
YALE LAW & POLICY REVIEW

Disorganized Labor (Law)

*Michael M. Oswalt**

How might ambitious but inexperienced, low-resourced groups succeed where mature organizations have already failed? This Article considers that question through the lens of the U.S. labor movement. Between 2022 and 2023, workers at companies thought to be unorganizable launched seemingly quixotic do-it-yourself unionization campaigns—and sometimes won. A key factor may have been workers' reliance on bricolage, an approach to formidable challenges shown to differentiate start-ups that fizzle from those that innovate to surpass richer, more established competitors. Lacking the assumptions and expectations accompanying traditional campaigns, workers at Trader Joe's, Apple, Amazon, and hundreds of Starbucks cafés experimented with tactical combinations, resurrected discarded resources, and took action where standard scripts urged caution. The result was a fundamental reordering of labor institutions, labor personnel, and labor financing. But the most enduring impact of the disorganized era may be on labor law itself. Where workers who defy advice (or are denied advice) start their own organizations, run their own campaigns, and file their own legal documents, doctrinal and procedural "truisms" in critical areas like property access, speech, and remedies can become provisional, contingent—or not even true.

INTRODUCTION.....	82
I. ORGANIZED LABOR	89

* Associate Dean for Academic Affairs, Professor of Law, Wayne State University Law School. Thanks to Steven Winter, Michael Z. Green, Shirley Lin, Mike Wishnie, Will Ortman, Chris Lund, and participants at the 19th Annual Colloquium on Scholarship in Employment and Labor Law and the Labor Law Group's June 2024 meeting for helpful comments on early drafts. The Article is dedicated to Mac, the best tinkerer—and dad—a kid could ever hope to have around. All errors are my own.

Disorganized Labor (Law)

A. Organized Institutions	89
B. Organized People	95
C. Organized Funding	101
II. <i>DISORGANIZED LABOR</i>	103
A. <i>Bricolage</i>	106
B. <i>Disorganized Institutions</i>	110
1. Refusing Limits: A “Now or Never” Mentality	112
2. Repurposed Institutional Space: Bus Stop Union Halls	114
3. MacGyvering for Growth: Claustrophobic Cafés and Early Exposure.....	117
C. <i>Disorganized People</i>	121
1. When the Best of What’s Around Is . . . You.....	121
2. New Blends: Officer-Employees, YOLO-Salts.....	126
D. <i>Disorganized Funding</i>	130
1. Inspired, Cheap, and Free Stuff.....	131
2. Engaging Traditional Unions Nontraditionally.....	132
III. <i>DISORGANIZED LABOR LAW</i>	135
A. Disorganized Labor Law: Access	142
1. Organizers—and Officers—in the Building.....	143
2. Planners as Doers	144
B. Disorganized Labor Law: Speech	145
1. Tolls of Expired Talking Points	146
2. Keepin’ it Real with Generation Z	149
C. Disorganized Labor Law: Latent Legal Powers and Roads Rarely Taken	154
1. Single-Location Presumptions	155
2. Reinstatement, Revisited.....	156
IV. A DISORGANIZATION AGENDA	162
A. The Board	162
1. Prioritizing Promises and Company Unions	162
2. Countering Bad-Faith Bargaining with a Multiplace, Multistate Injunction Presumption.....	165
B. The Movement.....	170
1. OrganizingCorps.....	176
2. Contract Arbitration	178
CONCLUSION	180

INTRODUCTION

If areas of law were categorized by meme, labor law's would be 2011's "You Had One Job."¹ Because the National Labor Relations Act (the "NLRA" or the "Act") flounders at the primary task it was enacted to do: expand the practice of collective bargaining.² The Act provides a bureaucratic, confusing, slow, and scary path toward formal organization.³ So workers call the experts—unions—for help.

But what if they don't?

This Article tells that story. It is a story about relationships, innovation, and pluck—of workers who didn't get a call back, got a "no," or never bothered to ask and Googled "how to start a union" instead. The accounts would be oddities except for the dictator-esque winning vote counts⁴ against economy-defining companies that often followed.⁵ When the first two Starbucks cafés organized in Buffalo, one expert predicted

1. *You Had One Job*, KNOW YOUR MEME, <https://knowyourmeme.com/memes/you-had-one-job> [https://perma.cc/49PK-2MWH] ("You Had One Job" is an expression used to call attention to perceived blunders ... on the job.").
2. For the classic academic case, see Paul Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1769, 1770 (1983) ("[T]here has been increasing appreciation that American labor law has failed to make good on its promise to employees that they are free to embrace collective bargaining if they choose."). For a first-person account of the law's failure, see Greg Jaffe, *The Worker Revolt Comes to a Dollar General in Connecticut*, WASH. POST (Dec. 11, 2021) [hereinafter Jaffe, *Dollar General*], <https://www.washingtonpost.com/nation/interactive/2021/worker-revolt-comes-dollar-general-connecticut/>.
3. See, e.g., Jaffe, *Dollar General*, *supra* note 2 ("The employees voted 4 to 2 to organize, an outcome Dollar General spent the next 28 months fighting in the courts [as] the company fired the employee who initially called the union.").
4. As Dave Kamper put it, "We've seen union election wins with 'dictators holding sham election'-type numbers." Dave Kamper, *OK, I've Seen Enough. This Time Is Different*, FORGE (July 31, 2023), <https://forgeorganizing.org/article/ok-ive-seen-enough-time-different/> [https://perma.cc/WXF7-86X8].
5. Parker Purifoy, *Experts See Starbucks Union Impact 1 Year After First Win*, LAW360 (Dec. 13, 2022), <https://www.law360.com/employment-authority/articles/1557418/experts-see-starbucks-union-s-impact-1-year-after-first-win>.

Disorganized Labor (Law)

that “if you organized 100 stores it would be the biggest thing that happened in 50 years.”⁶ It’s now 627.⁷ An Amazon warehouse win sparked a similar once-in-a-generation take.⁸ Christian Smalls, one of the 3 lead organizers, had a more practical perspective: “We just made unionizing cool as fuck.”⁹ The go-it-alone campaigns that followed at Lowe’s,¹⁰ Home Depot, Trader Joe’s, REI, Apple, New Seasons, Geico,¹¹ T-Mobile,¹² and on dozens of college campuses¹³ suggested he was onto something.¹⁴

6. Noam Scheiber, *Taking On Starbucks, Inspired by Bernie Sanders*, N.Y. TIMES (Jan. 14, 2022), <https://www.nytimes.com/2022/01/14/business/economy/starbucks-union.html>.
7. *Starbucks Unionization Tracker*, LAW360 (Sep. 19, 2025), <https://www.law360.com/employment-authority/starbucks-tracker>.
8. Karen Weise & Noam Scheiber, *Amazon Workers on Staten Island Vote to Unionize in Landmark Win for Labor*, N.Y. TIMES (Apr. 1, 2022), <https://www.nytimes.com/2022/04/01/technology/amazon-union-staten-island.html> (“A handful of employees at Amazon’s massive warehouse on Staten Island, operating without support from national labor organizations voted by a wide margin to form a union ... in one of the biggest victories for organized labor in a generation.”).
9. Greg Jaffe, *Chris Smalls’s Amazon Uprising and the Fight for a Second Warehouse*, WASH. POST. (June 12, 2022) [hereinafter Jaffe, *Amazon Uprising*], <https://www.washingtonpost.com/nation/2022/06/12/chris-smallss-amazon-uprising-fight-second-warehouse/>.
10. HAMILTON NOLAN, THE HAMMER: POWER, INEQUALITY, AND THE STRUGGLE FOR THE SOUL OF LABOR 207 (2024) [hereinafter NOLAN, THE HAMMER] (“Typically, there would be the name of a specific union [on the organizing card] but Allen is trying to organize the first Lowe’s union in America on his own, as an independent.”).
11. Jonah Furman, *GEICO Workers Launch Union Effort, Management Says Call the Cops*, LAB. NOTES (Sep. 28, 2022), <https://labornotes.org/2022/09/geico-workers-launch-union-effort-management-says-call-cops> [<https://perma.cc/URZ6-XFY6>] (describing GEICO United as “an effort to form an independent union at the insurance giant”).
12. Mitchell Clark, *T-Mobile Social Media Support Workers Are Trying to Form a Union*, VERGE (Oct. 13, 2022), <https://www.theverge.com/2022/10/13/23403284/t-mobile-social-media-care-team-t-force-care-alliance-union> [<https://perma.cc/8Q6R-774Q>].
13. Robert Iafolla, *Student Organizing Bids on Campus Seed New Generation*, BLOOMBERG L. (Sep. 27, 2023), <https://www.bloomberg.com/bloomberglawnews/daily-labor-report/XB8ACMIS000000> (“[A] significant share of undergraduates formed their own independent unions, forgoing the

DIY¹⁵ approaches unsettle the labor landscape. Primarily, the campaigns disorganize axiomatic tenets of organizing. De-professionalization forces reconceptions of who does the talking, whether the books get balanced (if there are books at all), and especially how the efforts institutionalize. Throughout this Article, organizations are built on the fly and organizers include a mix of courageous, conversationally gifted on-site employees and amateur “salts” who join the job just to join the campaign. “Dues” are crowdsourced donations through GoFundMe or whatever accumulates from spot assistance from outside groups.

Secondarily, the efforts disorganize assumptions about the potential for steely but shoestring labor organizations to win traditional National Labor Relations Board (“NLRB” or the “Board”) elections amid full-throttled corporate coercion. They can, apparently. But why?

Insider reports offer clues. If the narratives emerging from independent campaigns came with needle drops, Bob Dylan’s famous line, “When you ain’t got nothing, you got nothing to lose,” would be a refrain. Said one veteran union observer, “Most of these workers are moving from one shitty job to another anyway, so they figure that they might as well organize to make them better while they are there.”¹⁶

“Might as well” is the operative phrase. My thesis is that a mechanism of independent campaigns—and any electoral successes—evinces an orientation toward seemingly long or blurry odds that, boiled down, is something like, “Let’s give it a shot.”

But this version of winging it is not careless or even impulsive. It has a research pedigree stemming from late-’50s studies of how nascent

expertise and support of an established union . . . [and] cho[osing] to go it alone.”).

14. Said one veteran organizing director: “I haven’t had four successful worker-generated organizing campaigns in my career and we just had four in four months.” Chris Brooks, *How Amazon and Starbucks Workers Are Upending the Organizing Rules*, IN THESE TIMES (May 31, 2022), <https://inthesetimes.com/article/amazon-starbucks-workers-organizing-unions-momentum-movement-moment> [https://perma.cc/XA8T-9G76].
15. DIY stands for “do it yourself.” DIY, OXFORD ENG. DICTIONARY, <https://doi.org/10.1093/OED/4208045373>. As noted *infra* note 321 and accompanying text, the apt application of this term to the recent era of independent organizing can be attributed to Eric Blanc. See Eric Blanc, *Labor’s Uptick Isn’t Just Hype*, LABOR POLITICS (May 8, 2023), <https://laborpolitics.substack.com/p/labors-uptick-isnt-just-hype> [https://perma.cc/3TYW-X3WH].
16. *Id.*

organizations react to the presence or absence of useful resources, and how those reactions contribute to or limit growth.¹⁷ Because while most start-ups begin with few “competitive advantages,” little “outside investment,” and—rather predictably—fail to “create any discernible innovative outcomes during . . . short-lived and mundane struggles” to exist, some stabilize, innovate, and even thrive.¹⁸

A differentiator is uncommon persistence. “Whereas resource constraints might cause many other firms to refrain from attempting new activities,” some press “to find ways of addressing new challenges.”¹⁹ Here, it is not that the outliers are smart about using the few resources they have²⁰ or deft about acquiring new resources they can afford.²¹ Instead, they have an uncanny knack for combining, recombining, and mixing whatever is cheap, free, or available into something totally new.²² That “resource scarcity” and creativity are linked is not just a satisfying feature of Hollywood productions like *Mission Impossible* or, of course, *MacGyver*; the relation is empirically backed.²³ But the real-life benefits are restricted to those who, like the workers you’ll meet, try.

The overall approach lends itself to all sorts of adjectives—gutsy, spunky, or gritty—and colloquialisms—something out of nothing, treasure

17. See EDITH PENROSE, THE THEORY OF THE GROWTH OF THE FIRM 68-70 (1959) (“If there are circumstances in which a business[person] acquainted with the properties of the resources at [their] disposal (including [their] own abilities) says to [them]self regarding a particular resource, ‘there ought to be some way in which I can use that’, and subsequently proceeds to explore the possibilities of using it, then we can fairly conclude that [they] believe[] there are productive services inherent in that resource about which as yet [they] know[] little or nothing.”).
18. Julienne Senyard, Ted Baker, Paul Steffens & Per Davidsson, *Bricolage as a Path to Innovativeness for Resource-Constrained New Firms*, 31 J. PROD. INNOVATION MGMT. 211, 211 (2014).
19. *Id.* at 213.
20. *Id.*
21. Lars Witell, Heiko Gebauer, Elina Jaakkola, Wafa Hammedi, Lia Patricio & Helen Perks, *A Bricolage Perspective on Service Innovation*, 79 J. BUS. RSCH. 290, 291 (2017).
22. Senyard et al., *supra* note 18, at 213.
23. Witell et al., *supra* note 21, at 293; Senyard, et al., *supra* note 18, at 213 (“Fittingly, evidence suggests that some resource-constrained new firms do indeed show substantially more innovativeness than other similarly placed firms.”).

out of trash, or “throwing metal.”²⁴ But the empirical shorthand is “*bricolage*,” roughly translated as “making do with ‘whatever is at hand.’”²⁵ *Bricoleurs* may not get what they wanted—or what outsiders would have predicted—but at its best, *bricolage* gets the job done. Examples permeate the pages that follow.

How a *bricolage* style infiltrated a process that is usually guided and resourced by trained repeat players may be related to who has generally adopted it. By dint of a birth year, workers at Starbucks, Chipotle, Home Depot, and elsewhere found themselves saddled with college debt, scarred by a pandemic, anguished by racism, and committed to a political-economic analysis shaped by Bernie Sanders where service work was the only work. For many, identities at society’s margins that in other contexts could have incentivized quiescence instead forged voice—a willingness to tell even more powerful actors how they would be addressed and how they would be treated. “Be Gay! Do Strikes!” became a protest tagline²⁶ and a declaration of principle: Anyone could make a sign and the requisite “training” was life.

Historically, most independent campaigns eventually merge with established unions, and this remains true. But the dramatic clustering of DIY efforts is auspicious. If last decade’s rise of one-day walkouts democratized strikes,²⁷ 2022 and 2023’s go-it-alone boomlet highlights the

24. Raghu Garud & Peter Karnøe, *Bricolage Versus Breakthrough: Distributed and Embedded Agency in Technology Entrepreneurship*, 32 RSCH. POL’Y 277, 285 (2003).
25. Ted Baker & Reed E. Nelson, *Creating Something from Nothing: Resource Construction Through Entrepreneurial Bricolage*, 50 ADMIN. SCI. Q. 329, 330 (2005) (quoting CLAUDE LÉVI-STRAUSS, THE SAVAGE MIND 17 (George Weidenfeld & Nicolson Ltd. trans., University of Chicago Press 1966)).
26. E. Tammy Kim, *The Upstart Union Challenging Starbucks*, NEW YORKER (Aug. 2, 2022) [hereinafter Kim, *Upstart Union*], <https://www.newyorker.com/news/dispatch/the-upstart-union-challenging-starbucks>. See also generally Leonore F. Carpenter, “*Strike With Pride*”: *Unionizing as an LGBTQ Rights Strategy*, 85 OHIO ST. L.J. 743 (2024) (describing the deep interconnectedness of labor and LGBTQ-rights issues in the Starbucks campaign).
27. By late 2019, the *New York Times* had published a strike “how-to” guide with tips like, “Carry signs.” Malia Wollan, *How to Organize a Walkout*, N.Y. TIMES (Aug. 27, 2019), <https://www.nytimes.com/2019/08/27/magazine/how-to-organize-a-walkout.html>. See also Steven Greenhouse, *The Return of the Strike*, AM. PROSPECT (Jan. 3, 2019), <https://prospect.org/power/return-strike/> [<https://perma.cc/V8J6-8VNV>] (“With union strength at its lowest

potential of democratized organizing. For one, with just 6% union density in the private sector,²⁸ there is enough work to go around. But more broadly, *bricolage* is out-of-the-box thinking in the nick of time. The box has historically excluded the nation's largest retailers, "bellwether" employers that, as Benjamin I. Sachs has suggested, symbolize the modern economy and cannot be ignored.²⁹ That labor³⁰ had occasionally tried, and failed, to solve the mass retail equation suggests that a nonprofessionalized, go-for-it mentality—distributed randomly and wildly across the country—is a free market approach worth investigating, if not incubating. Labor's biggest players, who reacted to the independent efforts first with awe and then with as much support as the workers were willing to accept, seem to agree.

This is not to say that a *bricolage* organizing ethic is "better" than other or standard approaches. By nature, it's a second-, third-, or last-best option. But even the last-best option might equate to an inspiring campaign that otherwise wouldn't have existed, a strategy so crazy it worked, or a group of friends who became workplace leaders because they finally had the chance.

And yet, in an era where desperately needed statutory reform is effectively impossible, *bricolage*'s most resonant impact may be on law, where workers without scripts have become statutory and procedural entrepreneurs, disordering fundamental beliefs about what labor law is and what it can be. That includes consequential areas like access, speech, remedies, elections, and bargaining units. Under *Lechmere v. NLRB*, the union can't be on company property.³¹ In these campaigns, the union is in the building, and its leaders are strategizing and mobilizing on the floor. Speech rules from *NLRB v. Gissel Packing* and associated cases let employers scare, patronize, degrade, and muzzle workers.³² In these

point in decades, many of the strikes this year took place alongside or completely outside traditional labor-management relations.").

28. News Release, Bureau of Lab. Stat., U.S. Dep't of Lab., Union Members—2024 (Jan. 28, 2025), <https://www.bls.gov/news.release/pdf/union2.pdf> [<https://perma.cc/W499-ZLM4>].
29. Purifoy, *supra* note 5.
30. Here, and throughout the Article, "labor" is often used as a shorthand for unions or the organized labor movement generally.
31. 502 U.S. 527, 541 (1992).
32. 395 U.S. 575 (1969); *see also* F. W. Woolworth Co., 251 NLRB 1111, 1113 (1980) (concluding that firing an employee for asking questions during the employer's "attempt to further its antiunion campaign by conducting a

campaigns, tried-and-true talking points risk backlash or humiliation, while barring employees from responding only makes the consequences worse. The NLRB's standard firing fix, a chance to return to work, is so ineffectual that most workers opt not to even accept it. These campaigns celebrate—and organize around—the offer. And although Board regulations on representation elections are viewed as irrelevant to union formation and detrimental to union power, *bricolage*-style campaigns have unlocked surprising, even shocking, value on both accounts: Workers have won elections after filing with the lowest possible support and have accrued leverage and momentum from minuscule units.

In previous eras, smart and high-level unionists avoided the NLRA's impotence by trading the statute for contracts, state laws, and employment laws instead. In today's era, smart and *low*-level unionists embrace the NLRA but avoid its impotence by trading conventional wisdom for experiments.

The Article proceeds as follows. Part I surveys the organized institutions, organized people, and organized funding supporting standard conceptions of "organized labor." Part II disorganizes that terrain. Union halls are bus stops, training is a book group, and dues are potlucks. Fueling the shake-ups are badges of *bricolage*: now-or-never mindsets, liabilities reconceived as assets, and uncanny combinations later revealed to be amazingly clever.

A consequence is disorganized law. In Part III, truisms about access and speech seem less true when workers who defy advice or can't get advice start their own campaigns—and organizations—anyway. Assumptions about the usefulness of administrative law and procedures turn upside down when workers file their own legal documents. And precedents transform when a worker quits a job, to take a job, to organize that job "just because."

Part IV looks to the future and considers ways law and labor might adapt to support *bricolage* as an organizing tool. On the law side, a "disorganization agenda" might include new priorities in prosecution and agency outreach as the standard mix of employer threats evolves to include more carrots than sticks. Campaigns against the nation's largest employers may call for easing the path to multistate injunctions. On the movement side, traditional unions are already doing what they can—and doing it well. The issue is scale. I suggest a surprising potential ally in their efforts: Silicon Valley, where an incipient culture of union-management

captive-audience meeting and by declaring that no questions would be answered . . . did not amount to an unfair labor practice").

cooperation is beginning to advance and millions have already been spent developing independent organizing apps with names like YouIn? and UniteOnline.³³ Two aspirational legislative efforts are also proposed: (1) an AmeriCorps-like program for civil, religious, political, community, or labor organizing; and (2) a renewed attempt to pass an NLRA amendment providing for contract arbitration.

I. ORGANIZED LABOR

A. Organized Institutions

Usually, workplace organizing starts with spirit and—if it succeeds—ends with order.³⁴ Employees share a complaint. They meet, meet some more, and the group grows.³⁵ The complaint goes public, a plan forms, and a campaign for unionization begins in earnest.³⁶ If they win a majority-rules election, or if their employer voluntarily accepts their claim to majority support, they become a legally certified, or recognized, union.³⁷ The employer must then meet to resolve the complaints contractually.³⁸

- 33. See *infra* note 316.
- 34. I borrow this framing from Gabriel Winant's wonderful essay, *Who Works for the Workers?*, N+1 MAG., Fall 2016, <https://www.nplusonemag.com/issue-26/essays/who-works-for-the-workers/> [https://perma.cc/EV55-39H7] ("Organized labor, by contrast, is at its finest both reliable bureaucracy and mass spirit.").
- 35. For a recent and poignant example, see Josh Noel, *Goose Island Workers Tried to Unionize Before the COVID-19 Pandemic. The Company Pushed Back—and Then Laid Off Leaders of the Effort*, CHI. TRIB. (Sep. 30, 2021), <https://www.chicagotribune.com/2021/09/30/goose-island-workers-tried-to-unionize-before-the-covid-19-pandemic-the-company-pushes-back-and-then-laid-off-leaders-of-the-effort/>.
- 36. *Id.*
- 37. Benjamin I. Sachs, *Enabling Employee Choice: A Structural Approach to the Rules of Union Organizing*, 123 HARV. L. REV. 655, 664-67 (2010). For an overview of the employer “recognition” process, see generally James J. Brudney, *Neutrality Agreements and Card Check Recognition: Prospects for Changing Paradigms*, 90 IOWA L. REV. 819 (2005).
- 38. This is known as the duty to bargain. See 29 U.S.C. § 158(a)(5) (2024) (making it an unfair labor practice for employers to “refuse to bargain collectively with the representatives of [their] employees”).

Only rarely, though, do workers navigate this process alone. Somewhere in the middle, someone has called an established union—or multiple established unions—for assistance.³⁹ If the union agrees, a partner on everything from door-knocking to website design is in the offing.⁴⁰ In exchange, the workers agree to affiliate with the union, which will collect dues and formally represent them.⁴¹ The fledgling effort thereby becomes part of an institution—a so-called “local” union—with an office lease, full-time executives and staff, human resources policies, and even specialized status under the federal tax code.⁴²

The local union is probably numbered, reflecting its charter with a much larger national or international labor organization that is also, confusingly, colloquially referred to as a “union.”⁴³ The national (or

39. JULIUS G. GETMAN, RESTORING THE POWER OF UNIONS 24 (2010) (“Organizing drives typically begin in response to employee discontent that is communicated to the union.”). For a profoundly well-produced oral history on this process, see *Transcript, Kickstarter Union Oral History: Chapter 4: The Leak*, ENGELBERG CTR. (Oct. 20, 2023), <https://eclive.engelberg.center/episodes/chapter-4-the-leak-IXspIdgE/transcript> [<https://perma.cc/5FYB-RA8C>] (“After research and a lot of conversations with the contenders and conversations with workers who had worked with these unions before . . . we whittle it down to two: WGAE . . . and OPEIU.”).
40. Sachs, *supra* note 37, at 664-65; *see also* Ken Green, *Choosing a Union: How to Connect with a Union Organizer*, UNIONTRACK (Apr. 18, 2023), <https://uniontrack.com/blog/union-organizer> [<https://perma.cc/W4KF-PR5B>] (“[P]repare a list of questions that would help you and your coworkers better understand how the union can help you.”).
41. *See, e.g.*, Commc’ns Workers of Am. v. Beck, 487 U.S. 735, 739 (1988) (explaining that employees chose “Communications Workers of America (CWA) as their exclusive bargaining representative . . . [which] negotiated a union security clause . . . under which all represented employees . . . must pay the union ‘agency fees’” regardless of union membership status).
42. *What Is a Union?*, UNIONPLUS, <https://www.unionplus.org/page/what-union> [<https://perma.cc/3AEU-JH65>] (describing a “local union”). For an example of a local union and some of its functions, see *Culinary Workers Union Local 226*, <https://www.culinaryunion226.org> [<https://perma.cc/SG2H-JZDG>]. For an overview of unions’ 501(c)(5) tax status, see *Life Cycle of a Labor Organization*, IRS, <https://www.irs.gov/charities-non-profits/other-non-profits/life-cycle-of-a-labor-organization> [<https://perma.cc/5PK2-KZMW>].
43. For an overview of the legal and practical relationship between international and local unions, see Pomona Valley Hosp. Med. Ctr., 355 NLRB 234, 242 (2010) (“[O]ver 150 local labor organizations are affiliated with [the international union].”).

international) union provides strategic, legal, and technical support to the multiple local unions connected to it below (which also pay dues), but nationals or internationals do not usually maintain their own collective bargaining agreements with employers or have workers as members.⁴⁴

The national or international organization, in turn, is likely itself an affiliated, dues-paying member of one of the 2 major U.S. labor federations above it, the 63-member American Federation of Labor and Congress of Industrial Organizations (the “AFL-CIO”)⁴⁵ or the 3-member Strategic Organizing Center (the “SOC”).⁴⁶ At each of the 3 levels there are individualized governing documents, leadership elections, media and political strategies, policy goals, campaigns, and branding.⁴⁷

44. *Id.*; Roger Hartley, *The Framework of Democracy in Union Government*, 32 CATH. U. L. REV. 13, 82-83, 91 (1982). A sense of the dynamic between an international union and its local affiliates can be found in Laborers’ International Union of North America’s (“LiUNA”) description of its structure, wherein the international union lobbies for members in Washington, D.C., and “[o]versee[s] and support[s] organizing programs carried on at both local and regional levels,” while the local union “[e]nforces rights under the collective bargaining agreement,” offers worker training programs, and “enforces legal rights” granted by the NLRA. *LIUNA Structure, LIUNA! FEEL THE POWER*, <https://www.liuna.org/liuna-structure> [<https://perma.cc/HZF6-YVVA>].
45. *Our Affiliated Unions*, AFL-CIO, <https://aflcio.org/about-us/our-unions-and-allies/our-affiliated-unions> [<https://perma.cc/W9Y6-D86B>].
46. STRATEGIC ORGANIZING CENTER, <https://thesoc.org> [<https://perma.cc/KUF6-JKM9>]. In its recent transition from “Change to Win,” the Strategic Organizing Center is sometimes now described as a “coalition” instead of a federation. See Irina Ivanova, *Amazon Workers Have Highest Warehouse Injury Rate, Labor Groups Say*, CBSNEWS (June 2, 2021), <https://www.cbsnews.com/news/amazon-injury-rate-highest-among-warehouses-worker-groups-allege/> [<https://perma.cc/6MCJ-RW9D>].
47. Hartley, *supra* note 44, at 62-92; Pomona Valley Hosp. Med. Ctr., 355 NLRB 234, 242 (2010) (“[L]ocal labor organizations . . . are governed by their own elected officers . . . serve as the exclusive representative of employees . . . sign collective-bargaining agreements, and administer and enforce those agreements.”). For a good example, see the many tabs and dropdowns on the homepage of SEIU-32BJ, one of the largest locals on the East Coast. 32BJ SEIU, <https://www.seiu32bj.org> [<https://perma.cc/M5SF-AWLS>]. For an international example see the United Food and Commercial Workers International Union (“UFCW”). UFCW, <https://www.ufcw.org> [<https://perma.cc/3HWY-9QMV>].

The institutional layers are partly a reflection of law. Nothing about forming or running a union is simple. The NLRB's flowchart "generally describ[ing] representation case procedures"—that is, how to start a union—prescribes six steps *before* the web of boxes, arrows, and lines begins.⁴⁸ The lived experience ranges from byzantine to baffling,⁴⁹ and for the inexperienced, going it alone is likely to feel fanciful.

Winning a vote for representation triggers, if anything, more legal complexities that are also better suited to an existing operation like a local union. The twin doctrines of "exclusive" and "fair" representation mean the union must bargain a contract thoughtfully and impartially defend those covered under the contract, a group encompassing both members who love the union and nonmembers who may absolutely not.⁵⁰ The delicate balancing of internal interests requires experienced staffers and, of course, lawyers.⁵¹

Even if the election, negotiation, and contract administration proceed smoothly, the NLRA's uniquely American expectation that bargaining proceeds employer by employer—or, for big companies, location by location⁵²—creates intra- and inter-local-union complexities that call for

48. About NLRB, NAT'L LAB. RELS. BD., <https://www.nlrb.gov/resources/nlrb-process> [https://perma.cc/Q8S2-C7SR].
49. For some succinct case studies from campaigns at Kumho Tire and DISH TV, see Gordon Lafer & Lola Loustaunau, *Fear at Work*, ECON. POL'Y INST. 8-21 (July 23, 2020), <https://www.epi.org/publication/fear-at-work-how-employers-scare-workers-out-of-unionizing/> [https://perma.cc/KKZ2-K6QP].
50. See *Steele v. Louisville & Nashville R.R.*, 323 U.S. 192, 202 (1944) ("While the majority of the craft chooses the bargaining representative, when chosen it represents . . . all its members, the majority as well as the minority, and it is to act for and not against those whom it represents."); *Vaca v. Sipes*, 386 U.S. 171, 177 (1967) ("[T]he exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.").
51. For an acerbic take on the role of law, lawyers, and arbitration in unionized environments, see THOMAS GEOGHEGAN, WHICH SIDE ARE YOU ON: TRYING TO BE FOR LABOR WHEN IT'S FLAT ON ITS BACK 161-65 (1992).
52. Mark Barenberg, *Widening the Scope of Worker Organizing: Legal Reforms to Facilitate Multi-Employer Organizing, Bargaining, and Striking*, ROOSEVELT INST. 3-14 (Oct. 7, 2015), <https://rooseveltinstitute.org/publications/widening-the-scope-of-worker-organizing/> [https://perma.cc/N3FH-KQCW]

Disorganized Labor (Law)

further coordination. The national or international unions have traditionally played that role among their own smaller local unions,⁵³ with the federations serving as an important mediating force between the nationals or internationals, which might otherwise spar over the same group of workers.⁵⁴

(describing how the “existing legal framework creates at least seven key obstacles to effective multi-employer organizing and bargaining”).

