



The World We Have Lost: US Labor in the Obama Years

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Barack Obama was the most labor-friendly US president in at least a generation. As he recalled in his 2006 best-seller, *The Audacity of Hope*, he had been a strong union ally as an Illinois State senator, “sponsoring many of their [labor’s] bills and making their case on the floor.” He went on to play a similar role as a US senator. Later in the book, he endorsed the key provisions of organized labor’s top legislative priority at the time, the Employee Free Choice Act (EFCA):

... to help workers gain higher wages and better benefits, we need once again to level the playing field between organized labor and employers ... We should have tougher penalties to prevent employers from firing or discriminating against workers involved in organizing drives. Employers should have to recognize a union if a majority of employees sign authorization cards choosing the union to represent them. And federal mediation should be available to help an employer and a new union reach agreement on a contract within a reasonable amount of time.¹

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Yet another reflection of his union sympathies was Obama's mantra "Yes We Can!"—an English rendition of "Si Se Puede!," the United Farm Workers' iconic labor organizing slogan. AFL-CIO General Counsel Craig Becker, a member of the National Labor Relations Board under Obama, declared that no "president since Roosevelt has been rhetorically as open about his support for the labor movement."²

When Obama was elected president, organized labor was in a period of deep soul-searching, after decades of decline in union membership and clout. The Service Employees International Union (SEIU), along with UNITE HERE! (the name of the hotel and garment workers' unions after their 2004 merger) and a few other unions had left the AFL-CIO just three years earlier to form Change to Win, a rival labor federation.³ The SEIU and UNITE HERE's Chicago affiliates had endorsed Obama's 2004 Senate run; these two unions were also early supporters of his candidacy in the 2007 presidential primaries.⁴ Obama was also friendly to the AFL-CIO unions.

The 2008 financial meltdown, the deepest economic crisis since the Great Depression and a key factor in Obama's election victory, led many progressives and labor leaders to urge him to replicate some of the New Deal initiatives of the 1930s that had established key legal protections for workers and sparked the nation's last great union upsurge. Unions had invested millions of dollars in Obama's 2008 election campaign, and his professed commitment to the labor cause led many to hope that he would follow up on his pledge to support EFCA and take a leadership role in helping win its passage.

Shortly after the November 2008 election (but before Obama's inauguration), rank-and-file workers occupied the Republic Windows factory in Obama's adopted hometown of Chicago. The strike came in protest of a planned plant shutdown that would have violated a federal law requiring employers to provide advance notice to affected workers. In part because it broke out during the holiday season and amid the chaos of the financial crisis, the Republic Windows workers captured broad public sympathy. Obama (along with many other elected officials) spoke out in support of their action, further adding to the expectations that the inauguration of the nation's first African-American president, a self-proclaimed union supporter, would be a new day for the U.S. labor movement.

At first, these hopes seemed amply justified. SEIU President Andy Stern was the single most frequent visitor to the White House in the first half of 2009. AFL-CIO President John Sweeney, who had been invited to the

White House only once during the entire eight years of the previous administration, was there at least once a week in the early months of Obama's presidency; later Sweeney's successor, Richard Trumka, was also a regular guest. Obama also made a series of pro-labor appointments immediately upon taking office, including Hilda Solis, a California congresswoman with strong union ties, who became his Secretary of Labor in 2009, and Wilma Liebman, a labor attorney previously employed by the Bricklayers union, to head the National Labor Relations Board (NLRB).⁵ And the very first bill Obama signed into law was the Lilly Ledbetter Fair Pay Restoration Act, which was designed to make it easier for workers to sue for pay discrimination.⁶

However, the economic team Obama assembled to address the financial crisis was dominated by Wall Street loyalists and was far less union-friendly than many progressives had hoped. It famously prioritized financial and business interests over those of labor and working people in addressing the financial crisis. And although organized labor strongly supported Obama's health care reform effort, his decision to prioritize the Affordable Care Act over all other legislative goals during the administration's first year was among the factors leading to failure of the EFCA campaign. As many commentators have noted, EFCA might well have been defeated in any case, but at the time its collapse was a huge disappointment for labor, which had poured vast resources into the effort to win its passage.⁷

Obama did deploy his executive powers in support of labor interests throughout his eight years in office. He made a series of progressive appointments to the U.S. Department of Labor (DOL) and the NLRB—despite considerable Congressional resistance in regard to the latter. Obama's DOL ramped-up enforcement of wage and hour laws, occupational health and safety rules, and other worker protections. He also issued various Executive Orders and administrative regulations extending minimum-wage and overtime protections to home care workers, restricting unpaid internships, increasing the wage threshold for overtime eligibility, requiring federal contractors to provide paid sick leave, and raising the minimum wage for workers employed by federal contractors. In addition, the Obama NLRB issued a steady stream of union-friendly rulings, making it easier for sports players, taxi drivers, graduate student employees and faculty to unionize, and issued rules designed to streamline the union representation election process.

