They formed a union; now comes the hard part

Activists in Staten Island, NY, call on big businesses to not stand in the way of workers who want to form unions.

The federal Bureau of Labor Statistics reported in January that only 10.3 percent of U.S. workers belonged to a union last year—and that just 6.1 percent of private-sector workers were unionized. This continues a steady decline since 1983, when 1 in every 5 workers was a union member, and a severe drop from the peak in union membership of 35 percent in 1954.

Yet, a Gallup poll last year found that 68 percent of Americans expressed approval of labor unions, the highest since 1965.

How is enthusiasm for unions high, but union membership so low?

Several factors have set the stage for the decline of union representation. Many manufacturing jobs, long the bedrock of unions, moved overseas, with international trade agreements promoted by both political parties making the process easier. State-level "right-to-work" laws weakened union power. And much of the labor movement had become complacent and didn't recognize the struggle it was in, often wasting opportunities and resources that could have been used to organize workers. But a major challenge involves laws that fail to protect workers' rights and court decisions that have weakened the law even more.

Consider the recent organizing drive at a Starbucks store in Buffalo, NY. In December, workers at the Elmwood Avenue store voted 19-8 to join the Starbucks Workers United union. A few more Starbucks stores have subsequently voted "yes," and union drives are spreading to hundreds of Starbucks shops nationwide.

Their success is notable only because it was so unlikely—aside from a brief union effort that ended in failure in the 1980s when the company was in its infancy, the Elmwood Avenue store is the first of 9,000 U.S. Starbucks store locations to unionize. For Starbucks employees and many other workers who want unions, it was the exception rather than the rule because organizing is so difficult. U.S. labor laws, most importantly the National Labor Relations Act of 1935, were designed to bring order to the process, not to make it any easier for workers to organize. The law created the National Labor Relations Board (NLRB) to regulate the process.

Nevertheless, the balance struck by the law worked fairly well until President Ronald Reagan fired 11,000 striking air traffic controllers in 1981. Inspired by his action, employers began using a full-court press not only to combat existing unions, but also to stop new organizing efforts. They relied on sympathetic judges and political appointees in government to back them up, even when their actions were on shaky legal ground.

The NLRB's members are appointed by the president but serve staggered five-year terms, so openly anti-union members have managed to stay on, and sometimes retain control of the board, even in pro-labor administrations. In many cases, the NLRB must rely on courts to approve or enforce its decisions, potentially putting unions at the mercy of unsympathetic judges who give employers a wide berth.

Starbucks tried to stop the union effort in Buffalo by inundating workers with inaccurate anti-union messages and even by firing union activists, making up excuses for these terminations to avoid federal laws that, on paper at least, forbid retaliating against union supporters.

Against the odds, the workers in Buffalo defied the corporate campaign, but that was just the beginning—they still need a contract, and anti-union executives at Starbucks headquarters are

using additional devious tactics to delay negotiation, possibly until employee negotiators just give up or quit their jobs. For instance, Starbucks employees have accused the company of simply delaying meeting with union representatives for negotiations and of retaliating against union activists by reducing their hours on the job, possibly threatening their eligibility for full-time employee benefits; or by disciplining or even firing them for random offenses. Starbucks Workers United said that seven employees in Memphis—the entire team of organizers there—were fired after speaking to the media about their campaign. Starbucks has consistently denied the allegations, contending that its actions are normal business practices.

The employees have filed complaints with the NLRB, but resolving those complaints could take years and might result only in back pay for the workers, with no further incentive for the company to negotiate.

Workers at other mega-employers that have never had unions in their U.S. facilities before, such as Amazon, have launched organizing drives, with mixed results. In an historic victory, workers at an Amazon fulfillment center on Staten Island, NY, voted in March to unionize. Meanwhile, employees at Amazon's Bessemer, AL, plant voted against union representation last year, but the NLRB ruled that Amazon had improperly interfered with the election and ordered a new vote. That vote, which also occurred in March, again went against the union, but the NLRB is reviewing challenged ballots.

Labor law stacked against labor

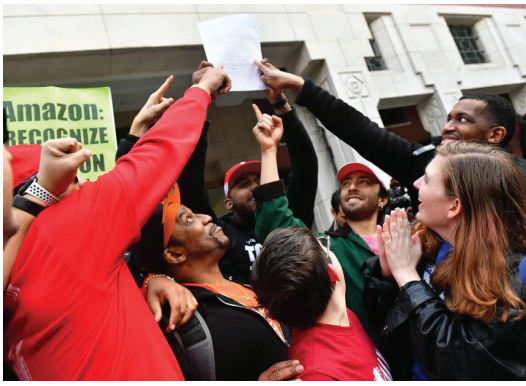
It remains to be seen whether Starbucks and Amazon workers will successfully negotiate contracts, but many workers hit a brick wall when they try to organize and win contracts. Cathy Creighton represented unions as an attorney for three decades, and she saw the reason for the disconnect firsthand.

"Why do we have support for unions...and we have such poor unionization rates? It really is because it's intentional under the law," she said.

Creighton now is director of Cornell University's Industrial and Labor Relations Buffalo Co-Lab, at the heart of the Starbucks organizing drive.

"The law is antiquated; it has over the last 87 years been amended or interpreted in ways that are harmful to employees," she said. "We've had no meaningful labor law reform that works towards workers' rights in many decades."

The 1981 air traffic controllers' strike was illegal because, as is the case with most federal workers, the air traffic controllers were forbidden from striking—but President Reagan's decision to fire them was a 180-degree turn from the actions of previous presidents. In the past, presidents who had faced work stoppages among federal employees chose not to take such drastic steps—including the Great Postal Strike of 1970. In that case, letter carriers won a huge victory: Congress granted postal



Top: Attached to a pole is a flyer calling on Starbucks to drop its anti-union stance.
Above: Staten Island Amazon Labor Union workers celebrate their election win on April 1.