53. For example, most national or international organizations have the power to take over or “trustee” their subordinate units, generally for alleged local corruption, procedural abuses, or fiscal mismanagement. Matthew A. Rooney, *A Fair Hearing Requirement for Union Trusteeships Under the LMRDA*, 40 U. CHI. L. REV. 873, 873-74 (1973). Guardrails on the process were codified by Congress in Title III of the Labor-Management Reporting and Disclosure Act of 1959, Pub. L. No. 86-257, 73 Stat. 519 (codified as amended at 29 U.S.C. §§ 401-531 (2024)); Rooney, *supra* at 874; *see also* Clyde W. Summers, *Union Trusteeships and Union Democracy*, 24 MICH. J.L. REFORM 689, 691-92 (1991) (criticizing antidemocratic consequences where trusteeships are done “with the very purpose of curbing opposition groups at the local level and reinforcing dictatorial control by national officers”). National or international organizations also play a central role in the merging or consolidation of local unions to create better coordinated bargaining units, achieve economies of scale, or streamline organizational structures. Gary N. Chaison, *Local Union Mergers: Frequency, Forms, and National Union Policy*, 4 J. LAB. RSCH. 325, 325-28 (1983).
54. As Christopher Tomlins has explored, as far back as the 1880s, “national unions felt they enjoyed sufficient unity of purpose and community of interest to establish an ad hoc alliance,” which was soon branded the American Federation of Labor (the “AFL”). CHRISTOPHER L. TOMLINS, THE STATE AND THE UNIONS: LABOR RELATIONS, LAW, AND THE ORGANIZED LABOR MOVEMENT IN AMERICA, 1880~1960 10 (1985). The federated model was seen to respect craft- and trade-union autonomy while promoting “working class unity . . . in one organized movement.” *Id.* at 32-33. In 1955, the AFL merged with its bitter historical rival, the Congress of Industrial Organizations (the “CIO”). Article XX of the combined AFL-CIO constitution sets rules for its unions and procedures for resolving disputes between its affiliate unions. *See Constitution of the AFL-CIO*, AFL-CIO 38-39 (as amended June 12-15, 2022), <https://aflcio.org/reports/afl-cio-constitution> [https://perma.cc/GZ2F-KEMY] (“No affiliate shall organize or attempt to represent employees as to whom an established collective bargaining relationship exists with any other affiliate.”); *id.* at 52 (“No affiliate shall . . . circulate . . . any charge or report that is designed to bring or has the effect of bringing another affiliate into public disrepute or of otherwise adversely affecting the reputation of such affiliate or the Federation.”). The AFL-CIO and its associated state bodies also organize “central labor councils,” which bring local unions and groups

The federal labor movement has also been an important locus for institutional change. The AFL-CIO's mid-1990s "revolution from above"⁵⁵ cracked exclusionary practices and incentivized new organizing.⁵⁶ In the early aughts, debate over a plan to restructure the federation to make organizing more "strategic" by focusing on industry- or sector-specific campaigns—power through "market share," the theory went⁵⁷—led several international unions to exit the AFL-CIO entirely.⁵⁸ While the split failed to reverse national membership losses,⁵⁹ sectoral approaches

together to strategize on labor issues and campaigns at the community level. *State Federations and Central Labor Councils*, AFL-CIO, <https://aflcio.org/about-us/our-unions-and-allies/state-federations-and-central-labor-councils> [https://perma.cc/XJC3-Q9GB].

55. Fernando Gapasin & Michael Yates, *Organizing the Unorganized: Will Promises Become Practices?*, 49 MONTHLY REV. 46, 58 (1997).
56. In 1995, an insurgent slate of candidates won the AFL-CIO's first contested presidential election and—in addition to founding an organizing department—began offering tens of millions of dollars in new campaign incentives while pressing national and international unions to spend at least 10% of dues on membership building (up from an average of 3%). See Victor G. Devinatz, *John Sweeney's Legacy and the Future of the AFL-CIO*, 13 WORKINGUSA: J. LAB. & SOC'Y 281, 285 (2010); VANESSA TAIT, POOR WORKERS' UNIONS 188, 190 (2016); Steven Greenhouse, *Labor, Revitalized with New Recruiting, Has Regained Power and Prestige*, N.Y. TIMES (Oct. 9, 1999). The reformers also diversified the AFL-CIO's executive council, scrapped anti-immigrant policies, and recognized an official LGBTQ+ constituency. RICK FANTASIA & KIM VOSS, HARD WORK 133 (2004); Ruth Milkman, *Toward a New Labor Movement? Organizing New York City's Precariat*, in NEW LABOR IN NEW YORK: PRECARIOUS WORKERS AND THE FUTURE OF THE LABOR MOVEMENT 1, 9 (Ruth Milkman & Ed Ott eds., 2014); Devinatz, *supra* at 284-85.
57. DON STILLMAN, STRONGER TOGETHER: THE STORY OF SEIU 135, 138 (2010). See also generally Stephen Lerner, *An Immodest Proposal: Remodeling the House of Labor*, NEW LAB. FORUM (Nov. 21, 2017), <https://newlaborforum.cuny.edu/2017/11/21/an-immodest-proposal-remodeling-the-house-of-labor/> [https://perma.cc/MP8T-FGVY] (providing an overview of the critique, including that the AFL-CIO did not have the constitutional power to compel its affiliates to organize anywhere in particular, or at all).
58. Steven Greenhouse, *4 Major Unions Plan to Boycott A.F.L.-C.I.O. Event*, N.Y. TIMES (July 25, 2005), <https://www.nytimes.com/2005/07/25/us/4-major-unions-plan-to-boycott-aflcio-event.html>.
59. For an empirical analysis of the schism's uncertain impact on new organizing over the first ten years, see generally Rachel Aleks, *Estimating the Effect of "Change to Win" on Union Organizing*, 68 ILR REV. 467 (2015).

Disorganized Labor (Law)

characterize many of the significant unionization, contract, merger, and labor-policy efforts launched over the past twenty or so years.⁶⁰

B. Organized People

Organized institutions, of course, are made up of organized people, thanks, appropriately enough, to people known as “organizers.” There are generally four types. The first (and most known) is the “external” organizer, the affable, fearless motivator portrayed in Hollywood versions of campaigns.⁶¹ These organizers are professionals in the sense that the work is around the clock and based on training and experience in the craft

60. That includes campaigns organizing fast food, Steven Greenhouse, *“The Success is Inspirational”: The Fight for \$15 Movement 10 Years On*, GUARDIAN (Nov. 23, 2022), <https://www.theguardian.com/us-news/2022/nov/23/fight-for-15-movement-10-years-old> [https://perma.cc/TL2M-WT22], state homecare agencies, Peggy R. Smith, *Welfare, Child Care, and the People Who Care: Union Representation of Family Child Care Providers*, 55 KAN. L. REV. 321, 359-63 (2007), the Vegas strip, Harold Meyerson, *Las Vegas as a Workers’ Paradise*, AM. PROSPECT (Dec. 11, 2003), <https://prospect.org/special-report/las-vegas-workers-paradise/> [https://perma.cc/2HZG-8238], and the nation’s largest employers, Nelson Lichtenstein, *How Wal-Mart Fights Unions*, 92 MINN. L. REV. 1462 (2008), and second-largest employers, Margot Roosevelt, *Teamsters Vow to Unionize Amazon, Taking On an Anti-Union Behemoth*, L.A. TIMES (June 22, 2021), <https://www.latimes.com/business/story/2021-06-22/teamsters-mount-amazon-union-plan-warehouse-logistics>. It also includes contract campaigns encompassing a massive swath of domestic hoteling, GETMAN, *supra* note 39, at 130-32, and 9 regional janitorial markets, FANTASIA & VOSS, *supra* note 56, at 134-50. With union pressure, California, Seattle, and New York City have all passed laws promoting state- or citywide standards in the fast-food, domestic-labor, and gig markets. Chris Marr, *California Fast Food Bill Inches US Toward Bargaining by Sector*, BLOOMBERG L. (Aug. 18, 2022), <https://news.bloomberglaw.com/daily-labor-report/california-fast-food-bill-inches-us-toward-bargaining-by-sector>; César Rosado Marzán, *Quasi Tripartism: Limits of Co-Regulation and Sectoral-Bargaining in the U.S.*, 90 U. CHI. L. REV. 703, 729-35 (2023); Jeffery C. Mays, *New York Passes Sweeping Bills to Improve Conditions for Delivery Workers*, N.Y. TIMES (Sep. 23, 2021), <https://www.nytimes.com/2021/09/23/nyregion/nyc-food-delivery-workers.html>.
61. An example is “Reuben Warshowsky,” played by Ron Leibman in the Oscar-winning NORMA RAE, DVD (20th Century-Fox 1979).

of generating and sustaining collective action.⁶² The schooling may have come from a local union,⁶³ but in recent times the most accessible opportunities are provided through the AFL-CIO's Organizing Institute⁶⁴ and a variety of national- or international-union organizer-in-training programs.⁶⁵ These upper-tier initiatives often trace back to the late-1990s revitalization investments, including the conscious attempt to welcome outsiders—college students, people of color, women, civil rights activists—into the institutional fold.⁶⁶

62. See Don Goldstein, *Jobs in the Labor Movement*, CUNY GRADUATE CTR.: BLOG (Jan. 13, 2022), <https://careerplan.commons.gc.cuny.edu/blog/labor-movement-jobs> [https://perma.cc/EH7D-CD3V] ("Much of their work includes one-on-one communication with workers at job sites and in their homes, list development, recruitment, running worker meetings, directing workplace actions, developing leaders, building strategic alliances and collaborating with other staff."); *Meet the External Organizing Team*, EDUC. WORKERS UNITED, SEIU Loc. 99, <https://www.seiu99.org/workplaces/earlyed/childcare/meettheteam/> [https://perma.cc/7R32-JLRS].
63. Especially large local unions, like Service Employees International Union ("SEIU") 32BJ, may have their own training programs. *New Organizer Training Program*, 32BJ SEIU, <https://www.seiu32bj.org/new-organizer-training/> [https://perma.cc/52TZ-N98V].
64. *AFL-CIO Campaign Apprenticeship Program*, AFL-CIO, <https://aflcio.org/about-us/programs/organizing-institute/afl-cio-campaign-apprenticeship-program> [https://perma.cc/74E4-C79A] ("Trainees who successfully complete the paid, 12-week apprenticeship program will be recommended to unions looking to expand their organizing program.").
65. See, e.g., *Organizer-in-Training (OIT)*, AFSCME, <https://www.afscme.org/about/careers/organizer-in-training> [https://perma.cc/HK5D-PTXR] (describing "an intensive year-long program to learn the fundamentals of building worker power through union organizing"); *SEIU: SEIU Organizer in Training Reviews*, GLASSDOOR, https://www.glassdoor.com/Reviews/SEIU-Organizer-In-Training-Reviews-EI_IE150204.0,4_K05,26.htm [https://perma.cc/WC35-XQLB].
66. See RUTH MILKMAN, L.A. STORY: IMMIGRANT WORKERS AND THE FUTURE OF THE U.S. LABOR MOVEMENT 21-22 (2006) (describing a "heavy reliance on 'outsiders'—especially the college-educated organizers with no shop-floor experience"); Leslie Bunnage, *Freshman Organizers: Can Union Summer Become a Year-Round Vocation?*, NEW LAB. FORUM, Fall-Winter 2002, at 94 (concluding that the AFL-CIO's "Union Summer" organizing training program "has been reasonably successful in recruiting participation from their target populations of people of color and young white women"); TAIT, *supra* note 56, at 189 ("By the late '80s, organizers with social movement or

Disorganized Labor (Law)

External organizers are essentially sidekicks to the second category: the in-house employees fighting for the right to collectively bargain. Variously known as worker leaders,⁶⁷ rank-and-filers, activists,⁶⁸ or simply workers, their efforts are at once unpaid, intensely personal, and life encompassing.⁶⁹ While external organizers are there to provide a crash course on labor law, media, and management tactics,⁷⁰ it is the in-house activists who carry the most workplace credibility and the greatest personal risks.⁷¹

Then there are “salts,” workers who accept a job with the intention of helping to unionize it. As a tactic, salting long predates federal labor law; dock, auto, coal, and trade workers served as union “agents” or radical “colonizers” on the inside throughout the latter nineteenth century.⁷² With

community-organizing experience had made headway inside local, regional, and national trade unions.”).

67. Seth Newton Patel, *Have We Built the Committee? Advancing Leadership Development in the U.S. Labor Movement*, 16 WORKINGUSA: J. LAB. & SOC'Y 113, 114 (2013).
68. SHAUN RICHMAN, TELL THE BOSSES WE'RE COMING 17 (2020).
69. JANE McALEVEY, RAISING EXPECTATIONS (AND RAISING HELL) 14 (2012) (describing the “whole-worker organizing model” where activists’ “vision” of their own “self-interest” includes coworkers, “their workplace, their street, their kids’ school, their community, their water-shed, their nation and their world”).
70. Indeed, successful modern union organizing is premised on “utilizing a grassroots, rank-and-file-intensive strategy, building a union and acting like a union from the very beginning of the campaign . . . [including] small-group meetings to develop leadership and union consciousness and to inoculate workers against” employer dissuasion tactics. Kate Bronfenbrenner & Tom Juravich, *It Takes More Than House Calls: Organizing to Win with a Comprehensive Union-Building Strategy*, in *ORGANIZING TO WIN: NEW RESEARCH ON UNION STRATEGIES* 19, 24 (Kate Bronfenbrenner, Sheldon Friedman, Richard W. Hurd, Rudolph A. Oswald & Ronald L. Seeber eds., 1998).
71. Noam Scheiber, *Companies Are Taking a Harder Line on Union Organizers, Workers Say*, N.Y. TIMES (May 22, 2023), <https://www.nytimes.com/2023/05/22/business/economy/unions-starbucks-apple-rei-trader-joes.html> (“A pattern of similar worker accusations [of retaliatory discipline and terminations] . . . has arisen at Starbucks, Trader Joe’s and REI as retail workers have sought to form unions in the past two years.”).
72. JAMES D. WALSH, *PLAYING AGAINST THE HOUSE: THE DRAMATIC WORLD OF AN UNDERCOVER UNION ORGANIZER* 17 (2016). In the Depression era, salts often emerged from radical leftist organizations “with a broader and more explicit

both external union training and in-house interpersonal standing, salts may offer a bit of the best from both worlds, and a variety of unions, from the International Longshore and Warehouse Union (the “ILWU”) to UNITE HERE, revived the approach in the 2000s.⁷³ As work, salting is difficult, harrowing,⁷⁴ and exhausting—it’s literally two jobs, with meetings, supervisors, and tasks on both ends.⁷⁵ But it is also Supreme Court-approved and the only way for anyone on the union’s payroll to access any portion of the employer’s property.⁷⁶

Finally, there are “internal” organizers, usually in unionized settings, who help resolve workplace concerns, maintain membership commitments, and fight for stronger contracts.⁷⁷ When internal organizers are employed by local unions, they are sometimes referred to as union “staff,” and their duties may be incredibly diverse, spanning from corporate research to financial analysis to event planning.⁷⁸ Internal organizers also include members of the bargaining unit, often called “stewards,” who receive time off under the collective bargaining

political agenda than the unions employing ‘salts’ today.” STEVE EARLY, *SAVE OUR UNIONS* 99-100 (2013).

73. EARLY, *supra* note 72, at 102-106.
74. As an ILWU salt described it, “Salting is not a form of labor activism that everyone can sustain. Adding to the ever present stress of organizing, including all the after-work and weekend meetings, is the constant fear of being found out and fired by your boss.” EARLY, *supra* note 72, at 104. Walmart, for example, trains managers on ferreting out the practice. WALSH, *supra* note 72, at 11. Of course, salting can also be profoundly fulfilling. Sarah, a UNITE HERE salt who helped build the union’s program nationally in the mid-2000s, described her 3 years at a DoubleTree hotel as life-changing and said she “couldn’t understand why a burgeoning activist would do anything other than salt.” *Id.* at 8, 22.
75. UNITE HERE organizers sometimes lease a “salt house,” making it a truly 24-hour-a-day job. WALSH, *supra* note 72, at 25.
76. *Lechmere v. NLRB*, 502 U.S. 527, 539 (1992) (barring external organizers from employer property absent a “inaccessibility exception” applicable in “logging camps . . . mining camps . . . and mountain resort hotels”).
77. See Goldstein, *supra* note 62 (describing the work of an “[i]nternal [o]rganizer” or “[s]taff [r]ep”).
78. *Id.*

agreement to handle coworkers' grievances and monitor employer compliance with the contract.⁷⁹

Like any employer, unions have organizational hierarchies, but unlike other employers, unions operate democratically, so the leadership—from the locals to the federations—is internally elected.⁸⁰ For this reason the union “boss” trope is not just tired but misleading. Though “business unionism” had its share of self-dealing officials⁸¹ expert at flipping low-turnout elections into high-paying, effectively permanent employment⁸² recent generations are filled with social-reform-minded activists drawn from community organizations, or insurgents who started at the shop, gained experience in lower offices, and became devoted to building union strength.⁸³ Many bring transformative visions for restructuring work,

79. See, e.g., *Steward Handbook: How to Build a Strong Union and Power in the Workplace*, AFSCME 5-9 (June 2014), https://afscmeatwork.org/system/files/afscme-steward-handbook_1.pdf [<https://perma.cc/ZNG5-W2Y8>].
80. Indeed, the Labor-Management Reporting and Disclosure Act of 1959 requires every local, national or international union to “elect its officers” every 3 or 5 years, respectively, “by secret ballot among members in good standing.” 29 U.S.C. § 481(a)-(b) (2024).
81. UNITE HERE’s president once had access to a union-funded jet for personal travel, a Palm Springs office, and 4 retirement accounts, one of which paid \$300,000 annually. FANTASIA & VOSS, *supra* note 56, at 92-93.
82. See *id.* at 87-88 (describing a drastic statistical drop in union-leadership transition rates between the early 20th century and the 1960s); NELSON LICHTENSTEIN, STATE OF THE UNION 144 (2002) (discussing how, regardless of internal democratic practices, “top-heavy, well-paid bureaucracies proved highly resistant to rotation in office” in the mid-20th century); *see also* Brian Petruska, *Choosing Competition: A Proposal To Modify Article XX of the AFL-CIO Constitution*, 21 HOFSTRA J. EMP. & LAB. L. 1, 8-9 (2003) (documenting low membership participation in union democratic functions during this time).
83. Marshall Ganz et al.’s study of early leadership cohorts found a third of “new generation” union leaders had activist-community or leadership backgrounds and had not initially been members of their union. Marshall Ganz, Kim Voss, Teresa Sharpe, Carol Somers & George Strauss, *Against the Tide: Projects and Pathways of the New Generation of Union Leaders, 1984-2001*, in REBUILDING LABOR: ORGANIZING AND ORGANIZERS IN THE NEW UNION MOVEMENT 150, 157 (Ruth Milkman & Kim Voss eds., 2004). No matter the entry point or motivation, over time most leaders described their core mission as “union building,” *id.* at 191, 193, which the authors defined as viewing union work—including organizing—as an end in itself. *Id.* at 157. Diana Valles, president of Culinary Workers Union Local 226 in Las Vegas, is an example of a union executive who has taken the internal route, starting as

organizing, and communities to local and international presidencies, as evidenced in profiles on *60 Minutes*,⁸⁴ in the *New Yorker*,⁸⁵ and in the *New York Times*.⁸⁶

a guest room attendant and Local 226 member in 1988, becoming a steward during a major contract fight and then an external organizer in 2004, and working her way up electoral channels to executive leadership. *Our Union/Officers: Diana Valles*, CULINARY WORKERS UNION LOC. 226, <https://www.culinaryunion226.org/union/officers/diana-valles> [https://perma.cc/BXW9-PVAD]. See also Kim Voss & Rachel Sherman, *Breaking the Iron Law of Oligarchy: Union Revitalization in the American Labor Movement*, 106 AM. J. SOCIO. 303, 337-38 (2000) (identifying the three critical factors influencing union change as (1) an internal political crisis facilitating new leaders, (2) the presence of officials with external activist experience, and (3) international support for innovation).

84. Daniel Schorn, *Andy Stern: The New Boss*, CBS NEWS (May 12, 2006), <https://www.cbsnews.com/news/andy-stern-the-new-boss/> [https://perma.cc/9UVA-ZDVJ] (“Like the head of a big company, he’s going global—recruiting without borders. He has moved organizers into nine different countries.”).
85. Jennifer Gonnerman, *Flight Attendants Fight Back*, NEW YORKER (May 23, 2022), <https://www.newyorker.com/magazine/2022/05/30/flight-attendants-fighting-back> [https://perma.cc/S2HF-4YAK] (“The speech [calling for a general strike] got national attention, and later, when a CBS interviewer suggested that Nelson was threatening to ‘shut down the whole economy,’ she calmly responded, ‘Yes.’”).
86. On the verge of a major Chicago schools strike, the *New York Times*, profiling the Chicago Teachers Union president, stated that “[w]hen it comes to demanding, pushing and sparring, few people could even begin to compare with Rahm Emanuel Then came Karen Lewis.” Monica Davey & Steven Yaccino, *Teachers’ Leader in Chicago Strike Shows Her Edge*, N.Y. TIMES (Sep. 11, 2012), <https://www.nytimes.com/2012/09/12/education/talks-to-continue-in-chicago-teachers-strike.html>. The deeper context involves Lewis’s role as leader of an insurgent caucus that reinvented the Chicago Teachers Union (the “CTU”—and many others—by bringing community issues into the bargaining process. See, e.g., SARAH JAFFE, NECESSARY TROUBLE 118-28 (2016) (“The CTU strike . . . created space for labor to think about itself as a force to fight for a better economy for all, and to sway political opinion by making public demands coupled with action.”).

C. Organized Funding

Employing all these people—and maintaining the buildings they work in—takes money, money that is received and tracked, and often at risk. The primary source is member dues, which can cover the costs of everything from maintaining the union hall, to staff salaries, to transportation, to candidate canvassing.⁸⁷ Dues paying is voluntary in the public sector⁸⁸ and in states that have enacted so-called “right-to-work” laws.⁸⁹ Everywhere else, dues from members and fees from nonmembers (covering governance costs but excluding any political spending) are usually deducted directly from paychecks.⁹⁰ Union members generally have a say in how much is deducted, including special assessments, which may temporarily raise the deduction to support an important upcoming project, like a strike fund or federal or state electioneering.⁹¹

Not all income is dues based. A substantial portion of labor financing comes from investments, interest, dividends, rent, and one-time asset

87. Sameer M. Ashar & Catherine L. Fisk, *Democratic Norms and Governance Experimentalism in Worker Centers*, 82 L. & CONTEMP. PROBS. 141, 153-54 (2019) (“Only unions, among contemporary worker formations, have adopted a dues model.”).
88. Janus v. AFSCME, Council 31, 585 U.S. 878, 885 (2018) (declaring a mandatory minimum dues level to “violate[] the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern”).
89. 29 U.S.C. § 164(b) (2024) (allowing states to prohibit agreements between unions and employers requiring a minimum dues level).
90. Commc’ns Workers of Am. v. Beck, 487 U.S. 735 (1988) (allowing nonmembers covered by a collective bargaining agreement to opt out of union political spending). For comprehensive coverage of this regime and its complex legal evolution, see Catherine L. Fisk & Erwin Chemerinsky, *Political Speech and Association Rights After Knox v. SEIU, Local 1000*, 98 CORNELL L. REV. 1023, 1029-40 (2013). Dues deducted directly from workers’ paychecks are known as “checkoff.” Valley Hosp. Med. Ctr., Inc., 371 NLRB. No. 160 (2022).
91. For an example, see Knox v. SEIU, Local 1000, 567 U.S. 298, 301 (2012) (“SEIU sent a letter to unit employees announcing a temporary 25% increase in dues and a temporary elimination of the monthly dues cap, billing the move as an ‘Emergency Temporary Assessment to Build a Political Fight-Back Fund.’”).

sales.⁹² All told, in 2020 unions had over \$18 billion in revenue, more than \$15 billion in expenses, and \$29.1 billion in net assets, including \$13.5 billion in cash and securities.⁹³

The model brings freedoms and risks. Avoiding elite, charitable, or grant money sidesteps the associated strings that may skew priorities away from the kinds of new and aggressive organizing that may be desirable but disfavored in some giving circles.⁹⁴ At the same time, membership losses at the local level, and legal losses at the Supreme Court level—the constitutional right to public sector free-ridership dates all the way back to 2018—bring a basic instability that makes long-term planning and campaigning difficult.⁹⁵ And while labor’s bottom-line holdings are eye-popping, they also make unions a ripe target for an intimidating array of defamation, Racketeer Influenced and Corrupt Organizations Act (“RICO”), and property-based claims.⁹⁶

There is also the paperwork. All time worked and all expenses must be logged and categorized by purpose to calculate dues levels for nonmembers (in non-right-to-work states) and voluntary fee payers (in right-to-work states).⁹⁷ Compliance with the federal Labor-Management

92. Chris Bohner, *Labor’s Fortress of Finance: A Financial Analysis of Organized Labor and Sketches for an Alternative Future*, RADISH RSCH. 6 (2022), https://www.radishresearch.org/_files/ugd/2357dd_08be2eafaedd4e988539733dd9b4eef2.pdf [<https://perma.cc/M4KK-UCFS>]; *see also* KIM MOODY, US LABOR IN TROUBLE AND TRANSITION: THE FAILURE OF REFORM FROM ABOVE, THE PROMISE OF REVIVAL FROM BELOW 117 (1988) (describing “accumulated wealth that is independent of dues income”).

93. Bohner, *supra* note 92, at 1.

94. Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546, 601, 603 (2021) (“The labor movement... has achieved independence and relative financial stability through a dues model.”).

95. This can be true even as non-dues-based income, like property sales, covers for immediate-term membership losses. *See also* Janus v. AFSCME, Council 31, 585 U.S. 878 (2018) (establishing a constitutional right to voluntary dues in the public sector); *cf.* Bohner, *supra* note 92, at 2 (stating that the half-million-member decline “did not adversely impact union finances”).

96. *See* James J. Budney, *Collateral Conflict: Employer Claims of RICO Extortion against Union Comprehensive Campaigns*, 83 S. CAL. L. REV. 731, 732-34 (2009) (describing defamation, antitrust, and racketeering claims brought against unions).

97. Where unions are authorized to collect member dues, they must separate expenses (including labor costs) related to collective bargaining and

Reporting and Disclosure Act (the “LMRDA”) is complex enough that almost a fifth of local unions miss the filing deadline and international unions are encouraged to meet regularly with the Department of Labor’s Office of Labor-Management Standards to review “data about their affiliates that may need additional assistance to meet the LMRDA’s requirements.”⁹⁸

II. DISORGANIZED LABOR

Part I has provided, at best, a sketch of the institutions, people, and revenue that make up what is generally considered “organized labor.” To be sure, there are important actors and entities outside this sphere that operate or experiment with different models. Dozens of unions—including the massive National Education Association and the high-profile Writers Guild of America West—are unaffiliated with either the AFL-CIO or the SOC.⁹⁹ The burgeoning “alternative-labor” segment¹⁰⁰ of worker advocacy is funded almost entirely by private and government grants.¹⁰¹ Some

representational activities (e.g., grievance handling, rent, attorney fees, leaflets regarding working conditions) from expenses incurred for other reasons (e.g., political or ideological activities, public relations). Jeff Canfield, *The Broken Beck Rights System*, 47 Wayne L. Rev. 1049, 1063 (2001) (describing “the issue of ‘accounting’”). Depending on the state, workers may be charged, through dues, all, a portion, or none of these costs, a reality requiring considerable technical and accounting expertise. Abrams v. Commc’ns Workers of Am., 59 F.3d 1373, 1375 (D.C. Cir. 1995) (describing the work of an outside accounting firm hired for this purpose).

98. Jeffrey Freund, *The Key to Timely and Accurate Labor Union Reporting*, U.S. DEP’T LAB.: BLOG (Apr. 25, 2023), <https://blog.dol.gov/2023/04/25/the-key-to-timely-and-accurate-labor-union-reporting> [https://perma.cc/R5DP-8S2B].
99. See *Our Affiliated Unions*, AFL-CIO, <https://aflcio.org/about-us/our-unions-and-allies/our-affiliated-unions> [https://perma.cc/DCG4-Q56W]; *About*, Strategic Organizing Center, <https://thesoc.org/about/> [https://perma.cc/874A-9HDY].
100. As Josh Eidelson initially described in 2013, “alt-labor” generally refers to efforts aimed at improving working conditions absent collective bargaining. Josh Eidelson, *Alt-Labor*, AM. PROSPECT (Jan. 29, 2013), <https://prospect.org/notebook/alt-labor/> [https://perma.cc/4HW8-Q7LH].
101. Cesar F. Rosado Marzan, *Alt Labour and Worker Centres*, in THE OXFORD HANDBOOK OF THE LAW OF WORK 481, 482 (Guy Davidov, Brian Langille & Gillian Lester eds., 2024). In some cases, the singularity of an organization’s

efforts, like the #RedForEd teacher strikes and the Google Walkout for Real Change in 2018, make such magnificent use of social media as to be effectively leaderless.¹⁰²

But even here, well-established unions and traditional methods of organizing exert a heavy gravitational pull. Most “independent” unions end up merging with an AFL-CIO or SOC local.¹⁰³ Some affiliate, disaffiliate, and then reaffiliate.¹⁰⁴ Even those that are officially nonaligned may have

leader itself leads to foundation funding. *See* Rachel L. Swarns, *A Capstone in a Career Spent Fighting for the Rights of Domestic Workers*, N.Y. TIMES (Sep. 21, 2014), <https://www.nytimes.com/2014/09/22/nyregion/a-capstone-in-a-career-spent-fighting-for-the-rights-of-domestic-workers.html> (detailing the National Domestic Workers Alliance’s “pioneer[ing]” leader Ai-jen Poo, whose MacArthur “genius” grant was used to “endow a fellowship for domestic workers to do organizing and policy work”).

102. In 2018, an astounding collection of Facebook posts and private groups helped catalyze mass teacher strikes across 5 Southern states and Colorado. *‘Any Talks of Striking?’: How a West Virginia Teacher’s Facebook Post Started a National Movement*, USA TODAY (Feb. 20, 2019), <https://www.usatoday.com/story/news/education/2019/02/20/teacher-strike-west-virginia-school-closings-education-bill/2848476002/> [<https://perma.cc/QF24-LBYM>]. At Google, employees outraged by the company’s handling of sexual assault claims used internal communication systems to organize a massive global walkout in a matter of days. Kate Conger, Daisuke Wakabayashi & Katie Benner, *Google Faces Internal Backlash Over Handing of Sexual Harassment*, N.Y. TIMES (Oct. 31, 2018), <https://www.nytimes.com/2018/10/31/technology/google-sexual-harassment-walkout.html>.
103. *See, e.g.*, TAIT, *supra* note 56, at 119-20 (“The innovative style [United Labor Unions] employed . . . caught the eye of SEIU SEIU offered to affiliate the [United Labor Unions] locals, giving all five a collective organizing subsidy worth \$216,000 in the first three years”); Erik Loomis, *Independent Unions: The Allure of a Failing Strategy*, NEW LAB. FORUM (May 2023), <https://newlaborforum.cuny.edu/2023/04/28/independent-unions-the-allure-of-a-failing-strategy/> [<https://perma.cc/69DA-9BJQ>] (canvassing history and concluding that it “is almost impossible for independent unions to muster [an adequate] level of resources without affiliation with a larger international”).
104. *See, e.g.*, *State Workers’ Union Rejoins AFL-CIO*, ME. BIZ (Dec. 20, 2013) (“The union representing 12,000 state workers in Maine has rejoined the AFL-CIO after a seven-year hiatus.”), <https://www.mainebiz.biz/article/state-workers-union-rejoins-afl-cio> [<https://perma.cc/WB4X-8UCD>]; Dave Jamieson, *UFCW Rejoins AFL-CIO, Ending 8-Year Absence from Labor*

formal federation “partnerships” or rely on a federation’s solidarity efforts.¹⁰⁵ Collaborations are also common in “alt-labor” efforts to improve working conditions through avenues other than collective bargaining.¹⁰⁶ Even in these collaborations, the “private” money that supports alt-labor organizing includes heavy doses of union money, which is to say, dues money.¹⁰⁷

Federation, HUFFPOST (Aug. 8, 2013), https://www.huffpost.com/entry/ufcw-rejoins-afl-cio_n_3726816 [https://perma.cc/HBC6-DJC3].