These actions significantly improved the situation of workers and their unions for the duration of Obama's two terms in office, but most of them proved short-lived. Some were successfully challenged in the courts, and nearly all the others would be reversed soon after the 2016 election of Donald Trump. Meanwhile, at the state level, even during Obama's first term, immediately after the 2010 midterms, newly elected Republican governors and legislators launched coordinated efforts to restrict public-sector unions (which unlike their private-sector counterparts are governed by state-level laws), with considerable success. Wisconsin's 2011 law restricting public-sector union rights under Governor Scott Walker is the best-known case, but there were similar developments in many other states.

Unionization rates continued their long decline in the Obama years. In 2008, 12.4 percent of the nation's wage and salary workers and 7.6 percent of those in the private sector were union members; by 2016, the figures were 10.7 percent and 6.4 percent, respectively.⁸ However, even as union membership waned, the number of non-union organizations like worker centers and community-based organizations grew steadily during the Obama years. Such "alt-labor" groups, along with traditional unions, helped secure passage of pro-labor legislation in several states and cities where Democrats retained political power, providing new protections for vulnerable occupational groups (e.g., domestic workers), increasing penalties for violations of labor and employment laws, increasing state and local minimum wages, and establishing paid sick leave and paid family leave programs in various jurisdictions.

THE FAILURE OF THE EMPLOYEE FREE CHOICE ACT

The aspect of this eight-year period of labor history that has been most studied is the failure to win EFCA. After the 2008 elections, with a union-friendly president and a filibuster-proof majority in the Senate, labor leaders believed they finally had a chance to secure this reform, which consisted of a set of amendments to the 1935 National Labor Relations Act (NLRA). EFCA had first been introduced in Congress in 2003 and had been labor's top legislative priority ever since. The measure was designed to address the tactics that employers had developed since the late 1970s to delay and undermine the NLRB election process, typically with the help of "labor consultants" (known as "union busters" in the vernacular).

EFCA had three key provisions. First, it would have required the NLRB to certify unions if a majority of workers signed valid union authorization cards, rather than requiring a secret-ballot election. Secondly, in newly unionized workplaces, EFCA would have mandated binding arbitration after 90 days of collective bargaining if agreement had not yet been reached on a first contract. Third, it would have stiffened penalties for employer “Unfair Labor Practice” violations, like firing workers involved in organizing or threatening to close a business if workers voted to unionize—actions that have long been illegal under the NLRA but are widely practiced, in part because the penalties are minimal.

The business lobby shared organized labor’s perception that EFCA (or a compromise measure including many of its provisions) had a serious chance of passage under Obama, who had pledged to sign it into law if it got through Congress. Employer organizations mobilized intensively to defeat the proposed measure, with the US Chamber of Commerce alone devoting \$20 million for this purpose in 2009 and 2010.⁹ Bernie Marcus, the CEO of Home Depot, went so far as to declare that EFCA would mean “the demise of civilization.”¹⁰ The business counter-campaign, along with the unexpected victory of Republican Scott Brown in the special election to replace Senator Edward Kennedy after his death in 2009, which cost the Democrats their filibuster-proof Senate majority, effectively killed the bill.¹¹

EFCA’s failure was deeply demoralizing to organized labor and its supporters. “We had put all of our eggs in that legislative basket and we didn’t win,” labor attorney and former Kennedy staffer Sharon Block later recalled.¹² “For American labor, year one of Barack Obama’s presidency has been close to an unmitigated disaster,” veteran labor journalist Harold Meyerson wrote in early 2010, adding that EFCA’s defeat was “devastating and galling.”¹³ Instead of the breakthrough for labor law reform that so many had dreamed of after Obama’s election, EFCA’s defeat became another chapter in the decades-long history of union decline.

