, is vital for the revitalization of the labor movement in the public sector.

Teacher Unions

Teachers unions, as any other union, strive to improve the working conditions of their membership. They engage in the process of collective bargaining both over typical bread and butter issues, such as pay, work hours, and benefits, as well as broader issues, such as safety and student equity. Through arbitration and unfair labor practice proceedings, unions ensure that the agreements they bargained for are adequately awarded to their members. However, teachers unions possess the unique goal of not only improving members’ conditions, but also in shaping education policy. For example, collective bargaining agreements between teachers unions and districts include language that specifies the degree to which a union can influence local policy and district-level decisions.

Teachers unions not only play a crucial role in collective bargaining to grant their members better working conditions, pay, and benefits, but they also serve a purpose in community organizing and engage in advocacy to shape broad public policy. While teachers’ unions are often criticized by the public due to their strength and political influence, the strength of teachers unions has significantly diminished in recent years.

Although teachers have the highest rates of union participation compared to any other public sector union, membership has been declining since its height in the 1980s.⁷ Recent decreases in union membership since 2018 can be greatly attributed to the role of the Janus Supreme Court decision which gutted public sector unions, specifically teacher unions.⁸ In *Janus v. American Federation of State and Municipal Employees (AFSCME), Council 31*, the Supreme Court held that employees cannot be forced to pay agency fees if they make the decision to refrain from joining the union that represents the employees in their workplace. Even if the union was voted by a majority of employees as the exclusive bargaining representative for a particular bargaining unit, employees within that bargaining unit can refuse to pay agency fees if they do not join the union. While proponents of the *Janus* decision regard it as a win for free speech since employees who do not support the union do not have to financially support it, critics of the *Janus* decision argue that it is unfair based on the fact that non-paying employees reap the benefits of the union. In fact, the commitment of the *Janus* decision to the free speech rights of employees is unfounded, considering the fact that agency fees can only be used for collective bargaining and other direct actions that influence workplace conditions, and unions are barred from using agency fees for political activities.⁹ While it is important to note that the *Janus* decision impacts states that allow “closed shop” agreements which require all employees who work at a workplace to pay union dues, it does not impact “right to work” states which prohibit closed shops. This withholds vital funds that the union requires to sufficiently operate, considering that agency fees make up 75 to 85 percent of union dues.¹⁰

Since unions depend on dues from all employees to finance operations that aim to improve the general well-being of the workforce as a whole, this severely cuts union budgets, and consequently, it undermines both their bargaining power and political strength.

In fact, predictions estimated that the Janus decision will lead to an “average pay decrease of 3.6% for public sector employees”, having an even greater negative impact on public school teachers by decreasing their pay by 5.4% on average.¹¹

Additionally, the toll the decision placed on membership rates was predicted as a 4.8% decrease in union membership among pre-k to 12th grade and special education teachers.¹²

This decision also harms unions in right-to-work states, states with strict anti-union legislation, because national unions will have to allocate fewer funds to assist these fledgling unions in anti-union states. This case also presented broader racial implications, since by slashing employment rates and pay for public sector workers, it threatens people of color in particular. Indeed, African American workers are 30% more likely to work in the public sector, and African American women who work in the public sector earn 126.7% more than African American women who work in the private sector.¹³

In recent years, teachers unions have shifted their attention from typical bread and butter issues, ‘business unionism’ to broad social justice concerns, ‘social justice unionism’.¹⁴ Teachers unions serve as allies, aiding teachers who are not only concerned with teaching students but with leveling historical educational inequities between students on socioeconomic status, and through the process of

advocacy, both teachers and teachers unions recognize the role politics and history play in both exacerbating and mitigating these inequities. Since they acknowledge the responsibility policy must undertake to resolve education inequality, these unions advocate for broad political change through education reform. In fact, teachers unions sometimes link broader social justice missions, such as civil rights, to the typical bread and butter issues members advocate for.¹⁵

As previously mentioned, teachers unions’ bargaining power has been declining for the past forty years and since the Great Recession public sector unions have faced attacks from both conservative and liberal factions.¹⁶ Teachers unions’ have faced increased criticism for a multitude of reasons. They represent the largest group of organized workers in the United States and therefore are subject to many attacks by anti-union forces.¹⁷ There is also an immense amount of money allocated for schools with a majority of that going towards teachers salaries and benefits.¹⁸ These factors make teachers unions the subject of much scrutiny, especially because they have so much responsibility in shaping the nation’s youth.

