



Blueprint to Empower Workers for Shared Prosperity

Report by
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 **ROOSEVELT
INSTITUTE**
REIMAGINE THE RULES

Until economic and social rules work for all Americans, they're not working. Inspired by the legacy of Franklin and Eleanor, Roosevelt Institute reimagines America as it should be — a place where hard work is rewarded, everyone participates, and everyone enjoys a fair share of our collective prosperity. We believe that when the rules work against this vision, it's our responsibility to recreate them.

We bring together thousands of thinkers and doers — from a new generation of leaders in every state to Nobel laureate economists — work to redefine the rules that guide our social and economic realities. We rethink and reshape everything from local policy to federal legislation, orienting toward a new economic and political system, one built by many for the good of all.



The Roosevelt Institute’s Future of Work initiative focuses on three areas: promoting innovative strategies for worker organizing and representation, strengthening labor standards and their enforcement, and assuring access to good jobs for women, workers of color and immigrants. Future of Work brings together thought and action leaders from multiple fields to reimagine a 21st century social contract that expands workers’ rights and the number of living wage jobs. The aim is to aggregate and support the development of innovative policies and organizing models and to disseminate that vision to opinion leaders, policymakers, and to the broader public.

The Future of Work initiative is led by Roosevelt Institute Fellows Annette Bernhardt, Richard Kirsch, and Dorian Warren. Two Roosevelt Institute program managers, Harmony Goldberg and Andy Shen, facilitated the work of the initiative leading to this publication.

The authors of the *Blueprint to Empower Workers for Shared Prosperity* are Richard Kirsch, Andy Shen, and Dorian Warren.

We want to thank all of those who participated in the Future of Work process over the past three years for their thoughtful contributions, their time, and their passionate commitment to empowering workers.

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EXECUTIVE SUMMARY

The Future of Work (FoW) Initiative, a project of the Roosevelt Institute, has been working since 2013 to strengthen the right to organize and collectively bargain, uplift and uphold labor standards, and end racial, ethnic, and gender discrimination in the workplace.

The *Blueprint to Empower Workers for Shared Prosperity* is the culmination of a two-year process that brought together labor unions, academics, leading thinkers from worker organizing centers, community and policy groups, and attorneys to identify major areas in which to explore new policies. Based on these discussions, the Future of Work leadership team commissioned a set of papers to develop significant policy proposals. This Blueprint synthesizes those papers and a small number of related papers. The result is a set of bold proposals that, taken together, would transform the American workplace, making it more inclusive, dignified, and just.

We believe that in order to challenge inequality and achieve economic justice, we must rebuild the fundamental norms of the workplace. We need to fight inequality at its source, from low wages to lack of bargaining power to systemic labor market exclusion. Doing so will improve economic performance, as workers' increased incomes drive spending and raise the standard of living. We will build a fair and high-performing economy from the bottom up and the middle out.

Building on this core principle, the Blueprint explores five policy strategies to empower workers and advance shared prosperity: (1) maximizing worker power and voice in the new economy; (2) ensuring local residents receive a fair share of the wealth generated by publicly funded projects; (3) holding all employers accountable for violations of labor and civil rights; (4) promoting worker-centered business models and socially responsible business practices; and (5) valuing care by valuing care workers.

Introduction

THE PROBLEM WE FACE: RISING ECONOMIC INSECURITY

The U.S. economy is no longer working for the vast majority of Americans. Too many are unemployed, underemployed, stuck in low-wage jobs, or only able to find part-time employment.¹ These people are working hard and playing by the rules, but are unable to attain economic security, much less mobility. As a result, a larger and larger share of workers, students, small business owners, and families feel that the rules are rigged against them and in favor of the most powerful.

¹ By late 2014, the unemployment rate had dropped from more than 10 percent at the height of the recession to less than 5.4 percent, but that number masks grave and enduring problems; labor participation and long-term unemployment rates remain at historically low levels for a mid-recovery economy, and severe racial and ethnic unemployment disparities persist—the Black unemployment rate is still twice that of whites, as it has been since the 1960s, and in many American cities Black unemployment sits at Depression Era levels of 20 percent or higher.

Many pundits argue that sluggish economic growth and declining prospects for the middle class are inevitable outcomes of technological changes and a globalized economy. Economic security, they suggest, is as antiquated as the assembly line. This is simply not true. The impact of technology and globalization is shaped by the economic rules and institutions we choose as a nation. We cannot underestimate the impact government policy plays in determining how Americans experience economic forces or structural changes.

Nothing about 20th century industrialization, for example, guaranteed the emergence of a booming middle class and high-pressure economy. It took striking workers, the Great Depression, and institutional revolution in the form of the New Deal to secure power and protection for many American workers.

