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### The Future of Work in America: Policies to Empower American Workers and Secure Prosperity for All

Report by  
Richard Kirsch  
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The Future of Work is bringing together thought and action leaders from multiple fields to re-imagine a 21st century social contract that expands workers' rights and increases the number of living wage jobs. The Future of Work is focusing on three areas: promoting new and innovative strategies for worker organizing and representation; raising the floor of labor market standards and strengthening enforcement of labor laws and standards; and assuring access to good jobs for women and workers of color.

Under the sponsorship of the Roosevelt Institute, the Future of Work is a collaboration between the Roosevelt Institute and the Columbia Program on Labor Law and Policy. The project is organizing a series of meetings, policy papers, and a conference, that aim at generating, debating, and communicating multiple approaches to empowering American workers to build an economy of broadly shared prosperity.

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**Richard Kirsch** is a Senior Fellow at the Roosevelt Institute and the author of *Fighting for Our Health: The Epic Battle to Make Health Care a Right in the United States*, published in February 2012 by the Rockefeller Institute Press. In his current work for the Roosevelt Institute and as a Senior Advisor to USAction, he focuses on how progressives can tell a power, values-based story about our core beliefs. He also focuses on issues related to creating good jobs and writes about implementing the Affordable Care Act. Prior to joining the Institute, Mr. Kirsch was the National Campaign Manager of Health Care for America Now from the Campaign's founding to its successful conclusion in April 2010.

For media inquiries, please contact Tim Price at 212.444.9130 x 219 or [tprice@rooseveltinstitute.org](mailto:tprice@rooseveltinstitute.org).

*The views and opinions expressed in this paper are those of the author and do not necessarily represent the views of the Roosevelt Institute, its donors, or its directors.*

This paper, *Policies to Empower American Workers and Secure Prosperity for All*, is an introduction to the first area: policies to invigorate worker organizing. The paper is in four parts:

- A history of how organized workers fueled America's broadly shared prosperity;
- A history of how the weakening of American labor led to the shrinking of America's middle class;
- A primer on American labor law;
- Policy ideas to reform and transform worker organizing.

## The Future of Work in America: Policies to Empower American Workers and Ensure Prosperity for All

By Richard Kirsch, March 25, 2014

### HOW ORGANIZED WORKERS FUELED AMERICA'S BROADLY SHARED PROSPERITY

The middle class is the great engine of the American economy. Organized workers built a powerful middle class by taking direct action and advocating for government policies to give workers a fair share of economic wealth. But over the past 40 years, this pattern has been reversed as corporate owners and managers have taken an increasing share of America's wealth rather than sharing it with workers. As a result, the American economy has sputtered, and more and more Americans are struggling to meet their basic needs.

The Roosevelt Institute draws inspiration from the New Deal and Franklin Roosevelt's achievements in responding to a harsh industrial economy and an immediate economic crisis by building the foundations of a very different economy. The Roosevelt era fundamentally transformed the nature and conditions of work in America, from one in which workers had virtually no voice, power, job security or personal safety to a robust social contract bedrocked by law and social norms.

New Deal labor law provided legal protections that enabled workers to organize unions and to negotiate for higher wages and benefits and for safe working conditions. New Deal legislation put a floor under labor standards, establishing a minimum wage and overtime protections that lifted the incomes of workers across the wage spectrum. The New Deal's social insurance programs, including Social Security, unemployment insurance, government guarantees for home mortgages, and financial support for poor families with children, worked hand in hand with labor organizing and wage standards to build a broad middle class.

Corporate benevolence did not hand working people good wages. It took a massive movement of striking workers, who faced decades of government suppression, to win the right to organize in 1935. After government spending on World War II finally ended the Depression by creating a full-employment economy, it took another massive wave of strikes to secure agreement from some of the nation's largest corporations to share post-war industry profits with workers.

With the United States standing alone with a strong economy after World War II, and with pent-up demand at home and huge needs to meet in a devastated world, many large corporations reached a truce with unions, enforced by the continued strikes, in which the profits from the surging economy were shared with shareholders and workers. From 1947 through the early 1970's, worker income rose in lockstep with productivity. As the value of output produced by workers increased, so did their compensation. Hourly wages grew steadily until 1972. The share of employers who provided health coverage increased to more than 70 percent.<sup>1</sup> Pensions became a standard practice in larger corporations.

Outside of the South, there was a public consensus in favor of unions. Republican President Dwight Eisenhower once said, "Only a fool would try to deprive working men and working women of their right to join the union of their choice." In this context, millions of teachers and local, state, and federal workers joined unions alongside workers who labored in private industries.

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<sup>1</sup> *The Forty-Year Slump*, Harold Meyerson, *The American Prospect*, October 2013

<sup>2</sup> <http://www.decisionsonevidence.com/2011/09/deunionization-wage-inequality-and-the-decline-of-the-middle-class/>

The higher wages and better benefits won by unions boosted wages at non-unionized companies as well. The wages of workers at non-union firms got a 7.5 percent boost when at least one-fourth of the workers in that industry belonged to unions<sup>2</sup>.

The New Deal reforms were far from perfect. They left out broad swaths of the American public, largely along lines of race and gender. Domestic workers and farm workers – jobs held widely by African-Americans and women in the 1930s – were excluded from the new federal labor rights, from most minimum standards, and from Social Security. New Deal rights were even further restricted in the 1940s, when a major roll-back of labor law enabled states to put up legal walls against increased unionization. These walls were primarily adopted by Southern states, which had the highest proportions of African-American workers.

