

# **Fear at work**

An inside account of how employers threaten, intimidate, and harass workers to stop them from exercising their right to collective bargaining

**Report** • By [Gordon Lafer](#) and [Lola Loustanaou](#) • July 23, 2020

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# Summary

**What this report finds:** Most American workers want a union in their workplace but very few have it, because the right to organize—supposedly guaranteed by federal law—has been effectively cancelled out by a combination of legal and illegal employer intimidation tactics. This report focuses on the legal tactics—heavy-handed tactics that would be illegal in any election for public office but are regularly deployed by employers under the broken National Labor Relations Board’s union election system. Under this system, employees in workplace elections have no right to free speech or a free press, are threatened with losing their jobs if they vote to establish a union, and can be forced to hear one-sided propaganda with no right to ask questions or hear from opposing viewpoints. Employers—including many respectable, name-brand companies—collectively spend \$340 million per year on “union avoidance” consultants who teach them how to exploit these weakness of federal labor law to effectively scare workers out of exercising their legal right to collective bargaining.

Inside accounts of unionization drives at a tire manufacturing plant in Georgia and at a pay TV services company in Texas illustrate what those campaigns look like in real life. Below are some of the common employer tactics that often turn overwhelming support for unions at the outset of a campaign into a “no” vote just weeks later. All of these are legal under current law:

- Forcing employees to attend daily anti-union meetings where pro-union workers have no right to present alternative views and can be fired on the spot if they ask a question.
- Plastering the workplace with anti-union posters, banners, and looping video ads—and denying pro-union employees access to any of these media.
- Instructing managers to tell employees that there’s a good chance they will lose their jobs if they vote to unionize.
- Having supervisors hold multiple one-on-one talks

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with each of their employees, stressing why it would be bad for them to vote in a union.

- Having managers tell employees that pro-union workers are “the enemy within.”
- Telling supervisors to grill subordinates about their views on unionization, effectively destroying the principle of a secret ballot.

**Why it matters:** The right to collective bargaining is key to solving the crisis of economic inequality. When workers have the ability to bargain collectively with their employers, the division of corporate profits is more equally shared between employees, management, and shareholders. When workers can’t exercise this right, inequality grows and wages stagnate, as shown in the long-term decline of workers’ wages over the past 40 years: CEO compensation has grown 940% since 1978, while typical worker compensation has risen only 12%—and that was before the coronavirus pandemic hit.

The importance of unions has been even further heightened by both the COVID-19 pandemic and the national protests around racial justice. In recent months, thousands of nonunion workers walked off their jobs demanding personal protective equipment, hazard pay, and access to sick leave. The concrete realization that these things could only be won through collective action has also led many of these workers to seek to unionize in order to protect themselves and their families. At the same time, the importance of the power of collective bargaining for essential workers and Black workers has become clearer. Unionization has helped bring living wages to once low-wage jobs in industries such as health care and is a key tool for closing racial wage gaps. In recent years the Black Lives Matter movement has joined with the fight for a \$15 minimum wage and other union efforts in order to win economic dignity for African American workers.

**What we can do about it:** Congress must act to ensure that workers have a right to vote to unionize in an atmosphere defined by free speech and open communication, and without fear of retaliation for one’s political views. The House of Representatives took an important step in this direction when it passed the Protecting the Right to Organize (PRO) Act in February 2020. If adopted by the Senate, the PRO Act would help ensure that workers have a meaningful right to organize and bargain collectively by streamlining the process when workers form a union, bolstering workers’ chances of success at negotiating a first agreement, and holding employers accountable when they violate the law. Beyond passing the PRO Act, legislators should back a package of proposals advanced by a group of 70 economists, academics, and labor leaders led by Harvard University’s Center for Labor and Worklife program. Their Clean Slate for Worker Power agenda includes extending labor rights to farmworkers, domestic workers, and independent contractors who are now excluded from federal union rights; requiring meaningful employee representation on corporate boards of directors; mandating a national requirement that employees may only be fired for just cause rather than arbitrarily; and enabling workers to engage in sector-wide negotiations rather than single-employer bargaining. These proposals would help create shared prosperity by starting to restore balance and effective democratic standards in federal labor law.

# Introduction

The central fact of our economy is the long-term decline of employment conditions over the past 40 years. Since the late 1970s, corporate profits, executive salaries, and shareholder returns have grown handsomely while wages of workers creating this prosperity have stagnated.<sup>1</sup> Chief executive officer compensation grew 940% from 1978 to 2018, while typical worker compensation rose only 12% in that period.<sup>2</sup> Even the low unemployment rate reached by 2018 had not been enough to spur truly significant wage growth, leading one economic analyst to declare that “the competitive supply-and-demand model of labor markets is fundamentally broken.”<sup>3</sup> Workers have responded to falling wages by working longer hours.<sup>4</sup> Thus, American workers find themselves working harder, running faster, and still sliding slowly backwards.

One of the primary causes of this growing economic inequality is the shrinking share of American workers who have a union in their workplace.<sup>5</sup> When workers have the ability to bargain collectively with their employers, the division of corporate profits is more equally shared. On average, if one compares a union employee with a nonunion employee of the same gender, race, ethnicity, education, and years of experience, working in the same occupation, same industry, and same geographic area, the unionized worker’s wages are 13.2% higher than the nonunion counterpart. When the value of health and pension benefits are added in, the union pay advantage is greater still.<sup>6</sup>

Unsurprisingly, many nonunion workers wish that they too could earn union wages and benefits and access the other protections that come with unions. In a 2017 survey, 49% of nonmanagerial nonunion employees—who in the population at large represent roughly 58 million workers—told pollsters they would vote for having a union if given the opportunity to do so.<sup>7</sup> Yet that same year, only 50,000 employees were able to establish a new union through National Labor Relations Board (NLRB) elections, or less than 1% of the number who want a union.<sup>8</sup> What makes unions so rare despite being so popular? The fact that federal labor law is profoundly broken. Instead of serving as a neutral expression for workers’ preferences, the NLRB election system forces workers to run a gauntlet of fear, threats, intimidation, forced propaganda, and stifled speech. This is what must change for American workers to have a meaningful right to collective bargaining and for our country to find our way out of the crisis of economic inequality.

Current events make the need to reform labor laws even more urgent. The COVID-19 pandemic and the national protests around racial justice have heightened the importance of unions. As the pandemic swept across the country, thousands of nonunion workers walked off their jobs demanding personal protective equipment, hazard pay, and access to sick leave. The concrete realization that these things could only be won through collective action has also led many of these workers to seek to unionize in order to protect themselves and their families.<sup>9</sup> At the same time, the importance of the power of collective bargaining for essential workers and Black workers has become clearer. Unionization has helped bring living wages to once low-wage jobs in industries such as health care and is a key tool for closing racial wage gaps.<sup>10</sup> In recent years the Black Lives Matter movement has joined with the fight for a \$15 minimum wage and other union efforts in order to win

economic dignity for African American workers.<sup>11</sup>

## Elections without democracy

As the world's first modern democracy, the United States has long served as the global standard-bearer for defining what constitutes "free and fair" elections, including equal access to the voters for all political parties, equal access to the media, freedom of speech for both candidates and voters, and a guarantee that voters will not be financially bribed or coerced to support one candidate or another. People who first hear of union "elections" may assume these elections are conducted according to the same standards. However, the standard practice of anti-union employers makes NLRB-supervised elections look more like the discredited customs of rogue regimes abroad than anything we would call American. First, because there is no meaningful enforcement for violating voters' rights, these rights are often violated. And those rights themselves are limited. There is, for instance, no right of free speech for voters in union elections. There is no equal access to media. Indeed, there is not even equal access to the names and contact information of eligible voters. And there is no protection against economic coercion of voters. Anti-union employers take advantage of the lack of rights in many ways, as the following sections show.

Finally, even when workers vote to unionize and that vote is legally certified by the NLRB, employers often continue to deny these employees the right to collective bargaining by refusing to negotiate a contract. As illustrated in the second of the case studies below, this can be accomplished through both illegal and legal means, including legal tactics that create multiyear delays, causing workers to lose faith in their own power and often leading activists to quit the employer. Again, the norms of American democracy require that winning candidates assume their positions at the appointed time; if there are challenges about the election, these are addressed at a later time, but legal delaying tactics cannot be used to perpetuate an incumbent's rule after voters have elected to replace the incumbent with a challenger. But under the National Labor Relations Act (NLRA), even when employees vote for collective bargaining, the outcome of this vote may not be implemented for years, if at all.

## Lawlessness at work: How employers undermine workers' legal right to organize

The National Labor Relations Act of 1935 established the right to a union and collective bargaining for all private-sector workers. However, in the 85 years since the law was enacted, those rights have become increasingly unattainable. In 2018, only 6.4% of private-sector workers had unions.<sup>12</sup>

Workers' inability to secure union representation is in large part a product of the rampant lawlessness that characterizes NLRB elections, made possible by the absence of meaningful penalties under the law. In elections for Congress, those who violate elections

law may face fines, imprisonment, or loss of commercial licenses. But in NLRB elections, even employers who willfully and repeatedly break the law by threatening employees, bribing employees, destroying union literature, firing union supporters, or lying to federal officials in an effort to cover up these deeds can never be fined a single cent, have any license or other commercial privilege revoked, or serve a day in prison. As a result, it is not merely rogue employers who violate workers' rights under law, but many mainstream employers who decide it is worth breaking the law in order to intimidate employees out of organizing a union.

A December 2019 EPI report highlighted the rampant lawlessness that characterizes workplace elections under the NLRB.<sup>13</sup> In 2016–2017:

- Employers were charged with violating workers' legal rights in 41.5% of all NLRB-supervised union elections.<sup>14</sup>
- Employers were charged with illegally firing workers in at least one-fifth (19.9%) of elections.
- In nearly a third (29.2%) of all elections, employers were charged with illegally coercing, threatening, or retaliating against workers for union support.
- Larger employers are even more likely than others to break the law: in elections involving more than 60 voters, more than half (54.4%) of employers were charged with at least one illegal act.

To put these findings in the context of what we normally expect from democratic elections, the Federal Elections Commission reports a total of 372 charges of illegal activity related to federal election campaigns in 2016–2017, or one charge for every 367,000 voters.<sup>15</sup> In comparison, NLRB-supervised elections saw one charge for every 161 eligible voters.<sup>16</sup> By this math, illegalities are more than 2,000 times more common in NLRB elections than in elections for the U.S. Congress or president. Such widespread intimidation recalls the worst of authoritarian regimes abroad; but these are the conditions that govern unionization elections in workplaces across the country.