105. The “AFL-CIO/NEA Labor Solidarity Partnership,” for example, “allows local affiliates of the [National Education Association] to join the federation at the local and state levels through affiliation with the national AFL-CIO.” *NEA Partnerships*, AFL-CIO, <https://aflcio.org/about-us/our-unions-and-allies/nea-partnerships> [https://perma.cc/9HV4-22PV]; *see also* Press Release, AFL-CIO, AFL-CIO Stands in Strong Solidarity with WGAE and WGAW Members on Strike (May 2, 2023), <https://aflcio.org/press/releases/afl-cio-stands-strong-solidarity-wgae-and-wgaw-members-strike> [https://perma.cc/M6VF-5SEK] (making no distinction between the affiliated Writers Guild of America East and the unaffiliated Writers Guild of America West). For a list of AFL-CIO “allied groups,” including, for example, the National Day Laborer Organizing Network, *see Our Unions and Allies*, AFL-CIO, <https://aflcio.org/about-us/our-unions-and-allies> [https://perma.cc/2KVV-2M5H].
106. Eidelberg, *supra* note 100 (describing a “new face of the U.S. labor movement—an often-ignored, little-understood array of groups organizing workers without the union label”). The AFL-CIO lists a number of alt-labor organizations as “allied groups.” *Our Unions and Allies*, AFL-CIO, <https://aflcio.org/about-us/our-unions-and-allies> [https://perma.cc/2KVV-2M5H]; *see also* Ruth Milkman, *Toward a New Labor Movement? Organizing New York City’s Precariat*, in *NEW LABOR IN NEW YORK: PRECARIOUS WORKERS AND THE FUTURE OF THE LABOR MOVEMENT* 1, 20-21 (Ruth Milkman & Ed Ott eds., 2014) (describing the rise of collaborations, partnerships, and support between unions and worker centers).
107. Two of the largest efforts, Fight for \$15 and OURWalmart, were actually created by SEIU and UFCW, respectively, Charles Lenchner, *The Fight for \$15 Goes Viral*, NEW LAB. FORUM (Apr. 12, 2016) <https://newlaborforum.cuny.edu/2016/04/12/the-fight-for-15-goes-viral/> [https://perma.cc/3VAE-D2KK], but in general “[u]nions in the traditional labor movement are often [alt-labor groups’] main backers.” Lance Compa, *Careful What You Wish for: A Critical Appraisal of Proposals to Rebuild the Labor Movement*, NEW LAB. FORUM (Dec. 28, 2015), <https://newlaborforum.cuny.edu/2015/12/28/proposals-to-rebuild-labor-movement/> [https://perma.cc/4SCK-UHL5]. Martin Malin has also made the point that as alt-labor groups mature, they tend to adopt organizational arrangements and functions “like traditional

Through economic, political, and employment upheavals, the three-tiered, dues-driven, staff-centric system has remained sticky. But a rearrangement has begun to emerge alongside it. Workers who want a union may be uninterested, unready, or unable to secure support from the traditional edifice. Some are going it alone, casually attached, at best, to traditional unions' methods of organizing and internal governance. Institutions exist, but they pop up on the fly. Organizers, including salts, are organizing, but they lack training and a playbook. There is funding, it just doesn't come from dues.

Unmoored, at least initially, from the history and stability of the traditional arrangements, the campaigns can feel haphazard, random, or even naïve. That's not necessarily wrong, but sometimes non-systemized, non-centralized, non-schooled perspectives and takes turn out to be the right ones. Conventional wisdom supplies only the conventional options. Experiential, intuitive, or accidental wisdom magnifies the field. Sometimes, having a lot risks a lot. Always, having a little risks a little. Professionals are professionals and amateurs are amateurs, but only amateurs can be diamonds in the rough.

Outside-the-box thinking born of circumstance, identity, or personal characteristics freed to flourish is neither new nor, at least in other circles, theoretically underdeveloped. The ethic is known empirically as "*bricolage*," an approach to change and institutional growth that helps explain why most shoestring organizations fail while a few thrive to surpass even bigger, richer, more experienced entities in innovation, stability, and usefulness.

Part II begins with a *bricolage* précis. It then turns to heavily descriptive accounts to argue that the birth and early course of numerous recent campaigns have leveraged the style's virtues to make space for collective-action innovations and iterative-organizing progress that hardly anyone thought possible. The result is, in part, a reconceptualization of how labor's institutions can be structured, who might do that work, and how it could be financed.

A. *Bricolage*

Bricolage is a fancy word for a simple concept: "mak[ing] do," as anthropologist Claude Lévi-Strauss classically put it, "with 'whatever is at

labor unions." Martin H. Malin, *Alt Labor? Why We Still Need Traditional Labor*, 95 CHI.-KENT L. REV. 157, 172-75 (2020).

hand.”¹⁰⁸ If the most obvious response to a formidable challenge is to get help or bail, *bricolage* is the old college try with the best of what’s around.¹⁰⁹ The “*bricoleur*” keeps tacit inventory of “odds and ends”—objects, skills, ideas—since “they may always come in handy.”¹¹⁰ *Bricolage* is “tinkering,”¹¹¹ getting “something from nothing,”¹¹² “muddling through,” and feeling good about good enough.¹¹³ There are no mistakes, just course correction clues.¹¹⁴ David, spotting “five smooth stones” in the wadi, practiced *bricolage*; Goliath was felled by it.¹¹⁵

Scholarly treatments tend to focus on *bricolage*’s role in entrepreneurship, where it is seen to assist—or even differentiate—firms that thrive despite severe resource constraints.¹¹⁶ Here three traits are generally identified: (1) a “bias toward action” or refusal to accept purported limits; (2) a practice of combining or reusing resources

108. Isabelle Corbett-Etchevers & Aura Parmentier-Cajaiba, *Making Strategy out of Everyday Tools: A Collective Bricolage Perspective*, 25 M@AN@GEMENT 39, 42 (2022).
109. Baker & Nelson, *supra* note 25, at 353.
110. CLAUDE LEVI-STRAUSS, THE SAVAGE MIND 17 (George Weidenfeld & Nicolson Ltd. trans., University of Chicago Press 1966).
111. See SHERRY TURKLE, LIFE ON THE SCREEN 52 (1995) (describing *bricolage* in early internet culture as the “[t]riumph of [t]inkering” where users “learn about how things work by interacting with them”).
112. Baker & Nelson, *supra* note 25, at 329.
113. Witell et al., *supra* note 21, at 292-93. (“Making do with what is available is regarded as a type of stop-gap tactic that leads to imperfect (‘good-enough’) solutions.”). Isabelle Corbett-Etchevers and Aura Parmentier-Cajaiba liken *bricolage* to the “garbage can model” of problem-solving strategy intuitive to DIY aficionados: grabbing the first tool that seems like it might work. Corbett-Etchevers & Parmentier-Cajaiba, *supra* note 108, at 42.
114. See TURKLE, *supra* note 111, at 51 (“For planners, mistakes are steps in the wrong direction; bricoleurs navigate through midcourse corrections.”).
115. 1 Samuel 17:38-48 (New Revised Standard).
116. A Senyard et al. study is typical of this focus, noting that most new firms are reliant solely on founders’ meager savings and borrowed investments, “never creat[ing] any discernible innovative outcomes during . . . short-lived and mundane struggles” to survive. Senyard et al., *supra* note 18, at 211. “Yet, against these considerable odds, substantial subsets of new firms do manage to innovate. Remarkably little theory or research identifies or explains the patterns of behavior that differentiate” them. *Id.*

“toward purposes for which they were not originally intended”;¹¹⁷ and (3) an impulse to unlock value from resources and people—both internal and external—that “other firms view as worthless.”¹¹⁸

In combination, the characteristics suggest a swashbuckling, even audacious approach to ideas and relationships. One study cites the “strikingly creative” example of a farmer who—shrugging off repeated explosions—drilled into an abandoned mine shaft, retrofitted a used generator to turn the escaping methane into saleable electricity, harnessed the leftover heat for a hydroponic greenhouse, raised tilapia in the tomato water, and turned the fish waste into fertilizer.¹¹⁹

But *bricolage* has mostly been situated in relatively mundane scenarios—a trash can erupts on a movie set and instead of screaming for a fire extinguisher someone dumps in ice from a cooler nearby;¹²⁰ Indian American youth appropriate music and clothes from Black and Latinx culture, “fashioning their own second-generation style”;¹²¹ or a short-staffed elder-care company leverages the amateur assistance of clients’ friends and neighbors.¹²²

And while “making do” may lead to unexpectedly positive outcomes—there’s a reason why “MacGyvered” is both a verb and a compliment¹²³—

117. *Id.* at 213.

118. *Id.*; see also Baker & Nelson, *supra* note 25, at 334-36; Witell et al., *supra* note 21, at 293 (identifying relational “networking” as a separate factor).

119. Baker & Nelson, *supra* note 25, at 341-42. In another example, Cycle Tech, a motorcycle-repair shop, designated pre- and postclosing hours “beer time,” turning customers into workers, suppliers, marketeers, and organizers when those showing up to drink ended up helping with rush orders, donating spare parts, touting merchandise, and planning rides. *Id.* at 348, 342-43.

120. Beth A. Bechky & Gerardo A. Okhuysen, *Expecting the Unexpected? How SWAT Officers and Film Crews Handle Surprises*, 54 ACAD. OF MGMT. J. 239, 247 (2011).

121. Sunaina Maira, *Identity Dub: The Paradoxes of an Indian American Youth Subculture (New York Mix)*, 14 CULTURAL ANTHROPOLOGY 29, 36-37 (1999).

122. Witell et al., *supra* note 21, at 295.

123. See, e.g., Helene Cooper & Eric Schmitt, *The ‘MacGyvered’ Weapons in Ukraine’s Arsenal*, N.Y. TIMES (Aug. 28, 2022), <https://www.nytimes.com/2022/08/28/us/politics/ukraine-weapons-russia.html> (describing Ukraine’s effective use of “inexpensive, plastic aircraft modified to drop grenades,” much “to the astonishment of weapons experts,” as MacGyvering: “a reference to the 1980s TV show in which the title character uses simple, improvised contraptions to get himself out of sticky situations”).

"grand plans" and the pursuit of "dramatic outcomes" are, almost definitionally, not generally part of the equation.¹²⁴ Garud and Karnøe, for example, contrast Denmark's gangly network of small wind turbine start-ups with the United States's high-tech, high-investment, centralized wind energy strategy.¹²⁵ Where the Danes' *bricolage*-style effort drew expertise mostly from farm equipment,¹²⁶ the U.S. sector aimed for a radical "breakthrough" akin to revolutions in radio, cars, and television.¹²⁷ Setbacks and obstacles proliferated on each continent, but Denmark's distributed sites dispersed the impacts, while simultaneously spurring "a steady accumulation of valuable knowledge," incremental "design scale-ups," and ultimately worldwide success.¹²⁸ The United States's more compact moonshot model—courting investor, press, and political backlash from hyped expectations—outright failed.¹²⁹

There are, of course, limits. *Bricolage* might not work. Not all problems can be solved with even the most creative use of existing resources.¹³⁰ To state the obvious, getting outside help can be helpful. And while an "action bias" carries an aura of no-nonsense efficiency, a slippery slope leads to a mad scientist's lair of quarter-finished projects or people spread "too thin" to be successful.¹³¹

There are also dangers if *bricolage* does work. Where the best of what's around yields a second- or even third-best solution, the *bricoleur* is left with... a second- or third-best solution.¹³² "Good enough" may be

124. Garud & Karnøe, *supra* note 24, at 279, 295.

125. *Id.*

126. *Id.* at 285 ("Lacking explicit theoretical knowledge on turbine aerodynamics, practical engineers initiated a learning process by deploying and redesigning components that often failed but could be improved. Many a problem was solved by 'throwing metal' at the problem.").

127. *Id.* at 287-88, 295; *see also id.* at 286 ("Following what is commonly labeled as a 'linear' model of discovery, technical problems were to be solved by developing and applying engineering science knowledge.").

128. *Id.* at 295 ("[D]istributed actors offered inputs to generate a virtuous learning circle to forge a viable technological path.").

129. *Id.* at 286, 289, 295.

130. Senyard et al., *supra* note 18, at 215.

131. *Id.*

132. *Id.* ("Innovations generated through bricolage often serve only as 'stop gaps'—potentially innovative but temporary solutions.").

sufficient, but it can also be a missed opportunity, or what some scholars have called “satisficing.”¹³³

Today, *bricolage* badges can be found in one of the more surprising start-up settings: the workplace, where union entrepreneurs organize in the shadow of some of the nation’s biggest, and presumed intractable, businesses.

B. Disorganized Institutions

There has been, among organized labor’s conventional players and throughout the tiers, a basic consensus that new organizing at any of the nation’s largest nonunion employers should be approached with strategic care, if not strategic hesitancy. Half of the top ten are retail behemoths like Target,¹³⁴ where rapid turnover and scattered locations make building density through individual NLRB elections difficult. Anti-union ferocity—famously unchecked by law—makes securing voluntary recognition agreements unlikely.¹³⁵ Historically, the industry has been labeled “unorganizable,”¹³⁶ with numbers to match.¹³⁷

Nonetheless, size correlates with strategic necessity, so it is not as if major unions haven’t tried. The United Food and Commercial Workers

133. *Id.* at 215-16. “Satisficing,” a portmanteau of “satisfied” and “suffice,” is generally taken to mean an attempt that is acceptable but not ideal. For its history and use across disciplines, see generally Florian M. Artinger, *Satisficing: Integrating Two Traditions*, 60 J. ECON. LITERATURE 598 (2022).

134. Walmart (1), Amazon (3), Home Depot (6), Target (8), and Starbucks (15) make up 5 of the top U.S. employers by number of employees. *Biggest U.S. Companies by Number of Employees*, STOCK ANALYSIS, <https://stockanalysis.com/list/most-employees/> [https://perma.cc/8M39-37FC].

135. For an example from Target, see Benjamin Becker, *West Indian Immigrant Workers Confront the Difficulties of Big-Box Organizing*, in NEW LABOR IN NEW YORK: PRECARIOUS WORKERS AND THE FUTURE OF THE LABOR MOVEMENT 25 (Ruth Milkman & Ed Ott eds., 2014).

136. Braden Campbell, *Flurry of Election Filings Jolt REI Union Campaign*, LAW360 (Apr. 20, 2023), <https://www.law360.com/employment-authority/articles/1599418/flurry-of-election-filings-jolt-rei-union-campaign>.

137. Table 3. Union Affiliation of Employed Wage and Salary Workers by Occupation and Industry, U.S. BUREAU LAB. STAT., <https://www.bls.gov/news.release/union2.t03.htm> [https://perma.cc/39S8-8QNU] (reporting 3.7% retail-union membership in 2023 and 4% in 2024).

International Union (“UFCW”), Service Employees International Union (“SEIU”), and Teamsters—million-plus membership outfits—have all launched multiyear, heavily financed campaigns against Walmart, Amazon, and the fast-food giants to great acclaim but no new dues payers.¹³⁸ During COVID’s depths, the “well-established national union”¹³⁹ Retail, Wholesale and Department Store Union (“RWDSU”) tried an election at an Alabama Amazon warehouse, and it went as many expected: a lopsided loss with wild corporate illegalities.¹⁴⁰

So, when a slew of campaigns and eventually election dates began popping up at companies like Starbucks (Buffalo), Trader Joe’s (Oakland),¹⁴¹ Home Depot (Philadelphia),¹⁴² and—again—Amazon (New

138. See Kari Paul, *Teamsters Plan Sweeping Effort to Unionize Amazon Workers*, GUARDIAN (June 22, 2021), <https://www.theguardian.com/technology/2021/jun/22/amazon-union-teamsters> [https://perma.cc/3ZBZ-DFPD]; Dominic Rushe, ‘Hopefully It Makes History’: Fight for \$15 Closes In on Mighty Win for US Workers, GUARDIAN (Feb. 13, 2021), <https://www.theguardian.com/us-news/2021/feb/13/fight-for-15-minimum-wage-workers-labor-rights> [https://perma.cc/NS56-MK8J]; Steven Greenhouse, *Wal-Mart Labor Protests Grow, Organizers Say*, N.Y. TIMES (Oct. 9, 2012), <https://www.nytimes.com/2012/10/10/business/organizers-say-wal-mart-labor-protests-spread.html>.
139. Andrea Hsu, *Do-Over Union Election at Amazon’s Bessemer Warehouse is Too Close to Call*, NPR (Mar. 21, 2022), <https://www.npr.org/2022/03/31/1090123017/do-over-union-election-at-amazons-bessemer-warehouse-is-too-close-to-call> [https://perma.cc/8DJF-RD2K].
140. Karen Weise & Michael Corkery, *Amazon Workers Vote Down Union Drive at Alabama Warehouse*, N.Y. TIMES (Apr. 9, 2021), <http://nytimes.com/2021/04/09/technology/amazon-defeats-union.html>; Noam Scheiber, *Union Vote at Amazon Warehouse in Alabama Is Overturned by Regional Labor Office*, N.Y. TIMES (Nov. 29, 2021), <https://www.nytimes.com/2021/11/29/business/amazon-bessemer-alabama-election.html> (describing, among other acts, that Amazon persuaded the Postal Service to install a tented campaign-festooned mailbox next to company surveillance cameras after the Board had already rejected Amazon’s own attempt to provide ballot boxes).
141. Suhauna Hussain, *An Oakland Trader Joe’s Might Be California’s First To Unionize. One Reason: Rats*, L.A. TIMES (Mar. 22, 2023), <https://www.latimes.com/business/story/2023-03-22/why-a-trader-joes-in-oakland-ispushing-for-a-union>.
142. Jonah Furman, *Home Depot Workers Have Filed To Form the First Union at the Retail Behemoth*, IN THESE TIMES (Sep. 27, 2022), <https://inthesetimes.com>

York City this time), it provoked wonder over “where” and skepticism over “how.”

1. Refusing Limits: A “Now or Never” Mentality

The real surprise was “who.” Staten Island’s so-called “Amazon Labor Union” was totally unknown. The other unions—Starbucks, Trader Joe’s, and Home Depot “Workers United,” respectively—seemed equally mysterious.

But what these unions lacked in external recognition they made up for in internal get-up-and-go. The Starbucks drive’s personified spark was barista Jaz Brisack, who first asked the union responsible for winning campaigns at upstate New York coffee chains “Gimme! Coffee” and “SPoT” for help.¹⁴³ The answer was no: “[W]e thought you guys were crazy. No one’s done this before. No one’s done a big chain like Starbucks.”¹⁴⁴

Jaz had a different take: “It’s now or never.”¹⁴⁵ So, over crochet and Old Fashioneds, Jaz tried gathering a group themselves. “How do you feel about organizing a union at Starbucks?”¹⁴⁶ Brisack asked coworker Cassie Fleischer, their “heart beating in their chest.”¹⁴⁷ “Is that even possible?” Fleischer replied.¹⁴⁸ (It was.¹⁴⁹)

/article/home-depot-workers-union-labor-independent-nlrb
[<https://perma.cc/3KNJ-PR8N>].

143. Greg Jaffe, *A Rhodes Scholar Barista and the Fight to Unionize Starbucks*, WASH. POST (Feb. 12, 2022) [hereinafter Jaffe, *Rhodes Scholar*], <https://www.washingtonpost.com/nation/2022/02/12/rhodes-scholar-barista-fight-unionize-starbucks/>; Kristin Toussaint, *How Do Workers Take On a National Chain Like Starbucks? One Store at a Time*, FAST COMPANY (Jan. 24, 2022), <https://www.fastcompany.com/90714672/how-do-workers-take-on-a-national-chain-like-starbucks-one-store-at-a-time> [https://perma.cc/G8KP-6AB3].
144. Toussaint, *supra* note 143. Brisack had actually been invited to Buffalo for informal training by Workers United organizer Richard Bensinger, who noted, “Just because you’re working [at Starbucks] doesn’t mean I’m going to try to organize it,” and cited a drastic lack of resources. Jaffe, *Rhodes Scholar*, *supra* note 143.
145. Jaffe, *Rhodes Scholar*, *supra* note 143.
146. *Id.*
147. *Id.*
148. *Id.*

Jaz's warehouse complements were former and current Amazon employees Christian Smalls and Derek Palmer, who also initially reached out to professionals through a fact-finding visit to the Alabama facility being organized by RWDSU.¹⁵⁰ Reporting a chilly reception, Smalls and Palmer returned to New York and proclaimed their own campaign to unionize warehouse JFK8¹⁵¹ "from scratch."¹⁵² Charitable contemporaneous reports called going it alone "a highly unusual route" and "a long shot, considering Smalls and his nascent union have little organizing experience or expertise."¹⁵³ Less charitable reflections included descriptors like "insane"¹⁵⁴ and "shocking."¹⁵⁵ "I believe we'll be successful," Smalls said at the time.¹⁵⁶ And they were.¹⁵⁷

149. Noam Scheiber, *Starbucks Workers at a Buffalo Store Unionize in a Big Symbolic Win for Labor*, N.Y. TIMES (Dec. 9, 2021), <https://www.nytimes.com/2021/12/09/business/economy/buffalo-starbucks-union.html>.
150. Jodi Kantor & Karen Weise, *How Two Best Friends Beat Amazon*, N.Y. TIMES (Apr. 2, 2022) [hereinafter Kantor & Weise, *How Two Best Friends*], <https://www.nytimes.com/2022/04/02/business/amazon-union-christian-smalls.html>.
151. *Id.*
152. Steven Greenhouse, *How Amazon Employees Won Their First Union*, SLATE (Apr. 2, 2022), <https://slate.com/news-and-politics/2022/04/amazon-union-staten-island-christian-smalls.html> [<https://perma.cc/26T4-BTXW>].
153. Steven Greenhouse, *Amazon Fired Him—Now He's Trying to Unionize 5,000 Workers in New York*, GUARDIAN (June 4, 2021) [hereinafter Greenhouse, *Amazon Fired Him*], <https://www.theguardian.com/technology/2021/jun/04/amazon-workers-staten-island-christian-smalls> [<https://perma.cc/TG5K-T77P>].
154. Jaffe, *Amazon Uprising*, *supra* note 9.
155. Josh Eidelson, *Amazon Warehouse Workers Just Redefined What's Possible for U.S. Labor*, BLOOMBERG (Apr. 2, 2022) [hereinafter Eidelson, *Just Redefined*], <https://www.bloomberg.com/news/articles/2022-04-02/amazon-warehouse-workers-just-redefined-what-s-possible-for-u-s-labor>; *see also* Loomis, *supra* note 103 ("Almost no one believed the ALU had a shot to win this election."). For some historical perspective, only 6 NLRB elections of a similar size had even been conducted in the last 40 years. Robert Combs, *A Win at Amazon Would Be Labor's Largest in 20 Years*, BLOOMBERG L. (Mar. 12, 2021), <https://news.bloomberg.com/bloomberg-law-analysis/analysis-a-win-at-amazon-would-be-labors-largest-in-20-years>.
156. Greenhouse, *Amazon Fired Him*, *supra* note 153.
157. Weise & Scheiber, *supra* note 8.

For Starbucks Workers United (“SWU”) and Amazon Labor Union (“ALU”), roadblocks on the principal organizing artery became not signs to turn back but invitations to double-check the map. It would also necessarily mean navigating some back—or even unmarked—roads. The *New York Times* raised the obvious question about the detour: “Why should they win when better-funded, more experienced operatives had been beaten?”¹⁵⁸ That is essentially the question presented by almost all empirical treatments of organizational *bricolage*, and the answer was equally obvious: They might not. But they, like the other independent efforts inspired by the attempt,¹⁵⁹ would make do in the meantime.

2. Repurposed Institutional Space: Bus Stop Union Halls

Smalls and Palmer, for instance, may have lacked “money, experience, or help,”¹⁶⁰ but they did have a creative institutional take on an abundant resource: space. Amazon warehouses can be a mile long.¹⁶¹ Counting robot dodging, walking end to end takes fifteen minutes.¹⁶² In the past, size had stymied previous campaigns by making it difficult to meet enough workers to effectively spread the word.¹⁶³

158. Kantor & Weise, *How Two Best Friends*, *supra* note 150.

159. See, e.g., Dave Jamieson, *Home Depot Workers Want to Form the Chain’s First Store Union*, HUFFPOST (Sep. 23, 2022) [hereinafter Jamieson, *Home Depot*], https://www.huffpost.com/entry/home-depot-workers-union-philadelphia_n_632e0ddde4b0695c1d822143 [https://perma.cc/XE6H-M6AD] (quoting Home Depot Workers United leaders saying, “We’re inspired by Starbucks and Amazon — let us be the catalyst at Home Depot.”); Jeremy Gantz, *Starbucks. Amazon. Now, Trader Joe’s Is Unionizing*, IN THESE TIMES (May 26, 2022), <https://inthesetimes.com/article/hadley-massachusetts-starbucks-amazon-trader-joes-organizing-campaign-workers-grocery> [https://perma.cc/Y6QY-ME6J] (“Partly inspired by the campaigns to unionize Starbucks and Amazon, the group hopes to establish the chain’s first union—a new, independent union called Trader Joe’s United . . .”).

160. Jaffe, *Amazon Uprising*, *supra* note 9.

161. Mark Satinoff, *Inside a North Carolina Amazon Union Organizing Drive*, WORLD-OUTLOOK (Aug. 31, 2022), <https://world-outlook.com/2022/08/31/inside-a-north-carolina-amazon-union-organizing-drive/> [https://perma.cc/E3ET-TRAB].

162. *Id.*

163. At warehouse ONT8, a United Steelworkers drive fizzled when the union “insisted the workers recruit a significant proportion of” activists “for a committee.” Jessica Mach, *Amazon Workers Like ALU’s ‘Hands-Off’ Model*

Smalls and Palmer, though, realized that what mattered wasn't square footage but where the square footage funneled. On that account JFK8's exterior blueprint was organizing gold. The S40/S90 MTA bus stop was "the lifeline bringing workers to and from" the warehouse.¹⁶⁴ So, from April 20, 2020 onward, from before dawn to after midnight, some 9,500 workers encountered space that was officially public but functionally union.¹⁶⁵ The "hall" was a tent;¹⁶⁶ a parked Chevy Suburban, Smalls's bedroom most nights, the "office."¹⁶⁷ Ribbons stuck to a barbed wire fence in "A_L_U" formation added some color.¹⁶⁸

The explicit ask was a signed union authorization card,¹⁶⁹ but the implicit message was that the union could provide what Amazon refused. It just needed *space*—now, literally, later legally—to do it. JFK8 had more injuries than coal mines¹⁷⁰—there were Facebook groups devoted entirely to "managing the physical toll"¹⁷¹ with home remedies—and Amazon had

Despite Risks, LAW360 (Jan. 20, 2023), <https://www.law360.com/employment-authority/articles/1567903/amazon-workers-like-alu-s-hands-off-model-despite-risks>. According to one organizer, "I felt that was going to be an issue, a setback, because in our warehouse I could be in one area for years and never walk to the other side to meet new people. That could take years, just trying to get a committee together." *Id.*

164. Josefa Velasquez, *Meet Christian Smalls and Derrick Palmer, the DIY Duo Behind the Amazon Labor Union's Guerrilla Bid to Make History*, CITY (Mar. 24, 2022), <https://www.thecity.nyc/2022/03/24/amazon-workers-staten-island-union-vote/>.
165. *See id.* ("The bus stop has become the nerve center for current and former Amazon employees who are attempting to organize the company's first labor union").
166. Greenhouse, *Amazon Fired Him*, *supra* note 153 ("The tent—with a sign saying, 'Sign Your Authorization Cards Here'—stands along a public bus stop outside Amazon's Staten Island warehouse.").
167. Velasquez, *supra* note 164.
168. *Id.*
169. *See* Greenhouse, *Amazon Fired Him*, *supra* note 153.
170. Wes Enzinna, *What Will the Amazon Slayer Do Next?* N.Y. MAG. (July 18, 2022), <https://nymag.com/intelligencer/article/chris-smalls-amazon-profile.html> (noting also Occupational Safety and Health Administration ("OSHA") statistics showing that the serious-injury rate at Amazon warehouses is double that of non-Amazon warehouses).
171. Erika Hayasaki, *Amazon's Great Labor Awakening*, N.Y. TIMES MAG. (Feb. 18, 2021), <https://www.nytimes.com/2021/02/18/magazine/amazon-labor-awakening.html>.

refused to tell employees (or even officials)¹⁷² about COVID cases.¹⁷³ But now prayer candles dotted the bus stop's patchy grass, memorializing a worker who was killed crossing the street at midnight, her lunch break.¹⁷⁴ Amazon managed workers by app, reliant "on a maze of systems that minimized human contact."¹⁷⁵ This could lead to disastrous or ludicrous consequences: An algorithm mistakenly cut off James Watts's benefits and he sold his wedding rings for food;¹⁷⁶ Ann Castillo received an automated text ordering her husband, dying from COVID, back to JFK8.¹⁷⁷ But now the bus stop was a place for humanity: Employees prayed for their colleagues in crisis, fundraised for an unhoused coworker, and sang along to Marvin Gaye.¹⁷⁸

Warmth was a theme. It was Smalls's job to keep the propane heater flowing (ALU-branded, with duct tape).¹⁷⁹ There were 20 formal barbeques and daily hot meals, courtesy, often, of an aunt.¹⁸⁰ Angelika

workers-employees-covid-19.html ("Veteran workers offered suggestions based on their own routine.").

172. Jodi Kantor, Karen Weise & Grace Ashford, *The Amazon That Customers Don't See*, N.Y. TIMES (June 15, 2021) [hereinafter Kantor, *Amazon That Customers Don't See*], <https://www.nytimes.com/interactive/2021/06/15/us/amazon-workers.html> ("Amazon left employees mostly in the dark about the toll of the virus.... While Amazon said publicly that it was disclosing confirmed cases to health officials, New York City records show no reported cases....").
173. Velasquez, *supra* note 164.
174. *Id.*
175. Kantor, *Amazon That Customers Don't See*, *supra* note 172.
176. Jodi Kantor, Karen Weise & Grace Ashford, *Inside Amazon's Worst Human Resources Problem*, N.Y.TIMES (Oct. 24, 2021) [hereinafter Kantor, *Inside Amazon's Worst*], <https://www.nytimes.com/2021/10/24/technology/amazon-employee-leave-errors.html>.
177. Kantor, *Amazon That Customers Don't See*, *supra* note 172.
178. Kantor & Weise, *How Two Best Friends*, *supra* note 150.
179. Velasquez, *supra* note 164.
180. Andrea Hsu & Alina Selyukh, *He Was Fired by Amazon 2 Years Ago. Now He's the Force Behind the Company's 1st Union*, NPR (Apr. 2, 2022), <https://www.wglt.org/2022-04-02/he-was-fired-by-amazon-2-years-ago-now-hes-the-force-behind-the-companys-1st-union> [https://perma.cc/N3VD-ZW7V].

Maldonado left a 12-hour shift feeling sick and missed the bus.¹⁸¹ Smalls handed her pumpkin pie; she stayed 6 hours and kept coming back, the tent becoming “an escape from the drudgery and isolation of working the overnight shift.”¹⁸²

3. MacGyvering for Growth: Claustrophobic Cafés and Early Exposure

SWU also had a *bric*-ish knack for making institutional good out of seemingly detrimental geographies. Union-building talk traditionally happens in break rooms.¹⁸³ At Starbucks, there often are no break rooms.¹⁸⁴ The workspace, lodged between a machine- and display-cluttered counter and a multiblender oven wall, is pocket-size. And that’s before union chatter prompted the “mass-hiring” of new employees.¹⁸⁵ In Mesa, payroll jumped from twenty-five to forty, doubling shift staffing and generally causing logistical “chaos.”¹⁸⁶

Then there were the new managers, bussed from out of town and known for headsets capturing wireless chit-chat, the union avoidance

181. Jaffe, *Amazon Uprising*, *supra* note 9.

182. *Id.*

183. Nonworking areas like break rooms are specifically Supreme Court-approved for union talk, solicitations, and distributions. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 843 n.10 (1945) (“[B]efore or after work, or during luncheon or rest periods, is an employee’s time to use as [s]he wishes without unreasonable restraint, although the employee is on company property.”).

