

**FROM THE SHOP FLOOR TO THE BARGAINING TABLE:
THE RESURGENT LABOR MOVEMENT IN THE U.S. AND GLOBALLY**

**An Analysis and Bibliography Prepared For
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I. INTRODUCTION

After a half-century of steadily declining union membership, organized labor in the United States is in the midst of a multi-front resurgence. From 2021 to 2022, union elections increased by 50%, with unions winning 72% of them, and 71% of Americans now approving of unions -- a level of support not seen since the 1960s. While most of these elections have not yet produced collective bargaining agreements, and only about 10% of U.S. workers belong to a union, employees in a wide variety of previously unorganized workplaces have petitioned for union representation, and unions in organized industries have successfully exercised their right to strike for improved pay and working conditions.

Several factors have fueled this wave of labor activism: a post-pandemic labor shortage caused, in part, by restrictions on immigration; a post-Trump recognition and rejection of economic and racial disparities; a new, college-educated work force in the retail, service, and warehousing industries; agile and effective organizing strategies made possible by remote communication and social media platforms; and pro-worker labor-law changes making it easier for unions to engage with unorganized workers and counter aggressive union avoidance campaigns.

Union organizing has taken root on the shop floors of domestic and multi-national corporations, including Amazon, Apple, Microsoft, Starbucks, Trader Joe's, REI, Pet Smart, and an EV battery plant owned by GM. In academia, faculty, and graduate/post-graduate workers have successfully organized and struck for higher wages and better benefits at Harvard, Columbia, NYU, MIT, Rutgers University and the University of California (where 36,000 union members walked off the job for six weeks). In healthcare, 7,000 nurses struck two New York City medical centers for enforceable staffing levels, and a physicians' union representing hospitalists at an Oregon hospital signed a first collective bargaining agreement. In transportation, a coast-to-coast railroad workers strike was narrowly averted when President Joe Biden (who had vowed to be "the most pro-union president you've ever seen") imposed a labor contract. And with the largest labor pacts in the U.S. set to expire this Spring at United Parcel Service and the auto industry, nation-wide strikes in those key industries are entirely possible.

In this panel, expert labor and employment practitioners and academics from the U.S. and abroad will analyze the causes and likely consequences of these developments. Is the rebirth of U.S. unionization a permanent change or a momentary reaction to social disruption and economic uncertainty? Will the combination of workplace organizing and movements for racial, social and economic equality change the balance of power between labor and management in the U.S.? If so, how will these developments affect global transactions and regulations? And what role, if any, will changes in U.S. labor and employment law play in this emerging drama?

II. ANALYTIC FRAMEWORK

When assessing the strength and viability of labor organizing at a given juncture, scholars and practitioners often look to a confluence of economic, legal, political, sociological and cultural factors. This analysis examines several theories for why labor organizing is experiencing an upswing in the U.S. and assesses the longer-term viability of current efforts. Broadly speaking, the economic effect of the ongoing labor shortage is that U.S. workers have more bargaining power and are less worried about retaliation because they are confident they can secure new employment elsewhere if necessary. Legal developments at the National Labor Relations Board (“NLRB”) and other venues have bolstered labor organizing, and more such changes are underway. At the same time, political climates hostile to organizing, particularly at the state level, can align union-eligible workers against unionization, encourage union-oriented workers to feel their cause is hopeless, and even result in local government advocating for management. Yet, across-the-board support for unions is at a near-all time high of U.S. adults (71%)¹, and shifts in cultural perceptions are rendering union organizing a more appealing choice, especially for college-educated workers and workers of color.

A. Economic Factors

The economic explanation for the current blossom in union organizing² is the dramatic apparent shortage of workers in the United States labor market following the Covid shutdown, paired with inflation. The unemployment rate stands at 3.4%, the lowest it’s been in 53 years,³

¹ This represents the highest level of support for labor unions since 1965; the 1950’s registered the all-time high of 75% support. Jaclyn Diaz, *Support for Unions in the U.S. is at a 57-year High*, National Public Radio, <https://www.npr.org/2022/08/31/1120111276/labor-union-support-in-us>

² Kate Rogers and Amelia Lucas, *Here’s how a recession could hurt – or help – unions at big companies like Starbucks and Amazon*, CNBC (Sept. 30, 2022) <https://www.cnbc.com/2022/09/30/unions-could-face-obstacle-in-2023-if-economy-falls-into-recession.html>)