## **Lawful but exploitive coercion: Employers spend \$340 million per year on “union avoidance” consultants to deny workers the right to organize**

Even when employers obey the law, they rely on a set of tactics that are legal under the NLRA but illegal in elections for Congress, city council, or any other public office. A \$340 million industry of “union avoidance” consultants helps employers exploit the weaknesses of federal labor law to deny workers the right to collective bargaining.<sup>17</sup>

Over the past five years, employers using union avoidance consultants have included FedEx, Bed Bath & Beyond, and LabCorp, among others. **Table 1**, reproduced from an EPI report published in late 2019, lists just a few of these employers, along with the reported

Table 1

## Employers spend millions on union avoidance consultants

Amounts union avoidance consultants reported receiving from selected employers for work performed in 2014–2018

Employer	Amount reported	Years
<i>Laboratory Corporation of America</i>	\$4,300,000	2014–2018
<i>Mission Foods</i>	\$2,900,000	2016–2017
<i>Albert Einstein Medical Center</i>	\$1,100,000	2014–2017
<i>Simmons Bedding Co.</i>	\$848,000	2015–2017
<i>FedEx</i>	\$837,000	2014–2018
<i>Trump International Hotel Las Vegas</i>	\$569,000	2015–2016
<i>Nestle, USQ</i>	\$566,000	2014–2018
<i>Bed Bath &amp; Beyond</i>	\$506,000	2014, 2018
<i>J.B. Hunt Transport</i>	\$354,000	2016–2018
<i>Hilton Grand Vacations</i>	\$340,000	2014–2015
<i>Owens Corning</i>	\$340,000	2014–2017
<i>Archer Daniels Midland</i>	\$324,000	2016–2017
<i>Robert Wood Johnson University Hospital</i>	\$316,000	2014–2016
<i>Caterpillar</i>	\$279,000	2014–2016
<i>Quest Diagnostics</i>	\$200,000	2015–2017
<i>Associated Grocers of New England</i>	\$190,000	2014–2017
<i>Pier 1 Imports</i>	\$169,000	2015–2016

**Source:** Lafer and Loustaunau’s analysis of LM-20 and LM-21 forms filed by consultants with the U.S. Department of Labor (DOL) Office of Labor-Management Standards (OLMS), 2014–2018

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financial investments they made to thwart union organizing during the specified years.<sup>18</sup>

These firms’ tactics lie at the core of explaining why so few American workers who want a union actually get one, and their success in blocking unionization efforts represents a significant contribution to the country’s ongoing crisis of economic inequality.

## The lack of a right of free speech enables coercion

NLRB elections are fundamentally framed by one-sided control over communication, with no free-speech rights for workers. Under current law, employers may require workers to attend mass anti-union meetings as often as once a day (mandatory meetings at which the employer delivers anti-union messaging are dubbed “captive audience meetings” in labor law). Not only is the union not granted equal time, but pro-union employees may be required to attend on condition that they not ask questions; those who speak up despite

Table 2

## Union avoidance tactics

Tactics that turn support for unions at the outset of a unionizing campaign into a 'no' vote	Legal under current law
<i>Forcing employees to attend daily anti-union meetings where pro-union workers have no right to present alternative views and can be fired on the spot if they ask a question.</i>	✓
<i>Plastering the workplace with anti-union posters, banners, and looping video ads—and denying pro-union employees access to any of these media.</i>	✓
<i>Instructing managers to tell employees that there's a good chance they will lose their jobs if they vote to unionize.</i>	✓
<i>Having supervisors hold multiple one-on-one talks with each of their employees, stressing why it would be bad for them to vote in a union.</i>	✓
<i>Having managers tell employees that pro-union workers are "the enemy within."</i>	✓
<i>Telling supervisors to grill subordinates about their views on unionization, effectively destroying the principle of a secret ballot.</i>	✓

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this condition can be legally fired on the spot.<sup>19</sup> The most recent data show that nearly 90% of employers force employees to attend such anti-union campaign rallies, with the average employer holding 10 such mandatory meetings during the course of an election campaign.<sup>20</sup>

In addition to group meetings, employers typically have supervisors talk one-on-one with each of their direct subordinates.<sup>21</sup> In these conversations, the same person who controls one's schedule, assigns job duties, approves vacation requests, grants raises, and has the power to terminate employees "at will" conveys how important it is that their underlings oppose unionization. As one longtime consultant explained, a supervisor's message is especially powerful because "the warnings...come from...the people counted on for that good review and that weekly paycheck."<sup>22</sup>

Within this lopsided campaign environment, the employer's message typically focuses on a few key themes: unions will drive employers out of business, unions only care about extorting dues payments from workers, and unionization is futile because employees can't make management do something it doesn't want to do.<sup>23</sup> Many of these arguments are highly deceptive or even mutually contradictory. For instance, the dues message stands in direct contradiction to management's warnings that unions inevitably lead to strikes and unemployment. If a union were primarily interested in extracting dues money from workers, it would never risk a strike or bankruptcy, because no one pays dues when they are on strike or out of work. But in an atmosphere in which pro-union employees have little effective right of reply, these messages may prove extremely powerful.

**Table 2** list the most common legal but anti-democratic tactics used to defeat union organizing.



## The outcome of elections without democracy

It is common for unionization drives to start with two-thirds of employees supporting unionization and still end in a “no” vote. This reversal points to the anti-democratic dynamics of NLRB elections: voters are not being *convinced* of the merits of remaining without representation—they are being intimidated into the belief that unionization is at best futile and at worst dangerous. When a large national survey asked workers who had been through an election to name “the most important reason people voted against union representation,” the single most common response was management pressure, including fear of job loss.<sup>24</sup> Those who vote on this basis are not expressing a *preference* to remain unrepresented. Indeed, many might still prefer unionization if they believed it could work. Where fear is the motivator, what is captured in the snapshot of the ballot is not preference but despair.

To understand what union elections look like in reality, we have profiled two cases in which workers sought to create a union and met with a harsh (and typical) employer backlash. In both cases—a tire plant in Georgia and a satellite TV company in Texas—the employer response ranges from illegally firing union activists to engaging in acts of coercion and intimidation that are illegal in any normal election to public office but are allowed under the NLRA.

## Kumho Tire defeated an organizing campaign even when 80% of workers wanted a union

In Macon, Georgia, one of the world’s largest tire manufacturers opened a new plant in 2016 that promised to bring hundreds of middle-class jobs to the economically hard-hit city. When promised wages failed to materialize, the workers began organizing a union; within six weeks 80% had signed cards calling for an election.<sup>25</sup> In response, the company hired “union avoidance” consultants who ran a traditional—and very aggressive—anti-union campaign. In an NLRB election less than a month later, employees narrowly voted against unionization.<sup>26</sup> What follows is an account of what initially led employees to organize and how management’s campaign drove so many of them to abandon that effort so soon after they’d begun.

## Working at Kumho: Promise and reality

Macon has the most concentrated poverty of any city in Georgia.<sup>27</sup> In 2016, nearly 40% of the city was living below the poverty line. Half of this population—or one in five Macon residents—was living on incomes that were less than 50% of the federal poverty threshold, or less than \$12,150 per year for a family of four. Macon’s African American residents were especially likely to be living in poverty, making new job creation particularly essential for the city’s Black community.<sup>28</sup>

Thus, when Kumho Tires—one the world’s largest producers of car and truck tires—announced plans to build its first U.S. factory in Macon, the news was celebrated as a critical lifeline for the city. Kumho promised to create more than 450 new jobs, with the local press reporting that jobs would pay \$45,000 per year.<sup>29</sup> “We have extreme poverty in Macon,” one worker explained. “When Kumho came in, I thought ‘this is our chance to make a good living.’... Everybody’s hopes were up.”<sup>30</sup>

Unfortunately, as Kumho’s majority-Black workforce soon discovered, the Kumho jobs did not turn out as advertised. On their first day at the company, employees were told they’d start at \$15 per hour, one-third less than what they’d been led to believe. However, employees were assured that this was a temporary wage while the company was setting up and that everyone would get pay increases once production got rolling.<sup>31</sup> Yet months went by with no wage increase. When employees asked about their promised raises, managers explained that first they needed to sign up customers. After customer contracts were signed, managers declared there couldn’t be any raises until the plant was running at 80% capacity. “Every time we hit one of those goals, they changed the goalpost,” one employee reported.<sup>32</sup> Ultimately, employees went a year and a half with no raise, and have never come close to the wage level promised when Kumho opened.<sup>33</sup>

Beyond wages, employees soon discovered that Kumho operated with few known rules, with many decisions seemingly based solely on favoritism. For instance, some jobs in the plant are louder, dirtier, harder, or more complicated than others but all pay the same.<sup>34</sup> When workers in the harder jobs sought to switch positions, they discovered that there was no process for moving from one job to another: no seniority system, no application process, no action they could take other than appealing to the personal whim of supervisors.<sup>35</sup> Employees likewise complained of arbitrary discipline. One woman reported that she was fired for being on break too long—an offense often overlooked with others. “They were just making up things,” explained a co-worker. “If they like you, you can miss as many days as you want. But if they don’t like you, as soon as you go over, you’re out the door.”<sup>36</sup> So too, employees frequently worked around safety hazards without proper training or equipment. Employees in Kumho’s mixing department spent 12 hours a day working without respirators, covered in carbon black—a powdery substance classified as a chemical hazard and potential carcinogen.<sup>37</sup> In 2019, OSHA issued a \$523,000 fine against the facility, citing Kumho for 22 separate violations including unsafe use of carbon black.<sup>38</sup> To make their jobs safer, better paying, and more reliable, employees turned to organizing a union.

In early August 2017, United Steelworkers Local 572 President Alex Perkins received a message from a Kumho employee asking to talk about creating a union at the new plant. They met at a restaurant, where Perkins explained the union couldn’t take action based on one employee’s interest and that the next test would be whether a larger group of workers was interested in organizing. The employee then asked Perkins to step outside, where 17 Kumho workers waited to talk with him.<sup>39</sup> The following week, the Steelworkers gave out 60 union cards to a group of four workers, thinking they might sign up 60 supporters in a month, or perhaps never; instead, they were all signed by the next day. Organizing proceeded rapidly, and on September 18, the workers petitioned for an NLRB election with 250 signed cards, representing nearly 80% of the plant’s workforce.

## Management’s anti-union campaign

Almost immediately after the employees’ petition was filed, Kumho hired a consultant associated with Labor Relations Institute, one of the country’s most prolific union avoidance firms. The company instituted daily compulsory anti-union meetings running up to 90 minutes.<sup>40</sup> Production was shut down and all workers were required to listen to managers and consultants delivering anti-union speeches, videos, and powerpoint presentations.<sup>41</sup>

Outside the meeting rooms, the workplace was saturated with one-sided propaganda. “The whole place was covered in anti-union posters,” one employee recalled. “‘Vote No.’ ‘USW loves strikes.’ ‘USW plants closed down.’”<sup>42</sup> In addition, “anti-union videos played 24/7 on flat screens that management put up in the employee entrance to the plant, at the security gates, in the cafeteria and in break rooms.... Any time you went on break or to the bathroom, they were in your face.”<sup>43</sup>

The company had hundreds of “Vote No” hats made, with supervisors encouraging their subordinates to don them. Kumho employs a large number of temporary employees who do the same work as, and are generally indistinguishable from, regular employees. Because temporary employees could be terminated at will and lacked the same legal protections afforded regular employees, they followed management’s wishes.<sup>44</sup> The hats were meaningless for the temp workers, who couldn’t vote in the election. But as temporary employees donned the hats, they flooded the workplace with a sea of apparently anti-union sentiment, and most workers were unable to distinguish between hat-wearers who were temporary employees and those who were permanent employees. Thus the hats created an atmosphere of momentum for the anti-union cause and intimidation for pro-union employees.