Prior to the Great Recession, teachers unions and public sector unions in general really only faced attacks from conservatives and the right. After the Recession and the great economic unrest that ensued, there emerged a divide between private and public sector workers with many perpetuating the idea that public sector workers lived better than private sector workers.¹⁹ Therefore, these unions were labeled as a new elite that were overpaid and over benefited.²⁰

This caused a shift in public perception of public sector unions and specifically teachers unions. Critics claim that teachers unions make it impossible to remove bad teachers from classrooms, oppose school choice, oppose merit pay, and oppose efforts to put high quality teachers in high-need school districts.²¹

However, all of these claims are simply not true. Teachers unions support school choice.²² However, they do not support private school vouchers, which is an entirely different policy proposal.²³ They also support merit pay.²⁴ Unions in New York, Pittsburgh and other locations support the idea so long as it includes entire school gains for effort.²⁵ Unions do not support forcing teachers to be relocated to high-need school districts and or lower performing schools, but they do support bonuses and incentives for this sort of relocation.²⁶

The main attack against teachers unions is that they prevent bad teachers from being removed from the workplace. Teachers unions actually support many reforms such as peer review plans to make sure teachers of merit are in classrooms.²⁷ In peer review plans, expert teachers come into schools and work with educators to improve their teaching.²⁸ If these experts do not see sufficient improvement, they will recommend these teachers be fired with final decisions resting with administration and school boards.²⁹ Ultimately, most of the attacks lobbied at teachers unions are unsubstantiated and mere facades to decrease teacher unions bargaining power in the workplace.

Teachers unions have continuously lost bargaining power since about 1980.³⁰ These declines have coincided with an increase in prevalence of charter schools and in the practice of labor-management

relationships.³¹ These relationships were deeply entrenched with Democratic Party politics, but when the party began to adopt “corporate education reform” teachers unions were faced with a decision to either capitulate or resist the stripping of their power.³²

Unfortunately, the AFT has leaned much more towards partnership than resistance, which has caused teachers unions to lose much of their already weakening bargaining power.³³

Even though teachers unions have been attacked viciously by both the right and left, teachers unions have also been positively associated with student achievement and higher standardized test scores.³⁴ Unionism has led to “modestly higher” standardized test scores. They are also generally positively associated with high student achievement with unions having even more of a positive impact on middle and high achieving students.³⁵ Researchers attributed these higher student performances to the fact that teachers were able to receive higher salaries, credentialing, and more autonomy, which leads to their students succeeding at higher levels.

Police Unions

Police unions are a complicated issue; despite the labor movement’s declining influence, they continue to successfully exert political clout and negotiate favorable working terms for their union members.³⁶ Furthermore, police unions tend to lean right, whereas unions typically align with the political left.³⁷ As a public-sector union, police unions serve the purpose of representing the diverse priorities and interests of law enforcement officers who have the demanding job of protecting the public and enforcing the nation’s many laws.

They are also tasked with attending to the taxpayers who expect the police to protect and serve their communities. While police unions demand a high degree of power in order to adequately carry out its functions, the unreserved authority of police unions has been under fire in the face of the murders of George Floyd and Breonna Taylor, the Black Lives Matter Movement, and the ongoing COVID-19 pandemic.

First, police unions lack accountability. Police unions and the CBAs negotiated between precincts and cities are structural guarantors of obstruction and unaccountable policing.³⁸ There is essentially no public nor governmental oversight for police unions because they have harbored their power to conceal instances of misconduct. Campaign Zero, an organization started in the wake of the Black Lives Matter Movement, has concluded that police unions have deliberately used collective bargaining agreements to establish unfair protections for police that create one set of rules for police and another for civilians.³⁹ Through contractual provisions and the birth of the Law Enforcement Officers' Bill of Rights, unions have made it increasingly difficult for oversight structures to punish officers who are unfit to serve.⁴⁰ In addition to CBA stipulations, many unions have recommended that precincts purge files that could be deemed damaging such as reports on use of force. Police unions have also stipulated that misconduct be investigated internally rather than by a third party. The union's ability to protect incompetent police officers has contributed to a phenomenon known as the "officer shuffle".⁴¹ The officer shuffle is "a practice by which discredited officers are allowed to remain in police work merely by moving from one department to another."⁴² Police unions are complicit in both overlooking the

wrongdoings of their officers and in offering a shield of protection to those unfit for the job. As with the union's role in shielding police from the law, public policy is a key factor in restricting police accountability. State statutes govern officer discipline and misconduct. Many states have policies that fail to adequately punish police that abuse their power. Police unions' CBAs offer a shield of protection to unfit officers.