They formed a union (continued)

President Ronald Reagan's crushing of the air traffic controllers union in 1981 changed the way the federal government and private companies dealt with unions.

employees collective-bargaining rights and raises, and none of the workers was fired for striking.

Reagan's choice to accept the disruption of air travel to destroy the air traffic controllers' union rather than negotiate sent a strong signal to the corporate world. Emboldened by Reagan's crushing of the controllers union and by rulings by pro-business judges and NLRB members, private employers used aggressive tactics to destroy their unions rather than negotiate. One of the first blows came in 1983, when copper mining firm Phelps Dodge faced a strike among its workers in Arizona, most represented by the United Steelworkers of America.

Following Reagan's lead, Phelps Dodge hired replacement workers—but unlike most "scabs," who worked in place of striking workers until the strike was settled, these workers were "permanent replacements." The strikers effectively had been fired, even though firing striking union workers in the private sector was illegal. The company arranged for a new union election and the new employees promptly decertified the unions. It was a loophole that other employers began to use in earnest.

"We created a new approach to labor," Phelps Dodge President Richard Moolick bragged after the company's victory. "Suddenly people realized, hell, you can beat a union. Time was, big unions were considered invincible. We demonstrated that nobody was invincible."

According to the Economic Policy Institute, a progressive think tank, employers face complaints of violating federal law in 41.5 percent of union election campaigns, with 1 out of 5 involving allegations that workers were illegally fired for union activity. The courts and the NLRB have let many get away with it, issuing rulings that have chipped away at union rights and often ignored precedents.

Workers want unions

While the efforts to combat unions, often including their very existence, have led to declining membership, the stagnation of wages and benefits that resulted seem to have had the opposite effect on public opinion. Facing the bleak consequences of union declines—rising income gaps between the richest Americans and everyone else, eroding benefits, and more—workers want their unions back.

"We've had dramatic increases in income inequality," Creighton said. "The middle class is much, much smaller and has much, much less wealth, and the income inequality is so dramatic. Now we're in a state where many young people, especially, are burdened with student loan debt and they're facing a lifetime of low-wage employment. Even though they're working, they'll be working poor with very few benefits."

In desperation, some of these workers have simply quit their jobs recently as part of the "Great Resignation." In February, 4.4 million Americans quit their jobs, and among those who found new jobs, their pay grew faster than for those who kept their jobs. Working at home made it easier—the expansion of remote working that began by necessity during the pandemic opened up opportunities for many workers to get new jobs without relocating. But it's a small, temporary fix because the surge in job creation won't last forever—mainly because much of the recent job growth simply reflects the return of people to jobs or industries that were hit hard by pandemic-related closures—and workers are still competing for the best jobs instead of striving

Union leaders, including the late AFL-CIO President Richard Trumka, joined members of Congress at a press conference with House Speaker Nancy Pelosi following House passage of the PRO Act.

to raise wages and benefits for all of them. The impulse to resign can work against union drives as well—frustrated workers may simply quit instead of staying to vote for a union.

But other workers, like those at Starbucks and Amazon, are staying put and starting union drives.

"I think people realize there's no better plan," Creighton said. Despite decades of efforts by anti-union forces to discredit unions and put up barriers to unionization, some workers, especially young ones, see unions as the only solution for getting a bigger piece of the pie.

They face an uphill battle because the deck is stacked against them. They must win a union election despite sometimes hostile tactics by their employer, possibly costing them their jobs. Then, as with the Starbucks employees, they must struggle again to win a contract. Unlike most public-sector unions such as NALC, which enjoys automatic mediation and binding arbitration if contract negotiations reach an impasse, private employers aren't required to sign a contract, only to "bargain in good faith." And many don't live up to that requirement and aren't held to it by the courts or the NLRB.

"That's why, in over half of the times when someone actually does get a union, they don't get a contract in the first year," Creighton said, "and 36 percent don't even have a contract in the second year—and then people just give up."

A legislative solution: the PRO Act

Pro-worker members of Congress are trying to fix the problem with simple, yet fundamental, changes to the law through the Protecting the Right to Organize (PRO) Act (H.R. 482), introduced by Rep. Bobby Scott (D-VA). The bill, which the House passed in March of 2021 by a vote of 225-206, would give workers truly fair elections and negotiations and close the loopholes in current law.

"The PRO Act would solve tons and tons of the problems" with labor law, Creighton said. "It would have a fair election. It would have first-contract arbitration. And it would have substantial actual penalties if the employer violates the law."

The PRO Act is the successor to the Employee Free Choice Act (EFCA), a bill Congress considered in 2007 and again in 2009, but that received insufficient support from lawmakers and administrations of both political parties. EFCA would have certified a union if a majority of workers called for an election; the PRO Act requires an election regardless. Like the PRO Act, it would have streamlined organizing and required arbitration if contract negotiations broke down. Along with other protections for workers, the PRO Act expressly forbids employers from interfering in union elections and requires contract mediation and arbitration when contract negotiations break down. It authorizes the NLRB to assess monetary penalties when a worker is fired or harmed for lawful union activities, and it allows workers to sue employers if the NLRB doesn't act. It allows unions to override "right-to-work" laws by negotiating fair-share fees on represented workers who don't join the union.

The Senate has not acted on H.R. 482, and with the 60-vote threshold necessary to clear the filibuster, many think this Senate will not take a vote. Nevertheless, it's worth trying, NALC President Fredric Rolando said.

"Strengthening the labor movement by convincing the Senate to pass the PRO Act continues to be one of NALC's high legislative priorities," Rolando said. **PR**