Finally, in addition to the mandatory group meetings, workers report that each employee was personally and repeatedly addressed by their direct supervisor.<sup>45</sup> One employee recounts that “my supervisor would stop me every day and say, ‘How you gonna vote, man? You gotta vote no!’ No question I was going to vote yes, but I couldn’t let them know that, ’cause I was in fear for my job security.”<sup>46</sup> In extreme cases, employees were double-teamed, with two managers simultaneously talking against the union from either side of one’s workstation. One employee subject to this treatment “got to the point where he would tell them whatever they wanted to hear,” just to make the treatment stop.<sup>47</sup>

## The role of fear in Kumho’s anti-union campaign

At the heart of management’s campaign was the threat that workers would lose their jobs if they voted to unionize. Under the NLRA, it is legal for employers to “predict” that they will shut down if workers organize, but illegal to “threaten” closure. Insofar as they scare workers out of organizing, there is no significant difference between these, and employers often issue a combination of illegal threats and technically legal predictions. In Kumho’s case, an administrative law judge of the NLRB ultimately determined that 12 different managers (including the company’s CEO) issued illegal threats to close the plant or lay off

employees.<sup>48</sup>

On the day employees filed their election petition, three different managers told their subordinates that Kumho would shut the plant down if they voted the union in.<sup>49</sup> Over the course of the next month, such threats were repeated daily. In mandatory whole-plant meetings, in departmental pre-shift meetings, and in supervisors' one-on-one conversations with subordinates, workers were told that if they voted to organize, Kumho's contractors would cut them off, the parent company would close the plant, the equipment would be shipped back to Korea, and everyone at the Macon facility would be out of work.

The election period was described by one Kumho employee simply as "Hell. Intimidation. Every day managers asking you, 'What are you going to do.' Some people trying to stay strong, other people trying to hide whatever they thought, and others trying to get brownie points by running up to management to tell them everything that was said in union meetings."<sup>50</sup>

A lot of employees shut down in the face of intensive supervisory campaigning. "As soon as you come in, every day they were in your face," one worker recalled. "A lot of people couldn't handle it."<sup>51</sup> Even one of the core union leaders found the pressure unbearable: "I kept having them come up to me, demanding, 'Can I count on you for a no vote?' One day he kept at it for 10 minutes straight, so I told him 'yes,' just to get him off my back."<sup>52</sup> Likewise, many employees who had identified themselves to co-workers as union supporters nevertheless wore Vote No hats out of fear that refusing to do so would alienate their supervisor.<sup>53</sup>

In union elections, everyone is looking around to see who else is in; to judge whether they believe that their co-workers are capable of coming together to force management to pay more than it wants.<sup>54</sup> A large collective action—such as everyone wearing union buttons or t-shirts—gives employees confidence that they have the collective power to stand up to management. For the same reason, management strategies focus on intimidating union supporters into silence and quiescence—or into open betrayal of their cause—in order to convince others that even union supporters lack the fortitude to unite in opposition to management. At Kumho, such incidents were plentiful.

One union leader recalls a friend, known to co-workers as a strong union supporter, who wore a Vote No hat in order to get his employer to stop harassing him. "Other people who looked to this guy as a strong union supporter got the message that management can cow anyone."<sup>55</sup> Another Kumho worker recalled a pro-union employee who ended up making an anti-union speech in a departmental meeting. This employee later apologized and swore that he was still a union supporter, but felt he had to take this step to secure his job.<sup>56</sup>

At one point, the employees considered organizing a day when supporters would all wear union buttons to work, but people were too fearful to carry this out.<sup>57</sup> One of the core union leaders explained how even he came to believe wearing buttons was dangerous.

At first, I didn't care who knew I was for the union. But then, once the pressure got on me, I also heard from another employee that in HR they had a list of people who

were for the union. I thought, 'I'm gonna end up getting fired.' So I started laying low. I tried not to talk about it... I felt my job was at risk. We weren't about to wear a button supporting the union.<sup>58</sup>

## **Kumho's active campaign of disinformation**

When Kumho employees petitioned for a union election, 80% had signed cards supporting unionization; less than a month later, only 43% voted to organize, with 52% opposed.<sup>59</sup> When asked how it is possible for political opinion to shift so dramatically in such a short period, management consultants typically assert that this reflects a process of objective education: in the pre-petition period workers only heard the union side of the story; once presented with all the facts, they turned against unionization. However, the messages conveyed by Kumho's managers and consultants were not objective facts. Rather, at the heart of the anti-union effort was an active campaign of disinformation. Specifically, the company's messaging focused on four demonstrably false assertions: (1) that the plant would shut down if workers organized; (2) that Kumho's customers wouldn't buy from a union supplier; (3) that Kumho was already paying above-average wages for the area; and (4) that workers would be forced to pay exorbitant union dues if they voted to organize. Each of these is briefly explained below.

### **False threats of plant closing**

Kumho managers repeatedly hammered workers with the assertion that, if they voted to organize, all their jobs could be shipped overseas.<sup>60</sup> But these threats fly in the face of the company's \$450 million investment in this state-of-the-art facility and its own declarations regarding the strategic value of its Macon facility.<sup>61</sup> North America accounts for 22% of the global tire market, and the factory site—just off an interstate highway—makes for easy transportation to auto manufacturers and dealers in the South and throughout the U.S.<sup>62</sup> When the facility opened, a company spokesperson said, "It helps us dramatically to be here" because "the U.S. tire market is the biggest in the world" and "shipping from China or Vietnam is an expensive process."<sup>63</sup> The chairman of Kumho's parent corporation went further, declaring that the Macon plant was "a must if we are to significantly expand our presence in the market."<sup>64</sup> The idea that the company would walk away from this critical investment rather than negotiate with its employees is simply not plausible. But it was nevertheless asserted, repeatedly and strenuously, throughout the campaign.

### **Threats that Kumho's customers wouldn't work with unionized suppliers**

Consultants and supervisors repeatedly told employees that the auto manufacturers that Kumho sells to don't want to do business with unionized suppliers, specifically naming Hyundai and Kia as South Korean car manufacturers that would not want to contract with a unionized tire manufacturer. But this is false: both Hyundai and Kia contract with Goodyear and Firestone—both unionized companies—for their tires. When one worker challenged a consultant on this point, the consultant backpedaled, insisting that "I'm just saying it's a

possibility.”<sup>65</sup> But the assertion was repeatedly made without any such qualification—and taken to heart by many workers who had no source of alternative information with which to evaluate management’s claims.

## **Threats that wages and benefits could go down with a union, and assertion that wages average only \$11 in Macon area**

It is a standard theme of anti-union consultants to tell employees that unionization might result in lower wages and benefits. Employers typically stress that the process of collective bargaining starts “from scratch,” with no guarantee of maintaining current wage and benefit levels.<sup>66</sup> It is true, of course, that bargaining begins without preconditions. But in a nonunion workplace, wage and benefit levels always start “from scratch.” Presumably, wages in a nonunion firm represent the lowest management thinks it can pay and still attract the quality of labor it needs. It is nonsensical to think the addition of a union could result in lower wages. Indeed, in advertising its union avoidance services to employers, LRI notes that unions typically increase compensation by 25%.<sup>67</sup>

At Kumho, this misleading argument was reinforced with falsified data. In whole-plant meetings, the company’s consultant told employees that Bureau of Labor Statistics (BLS) reports showed that the average wage for Macon-area production workers was \$11.35 per hour, and that therefore if workers voted in a union, the company would enter negotiations proposing to pay everyone \$11 rather than the \$15 most employees were then earning.<sup>68</sup> “She told us we could lose a lot if we vote in the union,” one employee recalled, “because she said the company is already paying us a lot more than we’re supposed to be paid.”<sup>69</sup> Not only was the claim illogical; it was false. In later questioning before an administrative judge, Kumho representatives acknowledged that BLS reported average production wages of \$17.17 per hour in the Macon area.<sup>70</sup>

## **False claims about mandatory dues in a right-to-work state**

A standard message of anti-union campaigns is that unions are businesses that exist only to coerce dues out of workers, and that the dues workers pay will amount to more than the benefits they derive from a union contract.<sup>71</sup> This argument doesn’t make sense anywhere in the country—a union contract only goes into effect if workers vote to ratify it, and workers would not vote to ratify a contract whose terms will make them worse off. But the argument makes least sense in a state like Georgia where a state law requires that employees be granted the full benefits of a union contract even if they don’t contribute dues to cover the cost of maintaining that contract (such laws, misleadingly labeled right-to-work or RTW laws, exist in many states).<sup>72</sup> RTW laws mean that no worker can ever be required to pay union dues. If there were a union at Kumho, dues would be entirely voluntary.

Nevertheless, communications from management sought to convince workers that they would be forced to pay dues against their will. One management poster informed workers,

“Even if you do not participate in the Union activity, you will be required to pay dues which amounts to as much as...3% of your pay.”<sup>73</sup> Similarly, the company’s website declared that

If the union wins the election, it will be speaking for all employees in the bargaining unit as a group, regardless of how an individual employee voted. When they can, unions want a ‘dues check-off’ provision in a contract, **which means that dues are automatically deducted from employees’ paychecks.**<sup>74</sup>

## Why voters believe false information: Free speech stifled

The previous section detailed Kumho’s campaign of disinformation. Why would Kumho employees believe such demonstrably false claims from management? Above all, because they are bombarded by one-sided information, with little or no opportunity to hear from the union.

Democracy relies above all on free speech to create an informed citizenry. But under current law, it is impossible for most workers to have balanced information. Pro-union employees are only permitted to talk about their cause while on break time and in break areas. But at Kumho, supervisors were often present in both the cafeteria and break rooms, making these spaces feel unsafe. And given the company’s open hostility, most employees were scared to be associated with known union activists.