Although a substantial proportion of the issues with police accountability can be traced back to public policy and judicial precedent, police unions fiercely obstruct any and every attempt at reform. They utilize their unwavering strength to affect a great deal of political power and fear-monger politicians into meeting their demands. For example, Mayor De Blasio of New York took four and a half years to fire the officer that brutally murdered Eric Garner on videotape because the head of the Police Benevolent Association of the City of New York, a very large and influential police union, threatened to instruct his officers not to do their job. Unfortunately, the example above is a repeated occurrence. Police unions flex their power to intimidate public officials into meeting their demands and letting unfit officers off the hook.

It is also important to note that the institution of policing itself is inherently problematic. The history of modern policing can be traced back to slave patrols—meaning that police were established to preserve the elevated socioeconomic status of rich white men from the threats posed by Black Americans.⁴³ The foundations of the policing system are ingrained in white supremacy. Racism within policing is not a malfunction of the position, but rather the job functioning as it was created to.

While the general public outcries for stringent police accountability, pundits on the right tout the platitude that there are a few "bad apples" in every occupation. However, the age-old phrase is that "a few bad apples spoil the whole bunch" and thus, the police union's oversight of corrupt officers' misconduct taints the entire profession. The political left, concerned with race and police brutality, have declared police unions public enemy number one.⁴⁴ Police unions have exerted their authority to zealously shield officers from accountability, and now they are facing well-deserved backlash. The negative reputation of Police unions has smeared public opinion on public-sector unions at large. However, it is vital to remember that police unions are not wholly representative of public-sector unionism. Public-sector unions such as teachers unions are integral to public welfare.

A Comparative Analysis

As introduced above, there is a stark contrast between the scope and effect of police unions versus teachers unions. While both public sector unions are targets of severe public scrutiny, the two differ significantly. One may compare police unions' protection of officers who engage in misconduct at the expense of civilians with the teacher tenure system to argue that teachers unions also protect bad teachers at the expense of students. However, this is a false equivalency. What opponents of teacher tenure fail to understand is that tenure does not automatically guarantee teachers with jobs for life by preventing their termination, but rather it requires employers to show "just cause", or reasonable grounds for termination.⁴⁵ Unlike police unions, schools and teachers unions do not purge the files of teachers who

engage in misconduct nor simply relocate the teacher to another school. In fact, due to criticisms that termination proceedings were being dragged out, the AFT expedited the termination process for teachers accused of alleged misconduct to 100 days.⁴⁶ Teachers, unlike police officers, are subject to regular checks on accountability, and the tenure system was designed to preserve personnel consistency despite political whims. Similarly, while both unions are criticized to the extent of their political influence, teachers unions, like any large organization, wield their influence on public policy through lobbying, advocacy, collective action, and coalition building. While teachers union membership threatens to withhold their labor to bring school districts and local leaders to the bargaining table, they are doing so to advocate for bread and butter issues, not to advocate for teachers who engaged in misconduct as police have done in the past. While reforms for both unions are necessary and while the role of both professions is to serve the community, it would be incorrect to treat both unions as identical entities.

Policy Recommendations

For teachers unions, the best strategy to counteract the influence of Janus is to operate more efficiently with the resources they already have or to make it easier for unions to operate with limited quantities of resources. One solution which achieves the former goal is to promote advocacy through rank-and-file membership. For example, in West Virginia, teachers led the strikes and walkouts in 2018 and 2019.⁴⁷ This strategy relies less on support from union funds by focusing more on solidarity and coalition-building within communities.