OBAMA’S ECONOMIC RECOVERY PROGRAM: NO NEW DEAL

Another source of disappointment for labor was the administration’s response to the economic crisis. Obama’s progressive campaign rhetoric and the massive popularity he enjoyed in the immediate aftermath of his election in 2008 inspired widespread hopes that he might replicate the kinds of public policies that had followed the 1929 stock market crash: efforts to stem or reverse the growth of inequality, a massive job creation

program, and other measures to help working people recover from the massive employment and housing losses they suffered after the 2008 financial meltdown. Initially, there were some promising signs along these lines, most notably the American Recovery and Reinvestment Act (ARRA), which provided a major economic stimulus of \$787 billion and included significant tax cuts benefitting working people. But the ARRA was more modest in scale and scope than many progressives had hoped and conspicuously lacked a New Deal-style jobs program. More important, the economic team Obama appointed to address the crisis was dominated by economists drawn from Wall Street, and it soon became clear that their priority was rescuing financial institutions with bailouts and tax cuts, rather than addressing the pressing economic concerns of ordinary Americans.¹⁴

Thus like EFCA, labor's hopes for a new New Deal were left unfulfilled. In the 1930s, President Franklin D. Roosevelt had taken a bold stand in support of unions and collective bargaining and launched large-scale job creation programs and other measures to assist workers, while confronting business opposition head on. This was the period of landmark legislation creating Social Security, the first federal minimum-wage law, and other bedrock labor protections. Crucially, Roosevelt had the political leverage to carry out this agenda, most of which was passed with bipartisan support. In contrast, Obama faced a sharply divided Congress from the outset, a situation that would deteriorate dramatically after the 2010 midterm elections. That many on the political Right demonized the president on an openly racial basis further limited his room for maneuver.

Perhaps Obama could have been bolder during the "honeymoon period" at the start of his first term, but the political reality he faced in 2009 and 2010 bore little resemblance to that of the New Deal era. He did make numerous labor-friendly appointments to the DOL and NLRB; otherwise his actions in support of working people and the labor movement were largely confined to administrative measures and Executive Orders.

LABOR-FRIENDLY EXECUTIVE ORDERS, POLITICAL APPOINTMENTS, AND ADMINISTRATIVE ACTIONS

Presidents have the power to issue Executive Orders, and to reverse those issued by their predecessors, without Congressional approval. Obama used this power to deliver on some of his campaign promises immediately upon taking office. For example, he issued an Executive Order that prohibited federal contractors from using government funds for anti-union

expenditures, another that required contractors to post notices informing workers of their rights to unionize, and a third encouraging them to adopt Project Labor Agreements (short-term agreements that resemble union contracts) for construction projects. Another Obama Executive Order re-established a labor-management council within the federal government.¹⁵

In addition to choosing Hilda Solis as his Secretary of Labor, Obama made several other labor-friendly appointments in 2009 that reinvigorated the department. In the first two years of the Obama administration, the DOL also hired hundreds of new wage-and-hour investigators, along with new staffers in various other agencies assigned to enhance enforcement of workplace protections.¹⁶ This enabled DOL to ramp-up enforcement of minimum-wage, overtime, and occupational health and safety laws. The Department's Wage and Hour Division began to shift resources toward more proactive enforcement efforts, rather than simply responding to complaints, and greatly increased its outreach efforts to educate workers about their rights and to communicate their renewed determination to more effectively address violations.¹⁷

The Obama DOL also extended minimum-wage and overtime protections to nearly two million previously exempted home care workers, and required businesses to disclose any outside legal advice they received in regard to union organizing campaigns (the "persuader rule"). It also issued new regulations limiting worker misclassification as independent contractors, setting stricter limits on unpaid internships, and expanding eligibility for overtime pay to millions of additional workers.¹⁸ However, with the exception of the measures for home care workers, which survived a legal challenge in the federal courts, all of these efforts would be scaled back or reversed after Obama left office.

The NLRB was also far more labor-friendly under Obama than it had been under the Bush administration, but in contrast to the DOL, there was a lengthy delay before it could begin its work. The 2009 appointment of Wilma Liebman to chair the NLRB was warmly welcomed by organized labor.¹⁹ However, in response to vigorous opposition from the business lobby, Republicans successfully filibustered confirmation of Obama's nominees to fill two additional vacancies on the NLRB, Craig Becker and Mark Pearcc, for nearly a year. In April 2010, they were finally installed through "recess appointments" that could be made by executive authority when the Senate was not in session. The time limits on recess appointments meant that this drama would be repeated: similar controversy surrounded Obama's subsequent appointments to the NLRB, and in 2012

Republicans went so far as to challenge his right to make recess appointments, although the administration ultimately prevailed.