184. Café layouts vary, but many, to baristas’ frustration, do not include a private employee break room. *See, e.g., Starbucks Gossip: The #1 Starbucks Website (Not Run By Starbucks Corp.): Barista: They Got Rid of My Starbucks Break Room and I'm Really Mad!* (Jan. 28, 2012), https://starbucksgossip.typepad.com/_/2012/01/barista-they-got-rid-of-my-starbucks-break-room-and-im-really-mad.html [https://perma.cc/7CXC-C4NN] (including comments like, “I’ve never worked at a store with a break room and I’ve worked in 7 stores” and “Every store I have worked at has a work area in the back. Not a break room.”).

185. Hannah Faris, *Starbucks Workers Are Facing Down One of the Most Intense Union-Busting Campaigns in Decades*, IN THESE TIMES (Mar. 21, 2022), <https://inthesetimes.com/article/starbucks-organizing-union-labor-coffee-historic-campaign> [https://perma.cc/M5NM-NZMS].

186. *Id.*

version of air traffic control.¹⁸⁷ Managers' other move, sitting at a table and staring, was less intrusive but equally unnerving.¹⁸⁸ Workers created a multistore group chat in Eugene, Oregon, to help each other psychologically prepare for the sudden influx of anonymous supervisors.¹⁸⁹ There was, reflected Ky Fireside, no place to privately cry.¹⁹⁰

But for the incipient SWU, "no place" could be a right place. Shoulder to shoulder, beneath the din and freneticism of spinning, steaming, and shot pulling, small talk is easy and, for skilled multitaskers like baristas, organizing talk is effortless.¹⁹¹ And tradition cuts two ways. Break rooms are a union-building hub, but they're good for union busting too. Without them, Starbucks pushed staff meetings to the customer lobby where massive glass windows converted cafés into fishbowls for gawking—and picketing. Fifty uninvited labor organizers and baristas once showed up at a Starbucks store in Chicago.¹⁹² It takes far fewer for a successful "solidarity sip-in," where supporters caffeinate at every open (or strategic) seat, quashing the anti-union meeting or, at least, making conversation

187. As an administrative law judge would later find, "the extra bosses donned headsets—even when they weren't serving customers—so that they could monitor the workers' conversations." Greg Jaffe, *Lexi Rizzo Fought to Unionize Her Starbucks. Now She's Out of a Job. Her Struggle Is Just Beginning*, WASH. POST (June 17, 2023) [hereinafter Jaffe, *Lexi Rizzo Fought*], <https://www.washingtonpost.com/business/interactive/2023/starbucks-union-fired-worker>. Lexi Rizzo, an SWU activist, would later use her headset to update her coworkers: "I'm getting fired." *Id.*; see also JAZ BRISACK, GET ON THE JOB AND ORGANIZE: STANDING UP FOR A BETTER WORKPLACE AND BETTER WORLD 117 (2025) ("Over the days and weeks that followed, [the president of Starbucks North America's] forces swelled as other members of corporate and managers from across the country joined her in Buffalo.").

188. Faris, *supra* note 185.

189. *Id.*

190. *See id.* (describing how after some managerial interactions, "workers leave the floor to cry privately").

191. Kim, *Upstart Union*, *supra* note 26 ("Their work as baristas made them adept at juggling tasks, making conversation, and responding to emotional cues—all essential for organizing."); Noam Scheiber, *A Union Blitzed Starbucks. At Amazon, It's a Slog.*, N.Y. TIMES (May 12, 2022), <https://www.nytimes.com/2022/05/12/business/economy/amazon-starbucks-union.html>.

192. Faris, *supra* note 185.

exceedingly awkward.¹⁹³ In Portland, Oregon, supervisors started scheduling talks outside the building.¹⁹⁴

ALU, too, found institutional efficiencies in presumptively low-value resources. Conventionally, early campaign publicity is viewed with disdain bordering on fear—a spotlight inviting catastrophic blowback on nascent organizing.¹⁹⁵ And while technically just 30% support (generally evidenced with signed notecards or a petition) is needed to trigger a representation election, the same attrition concern makes 70-80% standard.¹⁹⁶ ALU went public immediately and filed at 30%.¹⁹⁷ What Smalls called “all in,”¹⁹⁸ others labeled “unheard of,” unserious, “un-

193. *Id.*

194. *Id.*

195. Sachs, *supra* note 37, at 665 (quoting internal union-organizing manuals and stating that “[b]ecause of the intensity of employer opposition to unionization . . . unions try to complete as much of the organizing phase as possible before the employer becomes aware of the effort”).

196. A 1984 study of elections filed at Region 18 between 1978 and 1980 found that over 60% of unions filed with a card majority, 10% filed with between 30-40% support, and 12% filed at precisely 30% support. Laura Cooper, *Authorization Cards and Union Representation Election Outcome: An Empirical Assessment of the Assumption Underlying the Supreme Court’s Gissel Decision*, 79 NW. U. L. REV. 87, 118 tbl. 9 (1984). More than a third of unions that had between 80-90% and 90-100% support prior to the election—over a fifth of the total sample—later lost. *Id.* In modern times, it is typical for unions to file at “70 percent or more, based on the assumption they will lose votes because of turnover and union busting.” Rachel Lerman, Greg Jaffe, Jeff Stein & Anna Betts, *Amazon Workers Vote to Join a Union in New York in Historic Move*, WASH. POST (Apr. 1, 2022), <https://www.washingtonpost.com/technology/2022/04/01/amazon-union-staten-island/>. At Lowe’s, the Teamsters told Felix Allen they would aim for 80% support. *See also* NOLAN, THE HAMMER, *supra* note 10, at 209. Allen, thinking that “80 percent of the cards signed is the shit that’s impossible,” decided to go it alone and filed at 40%. *Id.*

197. Eidelson, *Just Redefined*, *supra* note 155 (“[A] key part of ALU’s strategy, one that had seemed dubious, was to request an NLRB vote as soon as it got petition signatures from the bare-minimum 30% of the workforce.”); Sarah Lazare, *How Workers Used Amazon’s Captive Audience Meetings Against the Company*, IN THESE TIMES (Apr. 4, 2022), <https://inthesetimes.com/article/amazon-labor-union-jfk8-staten-island-jeff-bezos-workers> [<https://perma.cc/8CJX-RU27>].

198. Jaffe, *Amazon Uprising*, *supra* note 9.

strategic,” the “opposite of best practices,” and the advice of “literally nobody.”¹⁹⁹

In fact, the risky reorderings proved valuable.²⁰⁰ First, early publicity may train the cannons, but it also brings the reach. “There’s no way,” explained ALU’s Justine Medina, “to do one-on-ones with thousands as a rag-tag, scrappy team, especially at the very beginning when it was Derrick Palmer and Chris Smalls.”²⁰¹ So furtive home visits were traded for the bus stop tent, unmistakable ALU “drip,”²⁰² and @amazonlaborunion TikTok, where rogue clips of products “whizz[ing] by” on conveyor belts and “products being placed meticulously into a box like pieces of a puzzle” narrated workers’ toils, and ALU’s aspirations, for absolutely anyone.²⁰³

Second, for the uncharted makeshift group, filing for an election—even at the utter minimum—brought legitimacy:²⁰⁴ A government-stamped document with a certain date stated, in effect, that the campaign was real. At New Seasons Market, where workers copied the 30% approach, worker-organizer April St. John described how “[a] lot of people who were

199. Luis Feliz Leon, *Amazon Workers Defied Conventional Wisdom—And Won a Union*, IN THESE TIMES (Apr. 13, 2022) [hereinafter Leon, *Defied Conventional Wisdom*], <https://inthesetimes.com/article/amazon-workers-labor-union-staten-island-new-york> [<https://perma.cc/UZ6T-ZSJZcon>].

200. Even apart from the value extracted from these unorthodox moves, the helpful reordering of routines through sequence changes is itself a bricolage characteristic. See Bechky & Okhuysen, *supra* note 120, at 248-49 (citing a film crew’s “reassembly of scenes [to] enable[] the production to carry on shooting that day without [a] sick actor’s presence” as useful bricolage).

201. She added: “That’s why we were public about it from the beginning.” Lazare, *supra* note 197.

202. The union paraphernalia, in black, white, hot pink, and teal, was designed to attract, but also to contrast with, standard warehouse attire. Gina Cherelus, *Christian Smalls Is Leading a Labor Movement in Sweats and Sneakers*, N.Y. TIMES (Apr. 6, 2022), <https://www.nytimes.com/2022/04/06/style/christian-smalls-style-amazon-union.html>. Branding, for Smalls, was part of organizing: “[O]ne thing that’s going to help us succeed with this union is our gear is going to be way better than theirs. Our drip is going to be way better.” *Id.*

203. Velasquez, *supra* note 164. See also Leon, *supra* note 199 (noting that rejecting home visits “was a source of debate within ALU”).

204. Braden Campbell, *New Unions’ Election Approach Defies Conventional Wisdom*, LAW360 (Oct. 20, 2022) [hereinafter Campbell, *New Unions’ Election*], <https://www.law360.com/employment-authority/articles/1541540>.

afraid to say the ‘union’ word before we filed felt that they could finally talk about it.”²⁰⁵ Even more critically, with 150% annual worker turnover at Amazon—3% of hourly workers each week—every signed card risked expiration.²⁰⁶ But election dates concretized the voter list.²⁰⁷ “The idea was . . . we would have a set group of people we could focus on aggressively organizing into the union, and not really worrying about the new people coming in,” said Connor Spence.²⁰⁸

The tactic depended on aggressive defiance of a supposed “universal truth” that postpetition, support for unionizing goes down, not up.²⁰⁹ But across the organizing landscape, an exceptional constellation of people was willing to give it, and other curiosities, a shot.

C. Disorganized People

The core actors in the institutionally independent campaign wave might most obviously be classified as employee organizers. But employee organizers still usually get guidance and assistance from professional union staff. At Starbucks, Amazon, and elsewhere, workers have displayed remarkable self-reliance, leveraging anything at hand largely absent training, experience, or connections.

1. When the Best of What’s Around Is . . . You

At Home Depot, Vince Quiles showed up at the Philadelphia NLRB for a 90-minute labor law crash course before collecting 100 cards—personally—in less than a month, filing for an election at 36% workforce

205. *Id.*

206. See Kantor, *Amazon That Customers Don’t See*, *supra* note 172. Indeed, ALU actually filed two petitions. The first was rejected after Amazon provided payroll lists suggesting that “half the people who had signed cards no longer worked” there. Kantor & Weise, *How Two Best Friends*, *supra* note 150. See also Eidelson, *Just Redefined*, *supra* note 155 (“With supporters leaving the company as quickly as they could sign new ones up, aiming for a supermajority would’ve taken forever.”).

207. Braden Campbell, *How A Grassroots Union Pulled Off the Upset at Amazon*, LAW360 (Apr. 4, 2022) [hereinafter Campbell, *How a Grassroots Union*], <https://www.law360.com/employment-authority/articles/1480460/how-a-grassroots-union-pulled-off-the-upset-at-amazon>.

208. *Id.*

209. Campbell, *New Unions’ Election*, *supra* note 204.

support.²¹⁰ “She was extremely helpful,” he said of the Board agent. “I was flying by the seat of my pants.”²¹¹ At a Lansing Chipotle, Sam Smith, Harper McNamara, and Atulya Dora-Laskey relied on a series of articles about the company in *Jacobin*, a socialist magazine, and studied the book *Secrets of a Successful Organizer*.²¹² “That was super helpful,” recalled Dora-Laskey, “because it taught us that you really have to be listening way more than you’re talking—the 30/70 rule.”²¹³ Free-styled research was also apparent at Starbucks²¹⁴ and Amazon, where Smalls took to Twitter for early legal advice.²¹⁵

But for most activists, the best of what’s around was often what came naturally: an internal drive and flair for interpersonal connections. With what a tag-along reporter compared to the “élan of wedding planners,” baristas evangelized unionization by running what they liked to call “clean plays” at not-yet-union shops, a rebellious take on Starbucks-speak for making a café “just right.”²¹⁶ Observers likened them to relational savants: “They’re wickedly, devastatingly funny and positive.”²¹⁷ “[E]verybody knows exactly what to do.”²¹⁸ In Tacoma, Liz Duran and Isabelle Loverich made an accidental pitch to a supervisor—she wasn’t interested—but hardly skipped a beat when, over her shoulder, a barista arched an

210. Jamieson, *Home Depot*, *supra* note 159.

211. *Id.*

212. Eric Blanc, *Unionizing Chipotle*, LAB. POLITICS (Sep. 9, 2022) [hereinafter Blanc, *Unionizing Chipotle*], <https://laborpolitics.substack.com/p/unionizing-chipotle>.

213. *Id.*

214. See, e.g., Laura Anaya-Morga, *How 2 Baristas’ Secret Meetings Brought the Starbucks Union Drive to Long Beach*, LONG BEACH POST (May 12, 2022), <https://lbpost.com/news/starbucks-union-vote-redondo-seventh-long-beach/> [<https://perma.cc/EW7N-VV77>] (“Serrano and Alexis... began researching labor law intensively....”).

215. Smalls posted on Twitter in April of 2021: “Any Union labor lawyers in NY that can assist @amazonlabor please contact me ASAP! We’re ready to go! 🤝 Chrissmalls21@gmail.com”). Christian Smalls (@Shut_downAmazon), TWITTER (Apr. 15, 2021, at 2:29 PM), https://x.com/Shut_downAmazon/status/1382763032498028544 [<https://perma.cc/TN3V-C6MY>].

216. Kim, *Upstart Union*, *supra* note 26.

217. *Id.*

218. Faris, *supra* note 185.

eyebrow, signaled enthusiasm, and caught them in the parking lot.²¹⁹ “I decided to take out the garbage,” the recruit noted wryly.²²⁰

JFK8’s warehouse activists drew on similar affective talents for a hyperpersonalized approach that put Amazon’s corporate character—ranging from aloof (laptops track bathroom breaks²²¹) to racist—into sharp relief. By the end of the campaign, Smalls—long since fired—had been described to Jeff Bezos (by Amazon’s general counsel) as “not smart, or articulate,”²²² accused of wanting dues to buy a Lamborghini,²²³ and deemed, along with other organizers still employed, a “thug[].”²²⁴ Against this backdrop of single entendres²²⁵ in a 78% BIPOC workforce—8% in

219. Kim, *Upstart Union*, *supra* note 26.

220. *Id.*

221. Lauren Kaori Gurley, *Internal Documents Show Amazon’s System for Tracking Workers Every Minute of Their Shifts*, VICE (June 2, 2022), <https://www.vice.com/en/article/5dgn73/internal-documents-show-amazons-dystopian-system-for-tracking-workers-every-minute-of-their-shifts> [<https://perma.cc/2R6V-SRE6>]; *see also* Kantor, *Amazon That Customers Don’t See*, *supra* note 172 (“A single frontline manager could keep track of 50, 75, even 100 workers by checking a laptop.”).

222. Julia Carrie Wong, *Amazon Execs Labeled Fired Worker ‘Not Smart or Articulate’ in Leaked PR Notes*, GUARDIAN (Apr. 2, 2020), <https://www.theguardian.com/technology/2020/apr/02/amazon-chris-smalls-smart-articulate-leaked-memo> [<https://perma.cc/YE3A-V56W>].

223. Eric Blanc, *The Workers Behind Amazon’s Historic First Union Explain How They Did It*, JACOBIN (Apr. 24, 2022), <https://jacobin.com/2022/04/amazon-union-staten-island-alu-chris-smalls-bernie-sanders-interview> [<https://perma.cc/4EEU-VH8W>]; TRANSFORM WITH MARIANNE WILLIAMSON: *My Interview with Christian Smalls* (July 31, 2022), <https://mariannewilliamson.substack.com/p/my-interview-with-christian-smalls#details> [<https://perma.cc/ZJ86-LMM8>].

224. Kantor & Weise, *How Two Best Friends*, *supra* note 150.

225. For a historical and critical analysis of Amazon’s literal and figurative policing of its predominantly Black workforce, see Tamara Lee et al., *The Militarization of Employment Relations: Contemporary Worker Control in Amazon Fulfillment Centers*, 52 WORK & OCCUPATIONS 491 (2024). Shirley Lin’s work centers how ALU’s leaders deftly “embraced” the full complexity of “workers’ concerns” by “explicitly relat[ing] calls for solidarity under a theory of institutional racism.” Shirley Lin, *Race, Solidarity, and Commerce: Work Law as Privatized Public Law*, 55 ARIZ. STATE L.J. 813, 870 (2023).

the executive ranks²²⁶—was, for example, Brima Sylla, a Liberian immigrant fluent in English, Arabic, French, and 3 African languages, who mobilized by match-making, connecting employees with similar backgrounds or identities.²²⁷ In his words:

*I made an “African votes 4 ALU” chat, and another “Immigrants 4 ALU” chat, and soon after I helped create separate WhatsApp chats for Caribbeans, for Latinos, and for Asians. Cassio and Karen took the lead on the work with Latinos, which was really important because so many workers speak Spanish.... Whoever I met, I’d eventually ask them for their number. Fortunately, they trusted me. I’d add them to the chats, and I’d tell them to spread the news to their friends at work too. And sometimes they’d just add their friends directly to the chat. Once I even found out from my sister-in-law that a niece of mine had started working in the building. When I saw her, I not only added her, but she gave me the number of about twenty of her friends who worked there too—not just Africans, whites too.*²²⁸

And where Amazon lanyards thrown to the ground became objects of ritualized quitting,²²⁹ activists made objects of ritualized inclusion. Meals, specifically. From peas and rice to chicken and macaroni pie, homemade break room food was a constant.²³⁰ Eventually, Angelika Maldonado—the same Angelika who attributed her involvement to Smalls’s offer of bus stop

- 226. Enzinna, *supra* note 170. Estimates suggested Black workers were about 50% more likely than white workers to be fired at JFK8. Kantor, *Amazon That Customers Don’t See*, *supra* note 172.
- 227. Eric Blanc, *How Amazon’s Immigrant Workers Organized to Win a Union on Staten Island*, JACOBIN (Apr. 4, 2022) <https://jacobin.com/2022/04/amazon-warehouse-alu-staten-island-immigrant-workers> [https://perma.cc/R5GT-Z5KB].
- 228. *Id.*
- 229. E. Tammy Kim, *How to Unionize at Amazon*, NEW YORKER (Apr. 7, 2022) [hereinafter Kim, *How to Unionize*], <https://www.newyorker.com/news/dispatch/how-to-unionize-at-amazon> (“I’m not gonna lie to you, bro. People just leave their badge at the bus stop when they get fired or they quit. So, you’ll find these all the time.”).
- 230. Luis Feliz Leon, *These Are the Workers Who Took on Amazon, and Won*, IN THESE TIMES (May 23, 2022) [hereinafter Leon, *These Are the Workers*], <https://inthesetimes.com/article/amazon-workers-band-together-to-form-labor-union-against-amazon-jeff-bezos-chris-smalls> [https://perma.cc/69HC-RCMF].

pie²³¹—suggested “giv[ing] out food that targets the culture of the workers at Amazon,” and asked her neighbor to cook up a large batch of African rice: “[T]hat really attracted a whole bunch of African workers toward us and we gained a couple of new organizers off that,” she recounted.²³²

Most profound, though, were the relational ripple effects of the February 23, 2022, 6-car, 12-cop parking lot arrest video of Chris Smalls, Brett Daniels, and Jason Anthony—for delivering grilled chicken and pasta.²³³ “[It] got people taking flyers from me who had *never* wanted to take flyers from me,” said Justine Medina.²³⁴ Ex-longshoreman Pasquale “Uncle Pat” Cioffi initially “scolded organizers” for making unrealistic promises but eventually softened, thanks in part to Amazon’s overpolicing: “At the end of the day, [Smalls, Daniels, and Anthony] were dropping off food.”²³⁵ Cioffi proceeded to flip 500 workers from “no” to “yes.”²³⁶

It is not that external organizers can’t build genuine relationships or have similarly important impacts. But professionalized interactions are not the same as guileless conversations driven by place, circumstance, or necessity. The first, on some level, will always be transactional. Introductions must be made, schedules need coordinating, and the party being paid will inevitably move on.²³⁷ In the second, everyone feels the

231. *See supra* notes 181-182 and accompanying text.

232. Eric Blanc, *Here’s How We Beat Amazon: An Interview with Angelika Maldonado*, JACOBIN (Apr. 2, 2022) [hereinafter Blanc, *Here’s How We Beat*], <https://jacobin.com/2022/04/amazon-labor-union-alu-staten-island-organizing> [<https://perma.cc/KWP7-VUWP>].

233. For these details and clips of the viral video, see Julia Donahue, *Amazon Colludes with NYPD to Arrest and Intimidate Workers*, MORE PERFECT UNION (Mar. 28, 2022), <https://perfectunion.us/amazon-colludes-with-nypd-to-arrest-and-intimidate-workers/> [<https://perma.cc/LB7S-F2ZS>]; *see also* Leon, *These Are the Workers*, *supra* note 230.

234. *How the Amazon Labor Union Defeated the Bezos Behemoth*, CURRENT AFFS. (April 22, 2022), <https://www.currentaffairs.org/news/2022/04/how-the-amazon-labor-union-defeated-the-bezos-beemoth> [<https://perma.cc/3QM9-ZC6V>].

235. Leon, *These Are the Workers*, *supra* note 230.

236. Enzinna, *supra* note 170.

237. For an overview of the centrality of such basic administrative work in early organizing efforts, which inevitably includes weeks or months of conversations, coordinating, and meetings, see Seth Newton Patel, *Have We Built the Committee? Advancing Leadership Development in the U.S. Labor Movement*, 16 WORKINGUSA: J. LAB. & SOC’Y 113, 114-15 (2013) (describing

problem, everyone knows the stakes, and everyone has stories. Shared humanities—group action’s kindling—cannot help but surface.²³⁸

2. New Blends: Officer-Employees, YOLO-Salts

Another byproduct of self-reliance is role shifting, itself a *bricolage* hallmark.²³⁹ In all organizing, certain activists naturally become worker-leaders. But in institutionally independent organizing, certain workers become worker-officers, an informal coalition of the willing replacing a formal slate of the elected. Trader Joe’s United’s president was Jamie Edwards, the organizing director was Tony Falco, and Maeg Yosef headed communications.²⁴⁰ All three of them work regular shifts, none had past union experience, and they’ve run 6 NLRB elections across 5 states (4

some aspects of this process: “[Q]uietly identify respected leaders in each shift and work area, recruit leaders to the organizing committee, train the leaders to organize their coworkers, inoculate or prepare the committee for management’s anti-union campaign”).

238. Jaz Brisack’s memoir is full of relevant examples, like the time they offered to personally take a coworker’s shift to enable them to perform in a previously scheduled drag show, even though it required a 16-hour day. As Brisack recounts: “Marcus was extremely grateful, texting me: ‘Hmu anytime I owe you one ❤️.’ When I reached out a few months later, they would respond almost immediately.” BRISACK, *supra* note 187, at 84. On the links between personal relationships, motivation, and organizing, see generally MARK R. WARREN, DRY BONES RATTLING: COMMUNITY BUILDING TO REVITALIZE AMERICAN DEMOCRACY 23 (2001) (“It is in community connections that individuals can develop the will to act collectively”); JEFFREY STOUT, BLESSED ARE THE ORGANIZED: GRASSROOTS DEMOCRACY IN AMERICA 153 (2010) (“When the person before me is grieving or angry or horrified by something, and my neurological uptake is functioning properly, my perception of the other person’s emotional state activates the same cells and circuits in my brain that are activated when I am grieving, angry, or horrified.”).
239. Bechky & Okhuysen, *supra* note 120, at 246, 247 tbl. 3 (identifying *bricolage* where subjects “drew on their task knowledge to engage in role shifting—that is, adjusting their own activities by substituting for someone else or performing some of the tasks in someone else’s role”).
240. Alex N. Press, *Trader Joe’s Workers Are Carrying Out an Experiment in Independent Unionism*, JACOBIN (Aug. 22, 2023), <https://jacobin.com/2023/08/trader-joes-workers-independent-unionism-organizing-tju-grocery-store> [https://perma.cc/63KE-XG4Q].

wins, 2 losses).²⁴¹ Yosef got the unionization bug watching the NBC sitcom *Superstore* with her wife, who also works at Trader Joe's in the Hadley, Massachusetts, store.²⁴²

At ALU, Christian Smalls, who initially questioned unionization's usefulness, was officially the president.²⁴³ But his podcast (*Issa Smalls World*), appearances on *Dr. Phil* and *60 Minutes*, social media exposure, and effectively public cell phone number also made him the de facto head of not just ALU communications and organizing but, seemingly, domestic political activism.²⁴⁴ Workers, or really anyone wanting assistance on any topic, texted him personally at all hours.²⁴⁵ Smalls claims to have received a message asking him to "save abortion rights."²⁴⁶

Amazingly, none of those duties precluded his micro-advocacy for JFK8. Managers of suspended workers could get FaceTimes directly from Smalls and, absent an answer, texts requesting justification: "Just fyi I officially represent the workers so they are going to tell me," read one.²⁴⁷ The obvious bureaucratic response—try "the right channels"—ran up against the lived reality that Smalls *was* the right channel: "Lol you my friend or nah . . . The right channels stfu lol," he'd reply.²⁴⁸ Maddie Wesley, a recent Wesleyan grad, was both "lead organizer" for the next warehouse targeted for organizing and ALU treasurer; the ALU vice president was Connor Spence, who was also in charge of break room flyers.²⁴⁹

241. *Id.*

242. *Id.*

243. *Chris Smalls*, PENGUIN RANDOM HOUSE SPEAKERS BUREAU, <https://www.prhspeakers.com/speaker/chris-smalls> [https://perma.cc/DB9T-BAH5]; Enzinna, *supra* note 170 (describing Smalls's early skepticism of even wholly worker-led unionization efforts as "abstract" and "irrelevant").

244. Enzinna, *supra* note 170; Jaffe, *Amazon Uprising*, *supra* note 9.

245. Enzinna, *supra* note 170; Jaffe, *Amazon Uprising*, *supra* note 9 ("Walmart, Target and Dollar General employees wanted his help, too.").

246. Enzinna, *supra* note 170.

247. Jaffe, *Amazon Uprising*, *supra* note 9.

248. *Id.*

249. *Id.*; Dave Jamieson, *How Amazon Workers Beat the Union Busters at Their Own Game*, HUFFPOST (Apr. 4, 2022) [hereinafter Jamieson, *How Amazon Workers Beat*], https://www.huffpost.com/entry/how-amazon-workers-beat-the-union-busters-at-their-own-game_n_624b0385e4b0e44de9c52704 [https://perma.cc/2TXJ-G9QX].

Nothing, though, better highlights new syntheses in institutionally independent organizing than the presence of free agent salts. That is, while the independent campaigns are of a piece with the reemergence of salting as a resource, there's a big compositional twist. Gone from the organizer/employee mix is what would otherwise be seen as an essential adhesive: the union intermediary to train, direct, supervise, and even house the salt.²⁵⁰ In institutionally independent organizing, people just move, apply for the job, and start organizing.²⁵¹

People like Brett Daniels, a Phoenix movie theater worker who, inspired by the March 2020 walkout that led Amazon to fire Smalls, tried his hand salting at a local warehouse before upending his life completely with a move to Staten Island and a job at JFK8.²⁵² It took Cassio Mendoza, another free agent salt, a mere month to get hired after arriving at JFK8, unannounced, from Los Angeles.²⁵³ All told, unaffiliated salts made up 6 of the 24 primary Amazon activists²⁵⁴ and at least 10 of the main organizers across the Buffalo Starbucks locations.²⁵⁵

- 250. *See, e.g.*, WALSH, *supra* note 72 at 22-31, 43-45 (providing a first-hand account of UNITE-HERE's program of recruiting, training, and housing salts).
- 251. Jaz Brisack's fascinating memoir is dedicated in part to people who made such moves: "Starbucks Workers United owes its existence to the volunteers who uprooted their lives and came to Buffalo in the spring of 2021 to become Starbucks baristas and help bring the campaign to life." BRISACK, *supra* note 187, at 280; *see also id.* at 76 ("Many of them were already interested in labor, but weren't sure how to get involved Bill O'Malley, a retired lawyer seeking to learn organizing, moved to Buffalo to join the campaign.").
- 252. Leon, *These Are the Workers*, *supra* note 230.
- 253. *Id.* Cassio had initially observed a protest at Jeff Bezos's Beverly Hills mansion and, once hired, made "attempts to fade into the background" before becoming a key activist on the campaign. *Id.*
- 254. Mie Inouye, *Labor's Militant Minority*, Bos. REV. (June 15, 2022) (noting that while "none . . . came to JFK8 with an established union," one was recruited by a radical political organization and the rest "came on their own"); *see also id.* (stating that "salts show up at Amazon independently across the country, not just at JFK8").
- 255. Josh Eidelson, *Starbucks, Amazon Labor Union Wins Helped by Undercover 'Salts'*, BLOOMBERG (Apr. 3, 2023) [hereinafter Eidelson, *Undercover Organizers*], https://www.bloomberg.com/news/features/2023-04-03/starbucks-amazon-labor-union-wins-helped-by-undercover-salts?utm_source=website&utm_medium=share&utm_campaign=copy.

Beneath the phenomenon is a generation forged by pandemic, debt, and financial, abortion, and climate crises²⁵⁶ that itself embodies a new combination of political-cultural orientations that might be summarized as YOLO-unionism.²⁵⁷ Socialist magazine *Jacobin* has urged its readership to survey the retail, gaming, hospitality, and logistics options—and “get a job and start organizing.”²⁵⁸ An internal Democratic Socialists of America (“DSA”) survey identified thousands hoping to heed the call.²⁵⁹ Dora-Laskey, the Chipotle activist, characterized the mindset succinctly: “Zoomers are looking around and we’re like, ‘This shit is over.’ Everything

256. Inouye, *supra* note 254. Reflecting on employee-driving campaigns at Starbucks, Amazon, Apple, and REI, labor-reporter Noam Scheiber of the *New York Times* concluded that “a key part of the story is the radicalization of the college-educated worker,” post-Great Recession and post-pandemic. Ian Prasad Philbrick, *Why Union Drives Are Succeeding*, N.Y. TIMES (July 17, 2022), <https://www.nytimes.com/2022/07/17/briefing/union-drives-college-graduates.html>; *see also* Jonah Furman, *How Zoomers Organized the First Chipotle Union*, LAB. NOTES (Aug. 31, 2022) [hereinafter Furman, *How Zoomers Organized*], <https://www.labornotes.org/2022/08/how-zoomers-organized-first-chipotle-union> [<https://perma.cc/MAU6-V4WM>] (quoting Chipotle organizer Samantha Smith: “Everything that’s happened politically, like abortion being criminalized, and then inflation but nobody’s getting paid any more, people can’t afford things—that is a real push.”).

257. “You only live once”; used to express the view that one should make the most of the present moment without worrying about the future (often as a rationale for impulsive or reckless behaviour). YOLO, OXFORD ENG. DICTIONARY, <https://doi.org/10.1093/OED/4571822433>. An indispensable resource for thinking about the political and organizing perspectives of college-educated millennials and the even-younger Generation Z is Ruth Milkman’s *A New Political Generation: Millennials and the Post-2008 Wave of Protest*, 82 AM. SOCIO. REV. 1 (2017). Focusing on post-2008 immigration, inequality, campus sexual assault, and Black Lives Matter-related organizing, Milkman is careful to note that while the “movements are far from homogeneous,” with some “led by privileged young insiders” and “others by quintessential social outsiders,” all share educated leaders and activists (many from the LGBTQI+ community), social media skills, and an intersectional politics emphasizing race, class, gender, and sexuality. *Id.* at 25-26.