³ Department of Commerce, News: Unemployment is at its Lowest Level in 54 years (Feb. 3, 2023) <https://www.commerce.gov/news/blog/2023/02/news-unemployment-its-lowest-level-54-years>

and companies across the board report difficulty finding qualified workers to fill vital roles.⁴ This generalization holds despite high profile mass layoffs in the tech industry.⁵ Traditional supply and demand modeling suggests that in a scenario like this, firms would present more attractive working conditions to enable them to meet their labor demands, although it has been reported that this has not begun to happen at a large scale.⁶ The labor shortage comes at a time of significant inflation, with the U.S. Bureau of Labor Statistics calculating a 10% increase in the cost of food between January 2022 and January 2023,⁷ and rents rising rapidly across the nation’s major metropolitan areas.⁸ With purchasing power diminished by about 10%, workers’ standard of living is declining. But the grass is not greener in the next pasture over—i.e., workers cannot readily command higher wages and improved benefits by moving to another employer. Therefore, they are turning to labor organizing and, in the worst-case scenario of dismissal for union activity (in breach of the National Labor Relations Act, “NLRA”), they are confident they will find employment elsewhere.⁹

B. Federal Law Supporting Organizing Efforts

Several legal developments have also facilitated organizing efforts. The NLRB’s General Counsel and its regional directors have vigorously pursued allegations of unfair labor practices in the context of worker organizing at Starbucks, Amazon, and elsewhere, culminating in decisive

⁴ Lydia DePillis, *U.S. Survey Shows an Uptick in Job Openings, and Not in Layoffs*, New York Times (Feb. 1, 2023)

[https://www.nytimes.com/2023/02/01/business/economy/labor-jolts-report-layoffs.html?searchResultPosition=22;](https://www.nytimes.com/2023/02/01/business/economy/labor-jolts-report-layoffs.html?searchResultPosition=22)

Sydney Ember and Ben Casselman, *What Layoffs? Many Employers Are Eager to Hang on to Workers*, New York Times (Feb. 26, 2023)

<https://www.nytimes.com/2023/02/26/business/economy/staffing-layoffs.html>

⁵ Alex Irwin-Hunt, *Big Tech Layoffs Barely Touch Pandemic-era Hiring*, FDI Intelligence (Feb. 15, 2023) [https://www.fdiintelligence.com/content/data-trends/big-tech-layoffs-barely-touch-pandemic-era-hiring-82050?saveConsentPreferences=success;](https://www.fdiintelligence.com/content/data-trends/big-tech-layoffs-barely-touch-pandemic-era-hiring-82050?saveConsentPreferences=success)

See Brian Merchant, *How Big Tech is Using Mass Layoffs to Bring Workers to Heel*, LA Times (Jan. 30, 2023) <https://www.latimes.com/business/technology/story/2023-01-30/column-how-big-tech-is-using-mass-layoffs-to-bring-workers-to-heel>

⁶ Noam Scheiber, *Despite Labor Shortages, Workers See Few Gains in Economic Security*, New York Times (Feb. 3, 2022)

<https://www.nytimes.com/2022/02/01/business/economy/part-time-work.html>

⁷ <https://www.bls.gov/cpi/>

⁸ Rebecca Leppert, *10 facts about U.S. renters during the pandemic*, Pew Research (Dec. 19, 2022)

<https://www.pewresearch.org/fact-tank/2022/12/19/10-facts-about-u-s-renters-during-the-pandemic/>

⁹ Heidi Shierholz, Margaret Poydock, and Celine McNicholas, *Unionization increased by 200,000 in 2022*, Economic Policy Institute (Jan. 19, 2023)

<https://www.epi.org/publication/unionization-2022/>

pro-worker findings.¹⁰ The NLRB, which currently consists of majority Democratic-appointees, has also rolled back rules adopted under the previous majority Republican-appointed Board, implementing a more permissive standard for micro-bargaining units, and permitting unions to continue to collect dues via dues check off between contracts. This latter development is critical for ensuring that unions have the resources they need to successfully advocate for new contracts—precisely at the time they need them most.¹¹ In the Board’s Texas regional office, the Regional Director found that Google is a legal joint employer of YouTube contract staff, entailing a duty to bargain with their union, even though the company contended that its corporate structure rendered its workers employees of an independent staffing company.¹² This finding has broad ramifications, because third-party staffing arrangements are common in the tech industry and elsewhere.

A case study from the Amazon Workers’ Union sheds light on how the attentive involvement of labor law enforcers can facilitate favorable conditions for on-the-ground organizing. In December 2021, the NLRB’s General Counsel reached a settlement with Amazon, under which the company would allow current workers to organize within its warehouses during nonwork time without facing discipline.¹³ This agreement proved vital to organizing efforts within Amazon’s Staten Island, NY facility, where, among other things, union activists tailed management consultants and distributed flyers detailing how much Amazon was paying them, thus significantly undermining their credibility.¹⁴

Other labor law changes remain pending or have only recently taken effect. The NLRB has restored the pre-Trump Board’s rule that non-disparagement clauses in severance packages

¹⁰ NLRB Region-3 Buffalo Wins Administrative Law Judge Decision Requiring Starbucks to Rehire and Compensate Seven Unlawfully Fired Workers, Reopen a Facility, Bargain with the Union, Provide Union Access, Conduct Training and Post Remedial Notices at Stores (Mar. 2, 2023) <https://www.nlr.gov/news-outreach/news-story/nlr-region-3-buffalo-wins-administrative-law-judge-decision-requiring>

