#### Otherwise – death by a thousand cuts.

Velazquez 25, Professor of Law @ Indiana (Alvin, “The Death of Labor Law and the Rebirth of the Labor Movement,” Indiana Legal Studies Research Paper Number 543)

The Court ruling that the administrative apparatus of the NLRA is unconstitutional would leave a vacuum in labor law, and anger over the death of collective bargaining rights could be widespread. The labor movement and its allies could channel this anger, alongside the deepening inequality in this country, and their remaining resources, to galvanize a new social movement.24

With enough of a movement, labor could sway discourse from the dead letters of the NLRA to a more moral framework that allows labor to bargain for the common good.25 Labor could consider using the death of the NLRA to enter into a new “grand bargain” of labor law26 as part of a general strike that unions such as the United Auto Workers have declared for May 1, 2028.27 The alternative is to continue to have collective bargaining rights die as a result of a thousand cuts.

#### A---Strengthen. It requires building on existing legal frameworks. The perm invalidates existing protections, so it is creation, not strengthening. Those are distinct.

David Morris 19, Professor of Business Development at Coventry University, “Toward a New Knowledge Economy?,” Revival of a City, edited by Jason Begley et al., Springer International Publishing, 2019, pp. 229–254, DOI.org (Crossref), doi:10.1007/978-3-030-22822-4\_10

Can government policy interventions intentionally create clusters? Te alternate views (to intentional creation) suggest that, either, governments can only create conditions in which clusters might emerge through the bottom-up actions of private frms, or that clusters begin to emerge on their own (autonomously), but once they have started they can be encouraged to grow through targeted policy interventions. However, innovative clusters will not emerge automatically and a number of facilitating conditions need to be present. Prominent among these are the ability of clusters to reduce the costs of co-ordinating complementary but dissimilar activities and the presence of network-innovation. Network-innovation occurs when diferent economic actors with distinct competencies combine their skills to improve existing products or processes or create new ones. Networkinnovations do not always occur through a planned process or programme of research and development, but do require the co-operation of multiple organisations along the value chain. Cluster initiatives are public-private actions designed and resourced to strengthen clusters. Note the word “strengthen” rather than “create”. Again, the implication is that initiatives can only develop something which has already begun to emerge rather than build something new where there was previously a gap. Cluster initiatives concentrate on particular aspects of cluster policy, for example developing commercial and research collaboration. Upgrading human resources and the business environment are also important.

#### Strengthen “bolsters” the existing framework

Wayne Rimmer 18, Institute of Education, University of Reading, “Exploring the contribution of teaching associations to the professionalism of teachers of English as a foreign language: a UK case study,” October 2018, https://centaur.reading.ac.uk/84076/1/13030646\_Rimmer\_thesis.pdf

1.2 Identifying the problem

The argument of this thesis is that the assumed link between TAs and perceptions of professionalism is putative and lacks empirical corroboration. The connection between TAs and professionalism is that the former has claims to foster the latter. Thus, in Szesztay’s (2006) list of aims for prospective TAs, first comes “to strengthen language teachers’ sense of identity as members of a respected profession” (p. 17). The verb “strengthen” is sanguine as it implies that some degree of professionalism already exists, but one that needs bolstering. Unfortunately, there is evidence from the public sphere to suggest that EFL is not “respected”, as illustrated in a non-fiction work describing an introduction to the world of teaching EFL:

I found a job teaching English at a language centre on the outskirts of Chiang Mai. It was a pretty shabby outfit, run by a bunch of cowboys. They didn't even ask me if I had a criminal record. All they saw was the TEFL certificate, the smart pants, the red striped suit and smart tie. The hours were long and the money wasn't much but it kept me busy and the language centre was close to where I lived. (Moore, 2014, pp. 54-55)

#### Absent an “existing” framework, the perm is “new” rights

Kassab 19, JD (GAUTHIA v. ARNOLD & ITKIN No. 01-19-00143-CV COURT OF APPEALS OF TEXAS, FIRST DISTRICT, HOUSTON August 13, 2019 Reporter 2019 TX APP. CT. BRIEFS LEXIS 10130)

The Lawyers also cite to a legal malpractice treatise written by Charles Herring, Jr. for the proposition [\*29] that "Texas courts and commentators further support the conclusion that the Texas barratry statute did not provide a private cause of action prior to the 2011 amendment." 1CR268. This citation is misleading. While the Lawyers quote the statement from Mr. Herring that no "express private remedy" existed against a lawyer or other person who engaged in barratry prior to 2011, they attempt to mislead the Court by intentionally omitting Mr. Herring's qualification following that statement: that the original § 82.065 allowed a client to void a contract obtained through barratry and explaining that the 2011 amendment only served to " strengthen civil remedies for clients and to create a new civil remedy for nonclients" subjected to illegal solicitation. See Charles F. Herring, Jr., 2013 TEXAS LEGAL MALPRACTICE & LAWYER DISCIPLINE § 3.20.5 (12th ed. 2013) (emphasis added). The word "strengthen" confirms that remedies already existed for clients, especially in contrast to the comment that the amendment "create[d] a new civil remedy for nonclients." Id.