Indeed, even home visits by union organizers or pro-union workers proved difficult to arrange. Many Kumho employees live far outside of town. With employees working 12-hour shifts, it’s difficult to find a time when people are home and available to talk.<sup>75</sup> The union office is just five miles from the Kumho plant, and organizers invited workers to meet there before or after their shifts. But, according to multiple employees, workers’ fear of retaliation from Kumho management soon led them to be wary of being seen meeting with union organizers—even away from company property. At first, between 20 and 25 employees came to meetings at the union office at the end of each shift. Over the next two weeks this number fell by 75%, and those who showed up were noticeably more fearful.<sup>76</sup>

USW Local 572 President Alex Perkins said he “started to see more people backing into parking spots, and couldn’t figure out why” until he realized that employees were shielding the back of their trucks from view out of fear that someone might drive by, record license plates, and report their presence to Kumho management.<sup>77</sup>

As a result of all these actions to stifle speech, most employees had little or no opportunity to hear the union’s arguments. The union estimates that 35% of Kumho’s employees never spoke with a union representative outside the workplace; an additional 30% had just one conversation; and only 35% had more than one such conversation.<sup>78</sup> Above all, it appears that it was this one-sided control of speech that made so many employees vulnerable to disinformation.

## The ‘no’ vote and its aftermath

In September 2017, employees at Kumho petitioned the NLRB for a union election, with 80% of workers having signed cards indicating their support for unionization. Less than one month later, employees voted 164–136 against unionization. Almost immediately following the election, the union filed charges with the NLRB, alleging that Kumho had broken the law by threatening and intimidating workers into voting no.<sup>79</sup>

### Why did Kumho employees vote no?

The central question of the Kumho experience is how pro-union employees were so quickly led to vote against organizing. Some were likely driven to vote no simply out of desperation to end the state of heightened tension in the workplace. To the extent that management’s behavior convinces workers that a vote to unionize is a vote to permanently turn the workplace into a psychological war zone, the only way to return things to normalcy is to vote “no.”<sup>80</sup>

Above all, employees reported, people voted no because management convinced them that their jobs were at risk.<sup>81</sup> Although Kumho’s wages were below the company’s competitors and below what was promised, they were still higher than many of the jobs otherwise available in this high-poverty region. “There are a lot of people around here making \$9.50 an hour,” explained one employee. “A lot of people had never even made what they were making here. So they feel like, ‘They tell me they’re going to shut this job down. I can’t mess this up.’”<sup>82</sup> “People on my shift voted no because they were afraid,” agreed a former employee. “Team leaders were saying if a union comes in Kumho is going to shut down.”<sup>83</sup> “They hammered at people,” another added. “It’s that every day on your job [they say] ‘We really need you to vote no. We’re gonna go out of business if you vote yes.’ People believed them. People were afraid to lose their job.”<sup>84</sup>

One employee who signed a union card and then voted no was convinced by their supervisor that unionization might drive Kumho out of business. Despite its being a \$2.5 billion multinational corporation that has been making tires for more than 50 years, this employee’s manager insisted that Kumho was a “startup” company and might not survive unionization.<sup>85</sup> Following this conversation, “I decided I wanted to give the company a chance.”<sup>86</sup> Eighteen months later, the employee had become disillusioned. “Every promise they gave us turned out to be a lie,” this employee explained.<sup>87</sup> A co-worker reported going through a similar process—signing a union card and then voting “No” because their supervisor claimed Kumho would shut the plant down if a union was voted in, and convinced the employee to give the company “another chance.” Both these employees came to regret their choice, and subsequently signed new union cards.<sup>88</sup>

### The challenge of a second election

In May 2019, a judge ruled that Kumho had committed “numerous, severe” violations of federal labor law, and ordered a new election to be held.<sup>89</sup> Yet it is very difficult for employees to come together in a renewed unionization effort after experiencing such



widespread intimidation. Many of the strongest union supporters were either fired or quit following the 2017 election.<sup>90</sup> And the experience of watching activists punished has left a deep mark on remaining employees. “If you wear a button,” one current employee asks, “what’s to say they won’t fire you over it?”<sup>91</sup>

Indeed, there is little reason for employers facing rerun elections not to engage in the same illegal intimidation a second time, since the likely remedy for that would simply be a third election.<sup>92</sup> This logic was long ago spelled out by a prominent “union avoidance” consultant:

What happens if you violate the law? The probability is you will never get caught. If you do get caught, the worst thing that can happen to you is you get a second election and the employer wins 96% of second elections. So the odds are with you.<sup>93</sup>

“Right now,” a Kumho worker reports, “everybody is too scared to be openly pro-union. People are scared to be seen meeting at the union hall, or even to meet at McDonald’s.”<sup>94</sup> As in authoritarian regimes abroad, when the fear of retribution makes voters too scared to publicly demonstrate what they believe, even a secret ballot cannot guarantee democracy. In the second election in September 2019, Kumho workers voted 141–137 in favor of unionization, with 13 challenged ballots.<sup>95</sup> Both sides are awaiting an NLRB ruling to determine the election’s outcome.

## What’s at stake: Union versus nonunion wages in Macon

This case study follows the initial defeat of a union organizing campaign in Macon followed by second election for which the outcome is uncertain. The outcome has real consequences. A union could make a dramatic difference in the lives of Macon workers. At Kumho, employees report a typical wage of \$15 per hour; at this rate, a worker with three dependents still qualifies for food stamps.<sup>96</sup> By contrast, if employees were able to raise their pay even just to the standard of entry-level employees at a nearby unionized packaging plant, they’d be making nearly \$46,000 per year—just about what the Kumho jobs were promised to pay when the plant first opened, and a wage at which no one would need public assistance.<sup>97</sup> There is good reason to believe that Kumho could afford to pay significantly better wages. Many of Kumho’s competitors are unionized, and pay well above Kumho’s rates.<sup>98</sup>

One union supporter who was terminated following the election laments having left, despite having landed in a better paying position. “I didn’t want to leave,” he explains. “I wanted to make Kumho a better place. This was 400 jobs that could help out 400 families in poverty in our community.... I’m in a great situation now but that’s not helping those people still there.”<sup>99</sup>

# How DISH TV denied employees' right to collective bargaining even after they won their union election

In 2009, 100 technicians and warehouse workers in two Dallas-area branches of the DISH TV corporation decided to organize a union. They affiliated with the Communications Workers of America (CWA), won their election, and had their union certified by the NLRB. But a decade later, they still have no contract. The employer—relying in part on advice from the anti-union Jackson Lewis law firm<sup>100</sup>—engaged in a series of tactics including legal delays, management intimidation, and economic retaliation. Some of these acts were legal and some were not; together, they illustrate how the weakness of current labor law allows employers to effectively block workers' right to collective bargaining even after they have won an election.

DISH TV, headquartered in Englewood, Colorado, is one of the nation's leading providers of satellite pay TV, with 12 million subscribers and annual revenues of approximately \$13 billion.<sup>101</sup> In 2009, the company announced that it was cutting technicians' hourly pay and switching to an incentive pay system based on employee productivity. Employees felt they had already put up with "too many changes," and viewed the pay cut as the last straw.<sup>102</sup> In response to the company's announcement, employees in DISH's North Richland Hills and Farmers Branch offices in Texas began organizing. Workers signed cards saying they wanted a union election, the union filed the petition for an election, and then the NLRB scheduled a vote.<sup>103</sup> Support for the union was widespread, and in 2010 a majority of employees in both locations voted to unionize. In theory, this is the point at which management is required to honor employees' choice and sit down to begin good-faith negotiations toward a contract. Instead, it marked the beginning of a decade-long war of attrition aimed at undermining the union and thwarting employees' ability to negotiate a fair contract.<sup>104</sup>

Immediately following the election, DISH filed complaints with the NLRB asserting that the CWA staff person representing employees at the North Richland Hills location was not an appropriate authority to file an election petition (despite his being the director of the local union and the fact that the NLRA does not require a specific type of person to file a petition) and contending that actions by a pro-union employee had tainted the election, even though the actions in question took place after voting was completed.<sup>105</sup> Under the NLRB's rules in effect at the time, the Labor Board was required to engage in a detailed hearing and lengthy delay in order to consider management's objections. Ultimately, both complaints were dismissed, but it took 18 months to legally verify these facts, delaying certification of the election outcome.<sup>106</sup> It wasn't until November 2011 that negotiations for both units were ready to begin.

However, just prior to the point at which negotiations would have begun, a petition was filed by some employees at the Farmers Branch location—supported by management—

calling to decertify the union.<sup>107</sup> Due to ongoing charges of illegal management activity, this vote was put on hold for nearly three years.<sup>108</sup> The vote on whether to decertify the union finally took place in May 2014; the employees reaffirmed their desire for unionization, and the CWA was recertified as the workers' union the following month. Management's legal tactics thus succeeded in forestalling negotiations for nearly half a decade. Five years after first organizing, these workers were back at the beginning, ready to begin the collective bargaining process in mid-2014.

Just six months later, however, DISH put a halt to negotiations. The company announced that it was switching labor attorneys, and that the new attorney would contact the union in 2015. Instead, more than a year went by with no communication from the company. In early 2016, the union repeatedly asked the company to schedule bargaining dates, but was rebuffed. Instead, in April 2016 the company declared that the two sides were at an impasse—despite its new attorney never once having met with the union.<sup>109</sup> By law, “impasse” can only exist when both parties have concluded there is no more compromising to be made. It's not possible to reach that point without extensive negotiations, and indeed the NLRB subsequently found that DISH's declaration of an impasse was illegal. But that process took two years. In the meantime, DISH invoked the bogus impasse declaration as a pretext to dramatically slash workers' wages—an act significant both for its own sake and for its impact on demoralizing workers and undermining belief in the union.

As in many unionization drives, DISH's pay system constituted a central issue in negotiations. After the company unilaterally imposed its incentive pay system in 2009, DISH employees gradually adapted to the new productivity measures, earning significant wage increases.<sup>110</sup> In response, DISH notified employees in 2016 that it was now abolishing incentive pay and cutting compensation to a new and lower flat rate—constituting a paycut of up to 50% for current employees.<sup>111</sup> At the same time, employees' health insurance deductibles were doubled.<sup>112</sup>

Unsurprisingly, the impact of these cuts was severe. Multiple employees reported having to work second jobs, borrow from their relatives, or take out high-interest payday loans to keep their families afloat.<sup>113</sup> “We are at the point we may have to put the house up for sale,” explained one employee. “My parents have been donating money to me because my wife...was pregnant...now she is applying for jobs as well.”<sup>114</sup> Another described simultaneously working full-time at DISH, going to school full-time to qualify for a higher-paying job, and taking on a graveyard-shift job to make ends meet. Employees described co-workers who moved in with their in-laws, had their cars repossessed, put their 401(k) retirement funds up as loan collateral, or stopped answering their phone in hopes of avoiding bill collectors.<sup>115</sup>

Beyond their direct economic impact, these wage cuts also served to undermine employees' bargaining power. By the end of 2016, 19 DISH employees had been forced to quit, including most of those who had served as members of the negotiating committee.<sup>116</sup> In one location, workers were left with no union steward and no representative on the bargaining committee, as veterans left and other employees were too scared to step up as replacements. One long-term union supporter explained simply that he didn't volunteer for

a leadership role because “I didn’t want to get fired.”<sup>117</sup> And as new employees came on to replace those driven out, management threatened veteran employees with termination if they discussed union issues with the newcomers.<sup>118</sup>

The ability of any group of workers to win a fair contract rests primarily on their ability to disrupt production or otherwise pressure the employer through collective action. In a typical campaign, workers engage in acts of solidarity within the workplace—wearing buttons or t-shirts, signing petitions, or holding group meetings. Often their actions escalate to public outreach activities including leafleting, picketing, staging boycotts, and making appeals to elected officials; ultimately building toward a potential strike. All of these actions depend on employees being united in commitment to their cause, and having confidence in the power of their own collective action.<sup>119</sup> But each of the steps taken by DISH management served to make this type of collective action impossible. The experience of multiyear delays saps the momentum of an organizing drive and undercuts employees’ belief in the power of their own action. Unilateral wage and benefit cuts function as an object lesson in the omnipotence of management and the futility of organizing. Forcing union activists to quit deprives workers of their natural leaders and makes all other employees witness the union’s strongest supporters resignation in the face of management retaliation, and the same retaliation makes others scared to play leadership roles. Finally, the dramatic level of turnover means that many current employees have no knowledge of the union, and with veteran employees banned from educating them, there is little possibility of current employees ever gaining such knowledge. Under such conditions, it is virtually impossible for workers to take the sorts of collective action needed to convince management to sign a fair contract.