258. Peter Olney & Rand Wilson, *It’s Time for Salting to Make a Comeback*, JACOBIN (June 26, 2022), <https://jacobin.com/2022/07/union-organizing-salt-salting-starbucks-amazon-ups> [<https://perma.cc/844Z-C8JS>] (“So what are you waiting for? . . . ‘Get a Job.’”).

259. Eidelson, *Undercover Organizers*, *supra* note 255.

is coming to an end in, like, quite a spectacular fashion. And it really is like, 'Okay, I might get fired from this job for organizing. Okay.'"²⁶⁰

There have been many opportunities to test the theory.²⁶¹ But if the amalgamated YOLO-unionism ideology lends itself to anything, it is employment flexibility. Once fired, many unaffiliated salts simply try again, elsewhere.²⁶² That includes Jaz Brisack, who helped launch the inaugural union campaign at Tesla.²⁶³

Fluidity also pervades the resources used to support these and other unionization projects, from empty rooms, to pro bono lawyers, to customized relationships with traditional unions.

D. Disorganized Funding

Lacking dues, investments, infrastructure, or any other stable source of funding, independent unions are, no doubt, shoestring operations. But independent organizing is not isolated organizing,²⁶⁴ and every campaign

- 260. Furman, *How Zoomers Organized*, *supra* note 256.
- 261. For detailed accounts of postorganizing firings in a variety of independent campaigns, from Trader Joe's, to REI, to Apple and Starbucks, see Noam Scheiber, *Companies Are Taking a Harder Line on Union Organizers, Workers Say*, N.Y. TIMES (May 22, 2023), <https://www.nytimes.com/2023/05/22/business/economy/unions-starbucks-apple-rei-trader-joes.html>; Jaffe, *Lexi Rizzo fought*, *supra* note 187. As of October 2022, Starbucks was estimated to have fired at least 100 organizers. Andrea Hsu, *Starbucks Workers Have Unionized at Record Speed; Many Fear Retaliation Now*, NPR (Oct. 2, 2022), <https://www.npr.org/2022/10/02/1124680518/starbucks-union-busting-howard-schultz-nlrb> [https://perma.cc/V666-C9Y4].
- 262. Notably, this also includes activated employees who, in effect, become unaffiliated salts in their next setting. *See, e.g.*, Hsu, *supra* note 261 (detailing the path of Gailyn Berg, who transferred to a new café "10 miles away" after "spearheading a failed union drive at another Starbucks" and continues to organize).
- 263. Josh Eidelson, *Tesla Workers Launch Union Campaign in New York*, BLOOMBERG (Feb. 14, 2023), [bloomberg.com/news/articles/2023-02-14/tesla-autopilot-workers-launch-union-campaign-in-buffalo-new-york-tesla](https://www.bloomberg.com/news/articles/2023-02-14/tesla-autopilot-workers-launch-union-campaign-in-buffalo-new-york-tesla); *see also* Josh Eidelson, *Starbucks Illegally Terminated Union Leader, US Officials Say*, BLOOMBERG (Dec. 30, 2022), <https://www.bloomberg.com/news/articles/2022-12-30/starbucks-illegally-terminated-architect-of-union-campaign-us-officials-say?embedded-checkout=true>.
- 264. Kim, *How to Unionize*, *supra* note 229.

has made the most of its own mix of low-cost internal and external resources.

1. Inspired, Cheap, and Free Stuff

Chris Smalls's charisma was perhaps a necessary element of the underdog campaign he led at Amazon.²⁶⁵ But it also turned out to be sufficient to fund the operation. Combining “compelling” public speeches²⁶⁶ with an influencer’s touch for TikTok’s algorithms helped²⁶⁷ funnel donations to an ALU GoFundMe, a free online fundraising platform.²⁶⁸ Money accordingly tended to “come[] in waves,”²⁶⁹ leading to shortages of ALU-branded T-shirts and, at times, food.²⁷⁰ Ultimately, the union raised \$120,000 for JFK8,²⁷¹ with the account “balloon[ing] from virtually nothing” to six figures post-victory.²⁷² “The good news is that we’re rolling in dough,” Smalls said, contemplating future warehouses.²⁷³

Crowdsourced and philanthropic giving has been important for independent efforts elsewhere.²⁷⁴ So too have in-kind gifts, especially legal

265. The *New York Times* called him “dazzlingly effective” at raising “an insurgent army from a bus stop.” Noam Scheiber, *Strains Emerge Inside the Union That Beat Amazon*, N.Y. TIMES (Mar. 21, 2023) [hereinafter, Scheiber, *Strains Emerge*], <https://www.nytimes.com/2023/03/21/business/amazon-labor-union.html>.

266. *Id.*

267. Velasquez, *supra* note 164. Social media facility was not limited to Smalls. Assisted by a pandemic-related policy allowing personal phones in the warehouse, various ALU-branded accounts produced in-house videos with touches of art and irony, like products whipped around a conveyor as the camera pans to warehouse televisions blaring MLK’s “I Have a Dream” speech. *Id.*

268. Kantor & Weise, *How Two Best Friends*, *supra* note 150.

269. Scheiber, *Strains Emerge*, *supra* note 265.

270. Campbell, *How a Grassroots Union*, *supra* note 207.

271. Kantor & Weise, *How Two Best Friends*, *supra* note 150.

272. Jaffe, *Amazon Uprising*, *supra* note 9; see also Enzinna, *supra* note 170 (“[O]n the day of its victorious union vote, the ALU, then a ragtag group of 20 members, had just \$3 left in its bank account.”).

273. Jaffe, *Amazon Uprising*, *supra* note 9

274. In Lansing, the local DSA paid for childcare during Chipotle organizing meetings. Blanc, *Unionizing Chipotle*, *supra* note 212; see also

work. Workers at Amazon, Trader Joe's, and New Seasons Market turned to free or low-cost representation from firms and nonprofits like the Working People's Law Center, Make the Road New York, and Pioneer Valley Workers Center.²⁷⁵

2. Engaging Traditional Unions Nontraditionally

By far the most salient resource has been workers' receptivity to receiving support from established unions. Initial ties vary. On one end, ALU got some phone-banking space from UNITE-HERE,²⁷⁶ office supplies from others,²⁷⁷ and even, post-JFK8, \$250,000 from the American Federation of Teachers.²⁷⁸ Smalls, nonetheless, would later describe the union's initial years as generally "isolated" from the broader movement.²⁷⁹ Similarly, Trader Joe's United ("TJU") is committed to formal independence but is advised by the Emergency Workplace Organizing Committee, run jointly by the United Electrical Workers ("UE") and DSA.²⁸⁰

In the middle, and most commonly,²⁸¹ are workers who find great value in established unions' bureaucracy but less value in established unions' external organizers—the inverse, in a sense, of traditional labor's post-1995 reclamation project.²⁸² Chipotle workers put nine unions and an independent option up for an internal vote—but only after they'd already

SBWorkersUnited Ithaca Strike and Relief Fund!, GoFUNDME, <https://www.gofundme.com/f/sbworkersunited-ithaca-strike-fund> [<https://perma.cc/YW4S-XW4F>]; Satinoff, *supra* note 161 (describing a North Carolina warehouse effort that uses GoFundMe exclusively).

275. Braden Campbell, *Independent Unions Grew in 2022 and Aren't Slowing Down*, LAW360 (Dec. 14, 2022) [hereinafter Campbell, *Independent Unions Grew*] https://www.law360.com/employment-authority/articles/1558363/independent-unions-grew-in-2022-and-aren-t-slowing-down;_How_to_Unionize, *supra* note 229; Press, *supra* note 240.
276. Leon, *Defied Conventional Wisdom*, *supra* note 199.
277. Kim, *How to Unionize*, *supra* note 229.
278. Enzinna, *supra* note 170.
279. *Id.*
280. Press, *supra* note 240.
281. See, e.g., *id.* ("Those that do succeed often end up affiliating with other unions down the line, and for obvious reasons: it is hard to sustain worker organizing without institutional backing.").
282. See *supra* notes 55-56 and accompanying text.

solidified majority support on their own.²⁸³ Looking back, Dora-Laskey laughed about cautioning coworkers that the independent option was legitimate but that it would mean “Harper, Sam, and I will start, like, reading up on the National Labor Relations Board law and stuff.”²⁸⁴ The Teamsters won.²⁸⁵ “They point blank told us we had already done most of their work for them,” Sam Smith recalled.²⁸⁶ It was a similar story at Apple, where workers eventually went with Communications Workers of America (“CWA”),²⁸⁷ at New Seasons Markets (which affiliated with UE),²⁸⁸ and at REI (represented by UFCW and RWDSU).²⁸⁹ Even ALU, amid internal

283. Furman, *How Zoomers Organized*, *supra* note 256. Dora-Laskey remarked: “We were actually surprised to find out later that this wasn’t the norm, we assumed this was just sort of how unionization was always done.” Blanc, *Unionizing Chipotle*, *supra* note 212.

284. Furman, *How Zoomers Organized*, *supra* note 256.

285. Blanc, *Unionizing Chipotle*, *supra* note 212.

286. *Id.*

287. Catherine Thorbecke & Chris Isidore, *Workers at Second Apple Store Vote to Join Union*, CNN (Oct. 14, 2022), <https://www.cnn.com/2022/10/14/tech/apple-store-union-oklahoma> [<https://perma.cc/4QXY-ZEAM>].

288. *Compare Who We Are*, NSLU <https://www.nslu.org/> [<https://perma.cc/6PQ2-XJ7Y>] (“In 2025, we affiliated with UE . . .”), with Campbell, *Independent Unions Grew*, *supra* note 275 (“Several outposts of Pacific Northwest grocery chain New Seasons Market have organized with an independent group . . .”), and Brooke Jackson-Glidden, *New Seasons Employees Have Filed for Union Elections*, EATER: PORTLAND, OR (May 31, 2022, 7:28 PM EDT) (“Employees of the independent New Seasons Labor Union decided to represent themselves without an established union partner.”), <https://pdx.eater.com/2022/5/31/23149289/new-seasons-unionizing-hillsboro-division> [<https://perma.cc/V2QF-QF73>].

289. *Compare REI Co-op, UFCW, and RWDSU Continue Progress in Contract Negotiations*, REI Co-OP (Oct. 1, 2025), <https://www.rei.com/newsroom/article/rei-co-op-ufcw-and-rwdsu-continue-progress-in-contract-negotiations> [<https://perma.cc/5L8T-EVSB>] (discussing REI workers bargaining in association with 2 established unions), with REI Employees for REAL Change (@reigreenvests), INSTAGRAM (Apr. 5, 2022), <https://www.instagram.com/reigreenvests/p/Cb-dKTUpqlr/> [<https://perma.cc/GC5U-S5Z8>] (“We’ve been involved in an historic collaboration with current and former REI employees to form an independent union for the sole purpose of organizing and representing workers at our co-op.”), and Alina Selyukh, *REI Fostered a Progressive Reputation. Then Its Workers Began to Unionize*, NPR (July 6, 2023), <https://www.npr.org/2023/07/06/1186006322/rei-union-busting>.

disputes and struggles for a contract, eventually affiliated with the Teamsters.²⁹⁰

At the other end is SWU and its close, *sui generis* relationship with the SEIU-affiliated Workers United (“WU”).²⁹¹ Though WU was initially reluctant to get involved, Jaz’s whirlwind SWU recruitment efforts and a 49-signature-strong letter sent to Starbucks in August 2021 offered WU—one of the few unions with coffeehouse expertise—proof of concept.²⁹² And since those early days in Buffalo, New York, WU has played an intensely collaborative role, unique among independent efforts in that the assistance has been available almost from the start. Even then, though, support has been largely administrative or legal²⁹³ and limited to the bandwidth of around 20 external organizers, who print authorization cards, lend office space, phone the lawyers, or arrange Zoom calls.²⁹⁴ WU officials may be present to offer a national perspective—or not.²⁹⁵ “They don’t need to hear from me,” said Richard Bensinger, a senior WU organizer who sometimes lurks on calls.²⁹⁶

At its best, the fusion of SWU’s independent worker-organizers with WU’s institutional know-how (and a healthy dose of salts) can be a

allegations [<https://perma.cc/JU2R-9ZMX>] (describing an unaffiliated unionization effort).

290. Michelle Chapman & Haleluya Hadero, *Amazon Labor Union Members Vote Overwhelmingly in Favor of an Affiliation with the Teamsters*, AP (June 18, 2024), <https://apnews.com/article/amazon-union-teamsters-labor-warehouse-0d0d751d6800495ed0296e33b4f5835e> [<https://perma.cc/QRL5-VWKQ>].
291. See WORKERS UNITED, <https://workersunited.org> [<https://perma.cc/ZY9C-UX9X>] (describing WU as “an SEIU affiliate”).
292. Jaffe, *Rhodes Scholar*, *supra* note 143; Toussaint, *supra* note 143.
293. E. Tammy Kim depicted the type of support provided to a nascent union of Starbucks baristas in the Pacific Northwest: “A Workers United organizer in Philadelphia . . . has advised them remotely, via text message and Zoom, while a team of labor lawyers in Seattle handles their union election and unfair-labor-practice charges before the N.L.R.B. The workers themselves have done everything else.” Kim, *Upstart Union*, *supra* note 26.
294. Faris, *supra* note 185.
295. Josh Eidelson, *Howard Schultz Returns to an Unstoppable Union Wave at Starbucks*, BLOOMBERG (May 12, 2022) [hereinafter Eidelson, *Starbucks Baristas*], <https://www.bloomberg.com/news/features/2022-05-12/starbucks-workers-inspire-amazon-union-show-labor-s-power>.
296. *Id.*

powerful organizational elixir. Staring up at Howard Shultz, the then-CEO of Starbucks, who had come to the Buffalo Hyatt Regency for a final anti-union pitch, Gianna Reeve gripped an anti-retaliation pledge and whispered to fellow barista James Skretta, “Should I do this?”²⁹⁷ He whispered back: “If you stand up, I’ll stand up with you.”²⁹⁸

She did, and he did, and a video of Shultz fleeing a piece of paper “ricocheted” across the web, a moment thought to have supercharged the campaign.²⁹⁹ WU wrote the pledge, James Skretta was a salt, and Gianna Reeve was a Buffalo native and shift leader.³⁰⁰

The moment’s lasting, solidaristic effect could be identified months later, when a barista texted a coworker during a WU-sponsored simulated union dissuasion meeting, with retail and flight attendant organizers role-playing managers: “LETS REENACT GIANNA.”³⁰¹ Whispers followed, and two workers stood up.³⁰²

III. DISORGANIZED LABOR LAW

So, if the labor movement’s most captivating campaigns are in some sense “disorganized”—liabilities become assets, cheap things are the only things, and the quixotic is normalized—it is the sort of disorder consistent with styles found in low-resourced organizations that defy sometimes staggering odds of success.

Of course, *bricolage* costs are present in independent unionizing efforts too:

- Actors get overwhelmed: Seventy-to-eighty-hour weeks at Trader Joe’s,³⁰³ a panic attack at Amazon’s warehouse LDJ5,³⁰⁴ and a “third layer of burnout” at Starbucks ensue.³⁰⁵

297. Eidelson, *Undercover Organizers*, *supra* note 255.

298. *Id.*

299. *Id.*; see also BRISACK, *supra* note 187, at 152-53 (retelling the story and noting, “That meeting changed everything for many of the partners in the room.”).

300. Eidelson, *Undercover Organizers*, *supra* note 255.

301. *Id.*

302. *Id.*

303. Press, *supra* note 240.

304. Jaffe, *Amazon Uprising*, *supra* note 9 (“[T]he pressure was almost too much to bear . . . [H]er heart would start racing as she was lying in bed.”).

305. Kim, *Upstart Union*, *supra* note 26; see also BRISACK, *supra* note 187, at 168 (“After we won Elmwood, I got sick. The strain of trying to hold my store

- Projects start and are abandoned: Petitions are filed with fanfare, support fails to arrive, and campaigns fizzle.³⁰⁶
- *Bricolage* doesn't work: Home Depot United loses the vote to unionize in a landslide;³⁰⁷ ALU flails in a follow-up effort to unionize Amazon warehouse LDJ5.³⁰⁸
- Or, second- and third-best solutions become standard: Free agent salts proliferate but, once revealed, spark feelings of betrayal or, where white and privileged, internal tensions;³⁰⁹ worker-officers show leadership but struggle with institution-

together had been intense, and the relief of winning gave way to an immune system collapse."); Jaffe, *Amazon Uprising*, *supra* note 9 ("Smalls, who was also tired and stretched thin, told Wesley that he had more-pressing responsibilities [than recreating the JFK8 bus stop]. The union needed to find office space, lawyers and accountants. The outreach to Smalls from politicians and the international media hadn't let up.").

306. Scheiber, *Strains Emerge*, *supra* note 265 ("[W]orkers and organizers in Albany did not receive the support that Mr. Smalls had promised ... [H]is visits typically happened without much advance notice and were difficult to plan around.").
307. Chris Isidore, *Workers Vote Against First Unionizing Effort at Home Depot*, CNN (Nov. 6, 2022), <https://www.cnn.com/2022/11/06/business/home-depot-union-vote> [https://perma.cc/2Z68-VHEE] ("[O]nly 51 employees voted to join Home Depot Workers United, and 165 voted against it.").
308. See Jaffe, *Amazon Uprising*, *supra* note 9 ("380 voted in favor of unionizing and 618 voted no Amazon officials touted the LDJ5 victory as proof that workers are satisfied with the company.").
309. Salts' role in the shaping of workplace dynamics is variable and complex. Jaz Brisack has cautioned against making any distinction between salts and nonsalts, which can play into employer attempts to sow division. Inouye, *supra* note 254. Smalls has been more comfortable acknowledging differences, while also emphasizing salts' critical work at Amazon. *Id.* At JFK8, 6 of 7 salts were white, *id.*, and in general can come from "relatively privileged backgrounds," creating an imbalance in firing risks. Eidelson, *Undercover Organizers*, *supra* note 255. Brisack, in fact, has called their inability to protect coworkers from discharge their "biggest regret," *id.*, while others have admitted to "learning on the fly" how to "connect with demoralized co-workers... twice their age." Jaffe, *Amazon Uprising*, *supra* note 9. In-depth reporting has stated that "[m]ore than a few workers have said they've felt burned after finding out their co-workers were salts." Eidelson, *Undercover Organizers*, *supra* note 255.

building basics;³¹⁰ and GoFundMe is great, but Amazon spends \$4.3 million on union-avoidance consultants alone.³¹¹

Nonetheless, the turn toward disorganization is important. If the last decade democratized strikes with scores of employees walking out on their own,³¹² *bricolage* has democratized unionization, with scores of employees unionizing on their own. Some evidence comes from a surprising place: Silicon Valley, where venture firms with names like Schlaf Angel Fund and Gutter Capital apparently see an upside to investing millions into five app-based start-ups aimed at union-free unionization.³¹³ Businesses like YouIn?, Unit, Frank, and UniteOnline put cards, polls, petitions, support maps, and even legal advice a click away.³¹⁴ Karens for

310. ALU's upper ranks, in particular, have been mired in internal conflict regarding the union's use of funds (it took months to set up a bank account), Enzinna, *supra* note 170, and implementation of dueling constitutions, one written largely by the union's former treasurer, the other amended by Smalls. Scheiber, *Strains Emerge*, *supra* note 265. The divide has extended to organizing strategy and has led to a reform caucus and lawsuit alleging that Smalls unlawfully "refuse[d] to hold officer elections" in accordance with the earliest version of the constitution. Noam Scheiber, *Amazon Union Dissidents, in Challenge to Leader, Move to Force Vote*, N.Y. TIMES (July 10, 2023), <https://www.nytimes.com/2023/07/10/business/economy/amazon-union-lawsuit-christian-smalls.html>.
311. Kantor & Weise, *How Two Best Friends*, *supra* note 150.
312. Small, short, and often nonunion strikes have become so common that Cornell's Industrial and Labor Relations School created a comprehensive "Labor Action Tracker" to monitor and analyze the activity. *Labor Action Tracker*, CORNELL UNIV. ILR SCH. & UNIV. OF ILL. URBANA-CHAMPAIGN SCH. OF LAB. & EMP. RELATIONS, <https://striketracker.ilr.cornell.edu> [<https://perma.cc/8TZX-GAFF>]. Since 2021, strikes by nonunion or independently organized workers have made up between 22% and 37% of the total. Kathryn Ritchie, Johnnie Kallas & Deepa Kylasam Iyer, *Labor Action Tracker: Annual Report 2024*, CORNELL UNIV. ILR SCHOOL & UNIV. OF ILL. URBANA-CHAMPAIGN SCH. OF LAB. & EMP. RELATIONS 3 (2024), <https://www.ilr.cornell.edu/sites/default/files/d8/2024-02/Labor-Action-Tracker-2023-Annual-Report.pdf> [<https://perma.cc/ZBV5-GSL9>].
313. Natasha Mascarenhas, *Unit Tests an Easier Way for Workers to Organize*, TECHCRUNCH (June 1, 2021), <https://techcrunch.com/2021/06/01/unit-tests-an-easier-way-for-workers-to-organize/> [perma.cc/DN68-NJL]; see also *infra* note 314.
314. David Moscrop, *Organizing a Union? Yes, There's an App for That*, JACOBIN (Jan. 30, 2023), <https://jacobin.com/2023/01/organizing-unionization-app-tech-card-check-laws-canada-british-columbia> [<https://perma.cc/N69M-VCHD>];

Hire specializes in nonmajority unions and, for the especially cautious, offers to “loop in fellow employees anonymously.”³¹⁵

The democratization is promising for at least three reasons. The first is gap filling. Unions lack the capacity to assist all but a sliver of the 94% of private-sector workers who are not in them.³¹⁶ Naturally, the limited resources that exist are deployed “strategically,” often with an eye toward building new or existing regional or sector toeholds.³¹⁷ Even promising appeals for assistance can be declined as a result. “We reached out to about a dozen different unions and the sad thing is that a lot of them literally never even called us back—and others said they weren’t interested in taking us on,” said Chipotle’s Dora-Laskey.³¹⁸ She later added, “We were, like, wondering what was wrong with us.”³¹⁹ One union burrito shop in a sea of at-will competitors may not build power, but it probably builds hope, and definitely dignity. As political scientist Janice R. Fine has

Lauren Kaori Gurley, *A New App Is Taking Labor Unions Out of Union Organizing*, VICE (Aug. 12, 2021) [hereinafter Gurley, *A New App*], <https://www.vice.com/en/article/a-new-app-is-taking-labor-unions-out-of-union-organizing/> [<https://perma.cc/4YAS-S35W>].

315. *Micro Unions*, KARENS FOR HIRE: ENTITLED TO HELP, <https://www.karensforhire.com/micro-unions> [<https://perma.cc/VT5Q-YJ9L>].
316. See, e.g., Gurley, *A New App*, *supra* note 314 (“The Illinois Federation of Teachers politely declined to take them on, citing a lack of resources—and no other unions got back to them.”); Lance Compa, *Labor at a Crossroads: How Unions Can Thrive in the 21st Century*, AM. PROSPECT (Jan. 27, 2015), <https://prospect.org/justice/labor-crossroads-unions-can-thrive-21st-century/> [<https://perma.cc/8BQZ-DT8F>] (“The union’s biggest problem, in fact, is getting enough organizers into the field to meet demand . . .”); *see also infra* note 28 (showing low rates of union membership).
317. Theories of large-scale organizing are numerous and sometimes fraught, but all aim to grow union membership by deploying resources smartly. For good overviews of the history and debates, see Marilyn Schneiderman & Stephen Lerner, *Making Hope and History Rhyme: A New Worker Movement from the Shell of the Old*, NEW LAB. FORUM (Dec. 12, 2022), <https://newlaborforum.cuny.edu/2022/12/13/making-hope-and-history-rhyme-a-new-worker-movement-from-the-shell-of-the-old/> [<https://perma.cc/3MTZ-VGDY>]; Eric Dirnbach, *Which Workers Are “Strategic” to Organize*, JACOBIN (Feb. 18, 2023), <https://jacobin.com/2023/02/labor-power-and-strategy-book-review-strategic-union-organizing> [<https://perma.cc/APU2-G5PD>].
318. Blanc, *Unionizing Chipotle*, *supra* note 212.
319. Furman, *How Zoomers Organized*, *supra* note 256.

remarked, strategically situated or not, “angry workers who are hungry to organize deserve a viable path to unionization.”³²⁰ For those beyond the reach of traditional union resources, *bricolage*-based organizing has provided that path.

Second, what Eric Blanc has called “DIY unionism”³²¹ is like a marketplace-of-ideas approach³²² to renewal, which is to say, *bricolage* on a grand scale. Workers emerge as dispersed labor movement entrepreneurs.³²³ Creations will fail, others will not, but the “accumulation of inputs from multiple actors generates a momentum” urging paths forward.³²⁴ In time, actors are themselves shaped by accumulating facts on the ground.³²⁵ Someone at Great Clips googles “NLRB.” College

- 320. This is a paraphrase of Janice R. Fine, Panel Remarks at the Labor and Employment Relations 75th Annual Meeting: Update and Discussion of the Upsurge in Worker Organizing and Activism (June 1, 2023); *see also* Email from Michael M. Oswalt, to Janice R. Fine (Apr. 12, 2024, at 12:02 PM) (on file with the Yale Law and Policy Review); Email from Janice R. Fine, to Michael M. Oswalt (Apr. 12, 2024, at 3:04 PM) (on file with the Yale Law and Policy Review).
- 321. Eric Blanc, *Labor’s Uptick Isn’t Just Hype*, LABOR POLITICS (May 8, 2023), <https://laborpolitics.substack.com/p/labors-uptick-isnt-just-hype> [<https://perma.cc/K3XK-PM88>].
- 322. Eric Blanc uses the phrase, “[L]et a thousand organizing flowers bloom,” to describe the phenomenon. Eric Blanc, *Seven Lessons from Starbucks Workers’ Historic Victory*, LABOR POLITICS (Feb. 29, 2024), <https://www.laborpolitics.com/p/six-lessons-from-starbucks-workers> [<https://perma.cc/K3XK-PM88>]. For a dissenting view on the usefulness—and reality—of organizing “flowers” spurred by recent independent campaigns, see Benjamin Y. Fong’s critique of a book-length treatment by Eric Blanc. Benjamin Y. Fong, *How Useful Is “Worker-to-Worker Unionism?”*, JACOBIN (Mar. 21, 2025), <https://jacobin.com/2025/03/blanc-labor-sbwu-amazon-strategy> [<https://perma.cc/4ZNP-RNK6>].
- 323. Here I mean entrepreneurship in the *bricolage* sense of a “larger process that builds upon the efforts of many,” which pushes against traditional conceptions that locate creative agency “in a few individuals who have the full-blown ability to discover, create and exploit opportunities that lie beyond the reach of most.” Garud and Karnøe, *supra* note 24, at 277.
- 324. *Id.* at 278.
- 325. As Garud and Karnøe put it, “[A]ctors become interwoven into emerging technological paths that they shape in real time. In turn, the accumulating artifacts, tools, practices, rules and knowledge begin shaping actors over time.” *Id.* at 281.

commencement season ushers an uptick in warehouse applications. A union with history prints flyers for a union without any. Viabilities, maybe, emerge.

In fact, widely dispersed, *bricolage* might even represent an organic resolution to one of the fiercest theoretical debates in labor organizing.³²⁶ For some, confronting powerful employers amid weak labor laws, a vulnerable workforce, and a membership emergency requires local and international leaders to create, fund, and staff union campaigns.³²⁷ For others, workers must lead the way—their agency, commitment, and activism not just primary but essential.³²⁸ There is evidence to support both perspectives, but also much to suggest that a blend is probably best.³²⁹ Yet, even blended campaigns are targets for criticism, as paid

326. See Sameer M. Ashar & Catherine L. Fisk, *Democratic Norms and Governance Experimentation in Worker Centers*, 82 L. & CONTEMP. PROBS. 141, 150 (2019) (“Loosely speaking, this is a debate between top-down and bottom-up approaches to organizing and internal governance.”).

327. *Id.* For one of the earliest outlines of this approach, including 3 hypothetical campaign applications, see Stephen Lerner, *Let’s Get Moving: Labor’s Survival Depends on Organizing Industry-Wide for Justice and Power*, 18 LAB. RSCH. REV. 1 (1991).

328. For a good summary of this perspective, see Jane McAlevey, *The Crisis of New Labor and Alinsky’s Legacy: Revisiting the Role of the Organic Grassroots Leaders in Building Powerful Organizations and Movements*, 43 POLITICS & SOCIO. 415, 437 (2015) (advocating “bottom-up base-building,” meaning “worksit-based organizing, where workers are aided by skilled organizers, but not replaced by them—where workers themselves are the primary actors and primary leverage in their own self-organizing”).

329. A succinct summary of much of this work is found in Theresa Sharpe’s chapter, *Union Democracy and Successful Campaigns*, in REBUILDING LABOR: ORGANIZING AND ORGANIZERS IN THE NEW UNION MOVEMENT 62, 62-87 (Ruth Milkman & Kim Voss eds., 2004). Notably, Sharpe ultimately identifies “a necessary balance between a staff with the power to make strategic decisions and a rank-and-file empowered to take and sustain action.” *Id.* at 63; *see also* RUTH MILKMAN, L.A. STORY: IMMIGRANT WORKERS AND THE FUTURE OF THE U.S. LABOR MOVEMENT 24 (2006) (“[A]nalysis of these cases suggests that under current conditions a campaign is unlikely to succeed unless it involves *both* a strategy campaign *and* a bottom-up worker mobilization.”); Petruska, *supra* note 82, at 22-27 (canvassing studies on the impact of internal democracy on union effectiveness and concluding that “democracy seems to possess both the capacity for militant activism and aggressive bargaining, but also for imprudent and somewhat uncontrolled behavior”).

staffers often maintain authority over major decisions.³³⁰ *Bricolage* potentially squares the circle. Workers are the activists and the organizers. But because they are also the strategists, they have the power to regulate external engagements and relationships in ways the labor movement has rarely seen.³³¹ The options for external support might range from cashing a check, to a complete takeover, to levels of assistance that evolve over time or even reverse. *Bricolage* allows the top-down and bottom-up paradigms to persist, but workers choose the gradient that is right for their workplace, employer, or industry. *Bricolage* won't end the debate, but it may locate the many variations with unprecedented discernment and, possibly, consensus.

Finally, *bricolage* is disorganizing labor law. In the eyes of commentators and union leaders, labor law itself, specifically the NLRA, has long been left for dead.³³² There have been rightly heralded phases of "reinvention," but those efforts, pushed by innovative labor movement officials, were "renewal" by statutory escape.³³³ New workplace rights were created, or old labor law rights were enhanced, through private contracts, state or local legislation, or the enforcement of other federal laws like Title VII and the Fair Labor Standards Act.³³⁴

DIY is different. It renews labor law by shaking up the statutory playbook. And it is workers' doing. The jolts are playing out in different ways. In some cases, workers' methods render law and legal practices that favor employers moot or impotent. This includes bedrock principles of

330. See, e.g., Early, *supra* note 72, at 236-46 (criticizing a memoir describing such attempts).

331. This dynamic can be something like what Jaz Brisack described early in Starbucks workers' relationship with WU, where a worker-activist "spent nearly two years running communications for the national campaign," successfully lobbied for another worker to be hired as a graphic designer, and prevented various ideas that would not have "ensur[ed] that partners retained control of the press strategy and social media accounts." BRISACK, *supra* note 187, at 218.