Even with these flaws, unions played a major role in increasing the economic security of women, people of color and the poor. Many unions – although not all – were major backers of the New Deal’s social insurance programs and the anti-poverty programs of the 1960s, including Medicare and Medicaid. As African American workers began to join unions in larger numbers, many were finally able to join the middle class. Even today, union membership boosts the wages of African Americans by 12 percent. Other

groups who have traditionally suffered from lower wages also benefit from union membership with boosted wages: women by 11 percent, and Latinos by 18 percent.<sup>3</sup>

These higher wages and better benefits helped to build a huge middle class in the United States and to level income inequality. When union membership reached its peak between 1943 and 1958, income inequality dropped (Chart 1). The share of income that went to the wealthiest ten percent of Americans dropped to near 30 percent. But as the proportion of union members fell, the share of income taken by the wealthiest began to rise again. By 2010, the wealthiest were taking home almost 50 percent of the nation’s income.

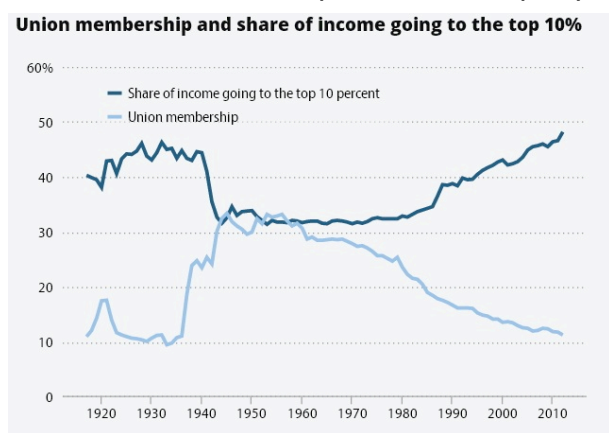
## HOW THE WEAKENING OF AMERICAN LABOR LED TO THE SHRINKING OF AMERICA’S MIDDLE CLASS

As the proportion of organized workers in America plummeted, the nation’s middle-class was decimated. The wealthy steadily took a greater share of the nation’s income, while working peoples’ real wages have been declining since the 1970s. These two phenomena – the weakening of unions and the shrinking of pay – are intricately intertwined. The corporate forces that set out to grab a bigger share of the nation’s wealth deployed an array of strategies, including deliberately attacking unions, which facilitated the concentration of wealth and the deterioration of Americans’ standard of living.

When General Motors President Charles Wilson told a U.S. Senate Committee in 1953 that what was good for General Motors was good for the country, he captured an era in which the good wages and benefits earned by the workers at U.S. manufacturing companies powered the nation’s economy and built the middle class.

But 60 years later, what is good for the GM of our day – Walmart – is clearly not good for America, as a

**Chart 1: Union Membership and Income Inequality<sup>4</sup>**



<sup>3</sup> *Unions and Social Mobility for Women Workers; Unions and Social Mobility for African-American Workers; Unions and Social Mobility for Latino Workers*, John Schmitt, Center for Economic and Policy Research, 2008.

<sup>4</sup> Chart from the Economic Policy Institute. Data on union density follows the composite series found in *Historical Statistics of the United States*; updated to 2012 from unionstats.com. Income inequality (share of income to top 10 percent) from Piketty and Saez, “Income Inequality in the United States, 1913-1998, *Quarterly Journal of Economics*, 118(1), 2003, 1-39. Updated and downloadable data, for this series and other countries, is available at the Top Income Database. Updated September 2013.

comparison between the biggest private employers of both eras underscores. While the American auto industry operated on the premise of one of its founders, Henry Ford, that workers should get paid enough to buy its costly products, Walmart operates on the premise that its workers should get paid so little that the only place they can afford to shop is at their low-priced employer.

A General Motors plant was the anchor of a community. It became the hub of a supply line for auto parts manufactured by other unionized companies. Its managers and factory workers earned enough to shop at local businesses and pay taxes to support public services. They had the resources and time to participate in the life of the community. They expected to stay with GM for their entire careers and to retire on a pension earned while working at the firm.

When a Walmart opens up, local businesses close. Wages decline throughout the community. Many of the items in a Walmart store are made outside of the country, part of a global supply chain built in search of lower wages in order to meet Walmart's low-priced demands. Workers often earn so little that they qualify for government benefits. Many Walmart employees are hired part-time or as temps. They lack job security and retirement security, other than the small Social Security checks their wages will accrue.

There are stark differences between prospects for organizing in the auto factories of the 20<sup>th</sup> century and the Walmarts of today. The GM plant in which workers staged the famous sit-down strike in Flint Michigan in 1937 employed 47,000 workers. The average Walmart store employs 300 workers.<sup>5</sup> It would be too expensive for an auto manufacturer to shutter a factory threatened by a strike, given the huge capital investment in a large-scale factory designed to manufacture a product for national distribution. But when Walmart workers voted to unionize a store in Canada, Walmart closed down that location, a small loss of investment for a company with 4,200 stores.

How did the transition from the manufacturing economy to the Walmart economy occur? The breakdown of the union and government-enforced New Deal social compact, in which major corporations shared their profits with their workers, began in the mid-1970s. The resurgence of economies around the globe and the shocks of oil-price increases threatened the dominance and profitability of American business. The U.S. began bleeding manufacturing jobs, a loss of 2.4 million jobs between 1979 and 1983.<sup>6</sup>

U.S. corporations responded in a number of ways. One was to insist that, in the words of a 1974 *Business Week* editorial, "Some people will have to do with less...so that big business can have more." Paul Volker, Chairman of the Federal Reserve, resolved that, "The standard of living of the average American has to decline."<sup>7</sup>

Corporations increased their focus on rewarding shareholders with short-term profits, rather than investing in their workers or in long-run growth. General Electric, for example, slashed its workforce and cut investment in research, and its stock price soared.