By early 2017, a CWA staff organizer reported that the union was “on the brink of losing all support.... We’ve seen people quit and people just not supporting us as they’ve already lost...trust.”<sup>120</sup> The union’s regional director reported that “our members...feel defeated.... They feel like they were lied to, demoralized, betrayed.”<sup>121</sup>

In June 2018—after multiple hearings in federal court—the NLRB issued an order finding that DISH had committed multiple and egregious illegal acts, and required the company to reinstate incentive pay for technicians at its two unionized facilities, to reinstate the preexisting health insurance plan, to provide back pay for those who lost wages or were forced to pay higher health insurance premiums, to offer reinstatement to those who’d been forced to quit, to read aloud a statement pledging to respect the law, and to return to the bargaining table.<sup>122</sup> Following this ruling, the company resumed negotiations in mid-2018, but appears to have continued to seek at every turn to undermine employees’ strength and unity within the workplace.

In late 2018, for instance, DISH reinstated three employees who had been forced to quit, but announced that it would lay off current employees to do so, sending letters notifying employees that they were losing their jobs due to “an order of the National Labor Relations Board.”<sup>123</sup> Similarly, when the company offered merit raises to warehouse workers at its other locations, it withheld such raises from its unionized staff, with a manager falsely telling employees that they were being denied raises “because of your union.”<sup>124</sup> As the drafting of this report wrapped up, the union and management were once

again in negotiations; but it was unclear whether management had become more interested in signing a contract.

The NLRB's order was designed, in theory, to rectify DISH's illegal actions and restore an even playing field for negotiations; but this goal was unrealistic. The NLRB reasoned that requiring management to read its pledge to honor the law out loud to employees "will counteract the coercive impact of the [labor law] violations."<sup>125</sup> But when workers know that even if the company breaks its promise, no manager nor the corporation itself can ever be fined, jailed, lose its license or suffer any other penalty for illegal behavior, there is no reason for employees to trust that it is safe to join the bargaining committee, identify themselves as a union steward, or go on strike.

Employees' fear of retaliation and their experience of management intransigence are not changed by reading a statement. Nor will reading a statement bring back the union supporters and leaders who quit when their wages were cut or give the newly hired the experience of organizing a union. What is needed is not an empty promise read out loud, but a legal requirement to settle a fair contract. Labor advocates for decades have proposed a system of neutral arbitration for settling union contracts—particularly first contracts—when the parties cannot reach agreement through traditional means.<sup>126</sup> In the DISH case, this is sorely needed: the company has ignored the law for so long, and has so severely undermined workers' ability to create an effective balance of bargaining power, that it is impossible to believe in the promise of a do-over election backed by a toothless pledge of good faith.

From the outside, it may seem puzzling that DISH has devoted so much time, energy, and money to fighting this small group of unionized employees. The company has never offered evidence that it can't afford union wages; nor have its bargaining representatives ever claimed an inability to pay.<sup>127</sup> Most tellingly, at the Dallas-area offices of AT&T DirectTV—a competitor company providing the same services as DISH but where employees have a union contract—technicians' compensation is 50% higher than at DISH, and warehouse workers' pay is almost twice that of equivalent DISH employees.<sup>128</sup> If competitors operating in the same industry and same geographic market are able to remain profitable while paying higher wages, there is no reason to believe DISH could not do likewise.

Given that that union wages are affordable, why has DISH run such a concerted campaign—over so many years—to avoid signing a collective bargaining agreement with its employees? It may be that DISH's corporate management was less concerned about wages at these two locations than they were about the potential for the example set by union-led wage increases to spread to others of the corporation's locations. DISH employs 16,000 people across the United States.<sup>129</sup> It's hard to imagine that many of these workers wouldn't respond to the knowledge that people were working the same jobs at significantly higher wages by demanding similar compensation for themselves.<sup>130</sup>

While it may be hard to justify the time and money spent on fighting the union in terms of the costs of this group of 100 employees, this expense may be more logical when understood as an investment in preventing higher wages from spreading to the rest of its

workforce.

For the public, the spread of union wages throughout the DISH network would be welcome news indeed. The difference between DISH's current wage scale in these facilities and the compensation earned by Dallas-area AT&T DirecTV employees doing the same work under a union contract is the difference between wages that may force one to rely on food stamps and wages providing a modest middle-class income.<sup>131</sup> Nationwide, 16,000 DISH employees could be living in greater security and providing for their families—and, as evidenced by AT&T, the corporation would still be profitable. By devoting such intensive resources and dedication to stomping out any potential beachhead of unionization, DISH is focused instead on keeping those 16,000 employees locked into financial hardship and insecurity.

## **Conclusion: We must restore an effective right to organize to solve the crisis of inequality**

We must restore the ability of American workers to negotiate with their employers if we are to reverse the growing crisis of inequality. Through a combination of legal intimidation and rampant lawbreaking, employers have made a sham of the theoretical right to collective bargaining.<sup>132</sup>

Employers' ability to effectively subvert federal labor law is one of the primary barriers that stands in the way of creating an economy in which American workers can support their families in dignity. To once again make that right a reality, Congress must act to ensure that workers have a right to vote to unionize in an atmosphere defined by free speech and open communication, and without fear of retaliation for one's beliefs.

The U.S. House of Representatives took an important step in the direction of restoring workers' collective bargaining rights when it passed the Protecting the Right to Organize (PRO) Act in February 2020.<sup>133</sup> Some of the most damaging tactics used by employers to oppose union organizing efforts would be restricted under the legislation, and meaningful penalties would be imposed when employers violate the law. Recently, a group of 70 economists, academics, and labor leaders led by Harvard Law School's Labor and Worklife Program have called for even more reforms to U.S. labor law. The package of proposals, called the *Clean Slate for Worker Power*, includes extending labor rights to farmworkers, domestic workers, and independent contractors who are now excluded from federal union rights; mandating a national requirement that employees may only be fired for just cause rather than arbitrarily; prohibiting employers from permanently firing workers who engage in a strike; and enabling workers to engage in sector-wide negotiations rather than single-employer bargaining.<sup>134</sup> All of these measures would be welcome steps toward restoring balance and effective democratic standards in federal labor law.

The evisceration of the American middle class, the increasing hardship that most

nonprofessional workers face, and the escalating inequality that has come to define our country are not facts of nature over which we lack control. Congress has the power to reverse this decline and to restore the promise of the American economy by insisting that employers respect the right of workers to organize free from fear or intimidation. Ensuring the right of workers to organize and bargain collectively to secure a fair share of the prosperity that their work creates is the most important step that federal lawmakers can take to restore fairness in the American workplace and broad prosperity across our country.

## About the authors

**Gordon Lafer** is an EPI research associate and a political economist and professor at the Labor Education and Research Center at the University of Oregon. **Lola Loustaunau** is a Ph.D. candidate and research fellow at the Labor Education and Research Center.

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7. Thomas Kochan, William Kimball, Duanyi Yang, and Erin Kelly, “Voice Gaps at Work, Options for Closing Them, and Challenges for Future Actions and Research,” MIT Sloan School of Management Institute for Work and Employment Research working paper, June 2018. In the survey, unionized workers were those who said that they were “represented by a union or a professional association” on their job.
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14. It is important to note that our finding almost certainly underestimates the true frequency of illegal employer threats and terminations. Much of employers' illegal behavior goes unrecorded, because workers are too scared to press charges. Indeed, Kate Bronfenbrenner's 2009 survey of union organizers for EPI and the American Rights at Work Education Fund found that more than 75% of employers were believed to have broken the law at least once during the course of the campaign, almost double the number of cases in which charges were filed. See Kate Bronfenbrenner, *No Holds Barred—The Intensification of Employer Opposition to Organizing*, Economic Policy Institute and American Rights at Work Education Fund, May 2009, pp. 5–6.
15. Data on Federal Election Commission enforcement comes from U.S. Federal Election Commission, "[FEC Enforcement Statistics 1977–2019](#)," last updated October 17, 2019. The estimate of charges of illegal activity per voter is based on the fact that more 136 million voters participated in the fall 2016 election; see Federal Elections Commission, "[Official 2016 Presidential General Election Results](#)," January 30, 2017.
16. In fiscal 2016 there were just 1,193 representation elections conducted under the NLRB, with just under 80,000 eligible voters. Election data for 2016–2017 was obtained from the NLRB through FOIA requests NLRB 2018-001366 and NLRB 2019-00178.
17. Celine McNicholas, Margaret Poydock, Julia Wolfe, Ben Zipperer, Gordon Lafer, and Lola Loustaunau, *Unlawful: U.S. Employers Are Charged with Violating Federal Law in 41.5% of All Union Election Campaigns*, Economic Policy Institute, December 2019.
18. EPI analysis of the union avoidance industry is built on an examination of publicly available forms LM-20 and LM-21 filed with the U.S. Department of Labor's Office of Labor-Management Standards (OLMS). It is worth noting that, due to loopholes in reporting requirements, these amounts may represent only a fraction of these companies' anti-union investments; for more information, see the methodological appendix in McNicholas et al., *Unlawful: U.S. Employers Are Charged with Violating Federal Law in 41.5% of All Union Election Campaigns*, Economic Policy Institute, 2019.
19. The NLRB has ruled that employers have "no statutory obligation to accord the employees the opportunity to speak" at such meetings. *Hicks-Ponder Co.*, 168 NLRB 806, 814 (1967). In *Litton Systems, Inc.*, 173 NLRB 1024, 1030 (1968), the NLRB supported an employer who fired an employee for discreetly leaving a captive audience meeting, affirming that employees have "no statutorily protected right to leave a meeting which the employees were required by management to attend on company time and property to listen to management's noncoercive antiunion [sic] speech designed to influence the outcome of a union election." In one of the landmark cases concerning captive audience meetings, the NLRB acknowledged that an employer "did its best to inhibit the free play of discussion," but nevertheless ruled the behavior legal. *Luxuray of New York*, 185 NLRB 100 (1970).
20. Kate Bronfenbrenner, *No Holds Barred—The Intensification of Employer Opposition to Organizing*, Economic Policy Institute and American Rights at Work Education Fund, May 2009.
21. Consultants universally stress the power of using supervisors to convey anti-union messages to their subordinates. Gene Levine notes, "The most effective method for gaining the support of employees is one-on-one, eyeball-to-eyeball conversations between supervisors and employees." See Gene Levine, *Complete Union Avoidance* (Delray Beach, Fla.: Gene Levine Associates, 2005), ch. 8, p. 5. Robert Lewis and William Krupman note that "face to face communications between supervisors and employees" are key to management's efforts: "If instructed properly, trained supervisors can be the most effective means of lawfully influencing employee attitudes." See Robert Lewis and William A. Krupman, *Winning NLRB Elections: Management's Strategy and Preventive Programs Second Edition* (New York: Practising Law Institute, 1979), p. 95. Alfred

