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## ARTICLE

# CAN WORKERS REGAIN THE UPPER HAND IN THE AMERICAN ECONOMY?

ALANA SEMUELS\*

In November 2011, I traveled to Columbus, Ohio to report a profile of Rich Trumka, the head of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), for my then-employer, the *Los Angeles Times*. The Republican legislature of Ohio, led by John Kasich, who had been elected governor in 2010, had earlier that year passed Senate Bill 5 (“SB 5”), a measure that dramatically limited the collective bargaining rights of the 360,000 public employees in the state.<sup>1</sup> SB 5 allowed city councils and school boards to impose their final contract offer unilaterally if they couldn’t reach an agreement with public employee unions. The bill required government workers to pay at least 15 percent of their health care costs and 10 percent of their salaries toward their pensions.<sup>2</sup>

This was a time when unions were under attack nationwide. The elections of 2010 had ushered Tea Party Republicans into state legislatures in states like Ohio and Wisconsin.<sup>3</sup> They subsequently targeted unions and passed laws restricting the bargaining rights of public employees, saying austerity was necessary in tough economic times.<sup>4</sup> Wisconsin’s Act 10, passed in 2011, was one of the most stringent in the country. “If Wisconsin

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1. Steven Greenhouse, *Ohio Wages Fierce Fight on Collective Bargaining*, N.Y. TIMES (Oct. 15, 2011), <https://www.nytimes.com/2011/10/16/us/in-ohio-a-battle-over-public-employees-bargaining-rights.html>.

2. *Id.*

3. Paul Harris & Ewen MacAskill, *US Midterm Election Results Herald New Political Era as Republicans Take House*, GUARDIAN (Nov. 3, 2010, 12:22 PM), <https://www.theguardian.com/world/2010/nov/03/us-midterm-election-results-tea-party>.

4. James Surowiecki, *The Business of Austerity*, NEW YORKER (Aug. 8, 2011), <https://www.newyorker.com/magazine/2011/08/15/the-business-of-austerity>.

goes, what will be next?" a Wisconsin union leader worried to *The New York Times* in 2011.<sup>5</sup>

But in Ohio, unions were not going to just give up. Union members knocked on doors and organized phone banks. They collected a record-breaking 1.3 million signatures to place a repeal of SB 5 on the November ballot.<sup>6</sup> Their message was aimed at everyday Ohioans, not just union supporters. Unions blamed Wall Street for the financial crisis and said that a vote for repealing SB 5 was a vote for the working people, like firefighters and teachers, and the people they serve.<sup>7</sup> A vote to repeal SB 5, they said, was a vote for working-class Americans.<sup>8</sup>

When I landed in Columbus the day before the election, I was struck by the passion of the union workers fighting to repeal SB 5. Sure, I was tagging along with Rich Trumka, but the rallies we attended were electric—people in red shirts chanting and whooping and cheering. Many of them were there after spending long hours on their feet campaigning. On election night, union members gathered in an outdoor arena and watched election results roll in.

The results that night suggested that Ohioans agreed with union members. Nearly two-thirds of Ohio voters had rejected SB 5.<sup>9</sup> That night was one of the rowdiest I've ever experienced. Union members were ecstatic—Ohio had sided with them, rather than with the politicians. The large screens set up that night showed Governor Kasich conceding that Ohioans didn't like SB 5. The crowd's roar was deafening.

Trumka, the unions, and even some political pundits saw the victory as a sign that labor was on its way back up. "I think it says people are tired of the excuses and the political games and the attacks on working people and their ability to make a living," Trumka said at the time.<sup>10</sup>

I sometimes look back on that night and think of it as the last real victory of labor on a large scale in America. The giddiness of the crowd, of the voters, even of Trumka—who had goofily played with his pasta after that rally, a detail that made it into the lede of my story—now seems na-

5. Monica Davey & Steven Greenhouse, *Angry Demonstrations in Wisconsin as Cuts Loom*, N.Y. TIMES (Feb. 16, 2011), <https://www.nytimes.com/2011/02/17/us/17wisconsin.html>.

6. David Eggert, *Pro-Union Coalition Delivers 1.3 Million Signatures for SB 5 Referendum*, COLUMBUS DISPATCH (June 29, 2011, 9:09 PM), <https://www.dispatch.com/article/20110629/NEWS/306299674>.

7. Natasha Vargas-Cooper, *In Ohio, Labor Rallies for Referendum Against Anti-Union Bill*, ATLANTIC (Mar. 16, 2011), <https://www.theatlantic.com/politics/archive/2011/03/in-ohio-labor-rallies-for-referendum-against-anti-union-bill/72569/>.