332. Wilma B. Liebman, *Decline and Disenchantment: Reflections on the Aging of the National Labor Relations Board*, 28 BERKELEY J. EMP. & LAB. L. 569, 570 (2007) ("Various commentators describe the National Labor Relations Act... as dead, dying, or at least 'largely irrelevant to the contemporary workplace—a doomed legal dinosaur.'").

333. Benjamin I. Sachs, *Labor Law Renewal*, 1 HARV. L. & POL'Y REV. 375, 376-77 (2007).

334. *Id* at 388-91.

workplace access, employer speech, and forums for that speech. In other cases, law perceived as neutral or detrimental to organizing has become facilitative. That includes precedent on salts, bargaining units, and certain remedies like reinstatement. In all cases, whatever the staying power of any particular campaign or union, workers' disordering of law is likely to reverberate.

A. Disorganized Labor Law: Access

Union power to persuade employees to support unionization is hampered by rules that make it hard to even meet them.³³⁵ Because of *Lechmere, Inc. v. NLRB*, union officials, staff, and like-minded advocates face a police-enforced, bright-line rule in workplaces: They may not enter, at any time.³³⁶ The communication options that remain are no different from those available to fringe political candidates and the Sierra Club: flyer passing, door knocking, cold calling, or, as suggested by the Supreme Court, sandwich boards and news ads.³³⁷ Unions must therefore rely heavily on inside supporters—that is, employees—who can spread the word in break rooms, bathrooms, and other nonwork areas during nonwork times.³³⁸ After their work shifts, even employees must exit the building, though they can continue campaigning in places like parking lots.³³⁹ Everything from support estimates, to committee building, to event

- 335. For a comprehensive history and analysis of “the broad and largely unarticulated conception of the right to exclude that has nearly eviscerated section 7 rights on private property,” see Cynthia L. Estlund, *Labor, Property, and Sovereignty After Lechmere*, 46 STAN. L. REV. 305, 310 (1994).
- 336. 502 U.S. 527 (1992); *see also* Venetian Casino Resort, L.L.C. v. NLRB, 793 F.3d 85 (D.C. Cir. 2015) (shielding an employer from unfair labor practice charges under the *Noerr-Pennington* doctrine after the employer “requested that police officers at the scene issue criminal citations to … [labor] demonstrators … because they were allegedly trespassing upon private property belonging to [the employer]”).
- 337. *Lechmere*, 502 U.S. at 540 (“[D]irect contact, of course, is not a necessary element of ‘reasonably effective’ communication; signs or advertising may suffice.”).
- 338. Waste Mgmt. of Ariz., Inc., 345 NLRB 1339, 1339 n.2, 1346 (2005) (“Interference with employee circulation of protected material in nonworking areas during off-duty periods is presumptively a violation of the Act”).
- 339. Tri-County Med. Ctr., 222 NLRB 1089, 1089 (1976).

planning, to messaging is coordinated between the volunteers and the professionals.³⁴⁰

1. Organizers—and Officers—in the Building

Independent campaigns disorganize the access boundaries, upending *Lechmere* to effectively destroy one of the most limiting rules in all of labor law. Simply put, the union's officers are also employees—and therefore, they are in the building. The result is a boon not just for union legal access but also for messaging credibility and strategic dexterity. At Amazon's JFK8, so gigantic that the thousands walking in and out the door are often anonymous, Angelika Maldonado recalled incredulous coworkers asking, "How are you guys able to be in the building? You guys don't even work here."³⁴¹ Her response was a practiced employee badge flash, collapsing Amazon's attempt to cast unions as outsiders in the process: "We do work here—everyone that's in the union here right now works here."³⁴²

At Amazon's RDU1 unit in Garner, North Carolina, the union president is Rev. Ryan Brown.³⁴³ His workstation is known as "the confessional" because workers visit throughout the day to "testify" to the power of group action in clips recorded for social media.³⁴⁴ Rev. President Brown is personally renowned for his shop floor defenses of individual workers threatened with discipline, which, according to coworkers who've seen it, "inspires" and "emboldens" others.³⁴⁵ He acknowledges that "[t]his is something an outside organizer wouldn't be able to do."³⁴⁶ For a union president, it is extraordinary.

340. For a sense of how heavily unions rely on the training, development, and natural gifts of workplace leaders—and vice versa—see Patel, *supra* note 67, at 132-35.

341. Blanc, *Here's How We Beat*, *supra* note 232.

342. *Id.* ("[T]hey often felt bamboozled by Amazon because they realized that they had been lied to.").

343. *Satinoff*, *supra* note 161.

344. *Id.*

345. *Id.*

346. *Id.*

2. Planners as Doers

The presence of union officers in the workplace also erases *Lechmere*'s standard boundaries between planning and doing, because the strategists—usually on the outside—can carry out the strategy personally on the inside. Rev. President Brown could give his own lunch break speeches before handing out flyers with QR codes linked to petitions he'd overseen.³⁴⁷ Being physically present also allowed for ideas to be tested—and adjusted for unexpected obstacles—immediately. ALU's Vice President Connor Spence hoped to link names on visitor badges with Department of Labor data to publicize the fees paid to Amazon's union dissuasion "consultants," who milled about the warehouse engaging workers.³⁴⁸ When some began to hide or reverse the badges, Spence encouraged workers to "figure [it] out through chit-chat."³⁴⁹ When a consultant named David refused to give a surname, Spence used process of elimination to find it on a vendor list.³⁵⁰ A "union-busting alert" on "David Acosta's" consulting fees followed.³⁵¹ Reportedly, Acosta was "impressed" ALU had pulled it off.³⁵²

Spence eventually tried to identify labor law violations by seeking reports from workers who'd conversed with the anti-union consultants.³⁵³ As Spence's legal acumen improved (and as allegations accrued), many of the consultants began to clam up, "talking less directly about the union and more about [the benefits of] working at Amazon."³⁵⁴ Spotting one who still seemed chatty, Spence asked three friends to individually approach the consultant and feign ALU support, disdain, and ambivalence, respectively, in hopes of identifying which "archetype[] might best trigger an unlawful reply.³⁵⁵ Any labor lawyer might ask workers to be on the lookout for illegal encouragement, quips, or questions popping up in conversation. It took someone on the floor to identify an opportunity to gamify—and

347. *Id.*

348. Jamieson, *How Amazon Workers Beat*, *supra* note 249.

349. *Id.*

350. *Id.*

351. *Id.*

352. *Id.*

353. *Id.*

354. *Id.*

355. *Id.*

galvanize—the process: “I really wanted to see if we could trip these guys up,” he said.³⁵⁶

B. Disorganized Labor Law: Speech

Disorganized labor has also disorganized labor law speech principles. Under *NLRB v. Gissel Packing Co.*, employers have wide latitude to express vigorous opposition to unionization through any medium, in any form, at any time, and to any-sized group, so long as the communications do not amount to threats or bribes.³⁵⁷ Theoretically, the Act’s express prohibition of threats could significantly curtail anti-union employer speech. Threat assessments are highly contextual, requiring a specific account of employees’ “economic dependence” and other worker-specific sensitivities that someone outside of the workplace would not necessarily pick up on.³⁵⁸ Some have suggested that taking the guidance seriously—especially employee desires for continued employment—gestures toward a regime of employer neutrality about unionization.³⁵⁹

356. *Id.*

357. 395 U.S. 575 (1969). This is described explicitly in Section 8(c): “The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice . . . if such expression contains no threat of reprisal or force or promise of benefit.” 29 U.S.C. § 158(c) (2024).

358. *Gissel Packing Co.*, 395 U.S. at 617 (describing the “necessary tendency” of employees, because of their “economic dependence,” to “pick up intended implications . . . that might be more readily dismissed by a more disinterested ear”).

359. While acknowledging “some play’ in the system” for a degree of free choice under some circumstances, Alan Story argues that the workplace is “inherently coercive” to employee free choice. Alan Story, *Employer Speech, Union Representation Elections, and the First Amendment*, 16 BERKELEY J. EMP. & LAB. L. 356, 411-14 (1995). An enlightened regime would, in turn, be limited to simply picking “which coercion . . . is permissible and which coercion is not.” *Id.* at 414. Voluntary employer speech about collective bargaining—as opposed to the “invisible” and inevitable coercion arising from the fact that employees “as a group . . . have no choice but to sell their labor”—would accordingly be one of the more likely targets for severe restriction or elimination. *Id.* at 412. Craig Becker’s work takes a similar perspective, noting that it is “but a short step to the realization that all employer speech to employees during working hours, at the workplace, is speech to a captive audience” and thereby coercive. Craig Becker, *Democracy in the Workplace: Union Representation Elections and Federal Labor Law*, 77

In fact, something like the opposite has taken hold. Economic dependence rarely factors directly into *Gissel* analyses, and the employer's primary safe harbor—"general views about unionism" or "specific views" about *this* union³⁶⁰—swallows all but the most clichéd "if x, then y" threats.³⁶¹ As a result, nearly anything a supervisor says about an active campaign is to its electoral advantage, based solely on underlying power dynamics. In other words, it takes very little emotional, relational, or legal skill to issue an entirely threatening, but entirely legal, warning.

1. Tolls of Expired Talking Points

But that was before employees at Starbucks, Home Depot, Trader Joe's, and Gen Z writ large found NLRB.gov. Among these workers, the *Gissel*-in-a-box approach can limp along or backfire.

Take, for example, two of the most common anti-union talking points: The union is a third-party interloper, and the union just wants your dues.³⁶² The first is self-refuting—the "union" is on the payroll. The second has become either nonsensical—my friend wants my money?!—or out of touch. Today's unions are culturally cool.³⁶³ They're "fun."³⁶⁴ ALU partied

MINN. L. REV. 495, 600 (1993). The NLRB itself once agreed. *See* Am. Tube Bending Co., 44 NLRB 121, 129-30 (1942) (requiring "complete [employer] neutrality with respect to an election").

360. *Gissel Packing Co.*, 395 U.S. at 618.
361. For a comprehensive treatment of this issue, including discussion of how the Board might more effectively take economic dependence into consideration, see Michael M. Oswalt, *The Content of Coercion*, 52 U.C. DAVIS L. REV. 1585, 1600-09, 1662-63 (2019).
362. GETMAN, *supra* note 39, at 26, 28; *Union Busting*, BOILERMAKERS, <https://boilermakers.org/organizing/union-busting> [<https://perma.cc/E9D3-2CF4>] ("They will claim the union is only after money, and that the company doesn't need a third party to make sure workers are paid and treated fairly."); Furman, *How Zoomers Organized*, *supra* note 256 ("She started saying that we would have to be paying dues *for life* if we joined a union—even if you leave Chipotle.").
363. Olivia Heffernan & Jamie McCallum, *Letter to a New New Left (Or, How Unions Got Cool Again)*, LITERARY HUB (Apr. 10, 2023), <https://lithub.com/letter-to-a-new-new-left-or-how-unions-got-cool-again> [<https://perma.cc/VCA6-M2FF>] ("They're a critical part of the political and cultural zeitgeist too, especially for the newest Left.").

in front of one of Jeff Bezos's mansions.³⁶⁵ The 70,000-strong "Dripped Out Trade Unionists" X account shares the hottest union-branded fashions (a "This Barbie is in a trade union" bag got over 17,000 likes).³⁶⁶ #HotLaborSummer was a thing.³⁶⁷ In 2020, the Movement for Black Lives planned a Strike for Black Lives,³⁶⁸ a pairing of big social vision with big collective action that also showcased emergent acceptance of unions as vehicles for liberation.³⁶⁹ Jimmy Hoffa's old union bargains for pronouns.³⁷⁰ "Kids do not care about paying union dues," has become the

- 364. Steve Chiotakis, *LA's Strippers, Baristas and Teachers Party for Their Unions*, KCRW (Sep. 19, 2022), <https://www.kcrw.com/shows/greater-la/stories/unions> [https://perma.cc/QV96-F7P9].
- 365. *Id.*; Blake McMillan, *Workers Bring Black Friday Protest to Jeff Bezos' Manhattan Mansion*, INDYPENDENT (Nov. 27, 2022), <https://indypendent.org/2022/11/workers-bring-black-friday-protest-to-jeff-bezos-manhattan-mansion/> [perma.cc/QM7L-GQAL].
- 366. Dripped Out Trade Unionists (@UnionDrip), X (formerly TWITTER) (Oct. 9, 2023, at 7:09 AM), (reposted from Eleanor Penny, @eleanorkpenny, <https://x.com/eleanorkpenny/status/1711337964926542083> [https://perma.cc/W648-7DEZ]).
- 367. THE POLITICAL SCENE PODCAST: *The Historic Battles of "Hot Labor Summer"* (The New Yorker, July 27, 2023), <https://www.newyorker.com/podcast/political-scene/the-historic-battles-of-hot-labor-summer> [https://perma.cc/SNZ8-SSVF].
- 368. Jacob Bogage, *Thousands of U.S. Workers Walk Out in 'Strike for Black Lives,'* WASH. POST. (July 20, 2020) ("Organizers... called on businesses to 'dismantle racism, white supremacy, and economic exploitation' and ensure access to union organizing...."), <https://www.washingtonpost.com/business/2020/07/20/strike-for-black-lives/>.
- 369. See Heffernan & McCallum, *supra* note 363 ("[T]he US working class is disproportionately Black and Brown, and includes poor workers who are also queer, and non-binary. Labor, it was soon realized, spoke up for the socially and culturally marginalized.").
- 370. See Simon Rowe, *Teamsters' Non-Discrimination Contract Proposal Could Help Transgender UPS Workers*, FIGHT BACK! NEWS (July 1, 2023), <https://fightbacknews.org/articles/teamsters-non-discrimination-contract-proposal-could-help-transgender-ups-workers> [https://perma.cc/S393-DCRW]; see also Jim Grossfeld, *Union and Queer*, AM. PROSPECT (Sep. 4, 2023), <https://prospect.org/2023/09/04/2023-09-04-union-and-queer/> [https://perma.cc/Z8WV-4GVD] ("[T]he relationship the LGBTQ+ community had built with the Teamsters was crucial to defeating the Briggs Amendment—a proposition... in 1978 that would have barred gays and lesbians from working in the state's public schools.").

new management lament.³⁷¹ “Their Netflix costs more. They think it’s a hell of a deal.”³⁷²

Bespoke perspectives can still have persuasive force, but the networked nature of the workforce mandates a messaging sophistication that off-the-rack supervisors who hope to curtail unionization may not possess. An oddly halting conversation between an employee and manager at one store led the employee to assume the manager was using “some tactic the union-busting experts had taught” her.³⁷³ In fact, the manager had accidentally left her question sheet with the previous barista who, predictably, shared it.³⁷⁴ Once passed around, bullets like, “Add a personal story here,” or “Help [a] barista set up a benefit they showed interest in,” became on-ramps for baristas to set managers up for embarrassing—or, depending on one’s perspective, empowering—discussions about perks workers were “*not* eligible for.”³⁷⁵

Similarly, as managers repeatedly used an ill-considered line about the “[v]enti cup of benefits” Starbucks would have to spill “[t]o make room for more” in collective bargaining, workers came prepared with repeated zingers:³⁷⁶

- Nye, in Hopewell, New Jersey: “Are you saying you’ll take away my benefits?”³⁷⁷ (The response: “No, of course not,” before immediately moving on.)³⁷⁸

371. Julia Rock, *Fear and Loathing Among the Union Busters*, LEVER (Jan. 31, 2023), <https://www.levernews.com/fear-and-loathing-among-the-union-busters/> [<https://perma.cc/P78Q-CAUL>].

372. *Id.*

373. Sara Mughal, ‘Add Personal Story Here’: Starbucks Anti-Union One-on-Ones Fall Flat, LAB. NOTES (Apr. 20, 2022) [hereinafter Mughal, *Add Personal Story Here*], <https://labornotes.org/2022/04/add-personal-story-here-starbucks-anti-union-one-ones-fall-flat> [<https://perma.cc/MU4K-X3PL>].

374. *Id.*

375. *Id.*

376. *Id.*; see also *id.* (“Corporate had sprung the one-on-ones on us with little notice, likely hoping we wouldn’t have time to prepare for them They didn’t take into account the months of long hours we’ve worked together day after day [T]he resourcefulness and teamwork I’ve seen in my co-workers have been truly staggering.”).

377. *Id.*

378. *Id.*

- Shayla Swain, in Pennington, New Jersey: “If a drink doesn’t fit in a venti cup, you put it in a trenta cup.”³⁷⁹

“We were prepared for the one-on-ones,” said Paul, who replied to a manager’s introductory “How are you?” with: “Pretty good. Everyone’s feeling strong about unionizing.”³⁸⁰

2. Keepin’ it Real with Generation Z

Predictably, employers are being counseled to adapt *Gissel*’s freedoms to these generational realities, particularly a world where unionization is “a goal in itself” favored “as a matter of principle.”³⁸¹ The call, delivered by lawyers and consultants, at trade shows and in private, is for a rhetorical “paradigm shift”³⁸² roughly summarized by the old saw—if you can’t beat ‘em, join ‘em. While it makes sense to know one’s audience, in this case the “them” are just young people depicted as ego-fragile do-gooders mollified by praise and sublimation. The caricature has ensured that the shift has proceeded in awkward (and sometimes self-humiliating) fits and starts.

Instructive of the new model was the October 2022 panel “The Evolving World of Labor Relations: An Organizing Re-Union,” at the National Restaurant Association’s legal convention, where Laura Pierson-

379. Eidelberg, *Starbucks Baristas*, *supra* note 295. It is not entirely clear whether Swain used this line in the moment or passed it along to others—including the press—after the fact. *See id.*

380. Mughal, *Add Personal Story Here*, *supra* note 373.

381. Noam Scheiber, *Taking On Starbucks, Inspired by Bernie Sanders*, N.Y. TIMES (Jan. 14, 2022), <https://www.nytimes.com/2022/01/14/business/economy/starbucks-union.html>.

382. Janette Levey, *Starbucks ‘Memphis 7’ Ruling Shows Retaliation Is a Bad Idea*, LAW360 (Sep. 21, 2023), <https://www.law360.com/employment-authority/articles/1720959/starbucks-memphis-7-ruling-shows-retaliation-is-a-bad-idea>; *see also* Daniel Johns, *How Cos. Can Avoid Sinking in the Union Organizing Storm*, LAW360 (Feb. 7, 2023), <https://www.law360.com/articles/1571775/how-cos-can-avoid-sinking-in-the-union-organizing-storm> (“[R]evisit union organizing campaign messaging.... In particular, pay attention to how to effectively speak to younger, Gen Z employees, many of whom may have an interest in unions beyond just what unions may do to increase their wages and benefits.”); Campbell, *Independent Unions Grew*, *supra* note 275 (“You as an employer have to pivot on your message, and it’s a delicate balance because you’re dealing with people working there that are also leaders of the union movement.”).

Scheinberg, principal at prominent management firm Jackson Lewis, revealed that the “best” union avoidance “lessons” had recently been exposed by interactions with her eighteen-year-old son. Head pats, she explained, are key:

[T]he most important thing I don’t want you to do is go negative.... You have this trophy generation that wants everything light and fluffy. You need to change the mindset to the fact that you are lucky to have them come to work. You are so lucky. Thank you for coming to work today.... That’s the way they want to feel, that’s the way they need to be addressed.³⁸³

Taken up at the same meeting were anxieties surrounding today’s porous boundaries between work and political issues, typified by Whole Foods’s fear that pandemic-era BLM masks were a Trojan horse for unionization.³⁸⁴ Another Jackson Lewis lawyer, Felice Ekelman, noted that while “employee speech c[a]n’t reasonably—or legally—be stamped out completely... it could be controlled” by socially conscious “activities [that] might make them less likely to unionize.”³⁸⁵ Extant investor interest in “environmental, social, and corporate governance” (“ESG”) practices, for example, could “double-count” as union avoidance where workers are assigned to “sustainability” or “community” committees and given justice-oriented tasks to blow off activist steam.³⁸⁶

The context for such performances is often internal corporate “affinity” or “resource” groups, which have risen by 35% since 2020.³⁸⁷ Union avoidance consultants increasingly recommend the groups as a forum in which managers can most naturally adopt the liberatory language and issues thought to appeal to younger workers.³⁸⁸ The “Black Empowerment Network” (“BEN”), an “Amazon and AWS employee-led

383. Rock, *supra* note 371.

384. *Id.*; see also Josh Eidelson, *Biden Lawyer Battles Whole Foods Over Black Lives Matter Masks*, BLOOMBERG (Aug. 15, 2022), <https://www.bloomberg.com/news/features/2022-08-15/biden-lawyer-battles-whole-foods-over-black-lives-matter-masks>.

385. Rock, *supra* note 371.

386. *Id.*

387. Lee Fang, *The Evolution of Union Busting: Breaking Unions with the Language of Diversity and Social Justice*, INTERCEPT (June 7, 2022), <https://theintercept.com/2022/06/07/union-busting-tactics-diversity>.

388. *Id.*

affinity group,” uses “philanthropy” (e.g., “reading to elementary school students”), “Employee Development” (e.g., “expos[ing] our members to … amazing employee growth opportunities”), and “Employee engagement” (e.g., “networking events”) to “represent[] the voices and concerns of Black Amazonians,” specifically in “Amazon’s response to social injustices that impact [Black] communities.”³⁸⁹ BEN also “partner[s] with Glamazon—the Amazon LGBTQIA+ employee affinity group—during Pride Month and Transgender Awareness Week.”³⁹⁰

Small groups’ potential for labor suppression is evident historically.³⁹¹ A modern example emerged during the UAW’s 2023 negotiations with the “Big 3” automakers, when Stellantis’s Diversity and Inclusion executives tapped its 12 “Business Resource Groups” for replacement work at struck-parts facilities.³⁹² Union and nonunion members of Middle Eastern Employees Together (“MEET”), Asians Connected Together (“ACT”), First Nations, Stellantis African American Network Diaspora (“STAAND”), and others were urged to “pick a specific day of the week/weekend to volunteer as a team.”³⁹³ (They chose October 13, for Working Parents Network, apparently.)³⁹⁴

That stated, the impact of corporate America’s top-down, relationally inclusive turn is unclear. Deriding twenty-first-century unionism as out of step with a company’s own equitable values can come off as inauthentic—like tech firm Mapbox’s accusations of “xenophobia” where a union had previously opposed offshoring.³⁹⁵ Or the corporate tactics are just weird,

389. Life at AWS Team, *How the Black Employee Network Empowers Black Employees to Thrive at Amazon and AWS*, AWS (Jan. 31, 2023), <https://aws.amazon.com/careers/life-at-aws-How-the-Black-Employee-Network-empowers-Black-employees-to-thrive-at-Amazon-and-AWS/> [https://perma.cc/A2NE-VUCT].

390. *Id.*

391. For an overview of this history and its nuances in practice, see Mark Barenberg, *Democracy and Domination in the Law of Workplace Cooperation: From Bureaucratic to Flexible Production*, 94 COLUM. L. REV. 753, 825-79 (1994).

392. Daniel Boguslaw, *Stellantis Diversity Groups Mobilize to Provide Scab Labor at Auto Parts Plants*, INTERCEPT (Oct. 10, 2023), <https://theintercept.com/2023/10/10/uaw-auto-strike-stellantis/>.

393. *Id.*

394. *Id.*

395. Fang, *supra* note 387. At one of the first Starbucks bargaining sessions, company lawyer Alan Model quipped that in scheduling future sessions the

like upscale vegan wholesaler No Evil Foods's warning to never "trust a union that represents meat."³⁹⁶

Other attempts are offensive. Black Amazon warehouse workers have not missed BEN's connotations, namely, the racist rice-package image of "Uncle Ben," long linked to "racist myths of submissive and cheerful enslaved people."³⁹⁷ CEO Howard Schultz compared Starbucks's benefits to resource sharing by Holocaust prisoners: "So much of that story is threaded into what we've tried to do at Starbucks—is share our blanket."³⁹⁸

Moreover, while employers may legally bar workers from speaking during presentations and meetings,³⁹⁹ muzzling is so obviously inconsistent with in-house allyship that the new ethic won't allow it. As Ekelman reminded: "[Y]ou should be meeting with your employees on a regular basis to talk about things happening in your organization, so that if and when you need to . . . talk about third parties . . . the captive audience speech is not weird."⁴⁰⁰ But, she added to laughter, "[Y]ou don't have to call it a captive audience speech."⁴⁰¹

Yet, when talk regularly goes two ways, especially where managerial solicitations for solidarity with supervisors beg for pointed replies, vulnerabilities arise.⁴⁰² Questions by undecided JFK8 voters like, "Why won't you let someone from the union speak up about what's going on?"

groups would want to avoid "giv[ing] up their Saturdays." Baristas work Saturdays. Eidelson, *Starbucks Baristas*, *supra* note 295 (noting that workers "marveled at the gulf between them and the company").

396. David Dayen, *Anatomy of an Anti-Union Meeting*, AM. PROSPECT (Aug. 2, 2021), <https://prospect.org/labor/anatomy-of-an-anti-union-meeting/> [<https://perma.cc/52PG-HTRS>].
397. Lee et al., *supra* note 225, at 522 n.16.
398. Ahiza García-Hodges, *Former Starbucks CEO Uses Holocaust Analogy to Describe Coffee Company's Mission*, NBC (Nov. 10, 2021), <https://www.nbcnews.com/business/business-news/former-starbucks-ceo-uses-holocaust-analogy-describe-coffee-companys-m-rcna5170> [<https://perma.cc/5GHL-RGD5>].
399. See F.W. Woolworth Co., 251 NLRB 1111, 1113 (1980).
400. Rock, *supra* note 371.
401. *Id.*
402. See Lazare, *supra* note 197 ("[We told people:] 'If you're invited into a captive audience meeting, talk back.' We always had someone in there.").

were, in retrospect, an ominous sign for the company.⁴⁰³ Then came the active rebuttals from union supporters, who were, unsurprisingly, gradually disinited.⁴⁰⁴ But that “just enraged everybody.”⁴⁰⁵

At Starbucks, meetings were styled as “listening sessions” where stores closed early so managers and baristas could sit in a circle and talk, with pizza.⁴⁰⁶ The informality suited activists, who often seemed more comfortable with the nuances of law and organizing than the facilitators. At one store, the manager in charge of the company’s “Women’s Alliance Network” noted that shift sharing with nonunion employees would have to end if the store organized.⁴⁰⁷ After a barista said that she thought a state law allowed for it, the Regional Manager pivoted to ask how collective bargaining would affect their colleagues’ experience “working in an environment where their salary is different.”⁴⁰⁸ “Well, I’d think that would just spark interest in them unionizing their store too,” was the response.⁴⁰⁹

Infantilizing rhetorical strategies were also ripe for exposure or cunning reversals. Managers, for example, had seemingly been coached to “mirror” workers’ sentiments, a rhetorical softening tool popularized by couples’ counselors and the parents of three-year-olds.⁴¹⁰ “[I am] worried about all the pros and cons [I am] hearing,” went a representative reflection.⁴¹¹ “I think I missed the cons,” said barista Sara Mughal, exposing

403. *Id.*

404. Jamieson, *How Amazon Workers Beat*, *supra* note 249.

405. *Id.*

406. Sara Mughal, *How We Turned the Tables on Starbucks Union-Busters*, LAB. NOTES (Feb. 17, 2022), <https://labornotes.org/2022/02/how-we-turned-tables-starbucks-union-busters> [<https://perma.cc/V465-3M56>].

407. *Id.*

408. *Id.*

409. *Id.*

410. *Id.*; see, e.g., HARVILLE HENDRIX, *GETTING THE LOVE YOU WANT: A GUIDE FOR COUPLES* xxiv-xxv (20th anniversary ed. 2008) (“When you mirror each other, you both get to experience what it is like to have someone pay close attention to you, understand exactly what you have to say, and honor your uniqueness.”); BECKY KENNEDY, *GOOD INSIDE: A GUIDE TO BECOMING THE PARENT YOU WANT TO BE* 143-44 (2022) (“When we verbally acknowledge what our child is doing in the moment, it’s as if we’re saying, ‘I see you: you are a real person with real wants and thoughts and feelings.’”).

411. Mughal, *supra* note 406.

the move. “[W]hat were those again?”⁴¹² Another worker elaborated on a “pro”: “Since we all decided to do this, we all have more confidence and there’s a lot of hope in the store. We don’t even feel like a team, we feel like a family. I come in and now I’m happy to be here.”⁴¹³ The meeting concluded with tears.⁴¹⁴

Perhaps unsurprisingly, the most recent reporting suggests that many employers, unhappy with the unfolding consequences of real talk—and real activism—in workplaces activated by disorganized law, now find themselves on the hunt for a *new*, “new paradigm” for workplace speech.⁴¹⁵

C. Disorganized Labor Law: Latent Legal Powers and Roads Rarely Taken

Beyond broad categories like access and speech, independent unions have disorganized other, narrower legal principles. Jessica Garrick has studied “the question of how latent legal resources and possibilities become activated,”⁴¹⁶ and the *bricolage* style may be one answer, as independent campaigns have drawn surprising value out of seemingly inert or underutilized procedural and doctrinal provisions. Some examples have already been discussed. The NLRA has always let unions file for elections with 30% support;⁴¹⁷ filing at the minimum was seen as fool’s

412. *Id.*

413. *Id.*

414. *Id.*

415. See Chip Cutter & Lindsay Ellis, *The Boss Has Had It with All the Office Activists*, WALL ST. J. (Aug. 28, 2025), <https://www.wsj.com/lifestyle/workplace/workplace-employee-activism-company-response-7ef095f6?> (describing “a more adversarial employer-employee dynamic in which bosses are far less concerned with accommodating their workers’ political and personal views”).

416. See Jessica Garrick, *Beyond Legal Ossification: The NLRB and Endogenous Legal Mobilization*, 29 MOBILIZATION 333, 346 (2024) (citing NLRB staffing and public outreach innovations during periods of austerity as an example).

417. 29 U.S.C. § 159(e) (2024).

gold. Salting has long been legal;⁴¹⁸ it was assumed to require some training and oversight.⁴¹⁹

Two other cases of unlocked potential deserve attention: the single-location electoral presumption and the reinstatement remedy.

1. Single-Location Presumptions

There is a decades-long legal “presumption” that workers at a single store or worksite location are an “appropriate” voting unit.⁴²⁰ Though these smaller, compact bargaining units are the easiest to win,⁴²¹ the modern “strategic” focus on scale and geographic or sector densities tends not to see the presumption as all that useful.⁴²²

But an isolated win in a surprising location may be worth more than the sum of its ballots. The first organized Starbucks, Chipotle, and Amazon sites made national news, and the temporal clustering—what some have called “momentum organizing”—is probably not random.⁴²³ One newly represented location may increase the likelihood of other campaigns arising close by. Rural Hadley, Massachusetts, is not known as a union

418. NLRB v. Town & Country Elec. Inc., 516 U.S. 85 (1995).

419. In fact, free agent salting is particularly well suited for disadvantageous recent precedent, which removed employer liability for firing salts exhibiting “conduct inconsistent with a genuine interest in employment.” Toering Elec. Co., 351 NLRB 255, 233-34 (2007). The free agent version neutralizes that principle since such salts *genuinely* need the job, simply to pay rent. Organizing coworkers is an inextricable value they happen to carry with them. *See, e.g.*, Matt Glynn, *Buffalo in Spotlight as Starbucks Labor Practices Scrutinized*, BUFFALO NEWS (Mar. 29, 2023), https://buffalonews.com/news/local/business/article_29c9ce1e-ce35-11ed-88ae-3fcfb10421f7.html (quoting Jaz Brisack: “I would try to organize any job I ever had . . .”); Eidelson, *Undercover Organizers*, *supra* note 255 (“I don’t think there’s any company you couldn’t salt.”). That’s not duplicity—it’s service with a smile that covers hope instead of resignation. Cf. ARLIE RUSSELL HOCHSCHILD, THE MANAGED HEART: COMMERCIALIZATION OF HUMAN FEELING 6-7 (1983) (“Seeming to ‘love the job’ becomes part of the job.”).