DeMaria states that “the most important factor influencing the individual’s choice of ‘Union’ or ‘Non-Union’ is his supervision—how well his supervisor communicates the company’s views during the organizing campaign.” See Alfred T. DeMaria, *The Supervisor’s Handbook on Maintaining Non-Union Status* (New York: Executive Enterprises, 1986), p. 37. DeMaria’s *Management Report for Nonunion Organizations* newsletter states that “the success of union prevention depends greatly on the ability of supervisors to influence their employees.” See *Management Report for Nonunion Organizations* 27, no. 11 (November 2004), p. 7. Bruce Kaufman and Paula Stephan report that the management attorneys they interviewed believed that “effectively marshalling the cooperation and support of the supervisors was the single most critical ingredient to defeating the union.” As one of the management attorneys concluded, “without [supervisors’] support, the employer’s chance of victory is substantially reduced.” See Bruce E. Kaufman and Paula E. Stephan, “The Role of Management Attorneys in Union Organizing Campaigns,” *Journal of Labor Research* 16 (1995), <https://doi.org/10.1007/BF02685719>, pp. 443, 447.

22. Marty Jay Levitt, *Confessions of a Union Buster* (New York: Crown, 1993), p. 10.
23. There is a remarkable degree of consistency in the themes of employer campaigns over the past 40 years. In his *Management Report for Nonunion Organizations* newsletter, Alfred DeMaria describes the “themes commonly used by employers” as including “threat to remove jobs,” “disparaging the moral character of union supporters,” “inevitability of strikes,” and “threat to reduce wages.” See “From the Editor: Learning Lessons (Good and Bad) from a Real-Life Campaign,” *Management Report for Nonunion Organizations* 24, no. 4 (April 2001), pp. 3–5. Another *Management Report* article in the same issue (p. 5), titled “Campaign Threat of Plant Closure,” notes that “predicting the future of a business if it becomes subject to an obligation to bargain with the union, is a recurring campaign theme.”
24. Other researchers likewise found that, among nonunion workers who wished they had one, 55% believed that “management opposition” was the central reason why they had been unable to organize. See Phil Comstock and Maier B. Fox, “Employer Tactics and Labor Law Reform,” in Sheldon Friedman et al., eds., *Restoring the Promise of American Labor Law*, ed. Sheldon Friedman et al. (Ithaca, N.Y.: Cornell Univ. Press, 1994), p. 98; and Richard Freeman and Joel Rogers, *What Workers Want* (Ithaca, N.Y.: Cornell Univ. Press, 1999), p. 62.
25. Under federal law, 30% of workers in a given workplace must sign cards requesting a union election in order for the NLRB to schedule an election; thus, the first step of any organizing campaign is collecting signed cards from at least 30% of the workforce.
26. The final vote was 164–136, with 16 employees not voting. United Steelworkers, *Kumho Tires*, Representation Case 10-RC-206308, National Labor Relations Board, September 2017. <https://www.nlr.gov/case/10-RC-206308>.
27. WMAZ, “Georgia Ranked as One of Worst States to Live, How Does Macon-Bibb Stack Up?” December 5, 2016; Evan Comen and Samuel Stibbins, “What City Is Hit Hardest by Extreme Poverty in Your State?” *USA Today*, July 13, 2018.
28. Advameg, Inc., City-Data.com, “Macon (GA) Poverty Rate Data,” 2016. Federal poverty thresholds for 2016 are at Georgia Department of Community Health, “2016 Federal Poverty Guidelines (FPG) Annual & Monthly Income Levels from 100% to 250%,” January 2016. The federal poverty threshold for a family of four was \$24,300 in 2016.
29. Randy Southerland, “Macon/Bibb County: It’s Better in Bibb,” *Georgia Trend*, March 1, 2015.
30. Employee #1, interview with G. Lafer, May 2019. Employee #2 similarly reported that newspaper accounts when Kumho opened stated that jobs at the plant would pay between

\$40,000–\$45,000 per year (Employee #2 interview with G. Lafer, May 2019). The company’s decision was further cemented by an extensive package of incentives provided by both state and local economic authorities—including free land, taxpayer-funded job training, site development, and water infrastructure, along with a 20-year tax abatement—totaling more than \$35 million in value. See “Kumho Tire—Macon, Georgia,” *Trade & Industry Development*, accessed June 2020, and Vera Linsalata, “Kumho Picks Georgia as Location for Its First U.S. Tire Plant,” *Rubber & Plastic News*, February 11, 2008. Georgia governor Sonny Perdue said the incentives were deemed well worth the price because Kumho would be “creating hundreds of new jobs for our citizens.” See Georgia Department of Economic Development, “Kumho Tire to Locate First U.S. Manufacturing Facility in Macon,” January 29, 2008.

31. “We’re starting you at \$15 but don’t worry—we’re gonna make up for it,” one employee was told on the first day of work (Employee #1, interview with G. Lafer, May 2019).
32. Employee #3, interview with G. Lafer, May 2019.
33. Employee #1, interview with G. Lafer, May 2019.
34. “There was no connection between wages and the kind of job you were doing,” one employee explained. “If we’re all making \$15, I’d rather move to a more relaxed department” (Employee #3, interview with G. Lafer, May 2019).
35. Employee #3, interview with G. Lafer, May 2019. Indeed, most employees had no job descriptions, making it all the more difficult to control what type of work one might be directed to do. Favoritism likewise shaped the assignment of hours and overtime. One employee, for instance, had been given as much overtime as he could work, enabling him to significantly boost his weekly earnings, until he lost favor with his supervisor and was subsequently completely shut out of opportunities for overtime work. (Employees #1 and #2, interview with G. Lafer, May 2019.) The practice of favoritism also secured the allegiance of those who benefited from the system. When Kumho employees approached their election, there was a block of nearly 40 employees—all white men—described as receiving preferential treatment from management. Where all other employees rotated between day and night shifts, these workers were on permanent day shift, and they were each paid \$28 per hour, far more than other employees with similar skills. These employees knew that in a unionized workplace, these positions would be open to bid by seniority and skill rather than reserved for management favorites. As a result, they served as a bloc of anti-union voters, promoting the wearing of “Vote No” hats to other workers. Reported by Alex Perkins, USW Local 572 president and organizer, in an interview with G. Lafer, May 14, 2019.
36. Employee #1, interview with G. Lafer, May 2019. Pay and promotion were also subject to unwritten and seemingly arbitrary procedures, employees reported. One employee, for example, described being asked to serve as a trainer in return for a pay increase of 75 cents per hour. One month into the new job he still hadn’t gotten a pay increase, but when he raised the issue with his supervisor, he was told that even though he had completed his probationary period and was a regular employee, he had to serve an additional probation period in the new position before he’d get his raise. None of this was ever put in writing, nor was it clear if other trainers were treated the same. “They just make up everything as they go,” this employee said. “They didn’t even tell me how long the probation would be.” Assuming this probation period would be set for the same 90-day length as the general employee probation, the employee approached his supervisor one week before completing his 90 days to ask about the raise. At that point, his supervisor announced that it wasn’t working out for him to be a trainer—giving no reason or evaluation whatsoever—and sent him back to his previous job, having never received a wage increase. (Employee #4, interview with G. Lafer, May 2019.)

37. Cancarb Limited, “[Safety Data Sheet: Carbon Black](#),” revised May 25, 2015. One night, after there was an accident with the mixing machines, resulting in carbon black being dispersed through the vents and coating all areas of the building, the entire facility was evacuated in response. But employees in the mixing department were working in carbon black fumes all day long, every day, without respirators. (Employees #2 and #3, interview with G. Lafer, May 2019.)
38. U.S. Department of Labor, Occupational Safety and Health Administration, “[U.S. Department of Labor Cites Georgia Tire Manufacturer and Contractors for 22 Safety and Health Violations](#)” (news release), May 29, 2019.
39. USW Local 572 President Alex Perkins, interview with G. Lafer, May 15, 2019.
40. Employee #3, interview with G. Lafer, May 2019.
41. Employee #3, interview with G. Lafer, May 2019. While union supporters sometimes questioned management’s assertions, it took great fortitude to do so, they said. One employee who challenged the consultant’s facts said he found his blood pressure spiking so extremely that he had to be rushed to the hospital. But after the first week, some of the strongest union supporters were weeded out of meetings, enabling consultants to work on the less committed voters without having to worry about being challenged. (Employees #3 and #4, interview with G. Lafer, May 2019.)
42. Employee #3, interview with G. Lafer, May 2019.
43. Employee #3, interview with G. Lafer, May 2019.
44. “If you’re a temp, they can cut you right then and there. So they tell you wear this hat, and you have to wear it,” explained one employee (Employee #1, interview with G. Lafer, May 2019).
45. Kumho managers reportedly graded and ranked employees, tracking each employee’s political leanings, and adjusting strategy accordingly. In a department where workers were particularly vocal in their support for unionization, an additional manager was assigned who succeeded in quashing the department’s demonstrations of pro-union sentiment. (Employee #3, interview with G. Lafer, May 2019.) This manager was later found to have submitted a timesheet to receive overtime pay for “non-union support” (Bonus Request Form, October 7, 2017, Exhibit U-2, Kumho Tires and United Steelworkers Union, Cases 10-CA-208255, 10-CA-208414 and 10-RC-206308, March 22, 2019). In May 2019, an administrative law judge found that nine different Kumho managers had illegally interrogated employees on 15 separate occasions. While this number is large, it likely represents a small sample of what was standard practice during the campaign. (Arthur J. Amchan, Decision, Kumho Tires and United Steel Workers International Union, Cases 10-CA-208255, 10-CA-208414, and 10-RC-206308, National Labor Relations Board, May 14, 2019.) One union supporter was told by his supervisor, “I was told you were pro-union so I don’t have to talk to you ‘cause your mind is made up” (Employee #3, interview with G. Lafer, May 2019).
46. Employee #5, interview with G. Lafer, May 2019.
47. Employee #1, interview with G. Lafer, May 2019.
48. Arthur J. Amchan, Decision, Kumho Tires and United Steel Workers International Union, Cases 10-CA-208255, 10-CA-208414, and 10-RC-206308, National Labor Relations Board, May 14, 2019.
49. Consolidated Complaint, Kumho Tires and United Steel Workers International Union, National Labor Relations Board, Cases 10-CA-208255 and 10-CA-208414, July 31, 2018.
50. Employee #1, interview with G. Lafer, May 2019.