Over the last 40 years, politicians and corporate leaders have systematically dismantled a host of the protections won in this earlier era. Further, they have blocked

reforms that would have allowed labor law to adapt to the changing economy. And the results are in: Today, roughly four out of ten Americans earn less than \$15 an hour and the outlook for wage growth is poor. Sixteen of the 20 occupations with the largest numeric growth projected through 2020 are low-wage jobs that do not require a college degree. Mid-wage occupations represented 60 percent of jobs lost in the recession, but constituted only 22 percent of those gained in the recovery. Low-wage occupations, on the other hand, made up nearly two-thirds of jobs gained.¹²³⁴

Failure to update labor policy has left already vulnerable workers and communities in an increasingly precarious position. Work such as that offered by the gig economy and the growing care economy is unstable and excluded from the legal protections of the Fair Labor Standards Act. It also exists outside the confines of the traditional employer–employee relationship that, since the New Deal, has guaranteed benefits and legal protections that bolstered the health of the middle class. Moreover, all of the issues facing workers today disproportionately affect women and workers of color. More than half of all African Americans and almost 60 percent of Latinos earn \$15 or less an hour, compared to only one in three white workers.

The current structure of the U.S. economy—powered by sectors deliberately excluded from New Deal protections, fueled by global supply chains, organized through sub-contracting and online platforms—hardly resembles the economy of the era in which the majority of our labor laws were written. We need to rewrite the rules to build power and protect workers in the 21st century. The purpose of this Blueprint is to outline key policies that will achieve this goal.

PAPERS INCLUDED IN BLUEPRINT

Future of Work commissioned papers

- Mark Barenberg, *Widening the Scope of Worker Organizing: Legal Reforms to Facilitate Multi-Employer Organizing, Bargaining, and Striking*
- Ben Beach and Kathleen Mulligan-Hansel, *Metropolitan Coalitions: Creating Opportunities for Worker Organizing*
- Laura Dresser, *Valuing Care by Valuing Care Workers: The Big Cost of a Worthy Standard and Some Steps toward It*
- Olatunde Johnson, *Promoting Racial and Ethnic Inclusion in Employment through Regulatory Mandates and Incentives*
- Michael Piore, *Labor Standards and Worker Organization Strategy*
- Haeyoung Yoon, *Local and State Business Registration Schemes: An Enforcement Lever to Strengthen Employer Compliance with Labor Standards and to Facilitate Worker Organizing*

Other papers referenced

- Janice Fine, *Tackling Exploitation Through the Co-production of Labor Standards Enforcement, Draft Report to the LIFT Fund*
- Catherine Ruckelshaus, Rebecca Smith, Sarah Leberstein, Eunice Cho, *Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work, May 2014*
- Noah Zatz, *Supporting Workers by Accounting for Care*

Additional papers for Future of Work Initiative

- Annette Bernhardt, *The Role of Labor Market Regulation in Rebuilding Economic Opportunity in the U.S.*
- Richard Kirsch, *The Future of Work in America: Policies to Empower American Workers and Secure Prosperity for All*
- Dorian Warren, *Tackling Workplace Segregation Through Collective Bargaining: The Case of UNITE-HERE and the Hotel Industry*
- Dorian Warren, *Union Organizing In National Labor Relations Board Elections*

OUR ANALYSIS: CAUSES OF TODAY'S ECONOMIC DECLINE

Meaningful and innovative policy solutions are needed to address chronic weaknesses in American labor law and to adapt those laws to the needs of workers in the 21st century.



Our argument is that the current imbalance in labor markets is the product of two concurrent trends. First, in the last four decades we have witnessed an ongoing political attack on existing labor standards and worker rights. Second, political forces have blocked attempts to modernize and expand labor institutions designed to build worker power as the economy transformed.

Beginning in the 1970s, hostile government policy—motivated by corporate influence in Washington—undercut labor laws and began to erode the bargaining power of American workers through a series of legal, lobbying, and regulatory attacks.⁵ While union membership declined dramatically—from one in three private sector workers in the 1950s to just 7 percent today—so too did its positive direct and indirect effects. For their members, unions raise median weekly earnings, reduce race- and gender-based income gaps, and improve the likelihood of health care and pension coverage.⁶ For non-members, unions—by virtue of the implicit threat of unionization—improve the wages and working conditions in relevant industries.^{7,8,9} With the decline of unions and disappearance of the credible threat of unionization, corporations were able to drive down wage growth and working conditions without fear of reprisal.