Despite this protracted process, the Obama NLRB actively deployed its rule-making power to help speed up union elections. Employers were newly required to post notices informing workers of their legal right to unionize under the NLRA, to provide unions with workers' email addresses and phone numbers, and to postpone any legal challenges to NLRB elections until after the workers had voted. However, this approach proved short-lived as nearly all these rules were successfully challenged in the courts.²⁰ Instead, the Obama NLRB, like its predecessors, used its power of adjudication in regard to the specific cases that came before it.

Historically, NLRB rulings have long followed a partisan pattern, with more labor-friendly rulings under Democratic administrations and more business-friendly rulings under Republican ones.²¹ The Obama NLRB was no exception, with decisions in a number of key cases that facilitated union organizing and protected workers' rights to engage in "concerted activity for mutual aid and protection" under Section 7 of the NLRA, that is, the right of workers to collectively address work-related issues on the job, not only by organizing unions but through other types of collaborative activity.

One arena in which the Obama NLRB made path-breaking new rulings involved the use of social media in the workplace. In a 2012 decision, *Costco Wholesale Corp.*, it ruled that policies in employee handbooks prohibiting workers from using electronic postings criticizing their employers were unlawful. Two years later in *Three D, L.L.C.*, it ruled that Facebook communications among employees were protected concerted activity; in 2014, it ruled in *Purple Communications Inc.* that employees could not be prohibited from using employer-provided email for organizing and other concerted activity. The Obama board also weighed in on conventional forms of workplace communication in the 2014 *Plaza Auto Center, Inc.* case, finding that a worker's verbal complaints to other workers on the job were protected speech.²²

In 2012, the Obama NLRB issued an especially high-profile decision in *D.R. Horton, Inc.*, banning employers from requiring workers to pursue individual arbitration (and thus requiring that they waive their right to class arbitration or other collective legal action), as a violation of the NLRA's provision protecting the right to concerted activity. This was reaffirmed in another case two years later, *Murphy Oil USA, Inc.*²³ However,

it has been the subject of court challenges and will soon come before the U.S. Supreme Court for a final resolution.

Another critical issue the Obama NLRB took up was the scope of “bargaining units” under the NLRA. In 2011, it ruled in *Specialty Healthcare Center of Mobile* that units that did not include all employees in a workplace were permitted. For example, a nursing home bargaining unit could include only certified nursing assistants but not cooks, janitors and clerical workers. Although business opponents criticized this decision as allowing “micro-units,” in this case the unit was twice the median size of bargaining units the NLRB had certified over the previous decade; the real issue was not size but whether the unit involved a “readily identifiable” group.²⁴

A series of additional decisions by the Obama NLRB expanded the coverage of the NLRA to include groups of workers whose status was ambiguous or who had been excluded from coverage in the past. The Board expanded eligibility for union representation to include non-tenure-track faculty members and graduate student assistants at private colleges and universities. Taxi drivers dispatched by a company were also deemed employees (rather than independent contractors), as were FedEx delivery drivers, and thus eligible for unionization under the NLRA.²⁵ In another key case, *Browning-Ferris Industries*, which the NLRB ruled in 2015 that a company that hires a contractor or franchisee to run one of its outlets may be considered a “joint employer” of the workers employed there, even if it does not actively supervise them. Although the *Browning* case concerned a different industry (recycling), it has implications for the fast-food industry, where the SEIU has been attempting to organize workers at McDonald’s franchises (the SEIU campaign is discussed further below).²⁶

The impact of these NLRB rulings has been limited, however. Even before the election of Donald Trump, whose NLRB appointees are highly likely to reverse many of them in future cases, many of these decisions faced court challenges and in some cases could be nullified by new legislation. For example, the *Browning-Ferris* case has already been reversed by the new Trump NLRB, but business opponents fearful that the pendulum could swing in the other direction under a future Democratic administration are lobbying for legislation to address the issue.²⁷

In summary, while Obama’s Executive Orders and his political appointments fulfilled his promises to support organized labor, and on his watch both the DOL and NLRB delivered many labor-friendly rulings between 2009 and 2016, those gains were highly precarious. There was an uptick

in union win rates during the Great Recession, which persisted throughout the Obama years.²⁸ However, as noted above, unionization rates continued their relentless decline during his two terms. Meanwhile, new political struggles over public-sector labor rights emerged at the state and local level after 2010, along with cases that came before the US Supreme Court.