420. Haag Drug Co., 169 NLRB 877, 877 (1968) (“[A] single store in a retail chain, like single locations in multilocation enterprises in other industries, is *presumptively* an appropriate unit for bargaining.”).

421. Combs, *supra* note 155.

422. *See infra* notes 52-55.

423. Brooks, *supra* note 14.

hotbed, but the first unionized Trader Joe's, Barnes and Noble, and Michaels popped up in *the same strip mall*.⁴²⁴ "My dream is for every store in that plaza to be union," said "senior bookseller" Clark Daniel, eyeing Marshalls and Panera a few parking spots away.⁴²⁵ And while a power analysis would conclude that one win at a random Michaels doesn't matter when so many remain nonunionized, the recent past raises a question: What would it mean to have 11 hypothetical wins at the 11 real Michaels stores in New Hampshire?⁴²⁶ The answer might be genuine regional union density and genuine union bargaining power. As Howard Schultz reassured—but possibly alarmed—investors on a May 2022 earnings call, "This movement is not related to any specific company."⁴²⁷

2. Reinstatement, Revisited

The Board has 3 basic tools for remedying illegal firings: notice postings, back pay, and reinstatement.⁴²⁸ All are designed to "restore the wronged to the position [s]he would have occupied"⁴²⁹ had the law been followed. However, only reinstatement helps repair damage done to the organizing drive. Win rates jump 13% when the wrongfully fired get their shifts back prior to union election day.⁴³⁰ The "very presence of the

424. Diti Kohli, *The Little Strip Mall That Could: How Hadley Became the Center of the Modern-Day Labor Movement*, BOS. GLOBE (Sep. 7, 2023), <https://www.bostonglobe.com/2023/11/11/business/labor-movement-strikes-picket-lines-massachusetts/>.

425. *Id.*

426. *Find a Store*, MICHAELS, <https://www.michaels.com/store-locator> [<https://perma.cc/6FRR-8C93>]

427. Motley Fool Transcribing, *Starbucks (SBUX) Q2 2022 Earnings Call Transcript*, MOTLEY FOOL (May 4, 2022), <https://www.fool.com/earnings/call-transcripts/2022/05/04/starbucks-sbux-q2-2022-earnings-call-transcript> [<https://perma.cc/Q8BB-54F6>].

428. See, e.g., *Johnston Fire Servs., LLC*, 371 NLRB No. 56, 2022 WL 280229 (Jan. 27, 2022) (ordering, and describing, the three remedies along with some of their nuances).

429. *Town & Country Mfg. Co.*, 136 NLRB 1022, 1029 (1962).

430. Benjamin I. Sachs, *Law, Organizing, and Status Quo Vulnerability*, 96 TEX. L. REV. 351, 371-72 (2017) (citing Kate Bronfenbrenner, *Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Union Organizing* 73-74 tbls. 8-9 (2000), <http://ecommons.cornell.edu/server/api/core/bitstreams/>

discriminatee at [her] old job," a Board Member has noted, "reassures others that that law protects their right to engage in union activity and that, if their rights are infringed, the Board is able to come to their aid."⁴³¹ Win rates drop by 19% when discharged activists are not heard from again.⁴³²

Yet, hardly any workers are willing to go back.⁴³³ Since 2016, 76% of workers offered reinstatement declined it,⁴³⁴ an improvement from the early 2000s when nearly 9 in 10 illegally fired employees opted to move on.⁴³⁵ And who, really, can blame them, the sheer awkwardness of a homecoming exceeded only by the offending supervisor's incandescent resentment and, probably, rage.⁴³⁶ As a practical matter, everyone has bills, and most must move to a new job, sometimes in a new neighborhood, city, or even state.⁴³⁷ And if reinstatement boosts collectives, it may

e433b22a-cab8-438b-a779-761d5892acdd/content
[<https://perma.cc/WM6M-ARZP>].

431. *A.P.R.A. Fuel Oil Buyers Grp., Inc.*, 320 NLRB 408, 418 (1995) (Browning, Member, dissenting in part).
432. Sachs, *supra* note 430.
433. Brent Garren, *When the Solution Is the Problem: NLRB Remedies and Organizing Drives*, 51 LAB. L.J. 76, 79 (June 2000) ("In reality, the offer of reinstatement is often worthless [because] few workers actually accept [it]").
434. *Reinstatement Offers*, NLRB, <https://www.nlrb.gov/reports/nlrb-case-activity-reports/unfair-labor-practice-cases/remedies-achieved/reinstatement> [<https://perma.cc/8SAE-LZTU>] (reporting 15,328 offers and 11,627 declinations between 2016 and 2023).
435. See Kate Bronfenbrenner, *Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Union Organizing* 48-49 (2000) (reporting that "the NLRB reinstated discharged workers before the election in 12 percent of the campaigns in which employers discharged workers for union activities"). Older studies suggest that rates plummet the longer the discriminatee must wait for a final litigation judgment, an incentive for seemingly endless employer appeals. See Garren, *supra* note 433, at 80 (collecting studies finding rates to vary from 93% to 5% depending on whether the worker was offered reinstatement within 2 weeks—presumably by the employer informally—or after 6 months, by the Board).
436. See Garren, *supra* note 433, at 80 ("Employees cite fear of company retaliation as the largest reason for not accepting a reinstatement offer.").
437. See Clyde Summers, *Effective Remedies for Employment Rights: Preliminary Guidelines and Proposals*, 141 U. PA. L. REV. 457, 477 (1992) (stating that because most discriminatees must find alternative employment,

enervate returnees, who sometimes report an emotional “scarr[ing]” that translates into, *I’m not trying that again*.⁴³⁸

Independent campaign activists seem interested only in the consciousness-affirming part, braving the challenges of a homecoming in service to the collective. That may be true especially, perhaps uniquely, at Starbucks, where reinstatement opportunities are honored, in both senses of the word. There discharges sit at the center of the countercampaign,⁴³⁹ with methods and targets seemingly selected for maximum shock value.⁴⁴⁰ While no worker ever wants to get fired, the most out-front activists are doing what they can to embrace the inevitability. “As soon as we filed our petition, I started preparing to get fired,” said Quinn Craig, a four-year

“[r]einstatement is apparently considered by most wrongfully discharged employees of no practical value”).

438. As Garren reports, *supra* note 433, at 80, a study by Elvis Stephens and Warren Chaney identified “a massive change in attitude among reinstated workers” characterized by acute fear of further discipline and, consequently, disinterest in further organizing. *See* Elvis Stephens & Warren Chaney, *A Study of the Reinstatement Remedy Under the NLRA*, 25 LAB. L.J. 31, 35 (1974).
439. SWU asserted that almost 200 Starbucks workers had been unlawfully discharged as a result of their participation in union activities. As of fall 2023, judges and the NLRB had ordered 28 reinstated, with dozens of other baristas’ charges pending. Steven Greenhouse, *Will Starbucks’ Union-Busting Stifle a Union Rebirth in the US?*, GUARDIAN (Aug. 28, 2023) [hereinafter Greenhouse, *Will Starbucks’ Union-Busting*], <https://www.theguardian.com/us-news/2023/aug/28/will-starbucks-union-busting-stifle-a-union-rebirth-in-the-us> [https://perma.cc/HT4D-4CMS]; *see also* Jenny Brown, *How to Get Un-Fired*, LAB. NOTES (Feb. 16, 2023) [hereinafter Brown, *How to Get Un-Fired*], <https://labornotes.org/2023/02/how-get-un-fired> [https://perma.cc/C9QJ-GX4B] (describing “a firing strategy”).
440. Alicia Flores, accused of sexual harassment for texting a coworker a picture of a Lana Del Rey album cover, was fired with a voicemail message that concluded, “Thank you, have a nice day.” Michael Sainato, *This Is Psychological Warfare’: Starbucks Workers Allege Anti-Union Firings*, GUARDIAN (Sep. 4, 2023), <https://www.theguardian.com/us-news/2023/sep/04/starbucks-labor-union-retaliation-firings> [https://perma.cc/E39K-NTB6]. Quinn Craig, a lead organizer, was fired during the union’s one-year-anniversary celebration. Greenhouse, *Will Starbucks’ Union-Busting*, *supra* note 439. Jaysin Saxton testified before Congress about unlawful firings and was discharged the following month. Caleb Dickey, *NLRB Attys Drop Starbucks Suit After Worker’s Rehiring*, LAW360 (June 22, 2023), <https://www.law360.com/employment-authority/articles/1691527/nlrb-attys-drop-starbucks-suit-after-worker-s-rehiring>.

Starbucks veteran in San Antonio who pulled shots in a “Scary Union Organizer” hat.⁴⁴¹ “I knew it was coming.”⁴⁴² Craig and others push aggressively to get back to their colleagues,⁴⁴³ and the Board has responded, often with federal injunction requests that can cut through litigation delays⁴⁴⁴ that are otherwise endemic.⁴⁴⁵ When it works, reinstatement is not just accepted, it’s acclaimed on social media hailing the “[f]irst day back from a year long coffee break”⁴⁴⁶ or “that moment when your boss messes up SO bad that they have to give u your job back . . . with backpay AND a promotion .”⁴⁴⁷

441. Greenhouse, *Will Starbucks’ Union-Busting*, *supra* note 439.

442. *Id.*

443. *Id.* Alicia Flores’s reaction is telling: “I’m going to get my job back. I know I’m going to get my job back, but this is psychological warfare. Starbucks doesn’t know what this is doing to people’s mental health . . .” Sainato, *supra* note 440. Austin Locke refused a settlement offer that moved him to a different store, having filed for reinstatement simultaneously with the Board and the New York City Department of Consumer and Worker Protection. Brown, *How to Get Un-Fired*, *supra* note 439.

444. See, e.g., Dickey, *supra* note 440 (“[NLRB] prosecutors dropped their bid to have a federal court order the reinstatement of a Starbucks worker . . . after the company offered to rehire him.”); see also Rock, *supra* note 371 (“[NLRB General Counsel] Jennifer Abruzzo warned audience members that if they fired workers for union organizing, the NLRB would not only reinstate the workers, but also seek full back pay and even public apology letters.”).

445. Since Board orders are not self-enforcing, appeals to federal court can lead even run-of-the-mill unfair labor practices to be litigated for years. For a sense of the embedded delays, recently exacerbated by a mix of skyrocketing filings and plummeting staffing, see *Performance and Accountability Report*, NLRB 67-69 (2023), <https://www.nlrb.gov/sites/default/files/attachments/pages/node-130/nlrb-fy2023-par-508.pdf> [<https://perma.cc/3R2C-63KU>] (stating that for fiscal year 2023, NLRB regions disposed of unfair-labor-practices charges in an average of 266 days, *prior to* appeals to the NLRB, the federal courts of appeal, and—potentially—the Supreme Court).

446. Michelle Eisen (@michelleeisen), X (formerly TWITTER) (Mar. 4, 2024, at 2:52 PM), <https://twitter.com/michelleeisen/status/1764740719124660423> [<https://perma.cc/6WHP-ETRN>].

447. Starbucks Workers United (@SBWorkersUnited), X (formerly TWITTER) (Jan. 29, 2024, at 4:47 PM), <https://twitter.com/SBWorkersUnited/status/1752086039706178024?s=20> [<https://perma.cc/Q3MR-P5AD>].

If reinstatement fails, or if injunctions are denied⁴⁴⁸ and the regular process drags on, discriminatees can often be found together, steeling themselves for the fight to return. It might be over mashed potatoes and lasagna, like the potluck held by the 12 (not a misprint) fired baristas in Buffalo following the historic inaugural victories.⁴⁴⁹ Howard Schultz and Starbucks's Board Chair Mellody Hobson had just been to the Senate.⁴⁵⁰ Sam Amato, in his mid-30s and previously a 13-year employee, had sat feet from Hobson and planned to tell her about the sadness he felt away from a job he loved.⁴⁵¹ She left the room "before he had the chance."⁴⁵²

"I wonder how much they know about us?" he asked.⁴⁵³ "I think they know everything," said Victoria Conklin, who was bidding her time at Olive Garden.⁴⁵⁴ Many were testifying before an NLRB administrative law judge the following week.⁴⁵⁵ The NLRB regional attorneys warned Amato that even if he won, appeals would delay his return for at least a year, but he hoped testifying would "be therapeutic" in the interim.⁴⁵⁶ And after all, "This is the trial where I get my job back."⁴⁵⁷

Sometimes the restoration ethic can reverberate. On February 8, 2022, Starbucks fired Forentino Escobar, Em Worrell, Nabretta Hardin, Kylie Throckmorton, LaKota McGlawn, Beto Sanchez, and Nikki Taylor, a group of seven baristas who began organizing at ritualized "Taco Tuesday"

448. To this point, the Board has repeatedly tried, and failed, to win a nationwide injunction against Starbucks for illegal discharges. *See, e.g.*, Parker Purifoy, *NLRB Asks for Nationwide Injunction in Denver Starbucks Case*, BLOOMBERG L. (June 6, 2023), <https://news.bloomberglaw.com/daily-labor-report/nlrb-argues-for-nationwide-injunction-in-denver-starbucks-case>; Robert Iafolla, *Starbucks Escapes Nationwide Ban on Firing Union Supporters*, BLOOMBERG L. (Feb. 23, 2023), <https://news.bloomberglaw.com/daily-labor-report/starbucks-escapes-nationwide-ban-on-terminating-union-supporters>.

449. Jaffe, *Lexi Rizzo Fought*, *supra* note 187.

450. *Id.*

451. *Id.*

452. *Id.*

453. *Id.*

454. *Id.* ("The NLRA was also calling for her to be reinstated.").

455. *Id.*

456. *Id.*

457. *Id.*

hangouts at a Memphis Mexican restaurant.⁴⁵⁸ “I cried in my car a little bit . . . I just felt really confused because I knew I was a good employee,” recalled Worrell.⁴⁵⁹ But they and the others did not think being ousted from their jobs was a reason to stop talking. “They messed with the wrong people,” Taylor reflected.⁴⁶⁰ “All we know is fight . . . In my mind, I realized I was going to be Starbucks’ biggest nightmare.”⁴⁶¹

Jobless, they certainly had more time to strategize, “hanging out every day because we had nothing else to do,” as Hardin described it.⁴⁶² The togetherness soon became formalized when the audacity of firing an organizing committee en masse—quickly dubbed the “Memphis Seven”—caught national attention, leading to speaking invitations at major events like South by Southwest and a solidarity festival in Belgium.⁴⁶³ Soon, “Reinstate the Memphis 7” became an activist tagline spotted on strike signs and in demands made to Starbucks supervisors at other stores.⁴⁶⁴ At home, the Poplar-Highland Starbucks location voted for SWU 11-3 that June, and a district court ordered the Memphis Seven back to work 2 months later.⁴⁶⁵ Six of the Seven accepted.⁴⁶⁶

“It backfired on them completely,” Sanchez reflected.⁴⁶⁷ “Starbucks was hoping to use our firings as a way to squash the fire . . . but instead it

458. Brittany Brown, *A Year Later, Members of the Memphis Seven Inspire a New Generation of Workers*, MLK50 (Jan. 17, 2023) [hereinafter Brown, *A Year Later*], <https://mlk50.com/2023/01/17/a-year-later-members-of-the-memphis-seven-inspire-a-new-generation-of-workers> [https://perma.cc/S6WN-5MGG].

459. *Id.*

460. *Id.*

461. *Id.*

462. *Id.*

463. *Id.*

464. Brown, *How to Get Un-fired*, *supra* note 439.

465. Brown, *A Year Later*, *supra* note 458.

466. *Id.* at box, The Memphis 7: A Timeline. Some sources suggest that all 7 returned. See, e.g., Alicia Davidson, *‘It’s a Great Day for Justice,’: Last of the Memphis Starbucks 7 Return to Work*, DAILY MEMPHIAN (Oct. 22, 2022), <https://dailymemphian.com/article/31754/memphis-starbucks-7-return-to-work> (“The last of the Memphis Starbucks 7 has been reinstated at the location on Poplar Avenue and Prescott Street . . .”).

467. Brown, *How to Get Un-fired*, *supra* note 439.

fired people up to organize even more.⁴⁶⁸ Post-reinstatement, Nabretta Hardin confirmed that while relations at the Memphis Starbucks branch are still tense, “now it’s easier to organize her coworkers.”⁴⁶⁹

IV. A DISORGANIZATION AGENDA

How might interested actors and institutions support *bricolage* as an emerging style of workplace organizing? This final Part explores that question, though with a level-setting caveat. *Bricolage* is not a path to union revitalization, at least not in the sense of a return to the membership rates of the 1950s or even the 1980s. It is a “relationship” with the tools at hand,⁴⁷⁰ and here the primary tool—one that preserves other tools—is law. But the NLRA is weak. Absent an unlikely statutory amendment, *bricolage*’s unionization potential is fundamentally limited.

Yet this is itself consistent with the best-of-what’s-around impulse. As the tech-futurist Sherry Turkle has written, *bricolage* “is not a stage in a progression to a superior form.”⁴⁷¹ It’s the optimistic response to a bowl of lemons. This final Part is about getting a little more sugar in the cabinet. In that spirit, I make some aspirational suggestions.

A. The Board

1. Prioritizing Promises and Company Unions

In a broad sense, the mere perception that government forces exist to help, rather than hinder, organizing adds at least a bit of weight to the “let’s do it” side of the ledger for workers considering open defiance of their managers on their own. Presidents on picket lines and self-

468. *Id.* For the Memphis 7, the effect was probably greater. As Hardin recounted, “The things we went through, we all went through them together. That just brought us even closer . . . Those workers are like my family.” Brown, *A Year Later*, *supra* note 458.

469. Brown, *A Year Later*, *supra* note 458.

470. TURKLE, *supra* note 111, at 51 (“Bricoleurs approach problem-solving by entering into a relationship with their work materials that has more the flavor of a conversation than a monologue.”).

471. *Id.* at 57.

proclaimed “proworker” NLRB general counsels pushing proposals that get business allies in a tizzy⁴⁷² all help the zeitgeist. Word gets around.⁴⁷³

On the ground, the Board may want to reexamine outreach and prosecutorial priorities to better align with the most modern talking points. If managers increasingly believe, or are counseled to believe, that praise and distraction best mollify the modern worker, the ratio of coercive threats to coercive promises and benefits may start to shift. “If you don’t stop, things will be bad for you,” may give way to, “If you *do* stop, things will be *great* for you.” Both are illegal,⁴⁷⁴ both may stunt campaigns, but the latter may feel less intuitively illegal to employees—and to managers—creating a multiplier effect. Absent the right insight, who, moreover, is likely to file an unfair labor practice after early organizing leads to a raise?

That the fast rise of affinity groups has coincided with new theories of identity formation as activist enervation is probably another storm warning the NLRB should heed. As noted, the use of subgroups for immobilizing purposes is older than the Act itself.⁴⁷⁵ While early incarnations were more expressly designed to “deal[] with” employment terms and conditions—and thus more expressly illegal—the modern,

- 472. Lauren Kaori Gurley, *The Lawyer Who Could Deliver on Biden’s Wish to Be the Most Pro-Union President*, WASH. POST (Oct. 17, 2022) [hereinafter Gurley, *The Lawyer*], <https://www.washingtonpost.com/business/2022/10/15/jennifer-abruzzo-union-biden-nlrb/>; Steven Greenhouse, *Too Radical or Not Radical Enough? US’s Top Labor Lawyer in the Spotlight*, GUARDIAN (Aug. 5, 2022), <https://www.theguardian.com/us-news/2022/aug/05/jennifer-abruzzo-nlrb-labor-lawyer-starbucks> [<https://perma.cc/W8WC-JLNN>] (“The US Chamber of Commerce has said Abruzzo has a ‘radical agenda hostile to employers,’ while Republicans… accuse her of… ‘unconscionable efforts.’”).
- 473. Gurley, *The Lawyer*, *supra* note 472 (“Chris Smalls said that the hardest part of unionizing was convincing his colleagues they had a right to organize, that there was an agency out there that would protect them . . .”).
- 474. For a comprehensive overview of the work and legal history of illegal promises of benefit, see Charles C. Jackson & Jeffrey S. Heller, *Promises and Grants of Benefits Under the NLRA*, 131 UNIV. PA. L. REV. 1 (1982).
- 475. As the NLRB has described, the proliferation of workplace committees motivated the passage of the NLRA’s earliest incarnation. See Electromation, Inc., 309 NLRB 990, 992-94 (1992) (“Early in his opening remarks Senator Wagner stated: . . . [T]he greatest obstacles to collective bargaining are employer-dominated unions, which have multiplied with amazing rapidity . . . Such a union makes a sham of equal bargaining power . . . [’]”).

identity-centric version of affinity groups sets a slippery slope.⁴⁷⁶ Already, groups meet regularly to discuss community, relationships, aspirations and frustrations. It is hardly difficult to imagine employers convening affinity groups to discuss a workplace-specific adaptation of those topics, then offering their own proposals for change that are subsequently debated, tweaked, and implemented:

Employer: Would you be interested in another day of service opportunity?

Employees: *Yes, but not on another Saturday—the customer service reps work then.*

Employer: It has to be Saturday. But what if the reps got an extra day of PTO?

Employees: *Sounds great.*

It also, as a practice, sounds like an unlawful company union.⁴⁷⁷

While a crackdown on illegal benefits and affinity groups would not offer all that much remedially on a case-by-case basis, the aggregate impact could be important. If the game is duplicity, calling illegal benefits “bribes” and illegal affinity groups “sweetheart unions” exposes the strategy. At Amazon, a Board settlement requiring the company to allow off-duty workers to organize in the parking lot, and on-duty workers to organize in the break room—which is to say, follow existing law—was credited as a meaningful factor in the JFK8 victory.⁴⁷⁸

- 476. In relevant part, Section 8(a)(2) makes it an unfair labor practice for an employer to “dominate or interfere with . . . any labor organization,” defined as “any organization of any kind” or even a “committee . . . which exists for the purpose, in whole or in part, of dealing with employers concerning” working conditions. 42 U.S.C. § 158(a)(2) (2024). The Board’s analysis of those terms is explained in Electromation, Inc., 309 NLRB at 994-97.
- 477. Unlawful “dealing” with an employee committee generally requires a “pattern or practice” and not just “isolated instances.” Vons Grocery Co., 320 NLRB 53, 53 (1995).
- 478. *See* Brooks, *supra* note 14 (“Suddenly, ALU organizers could talk to their coworkers outside *and inside* the warehouse.”). The settlement (which is actually narrower than described in some press reports), *see id.*, can be found at: Amazon.com Services, LLC (NLRB Dec. 22, 2021) (settlement agreement), <https://s3.documentcloud.org/documents/21169264/amazon-nlrb-agreement-december-2021.pdf> [<https://perma.cc/HTD2-SXPG>].

2. Countering Bad-Faith Bargaining with a Multiplace, Multistate Injunction Presumption

Unfortunately, there are other areas where the law itself leads nowhere. As of this writing, not a single independent organizing effort has secured a collective bargaining agreement. Theoretically, employers like Chipotle, Trader Joe's, and others can claim labor law contemplates the fruitlessness. Section 8(a)(5), the Act's bargaining provision, requires "good faith" negotiation but not agreement, on anything, potentially ever.⁴⁷⁹ The remedy for bad faith is an order for good faith.⁴⁸⁰ In general, only 48% of newly certified unions have a contract within their first year,⁴⁸¹ and 30% do not have a contract within 3 years.⁴⁸²

While the Biden NLRB made the utter most of the options at its disposal, even the most creative and aggressive use of § 8(a)(5)'s remedial tools are no match for a law that does not impose contractual terms. So the Board can, and has, mandated bargaining schedules and progress reports, billed employers for unions' wasted expenses and their negotiators' time,⁴⁸³ and required notices of bad faith to be mailed and read to employees, printed in newspapers, and signed by the CEO.⁴⁸⁴ None of these

479. H.K. Porter Co. v. NLRB, 397 U.S. 99 (1970).

480. Case Note, *The Supreme Court, 1969 Term: NLRB Remedial Power to Impose Contract Terms*, 84 HARV. L. REV. 202, 204 (1970) [hereinafter *NLRB Remedial Power*] ("The usual remedy for a violation of that duty is an order by the National Labor Relations Board that the offending party . . . bargain in good faith [H]owever, repeated orders to bargain may well prove unavailing.").

481. John Kallas, Dongwoo Park & Rachel Aleks, *Breaking the Deadlock: How Union and Employer Tactics Affect First Contract Achievement*, 54 INDUS. RELATIONS J. 223, 234-35 (2023).

482. Kate Bronfenbrenner, *No Holds Barred: The Intensification of Employer Opposition to Organizing* 22, ECON. POL'Y INST. (May 20, 2009), <https://files.epi.org/page/-/pdf/bp235.pdf> [<https://perma.cc/EY23-H6VE>].

483. Parker Purifoy, *Mandatory Bargaining Schedules Are Joining NLRB's Remedy Arsenal*, BLOOMBERG L. (Aug. 2, 2023), <https://news.bloomberglaw.com/daily-labor-report/mandatory-bargaining-schedules-are-joining-nlrbs-remedy-arsenal>.

484. Noah's Ark Processors, LLC, 372 NLRB No. 80, 2023 WL 3074926, at *6-13 (Apr. 20, 2023) (citing the remedial impact of a "warming wind of information").

options raises anxiety for an obdurate company like Starbucks.⁴⁸⁵ (When Howard Schultz testified before Congress that Starbucks “unequivocally . . . has not broken the law,” laughter broke out in the gallery.⁴⁸⁶) Repeated intransigence can bring contempt proceedings and fines, but only in court, years later.⁴⁸⁷

Precontract unions battered by “contumacious conduct”⁴⁸⁸ rarely last that long.⁴⁸⁹ Just ask the Medieval Times knights who unionized in 2022, struck to combat bad-faith bargaining in 2023, and—facing permanent replacement—dissolved in 2024.⁴⁹⁰

The on-paper solution for intransigence is an injunction under Section 10(j) of the Act, which lets the Board jump straight to federal court while

485. As Jaz Brisack put it, “Bargaining with Starbucks was by turns bizarre, absurd, and infuriating.” BRISACK, *supra* note 187, at 205.

486. Alina Selyukh & Andrea Hsu, *In Clash with Bernie Sanders, Starbucks’ Howard Schultz Insists He’s No Union Buster*, NPR (Mar. 29, 2023), <https://www.npr.org/2023/03/29/1166277326/starbucks-bernie-sanders-howard-schultz-union-hearing> [https://perma.cc/S4QA-9ZQT].

487. As long ago as 1960, the congressionally initiated *Cox Report* found the average time between a Board complaint and a court enforcement order was 871 days, which itself required a further federal proceeding if ignored. *NLRB Remedial Power*, *supra* note 480. Ten years later, a *Harvard Law Review* Case Note stated that the Board’s inability to adequately confront recidivists “had been noted with distress by Board members, Congress, and other observers.” *Id.*

488. *NLRB v. Neises Construction*, 62 F.4th 1040, 1047-50 (7th Cir. 2023) (affirming a \$192,400 contempt fine for failing to bargain after 5 years of litigation).

489. See TAIT, *supra* note 56, at 103-06 (describing an early-1980s Detroit fast-food campaign that resulted in a number of surprising electoral victories but, following turnover and years of litigation—including a 30-month challenge over a button—failed to achieve a single contract). Shep Searl’s recent reflection is instructive: “All these NLRB [bargaining] rulings against Starbucks are great to see But at our store there’s been such an attrition, and I think it’s turned a lot of us bitter and burnt out.” Bella DeVaan, *Red Cup Rebellion Redux: A Q&A with Starbucks Workers United*, INEQUALITY.ORG (Nov. 29, 2023), <https://inequality.org/article/red-cup-rebellion/> [https://perma.cc/VGD4-6W3W].

490. Dave Jamieson, *The Medieval Times Union Campaign Is Over*, HUFFPOST (Mar. 13, 2024), https://www.huffpost.com/entry/the-medieval-times-union-campaign-is-over_n_65d7bfaae4b0e4346d51d4ff [https://perma.cc/HA6M-YKAL].

the agency's regular procedures play out, either to force good-faith negotiations or to order immediate reinstatement of a discharged activist.⁴⁹¹ But the "straight to" court part averages 296 days, and, once there, speedbumps abound.⁴⁹² Ideally, judges rule on the briefs, but some require oral argument, others ask for witnesses,⁴⁹³ and a few have been receptive to Starbucks's insistence on the quagmire of full-blown discovery,⁴⁹⁴ including witness subpoenas.⁴⁹⁵ All told, district court proceedings add 108 days, on average, to the process.⁴⁹⁶

At the sprawling, multi-location corporations where much of independent organizing currently lives, the challenge is especially acute.

491. NAT'L LAB. RELATIONS BD., MEMORANDUM GC 10-07, EFFECTIVE SECTION 10(j) REMEDIES (2010), <https://www.nlrb.gov/guidance/memos-research/general-counsel-memos> [<https://perma.cc/U5Q4-B8B6>]; *see also* Smith v. Avanti Health Sys., 661 F.3d 1180, 1183-87 (9th Cir. 2011) (affirming a district court's grant of a 10(j) preliminary injunction against the employer's "continuing failure to bargain in good faith" and order to start bargaining).
492. Braden Campbell, *NLRB's 10(j) Injunction Pace Reflects Tight Staffing*, LAW360 (Apr. 18, 2023) [hereinafter Campbell, *10(j) Injunction Pace*], <https://www.law360.com/employment-authority/articles/1598503/print?section=employment-authority/labor>.
493. *Id.*
494. In 2022, district courts ordered discovery in 4 of 5 Starbucks Section 10(j) requests. Robert Iafolla, *Starbucks' Discovery Fights Are Stalling Labor Injunction Cases*, BLOOMBERG L. (Mar. 31, 2023), <https://news.bloomberglaw.com/daily-labor-report/starbucks-discovery-fights-are-stalling-labor-injunction-cases>. Just 3 had been issued in the previous 5 years. *Id.*
495. Jessica Mach, *Feud over Starbucks' Subpoenas Could Chill Injunction Bids*, LAW360 (Apr. 3, 2023), <https://www.law360.com/employment-authority/articles/1592534/print?section=employment-authority/labor>; *see also* Robert Iafolla, *Starbucks on Verge of Beating NLRB Injunction Bid in N.Y.*, BLOOMBERG L. (Aug. 24, 2023) ("[T]he injunction case has gone on for more than 400 days, chiefly due to discovery disputes."), <https://news.bloomberglaw.com/daily-labor-report/starbucks-on-verge-of-beating-nlrb-injunction-bid-in-new-york>.
496. Campbell, *10(j) Injunction Pace*, *supra* note 492; *see also id.* (noting that in most contexts, waiting 300-ish days for an injunction would "far exceed[] the timeline for demonstrating irreparable harm," a fact management attorneys emphasize); *cf.* Starbucks Corp. v. McKinney, 602 U.S. 339, 346 (2024) (newly requiring a showing of irreparable harm for all 10(j) injunction requests).