8. *Id.*

9. Reginald Fields, *Ohio Voters Overwhelmingly Reject Issue 2, Dealing a Blow to Gov. John Kasich*, PLAIN DEALER (Nov. 9, 2011), [https://www.cleveland.com/politics/2011/11/ohio\\_voters\\_overwhelmingly\\_rej.html](https://www.cleveland.com/politics/2011/11/ohio_voters_overwhelmingly_rej.html).

10. Associated Press, *Ohio Union Law Falls in Sweeping Defeat*, DESERET NEWS (Nov. 9, 2011), <https://www.deseretnews.com/article/700196087/Ohio-union-law-falls-in-sweeping-defeat.html>.

ive.<sup>11</sup> If unions and pundits saw that night as the beginning of labor's turnaround, they would probably agree with me now that it was one last gasp of strength for traditional labor, as it was decimated over the following seven years.

We are all familiar with the numbers. In 1983, 20 percent of all workers were members of unions, but today just 10.5 percent are.<sup>12</sup> The decline has been especially precipitous in the very states that seemed to be organizing workers to push back against the anti-union laws. In 2000, 17.4 percent of Ohio workers were members of unions; last year, just 12.5 percent were.<sup>13</sup> In Wisconsin, 17.8 percent of workers were members of unions in 2000; in 2017, just 8.3 percent were.<sup>14</sup>

But it's not just that unions have fewer members and less political strength than they once had. The people who are still members of unions have lost pay and benefits too. At the end of 2016, I wrote a story about how things had changed for public-sector workers in Wisconsin five years after the passage of Act 10, a bill championed by Governor Scott Walker that all but eliminated the collective bargaining rights of public employees in the state.<sup>15</sup> I talked to a teacher named Rich Erickson, who, before Act 10, had made \$36,000 a year and received great healthcare and pension benefits.<sup>16</sup> When I talked to him in 2016, he made \$30,000.<sup>17</sup> His wife was also a teacher, and together they made 11 percent less than they had before Act 10. Andrew Litten, a PhD candidate at the University of Michigan, told me that he found that total teacher compensation in Wisconsin had dropped 8 percent.<sup>18</sup> Teachers were leaving Wisconsin, or the profession, in droves.

Since that rowdy night in 2011, there have been multiple laws passed, court decisions reached, and officials elected that have made it harder for the everyday worker. Wisconsin, Michigan, and Indiana are now right-to-work states, meaning that people cannot be compelled to join labor unions as a condition of employment.<sup>19</sup> The 2014 Supreme Court ruling in *Harris v. Quinn* made it harder for home care unions to collect fees from people it

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11. Alana Semuels, *Labor Unions' Man of the Hour*, L.A. TIMES (Feb. 21, 2012), <https://www.pressreader.com/usa/los-angeles-times/20120221/284210872532017>.

12. *Union Membership Rate 10.5 Percent in 2018, Down from 20.1 Percent in 1983*, U.S. BUREAU OF LAB. STAT. (Jan. 25, 2019), <https://www.bls.gov/opub/ted/2019/union-membership-rate-10-point-5-percent-in-2018-down-from-20-point-1-percent-in-1983.htm>.

13. *Union Members Summary*, U.S. BUREAU OF LAB. STAT. (Jan. 18, 2019, 10:00 AM), <https://www.bls.gov/news.release/union2.nr0.htm>.

14. *Id.*

15. Alana Semuels, *How to Kill the Middle Class*, ATLANTIC (Dec. 7, 2016), <https://www.theatlantic.com/business/archive/2016/12/unions-wisconsin/509798/>.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Right to Work States*, NAT'L RIGHT TO WORK FOUND., <https://www.nrtw.org/right-to-work-states/> (last visited Sept. 7, 2019).

represented.<sup>20</sup> The ruling in *Janus v. AFSCME* in 2018 will make it harder for all public-sector unions to collect fees.<sup>21</sup> The United Automobile Workers (“UAW”), an international union, failed to organize workers at a Volkswagen plant in Chattanooga, and despite promises to organize similar plants in Mississippi, has not succeeded in doing so.<sup>22</sup> Executive orders from President Trump have tried to limit the activities of unions representing federal workers and tried to make it easier to fire federal workers.<sup>23</sup>