#### Maintenance of federal rights will be interpreted broadly to pre-empt state protections

Harris 25, Burnes Center for Social Change Senior Fellow (Seth, et al, “Power At Work Blogcast #96: Would workers have more power without the NLRA and NLRB?,” https://www.youtube.com/watch?v=TKDIOjOzHjU&t=1s&ab\_channel=TheBurnesCenterforSocialChange, Transcribed by YouTube and Brett Bricker)

Labor law scholars and activists and policy makers have been watching the decline of the NL for at least three decades, and we have been watching this sinking ship sink for quite a while, and up until now, the instinct of labor reformers was to try and reform the national declarations act and try to pass things through Congress and try to protect and then kind of then kind of beef up, if possible, the National Labor Relations Board, and that was the main trajectory that we thought was possible with regard to private sector labor governance. We now face another juncture in this decades long crusade to do something about private sector labor governance, and I think that we need to think about alternatives to reforming the NLRA and protecting the national negotiations board, and the one alternative which is out there is using state laws and state agencies to do private sector labor governance. It's not obvious that we have to choose federal law or state law, but the way that preemption doctrine, not statutory law, has been developed is that we supposedly have to choose and what I do in my working paper and blog post is offer some paths to state regulation of private sector labor governments, because I want to kind of open up our imagination to what is possible. And what I find, what I found is that 19 states currently have on the books private sector labor rights for workers, which means the equivalent of Section seven rights to organize collectively bargain and act concertedly. They also have their own definitions of unfair labor practices, again mimicking the federal labor law, and they also have an agency and a dispute resolution procedure for resolving issues, and that was the state of the draft that they sent, that I posted, that I heard about private blog after that, I also found that 14 other states recognize the rights of private sector workers to organize and bargain collectively as a public policy. So a total of 33 states have private sector labor rights, and they're not perfect. They're not they would not solve all of our problems. They would not solve all of the problems that the labor was unable to solve. But it's something, and when workers, Policy Advocates and organizers are trying to find ideas about what can we do now in lieu of this sinking ship, I think that going to states and to the local level might be the way to go, or a way to go, and that's the possibility that I want to raise this paper to claim that we might not necessarily see the NLRA dead by the end of the Trump administration, but what I hope To see gone is this fixation on the federal level as the only source of power for private sector workers, which I think has proved to be a devastating strategy for labor in the US. And so that's the paper, and that's the intervention. Does that make sense.

It makes perfect sense. I just want to clarify one point for our audience, because preemption is something labor lawyers talk about all the time, but it's not necessarily obvious to to ordinary people, people who are not read in on these kinds of things. So preemption means that federal labor law governs to the exclusion of state laws. So those state laws apply only where federal law does not right now, right so only to the very small number of workers who are not covered, or, I should say, the very small number of employees who are not covered by federal labor law. And so that means that we have these state laws in place, but other than in a very limited number of circumstances, they don't really operate right now. Is that fair?

It is fair. NLRA preemption is extremely broad in the landscape of federal preemptions, it's completely court made. It's not in the text of the NRA, that kind of pension, the preemption of state level governance is not in the text of the NRA, but Supreme Court created over the 60s and 70s, and basically it says that local governments and states cannot regulate labor activities that are arguably covered or prohibited by The National Labor Relations Act or even stuff that Congress meant to be excluded from any and all regulations. So even if you are excluded from the National Labor Relations Act, labor law of reemphasion might still grab a hold of you, and it's not obvious. I do have to say that there is a fair amount of workers who are excluded from the National Labor Relations Act, which we know that labor apprehension does not reach. So independent contracts, agricultural workers, public sector workers, employees of small employers and kind of the list go on and on, which for them, those state laws are the only possible so Basically, we have a completely court made preemption regime, which is now questionable because the NLRA has become a disabled institution, an institution that does not function in the way that Congress meant it to function.