When Chrysler faced bankruptcy in 1979, the United Auto Workers agreed to a number of concessions, including an end to annual wage increases tied to productivity. These concessions were then extended to unionized workers at Ford and General Motors. As Harold Meyerson writes, "Henceforth, as the productivity of the American economy increased, the wages of the American economy would not increase with it."<sup>8</sup>

Corporations also began exploiting weaknesses in U.S. labor law, which allowed corporations to hire replacements for striking workers. In 1981, a period of high unemployment, President Ronald Reagan fired the nation's air-traffic controllers for going out on strike; in so doing, he seriously undermined workers' ability to exercise their strike power. Major firms in a host of industries followed Reagan's precedent: they demanded that their workers accept lower wages,

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<sup>5</sup> *Fortress Unionism*, Rich Yelsen, Democracyjournal.org, Summer 2013.

<sup>6</sup> *Meyerson, op. cit.*

<sup>7</sup> *Ibid*

<sup>8</sup> *Ibid*

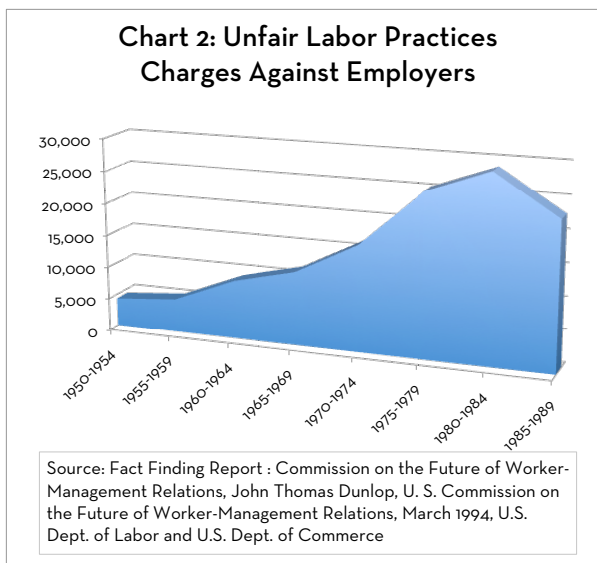
<sup>9</sup> *Ibid.*

which precipitated strikes, and then hired replacement workers at lower wages. The strike - the central tool that workers had used to win their fair share of economic growth - virtually evaporated over the next few decades. In the 1960s and 1970s, workers staged an average of 286 strikes a year. That declined to 83 strikes a year in the 1980s and finally to 20 a year since 2000.<sup>9</sup>

In the early 1970s, after major consumer and environmental legislation was enacted by Congress over the objections of big business, corporations decided they needed to expand their presence in Washington. Corporate trade associations moved their offices to the nation's capital and made big investments in lobbying and campaign contributions.<sup>10</sup> The policies they pushed included gutting trade protections for American manufacturers. This eased the way for the loss of 900,000 textile and apparel jobs in the 1990s and 760,000 electronics manufacturing jobs in the past two decades.<sup>11</sup>

Corporations pressed for the appointment of national labor law regulators who were antagonistic to unions. The combination of weak labor laws and hostile regulators enabled businesses to resist union organizing more aggressively. Unions lost members, and their political clout declined relative to surging corporate political power. Their efforts to win labor law reform fizzled, even in Democratic administrations from Carter to Clinton to Obama.

Another major change was the rise of the financial sector. Bankers ran a relentless campaign to weaken New Deal regulations. As major banks and Wall Street firms went public, they too became focused on short-term profits. They drove the businesses to which they loaned money or in which they invested to maximize their short-term profits by cutting pay and benefits and by firing workers. A hot private equity industry



saddled businesses with huge debts and drove firms to slash labor costs.

While the labor movement as a whole was slow to respond, there were some major unions that refocused resources on organizing new members. This followed a period in which organizing new members had taken a back seat to representing current members. These unions won some victories in a few sectors, notably health care and in the public sector. But the gains were not enough to reverse the decline of union membership in traditional strongholds like manufacturing and construction. Today, unionized workers make up 11 percent of the workforce, the lowest level in 97 years. With only 7 percent of private sector workers in unions, the labor movement can no longer play an effective role in raising workers' wages throughout the economy.<sup>12</sup>

American workers remain among the most productive in the world;<sup>13</sup> productivity in major sectors like manufacturing continues to rise.<sup>14</sup> But, in industry after

<sup>10</sup> *Winner-Take-All Politics*, Jacob Hacker and Paul Pierson, Simon & Schuster, 2010 provides an excellent history of this strategic move by business.

<sup>11</sup> Meyerson, *op. cit.*

<sup>12</sup> *Share of the Workforce in a Unions Falls to a 97 Year Low, 11.3%*, Steven Greenhouse, The New York Times, January 23, 2013

<sup>13</sup> OECD Data: <http://stats.oecd.org/Index.aspx?DatasetCode=PDYGTH>

<sup>14</sup> BLS Data: <http://www.bls.gov/news.release/prod2.t03.htm>

<sup>15</sup> *The Capitalist Machine: Computerization, Workers' Power and the Decline in Labor's Share Within U.S. Industries*, Tali Kristal, American Sociological Review, 78(3), 361-389.

<sup>16</sup> *National Income: Paying Work, Not Capital*, Bruce Bartlett, democracyjournal.org, Summer, 2013

<sup>17</sup> Meyerson, *op. cit.*

industry, the share of revenues going to wages has dropped, while the share going to profits has soared.<sup>15</sup> Labor's share of national income has plummeted, while the share taken by capital is at a record high.<sup>16</sup> If median annual income had kept up with productivity, it would now be \$86,426.<sup>17</sup> But the current median income is actually \$50,054, the lowest it has been since 1996 when adjusted for inflation.<sup>18</sup>

Today, unemployment is stuck at high levels. Millions of workers are trapped in part-time jobs or jobs for which they are overqualified. Most of the new jobs that have slowly emerged after the recession are low-wage jobs, but the proportion of high-wage jobs is also on the rise. It is the share of middle-wage jobs that is shrinking.<sup>19</sup>

Some blame technology for shredding jobs, while others believe that technology does not eliminate jobs but rather advances the trend towards the polarization between high-end and low-end jobs.<sup>20</sup> Others say that the problem is the lack of education among American workers. But even as the proportion of Americans who graduated from college doubled, the overall share of good jobs with decent wages and benefits has fallen over the past 30 years.<sup>21</sup>

Economies will always face challenges. But the crushing of America's middle-class over the past 40 years was not inevitable. It was the result of decisions made directly by corporate America to advance public policies that enabled them to take more of America's wealth and to share less with American workers. One of the most significant of these corporate strategies was to weaken the ability of unionized workers to demand a fair share of the nation's growing wealth, whether they demanded their fair share at the bargaining table or in the halls of Congress.