There have been developments that are negative for all workers, not just union members. The number of OSHA inspectors has declined under President Trump, as employees retired and no new inspectors were hired.<sup>24</sup> The Trump administration has rolled back an Obama-era rule that increased eligibility for overtime pay and a rule that would have made big companies liable for labor violations committed by its franchisees.<sup>25</sup> The Supreme Court ruled earlier this year that workers can be forced into arbitration clauses that prohibit class action lawsuits as a condition of employment.<sup>26</sup> Some commentators have said these latest developments are a sign that the worker power of half a century ago has dissipated.<sup>27</sup>

I don’t think worker power has disappeared entirely. Instead, what we’ve seen since that heady night in 2011 is a divergence. While workers in many states across the country are seeing a steady erosion of protections, of support, of wages, and of benefits, there are pockets of strength in certain places across America. In certain cities and certain industries, workers have unprecedented support from elected officials and from their neighbors, and they have used that support to gain protections and wage increases that

20. Cynthia Estlund & William E. Forbath, *The War on Workers*, N.Y. TIMES (July 2, 2014), <https://www.nytimes.com/2014/07/03/opinion/the-supreme-court-ruling-on-harris-v-quinn-is-a-blow-for-unions.html>.

21. Dylan Matthews, *6 Excerpts That Explain the Supreme Court’s Big Anti-Union Ruling*, VOX (June 27, 2018, 11:48 AM), <https://www.vox.com/2018/6/27/17509460/supreme-court-jan-us-afscme-public-sector-union-alito-kagan-dissent>.

22. Noam Scheiber, *Volkswagen Factory Workers in Tennessee Reject Union*, N.Y. TIMES (June 14, 2019), <https://www.nytimes.com/2019/06/14/business/economy/volkswagen-chattanooga-uaw-union.html>.

23. Erich Wagner, *Court Delivers Blow to Federal Unions Fighting Trump’s Workforce Orders*, GOV’T EXECUTIVE (July 16, 2019), <https://www.govexec.com/management/2019/07/court-delivers-blow-federal-unions-fighting-trumps-workforce-orders/158446/>.

24. Suzy Khimm, *Number of OSHA Workplace Safety Inspectors Declines Under Trump*, NBC NEWS (Jan. 8, 2018, 3:50 AM), <https://www.nbcnews.com/politics/white-house/exclusive-number-osh-workplace-safety-inspectors-declines-under-trump-n834806>.

25. Noam Scheiber, *Labor Board Moves Anew to Limit Employers’ Workplace Liability*, N.Y. TIMES (Sept. 13, 2018), <https://www.nytimes.com/2018/09/13/business/economy/nlr-joint-employer.html>.

26. Adam Liptak, *Supreme Court Upholds Workplace Arbitration Contracts Barring Class Actions*, N.Y. TIMES (May 21, 2018), <https://www.nytimes.com/2018/05/21/business/supreme-court-upholds-workplace-arbitration-contracts.html>.

27. David Rolf, *A Roadmap to Rebuilding Worker Power*, CENTURY FOUND. (Aug. 9, 2018), <https://tcf.org/content/report/roadmap-rebuilding-worker-power/?agreed=1>.

would have been difficult to imagine a decade ago.<sup>28</sup> Worker organizing is still a powerful tool to gain more rights. In some ways, low-wage workers across the country have more support from Americans than middle-wage union members do.

This may sound like good news, but it's a little more mixed than that. In 2011, I saw a state rallying around public employees throughout Ohio, valuing their services irrespective of what their job was or where they lived. Today, not all workers receive that support from their neighbors. A patchwork of workers—in certain in-demand industries and in progressive states and cities—are winning more protections than they did before, propelled by liberal voters who believe in protections for workers. However, in the rest of the country, workers are worse off than they've been for decades, and animosity towards unions is still strong. There doesn't seem to be any reason why their situation won't continue to worsen.

As an example, look at San Francisco. Despite its extremely high cost-of-living, San Francisco is probably one of the best places to be a worker in the country. In San Francisco, voters agreed to raise the minimum wage to \$15 an hour in 2014, and further, to tie the wage rate going forward to the annual increase in the Consumer Price Index.<sup>29</sup> In 2003, San Francisco was the first local jurisdiction to pass a minimum wage rate higher than the federal or state minimum wage. In the last few years, while other states were passing laws restricting unions, the city of San Francisco was improving working conditions for low-income people in the city. Today, employers in San Francisco must provide paid sick leave to all employees, including temporary and part time employees.<sup>30</sup> Employees earn paid sick leave at the rate of one hour per every thirty hours worked.<sup>31</sup> Employees who work at an establishment with twenty or more employees can also request flexible or predictable work arrangements, as long as they work at least eight hours a week and have been working there for six months or more, and paid family leave.<sup>32</sup>

It's not just San Francisco. In July, Seattle's City Council passed a law giving domestic workers a so-called bill of rights, following similar laws in

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28. Notice that this sentence is directed to workers, and not unions specifically.