Over 18 months, the NLRB sought 10 separate Starbucks injunctions⁴⁹⁷ while repeatedly trying, and failing, to win a nationwide order.⁴⁹⁸ The alternative, a mass complaint, was filed in April 2023 alleging bargaining failures at 144 locations.⁴⁹⁹ The document eventually ballooned to include 160 stores across 28 states, fodder for a trial and possible appeals set to span years.⁵⁰⁰ In the meantime, Starbucks conspicuously touted a tally of petitions filed to decertify previously unionized stores (around 25 by February 2024).⁵⁰¹

Thus, where time is of the essence, even the fastest tool deserves air quotes. Nonetheless, the Board must work with what it has, and there is at least one way that injunctions could be more effective in the current context: It should be easier to win injunctions covering multiple employer locations. Currently, there is a caselaw presumption against multi-location orders absent adjudicated illegalities at those sites.⁵⁰² At Starbucks, 24

- 497. Petition for Writ of Certiorari at 4, *Starbucks Corp.*, 602 U.S. 339 (No. 23-367).
- 498. Both of these failed national-injunction attempts focused on unlawful discharges. Noam Scheiber, *Judge Scales Back Ruling Against Starbucks in Union Fight*, N.Y. TIMES (Feb. 23, 2023), <https://www.nytimes.com/2023/02/23/business/economy/starbucks-union-ruling.html>; Patrick Lakamp, *Judge Takes Flak from Labor Advocates over How Starbucks Beat NLRB in a Buffalo Court*, BUFFALO NEWS (Sep. 25, 2023), https://buffalonews.com/news/local/judge-takes-flak-from-labor-advocates-over-how-starbucks-beat-nlrb-in-a-buffalo-court/article_167a187a-4bfb-11ee-88ac-d716dfbe78fe.html#:~:text=A%20decision%20from%20the%20judge,store%20in%20the%20Buffalo%20area.
- 499. Beverly Banks, *NLRB Official Says Starbucks Failed to Bargain at 163 Stores*, LAW360 (Apr. 26, 2023), <https://www.law360.com/employment-authority/articles/1601416>.
- 500. Parker Purifoy, *Starbucks Defends In-Person Bargaining in Nationwide Labor Case*, BLOOMBERG L. (Sep. 19, 2023), <https://news.bloomberglaw.com/daily-labor-report/starbucks-defends-in-person-bargaining-in-nationwide-labor-case>.
- 501. *Partners at Nearly 20 Stores Have Filed for Decertification: What Does It Mean?*, ONESTARBUCKS (Feb. 13, 2024), <https://one.starbucks.com/negotiations/what-does-decertification-mean/> [https://perma.cc/H6ET-S5ZJ].
- 502. *Kerwin v. Starbucks Corp.*, 657 F. Supp. 3d 1002, 1014 (E.D. Mich. 2023) (requiring “a record of committing unfair labor practices in multiple facilities”); *see also* NLRB v. S.E. Nichols, Inc., 862 F.2d 952, 961 (2d Cir. 1988) (considering, in requests to “expand . . . remedial powers beyond the

complaints alleging 50 illegal discharges was not enough to suggest a “corporate policy to violate labor laws” enabling an injunction beyond a single store, even though the company had already been found to have fired the “face of the Michigan campaign,”⁵⁰³ one of the more classically brazen and calculated violations of labor law.⁵⁰⁴

Waiting for dozens of unfair labor practices to bureaucratically mature at random sites around the country both counters common sense and wastes time. Starbucks Corporate owns the store. Starbucks Corporate pays the manager. Starbucks Corporate makes the rules. Starbucks, like REI, Trader Joe’s, and Chipotle, does not want uniformity merely in branding and customer experience, which could be satisfied through an independent business or franchise model. The “Starbucks model”—in its own telling—“is built on usage of a part-time workforce who . . . enjoy the exact same terms and conditions of employment.”⁵⁰⁵ The paradigm is not unique in the world of mass retail, as achieving employment uniformity at thousands of locations necessarily requires “centralized control” that, in Starbucks’s words, “minimizes the existence of store level local autonomy to perform other than ministerial acts to carry out the policies promulgated above the store level.”⁵⁰⁶

Indeed, before Starbucks recognized the extent of SWU’s momentum, it made breathless attempts to widen voting units by highlighting its extreme top-down control of personnel: “Starbucks has purposely designed its business to utilize centrally deployed technology to standardize operations and labor relations It involves the deployment

actual locations at which unfair labor practices were committed,” factors like “whether the employer has repeatedly shown anti-union animus on a broad scale,” location proximity, employee-transfer policies, and the centralization of labor relations).

503. *Kerwin*, 657 F. Supp 3d. at 1012.

504. See, e.g., David Saxe Prods., LLC, 370 NLRB No. 103, 2021 NLRB LEXIS 121, at *55 (2021) (“The Board and courts have recognized that the unlawful discharge of a union adherent . . . constitutes flagrant interference with employees’ rights under the Act and [has] the potential to cause long-lasting damage to election conditions because [it has] a tendency to reinforce employees’ fear that they will lose their employment if union activity persists.”).

505. Request for Review of the Regional Director’s Decision and Direction of Election at 34, Starbucks Corporation and Workers United, No. 28-RC-286556 (NLRB Jan. 7, 2022).

506. *Id.* at 33.

of technology tools and centralized operational policies throughout District 380 that knit the stores together by applying uniform standards [such as] . . . what levels of disciplinary action will be issued.”⁵⁰⁷

So, if Starbucks trains, requires, and pays managers and negotiators to nationalize “operations and labor relations,” their unlawful acts should be dealt with—and remedied—nationally as well.⁵⁰⁸ Or, at least, the Board should be allowed that presumption in 10(j) proceedings. The presumption could be rebutted with proof that a company’s labor practices or policies are, in fact, local, regional, or even vary store by store. That store managers in Cleveland, but not Charleston, are authorized to voluntarily recognize a union would be strong local evidence. That just one café in the country is allowed to set its own staffing levels (perhaps to coordinate with unique customer demand) would be strong single-store evidence. Starbucks and other large nonfranchised retail companies have that information. They should be asked either to produce it or be held to their own national standards.

But ultimately, because political instability and judicial hostilities render even the most impactful administrative law solutions ephemeral, lasting assistance may be more likely to arise from supportive nonstate actors in the labor movement and beyond.

B. The Movement

The labor movement already has a lot of great ideas to support independent organizing. Former AFL-CIO General Counsel Jon Hiatt has called on unions to start a “Labor Self-Organizing Workers Support” project to make toolkits, lawyers, experts, model contracts, and media

507. *Id.* at 32-33. The “technology” alluded to includes the “Virtual Coach,” a “decision tree which specifically tells the Store Manager what to do in specific situations (*i.e.* attendance, conduct, or performance issues) and . . . there is no discretion to ignore its directives.” *Id.* at 20. It even includes “video conference, phone, text, email, and other apps” that allow District Managers to be “involved in all discipline and discharge decisions.” *Id.* at 26.

508. *Cf.* NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 41-42 (1938) (“When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter . . . ? . . . It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience.”).

readily available to self-organizing workers.⁵⁰⁹ Journalist Hamilton Nolan has suggested something similar but through a novel institution “staffed by organizers whose single job is to help non-union workers unionize their workplaces.”⁵¹⁰ To some extent, these and other suggestions are already being implemented. At the “Inside Organizer School,” a “loose confederation of labor organizers” gives workshops on free agent salting.⁵¹¹ The UE/DSA-funded Emergency Workplace Organizing Committee, (“EWOC”)⁵¹² which, as noted, advises Trader Joe’s United, has an online form that matches workers with a “trained volunteer . . . within 48 hours.”⁵¹³ Professor Eric Blanc, who helped start the project, has expanded EWOC’s early lessons into a blueprint for implementing what he calls “worker-to-worker” organizing on a mass scale.⁵¹⁴

The most powerful example, though, comes from Workers United’s support-not-subsume allyship with Starbucks Workers United, which layers the resources and high-level connections of a national union on top

509. Jon Hiatt, *By Helping Self-Organized Workers, Labor Can Save Itself*, AM. PROSPECT (Apr. 11, 2022), <https://prospect.org/labor/by-helping-self-organized-workers-labor-can-save-itself/> [https://perma.cc/88UC-LDBG].
510. Hamilton Nolan, *A New Idea for New Union Organizing*, IN THESE TIMES (Aug. 2, 2023), <https://inthesetimes.com/article/union-labor-ewoc-afl-cio-organizing> [https://perma.cc/7TFG-YSE9].
511. Eidelson, *Undercover Organizers*, *supra* note 255 (stating that the school “remains a loosely organized confab, not some formal union body, but its leaders say they aim to start holding workshops every other month and to spread some of them across the country”). For an overview of the school’s history, which began in 2018, see BRISACK, *supra* note 187, at 41-44.
512. See *About Us*, EMERGENCY WORKPLACE ORG. COMM., <https://workerorganizing.org/about/> [https://perma.cc/ECC8-PDRN] (describing the project as a joint venture between DSA and UE).
513. Press, *supra* note 240; *Get Support*, EMERGENCY WORKPLACE ORG. COMM., workerorganizing.org/support [https://perma.cc/3JMC-EAK7].
514. ERIC BLANC, WE ARE THE UNION: HOW WORKER-TO-WORKER ORGANIZING IS REVITALIZING LABOR AND WINNING BIG 222-40 (2025). Blanc’s empirically researched, insightful analysis is deserving of careful study as the first comprehensive account to envision Starbucks-style campaigns as an antidote to union decline. *Id.* at 25 (“*We Are the Union*’s central argument is that worker-to-worker organizing is the only plausible path to scaling up union power. In other words, it can help organized labor extricate itself from the impasse of big-but-weak or small-but-powerful campaigns.”).

of baristas' profound relational gifts.⁵¹⁵ Having lost one WU-backed shareholder vote requiring an internal labor audit,⁵¹⁶ and on the verge of losing another that would have installed former Obama-, Clinton-, and Carter-administration officials on its board, Starbucks suddenly changed course in early 2024 and agreed to a national "framework" designed to facilitate signed collective bargaining contracts by the end of the year.⁵¹⁷ In exchange, the candidates withdrew.⁵¹⁸

Leveraging outside pressures to secure voluntary agreements that circumvent unfavorable labor law—or simply commit the company to following existing law—has a long history.⁵¹⁹ However, the attempts tend to require immense planning, personnel, and money, with sometimes unpredictable results.⁵²⁰ An agreement centered on bargaining,

- 515. For an even more detailed—and insider—look at the ups and downs of the ultimately successful partnership between SWU and WU, see *id.* at 137-49. For a more critical accounting of this dynamic, see BRISACK, *supra* note 187, at 215-23.
- 516. Clara Hudson, *Starbucks Proxy Fight Charted Alternate Path for Workers' Rights*, BLOOMBERG L. (Mar. 6, 2024), <https://news.bloomberglaw.com/esg/starbucks-proxy-fightcharted-alternate-path-for-workers-rights> ("Shareholder proposals rarely pass, but [the] bid ... advanced with 52% of investor support.").
- 517. *Id.*; see also Josh Eidelson, *Starbucks' Labor Pivot Poised to Spur New Unionization Wave*, BLOOMBERG L. (Feb. 28, 2024), <https://www.bloomberg.com/news/articles/2024-02-28/starbucks-sbux-surprise-labor-pivot-could-spur-new-unionization-wave> ("The new commitments represent a major pivot for Starbucks").
- 518. Crystal Tse, *Starbucks Activists Withdraw Candidates for Board Seats*, BLOOMBERG L. (Mar. 5, 2024).
- 519. Benjamin I. Sachs, *Despite Preemption: Making Labor Law in Cities and States*, 124 HARV. L. REV. 1153, 1169-72 (2011) ("[For example,] although the statutory regime affords employers significant opportunities to communicate anti-union messages to employees, employers may agree to waive or limit their own right to speak about unionization during organizing drives.").
- 520. Indeed, even the successful campaign for a national agreement at Starbucks had not, as of August 2025, yielded an agreement. See, e.g., Braden Campbell, *Starbucks Union's Contract Hopes Dim After Peace Fractures*, LAW360 (Jan. 22, 2025), <https://www.law360.com/employment-authority/articles/2287455/starbucks-union-s-contract-hopes-dim-after-peace-fractures>. It had, though, yielded strikes. Noam Scheiber, *Starbucks Workers Say They Will Begin a Strike in 3 Cities on Friday*, N.Y. TIMES (Dec. 20, 2024), <https://www.nytimes.com/2024/12/19/business/economy/starbucks-strike.html>.

specifically, is a critical advance in an era where *bricolage* functions like an organizing skeleton key that snaps after the election. Going forward, one could imagine a labor coalition committing to similar approaches, perhaps under a “hiring hall”-type model where independent campaigns could apply for assistance on a website and be matched with a union willing to launch a similarly creative campaign.⁵²¹

The problem, as always, is scale. Few unions have the bandwidth to engage in these sorts of multiyear “comprehensive campaigns” even in their own jurisdictions and for their own prospective members.⁵²² Yet an additional collaborator might lurk in a surprising corner, a partner with aspirations and incentives for landscape-altering change, not just organizing or bargaining agreements with individual companies.

Starting in 2022, a cadre of business leaders began meeting “to understand how they might most constructively respond to the new wave of organizing.”⁵²³ Early returns amounted to pretty basic dos and don’ts—“Don’t fire the organizers” was one—published in the Harvard Business Review.⁵²⁴ The meetings eventually became a roundtable hosted by the Aspen Institute and MIT, and a follow-up article in summer 2023 had a striking thesis: “If companies continue to assume that organized labor

union-strike.html (“The union . . . called the strike after a bargaining session with the company this week failed to produce better wage gains.”); Kristin Toussaint, *After 3 Years Without a Contract, Starbucks Workers Are Turning to Civil Disobedience*, FAST Co. (Apr. 24, 2025), <https://www.fastcompany.com/91321619/after-3-years-without-a-contract-starbucks-workers-are-turning-to-civil-disobedience> [<https://perma.cc/UE69-L8DU>]; *see also* Brudney, *supra* note 96, at 732-34 (explaining that “[m]anagement responses to comprehensive campaigns often involve filing lawsuits against unions and workers,” including defamation, antitrust, and racketeering claims).

521. For background on hiring halls, including their potential to “facilitate the translation of mobilization into institutional power,” see Catherine L. Fisk, *Sustainable Alt-Labor*, 95 CHI-KENT L. REV. 7, 24-35 (2020).
522. *See* Rich Yeselson, *Fortress Unionism*, DEMOCRACY: J. IDEAS (Summer 2013), <https://democracyjournal.org/magazine/29/fortress-unionism/> [<https://perma.cc/H2YG-X4UX>] (describing the rise, fall, and unique difficulties in conducting successful “comprehensive campaigns”).
523. Roy E. Bahat & Thomas A. Kochan, *How Businesses Should (and Shouldn’t) Respond to Union Organizing*, HARV. BUS. REV. (Jan. 6, 2023), <https://hbr.org/2023/01/how-businesses-should-and-shouldnt-respond-to-union-organizing>.
524. *Id.*

destroys value and to reflexively fight all collective-action efforts, as has been happening at Starbucks, Amazon, and elsewhere, they run an enormous—even existential—risk.⁵²⁵ A different, collaborative “path,” the piece said, was warranted, because “the labor organizations likely to be most valuable to business will be the strongest ones.”⁵²⁶ How to best negotiate a contract took up two-thirds of the discussion.⁵²⁷

The articles might be dismissed as provocations and the roundtable as exceptional. Except as Martin H. Malin has long detailed, it is empirically, anecdotally, and literally true that strong unions with cooperative managerial relationships improve governments and companies.⁵²⁸ Where decision-making shifts from unilateral to joint, questions that are normally radioactive—like how to rate employees, whether to contract out, and when to automate—can frequently find all-sides solutions.⁵²⁹ In December 2023, Microsoft signed an agreement with the AFL-CIO, covering all of the federation’s unions, to establish joint AI-implementation standards while remaining neutral in any future organizing campaigns at the company or its subsidiaries.⁵³⁰

If the roundtable’s work is to root a budding culture of union-agnostic, if not union-curious, executives and probusiness policymakers, stories about collaborations like Microsoft’s need to be told. Unions may not be in the best position to take the message to corporate America. But they can certainly set up meetings with legislators, and partners like Microsoft might be willing to come along. Clearly many, maybe most, senators would take a conference call with Brad Smith and Liz Shuler, the Microsoft and AFL-CIO presidents, respectively, to talk about workplace AI policy. Would those same senators meet with them to discuss assisting workers who want to organize a union—without the union? More relevant to the

525. Roy E. Bahat, Thomas A. Kochan & Liba Wenig Rubenstein, *The Labor-Savvy Leader*, HARV. BUS. REV. (July-Aug. 2023), <https://hbr.org/2023/07/the-labor-savvy-leader>.

526. *Id.*

527. *Id.*

528. Martin H. Malin, *The Paradox of Public Sector Labor Law*, 84 IND. L.J. 1369, 1391-96 (2009) (citing private-sector industrial relations studies and social-psychology procedural-justice research, as well as detailed case studies from the public sector).

529. *Id.* at 1392-96.

530. Parker Purifoy, *Microsoft AI Deal with AFL-CIO Is Step to Broader Standards*, BLOOMBERG L., (Dec. 13, 2023), <https://news.bloomberglaw.com/daily-labor-report/microsofts-ai-deal-with-afl-cio-is-step-to-broader-standards>.

question of coalition building, would an avowedly anti-union senator take the meeting?

The answers are probably yes and—even amidst the political right’s occasional turn toward working-class, even union-curious, stances⁵³¹—probably not. But the latter’s calculus might change depending on the policy being advanced and how it is framed. While “organizing” tends to be associated with leftist impulses and causes, it is politically multidimensional and practically multisector. Some may remember the Tea Party movement for aggressively confronting politicians at 2009 Obamacare “town halls,”⁵³² while others may remember it for the behind-the-scenes “string-pulling” by libertarian billionaires David and Charles Koch.⁵³³ But in truth, the movement’s formative stages were marked by tens of thousands of house meetings that coalesced into around 1,000 local groups and a historically astonishing number of grassroots participants characterized by Harvard sociologists Theda Skocpol and Vanessa Williamson as “very active.”⁵³⁴ Tenants and homeowners, rich and poor alike, regularly organize themselves into associations. In San Francisco,

531. For descriptions of this evolution, see Noam Scheiber, *Can the G.O.P. Really Become the Party of Workers?*, N.Y. TIMES, (Aug. 24, 2024), <https://www.nytimes.com/2024/08/24/business/economy/labor-workers-republicans-trump-vance.html> (citing Josh Hawley, JD Vance, Roger Marshall, and Marco Rubio as Republican senators who have “criticiz[ed] corporate labor practices” or sought “to give workers more say on the job”); Andrew Marantz, *The Tucker Carlson Road Show*, NEW YORKER (Nov. 11, 2024), <https://www.newyorker.com/magazine/2024/11/11/the-tucker-carlson-road-show> (citing Tucker Carlson’s praise of economic proposals touted by Senator Elizabeth Warren).

532. See, e.g., Ian Urbina, *Beyond Beltway Health Debate Turns Hostile*, N.Y. TIMES (Aug. 7, 2009), <https://www.nytimes.com/2009/08/08/us/politics/08townhall.html> (describing the fervor at various town hall meetings over Obamacare); Jeff Zeleny, *Democrats Skip Town Halls to Avoid Voter Rage*, N.Y. TIMES (June 10, 2010), <https://www.nytimes.com/2010/06/07/us/politics/07townhall.html> (detailing the frustration among voters in the lead-up to the 2010 midterm election).

533. Jane Mayer, *Covert Operations*, NEW YORKER (Aug. 30, 2010) <https://www.newyorker.com/magazine/2010/08/30/covert-operations> (describing the Koch brothers as “trying to shape and control and channel the populist uprising into their own policies”).

534. THEDA SKOCPOL & VANESSA WILLIAMSON, THE TEA PARTY AND THE REMAKING OF REPUBLICAN CONSERVATISM 8, 22, 90-92 (2012).

they can even bargain and strike.⁵³⁵ Debtors organize (against banks), consumers organize (against corporations), commuters organize (against transit systems),⁵³⁶ and social media users organize (against Facebook, X, and YouTube).⁵³⁷ “NIMBYs” organize against developers, “YIMBYs” clear the way for them.⁵³⁸ These efforts can, and do, cross political boundaries.⁵³⁹

1. OrganizingCorps

So organizing is not a union thing, it is a life thing, the Swiss Army knife of change for liberal, conservative, and all ends in between.⁵⁴⁰

- 535. Heather Knight, *In San Francisco, Tenants Use Labor Tactics to Challenge Their Landlords*, N.Y. TIMES, (Jan. 15, 2024), <https://www.nytimes.com/2024/01/15/us/san-francisco-rent-strike-labor-union.html> (“In 2022, city leaders passed Union at Home . . . [which] lays out a path for tenants to form their own associations and requires landlords to bargain with them, just as an employer must meet with unionized workers.”).
- 536. For an insightful description and plan for this sort of “community-driving bargaining,” see ERIKA SMILEY & SARITA GUPTA, THE FUTURE WE NEED 154-59 (2022); and drug-user community organizing, *Our History*, NEXT Distro, <https://nextdistro.org/history> [<https://perma.cc/PD3Y-NXWD>].
- 537. See, e.g., Charlotte Garden, *Platform Unions*, 108 MINN. L. REV. 2013, 2069 (2024) (“After learning of the change [Facebook] users started teaching each other how to game the algorithm, such as by adding ‘congratulations!’ to posts about the Affordable Care Act’s open enrollment period.”).
- 538. Conor Dougherty, *Twilight of the NIMBY*, N.Y. TIMES (June 5, 2022), <https://www.nytimes.com/2022/06/05/business/economy/california-housing-crisis-nimby.html>. “NIMBY” is a generally disparaging term describing “an attitude ascribed to persons who object to the siting of something they regard as detrimental or hazardous in their own neighbourhood, while by implication raising no such objections to similar developments elsewhere.” NIMBY, OXFORD ENG. DICTIONARY, <https://doi.org/10.1093/OED/8243757550>. Some housing activists use “YIMBY” to differentiate themselves from the NIMBYs, asserting, “Yes in my backyard.” Dougherty, *supra*.
- 539. See, e.g., Conor Dougherty, *The Surprising Left-Right Alliance That Wants More Apartments in the Suburbs*, N.Y. TIMES (Mar. 9, 2024), <https://www.nytimes.com/2024/03/09/business/economy/yimby-housing-conference.html>.
- 540. For a recent, grounded, and particularly sophisticated take on this concept, see Andrias & Sachs, *supra* note 94, at 548-62 (“[W]e ask how law could be

Disorganized Labor (Law)

Viewed in this light, might an anti-union senator consider voting for a bill modeled on AmeriCorps, which produces an army of nonprofit volunteers, but instead called OrganizingCorps and designed to produce an army of *organizing* volunteers? Why not find out.

Hypothetical OrganizingCorps participants might receive a stipend, housing, and training from a variety of religious, civic, labor, and other experts on organizing (1) in politics, (2) in the community, or (3) in the workplace. While the job track might seem like a political nonstarter, workplace organizing, like all organizing, is relevant to a host of nonideological, nonunion causes, from faith accommodations, to remote work, to grievance leave.⁵⁴¹ Post-training, the stipend might continue for up to 24 months as participants look for paid or unpaid opportunities with any campaign, initiative, or employer of interest. Acknowledging that workplace organizing entails a risk of premature discharge that political, neighborhood, and religious outreach does not, those on the workplace track might also be provided with 2 or 3 years of “firing insurance” that would immediately subsidize lost wages if necessary.⁵⁴²

OrganizingCorps might effectively double as a national free agent salting program. The training and funding help, but at its best, a federal organizing program might create a cultural permission structure that pushes justice-seeking young people into workplace or other causes, whether involved in the program or not. All national legislation is a long shot, even bills that might be backed by an eclectic coalition of labor, a few big businesses, and a smattering of conservative groups spotting an opportunity to increase outreach. Even serious discussion of the proposal, though, might spark interest in independent unionism.

Moreover, Congress is not the only legislature. Currently, seventeen states are entirely controlled by Democratic officials.⁵⁴³ Michigan just

used explicitly and directly to enable low- and middle-income Americans to build their own social-movement organizations for political power.”).

541. Katherine S. Hanson, *No Leave to Grieve: How Misfit Frameworks and America’s “Grief Tsunami” Require Better Bereavement Policy*, 24 MARQ. BENEFITS & SOC. WELFARE L. REV. 55 (2022).
542. This already exists on a voluntary basis for accidents that require employment leaves for health-related reasons. See AFLAC, <https://www.aflac.com/individuals/products/accident-insurance.aspx> [<https://perma.cc/6LGQ-D7EC>].
543. *State Government Trifectas*, BALLOTPEDIA, https://ballotpedia.org/State_government_trifectas [<https://perma.cc/VDF8-5MGZ>].

reversed a right-to-work law.⁵⁴⁴ Thanks to a recent amendment, the Illinois Constitution actually prohibits laws that “interfere[] with, negate[], or diminish[]” organizing rights.⁵⁴⁵ The prospect of an OrganizingCorps-Michigan, OrganizingCorps-Illinois, or even OrganizingCorps-New Mexico feels somewhat more imaginable.

2. Contract Arbitration

But to the extent a significant labor-business partnership committed to independent worker organizing is achievable, the ultimate goal should be an NLRA amendment providing for binding arbitration of contract negotiations that are not settled within 120 days. Which is to say, enactment of the Employee Free Choice Act of 2009’s (the “EFCA”) proposed new subsection, 8(h).⁵⁴⁶ Simply put, if workers can win a union but their employer may legally—or even illegally—never sign a contract, the right to organize is itself illusory. That is as true at Medieval Times, where workers were aligned with the American Guild of Variety Artists, as it is at Trader Joe’s, where the unaligned TJU has an uncertain future.⁵⁴⁷ Why Congress would pass a provision from a bill that failed in 2010, even as Democrats held the presidency, House, and, for a time, a filibuster-proof Senate majority, is a good question. And the answer is it probably will not. But a thought experiment suggests a few new differentiating factors.

To begin, the EFCA proposed three changes: (1) certifying unions on the basis of signatures collected by organizers instead of through a secret ballot election; (2) enhancing penalties for illegal conduct; and (3)

544. Joey Cappelletti, *Michigan 1st State in Decades to Repeal ‘Right-to-Work’ Law*, ASSOCIATED PRESS (Mar. 24, 2023), <https://apnews.com/article/right-to-work-repeal-michigan-democrats-b4304a2780909d37e76f211c7b070a6b> [<https://perma.cc/58VH-RNLK>].

545. ILL. CONST. art. I, § 25(a); *see also* Jake Sheridan & Jeremy Gorner, ‘Fundamental Right’ of Workers to Organize Being Added to Illinois Constitution, CHI. TRIB. (Nov. 15, 2022), <https://www.chicagotribune.com/2022/11/15/fundamental-right-of-workers-to-organize-being-added-to-illinois-constitution/>.

546. H.R. 1409, 111th Cong. (2009). A modified version of this provision is also included in the Protecting the Right to Organize Act of 2021. *See* H.R. 842, 117th Cong. (2021).

547. Sebastian Herrera, *The Labor Union That Defeated Amazon Is Fighting for Survival*, WALL ST. J. (Jan. 23, 2024), https://www.wsj.com/business/the-labor-union-that-defeated-amazon-is-fighting-for-survival-e9553de0?reflink=desktopwebshare_permalink.

submitting lengthy bargaining disputes to binding arbitration. The tidal wave of business opposition—the Chamber of Commerce predicted “Armageddon”⁵⁴⁸—centered almost entirely on the certification change. The new push would be surgical, focusing solely on arbitration, an issue that, unlike the alleged threat to democracy’s centerpiece, the voting booth, would be harder to demonize.

Second, and relatedly, the EFCA’s opponents’ most compelling substantive argument was that jettisoning elections jettisons decisional secrecy, tainting the integrity of workers’ support for unionization itself.⁵⁴⁹ An arbitration amendment turns the tables by forcing opponents to explain why workers who have followed their advice and chosen collective bargaining in secret should now be blocked from... collectively bargaining. At JFK8, it’s been 44 months, and counting.⁵⁵⁰

Finally, it is not that labor would have general assistance from some enlightened companies. The movement would be partnered with people who have already staked money, time, and reputations on app-based organizing under the same inoperable good-faith-bargaining law that confines SWU, AWU, TJU, and others. By “year 10,” the “Unit” app imagined that the “thousands of unions we’re supporting of various sizes” would gain so much dues-based revenue that the newly organized members would buy out the early investors.⁵⁵¹ Instead, Unit organized two workplaces, never got a contract, and went out of business.⁵⁵² So did

548. Steven Greenhouse, *After Push for Obama, Unions Seek New Rules*, N.Y. TIMES (Nov. 8, 2008), <https://www.nytimes.com/2008/11/09/us/politics/09labor.html>.

549. For an elegant discussion of the merits and limits of open decision-making in union organizing contexts, see Sachs, *supra* note 37, at 713-20.

550. Shenal Tissera, *Heated Staten Island Amazon Warehouse Workers Rally for Better Conditions*, CITY (July 10, 2025), <https://www.thecity.nyc/2025/07/10/staten-island-amazon-rally-hot-dangerous/> [<https://perma.cc/E5KP-3R8C>] (“In the three years that the ALU has been certified... Amazon has not sat down at the bargaining table once....”).

551. Clint Rainey, ‘*We Still Have a Lot to Prove*’: VC-Backed Union Startup Responds to Skepticism Around Its Model, FAST COMPANY (Aug. 24, 2022), <https://www.fastcompany.com/90781696/unit-of-work-qa> [<https://perma.cc/HR3L-RVEY>] (calling the buy-out the “exit to community” plan).

552. *Id.* (citing PEN America’s staff union and the Piedmont Health Services Providers union); Jamie E. White (@jamieearlwhite), X (formerly TWITTER)

Frank, a similar company.⁵⁵³ But that means the strategists and financiers for these and other apps now understand that their entrepreneurial dreams go through Section 8(a)(5)—and if they can successfully help amend it, those dreams might actually come true.

CONCLUSION

A lesson we might take from the efforts of Atulya Dora-Laskey, Jaz Brisack, Vince Quiles, Derrick Palmer, and others mentioned in this Article—and from the thousands of others who are not—is that when it comes to creating meaningful collectives, the best of what's around can be quite good. But labor law's incapacities, particularly its inability to deter unlawful firings and endless negotiation, put the broader project's sustainability at significant risk. So, there is work to be done.

In the meantime, an unfair labor practice charge filed by TJU in December 2023 provides, if not hope, at least some symbolic resonance.⁵⁵⁴ At union stores in Oakland, Minneapolis, and Hadley, Massachusetts, Trader Joe's workers alleged that a metric in their performance reviews was unlawful.⁵⁵⁵ Trader Joe's scrubbed the provision, and TJU quickly withdrew the charge.⁵⁵⁶ No longer would workers be disciplined for refusing to smile.⁵⁵⁷

And that, for now, was good enough.

(Mar. 31, 2023, at 14:10 ET), <https://x.com/jamieearlwhite/status/1641865503718113280> [<https://perma.cc/YSJ9-AQJB>] ("Some news: @UnitUnionizing will be shutting down this month.").

553. *Update on Frank*, TEAM FRANK, www.getfrank.com [<https://perma.cc/WD96-2894>] ("We're winding down and finding a new home for Frank to live on.... However, it won't be as an independent company, so we're pausing new organizations and campaigns....").
554. Emily Brill, *Trader Joe's Won't Enforce Smiling Rule at 3 Union Stores*, LAW360 (Dec. 5, 2023), <https://www.law360.com/employment-authority/articles/1773712/trader-joe-s-won-t-enforce-smiling-metric-at-3-union-stores>.
555. *Id.*
556. *Id.*
557. *Id.*; see also Melissa Daniels, *Ex-Trader Joe's Worker Says He Was Fired for Not Smiling*, LAW360 (Nov. 4, 2016), <https://www.law360.com/articles/859900/ex-trader-joe-s-worker-says-he-was-fired-for-not-smiling>.