Rebuilding the engine of our economy - the middle class - requires us to re-imagine how organized workers can once again exercise power to recreate an America in which prosperity is broadly shared.

## AMERICAN LABOR LAW TODAY: A PRIMER ON WHAT IT DOES AND DOESN'T DO

### *Scope of Federal Labor Law*

The core of national labor law is the National Labor Relations Act of 1935 (the "NLRA" or "Wagner Act") and the Labor Management Relations Act of 1947 (the "LMRA" or "Taft-Hartley Act").

The NLRA was enacted in the New Deal, with the goal of protecting workers who were organizing, bargaining, and striking. Taft-Hartley, which rolled back NLRA protections, was enacted at the behest of corporations after a huge wave of strikes following World War II when workers sought to share in the profits of the post-war boom.

The NLRA guarantees private-sector workers the right to organize without fear of retaliation from their employers and lays out a framework for the process of collective bargaining. The Act explicitly excluded farmworkers, domestic workers, and independent contractors from its protections. Some states have enacted laws protecting some of the private workers who are not covered by the NLRA. California, for example, includes farmworkers and domestic workers in collective bargaining rights. As the NLRA does not cover public workers, forty-three states have enacted laws that either permit or require public-sector employees to bargain, although they are usually prohibited from striking. The federal government has also enacted laws protecting the right of some federal employees to organize.

Southern Democrats who wanted to put a swift end to a wave of union campaigns to organize Southern factories in the 1940s broke with the Democratic Party's New Deal consensus to join with Republicans in enacting Taft-Hartley, giving the act enough votes to override President Harry Truman's veto.

The Taft-Hartley Act took away some of the most powerful tools that had been wielded by unions up until that point. For example, Taft-Hartley prohibits

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<sup>18</sup> *Census: Rich-poor gap widens*, Dennis Cauchon and Paul Overbag, USA Today, September 9, 2013

<sup>19</sup> *The Low Wage Recovery and Growing Inequality*, National Employment Law Project, August 2012

<sup>20</sup> *How Technology Wrecks the Middle-Class*, David H. Autor and David Dorn, The New York Times, August 24, 2013

<sup>21</sup> *Where Have All the Good Jobs Gone?*, John Schmitt and Janelle Jones, Center for Economic and Policy Research, July 2012

unions from engaging in secondary action, that is, unionized workers are prohibited from boycotting or picketing employers other than their immediate employers. This prevents unions from picketing a company's suppliers, from engaging in strikes or boycotts in solidarity with the other striking workers, or from picketing a corporation that has subcontracted work to their direct employer. Taft-Hartley also prohibits workers from striking over issues contained in a collective agreement when that contract is in effect, leaving workers with little recourse if there is a major dispute. Taft-Hartley eliminated coverage for supervisors (including foremen) even though they have no managerial authority.

Taft-Hartley also allows states to undercut dues collection by passing so called "right-to-work" laws. These laws permit workers to decline paying union dues, even though unions are still required to represent all the workers in a given workplace and to include all workers in their contracts. This places a heavy political burden on unions to organize and represent workers while undermining the financial resources available to them.

### ***Organizing and Bargaining Under the NLRA***

The NLRA has served as the structure for organizing and bargaining in the private sector for more than 75 years. For much of that time, many employers respected the NLRA's framework for providing a legal arrangement for worker representation, as shown in Chart 2, above, which shows the low level of union complaints about unfair labor practices.

The NLRA's success depends on employers' compliance with the Act. However, an employer that intends to fight the workers' actions has a strong upper hand, owing both to provisions in the law which favor employers and to weak enforcement by the National Labor Relations Board ("NLRB" or "Board"), the agency charged with administering the Act.

### ***Establishing union representation***

Under the NLRA, an employer is required to recognize and bargain in good faith with a union chosen by a majority of workers in a particular bargaining unit. The union and employer may agree on the category of workers comprising the bargaining unit. If they disagree, the NLRB decides the scope of the bargaining unit. Except in rare instances, the

Board designates a unit that is no greater in scope than a single employer. Typically, the unit is no wider than a single facility or a certain category of workers in a single facility or department.

There are several methods by which a union could demonstrate that they have majority support among the workers in a bargaining unit. The union could obtain membership card signatures from a majority of workers in the unit; this is known as a "card check" election. However, employers are not required to respect card check elections, and they can insist that the union instead petition the NLRB to conduct a secret ballot election among workers. Secret ballot elections give advantages to employers, primarily the ability to pressure employees while restricting union access. In the several weeks or months preceding the vote, the employer is permitted to campaign against the union, including requiring workers to attend anti-union meetings. Workers may discuss unionization during lunch and breaks, but union employees do not have the right to enter the employer's property to speak with workers.

While employers are not legally permitted to fire a worker for supporting the union or for taking other forms of collective action, the only penalty that employers face for firing a worker is that they are required to re-hire the worker and provide them with back-pay. Moreover, this back-pay award is reduced by the amount of wages that the employee earned or could have earned after the firing. It often takes years before the Board and courts order even such a small penalty. These weak penalties make it easy for employers to break the law, and, as a result, the firing of union supporters has become commonplace.

Once a union is recognized - either by winning an election or by card check - that union is responsible for representing all the workers in the bargaining unit in collective bargaining. Both the union and the employer are required to bargain in good faith. While the Board may request that a federal court find an employer that refuses to do so be held in contempt and fined, the process usually takes years.