29. S.F., CAL., ADMINISTRATIVE CODE ch. 12R (2014), [http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter12rminimumwage?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca](http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter12rminimumwage?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca) (last visited Sept. 7, 2019).

30. S.F., CAL., ADMINISTRATIVE CODE ch. 12W (2016), [http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter12wsickleave\\*f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca](http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter12wsickleave*f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca) (last visited Sept. 7, 2019).

31. *Paid Sick Leave Ordinance*, OFF. LAB. STANDARDS ENFORCEMENT, <https://sfgov.org/olse/paid-sick-leave-ordinance-pslo> (last visited Sept. 7, 2019).

32. Toni Vranjes, *Requesting Flexible Work: A New Right in San Francisco*, SHRM BLOG (Mar. 14, 2014), <https://blog.shrm.org/public-policy/requesting-flexible-work-a-new-right-in-san-francisco>.

states like New York, Oregon, and Illinois.<sup>33</sup> It seemed impossible to organize gig workers, like Uber drivers, until the Independent Drivers' Guild in New York started advocating for sixty thousand app-based drivers.<sup>34</sup> In August, the union successfully convinced New York City to cap the number of ride-hailing vehicles and set minimum wages for drivers.<sup>35</sup> But so far, the success is limited to New York City.

Blue states like California are moving to protect more workers, too. The *Dynamex* decision in the California Supreme Court may make it easier to classify gig economy workers as employees, rather than as independent contractors. However, *Dynamex*<sup>36</sup> only applies to California. Attorneys General in California, Massachusetts, and New York have staff dedicated to labor enforcement.<sup>37</sup> Florida, by contrast, doesn't even have a department of labor.<sup>38</sup>

In some ways, cities and states can make up for the worsening of standards for workers across the country. According to the Economic Policy Institute, the number of wage and hour investigators at the Wage and Hour Division of the U.S. Department of Labor has remained the same since 1948, as the number of payroll jobs in the United States tripled.<sup>39</sup> In 1948, the federal government employed one wage and hour investigator for every 22,600 workers; today, it employs one investigator for every 135,000 workers.<sup>40</sup> Between 1980 and 2015, the number of wage and hour violation cases investigated decreased by 63 percent.<sup>41</sup>

But cities like San Francisco have started their own wage and hour enforcement offices to make sure minimum wage and other similar city

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33. *Domestic Workers Ordinance*, OFF. LAB. STANDARDS, <https://www.seattle.gov/laborstandards/ordinances/domestic-workers-ordinance> (last visited Sept. 7, 2019).

34. Graham Rayman, *Uber, Lyft Drivers in New York City Launch Campaign for Minimum Wage*, N.Y. DAILY NEWS (Mar. 20, 2018), <https://www.nydailynews.com/new-york/uber-lyft-drivers-new-york-city-campaign-minimum-wage-article-1.3885907>.

35. Katie Honan, *New York City Extends Cap on Uber, Lyft Drivers*, WALL STREET J. (Aug. 7, 2019, 6:04 PM), <https://www.wsj.com/articles/new-york-city-extends-cap-on-uber-lyft-drivers-11565215462>.

36. Tony Marks, *The California Supreme Court Deals a Blow to Independent Contractors*, FORBES (May 29, 2018, 8:16 PM), <https://www.forbes.com/sites/tonymarks/2018/05/29/the-california-supreme-court-deals-a-blow-to-independent-contractors/#520040c770a1>.

37. Terri Gerstein & Mami von Wilpert, *State Attorneys General Can Play Key Role in Protecting Workers' Rights*, ECON. POL'Y INST. (May 7, 2018), <https://www.epi.org/publication/state-attorneys-general-can-play-key-roles-in-protecting-workers-rights/>.

38. *Florida Government Agencies*, WORKPLACE FAIRNESS, [https://www.workplacefairness.org/agencies\\_FL](https://www.workplacefairness.org/agencies_FL) (last visited Sept. 7, 2019). Florida has no state agency that enforces wage and hour laws.

39. David Cooper & Teresa Kroeger, *Employers Steal Billions from Workers' Paychecks Each Year*, ECON. POL'Y INST. (May 10, 2017), <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>.