¹¹ <https://www.nlr.gov/news-outreach/news-story/board-modifies-framework-for-appropriate-bargaining-unit-standard>; <https://www.nlr.gov/news-outreach/news-story/nlr-rules-employers-may-not-unilaterally-stop-union-dues-checkoff-when>

¹² Josh Eidelson, *Alphabet Must Negotiate If Contract Staff Unionize, Labor Board Official Rules*, Bloomberg (Mar. 3, 2023) <https://www.bloomberg.com/news/articles/2023-03-03/google-must-negotiate-if-contract-staff-unionize-nlr-official-rules?leadSource=verify%20wall>

¹³ *Amazon unionization efforts get a boost under a settlement with U.S. labor board*, National Public Radio (Dec. 3, 2021) <https://www.npr.org/2021/12/23/1067698799/amazon-nlr-union>

¹⁴ Ryan Grim, *Biden’s NLRB Was Essential to Unionizing the Amazon Warehouse In Staten Island: The aggressive appointment of Jennifer Abruzzo shows how electoral politics set the groundwork for mass organizing*, The Intercept (Apr. 22, 2022) <https://theintercept.com/2022/04/22/amazon-warehouse-union-biden-nlr/>

constitute unfair labor practices because they inhibit speech about workplace conditions and unfair labor practices.¹⁵ Also, the Board has ruled that employees whose terminations are adjudged to have been unfair labor practices may now seek not only backpay, but also consequential damages for direct or foreseeable financial harms.¹⁶ This change brings the NLRB's protections closer to how courts have applied relief under Title VII of the Civil Rights Act, and may incentivize workers to take more risks in advocating for unionization.

Additionally, the General Counsel announced she is seeking to reinstate a bar to decertification petitions during the pendency of contract negotiations.¹⁷ This change would have a big impact, because it would reduce the risk that management could leverage worker dissatisfaction over drawn-out contract negotiations to engineer a union's decertification. Some have also speculated that limits to the enforceability of non-compete agreements contemplated by the Federal Trade Commission would further spur union organizing, as workers would have less to fear if they are terminated for organizing with a freer hand to seek employment elsewhere.¹⁸ To be sure, many changes have not yet taken effect or have only recently taken effect, so the full impact of these changes on workers' interest in organizing remains to be seen.

C. Local Laws Promoting Organizing Efforts

In the summer of 2021, New York City enacted a law with union support requiring that City contractors and subcontractors enter into "labor peace" agreements with unions in order to

¹⁵ Brit Morse, *Employers Can No Longer Mute Departing Workers: Non-disparagement clauses have been a standard part of severance agreements, but the NLRB says that buying silence isn't legal* <https://www.inc.com/brit-morse/nlr-ruling-laid-off-workers-stay-silent-severance.html> (accessed Mar. 6, 2023)

¹⁶ *Board Rules Remedies Must Compensate Employees for All Direct or Foreseeable Financial Harms*, NLRB (Dec. 13, 2022) <https://www.nlr.gov/news-outreach/news-story/board-rules-remedies-must-compensate-employees-for-all-direct-or>

¹⁷ James A. Holt & Eduardo Vargas, *Changes underway: NLRB aiming to take pro-labor action in the areas of technology-based monitoring and surveillance and blocking charges*, *Employment Law Watch* (Nov. 9, 2022) <https://www.employmentlawwatch.com/2022/11/articles/employment-us/nlr-aiming-to-take-pro-labor-action-in-the-areas-of-technology-based-monitoring-and-surveillance-and-blocking-charges/>

¹⁸ Editorial Board, *Lina Khan's Non-Compete Favor to Big Labor: The FTC wants to rewrite labor contracts for 30 million workers to help unions organize*, *Wall Street Journal* (Jan. 8, 2023) <https://www.wsj.com/articles/the-ftc-does-big-labor-a-solid-11673047667>

win City human services contracts.¹⁹ Impacting approximately \$20 billion in services annually,²⁰ the law requires that these contractors and the unions representing or seeking to represent their staff agree to foreswear strikes and lockouts in order to ensure uninterrupted delivery of contract services.²¹ Such agreements effectively require employer neutrality when their employees attempt to organize. On March 15, 2023, Chicago’s City Council adopted similar legislation by a lopsided veto-proof 41-2 margin,²² and other jurisdictions are considering following suit.²³