#### That pre-emption constrains labor innovation. Starting from scratch is key.

Galvin 19, Professor of Political Science @ Northwestern (Daniel, “From Labor Law to Employment Law: The Changing Politics of Workers’ Rights,” *Studies in American Political Development*, 33)

Critically, however, these twin institutional and organizational developments have not emerged on a blank slate. For even as labor law has become an increasingly insufficient foundation for building worker power, it has remained fixed in place, exerting a powerful, jealous, and continuous governing authority in its expansive domain. Indeed, labor law has become almost as significant for what it prohibits as for what it allows: In addition to denying collective bargaining rights to millions of vulnerable workers by excluding key industries and occupations from coverage (domestic work, agricultural work, independent contractors), the law has been interpreted by courts as preempting any and all state and local efforts to regulate labor-management relations in the private sector.20 Preemption thus eliminates potentially generative sources of labor law innovation and experimentation while boxing in reformers, severely limiting their range of options. Unable to start from scratch and design new institutions better suited to changing economic and political conditions, workers and their advocates have had to structure their innovations to carefully circumvent the stubbornly persistent labor law without intruding into its broad purview. In this way, labor law has insinuated itself into the new state-level employment laws that have emerged, as well as the recent workaround proposals already mentioned. As I will elaborate, the constraints that labor law imposes are evident in the new laws’ delimited substantive content, distinctive institutional forms, and alternative delivery mechanisms.

#### Independent of the legal validity of pre-emption, building on the current system siphons labor energy from alternatives

Eidelson 12, union organizer, MA in political science, freelance writer, (Josh, “American Workers: Shackled to Labor Law,” 5/23/12, https://inthesetimes.com/article/american-workers-shackled-to-labor-law)

Yet the fact is, if a union wanted to test its luck with fewer legal restrictions on strikes and boycotts and no legal right to recognition or negotiations, it could do so right now by legally dissolving itself and re-constituting as something more like the CIW. Historian and New Labor Forum editor-at-large Steve Fraser argues that the downside of the NLRA may be less in the explicit restrictions it enforces than in the way its existence has ​“locked the trade union movement into a juridical way of proceeding” and made it ​“doubt other tactics.”

#### A---Optimized follow-on. The FG takes the best parts of state innovation and follows on after proof of concept

Gerstein 20, Director of the State and Local Enforcement Project at the Harvard Labor and Worklife Program and is a Senior Fellow at the Economic Policy Institute. She was previously the Labor Bureau Chief in the New York State Attorney General's Office and a Deputy Commissioner in the New York State Department of Labor. A.B., Harvard College; J.D., Harvard Law School (Terri, “STATE AND LOCAL WORKERS' RIGHTS INNOVATIONS: NEW PLAYERS, NEW LAWS, NEW METHODS OF ENFORCEMENT,” 65 St. Louis L.J. 45, Lexis)

State and local action has been critical for safeguarding workers' rights during this challenging time. However, this action at the state and local level can and should continue even in light of the Biden administration's welcome pro-worker approach. Sustained and even increased momentum among states and localities is important, for various reasons.

First, as Justice Brandeis wrote: "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the [\*89] rest of the country." 221This concept of states (and now localities too) serving as laboratories of democracy has allowed experimentation and advancement in laws and rights in a number of areas, not least among them worker protection laws. Paid sick days and paid family leave are both examples of this phenomenon: paid sick days began in one city, and paid family and medical leave began in one state, but both have now grown to cover millions of workers nationwide in a number of different places. With years of evidence from multiple jurisdictions of their feasibility, positive impact for workers, and lack of harm to employers, 222 national consensus has grown that these laws should be passed at the federal level, 223 with conservatives agreeing to the concept of at least paid parental leave, even though their proposals are generally lackluster. 224 Creativity in state and local worker protection legislation enables the development of cutting-edge approaches that address new developments in workplace challenges, including those emerging from new business models or from technological changes. States and localities can test policies that are not yet within the Overton window of the national conversation, on which there is not yet a national consensus. Even in prior eras with worker-friendly leaders at the federal level, states and localities have often taken the lead on important workplace and other policy issues, while the federal government later, with proof of concept, follows. 225

#### B---Speed.

Gerstein 20, Director of the State and Local Enforcement Project at the Harvard Labor and Worklife Program and is a Senior Fellow at the Economic Policy Institute. She was previously the Labor Bureau Chief in the New York State Attorney General's Office and a Deputy Commissioner in the New York State Department of Labor. A.B., Harvard College; J.D., Harvard Law School (Terri, “STATE AND LOCAL WORKERS' RIGHTS INNOVATIONS: NEW PLAYERS, NEW LAWS, NEW METHODS OF ENFORCEMENT,” 65 St. Louis L.J. 45, Lexis)

Another benefit of state and local involvement in workers' rights is their closeness to their constituents: they can easily partner with local organizations [\*90] and identify and address problems specific to their workforce and industries; they can also incorporate enforcement into other state and local functions, like granting of licenses (or Santa Clara County's dining out app). States and localities are also often nimbler than the federal government, with the ability to roll out new policies more quickly given the smaller size of government and the smaller regulated community at play.