### ***Bargaining for a contract***

Employers are required to bargain with the union over wages, benefits and working conditions. However, they are not required to bargain over a number of other decisions that impact workers, such as closing



or moving a facility or stopping the manufacturing of a given product. If the employer and union cannot reach an agreement on these questions, the employer may determine actions on its own.

During contract negotiations, both sides are permitted to use economic pressure to win concessions over mandatory subjects. The NLRA prohibits employers from firing strikers, but employers are entitled to hire permanent replacements for strikers. After the strike ends, any striker who has been permanently replaced technically remains an employee, unless she has found comparable work. But the employer is not required to actually offer them work until a position becomes open. As a result, striking workers may be out of work for a long time or never offered a job at the firm.

Employers are also permitted to lock out workers. Workers who have been locked out may also be replaced temporarily, but not permanently. If a union strikes over an employer's commission of an unfair labor practice - such as firing a worker for supporting the union - the employer may hire only temporary replacements, and they must reinstate the strikers immediately upon the end of a strike.

Of course, it takes timely action by the Board, backed up by federal courts, to enforce any of these protections. As we discussed in Section 2, a combination of appointments of regulators hostile to the NLRA and aggressive corporate resistance to complying with the law have made timely enforcement the exception.

Today, the NLRA process is used much less than in the past. The number of elections for union representation dropped by 59 percent, from 2,957 in 2000 to 1,202 in 2012. Most of the elections were to continue current union representation, rather than win the right to bargain for new workers. The number of new workers organized through the election process in this period shrunk from 106,459 in 2000 to 38,714 in 2012, a decrease of 64 percent.<sup>22</sup>

The weaknesses in current labor law, particularly in relation to the changes in the economy between the mid-20th century and today, provide the context for the next section, which presents an array of proposals

to reform and transform labor law for the 21st century economy.

## **REFORMING AND TRANSFORMING LABOR POLICY AND LAW IN THE UNITED STATES**

A look at the 21<sup>st</sup> century American economy, through the lens of American labor law, reveals the extraordinary shortcomings of current policies to empower workers to win a fair share of the nation's economic progress and enough earnings to power the economy forward.

The changing structure of work makes it difficult for workers to exercise the approach to union organizing and collective bargaining that was established by the NLRA. Today, the largest employers in the country, Walmart, Yum Brands (owner of major fast-food chains) and McDonalds, employ a relatively few low-wage workers at each of their thousands of locations. Walmart - which employs approximately 300 workers at each location - is the largest of these. In each of those locations, a union would need to collect the signatures of half of the workers to start the process.

Should the store decide to fire the workers who are organizing the union, the only penalty they would face - after a protracted regulatory and judicial process - would be to pay low-wage back-pay to a handful of workers. The store could warn its employees against voting for the union while they were on the clock, but the union would need to find and talk to each employee outside of work - a huge investment of time and money by the union.

Many of these workers are part-time, and job turnover is very high. The longer the store succeeds in delaying an election, the more workers will turn over, requiring the union to continually organize new crops of workers to win a simple majority. If the workers won the election and the store refused to negotiate in good faith, it could prolong the talks until only a few of the original workers remained. If workers did strike, the store could hire replacement workers and wait longer. Or they could decide to close the store, because the loss to the company of one outlet among thousands has virtually no impact on its bottom line. And if by some miracle the union organizing effort was

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<sup>22</sup> *Union Organizing In National Labor Relations Board Elections*, Roosevelt Institute, 2014

successful, the union would represent only one store that employed only a fraction of the corporation's workforce, making it difficult to influence broader industry standards.

When we look at the job categories that are adding the most workers today we see the same story. The organizing challenges of two groups of workers - retail sales and fast food - are captured in the discussion above. We also find other obstacles. Only one of the six job categories with the most job growth<sup>23</sup> - registered nurses - has historically been represented by unions. A substantial share of workers in two other growing categories - home health aides and personal care aides - are not covered by the NLRA, whether because they work for the person they are assisting or because they are categorized as independent contractors.

We can group the major challenges facing labor organizing and policy into five areas:

1. *Current labor law is tilted against unions.* There is little incentive for employers to recognize unions or to reach bargaining agreements. There is very limited effective enforcement of worker protections regarding organizing unions or national labor standards. Powerful tools that unions might use to gain more power in the economy are prohibited.
2. *Only a relatively small number of workers are employed at one site,* including at the nation's largest employers. The loss of manufacturing jobs and the increased use of technology in manufacturing, along with the growth of service jobs, has resulted in most of the largest employers having fewer workers at any one site. As a result, organizing workers at many of the nation's large corporations now requires successful campaigns at thousands of worksites.
3. *Industries are typified by diverse, global supply chains,* in which a major corporation that sells goods to the public does not directly employ many of the workers who produce its products. As a result, the employer that is driving the price for the good or

service being delivered is shielded from legal responsibility for the conditions of work, the compensation paid to many of the people who make the good or deliver the service, and responsibility for responding to unionization efforts.

4. *Labor law does not cover many workers.* Approximately 1 in 4 workers is not covered by the NLRA or other labor laws<sup>24</sup>. These include domestic workers, farmworkers, supervisors and independent contractors.
5. *Corporations have become much more powerful than unions* and often more powerful than governments, making decisions that determine people's well being and shape the national and global economy. Corporations use their power to cut wages and benefits, including by subverting labor laws.

A major goal of the Future of Work Project is to envision policies to address these challenges, in order to create a society of broadly shared prosperity. We seek policies to both *reform* and *transform* American labor law and policy.

In the following sections, we describe policy ideas to address the five major challenges listed above. Because these issues are interrelated, many of the most powerful ideas tackle more than one of these challenges.