One method of garnering community support to build pro-teacher coalitions is to focus on issues relating to social justice and center the improvement of teachers' conditions on their essential role to support families and communities. Shifting the frame of focus to equivocate what is good for teachers and what is good for communities, parents, and students will aid in galvanizing public support for teachers and their causes. In fact, teachers must explain how they have the expertise required to improve the quality of education for socioeconomically diverse students, and that they therefore should have a voice in community-level policymaking that influences the ability of these students to learn. Another recommendation is to pass legislation that makes it easier for public sector unions to recruit members without undergoing extreme expenses. For example, the New Jersey legislature passed the New Jersey Workplace Democracy Enhancement Act in 2018, anticipating Janus' harm to public sector unions, which allows unions to access public workplaces to discuss grievances and recruit new hires to join the union.⁴⁸ Other forms of legislation, such as a bill passed in Maryland requires that unions who are the collective bargaining representative for certain workplaces are featured in the orientation programs given to new hires, so that they are informed about the existence of the union and their eligibility to join.

For police unions, reform must focus on the extreme protections granted to officers who commit wrongdoings provided within police union CBAs. Given that 178 police union contracts consist of provisions that shield officers from accountability and oversight, the need for accountability is

evident.⁴⁹ One way of enticing police unions to include sufficient accountability measures in their CBAs is to grant the union tax-exempt status only if they include sufficient accountability procedures in their CBAs. Granting tax exempt status would be a strong motivating factor for police unions since union dues, donations, and investment income are taxable income, and losing the tax exempt status would force police unions to pay taxes on those funds, hence shrinking their budgets.⁵⁰ This would entail Congress amending the Section 501(c) Internal Revenue Code to specify that a police union may not be tax-exempt unless it satisfies specific requirements regarding accountability, oversight, and discipline for officers who engage in misconduct.⁵¹ The statute must be amended to spell out these requirements to ensure that the accountability provisions in CBAs are adequate in punishing culpable officers.

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5 Alternative Labor Strategies

By: Ambreen Aslam, Rose Dreizen, and Jack Mallek

Introduction

The labor movement has a long history in the United States, tracing back to the foundation of the Knights of Labor in 1869 and the formation of the American Federation of Labor in 1881. However, the labor movement remained in questionable legal status until the passage of the National Labor Relations Act (NLRA), also known as the Wagner Act, in 1935. From this point forward, union membership increased rapidly, reaching a peak of 34.8% of the working population in 1954. However, there has been a marked decline in union membership since at least the 1980s, with the Reagan administration's crushing of the air traffic controller strike being viewed as the definitive marker of labor's decline. Today, with labor union membership at historic lows, many prominent figures in the labor movement have proposed alternative strategies to return unions to their past prominence. Alt-labor groups have been a necessary alternative to unions, as an increasing number of workers are employed in sectors that are unable to unionize, such as independent contractors and domestic workers. Alt-labor groups emerged in the 1990s and early 2000s in the form of worker centers that focused primarily on immigrants and low-wage workers. Some of the major efforts coordinated by alt-labor include an event in 2006 when millions

of immigrants, mobilized by worker centers and immigrant rights groups, protested against the "Border Protection, Antiterrorism, and Illegal Immigration Control Act." More recently, the alt-labor group "Fight for \$15" has gained major national coverage and support that allowed them to help raise the minimum wage in several states, thanks to their heavy campaigning. The success stories of alt-labor groups demonstrate the impact they can have on transforming the labor movement to be more flexible and responsive to the needs of workers in the 21st century.

Theme I: Working Outside the System

Since the passage of the NLRA, pursuing collective bargaining agreements has overwhelmingly been the objective for unions. Unions engage in collective bargaining to secure a contract that includes provisions about wages, benefits, and working conditions. However with the decline of the labor movement, some argue that the reason for labor's decline lies in labor law itself. In analysis by Holly McCammon, she finds that while labor law has guaranteed the legal right to strike, it has conversely led to fewer and less militant strikes than the pre-Wagner Act Era.¹

McCammon argues that the government was able to regulate and limit the militancy of the labor movement by channeling it into the legal system. The text of the NLRA itself provides justification for this interpretation, stating, "It is the policy of the United States that sound and stable industrial peace . . . can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining." Thus, one of the core objectives of the Wagner Act is to reduce work stoppages, and subsequently labor militancy.