#### C---Legal victories---they’re more likely at the state level

Gerstein 20, Director of the State and Local Enforcement Project at the Harvard Labor and Worklife Program and is a Senior Fellow at the Economic Policy Institute. She was previously the Labor Bureau Chief in the New York State Attorney General's Office and a Deputy Commissioner in the New York State Department of Labor. A.B., Harvard College; J.D., Harvard Law School (Terri, “STATE AND LOCAL WORKERS' RIGHTS INNOVATIONS: NEW PLAYERS, NEW LAWS, NEW METHODS OF ENFORCEMENT,” 65 St. Louis L.J. 45, Lexis)

In addition, trends like the growth of forced arbitration and increasingly conservative federal courts call for a continued focus on state and local action. Forced arbitration clauses prevent workers from being able to bring lawsuits in court; they are often coupled with class waivers, which prohibit employees from joining together to bring a class action. An estimated fifty-six percent of workers are currently covered by forced arbitration, 226 and that number is predicted to increase to over eighty percent by 2024. 227 This coverage is greatly facilitated by the Supreme Court's decision in Epic Systems v. Lewis, which held that class waivers accompanying arbitration provisions do not violate the National Labor Relations Act's right to collective action. 228 The proliferation of arbitration means a significant diminishment of private litigation, 229a longtime essential pillar of our employment rights enforcement system. This situation will not be fully resolved unless and until federal legislation is passed to prohibit forced arbitration at work. 230 In the meantime, forced arbitration places even more responsibility on, and creates more need for, all government enforcement agencies - federal, state, and local - to vindicate workers' rights and ensure employer compliance with workplace laws.

[\*91] In addition, the composition of the federal courts after confirmation of over 225 Trump-appointed federal judges 231 means that state courts may become a far more promising venue for worker claims in many jurisdictions. 232

#### Labor survives the vacuum. It organizes quickly and maximizes existing state protections.

Velazquez 25, Professor of Law @ Indiana (Alvin, “The Death of Labor Law and the Rebirth of the Labor Movement,” *Indiana Legal Studies Research Paper* Number 543)

C. Organized Labor’s Death While Waiting for Government Action

An objector may argue that the Supreme Court setting aside the NLRA raises serious questions about how long labor can survive without regulatory clarity and the financing that comes from a stable stream of dues dollars. Specifically, they could point to the fact that union density rose after enactment of the NLRA. This shows that the key to union density was having public institutions shaping the relationship between capital and labor. There are two responses to this line of objection.

First, the Court’s action could have the effect of incentivizing organized labor to work quickly toward a major march like the proposed May Day 2028 strike. The real question is not whether Congress would act, but rather whether organized labor would adapt its tools to a new reality and use organizing to build worker power. In his forthcoming paper, Michael Oswalt discusses how smaller unions without resources make use of bricolage principles to form resilient unions.344 He defines bricolage as “making due with whatever is at hand.”

345 In many ways, this method is how the unions that existed before the New Deal behaved. Unions existed before the Act gave them legal sanction and continued to exist. In other words, history has shown that organized labor can survive and make gains for workers even when there are no regulatory structures governing labor relations. However, even if the NLRA is done away with, workers would not be starting from scratch. In some states, they would be able to rely on the legal protections that are already on the books waiting to be activated. As Racabi rightfully points out, “…the legal infrastructure for collective action already exists in many places. We don’t have to invent it from scratch; we have to develop strategies to utilize it and strengthen its capacities with personnel and budgets.”346

Another point to highlight is that only 10 percent of the workforce is in a union despite the existence of the NLRA. 347 However, one-third of that percentage is in the public sector and therefore not covered by the NLRA, but rather by local, state, and federal labor organizing schemes.348 That means doing away with the NLRA would have no effect on those units who are organized under state public sector law.349 Additionally, even though there appears to be a boom in union interest, the numbers tell a story of a movement still experiencing decline.350 Additionally, unlike the unions of pre-NLRA times, the unions of today have several tools that they can use to keep functioning. First, organized unions in the private sector who are covered by unexpired CBAs would not lose the protection of those agreements because they are private agreements. Since most agreements average between three and five years in duration, that alone would provide some time for organized labor to develop new tactics in the midst of a vacuum.351

Next, as discussed above, the unions of today have the benefit of the Norris-LaGuardia Act (NLGA) anti-injunction rule.352 The unions of yesteryear did not get to maximize the benefits of that law before Congress enacted the NIRA and NLRA. The NLGA’s protection of certain types of peaceful strikes and activities from court action provides unions with an opportunity to engage in insurgency at the state level. Of course, judges that are hostile to the interests of organized labor or workers seeking to organize generally may develop doctrines to work around or undermine the protective effect of NLGA. They could, for example, expand the reach of the Court’s ruling in Glacier Northwest v. Teamsters to disincentivize strikes by imposing damages for actions that the NLGA prohibits from enjoining.