The discussion below lists a host of ideas, some of which would upend current labor law. They may be controversial, even among those who share the goal of strengthening workers' ability to organize.<sup>25</sup> This non-exhaustive exploration of new ideas is meant to capture the major trends in thinking about how to increase worker power. Their inclusion in this report does not imply that the Future of Work project has endorsed them, but we do believe that it is important to encourage discussion of a wide range of ideas. As the Future of Work project proceeds, we expect to originate or elevate other ideas and approaches. Future of Work will be issuing policy papers on many

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<sup>23</sup> <http://www.bls.gov/opub/mlr/2012/01/art5full.pdf>

<sup>24</sup> [http://www.americanrightsatwork.org/dmdocuments/ARAWReports/havesandhavenots\\_nlracoverage.pdf](http://www.americanrightsatwork.org/dmdocuments/ARAWReports/havesandhavenots_nlracoverage.pdf)

<sup>25</sup> Many of these policy ideas were generated as part of a two-day discussion among a group brought together by the Future of Work project.

of the ideas, reviewing potential advantages, challenges and objections.

### *New forms of worker organizations*

The policy ideas below are made in context of an exciting wave of new forms of worker organizations, emerging to meet the challenges of the 21<sup>st</sup> century economy. The new worker organizations often draw public attention to low pay, wage theft, worker abuse and unsafe work conditions. Many of these groups are not seeking formal recognition as unions under the NLRA, and many of them emerged outside of the established union movement.<sup>26</sup> Instead, the organizations are using diverse strategies to organize workers in order to improve wages and working conditions. These groups build power for workers both by organizing workers to take collective action themselves and by building broader public support for the workers' demands. Often the groups will target employers that are dependent on consumers or government for revenues. In the process, they are exploring new approaches to bargaining, outside of the NLRA framework.

One way to understand the breadth and power of these new forms of worker organizing is by describing their work:

- The New York Taxi Workers Alliance (NYTWA) organizes the city's taxi drivers, who have been considered independent contractors since the 1970s and are therefore not covered by the NLRA. NYTWA puts pressure on the City's Taxi and Limousine Commission to improve wages and benefits for workers, setting up a de facto bargaining relationship with the city's regulatory agency rather than with employers directly.
- The Coalition of Immokalee Workers organizes tomato pickers in Florida. Farmworkers are excluded by name from the NLRA, so the CIW has had to develop innovative strategies. Central among these has been to organize consumers to pressure the big purchasers of tomatoes – supermarkets and fast food chains – to pay more for tomatoes and to require the growers to use these increased revenues to increase workers' pay.

- The Restaurant Opportunities Center United (ROC United) organizes restaurant workers at high-profile restaurants and at national restaurant chains for better pay and working conditions. ROC United takes legal action against employers who violate employment laws. They also educate and mobilize restaurant customers about abuses and low pay.
- The National Domestic Workers Alliance (NDWA) organizes to pass legislation at the state level to extend labor protections to domestic workers, who are not covered by the NLRA. NDWA also works to facilitate employers' following wage and benefit laws (such as paying Social Security) and to connect domestic workers with fair and responsible employers.
- The National Day Laborers Organizing Network brings together workers' centers that have organized hiring halls around the country for day laborers. One major area of organizing is stopping wage theft through collective action against employers who violate the law. Some day laborer organizations have also organized to require that new development projects that receive public funding ensure good hiring practices and working conditions for construction workers.

These worker organizations operate outside of the NLRA for two general reasons. One, as with taxi drivers, farm workers and domestic workers, the workers are not covered by the NLRA. The second reason is that even in jobs that are covered, the NLRA's structure creates barriers to effective collective action. For example, restaurant workers are covered by the NLRA; ROC United is working to overcome the challenge of organizing the relatively small number of employees at a single restaurant by seeking agreements from restaurant chains.

The policy ideas presented in this paper address both unions that operate under the NLRA and worker organizing outside of the NLRA. The frustration with the limitations of the NLRA has even led some to say it should be abandoned. The Future of Work Program at the Roosevelt Institute has a different view. We believe that we need a dual approach. We need to

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<sup>26</sup> Unions have also innovated in using similar techniques. For example, SEIU's Justice for Janitors campaign built public support as it organized janitors at multiple employers in Los Angeles,

repair and strengthen the NLRA; it continues to provide an important foundation for representing millions of workers. At the same time, we need new policies that support workers' ability to organize that go beyond the current framework of the NLRA and that facilitate the new organizing methods that are being developed by both independent worker organizations and unions.

The array of policy ideas presented below is just the first step in the process of identifying ideas for reforming and transforming labor law in the United States to empower workers organizing for broadly shared prosperity. They are not a finished agenda for reform, but a starting point to build one such agenda. Over the next few months, the Future of Work will commission policy briefs to explore these and other ideas in more depth, looking to identify the approaches most likely to achieve high impact. We will discuss the policy briefs with leaders from unions, worker organizations, scholars, and other allies, as we develop new approaches that promise to reach our common policy goals and are likely to earn the most support. We expect some ideas to be elevated, others to be discarded. At the conclusion of the process, we hope to have advanced our goal of developing bold policies to build a 21<sup>st</sup> century social contract that expands workers' rights and the number of living wage jobs.

### ***Reforming labor law to strengthen the ability of workers to form unions and collectively bargain***

For years, unions have focused their legislative efforts on proposals to correct the imbalances in the NLRA, which favor employers and block unionization, most recently through the 2010 push to enact the Employee Free Choice Act. There are a number of potential policies that could facilitate the process of union recognition.

A first would require employers to recognize a union once a majority of workers in the workplace had signed a card, a process known as card check election. Card check elections could be expanded to include mail ballots and confidential on-line ballots as methods for demonstrating majority support.

Other potential policies focus on leveling the playing field in union elections. For example, employers could be required to allow union representatives to have access to workers on the employer's premises.

Alternatively, if employers communicate opposition to unionization, they could be required to give unions equal time to speak to employees.