One particular strain of the labor movement, championed by the Industrial Workers of the World (IWW), therefore advocates a much more cautious approach to collective bargaining and labor law more generally. The IWW is a radical anti-capitalist union founded in 1905 as a result of the merging of the Western Federation of Miners with the United Brotherhood of Railway Employees, along with other minor labor unions. For its entire history, the IWW has been committed to democratic control of unions by the rank and file and has placed a heavy emphasis on labor militancy. Importantly, the IWW was most prominent from its founding in 1905 through to the 1920s, and subsequently did much of its organizing in the time before the passage of the NLRA, where direct action was the only method of winning demands. The modern IWW, therefore, makes direct action central to its own strategy towards unionism.

This revived strategy, called "Solidarity Unionism," has been applied in a number of IWW campaigns over the past 20 years.² Rather than pursuing a contract as the end goal, solidarity unionism focuses on building worker power on the shop floor by engaging in direct

action against the boss. The IWW acknowledges that bosses are criminals, arguing that a contract does not guarantee that bosses will uphold their end of the bargain and that direct action is required to make them adhere to the conditions of the agreement. Therefore, many IWW-organized workplaces eschew contracts altogether in favor of direct action, cutting out middlemen. For those workplaces that do decide to sign a contract, they also refuse to sign a no-strike clause, since workers' ability to halt/slow production is their main leverage in forcing the boss to adhere to the agreement. Since direct action requires as much participation from the rank and file as possible to be successful, the IWW heavily prioritizes rank-and-file accountability within the union and attempts to eliminate bureaucracy in favor of members volunteering to perform the everyday tasks needed for the union to function. The IWW thus attempts to build power outside of the structures defined by U.S. labor law.

There is some evidence to suggest that this strategy of Solidarity Unionism is effective. Over the past 20 years, the IWW has been involved in a number of organizing campaigns, with a number of successes. The most notable success was at Ellen's Stardust Diner in New York. They followed the solidarity union playbook nearly exactly and won improvements to unsafe working conditions, a lactation room for female workers with children, and the reinstatement of several workers who were fired during a strike. Even where the IWW fails to establish a permanent presence, they are still able to win lasting, concrete victories for working people. A common tactic of the IWW is to challenge employer scheduling so that workers post their own schedules when the employer posts the schedule for the

the week, thus giving the workers more autonomy and control over their own lives. Additionally, when organizing couriers in Chicago,³ the IWW managed to re-classify the couriers as employees rather than independent contractors, a notoriously difficult task in the delivery industry.

This same idea of building power has been applied even outside the sphere of employed workers. During the Great Depression, the Communist Party of America (CPUSA) created organizations called “Unemployment Councils” which would organize demonstrations of unemployed workers in response to material living conditions, namely rent and evictions. At one point, the councils were so successful in building power that landlords would *ask* the council whether they would be allowed to evict their tenants. Organizing the unemployed often benefits employed workers as well. The organized jobless are less likely to scab for bosses and could instead join the picket line for a strike. While there have not been any signs that this strategy has been considered in recent years, it was very successful during the Depression, and would be worthwhile to pursue in modern times.

Theme II: Making Alt-Labor Sustainable

Union membership has been declining since the 1980s, partly because the foundations of labor law fail to fully address the needs of the modern American workforce. The alt-labor movement has been able to gain traction and popularity because of its ability to mobilize outside the legal structure of the NLRA, which gives it more freedom and flexibility in how it decides to represent workers. The movement is also able to operate outside of the

confines of employer-based organizing because alt-labor groups often organize by sector rather than by employer. Some of the methods used by alt-labor groups include organizing workers, engaging in coalition campaigns, lobbying, advocacy, providing social services, and litigating wage theft and employee misclassification.

A purported challenge for the alt-labor movement centers around sustainability since, unlike traditional unions that collect membership dues, these groups do not have a system in place for collecting revenue from their members. The alt-labor movement uses forms of organizing that require sustained activism, as it can be challenging to maintain the momentum of an organizing effort. It is not just challenging to maintain the momentum of an organizing effort—once the campaign has ended, alt-labor groups face the challenge of rallying workers again and gaining foundational support for the next cause.

One way to help sustain the alt-labor movement would be to institutionalize any gains they make. Alt-labor should work to change the laws surrounding co-enforcement of labor laws and hiring halls. Co-enforcement of labor laws occurs when labor standard agencies collaborate with worker centers and community groups to carry out labor law. Worker groups and community centers not only have strong connections and ties with low-wage workers, but they are also more culturally and linguistically competent, which makes them strong allies for enforcing labor law.⁴ Worker centers can also educate workers about their legal rights and be a vital resource for workers when their employers are breaking the law.