51. Employee #1, interview with G. Lafer, May 2019.
52. Employee #4, interview with G. Lafer, May 2019.
53. Employee #3, interview with G. Lafer, May 2019.
54. This dynamic is described in detail in Gordon Lafer, “What’s More Democratic Than a Secret Ballot? The Case for Majority Sign-Up,” *Journal of Labor and Society* 11, no. 1 (March 2008), <https://doi.org/10.1111/j.1743-4580.2008.00187.x>. The dynamic is also inherent in the logic of collective action, as described in Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, Mass.: Harvard Economic Studies, 1971; twentieth printing 2002).
55. Employee #3, interview with G. Lafer, May 2019.
56. Employee #1, interview with G. Lafer, May 2019.
57. After witnessing the company’s daily disregard for the law—in interrogations and threats, if not yet in terminations—the union concluded that a button day would entail unacceptable risks for employees (USW Local 572 President and organizer Alex Perkins, interview with G. Lafer, May 2019).
58. Employee #4, interview with G. Lafer, May 2019.
59. Five percent of employees did not vote.
60. In a company-wide meeting, Kumho’s human resources director announced that the Macon plant accounted for only 5% of the company’s worldwide production, and therefore could easily be shipped back to Korea: “Five percent of production could just quickly go away.... I’m asking you to consider not having our work taken abroad, and cast your vote as a clear No. There’s too much at stake.... We just cannot have this place shut down.... The union...if they strike, you could see the molds or tires being produced somewhere else.... I don’t want any of you to look at me later and say...why didn’t you tell me that if we don’t get along...what could happen?... I want to...have you know pretty much that we’ll be looking at tires being shipped somewhere else.” (Kumho Chief People Officer Jerome Miller, speech to Kumho employees, October 11, 2017. Recording shared with the author by USW. This speech is also documented in Arthur J. Amchan, Decision, Kumho Tires and United Steel Workers International Union, Cases 10-CA-208255, 10-CA-208414, and 10-RC-206308, National Labor Relations Board, May 14, 2019.)
61. William Schertz, “Kumho Opens Its First N.A. Tire Plant,” *Rubber & Plastics News*, June 1, 2016; Vera Linsalata, “Kumho Picks Georgia as Location for Its First U.S. Tire Plant,” *Rubber & Plastics News*, February 11, 2008. The company’s human resources director lamented, “I would love to show everybody the inside of the plant, but it’s all proprietary stuff we pretty much built ourselves” (quoted in Lori Johnson, “Kumho Tire Plant Brings Economic Boost to Central Georgia,” WMAZ, March 3, 2016).
62. Kumho cited “proximity to transportation and customers” as one of the reasons it chose this location for its plant (Vera Linsalata, “Kumho Picks Georgia as Location for Its First U.S. Tire Plant,” *Rubber & Plastics News*, February 11, 2008).
63. Kumho spokesperson Jim Frentheway, quoted in William Schertz, “Kumho Opens Its First N.A. Tire Plant,” *Rubber & Plastics News*, June 1, 2016.
64. Quoted in William Schertz, “Kumho Opens Its First N.A. Tire Plant,” *Rubber & Plastics News*, June 1, 2016.

65. Employee #3, interview with G. Lafer, May 2019.
66. See, for instance, Gene Levine, *Guide to Union Avoidance* (Gene Levine Associates, 2005), ch. 2, pp. 2–16.
67. Form LM-20, File C-00525-683681, filed September 27, 2018, by LRI President Phillip Wilson, including boilerplate contract terms, states that the “cost of unionization is estimated at 25% for most organizations.”
68. The BLS \$11.35 figure was shown on a powerpoint slide with the question, “If the average hourly wage of manufacturing in Macon-Bibb County is 11.35, then why would Kumho Tire want to agree to anything more than that in negotiations?” (Official Report of Proceedings before the NLRB, Region 10, *Kumho Tires versus United Steelworkers Union*, Cases 10-CA-208255; 10-CA-208414; 10-RC-206308. March 21, 2019, volume 4.)
69. Employee #3, interview with G. Lafer, May 2019.
70. Official Report of Proceedings before the NLRB, Region 10, *Kumho Tires versus United Steelworkers Union*, Cases 10-CA-208255; 10-CA-208414; 10-RC-206308. March 21, 2019, volume 4.
71. See, for instance, National Association of Manufacturers, *Remaining Union-Free: A Supervisor’s Guide* (2004), p. 3; Alfred DeMaria, *Management Report for Nonunion Organizations* 26, no. 6 (2003), p. 7; Donald P. Wilson, *Total Victory! The Complete Management Guide to a Successful NLRB Representation Election*, 2nd edition (Broken Arrow, Okla.: Labor Relations Institute, 1997), pp. 77, 221.
72. Elise Gould and Will Kimball, “*Right-to-Work*” *States Still Have Lower Wages*, Economic Policy Institute, April 2015.
73. “Did You Know This About Unions,” poster distributed at Kumho Tire plant, shared with G. Lafer by United Steel Workers, April 2019.
74. Kumhounionfacts.com, *Frequently Asked Questions*, screenshot, accessed September 2017. Shared with Gordon Lafer by USW attorney. Emphasis in the original.
75. At Kumho, the difficulty of home visits was compounded by the company’s providing the union a list of employee contact information—required by federal law—in which every single address was wrong. (Kumho mailed anti-union letters to employees’ correct home addresses, but provided the union with a different list of entirely false addresses.) The union considered filing charges with the NLRB to compel the company to provide accurate addresses. However, filing a charge would delay the election date and, given that workers were being subject to such intensive daily anti-union campaigning, the union determined that it was better to proceed toward the election than to file a complaint. (USW Local 572 President and organizer Alex Perkins, interview with G. Lafer, May 2019.)
76. USW Local 572 President and organizer Alex Perkins, interview with G. Lafer, May 2019. Unions’ ability to talk with workers outside the workplace has grown even more daunting since the COVID-19 crisis.
77. USW Local 572 President and organizer Alex Perkins, interview with G. Lafer, May 2019.
78. USW Local 572 President and organizer Alex Perkins, interview with G. Lafer, May 15, 2019.
79. United Steelworkers, *Kumho Tires*, Representation Case 10-RC-206308, National Labor Relations

Board, September 2017. <https://www.nlr.gov/case/10-RC-206308>.

80. Indeed, after two weeks of management's anti-union messaging, a growing number of employees stopped reading the union leaflets. "I don't want to hear anymore from the union or the company," one woman told an organizer. "I just want it to be over." Reported by USW Local 572 President and organizer Alex Perkins, interview with G. Lafer, May 14, 2019.
81. Employee #3, interview with G. Lafer, May 2019.
82. Employee #1, interview with G. Lafer, May 2019.
83. Employee #2, interview with G. Lafer, May 2019.
84. Employee #5, interview with G. Lafer, May 2019.
85. Kumho's 2016 revenue reported in "Kumho Tire Co, Inc. GDR 144A," *MarketWatch*, accessed June 8, 2020. G. Lafer interview with USW Local 572 President and organizer Alex Perkins, May 2019. In the interview, Perkins shared his post-election communication with Employee #6.
86. Employee #6, interview with G. Lafer, May 2019.
87. Employee #6, interview with G. Lafer, May 2019.
88. Employee #6, interview with G. Lafer, May 2019; and USW Local 572 President and organizer Alex Perkins, interview with G. Lafer, May 16, 2019. In the interview, Perkins shared his communication with Employee #7.
89. Arthur J. Amchan, Decision, Kumho Tires and United Steel Workers International Union, Cases 10-CA-208255, 10-CA-208414, and 10-RC-206308, National Labor Relations Board, May 14, 2019. Because such an order can take years to take effect, the union decided to withdraw its objections to the first election, let workers sign new cards, and petition for a new vote, which would happen much more quickly.
90. Employees #1 and #3, interview with G. Lafer, May 2019.
91. Employee #4, interview with G. Lafer, May 2019.
92. When a union has been certified after winning an election, employers are legally required to negotiate a contract in good faith. However, if an employer refuses to bargain in good faith, the legal remedy is simply to order the employer, once again, to negotiate in good faith. At the Dayton Hudson Corporation in Michigan, for instance, an election was overturned after the employer was found guilty of illegal threats, coercion, discrimination against union activists, videotaping workers talking to organizers, following employees into bathrooms, and monitoring employee phone calls. A second election was scheduled for 15 months after the first, and the employer was required to post notices acknowledging the law and pledging to respect it in the future. Yet even while these posters hung on the company's walls, the employer repeated some of the exact behaviors it was pledging to rectify. The NLRB canceled the second election and charged the employer with more than 100 separate violations of the law. Yet all these workers could look forward to was, again, more signs posted, more promises voiced, and yet another delayed and rescheduled election. See Richard W. Hurd and Joseph B. Uehlein, *Patterned Responses to Organizing: Case Studies of the Union-Busting Convention*, Cornell University ILR School, 1994, p. 69. One of the most extreme such examples is the case of a casino in Sparks, Nevada, called the Sparks Nugget. In 1977, the NLRB found that the Sparks Nugget had been guilty of bargaining in bad faith for the three previous years, and instructed the employer to return to the negotiating table in good faith. In 1980, the Court of Appeals enforced the NLRB's order, but the employer continued in its refusal to

negotiate. In 1984, an administrative law judge once again found the employer was illegally bargaining in bad faith. In 1990, the NLRB upheld this decision, ordering the employer back to the table. Again, the employer appealed to the Ninth Circuit Court of Appeals, and in 1992, more than 17 years after the employer began disregarding the law, the court enforced another NLRB order requiring the company to return to the negotiating table. *Sparks Nugget, Inc. v. NLRB*, 968 F. 2d 991 (9th Cir. 1992) and related discussion in Andrew Strom, “Rethinking the NLRB’s Approach to Union Recognition Agreements,” *Berkeley Journal of Employment and Labor Law* 15, no. 1 (1994), pp. 50–86.