Other reforms would create meaningful disincentives for employers that violate labor laws. Violations would be strictly enforced, and violators would be subject to tough sanctions and fines. The penalties for retaliating against workers who are supporting unionization should be made much more substantial, rather than the current penalty of requiring employers to provide back pay. Employers could be prohibited from hiring replacement workers during a strike or lockout. Indeed, lockouts could be outlawed altogether.

Another set of policy reforms would aim at bolstering the leverage that workers have in campaigns to win union recognition or during contract negotiations. These policies are particularly important, given the limits of strike power in the contemporary economy.

One such policy tool would be to restore workers' right to conduct secondary boycotts and strikes. Another policy would prohibit the use of the RICO Act, which was enacted to stop organized crime, against worker organizations that engage in public accountability campaigns to focus attention on employers' irresponsible conduct in a wide range of areas, including labor practices, environment and corporate governance. Employers are now filing RICO suits against worker groups that mount such corporate social responsibility campaigns that shine a public spotlight on company conduct, which include strategies such as: testifying in public hearings against employer applications for zoning or public permits; operating websites that discourage the public from doing business with the employer; exposing negative information about the employer's practices; or filing administrative charges or lawsuits against employers. The broad and vague wording of the RICO Act has allowed employers to enmesh unions in costly and threatening litigation even when it has ultimately proved unsuccessful. Existing civil and criminal laws are sufficient to address rare cases of union misconduct and RICO should be confined to its original, narrow purpose.

### ***Organizing in an economy in which many employers, including the nation's largest, have relatively few workers at any one workplace***

There are a number of policy responses to the fact that smaller workplaces with fewer employees decrease workers' bargaining power. One policy would allow unions to create bigger bargaining units by combining worker groups or worksites. This would give unions the right to define the boundaries of bargaining units, either combining the units that exist within a single corporation or bringing together workers who labor for multiple employers within the same industry. If different unions made competing claims to a group of workers, the NLRB would be required to determine a structure for bargaining units that would maximize the bargaining power of workers.

Another approach would require the creation of multi-employer consortia for the purposes of bargaining. In the absence of multi-employer bargaining units, individual employers that reach agreement with unions might not be able to compete with their lower-waged competitors and would go out of business. This would allow workers to organize for better wages and working conditions in an entire industry.

Another policy would expand the use of hiring halls to a number of industries, potentially modeled after the construction industry. In construction, union members typically work on short-term jobs for multiple employers. These construction workers are hired through union hiring halls, and they receive health and retirement benefits from a multi-employer insurance fund administered jointly with the union.

To build on this model, employers in other industries could be required to hire workers through hiring halls, run by worker organizations. Employers would be required to pay into a fund run by the worker organizations, which would administer portable benefits - including health coverage, retirement accounts, and earned sick days, family leave, and vacation - earned by individual workers through their work with multiple employers,

Another transformational policy would be to end the "exclusive representation" requirement that a union win majority recognition in a given bargaining unit through an election and that they would need to represent all the workers in that unit. Instead, unions would be allowed to represent only those workers who choose to join the union. Members-only unions

could operate across numerous employers within an industry, within a region or across a supply chain. Repealing exclusive representation would allow members-only unions to collectively bargain for their members and to represent only their members in grievances with their employers. A hybrid system would allow members-only unions to function until such time that a majority of workers vote to establish a union with the responsibility of exclusive representation.

### ***Organizing in an economy in which major employers have extensive supply chains***

Policies that increase the ability of workers to organize in ways that address the structure of national and global supply chains are another important aspect of labor law reform and transformation. Many of the policies already described begin to address these challenges: permitting secondary boycotts would allow unions to pressure companies upstream or downstream from the company being organized. Allowing unions to define bargaining units and allowing members-only unions would increase representation options for workers across the supply chain.

Other new policies would hold a dominant employer accountable for the companies that it effectively controls. For example, companies like Walmart often contract with warehouse companies that almost exclusively handle Walmart-bound products. This policy would hold Walmart accountable for the conditions in those warehouses and require them to bargain with the warehouse workers. Similarly, in the garment industry, a major retailer that serves as the dominant purchaser from subcontracted clothing manufacturers, and that requires those manufacturers to produce items to the retailer's specifications, would be held accountable to the workers in those subcontracted garment factories.

One potential policy approach would be to make the dominant employer legally liable and/or financially responsible for the labor policies at the companies that it latently controls. The dominant employer would be responsible if the controlled company violates labor laws, including labor standards, worker organizing and occupational safety and health protections. Another approach would be to address the now-common practice of employers misclassifying

workers as “independent contractors” in order to reduce compensation costs to employees and – more relevantly for this discussion – to exclude those workers from NLRA protections. If workers are misclassified, all of the employers up the supply chain could be held legally responsible. Finally, both anti-trust and labor law should be changed to remove any barriers to worker organizations reaching agreements with a dominant employer that would apply to other firms in the supply chain.

### ***Empowering organizing of workers not now covered by labor law***

We need policies that address the exclusion of millions of workers from the right to organize. Some 34 million Americans, one-in-four workers (24 percent), are not covered by the NLRA or other labor laws.<sup>27</sup> We should begin by eliminating the explicit exclusions that remain in the NLRA. The Act should be reformed to cover domestic workers and agricultural workers, categories of workers now excluded from federal labor law.

Another important policy shift would redefine the categories of “workers” (who are currently covered by the NLRA) and “independent contractors” (who are currently excluded). This is increasingly important because a growing number of employers are forcing workers – from truck-drivers to adjunct faculty – to be classified as “independent contractors.” In this re-definition, “independent contractors” would instead be deemed employees whenever there is an entity (an “employer”) with sufficient latent power to determine the terms and conditions of employment.

The re-definition of “supervisors” is another realm where policy intervention is needed to address misclassification. Many supervisors are, more accurately, workers whose jobs include some supervisory responsibility, since they do not make policy (unlike managers). These workers should be reclassified so that they can also be covered by the NLRA.