A successful example of co-enforcement can be found in the San Francisco Office of Labor Standards Enforcement (OLSE) and the California Division of Labor Standards Enforcement (DLSE).⁵ Co-enforcement started in 2006 when their minimum wage ordinance was amended. “OLSE’s main contractor is the Chinese Progressive Association (CPA), which subcontracts with other community partners to ensure enforcement of standards outside of CPA’s cultural networks.”⁶ In order to further their cooperation, OLSE and community partner staff meet quarterly to update each other on their progress and to discuss any developments in policy or law. The community partners are also “tasked with holding workshops, conducting research and providing referral services that will educate workers and create conditions in which workers would be more likely to report violations of labor law.”⁷ Worker groups and community partners can be essential allies for helping to create trust and assurance to workers who want to pursue any labor violations committed by their employers. Alt-labor groups that work as co-enforcers of labor law should be given a formal enforcement and governance role by the government through new legislation which would provide them with funding. Not only would this bring extra funding to worker centers, but it would also give worker centers more power and legitimacy which would help sustain them in the future. Funding provided by the government would significantly help alt-labor since they currently lack a model for collecting funds from their members and this would give them financial stability.

Another way to help sustain alt-labor would be to bolster hiring halls because they could spark the

growth of sectoral representation by being a center for training and education in employment statutes and negotiation tactics, and they could provide the necessary support and guidance needed by workers seeking employment. Labor market coordination is a huge endeavor with workers facing many difficulties finding a new job because of the time and resources needed to find an employer. Employers also waste valuable time and resources because they often focus on credentials over an employee’s competency and demand unnecessary and expensive skills and credentials. Instead of having job seekers utilize employment agencies that “charge high fees, do not provide benefits, and can lead to jobs that have no worker accountability,” they should be using hiring halls.⁸ Hiring halls can serve as a “facilitator between employers and employees in job matching, enable training and skill-building, and have the ability to administer a sectoral benefits program and connect workers to needed services.”⁹ If more unions and labor organizations were enabled to operate non-discriminatory exclusive hiring halls, it would allow them to give workers much more power over their employment terms. An exclusive hiring hall arrangement would give much more power to workers than a non-exclusive hiring hall arrangement since an exclusive arrangement grants the hiring hall the exclusive right to refer candidates for employment. In order to make hiring halls more inclusive, Catherine Fisk suggests that they be expanded to include workers not covered under the NLRB, operate in low income communities, and be covered by anti-discrimination laws that are enforced by government agencies.¹⁰

Theme III: How Alternative Labor Makes the Labor Movement Inclusive

Despite unions making efforts to save their diminishing memberships today, the reason for this phenomenon might be that their strategies are no longer catering to the evolving workforce. Today's workforce includes young workers, women and migrants, all groups that have been marginalized from the early labor movement.

Due to an influx of immigrants from South American countries, low wage workers increasingly make up a large sector of the labor force. Not only is the labor force diversifying with an increase in immigrants, but low wage jobs like domestic work are traditionally taken up by women. In the United States, of the 1.8 million domestic workers, ninety-five percent are immigrants, women, or people of color.¹¹ Recognizing this growing diversity and acknowledging how the current workforce falls into various intersections of historically marginalized identities is the first step to figuring out how to revitalize the labor movement. Current legislation, such as the National Labor Relations Act, fails to protect workers that fall into the categories mentioned above. This hinders their ability to collectively bargain, despite facing the same workplace issues as other industries. This leads us to reconsider the effectiveness of the current labor movement, which is not equipped to address the evolving workforce. It shows us the need to break away from tradition and work to give these workers a platform to have their

concerns heard.

The alternative labor movement has given these workers a voice as they pursue nontraditional forms of labor unionism like community organizing. Community organizing has been very advantageous for workers as it provides mutual benefits. Mutual benefits consist of representation and advocacy efforts being offered for workers in exchange for volunteering their time to organize.¹² Nontraditional forms of labor unionism have also increased the sheer participation in combating workforce problems as anyone who is willing to help is able to do so through social media. The flexibility of today's movements provides individuals with other commitments the chance to be a part of the larger picture, breaking free from traditional unions' rigidity. Non-union, low-wage workers do not have a representative who takes the time to share their concerns with management, and due to the need to make ends meet, these workers don't have the time or agency to advocate for themselves efficiently. Community organizing takes on the role of the representative and not only amplifies these worker's voices, but also provides them with a place to share concerns related to the workplace. Young workers and women being able to take on a large role in the labor movement through community organizing is also beneficial as it elevates their voices in the context of policy making, another strenuous task.