Another critical legal development with profound organizing implications was New York City’s enactment of a “Wrongful Discharge Law” in 2021.²⁴ This law, passed with strong union support, makes it illegal for a fast food employer to terminate an employee or reduce their hours by more than 15%, without good cause or a bona fide economic motive. Good cause requires the employer to show either that the employee engaged in egregious misconduct, or that the employee’s performance deficiencies persisted despite four stages of progressive discipline. Even after pursuing the required progressive discipline, the employer would still lack good cause if similar conduct on the part of other employees did not result in their terminations. The bona fide economic motive prong requires the employer to demonstrate that it is experiencing a reduction in business and that it has laid off employees in reverse seniority order; and, should business improve, the employer must rehire laid-off employees in seniority order. At present, this law only applies to food service workers. However, an ordinance is pending in the City Council to expand the ordinance’s reach to all workers;²⁵ Philadelphia has a similar law for parking

¹⁹ Steve Wishnia, NYC Bars Human-Service Contractors From Union-Busting, LaborPress.org (Aug. 20, 2021), <https://www.laborpress.org/nyc-enacts-labor-peace-pact-helps-human-services-staffers-to-unionize/>

²⁰ Office of the City Comptroller, Annual Summary Contracts Report for the City of New York Fiscal Year 2022, at 82, <https://comptroller.nyc.gov/reports/annual-contracts-report/>

²¹ 3. <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4920283&GUID=DD5FF113-9B0E-4479-A483-531D9BA94BDA&Options=ID|Text|&Search=2252>; Robert B. Stulberg and Julie A. Dabrowski, *The City and State of New York Enact Powerful New Laws to Protect the Rights of Workers and Unions*, 49 Labor and Employment Law, No. 4, 8 at 9, ABA (Winter 2022).

²² Heather Cherone, *City Council Votes 41-2 To Ensure Nonprofit Employees Can Unionize Over Lightfoot’s Objection*, WTTW (Mar. 15, 2023) <https://news.wttw.com/2023/03/15/city-council-votes-41-2-ensure-nonprofit-employees-can-unionize-over-lightfoot-s>

²³ The Human Services Council has challenged the legality of this ordinance on the grounds that it is preempted by the NLRA. Human Services Council of New York v. City of New York, S.D.N.Y. Case No. 1:21-cv-11149-PGG.

²⁴ N.Y.C. Admin. Code §§ 20-1271 to 20-1275. The law applies to workers who have completed their probation periods.

²⁵ 0837-2022; “Wrongful Discharge from Employment”, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5958217&GUID=44D72CEC-FE82-4A43-BA31-4BB15FBC15EB&Options=Advanced&Search=>

attendants; and broad wrongful discharge legislation has been introduced at the statewide level in both New York and Illinois.²⁶

Explaining the relevance of wrongful discharge legislation for union growth, one policy advocate posited that, “[because] workers know they will be fired for organizing a union[,] [1]et’s make it a law that you can’t be fired unless it’s for a good reason, and then we’ll get more unions.”²⁷

New York City’s Wrongful Discharge Law recently was tested when Austin Locke, an outspoken proponent of unionization at Starbucks, was fired five days after his store’s successful union vote. Starbucks claimed he was fired because he had failed to complete a COVID questionnaire and because he had made a bogus report that a supervisor had pushed him (even though company declined to review their own security video footage to verify what really happened).²⁸

Locke’s case was taken up by the City’s Department of Worker and Consumer Protection, which filed a petition at the City’s administrative hearing tribunal, claiming Starbucks had violated the Wrongful Discharge Law because many other workers had failed to complete the COVID questionnaire without facing discipline, and because the subpoenaed security camera footage authenticated Mr. Locke’s version of events.²⁹ Rather than face a trial, Starbucks settled, reinstating Mr. Locke with \$21,000 in back pay.

Traditionally, U.S. courts have found local laws that inhibit the exercise of rights under the NLRA to be preempted, even when those local laws do not come into direct conflict with that law.³⁰ In 2022, a fast food trade association challenged the Wrongful Discharge Law on

²⁶ *New York State Legislators Propose “Wrongful Discharge” Law*, Proskauer, <https://www.proskauer.com/blog/new-york-state-legislators-propose-wrongful-discharge-law>; HB 3530 Illinois Employee Security Act, <https://www.ilga.gov/legislation/102/HB/10200HB3530.htm>; Jeff Schuhrke, *The Movement to End At-Will Employment Is Getting Serious*, In These Times (Apr. 26, 2021), <https://inthesetimes.com/article/at-will-just-cause-employment-union-labor-illinois>. Montana is the only state with statewide wrongful discharge protections, which date back to the 1980’s. Aaron Irion, *The Forgotten Origins of Montana’s Just-Cause Employment Law*, Niskanen Center (Nov. 10, 2022), <https://www.niskanencenter.org/forgotten-origins-montanas-just-cause-employment-law/>

²⁷ Shaun Richman, quoted in Jeff Schuhrke, *The Movement to End At-Will Employment Is Getting Serious*, In These Times (Apr. 26, 2021)

²⁸ Michael Dorgan, *Fired Starbucks worker behind Astoria store’s unionization gets reinstated — and \$21,000 in Back Pay*, Astoria Post (Mar. 2, 2023) <https://astoriapost.com/fired-starbucks-worker-behind-astoria-stores-unionization-gets-reinstated-and-21000-in-back-pay>