ATTACKS ON PUBLIC-SECTOR UNIONS: WISCONSIN TO THE FRIEDRICHS CASE

Starting in 2010, the absolute number of public-sector union members began to decline, reflecting cutbacks tied to austerity measures precipitated by the 2008 financial crisis. In efforts to reduce or eliminate budget shortfalls, more than half the states laid off public employees in fiscal years 2010 or 2011. Moreover, after the 2010 midterm elections brought Republicans into political power in many key states, austerity measures were coupled with a wave of direct political attacks on public-sector collective bargaining to produce an unprecedented fall off in public-sector union density. Ironically, Wisconsin, where these political attacks were especially prominent, in 1959 had been the first state to pass legislation creating collective bargaining rights for public-sector workers. The 2011 attack on public-sector bargaining rights led by Wisconsin Governor Scott Walker sparked vigorous resistance and a dramatic political struggle, including a month-long occupation of the state legislature building, but ultimately Walker prevailed.²⁹

This was not merely a continuation of previous anti-union efforts, which had been escalating since the late 1970s. Whereas those efforts had been concentrated in private companies, after 2010, for the first time the public sector became a central battleground. And in contrast to earlier years, the attacks did not come directly from employers—which in the public sector were government agencies—but rather from elected officials, under pressure from lobbyists and campaign donors. Attempts at undermining public-sector unions had appeared periodically before, but they accelerated enormously with the Great Recession and the state and local budget deficits that it helped to create. The new attacks on public-sector unions that emerged in 2011 were nakedly political in character. The ties between organized labor and the Democratic Party, and unions' long-standing tradition of generously supporting Democratic candidates, had long made

unions anathema for the political right. Now anti-union organizations such as the American Legislative Exchange Council (ALEC) capitalized on the unique opportunity presented by the wave of state-level Republican victories in the 2010 midterm elections. In 2011 and 2012 alone, 15 states passed laws restricting public employees' collective bargaining rights (although three of these were later overturned in popular referenda). ALEC wrote model legislation and disseminated it to sympathetic elected officials in various states, an approach that proved highly effective.

Although this public-sector anti-union offensive was the most distinctive feature of the post-2008 labor landscape, anti-union efforts continued to escalate in the private sector as well. ALEC and other right-wing groups promoted proposals for "right-to-work" legislation, which prohibits collective bargaining agreements that require that all covered workers pay union dues. Right-to-work laws were introduced in 19 states in 2011 and 2012, and were soon passed in three former union bastions in the Midwest: Indiana in 2012, followed by Michigan in 2013 and Wisconsin in 2015. ALEC also promoted other types of labor legislation at the state level including bills eliminating New Deal-era "prevailing wage" laws that require firms with public contracts to pay the wages and benefits that the majority of workers in a region and occupation receive (in practice, typically those specified in collective bargaining agreements).

The conservative interests that animated ALEC also pursued their anti-union agenda in the federal courts. The most important example, *Friedrichs v. California Teachers Association*, became the focus of a dramatic set of developments during Obama's final year in office. *Friedrichs* challenged the right of public-sector unions to collect "fair share service fees," also known as "agency fees," to cover the cost of union representation for government workers who chose not to become union members. As the U.S. Supreme Court had established in a 1977 case, such fees had long been deemed lawful in light of the fact that unions are required to represent both members and non-members in collective bargaining. *Friedrichs* revisited this question, with the plaintiffs arguing that agency fees violated the First Amendment's guarantee of free speech.

Most observers had expected the Supreme Court to side with the plaintiffs, but the sudden death of Justice Antonin Scalia in 2016 instead led to a tied 4-4 vote, which meant the lower court decision, which favored the union, remained in force.³⁰ The subsequent success of conservatives in blocking Senate confirmation of any replacement for Scalia on the Court, and Donald Trump's choice of Neil Gorsuch for that position in 2017, set

the stage for a replay of this drama. A new case pivoting on the same issue, *Janus v. AFSCME*, was decided by the Court in June 2018. As most observers had anticipated, the Court sided with the plaintiffs and struck down agency fees, which will be a major blow to public-sector union treasuries.

ALT-LABOR AND BLUE STATE LEGISLATIVE INITIATIVES

In the aftermath of EFCA's failure, hopes for labor movement revitalization have increasingly focused on the "alt-labor" (alternative labor) organizations that had begun to proliferate in the 1990s. Also known as "worker centers," these are not traditional unions but community-based groups that organize and advocate for low-wage immigrants and others concentrated at the bottom of the labor market. Alt-labor organizing campaigns typically involve "naming and shaming" employers who exploit such workers, focusing media and public attention on violations of labor and employment law, such as payment below the legal minimum wage (or in some cases outright nonpayment). Many worker centers also engage in litigation to secure back pay and other remedies for the victims. Initially, traditional unionists were skeptical about these efforts, but that had changed by the time Obama took office. By 2009, several labor unions as well as the AFL-CIO had entered into partnership agreements with worker centers, and some unions even began to emulate their tactics.