Especially in recent years, community organizing has held strong ties to larger efforts of social change.¹³ Alternative labor has allowed groups traditionally omitted from the table to come together and build their own coalitions to tackle workplace issues. This is a significant feat, as unlike labor unions, the alternative labor movement is not able to rely on legislation and instead stands behind grassroots advocacy work. These smaller movements set the stage for larger change through policymaking. They take the form of general movement networks, which are prevalent in the service and retail sectors, immigrant nonprofits, (which aid those excluded from labor protections), and member-service organizations, which emulate the guilds and associations that traditional labor unions provide. Growing scholarly research is acknowledging the effectiveness of alternative labor organizing is comparable to that of traditional labor unions.¹⁴

Lee suggests that alternative labor and the movement networks they build could have a large influence on policy making, specifically in benefit of young, low income, minority and immigrant workers. He states that "if alt-labor organizations serve as nexuses of political organization, they can narrow the political engagement and influence gaps between affluent and other voters."¹⁵ Traditionally, labor unions have served as incubators of political activity, encouraging the workforce to be more politically aware of voting in ways that would be most beneficial to their work conditions. However, with the evolved workforce and limited availability of

protections rewarded to them, marginalized groups have been further swept to the side. According to Lee, alternative labor has the ability to include marginalized groups if used to its full potential. Alternative labor organizations depend on the political process to promote workers' interests, thus, so too does their effectiveness. Being able to politically mobilize the workforce in the same way labor unions have could provide the alternative labor movement with a voice in the political arena to pass protections for currently excluded workers. Advocacy work and the labor movement are interchangeable, so the workforce should be equipped in a way that provides them with the most agency to advance their interests.

So, how exactly can the broader labor movement foster diverse workplaces? This can be accomplished by protecting the most vulnerable members of the workforce using the strategies alt-labor provides. The most economic growth is occurring in sectors where workers are not protected under New Deal labor laws (For example, farm workers, domestic workers, and other members of the gig economy that are considered independent contractors). The approach of acting within the system does not work for this new labor force. This is an integral moment where the broader labor movement needs to expand its boundaries outside of the workplace. When laws fail workers and they don't have collective bargaining agreements to stand behind, community action fills that gap.

If workers can't strike, the community strikes for them through boycotts and protests. However, the goal ultimately is to pressure the government to pass protections for workers that fell through the cracks of decades old labor reform laws. As the alt-labor movement continues to expose the shortcomings of current labor legislation and how it is leaving a growing number of workers subject to exploitation, it simultaneously brings attention to what protections need to be passed. Alt-labor gives the marginalized a voice, something the current labor movement has not been able to do. The current labor movement fails to recognize that it is okay to step outside of the traditional boundaries and engage individuals beyond the workers themselves. To include workers' concerns through a larger community voice. Most political advocacy work finds its strength and effectiveness in the number of people it successfully engages. Nowadays with social media, engagement has become easier as people have developed vast networks that allow them to raise awareness of even the smallest of labor issues, and the broader labor movement has failed to take advantage of that. When the law does not protect certain workers, a labor issue is no longer only between employer and employee, it is a concern for all workers. Alt-labor recognizes that and uses all of those workers to empower their movement, and it's about time traditional labor unions did the same by moving beyond the rank and file.

Conclusion

As the labor force has diversified, the alternative labor movement has grown to become an increasingly crucial vehicle in furthering workers' rights. The transformative nature of alt-labor allows workers to have influence outside of the system and traditional labor unions, a topic of growing interest among researchers. Alt-labor has been able to emulate labor unions without having to cater to the same structures. However, alternative labor organizations are also powerful in the sense that they are capable of infiltrating those structures and having just as much lobbying power as traditional unions. The future of alt-labor is unforeseen, but it is malleable. As alternative labor movement projects continue to tackle labor issues such as minimum wages, only time will tell if it is able to replace the diminishing presence of labor unions and give more breadth to the labor movement.

Endnotes

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