353 In that case, the Court held NLRA preemption did not protect the Teamsters from liability for causing damage to cement trucks because of strikers walking off the job in the middle of deliveries. 354 A Court looking to harm labor could return to the tortification of labor law in favor of employers and bankrupting unions.355

Finally, as discussed above, states are likely to move in quickly and fill the breach. For example, even though the United States does not have a comprehensive data protection law or artificial intelligence law, federal agencies and the State of California could move to fill the gap if unencumbered by the NLRA’s preemption law. 356 This ability alone would allow organized labor to seek labor law reform at the state level equivalent to, if not better than, parallel federal law reforms in a time period before labor peace provisions would cease to be effective.

#### Conservatives take that and run – every interpretation that actually benefits employers can be spun to be the opposite.

**McFerran 25**, former chairman of the NLRB, senior fellow at the Century Foundation, “The GOP Is Trying to Rebrand Its Anti-Worker Agenda. Don’t Believe Them” The Century Foundation, November 20th, 2025, <https://tcf.org/content/commentary/the-gop-is-trying-to-rebrand-its-anti-worker-agenda-dont-believe-them/>) rose

In the wake of passing a budget bill that [sacrificed the well-being of working families](https://www.clasp.org/press-room/press-releases/senate-budget-reconciliation-bill-sacrifices-the-well-being-of-working-families-to-give-tax-breaks-to-billionaires/) to support tax giveaways for corporations and billionaires, Republicans on Capitol Hill are trying to recast themselves as the party of working people. As part of this effort, last week Senate HELP (Health Education Labor and Pensions) Committee Chair Bill Cassidy (R-LA) introduced a [slate of proposals](https://www.help.senate.gov/rep/newsroom/press/chair-cassidy-colleagues-unveil-bills-to-strengthen-workers-rights-deliver-president-trumps-pro-worker-agenda) supposedly intended to “strengthen workers’ rights” and “deliver on President Trump’s pro-worker agenda.” Cassidy has also held [hearings](https://www.help.senate.gov/hearings/labor-law-reform-part-2-new-solutions-for-finding-a-pro-worker-way-forward) on labor law reform, touting the need to find “A Pro-Worker Way Forward.”

While this newfound focus on workers’ rights should be a positive development, unfortunately, a closer look reveals that the new Republican “pro-worker” agenda is largely a repackaging of many of the same anti-worker and anti-union ideas that big corporations have been pushing for quite some time. While this rebranding includes a few new ideas, there is nothing that will make significant progress to help workers succeed, and many ideas that will set workers back. Calling this legislative package “pro-worker” brings to mind a quote from the famed philosopher [Inigo Montoya](https://www.youtube.com/watch?v=dTRKCXC0JFg): “You keep using that word. I do not think it means what you think it means.”

#### . Enforcement.

#### Employers can simply refuse to negotiate or fire unionizing workers. When they do, the NLRB cannot assign financial penalties – which makes refusing to negotiate and firing unionizing workers financially optimal, because the cost of violating the law is the same as the cost of compliance would have been in the first place. If the aff wanted to say they changed that structure, they should’ve put it in their monstrosity of a plan.

Stansbury 21, senior fellow at the Peterson Institute for International Economics, assistant professor of Work and Organization Studies at MIT, PhD in economics from Harvard. (Anna, August 2021, “Do US Firms Have an Incentive to Comply with the FLSA and the NLRA?” Peterson Institute for International Economics, https://www.piie.com/sites/default/files/documents/wp21-9.pdf)

Labor Organizing Protections and the NLRA

The cost-benefit trade-off for employers considering violating the NLRA is even starker than for the FLSA. Sanctions on firms that commit unfair labor practices in the course of an employee organizing drive are almost always negligible, particularly when compared against the possibly large financial benefit to shareholders of avoiding unionization. Even the offense with the largest potential sanction—dismissal of a worker for union organizing—carries a maximum penalty of having to reinstate the worker with back pay. My estimates in this paper suggest that for an average firm, even if firing a union organizer would reduce the probability of unionization by less than 2 percent, and perhaps by as little as 0.15 percent, it would be financially worthwhile to do so.

It is therefore no surprise that so many firms are found to have fired workers during union organizing drives, and that workers worry about being fired if they try to organize a union. Indeed, Kim Bobo (2011, p. 1766), founding director of Interfaith Worker Justice, reported that “Whenever I am speaking with a group about unions, I always ask, ‘What would happen if you tried to organize a union at your workplace?’ Every single time the response is the same: ‘I would get fired.’”

The lack of incentive for employers to comply with the NLRA has been evident for some time. The Dunlop Commission (1994), for example, argued that the low penalty was a major cause of the increase in the NLRA violation rate (see also Kleiner 2001), and there have been repeated legislative attempts to increase penalties for unfair labor practices. As noted by Kleiner and Weil (2012, p. 49), “given the absence of any appreciable deterrence measure…it should…come as no surprise that the Act for decades has been ineffective in curbing behaviors that are antithetical to its fundamental aims.”