²⁹ Wilfred Chan, *Starbucks Fired a Union Organizer. New York City Got him Rehired*, The Guardian (Mar. 3, 2023), <https://www.theguardian.com/business/2023/mar/03/starbucks-unions-fired-workers-new-york-city-labor-law>

³⁰ *Association of Car Wash Owners, Inc. v. City of New York*, 911 F.3d 74, 81 (2d Cir. 20218).

preemption grounds (inter alia), arguing that the law interfered with the union negotiation process. The court found, however, that the law established a valid minimum labor standard, equally applicable to union and nonunion workers, and therefore that did not interfere with the NLRA's bargaining provisions.³¹ This case is currently on appeal to the U.S. Second Circuit Court of Appeals, which has previously found that minimum labor standards are not preempted by the NLRA.³²

D. Political Conditions Limiting/Expanding Organizing

Many labor scholars highlight the significant ways in which political conditions limit or expand the horizon for union activity. Presidential influence on federal labor policy through legislation and judicial appointments is particularly pronounced and long-lasting, given how the NLRB must petition circuit courts for enforcement of its orders.³³ Currently pending before the Supreme Court is *Northwest Glacier v. Teamsters*.³⁴ In that case, an employer sought to level state law tort claims against striking truck drivers who drove their loaded trucks out of the facility and then drove them back at the start of the strike, causing the employer to lose the value of some cement that hardened, even though no mixers were damaged because workers left them running. The Washington State Supreme Court found that the state law claim was preempted by the NLRA, because to allow state law property torts claims to proceed would interfere with the scope of unions' protected activity under the NLRA as enunciated by the U.S. Supreme Court in *San Diego Unions v. Garmon*, 359 U.S. 236 (1959).³⁵ The Supreme Court granted certiorari, with at least one and likely more of the Trump-appointed justices voting to hear a case that may serve as an opportunity for the Court to significantly scale back the extent to which collective action is protected from local and state property protection and business tort suits.³⁶

³¹ *Restaurant Law Center v. City of New York*, 585 F.Supp.3d 366, 375-77 (S.D.N.Y. 2022).

³² *Concerned Home Care Providers, Inc. v. Cuomo*, 783 F.3d 77, 85 (2d Cir. 2015).

³³ Inflation Reduction Act: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/19/fact-sheet-the-inflation-reduction-act-supports-workers-and-families/> (federal contractors and subcontractors must pay prevailing wage rates); CHIP Act: <https://aflcio.org/2022/8/10/service-solidarity-spotlight-chips-act-includes-critical-worker-voice-provisions>; Infrastructure Investment and Jobs Act, <https://uniontrack.com/blog/iija-unions>.

³⁴ *Glacier Northwest, Inc. v. International Brotherhood of Teamsters*, 21-1449 (argued Jan. 10, 2023).

³⁵ Sharon Block, *Cement-truck Drivers Went on Strike. A Lawsuit by their Company may Pave the Way for Restricting Workers' Rights*, ScotusBlog (Jan. 6, 2023), <https://www.scotusblog.com/2023/01/cement-truck-drivers-went-on-strike-a-lawsuit-by-their-company-may-pave-the-way-for-restricting-workers-rights/>

³⁶ Andrew Strom, *In Glacier Northwest, the Employer Wants the Court to Set Aside Sixty Years of Settled Law*, On Labor (Jan. 24, 2023) <https://onlabor.org/in-glacier-northwest-the-employer-wants-the-court-to-set-aside-sixty-years-of-settled-law/>

On a more prosaic level, local politicians have intervened in labor disputes to yip the scales against union organizing. When organizers in Bessemer, Alabama set themselves up at the intersection of the main road leaving an Amazon warehouse to canvass workers who stopped at a red light. Amazon asked the town fathers to change the light's timing, to minimize the canvassers' window for connecting with workers, and local government complied.³⁷ In Tennessee, thanks in large part to the intervention of political leaders against the union, workers at a Volkswagen plant voted down the union—even though management itself had taken a neutral stance.³⁸ Right-to-work laws, now on the books in half of the states, represent another avenue by which sub-federal government can workers' capacity to unionize.³⁹

A related dimension of the political factor is the presidential “bully pulpit”. President Biden has declared his intention to be the most pro-union president in history on numerous occasions, and he's lived out that intention through important official actions and symbolic gestures. On the eve of the union election at the Amazon warehouse in Bessemer, President Biden released a video message that underscored his commitment to ensuring that American workers enjoy free and fair union elections as guaranteed by labor law.⁴⁰ At the other end of Pennsylvania Avenue, Congress also has a megaphone and is putting it to use, with Senator Bernie Sanders has held Health, Education, Labor, and Pensions Committee hearings on labor law violations, with Starbucks CEO Howard Shultz called to testify on March 29, 2023. Another Congressional development with both pragmatic and symbolic moment has been the decision of the Office of Congressional Workplace Rights to allow Congressional staffers to unionize, resulting in seven House offices and one Senate office winning voluntary union recognition.⁴¹