40. *Id.*

41. *Id.*

laws are enforced.<sup>42</sup> San Francisco, for instance, has an Office of Labor Standards Enforcement, located in City Hall, where twenty-six employees follow up on wage and hour complaints filed by workers around the city.<sup>43</sup> If a worker isn't getting paid for overtime, isn't receiving compensation for all the hours she works, or isn't receiving the paid sick leave she is due, she can file a complaint with the Office of Labor Standards Enforcement and get her case heard. In July 2018, for instance, the San Francisco restaurant La Taqueria paid half a million dollars in unpaid wages and fines after an investigation by the Office of Labor Standards Enforcement.<sup>44</sup>

Not many places have Offices of Labor Standards Enforcement. Seattle and Los Angeles each have one.<sup>45</sup> On Halloween of 2018, Chicago's City Council voted to create an Office of Labor Standards after years of advocacy on the part of groups like Arise Chicago, a grassroots group that advocates on behalf of workers.<sup>46</sup> These offices began popping up at the beginning of the twenty-first century when cities started passing their own wage and hour laws. San Francisco was the first city with an Office of Labor Standards Enforcement—created around 2001 when the building trades complained that the prevailing wage law wasn't being enforced. Then, when cities passed their own minimum wage laws, and other wage and hour regulations, they realized they needed Offices of Labor Standards Enforcement to enforce those laws.

These offices collaborate with local community organizations to talk to workers about their rights and to process complaints. In San Francisco, the Chinese Progressive Association, a nonprofit that works with low-income Chinese immigrant populations, is a co-enforcer, along with the city.<sup>47</sup> Residents feel comfortable bringing their complaints to the Chinese Progressive Association, which then works with the city to decide where enforcement resources are best spent.<sup>48</sup> This is a very different model from the old labor model of the past. Previously, workers would have gone to their union with complaints about working conditions; they're now going to organizations in their cities, or to the cities directly.

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42. Tia Koonse et al., *Enforcing City Minimum Wage Laws in California: Best Practices and City-State Partnerships*, U.C. BERKELEY CTR. FOR LAB. RES. AND EDUC. (Oct. 2015), <http://laborcenter.berkeley.edu/pdf/2015/minimum-wage-enforcement.pdf>.

43. *See id.* at 8–9.

44. Jonathan Kauffman, *La Taqueria Pays More than a Half-Million Dollars in Unpaid Wages and Fines*, S.F. CHRON. (July 2, 2018), <https://www.sfchronicle.com/bayarea/article/La-Taqueria-workers-risky-complaints-over-13040018.php>.

45. Brian Watt, *Los Angeles Takes Steps to Form New Office to Enforce Rising Minimum Wage*, S. CAL. PUB. RADIO (Oct. 14, 2015), <https://www.scpr.org/news/2015/10/14/55027/los-angeles-takes-steps-to-form-new-office-to-enfo/>.

46. Trevor Montgomery, *Chicago Office of Labor Standards Passes Workforce Committee*, ARISE CHI. (Oct. 26, 2018), [https://www.arisechicago.org/chicago\\_office\\_of\\_labor\\_standards\\_passes\\_workforce\\_committee](https://www.arisechicago.org/chicago_office_of_labor_standards_passes_workforce_committee).

47. Koonse et al., *supra* note 42, at 13.

48. *Id.*



But of course, only some workers in some places can do this. A fast-food worker in San Francisco makes at least \$15 an hour and can ask for paid sick leave, flexible work arrangements, and paid parental leave.<sup>49</sup> If she has a problem with her employer, she can file a complaint with a number of community organizations or with the city's Office of Labor Standards Enforcement. Compare that to a worker in Florida, where costs of living in some cities can be high, but the minimum wage is just \$8.46 an hour, and no law mandates that workers can receive paid family or sick leave.<sup>50</sup> In Georgia, the minimum wage is just \$5.15 per hour, though most employees make the federal minimum of \$7.25 per hour.<sup>51</sup> Even pro-worker efforts in more liberal cities in red states have met resistance. When low-wage workers in Birmingham, Alabama, challenged a 2016 Alabama law intended to prevent cities from raising the minimum wage, a judge initially threw out their case. An appeals court later reversed that ruling, and the case is now making its way through courts.<sup>52</sup>

Victories in San Francisco, Chicago, and New York are a stark contrast to what is happening in places like Ohio. Last year, I visited a manufacturing plant opened by a Chinese billionaire near Dayton, Ohio. It had set up shop in a former General Motors plant in Moraine, Ohio, and started making automotive glass. But workers said the conditions were tough, and UAW started trying to organize employees.<sup>53</sup> The union lost the vote to unionize last November by a two-to-one margin.<sup>54</sup> Many workers said they worried the factory would pick up and leave if they voted to form a union.<sup>55</sup>

That leads to another kind of divergence that's also happening in labor. Take a look at some of the most high-profile organizing campaigns over the last few years. Media employees at the *Los Angeles Times*, *Vice Media*, *Slate*, *ThinkProgress*, and the *Huffington Post* have joined unions.<sup>56</sup> Graduate students have voted to join unions at universities across the country,

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49. *Paid Parental Leave Ordinance*, CITY & CTY. OF S.F., <https://sfgov.org/olse/paid-parental-leave-ordinance>, (last visited Sept. 5, 2019).