There were 160 worker centers in the United States in 2007; in the aftermath of the Great Recession, the number grew to over 200 by 2010 and, according to one estimate, to a total of 230 by 2013.³¹ In addition, several worker centers that began as local operations expanded during this period into national operations. These include the Restaurant Opportunities Centers United (ROC-United), with 11 local organizations across the nation; the National Domestic Workers Alliance, with 42 affiliates; and the National Day Laborers Organizing Network, with 43 affiliates.³² Other examples include the Food Chain Workers' Alliance (with which ROC-United is also affiliated) and the National Guestworker Alliance. Although there are no reliable data as to how many workers are affected by these efforts, many of which are modest in size, the Food Chain Workers' Alliance alone claims to represent 300,000 workers.

Another high-profile organizing initiative emerged in the wake of the 2011 Occupy Wall Street movement: the SEIU fast-food workers' campaign, centered on demands for wages of \$15 per hour and the right to

unionize. Launched in New York in late 2012, the “Fight for \$15” soon spread nationwide, propelled by a series of one-day demonstration strikes that garnered extensive publicity. Although funded by a traditional labor union, the SEIU, this campaign was initially spearheaded by a community organization (New York Communities for Change), and it adopted the strategic repertoire of the worker center movement, shining a bright light on low wages and workplace abuses in the fast-food industry and operating entirely outside the NLRA framework. The Fight for \$15 expanded to include workers in other low-wage sectors: in December 2014, April 2015, and November 2015, airport workers, domestic workers, convenience store employees, and even college-teaching adjuncts joined in the one-day strike demanding a \$15 hourly wage. Another worker center-like union-sponsored campaign was OUR (Organization United for Respect) Walmart, which launched a series of “Black Friday” strikes as well as other efforts to put pressure on the nation’s largest employer to improve its employment practices.

The \$15 per hour demand first floated by the SEIU fast-food organizing also inspired efforts across the nation to raise the minimum wage in cities and counties where unions still had a strong presence and significant political leverage. Seattle and SeaTac in Washington State, along with San Francisco, Emeryville, and Los Angeles in California, and more recently New York City and State, all passed laws gradually raising the overall minimum hourly wage to \$15 or more. Advocates also won more modest increases in minimum wages in more than a dozen other cities and states across the nation.

Like the Fight for \$15 itself, these minimum-wage campaigns built directly on the Occupy movement’s successes in raising public awareness of skyrocketing inequality. In 2014 alone, 14 states raised their statewide minimum wages.³³ At least two million workers benefitted from these new city-level laws from 2012 to 2016 alone, and about three million from the statewide minimum-wage increases legislated between 2008 and 2014. As of 2010, only a handful of cities had passed their own minimum-wage ordinances, but between 2012 and early 2016, 32 municipalities did so. In September 2015, seven cities in the San Francisco Bay Area announced plans to work together to establish a regional minimum wage, another recent innovation. Organized labor has also promoted a variety of legislative measures at the state and local levels aimed at improving the situation of low-wage workers, mandating benefits like paid family leave and paid sick days, and ramping up enforcement of state and local labor standards.³⁴

These legislative initiatives as well as the spurt of alt-labor organizing efforts that emerged in the Obama years harken back to pre-New Deal labor movement strategies, in contrast to the NLRA-based union campaigns that dominated in the mid-twentieth century. In the Progressive Era, when unionization rates were comparable to those of the early twenty-first century, labor reform groups and their middle-class allies publicized sweatshops and employer abuses and provided educational and social services for immigrant workers in much the same way that worker centers do today. These reformers also campaigned for progressive legislation, including the first state minimum-wage laws. With the failure of EFCA and in an institutional environment increasingly hostile to unions, the labor movement has returned to its pre-New Deal strategic repertoire.³⁵

ALEC and the other anti-union organizations allied with it have not stood by idly in the face of these new efforts. They argue that worker centers are unions in disguise and should be governed by the NLRA. That particular claim has not gained much traction, but in many states where Republicans have won political control, they have enacted preemption legislation that prohibits cities and counties from increasing minimum-wage laws or other measures benefitting workers. By 2017, 25 states had enacted minimum-wage preemption laws, 12 of which were passed after 2013, in direct response to the post-Occupy Wall Street wave of efforts to win minimum-wage increases at the city and county level. A few states have enacted blanket preemption laws designed to preclude local legislation on a wide variety of matters.³⁶ And a Republican-sponsored proposed federal law, H.R.4219, the “Workflex in the 21st Century Act,” introduced in November 2017, would extend this logic to preempt all state and local paid leave laws.