³⁷ William Thornton, *Jefferson County now says Traffic Lights were Changed near Amazon*, Al.com (Feb. 17, 2021) <https://www.al.com/business/2021/02/jefferson-county-now-says-traffic-lights-were-changed-near-amazon.html>

³⁸ Bobby Allyn, *Tennessee Workers Reject Union At Volkswagen Plant — Again*, National Public Radio (June 15, 2019) <https://www.npr.org/2019/06/15/733074989/tennessee-workers-reject-union-at-volkswagen-plant-again>

³⁹ Greg Rosalsky, *You may have heard of the 'union boom.' The numbers tell a different story*, National Public Radio (Feb. 28, 2023) <https://www.npr.org/sections/money/2023/02/28/1159663461/you-may-have-heard-of-the-union-boom-the-numbers-tell-a-different-story>. The Michigan legislature repealed the state's Right to Work law in March. Wells Foster, *Michigan House Passes New “Right to Work” Repeal*, Wood TV (Mar. 21, 2023), <https://www.woodtv.com/news/michigan/michigan-house-passes-new-right-to-work-repeal/>

⁴⁰ Russell Brandom, *President Biden Denounces 'anti-union propaganda' ahead of Amazon union vote*, The Verge (Mar. 1, 2021) <https://www.theverge.com/2021/3/1/22306952/amazon-union-biden-statement-bessemer-alabama-warehouse>

⁴¹ <https://rollcall.com/2022/10/27/whats-next-for-staffer-unions-on-the-hill/>; <https://rollcall.com/2023/03/08/with-voluntary-recognition-ed-markeys-staff-will-be-the-first-in-the-senate-to-unionize/>

E. Cultural Perceptions of Labor Organizing

Political leaders' influence on public perceptions about union organizing is one expression of the cultural dimension. Increasingly, other cultural platforms have mediated perceptions about unions among workers in the United States. For example, this year's Super Bowl run-up included a novel feature: NFL players rallying together with Starbucks workers against union-busting practices in the Phoenix metro area.⁴² Social media influencers, similarly, have entered the fray by calling on Amazon to respect workers' rights.⁴³ Perhaps these expressions of solidarity and others like it are serving to convince American workers that trade unionism is not a dusty holdover from a bygone era but a critical vehicle for ensuring survival in today's economy.

The increased involvement of workers of color in the U.S. labor movement has broadened the reach and effectiveness of unionization efforts. In 1969, President Richard Nixon supported a banner affirmative action initiative in order to "drive a wedge" between unions and people of color, two of the Democratic Party's core constituencies.⁴⁴ In that period, unions were approximately 80% white.⁴⁵ Now, with four in ten union workers being people of color, unions more closely resemble the United States demographic profile. Union leadership, as well, has become significantly more representative of the movement as a whole.⁴⁶ High visibility organizing campaigns, including SEIU's Justice for Janitors and the Fight for Fifteen, have centered working people of color as leaders and participants; The Fight for Fifteen is particularly noteworthy in that many, if not most, of the beneficiaries of this national effort to increase local minimum wage provisions were not union members. Thus, the campaign served as a way to

⁴² Katya Schwenk, *NFL Players Rally with Phoenix Starbucks Baristas Over Union Busting*, Phoenix New Times (Feb. 14, 2023) <https://www.phoenixnewtimes.com/news/nfl-players-association-rallies-with-phoenix-starbucks-workers-15573345>

⁴³ Wilson Wong, *Young TikTok creators organize campaign against Amazon to support workers' union demands*, NBC News (Aug. 16, 2022) <https://www.nbcnews.com/pop-culture/young-tiktok-creators-organize-campaign-amazon-support-workers-union-d-rcna43357>

⁴⁴ Hugh Davis Graham, *Richard Nixon and Civil Rights: Explaining an Enigma*, 26 *Presidential Studies Quarterly* 93, 96 (1996)

⁴⁵ John Schmitt and Kris Warner, *The Changing Face of Labor, 1983-2008*, Center for Economic and Policy Research

⁴⁶ *Who are today's union workers? Unionized workers are diverse, and they work in most industries across America*, Economic Policy Institute Fact Sheet (Apr. 21, 2021) <https://www.epi.org/publication/who-are-todays-union-workers/>

show working people that unions advocate for their concerns even when not (yet) directly representing them.⁴⁷

Another cultural and discursive shift has been the perception of unions as expressions of the workers themselves. This orientation empowers workers to take action without waiting for an external go-ahead, enabling them to feel as though they may stand up for themselves without any need for outside help. Centering the understanding that workers *are* the unions has proven a potent antidote to management portrayals of unions as outside agents. To be sure, much of this shift in perception has as much to do with messaging as with organizational structure, since unions have always prioritized member involvement and empowerment and rarely succeed where they operate as exogenous institutions. And in fact, only a very small handful of the many unions emerging in the past couple of years have proceeded without support from established organizations and their networks, such as SEIU, UFCW, OPEIU, RWDSU, or UAW.