50. *State Minimum Wages*, NAT'L CONF. OF ST. LEGISLATURES (Jan. 7, 2019), <http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx>.

51. *Id.*

52. Yuki Noguchi, *In Battle Pitting Cities vs. State over Minimum Wage, Birmingham Scores a Win*, NAT'L PUB. RADIO (July 27, 2018), <https://www.npr.org/2018/07/27/632723920/in-battle-pitting-cities-vs-states-over-minimum-wage-birmingham-scores-a-win>.

53. Alana Semuels, *Will China Save the American Economy?*, ATLANTIC (June 27, 2017), <https://www.theatlantic.com/business/archive/2017/06/china-american-factories/531507/>.

54. Noam Scheiber, *Chinese-Owned Factory in Ohio Fights Off Unionization Plan*, N.Y. TIMES (Nov. 9, 2017), <https://www.nytimes.com/2017/11/09/business/union-ohio-plant-china.html>.

55. *Id.*

56. Paul Farhi, *Unions Get a Welcome Reception in Digital Newsrooms*, WASH. POST (Dec. 19, 2018), [https://www.washingtonpost.com/lifestyle/style/unions-get-a-welcome-reception-in-digital-newsrooms/2018/12/19/9fe9b922-0249-11e9-b6a9-0aa5c2fcc9e4\\_story.html](https://www.washingtonpost.com/lifestyle/style/unions-get-a-welcome-reception-in-digital-newsrooms/2018/12/19/9fe9b922-0249-11e9-b6a9-0aa5c2fcc9e4_story.html).

including at Columbia, a private university.<sup>57</sup> The fields of law, arts, design, entertainment, sports, and media have seen an uptick in union membership between 2010 and 2017.<sup>58</sup> As UAW failed again and again to organize factories across the country, the AFL-CIO's Department for Professional Employees has gained members.<sup>59</sup>

Some economists think that the surge in professional workers joining unions says something about the precarious state of jobs in media, academia, and entertainment. Educated workers are so fed up with the jobs and conditions available to them that, despite their college diplomas, they're organizing out of frustration. However, the trend appears to be something different, a divergence similar to that discussed previously. The educated workers who have joined unions have done so because they have some sort of stability in this economy. Having a college education and in-demand skills, they know that they'll land on their feet, even if organizing fails or if their employer decides to shut down their company. This happened when Joe Ricketts closed two sites he owned, *DNAinfo* and *Gothamist*, after twenty-five New York staff members voted to join the Writers Guild of America, East ("WGAE").<sup>60</sup> In a story for *The Atlantic*, I talked to a few of the workers who had joined the WGAE and seen their company shut down.<sup>61</sup> Scott Heins, who worked as a full-time reporter and photographer for *Gothamist*, told me he knew the risks involved with organizing and would have done the whole thing again. He is now freelancing in New York. Workers like Heins, who have both a college education and a specific skillset, are more likely to have savings and more likely to be living in a big city where they can more easily find a new job, in comparison to less-educated workers who attempted to organize in places like Mississippi and Ohio.<sup>62</sup>

That leads back to a divergence. Increasingly, educated and well-off workers live in cities; uneducated workers live outside of cities.<sup>63</sup> Not only are cities places with better labor protections, they also lend themselves to labor organizing, where some people might consider organizing risky.

What does this mean for the future of labor in America? First of all, traditional unions are going to struggle. In states now skeptical about un-

57. *Our History*, GWC-UAW LOCAL 2110, <https://columbiagradunion.org/our-history/> (last visited Sept. 6, 2019).

58. Alana Semuels, *Organized Labor's Growing Class Divide*, ATLANTIC (Jan. 26, 2018), <https://www.theatlantic.com/business/archive/2018/01/union-organizing-media-white-collar/551453/>.

59. *Id.*

60. Robert Channick, *DNAinfo, Gothamist News Sites Shut Down by Billionaire Joe Ricketts After Union Vote*, CHI. TRIB. (Nov. 3, 2017), <https://www.chicagotribune.com/business/ct-biz-dna-info-shutting-down-20171102-story.html>.