93. Fred R. Long, president of West Coast Industrial Relations Association, gave a presentation at Century Plaza Hotel, Los Angeles, July 28, 1976; Joel D. Smith attended the presentation and recorded it. The transcript was reproduced in John Logan, “Consultants, Lawyers, and the ‘Union Free’ Movement in the USA Since the 1970s,” *Industrial Relations Journal* 33, no. 3 (2002), pp. 197–214. In an issue of his *Management Report for Nonunion Organizations* newsletter, union-avoidance consultant Alfred DeMaria likewise advises readers, “Companies that win the first election are more successful in a second election. One might think that an employer that committed unfair labor practices and had to face the union again in the second election would be less likely to succeed because of its previous unfair labor practices. Yet NLRB statistics show that, overwhelmingly, the party that wins the first election (whether it be the union or the employer) wins the second election handily, often by a greater margin.” See “Companies Win More Second Elections—But Not Always,” *Management Report for Nonunion Organizations* 27, no. 11 (November 2004), p. 1.
94. Employee #1, interview with G. Lafer, May 2019.
95. Wayne Crenshaw, “Kumho Tire Union Vote Came Down to Four Votes. Now the Ballots Are Being Challenged,” *Macon Telegraph*, September 9, 2019.
96. Kumho does not publish its wage rates, but as of June 2019, [Glassdoor](#) was still reporting \$15 per hour as the average wage for machine operators in Kumho’s Macon plant. Food stamps are available in Georgia for any family of four earning less than \$33,475 per year. See [Benefits.gov](#), “[Georgia Food Stamps](#)” (web page), accessed May 2020.
97. *Macon Georgia Agreement*, Graphic Packaging International, Inc., and United Steelworkers Union, Local 572, January 17, 2017–December 31, 2021; hard copy shared with G. Lafer by USW Local 572, Macon, Ga., May 2019.
98. Based on United Steelworkers’ contracts at Bridgestone/Firestone, Michelin, B.F. Goodrich/Uniroyal, Titan Tire, Goodyear, and Sumitomo Tire facilities in Alabama, Ohio, Iowa, Indiana, Tennessee, Virginia, North Carolina, and Kansas. Data provided to G. Lafer by USW via email, July 2019.
99. Employee #1, interview with G. Lafer, May 2019.
100. The Jackson Lewis website states that the firm has “developed specialized corporate campaign preventive advice and strategy/action plan recommendations...so that organizations can remain employers of choice.” Jackson Lewis P.C., “[Labor and Preventive Practices](#)” (web page), accessed June 2020. The same site advertises a JacksonLewis seminar titled “[War is Hel...pful: Union Avoidance Training](#).” For a fuller description of the firm’s work, see John Logan, “The Union Avoidance Industry in the United States,” *British Journal of Industrial Relations* 44, no. 4 (December 2006), pp. 651–675.
101. DISH Network Corp., “[Quick Facts](#)” (web page), accessed May 22, 2020.



102. Martha Kinard, Regional Director, 16th Region, *NLRB v. Dish Network Company*, Evidentiary Hearing before Hon. Reed C. O'Connor, U.S. District Judge, Ft. Worth, Texas, January 6, 2017. Case 4:16-CV-952. Hearing Transcript. Witness #2, p. 24.
103. Under the NLRA, if at least 30% of workers sign cards saying they want a union election, the NLRB schedules a vote.
104. Gordon Lafer, interview with staff and attorneys of Communications Workers of America; and Martha Kinard, Regional Director, 16th Region, *NLRB v. Dish Network Company*, Evidentiary Hearing before Hon. Reed C. O'Connor, U.S. District Judge, Ft. Worth, Texas, January 6, 2017. Case 4:16-CV-952.
105. Email communication to G. Lafer from CWA attorney, August 2019.
106. National Labor Relations Board, *Dish Network Corporation and Communications Workers of America Local 6171: Decision, Order and Order Remanding*, April 11, 2012.
107. There is no evidence that the petition was originated by management, but management employees campaigned in support of decertification (CWA attorney, communication with G. Lafer, August 2019).
108. These charges were not related to the decertification petition itself, but because there were outstanding charges of illegal management activity, the NLRB put the vote on hold until those charges could be remedied, and this took almost three years (CWA attorney, communication with Gordon Lafer, August 2019).
109. Martha Kinard, Regional Director, 16th Region, *NLRB v. Dish Network Company*, Evidentiary Hearing before Hon. Reed C. O'Connor, U.S. District Judge, Ft. Worth, Texas, January 6, 2017. Case 4:16-CV-952; testimony of CWA Regional Assistant Vice President Sylvia Ramos.
110. DISH Regional Director Monty Beckham confirmed that technicians at the two unionized locations had higher average efficiency than similar employees in DISH's other locations. Kinard, *NLRB v. Dish Network Company*, January 6, 2017, pp. 156–157.
111. The most skilled employees saw their pay cut from \$70,000 to \$35,000; lower-ranked employees experienced cuts that brought their wages down from over \$50,000 per year to under \$30,000. Kinard, *NLRB v. Dish Network Company*, January 6, 2017. Witnesses 2–8.
112. *Dish Network Corporation and Communications Workers of America*, Decision and Order, 366 NLRB no. 119, June 28, 2018, p. 8.
113. Kinard, *NLRB v. Dish Network Company*, January 6, 2017. Witnesses 5–8.
114. Kinard, *NLRB v. Dish Network Company*, January 6, 2017. Witness 6.
115. Kinard, *NLRB v. Dish Network Company*, January 6, 2017. Witness 7. The struggle to stay afloat also taxed family relationships. "A lot of the guys I work with," this witness explained, "know that it's pretty much a done deal that we're going to wind up getting divorced."
116. Kinard, *NLRB v. Dish Network Company*, January 6, 2017, pp. 6–7, 25, 202.
117. Kinard, *NLRB v. Dish Network Company*, January 6, 2017. Witness 2. Witness 1 likewise testified that employees did not volunteer to join the bargaining committee because "they were fearful for the terminations that they have seen."
118. Kinard, *NLRB v. Dish Network Company*, January 6, 2017. Witnesses 2, 3, 11. DISH manager

Waeland Thomas confirmed in federal testimony that he told employees, “I wouldn’t talk about the union while you are with these guys” because the newcomers would be surveyed by management about their experience and if they reported being made to feel uncomfortable by union talk, employees could suffer retaliation.

119. See, for example, Alexandra Bradbury, Mark Brenner, and Jane Slaughter, *Secrets of a Successful Organizer* (Detroit, Mich.: Labor Notes, 2016).
120. Kinard, *NLRB v. Dish Network Company*, January 6, 2017. Witness 1.
121. Kinard, *NLRB v. Dish Network Company*, January 6, 2017. CWA Assistant Vice President Sylvia Ramos.
122. *Dish Network Corporation and Communications Workers of America*, Decision and Order, 366 NLRB no. 119, June 28, 2018.
123. Letter from DISH Human Resources Manager Melissa Boillot to various employees, October 10, 2018.
124. Allegation made in unfair labor practice charge filed by Communications Workers of America against DISH TV, April 22, 2019; CWA attorney communication with G. Lafer, August 2019.
125. *Dish Network Corporation and Communications Workers of America*, Decision and Order, 366 NLRB no. 119, June 28, 2018.
126. The proposal for first contract arbitration was a central component of the Employee Free Choice Act of 2007, which was promoted by the AFL-CIO and adopted by the U.S. House of Representatives but not by the Senate. See <https://www.congress.gov/bill/110th-congress/house-bill/800>. The AFL-CIO continues to advocate for this proposal in a proposed Protecting the Right to Organize Act. See AFL-CIO, “[Letter in Support of Legislation to Modernize the National Labor Relations Act](#),” April 29, 2019.
127. Further, the union offered to compromise on wages, maintaining the 2009 incentive wages only for the most veteran employees. *Dish Network Corporation and Communications Workers of America*, Decision and Order, 366 NLRB no. 119, June 28, 2018, p. 7.
128. AT&T Southwest and Communications Workers of America, *2017 Labor Agreements*. As of 2019, warehouse employees at DISH earn between \$10 and \$11 per hour, or between \$20,800 and \$22,880 per year based on a 52-week, 40-hour-per-week schedule. Warehouse assistants with five years’ experience at AT&T DirecTV earn a base wage of \$39,182 per year, not including pay premiums for evening and graveyard shifts or Sundays. DISH technicians post-2016 earn between \$13 and \$17 per hour, or between \$27,000 and \$35,000 per year, compared with AT&T technicians who, with five years’ seniority earn a base wage of \$53,000 per year before accounting for shift premiums.
129. DISH Network Corp., “[Quick Facts](#)” (web page), accessed May 22, 2020.
130. Indeed, it appears that DISH executives sought to close the company’s two unionized locations shortly after workers organized. The U.S. District Court noted that DISH cut wages in the two unionized facilities to a level “lower than all other non-union technicians in the region” and, in addition, denied these employees the additional incentive pay provided to nonunion technicians. DISH offered no justification for this disparate treatment, and the court concluded that “improper retaliation seems the most likely answer.” *Kinard v. Dish Network Co.*, United States District Court for the Northern District of Texas, Forth Worth Division, January 14, 2017, Civil Action no.

4:16-cv-00952-O. But a leaked text suggests that the company had more ambitious aims: closing the branch offices and eliminating any trace of unionization within DISH’s national network. When wage cuts were announced in 2016, a DISH manager unintentionally shared a message announcing that “the union is gone. Techs will be affixed hourly rates, no [incentives].... The two offices are gradually closing.... They would rather have the techs quit en masse.” (Message from DISH Field Service Manager Hanns Obere, mistakenly sent to an employee. Reproduced in *Dish Network Corporation and Communications Workers of America*, Decision and Order, 366 NLRB no. 119, June 28, 2018.)

131. In Texas, a family of four is eligible for food stamps in 2019 if its income is below \$33,480. See Texas Health and Human Services, “[C-100, Income Limits and Proration Charts](#)” (web page), accessed June 8, 2020.
132. Researcher Kate Bronfenbrenner shows that, by the early 2000s, 96% of all employers involved in union elections with 50 or more voters mounted campaigns against unionization and three-quarters of all employers involved in union elections with 50 or more voters hired union avoidance consultants. See Kate Bronfenbrenner, *No Holds Barred: The Intensification of Employer Opposition to Organizing*, Economic Policy Institute and American Rights at Work Education Fund, May 2009.
133. For a detailed description of the provisions of the PRO Act, see McNicholas et al., *Unlawful: U.S. Employers Are Charged with Violating Federal Law in 41.5% of All Union Election Campaigns*, Economic Policy Institute, December 11, 2019.
134. Sharon Block and Benjamin Sachs, *Clean Slate for Worker Power: Building a Just Economy and Democracy*, Labor and Worklife Program, Harvard Law School, January 2020.