Writing for the Christian Science Monitor, Haleluya Hadero and Anne D'Innocenzio contrasted the Amazon Labor Union's ("ALU") successful efforts with the RWDSU's still-pending attempt to unionize the facility in Bessemer, AL.⁴⁸ ALU leader Chris Smalls focused on building worker leadership, which enabled workers to perceive that the union effort belonged to them, inspiring greater support and involvement. Workers shared pro-union sentiments through social media and cookouts, enabling the union to build on pre-existing relationships. On the other hand, some attribute the difference in outcomes to New York's far more hospitable organizing environment as compared with Alabama's.⁴⁹

One novel feature of the current unionization momentum has been an unprecedented level of involvement from white collar workers in industries such as arts and culture,⁵⁰ web

⁴⁷ Stephen Ashby, *Assessing the Fight for Fifteen Movement from Chicago*, 42 *Labor Studies J.* 366 (2017); Josefa Velasquez, *Meet Christian Smalls and Derrick Palmer, the DIY Duo Behind the Amazon Labor Union's Guerrilla Bid to Make History*, *The City* (Mar. 24, 2022)

<https://www.thecity.nyc/staten-island/2022/3/24/22995196/amazon-workers-staten-island-union-vote>
The Economic Policy Institute reports that while the average unionized worker earns 10.2% more than a similarly situated non-unionized comparator, "Black workers represented by a union are paid 13.1% more than their nonunionized Black peers, and Hispanic workers represented by a union are paid 18.8% more than their nonunionized Hispanic peers." <https://www.epi.org/publication/unionization-2022/>. Thus, union representation can help correct for discriminatory salary disparities.

⁴⁸ *'Built by workers': Amazon employees win their first union* (Apr. 5, 2022)
<https://www.csmonitor.com/Business/2022/0405/Built-by-workers-Amazon-employees-win-their-first-union>

⁴⁹ See *id.*

⁵⁰ <https://www.nytimes.com/2023/03/06/arts/design/whitney-museum-union-contract.html>;
<https://www.artnews.com/art-news/news/philadelphia-museum-of-art-museum-and-union-agreement-1234643294/>

services,⁵¹ tech,⁵² and medicine.⁵³ Openness to unions among college-educated workers may also be helping to fuel the success of organizing drives at Starbucks and other service sector employers with a relatively high proportion of college graduates.⁵⁴

Several sociological developments may be fueling this upsurge in interest. Recent college graduates from middle class and upper-middle class backgrounds are grappling with the reality that “the economic grand bargain available to their parents — go to college, work hard, enjoy a comfortable lifestyle — has broken down.”⁵⁵ With diminished prospects for career growth, young workers are turning to unionization to win more livable conditions today rather than keep waiting for a future stability that may not come.

Another noteworthy development has been the proletarianization of professional work. In a recent New York Times Op-Ed calling for physicians to unionize, Dr. Eric Reinhart lamented billing code and documentation requirements that create “endless administrative work” and constrain physicians’ capacities to pursue the course of treatment they believe is warranted in the particular circumstances.⁵⁶ Graduate students, similarly, argue that the contemporary graduate

⁵¹ Bryce Covert, *How Kickstarter Employees Formed a Union*, Wired (May 27, 2020) <https://www.wired.com/story/how-kickstarter-employees-formed-union/>

⁵² Noam Scheiber, *Video Game Workers Get a Union Foothold at Microsoft: The outcome, involving about 300 employees, is one of organized labor’s biggest victories at a major U.S. tech company*, New York Times (Jan. 3, 2023) https://www.nytimes.com/2023/01/03/business/video-game-workers-microsoft-union.html?action=click&pgtype=Article&state=default&module=styln-labor-movement&variant=show®ion=MAIN_CONTENT_1&block=storyline_top_links_recirc

⁵³ *Doctors Finally Join the Labor Movement* <https://www.thenation.com/article/activism/montefiore-hospital-union-cir/>; Daniel Bowling III, BarakD. Richman, and KevinA. Schulman, “The Rise and Potential of Physician Unions,” 328 JAMA 617 (2022); https://jamanetwork.com/journals/jama/article-abstract/2794951?guestAccessKey=e4c4d8b9-036e-4691-a6db-19d01cd2b1f5&utm_source=silverchair&utm_medium=email&utm_campaign=article_alert-jama&utm_content=olf&utm_term=072822

⁵⁴ Ian Prasad Philbrick, *Why Union Drives Are Succeeding: College-educated workers are driving a spike in union organizing*, New York Times (July 17, 2022) <https://www.nytimes.com/2022/07/17/briefing/union-drives-college-graduates.html>