The new types of worker organizations, which are proving capable of raising wage standards for many

workers, can be bolstered with new policies. Two of these avenues have already been described: enabling worker organizations to manage portable benefits and run hiring halls. Worker organizations can and often do perform public services, such as job training, occupational safety and health training, monitoring compliance with labor laws and enrolling workers in a variety of public programs. Government funding should be awarded to the workers groups for these services. Public entities could also bargain directly with worker groups, such as those representing home health care workers.

Some groups of private workers are performing public functions and are often paid directly or indirectly through public funds. For example, many home health care workers are funded by Medicare and Medicaid, both when they work for agencies and when they work independently. Some childcare providers work for publicly funded nonprofits and the cost of childcare is subsidized through tax credits. In these fields, governments should require that workers have decent wages and benefits, and provide sufficient funding. In industries dominated by public funding, such as home health care, public authorities could be formed as entities with which worker groups could bargain.

### ***Increasing the power of organized workers to stand up to corporations and claim a fair share of the wealth they produce***

Corporations are operated to increase the wealth of their private owners and public shareholders. The executives who run public corporations have also been collecting a growing share of corporate earnings. From 1978 through 2011, when the stock market went up 349 percent, CEO pay increased 727 percent. The pay for workers increased 6 percent during the same period<sup>28</sup>.

When corporate growth comes at the expense of workers, it slows down the economy, as workers have less to spend. Corporations hurt communities when they relocate to seek lower paid workforces and lower taxes, or lobby against worker protections. When corporations lobby for lower taxes, they shirk

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<sup>27</sup>[http://www.americanrightsatwork.org/dmdocuments/ARAWReports/havesandhavenots\\_nlracoverage.pdf](http://www.americanrightsatwork.org/dmdocuments/ARAWReports/havesandhavenots_nlracoverage.pdf)

<sup>28</sup> <http://www.epi.org/publication/ib331-ceo-pay-top-1-percent/>

their responsibility to pay for public services – from the roads on which they transport their goods, to the schools that educate their workers – resulting in deteriorating services and higher taxes on individuals and other businesses that do not get tax breaks.

Organized workers can serve as a powerful antidote to the concentration of corporate power. To protect workers who are in unions, the law should block corporations from transferring jobs from unionized to non-unionized facilities and from making long-term investment decisions that modernize non-union facilities at the expense of union facilities.<sup>29</sup> Indeed, the law should require unionized employers to recognize the union as the representative of new workers at any new facilities that the employer establishes or acquires. Unionized employers should not be allowed to close their business or specific facilities without first offering them for sale on the market. Bankruptcy courts should not be able to change union contracts without permission from the union.

A number of measures would give unions a greater voice in corporate policies. The scope of subjects over which employers are currently required to bargain with their employees, which is now restricted to wages and working conditions, could be expanded to a number of other subjects that impact workers and communities, including the introduction of new products, decisions to invest in new facilities, pricing and marketing. In that way, the welfare of workers – not just the interests of shareholders and executives – would be considered in business decisions. Strikes could also be allowed over a broader range of corporate policies, including decisions that impact communities and consumers.

Workers could also be given more of a role in corporate decision-making by requiring employers to allow the formation of “works councils,” an organizational form common in European countries. Works councils are established jointly by employers and worker organizations to represent workers in decisions in the workplace, ranging from personnel and management decisions to policies governing working conditions and major investments and locations. The current provisions in the NLRA, which

are designed to block the formation of employer-controlled unions, may need to be amended to clarify that works councils may be set up when the workers approve of the councils and are not objectively dominated by the employer. Another measure would require that corporate boards of directors include representatives of unions, who would have full access to all corporate data.

Public funding can also be used to promote worker organizing. Local, state and federal governments could leverage public contracts and subsidies to require employers to comply with workers’ rights to organize. For example, they could prohibit employers from running anti-union campaigns and they could require the recognition of card check elections or other forms of establishing majority support. Government could also require that firms that receive public contracts and subsidies meet standards for pay and benefits, as President Obama has done with his recent executive order establishing a \$10.10 minimum wage for workers of federal government contractors.

## **CONCLUSION: NEXT STEPS FOR THE FUTURE OF WORK IN AMERICA**

The Future of Work Initiative, co-sponsored by the Roosevelt Institute and the Columbia Program on Labor Law and Policy, is organizing a series of discussions with academics, worker organizers, and policy experts at unions and think tanks, to imagine major changes to labor policy in the United States. The Project is commissioning short policy papers on selected subjects and will organize a conference to discuss and debate the proposals.

The Future of Work is organizing our work along three objectives:

1. Strengthening labor law, both reforming and transforming the NLRA;
2. Strengthening labor standards and the enforcement of the labor laws now on the books;
3. Addressing barriers to workers getting good jobs based on race, gender and immigration status.

This paper addresses the first objective. The ideas presented above come from the first set of

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<sup>29</sup> These practices are banned under current law only when the NLRB can prove that the employer was motivated by anti-union bias, a high bar that is difficult to reach. The new policy would remove the need for a finding of anti-union intent.

conversations about strengthening labor law. As is clear from their breadth, we are encouraging participants in the Future of Work Project to think creatively, unbounded from what is now politically possible. Imagining policies to create an America that works for all of us is one way to reach that goal. The power to win these policies will come through organizing people at work and in their communities, through changing culture and the public's understanding of the importance of organized workers in moving the economy forward. The most important of these will be organizing workers to

demand that they receive a fair share of the wealth they help create.

Good ideas can play a key role in organizing workers and in the other ways of making change. It is much easier to get where you want to go if you know where you want to go. Good ideas give people hope that there can be a better world and help them see the way forward. We hope that the ideas and discussion generated by the Future of Work in America will inspire Americans to ensure that every job respects the dignity and value of every worker, as we build an America of broadly shared prosperity.