What can be done to reduce firms’ incentives to commit unfair labor practices? Since the NLRA does not allow for any remedies other than “makewhole” remedies, it seems extremely unlikely that meaningful incentives to comply can be created through the existing legal framework: even if firms’ violations are certain to be detected, it is often financially worthwhile to break the law because the penalties are so small relative to the potential benefits to profits from avoiding unionization.

#### The plan has to be enforced through the NLRB. View this as a topicality violation with a precision impact if they answer it.

McFerran 8-31-2025, JD @ Yale, senior fellow at The Century Foundation, having previously served as chairman of the National Labor Relations Board (NLRB) during the Biden administration, from 2021 to 2024 (Lauren, “An Unhappy Labor Day at the NLRB,” The Century Foundation, https://tcf.org/content/commentary/an-unhappy-labor-day-at-the-nlrb/)

As the country pauses on Labor Day to honor the contributions of workers and the labor movement, the government watchdog that is responsible for protecting working people’s rights is facing a crisis. Both President Trump and his powerful corporate allies are waging war against this small, independent agency, threatening its ability to serve the public and undermining the power and voice of working people across the country.

What is the National Labor Relations Board and why is it important?

The National Labor Relations Act gives workers a legal right to form and join unions and to bargain collectively for better wages and working conditions. The act also protects workers from retaliation when they join together and speak up about unfair treatment, whether in a union or not. Almost all private sector workers—not just those who are in unions or want to be in a union—have important rights under this law.

The National Labor Relations Board (NLRB) is the agency that enforces this law. If a worker thinks their employer has violated their rights, they can come to the NLRB: the agency’s general counsel (GC) will investigate their case, and will prosecute the case if it appears that an unfair labor practice has occurred. If the parties can’t reach a settlement, the case is then tried before an agency judge and—ultimately—the National Labor Relations Board, which acts as a court to decide the case.

Importantly, the GC is the only one who can bring a case before the NLRB—workers can’t bring claims on their own. And the NLRB is the only court that can initially decide these cases—workers cannot bring these claims to other federal courts until the NLRB has spoken. The NLRB is the only game in town, so its work is critically important to make workers’ rights a reality.

What has happened to the NLRB this year?

The NLRB in recent months has faced relentless attacks, primarily from the Trump White House, but also from some of the biggest and most powerful corporations in the country that want to make sure there’s no one watching how they treat their workers.

President Trump’s unlawful actions have left the NLRB without a quorum and unable to decide cases.

The NLRB is supposed to have five members, and the U.S. Supreme Court has said it must have three members to decide cases. While the law says that board members can only be fired for misconduct (“malfeasance or neglect of duty”), in January, President Trump fired Board Member Gwynne Wilcox without cause. Because there were already two vacancies on the NLRB, this illegal termination left the NLRB without a quorum and unable to hear cases. So now while workers who want to join a union or who think their rights on the job have been violated can still come to the agency for help, unless their employer voluntarily cooperates with the NLRB’s proceedings, without a quorum, the workers’ cases will sit in limbo indefinitely. The agency currently has no way to compel employers to bargain with their workers’ union, or to stop unfair treatment on the job.

#### **That dooms solvency.**

Toppelberg 25, JD from Stanford Law School, Fellow at the American Economic Liberties Project, researcher at UC Hastings Law’s Center for Innovation, graduated from Yale in 2019 with distinction in Economics. (David, June, “Union-Led Direct Democracy,” Stanford Law Review; Stanford Vol. 77, Iss. 6, (Jun 2025): 1629-1688, https://www.proquest.com/docview/3226380610?fromopenview=true&pq-origsite=gscholar&sourcetype=Scholarly%20Journals)

To briefly review these forces of the law, we can begin with the National Labor Relations Act (NLRA), which provides the legal foundation for collective organizing. The NLRA guarantees the right for most workers to organize unions and collectively bargain over working conditions, along with a set of procedures to vindicate and regularize these rights.3 But since at least the early 1980s, observers have noted that the Act is fatally underpowered. The principal critique is that the NLRA gives employers too much power to interfere with unionization efforts, while offering unions few rights to push back on (often illegal) employer interference.4 Statutory remedies against unionbusting employers are extraordinarily weak, limited to no- or low-cost penalties such as injunctions, reinstatement, and backpay-and usually far cheaper for employers than allowing unionization.5 The Supreme Court has interpreted the NLRA as providing the Board with "essentially remedial" rather than "punitive" powers, and the Court has interceded when the National Labor Relations Board (NLRB) goes beyond these bounds.6 And because of its slow processes, delays, and backlogs for adjudicating abuses and certifying elections, the NLRB can take years to resolve the easiest cases.7 The result is that the NLRA "more and more resembles an elegant tombstone for a dying institution."8