CONCLUSION

Although Obama was far more supportive of unions than any president in decades, he was unable to deliver lasting gains to organized labor. The EFCA debacle was only the first blow. For six of his eight years in power, Republican control over Congress severely constrained Obama’s room for maneuver, which was essentially limited to administrative actions—Executive Orders and DOL regulations and policies, as well as appointing DOL and NLRB officials. With the election of Donald Trump, moreover, most if not all of what Obama achieved in the labor policy arena will be reversed. Union power is increasingly confined to “Blue” states and cities; although some cherish the hope that on the national level, a day will come

when the pendulum will swing back to the progressive side. As Obama himself remarked the day after Donald Trump was elected, “The path that this country has taken has never been a straight line. We zig and zag, and if we lose, we learn from our mistakes, we do some reflection, we lick our wounds, we brush ourselves off, we get back in the arena. We go at it. We try even harder the next time.”³⁷

NOTES

1. Obama, Barack. 2006. *The Audacity of Hope*. New York: Three Rivers Press.
2. Minchin, Timothy J. *Labor Under Fire: A History of the AFL-CIO Since 1979*. Chapel Hill: University of North Carolina Press.
3. Milkman, Ruth and Stephanie Luce. 2017. “Labor Unions and the Great Recession,” *RSF: The Russell Sage Foundation Journal of the Social Sciences* 3(3): 145–65.
4. Obama, Barack. 2006. *The Audacity of Hope*. New York: Three Rivers Press.
5. Minchin, Timothy J. *Labor Under Fire: A History of the AFL-CIO Since 1979*. Chapel Hill: University of North Carolina Press.
- Warren, Dorian. 2010. “The American Labor Movement in the Age of Obama: The Challenges and Opportunities of a Racialized Political Economy,” *Perspectives on Politics* 8(3): 847–60.
6. Lofaso, Anne Marie. 2011. “Promises, Promises: Assessing the Obama Administration’s Record on Labor Reform,” *New Labor Forum* 20(2): 65–72.
7. Warren, Dorian. 2010. “The American Labor Movement in the Age of Obama: The Challenges and Opportunities of a Racialized Political Economy,” *Perspectives on Politics* 8(3): 847–60.
8. Hirsch, Barry T. and David A. MacPherson. 2017. *Union Membership and Earnings Data Book*. Bloomberg—Bureau of National Affairs.
9. Hamburger, Tom. 2009. “Labor Unions Find Themselves Card-Checked,” *Los Angeles Times*, May 19.
10. Lofaso, Anne Marie. 2011. “Promises, Promises: Assessing the Obama Administration’s Record on Labor Reform,” *New Labor Forum* 20(2): 65–72.
11. See Warren, Dorian. 2011. “The Unsurprising Failure of Labor Law Reform and the Turn to Administrative Action,” in *Reaching for a New Deal*, eds. Theda Skocpol and Lawrence R. Jacobs. New York: Russell Sage Foundation.
12. Cohen, Rachel. 2018. “How the Labor Movement Is Thinking Ahead to a Post-Trump World,” *The Intercept* (Jan. 21) <https://theintercept.com/2018/01/21/labor-movement-us-unions/>