61. Semuels, *supra* note 58.

62. *Id.*

63. Alana Semuels, *America's Great Divergence*, ATLANTIC (Jan. 30, 2018), <https://www.theatlantic.com/business/archive/2017/01/americas-great-divergence/514784/>.

ions, and in a country where even the courts seem anti-union, it is going to be very difficult for unions to sign up new members. People believe in general rights for workers—about two-thirds of Americans support raising the federal minimum wage to \$15 per hour.<sup>64</sup> But many are still skeptical about the benefits of unions.<sup>65</sup> What's more, many of the jobs that are growing fastest in this economy—such as gig worker jobs—can't be unionized under law.

Groups that play on Americans' increasing anger about economic inequality and talk about getting more power for all workers without saying the word "union" will do better and better. Some union groups are talking less about the services they offer their members and more about what they offer the community at large. For instance, The National Education Association is reaching out to members and trying to convince them that a union can help them fight for racial justice and equal distribution of resources, rather than just for salary wages.<sup>66</sup> Similarly, the Milwaukee Teachers Education Association has been focused on building a better union that is focused not just on wages and benefits—which it isn't allowed to bargain for—but also on social justice and issues that are important to teachers.<sup>67</sup> The union has gotten more teachers involved by talking about how the union benefits both teachers and students.<sup>68</sup> The United Domestic Workers of America offers free classes to members, and also advocates on immigration and bail reform issues that affect some workers' clients.<sup>69</sup> It has added seven thousand due-paying members since 2014.<sup>70</sup>

Nontraditional worker groups have had a lot of success with this message about inequality, although mostly in blue states. The National Domestic Workers Alliance ("NDWA"), which has been around since 2007, has brought together housekeepers, nannies, and elder care providers to pass laws that they say give low-wage workers basic dignity. The fight for a \$15 minimum wage began in 2012 when two hundred fast-food workers in New York City walked off the job to demand \$15 an hour; today, the NDWA helps push for higher minimum wages in states across the country.<sup>71</sup> The Arise Chicago Worker Center, which opened in 2002, educates workers

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64. Leslie David & Hannah Hartig, *Two-Thirds of Americans Favor Raising Federal Minimum Wage to \$15 an Hour*, PEW RES. CTR. (July 30, 2019), <https://www.pewresearch.org/fact-tank/2019/07/30/two-thirds-of-americans-favor-raising-federal-minimum-wage-to-15-an-hour/>.

65. Alana Semuels, *Converting a Union Skeptic*, ATLANTIC (Dec. 2, 2014), <https://www.theatlantic.com/business/archive/2014/12/life-in-a-union/383306/>.

66. Alana Semuels, *Is This the End of Public-Sector Unions in America?*, ATLANTIC (June 27, 2018), <https://www.theatlantic.com/politics/archive/2018/06/janus-afscme-public-sector-unions/563879/>.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *About Us*, FIGHT FOR \$15, <https://fightfor15.org/about-us/> (last visited Sept. 6, 2019).

about their rights across industries.<sup>72</sup> It also joined with other groups to win passage of paid sick day ordinances and domestic workers bill of rights in Chicago. Casa Latina in Seattle offers ESL classes, job skills, and safety training, and dispatches day laborers.<sup>73</sup> The Lynn Worker Center in Massachusetts has brought together construction workers, restaurant workers, and domestic workers to successfully pass a municipal wage theft ordinance in the City of Lynn.<sup>74</sup>

These nontraditional groups will have a harder time raising money than unions did, since they, generally, can't collect dues. But some of these groups are finding ways to raise money to fund their advocacy that do not rely on collecting union dues. They do this in the cities and states that have made it easiest. New York City passed a law last year that allows fast-food workers to choose to have money automatically deducted from their paycheck to support nonprofit nonunion workers groups.<sup>75</sup> Fast Food Justice said earlier in 2018 that it had gotten twelve hundred fast-food workers in New York to contribute \$13.50 a month to fund the organization's work.<sup>76</sup> The group says it doesn't limit its aid to fast-food workers, but will focus on minimum wage, affordable housing, and immigration issues that will benefit all workers.<sup>77</sup>

These worker groups have the most support in blue cities and states, where progressive voters largely agree that increasing economic inequality in America is bad for everyone. That doesn't necessarily mean that the protections they have earned can't spread to everyone. More than a century ago, workers in states that we now see as blue states started organizing. Groups of female mill girls in Lowell, Massachusetts and of female shirt-waist workers in New York started protesting and striking to demand better working conditions.<sup>78</sup> Massachusetts was the first state to approve the nation's first factory safety and health legislation in 1877, and in the following two decades, thirteen states followed suit.<sup>79</sup> A Bureau of Labor investigator

72. *Domestic Workers*, ARISE CHI., [https://www.arisechicago.org/domestic\\_workers](https://www.arisechicago.org/domestic_workers) (Sept. 6, 2019).