#### 2. Funding. The NLRB simply does not have the resources to meaningfully enforce labor law.

#### It was already underfunded.

**Rhinehart 24**, former senior counselor to the Secretary of Labor, former general counsel for the AFL-CIO, Senior Fellow, Economic Policy Institute, (“Testimony prepared for the U.S. House Subcommittee on Health, Employment, Labor, and Pensions for a hearing on ‘Big Labor Lies – Exposing Union Tactics to Undermine Free and Fair Elections’” Economic Policy Institute, May 22nd, 2024, <https://www.epi.org/publication/testimony-prepared-for-the-u-s-house-subcommittee-on-health-employment-labor-and-pensions-for-a-hearing-on-big-labor-lies-exposing-union-tactics-to-undermine-free-and-fair-elections/>) rose

Insufficient funding for the National Labor Relations Board (NLRB) – the independent agency established by Congress to administer and enforce the NLRA – is another impediment to workers being able to effectively exercise their organizing and bargaining rights. Despite the increase in union representation petitions at the agency and the increase in unfair labor practice filings, the NLRB has been essentially flat-funded for years, other than a much-needed $25 million increase in FY 2022.[11](https://www.epi.org/publication/testimony-prepared-for-the-u-s-house-subcommittee-on-health-employment-labor-and-pensions-for-a-hearing-on-big-labor-lies-exposing-union-tactics-to-undermine-free-and-fair-elections/#_note11) NLRB personnel are responsible for protecting the organizing and bargaining rights of more than 100 million workers.[12](https://www.epi.org/publication/testimony-prepared-for-the-u-s-house-subcommittee-on-health-employment-labor-and-pensions-for-a-hearing-on-big-labor-lies-exposing-union-tactics-to-undermine-free-and-fair-elections/#_note12) President Biden’s appointees to the NLRB are doing as much as they can with existing resources, but additional funding for the agency is needed in order for it to handle representation elections and unfair labor practice charges in a timely manner.

#### And recent cuts directly affected enforceability.

**Pedrow et. al. 6-17**, members of Ballard Spahr Labor and Employment Group, (Brian Pedrow\*, Shirley Lou-Magnuson\*\*, Ian Maher\*\*\*, “President Trump’s Budget Goes To Work Against Enforcement Agencies with Significant Cuts to DOL and NLRB” Ballard Spahr, June 17th, 2025, <https://www.hrlawwatch.com/2025/06/17/president-trumps-budget-goes-to-work-against-enforcement-agencies-with-significant-cuts-to-dol-and-nlrb/>) rose

The National Labor Relations Board (NLRB) also reduced its budget request by $14 million from $299.2 million in FY 2025 to $285.2 million in FY 2026.  The NLRB also plans on reducing staff by 99 employees through its participation in the Deferred Resignation Program and offers of voluntary early retirement.  The most significant cuts are to the NLRB’s Casehandling and Mission Support activities.  Casehandling — encompassing unfair labor practice proceedings, representation proceedings, and compliance proceedings — will have a reduced headcount of 61 employees and budget reductions of $8.9 million.  Mission Support, which includes administration, human resources, ethics, training, accounting, facilities, property, security, and technology infrastructure, will reduce its budget by $4.5 million and its headcount by 29 employees.  For more details see the NLRB’s FY 2026 Justification of Performance Budget for the Committee on Appropriations [here](https://aboutblaw.com/bioc).

#### There’s a huge case backlog – and when cases have long wait times, rights do not matter.

Bruenig 25, labor lawyer and public policy expert. (Matt, February 18,“The Futility of the NLRB”, NLRB Edge, https://www.nlrbedge.com/p/the-futility-of-the-nlrb, accessed on 8-10-2025)

In August of last year, I wrote a piece for the New York Times in which I argued that the Starbucks unionization campaign illustrates the inherent limitations of the National Labor Relations Board in facilitating mass unionization in America. The piece analyzes how much NLRB effort was required to produce 11,000 new union members at Starbucks and then concludes that the NLRB does not have even a tiny fraction of the budget that would be required to certify millions of new union members in a short period of time.

If this is how many government resources are required to certify just over 11,000 new union members, then it would clearly be unsustainable for the government if the enthusiasm we’ve seen at Starbucks were to spread to other companies and other unions. Without reforms, a huge wave of unionization would find itself p̶a̶r̶a̶l̶y̶z̶e̶d̶ \*stalled in the bottleneck of the N.L.R.B. process.

I was reminded of this while reading the first General Counsel memorandum (“GC memo”) of the Trump administration, which I summarized at NLRB Edge yesterday. The memo, GC 25-05, rescinds a long list of Biden-era guidance and signals that the new GC is going to try to roll back various worker protections. This is fairly standard when Republicans control the NLRB.

Interestingly, Acting GC William Cowen begins the memo by referencing the resource limitation problem I discussed in my NYT Starbucks piece.