⁵⁵ Noam Scheiber, *The Revolt of the College-Educated Working Class: Since the Great Recession, the college-educated have taken more frontline jobs at companies like Starbucks and Amazon. Now they’re helping to unionize them*, New York Times (Apr. 28, 2022) <https://www.nytimes.com/2022/04/28/business/college-workers-starbucks-amazon-unions.html>

⁵⁶ *Doctors Aren’t Burned Out from Overwork. We’re Demoralized by our Health System* <https://www.nytimes.com/2023/02/05/opinion/doctors-universal-health-care.html>. See also: *Why Doctors are Calling it Quits: Readers discuss a guest essay about doctors demoralized by the health care system*, <https://www.nytimes.com/2023/02/18/opinion/letters/doctors-burnout.html?searchResultPosition=58>

student job description skews far more heavily toward rote instruction and research assistance, and away from intellectual preparation and growth. For teachers, too, the routinization and standardization of education has motivated recent labor actions.⁵⁷ As members of professional classes experience less autonomy in the workplace, unionization holds out the possibility of improvements in bread and butter conditions and a greater say in how work is structured. These factors have spawned strikes and successful contract negotiations covering unprecedented numbers of academic workers.⁵⁸

F. The Long Road Ahead

One concern, voiced in various quarters, is that the focus on service sector union efforts and white-collar workplaces has diverted public attention away from labor disputes in more traditionally union-dense sectors, such as industry, transportation and mining. In Alabama, the biracial Warrior Met Coal Mine workers union struck in April of 2020 for higher pay. Just two months into the strike, the price of coal skyrocketed, enabling management to recruit out-of-state workers for temporary stints at near double the union workers' pay while refusing to negotiate. After nearly three years, the strike is off and the workers are back, at their original pay, with some disappointment that their efforts did not attract more national support.⁵⁹

Rail workers and some of their allies have expressed misgivings about President Biden's role in imposing a labor agreement that the union had rejected in late 2022, while others have praised the President for helping the union secure contract improvements.⁶⁰ The Teamsters are preparing to begin negotiations with United Parcel Service (UPS) for a new contract that will cover 340,000 union members who deliver an average of 24.3 million packages per day, totaling

⁵⁷ Amy Goodman and Jaisal Noor, *Thousands Rally in Chicago Teachers' Strike, Pushing Back Against Corporatized Education Reform*, Democracy Now (Sept. 11, 2012), https://www.democracynow.org/2012/9/11/thousands_rally_in_chicago_teachers_strike

⁵⁸ Shawn Hubler, *University of California Academic Workers End Strike: The nearly six-week walkout had disrupted research and classes across the renowned public system as employees sought higher pay and benefits*, New York Times (Dec. 23, 2022). <https://www.nytimes.com/2022/12/23/us/university-california-workers-strike.html>; see also, Liam Stack and Lesley Parnell, *Rutgers University Faculty Members Strike, Halting Classes and Research: Walkout is the first in the public university's 257-year history and follows nearly a year of bargaining*. New York Times (Apr.10, 2023). <https://www.nytimes.com/2023/04/10/nyregion/rutgers-strike.html>

⁵⁹ Amy Goodman and Kim Kelly, *Longest Alabama Strike Ends as Warrior Met Coal Miners Return. Record Coal Prices Help Break Strike*, Democracy Now (Mar. 1, 2023), https://www.democracynow.org/2023/3/1/alabama_warrior_met_coal_strike

⁶⁰ Noam Scheiber, *Most Pro-Union President Runs into Doubts in Labor Ranks*, New York Times (Dec. 27, 2022) <https://www.nytimes.com/2022/12/27/business/economy/biden-labor-unions.html?searchResultPosition=1>

approximately 2.2 billion packages per year. The current contract, which has been in force since 2018, is set to expire at the end of July 2023.⁶¹ Political and community support for the UPS Teamsters will no doubt play a significant role in the success of those negotiations.

As workers in sectors that have long been unionized can attest, having a union in the United States does not, by any means, guarantee a contract, let alone a contract that adequately addresses increases in living costs. The average length of time between a successful union election and the inking of the first contract is now 465 days.⁶² Of the 290 Starbucks locations that have voted to unionize, not a single one has a contract, nor do the unionized Amazon workers at the Staten Island facility. In the face of continuous concerted opposition from management, the question for 2023 will be whether unions and their members can carry their campaigns for better wages and working conditions across the finish line to win favorable contracts.

⁶¹ Rebecca Picciotto, *UPS and the Teamsters prepare for high-stakes talks with union contract set to expire*, CNBC (Feb. 3, 2023) <https://www.cnbc.com/2023/02/03/ups-teamsters-labor-fight-union-contract.html>

⁶² Robert Combs, *Analysis: Now It Takes 465 Days to Sign a Union's First Contract*, Bloomberg Law (Aug. 2, 2022) <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-now-it-takes-465-days-to-sign-a-unions-first-contract>