73. *About Casa Latina*, CASA LATINA, <https://casa-latina.org/about-us> (last visited Sept. 6, 2019).

74. *Lynn City Council Passes Wage Theft Ordinance*, LYNN J. (Mar. 30, 2018), <https://lynnjournal.com/2018/03/30/lynn-city-council-passes-wage-theft-ordinance/>.

75. Steven Greenhouse, *Fast Food Workers Claim Victory in New York Labor Effort*, N.Y. TIMES (Jan. 9, 2018), <https://www.nytimes.com/2018/01/09/business/economy/fast-food-labor.html>.

76. Erin Durkin, *Fast Food Employers Must Let Workers Give Portion of Pay to Nonprofit Under City Council Bill*, N.Y. DAILY NEWS (Jan. 10, 2018), <https://www.nydailynews.com/news/politics/fast-food-employers-workers-give-nonprofit-bill-article-1.3748913>.

77. Charlie Heller, *This New Organization Could Be the Future of Fight for \$15*, FOOD AND WINE (Jan. 11, 2018), <https://www.foodandwine.com/news/fast-food-justice-nyc>.

78. Melissa Kort, *The Fire That Changed Everything*, MS. MAG. (Mar. 21, 2011), <https://msmagazine.com/2011/03/21/the-fire-that-changed-everything/>.

79. *Factory Inspection Legislation*, U.S. DEPT. OF LAB., [dol.gov/general/aboutdol/history/mono-regsafepart02](http://dol.gov/general/aboutdol/history/mono-regsafepart02) (last visited Sept. 7, 2019).

said at the time, “The moral influence of the action of the States upon each other in the United States is great. A movement at first grows slowly, but as State after State adopts similar measures the pressure upon others to do likewise becomes stronger.”<sup>80</sup> By 1911, after the Triangle Shirtwaist fire, in which 146 workers were killed due to unsafe conditions, New York State created a Department of Labor.<sup>81</sup> The United States created its own Department of Labor two years later.<sup>82</sup>

America is more polarized now than it was then, and it may take longer for the moral influence of one state to spread to another very different state. But we are already seeing evidence that the pro-worker rhetoric of blue state worker groups is spreading. In the 2018 elections, Missouri voters overwhelmingly rejected a right-to-work bill that had been passed by the legislature.<sup>83</sup> Voters in red states like Utah, Nebraska, and Idaho voted to expand Medicaid to low-income residents.<sup>84</sup> Missouri and Arkansas voted to raise their minimum wage.<sup>85</sup> Many states and many workers still don’t have the level of protections of workers in places like San Francisco and New York, but advocates there are learning from the success of the people who have won these victories. Workers in blue states and in industries with a lot of progressive workers have been able to convince voters and elected officials that inequality is harmful, and that America’s workers deserve more rights in today’s economy. The harder job will be to convince everyone else.

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80. *Id.* at 4.

81. *Our History*, N.Y. ST. DEPT. OF LABOR, <https://www.labor.ny.gov/about/history.shtm> (last visited Sept. 7, 2019).

82. Judson MacLaury, *A Brief History: The U.S. Department of Labor*, U.S. DEPT. OF LABOR, <https://www.dol.gov/general/aboutdol/history/dolhistoxford> (last visited Sept. 7, 2019).

83. Jason Rosenbaum, *Missouri Voters Reject Right-to-Work Law*, NAT’L PUB. RADIO (Aug. 8, 2018), NPR, <https://www.npr.org/2018/08/08/636603626/missouri-voters-reject-right-to-work-law>.

84. Alison Kodjak, *A Winning Idea: Medicaid Expansion Prevails in Idaho, Nebraska, and Utah*, NAT’L PUB. RADIO (Nov. 7, 2018), <https://www.npr.org/sections/health-shots/2018/11/07/664661676/a-winning-idea-medicaid-expansion-prevails-in-idaho-nebraska-and-utah>.

85. Heather Long, *Arkansas and Missouri Just Approved Big Minimum Wage Increases, a Liberal Victory in Red States*, WASH. POST (Nov. 6, 2018), <https://www.washingtonpost.com/business/2018/11/07/arkansas-just-approved-big-minimum-wage-increase-liberal-victory-red-state/>.