Over the past few years, our dedicated and talented staff have worked diligently to process an ever-increasing workload. Notwithstanding these efforts, we have seen our backlog of cases grow to the point where it is no longer sustainable. The unfortunate truth is that if we attempt to accomplish everything, we risk accomplishing nothing.

Cowen is right that having a huge case backlog that makes it impossible to resolve unfair labor practices quickly makes the NLRB process essentially pointless. Most workers cannot wait for years to be reinstated to their job after being illegally fired, which also means that employers do not need to concern themselves with following the law.

#### 3. Bias. Trump’s recent executive order gave him unprecedented control over NLRB decisions and enforcement. He will leverage this power to side with employers no matter what.

#### Trump’s nominees were confirmed – which locks in conservative decisions.

**Anhold 7-18**, \*associate, \*\*counsel, \*\*\*partner. (Nicholas Anhold\*, Christian White\*\*, Patrick Muldowney\*\*\*, “The Labor Board Rises: President Trump Names Two NLRB Nominees, Meaning Potential for Quorum in Near Future” Baker-Hostetler, July 18th, 2025, <https://www.bakerlaw.com/insights/the-labor-board-rises-president-trump-names-two-nlrb-nominees-meaning-potential-for-quorum-in-near-future/>) rose

On July 16, President Donald Trump nominated to the National Labor Relations Board (NLRB or Board) Boeing’s chief labor counsel, Scott Mayer, and former NLRB attorney James Murphy. To be seated as Board members, Mayer and Murphy must each be confirmed in the U.S. Senate by a simple majority.

As [discussed previously](https://www.bakerlaw.com/insights/what-just-happened-the-practical-impacts-of-a-quorum-less-nlrb/), the Board must have a quorum to function, meaning at least three of its five seats must be filled. The Board has lacked a quorum since Jan. 27, when Trump [took the unprecedented step](https://www.thebargainingtableblog.com/blogs/youre-fired-trump-takes-aim-at-the-nlrb/) of terminating Democratic member Gwynne Wilcox, leaving only Republican Chairman Marvin Kaplan and Democratic member David Prouty. Without a quorum, the Board has been unable to conduct business or issue decisions. If either or both of Trump’s nominees are confirmed, the Board will regain a quorum with a majority Republican makeup, most likely resulting in the reversal of a number of the [highly union-favorable decisions](https://www.bakerlaw.com/insights/what-a-year-in-labor-top-10-labor-cases-and-developments-you-should-know-from-2024/) issued by the Board while it consisted of a Democratic majority.

Wilcox has not taken her termination sitting down and is currently in a legal battle with the Trump administration over whether it was lawful. After multiple rounds of courts alternatively ordering Wilcox’s reinstatement and upholding her termination, the D.C. Circuit ordered her reinstated on March 6. Wilcox v. Trump, 775 F. Supp. 3d 215 (D.C. Cir. 2025). However, on April 9, Chief Justice John Roberts granted the Trump administration’s requested short-term administrative stay of the D.C. Circuit’s order, upholding Wilcox’s termination until the Supreme Court ruled on the matter. Trump v. Wilcox, 2025 WL 1063917 (Apr. 9, 2025). On May 22, the full Supreme Court formally granted the stay request, meaning Wilcox will remain off the Board while the matter is litigated. Trump v. Wilcox, 605 U.S. \_\_\_\_ (2025).

What happens next remains to be seen. Given the current makeup of the Senate, it is likely, though by no means certain, that both of Trump’s Board nominees will be confirmed. If and when he secures a majority on the Board, Trump could settle with Wilcox and reinstate her as the second member of a Democratic minority. It is also possible that he may break from long-standing tradition by seeking a fourth Republican Board member. In the meantime, Chairman Kaplan’s term expires this Aug. 27, so Trump may decide to renominate him to cement a majority of a fully constituted Board.

#### General counsel too!

**Spring 25**, J.D., partner at CDF Labor Law (Mark, “Insight from the New NLRB General Counsel” CDF Labor Law, March 5th, 2025, <https://www.cdflaborlaw.com/blog/insight-from-the-new-nlrb-general-counsel>) rose

Last week, I attended the American Bar Association’s Mid-Winter Meeting for the Committee on Development Under the Law of the NLRA in Clearwater, Florida.

William Cowen, the new National Labor Relations Board (NLRB) General Counsel, was one of the featured speakers. Of course, he could not say too much, but GC Cowen did speak for over an hour. He was more candid than most government officials, which was appreciated by the attendees, who represent both the union and management side, as well as a number of NLRB officials and employees.

Here are some of the things he reported on that I thought many blog readers might be interested in, with a bit of my personal commentary:

GC Cowen has only been there a few weeks, so he is still figuring things out day-to-day.

GC Cowen’s view is that the NLRB is an executive agency and therefore he plans to follow the agenda set by the Executive Branch and the President of the United States. This means that things should get a lot more friendly for employers facing NLRB issues in the next four years.