13. Meyerson, Harold. 2010. "Under Obama, Labor Should Have Made More Progress," *The Washington Post*, February 10.
14. Skocpol, Theda and Lawrence R. Jacobs, "Reaching for a New Deal: Ambitious Governance, Economic Meltdown and Polarized Politics," in *Reaching for a New Deal*, eds. Theda Skocpol and Lawrence R. Jacobs. New York: Russell Sage Foundation.
15. Warren, Dorian. 2011. "The Unsurprising Failure of Labor Law Reform and the Turn to Administrative Action," in *Reaching for a New Deal*, eds. Theda Skocpol and Lawrence R. Jacobs. New York: Russell Sage Foundation.
16. Warren, Dorian. 2011. "The Unsurprising Failure of Labor Law Reform and the Turn to Administrative Action," in *Reaching for a New Deal*, eds. Theda Skocpol and Lawrence R. Jacobs. New York: Russell Sage Foundation.
17. Semuels, Alana. 2017. "The Future of the Department of Labor under Trump," *The Atlantic*, March 6.
18. Scheiber, Noam. 2015. "As His Term Wanes, Obama Champion's Workers' Rights," *New York Times*, August 31.
- Gitis, Ben. 2017. "Obama-Era Labor Regulations: Where Are They Now?" *American Action Forum*, September 21. <https://www.americanactionforum.org/insight/obama-era-labor-regulations-now/>
19. Lofaso, Anne Marie. 2011. "Promises, Promises: Assessing the Obama Administration's Record on Labor Reform," *New Labor Forum* 20(2): 65–72.
20. Garden, Charlotte. 2015. "Toward Politically Stable NLRB Lawmaking: Rulemaking vs. Adjudication," *Emory Law Journal* 64: 1469–1494.
21. Moe, Terry. M. 1982. "Regulatory Performance and Presidential Administration," *American Journal of Political Science* 26(2): 197–224.
22. Green, Michael Z. 2015. "The NLRB as an Uberagency for the Evolving Workplace," *Emory Law Journal* 64: 1621–1646.
23. Green, Michael Z. 2015. "The NLRB as an Uberagency for the Evolving Workplace," *Emory Law Journal* 64: 1621–1646.
- Becker, Craig. 2012. "The Continuity of Collective Action and the Isolation of Collective Bargaining: Enforcing Federal Labor Law in the Obama Administration" *Berkeley Journal of Employment & Labor Law* 33: 401–17.
24. Becker, Craig. 2012. "The Continuity of Collective Action and the Isolation of Collective Bargaining: Enforcing Federal Labor Law in the Obama Administration" *Berkeley Journal of Employment & Labor Law* 33: 401–17.
25. Lewin, Tamar. 2014, "Labor Ruling Could Allow More Faculty to Unionize," *New York Times*, December 22.

- Scheiber, Noam. 2016. "Grad Students Win Right to Unionize in an Ivy League Case," *New York Times*, August 23.
- DePillis, Lydia. 2015. "Labor Board's Shift in Legal Interpretation Could Allow Many Taxi Drivers to Unionize," *Washington Post* Wonkblog, October 29. https://www.washingtonpost.com/news/wonk/wp/2015/10/29/labor-boards-shift-in-legal-interpretation-could-allow-thousands-of-taxi-drivers-to-unionize/?utm_term=.679ec54ab7c4
26. Scheiber, Noam. 2015. "As His Term Wanes, Obama Champion's Workers' Rights," *New York Times*, August 31.
 27. Scheiber, Noam. 2017. "Labor Board Reverses Ruling That Helped Workers Fight Chains," *New York Times*, December 14.
 28. Milkman, Ruth and Stephanie Luce. 2017. "Labor Unions and the Great Recession," *RSF: The Russell Sage Foundation Journal of the Social Sciences* 3(3): 145–65.
 29. Milkman, Ruth and Stephanie Luce. 2017. "Labor Unions and the Great Recession," *RSF: The Russell Sage Foundation Journal of the Social Sciences* 3(3): 145–65.
- Lafer, Gordon. 2017. *The One Percent Solution: How Corporations are Remaking America One State at a Time*. Cornell University Press.
30. Liptak, Adam. 2016. "Victory for Unions as Supreme Court, Scalia Gone, Ties 4–4," *New York Times*, March 29.
 31. Fine, Janice. 2011. "New Forms to Settle Old Scores: Updating the Worker Center Story in the United States," *Relations Industrielles/Industrial Relations* 66: 604–30.
- Narro, Victor. 2013. "Perspectives: Worker Centers and the AFL-CIO National Convention," *Law at the Margins* blog, September 3. Available at: <http://lawatthemargins.com/perspectives-worker-centers-and-the-afl-cio-national-convention/>
32. Fine, Janice. 2015. "Alternative labour protection movements in the United States: Reshaping industrial relations?" *International Labour Review* 154(1): 15–26.
 33. Luce, Stephanie. 2015. "\$15 per Hour or Bust: An Appraisal of the Higher Wages Movement," *New Labor Forum* 24(2): 73–78.
 34. Milkman, Ruth and Stephanie Luce. 2017. "Labor Unions and the Great Recession," *RSF: The Russell Sage Foundation Journal of the Social Sciences* 3(3): 145–65.
 35. Milkman, Ruth. "Back to the Future? U.S. Labor in the New Gilded Age," *British Journal of Industrial Relations* 51: 645–66.
 36. Riverstone-Newell, Lori. 2017. "The Rise of State Preemption Laws in Response to Local Policy Innovation," *Publius: The Journal of Federalism*, 47(3): 403–425.
 37. <https://obamawhitehouse.archives.gov/the-press-office/2016/11/09/statement-president>