Meanwhile, “policy drift” or willful neglect of labor standards and institutions has stymied attempts to adapt collective bargaining institutions to the information and service economies. Without updates, policies like overtime, minimum wage, and employee bargaining rights fail to keep pace with changing markets, and thus passively weaken the standing of American workers.¹⁰ The nature of work in 21st century America does not conform to conditions under which the National Labor Relations Act (the primary legal structure protecting collective bargaining) was written in 1935. Today, the country’s largest employers are retail or food service firms where relatively few employers work at a single site when compared with the tens of thousands of employees at a manufacturing plant in the heyday of union organizing. While a strike at a GM plant could stop national distribution and secure increased benefits for 47,000 workers, a strike at a single Walmart

would barely register at national headquarters and would provide gains to around 300 employees at best.

Further, corporate strategy has disaggregated the large corporation; as a result, many workers are employees of contractors as opposed to employees of the firm that sets their wages and dictates their terms of employment. At least until recently, a worker in an Amazon warehouse or a McDonald’s franchise, for example, could not negotiate with the corporation directly, but would have to mediate through the contractor that signed his paychecks. A recent landmark ruling from the National Labor Relations Board recognizes corporations operating under these arm’s length contracts as “joint employers” and thus expands the scope for collective action. This ruling and the significant media and public reaction around it demonstrate that the American people understand just how much the U.S. economy has evolved past the corporate structures envisioned by the NLRB in the mid-20th century. However, the capacity of this ruling to modernize labor law is sure to be tested in the courts, and we are only at the beginning of a long battle over these issues.

The emerging gig economy also operates beyond the scope of traditional employer–employee relationships, and thus beyond the scope of collective action, safety protections, and wage standards. As this segment of the economy grows, our collective failure to reimagine the 20th century social contract will only exacerbate the economic insecurity already felt by so many.

Finally, the deliberate failure to adapt and augment our labor institutions has allowed the perpetuation of structural discrimination in labor markets and further contributed to systemic race- and gender-based disparities of wages and labor market access, both of which suppress the economy.¹¹ For example, the United States is the only rich democracy that does not require employers to provide paid sick and family leave. This shrinks the workforce—and growth along with it—by making it extremely difficult for women to both work and help raise a family.¹² Furthermore, America’s high incarceration rates mean that over 2 million

Americans who have had some contact with criminal justice institutions are effectively eliminated from the workforce.¹³

Along with these transformations in the nature of work—low-wage jobs, persistent occupational segregation, unequal labor market access—have come deliberate public policies that redistributed wealth and influence from the working and middle classes to the most affluent Americans. The share of income going to the top 1 percent increased dramatically from the 1970s to the present, coinciding with the aforementioned wage stagnation, rising debt, and declining mobility of workers.¹⁴ Again, this wasn't the result of "natural" market forces; the same corporate lobbying that helped

"involuntary part-time work" and "wage theft," have entered our national lexicon, and are contributing to the hollowing out of the middle class.¹⁶ In 2012 alone, government agencies recovered almost \$1 billion from employers for workers victimized by wage theft.¹⁷ Here, yet again, vulnerable minority populations suffer most: Undocumented immigrant workers are particularly vulnerable to wage theft.¹⁸

CHANGE IS POSSIBLE: A BURGEONING MOVEMENT

The situation is grave, but these trends can be reversed. Ours is an institutionalist approach. We believe that

the rules governing institutional and individual behavior matter, and that since conscious policy decisions have put us in this position, conscious policymaking can improve our circumstances. Therefore, we must propose and act on deliberate policies designed to protect and strengthen the position of American workers in society.¹⁹ Without concerted action, the growing low-wage service sector and peer-to-peer industry will continue to add millions of unstable, low-wage jobs with unpredictable schedules, little to no health care or retirement benefits, and scarce opportunity for fair bargaining.

In approaching the challenges that face workers today, the Roosevelt Institute draws inspiration from the New Deal's achievements

in responding to a harsh industrial economy and an immediate economic crisis while also building positive foundations for the future. The Roosevelt era fundamentally transformed the nature and conditions of work in America, from one in which workers had virtually no voice, power, job security, or personal safety, into a robust social contract in which the power of workers to organize and bargain for a fair share of economic growth and profits became a bedrock assumption, assured by strongly enforced rules and widely honored social norms. This shift proved a necessary precondition for the creation of the American middle class, the narrowing of economic inequality, and the promotion of broad mobility.

Of course, the New Deal was not perfect. The majority of workers of color were explicitly excluded from the new workplace protections as a consequence of the



A rally in front of a McDonalds on 5th Ave. in behalf of justice for the workers.

erode union power was also instrumental in the drive toward policies and market rules that benefit the wealthy to the detriment of poor, working-class, and middle-class Americans.¹⁵

Corporations—aided and abetted by changes in corporate governance rules—see it as their mission to deliver short-term returns for investors and seek every opportunity to cut costs, especially with regard to labor. Corporations now fight union organizing efforts with pre-New Deal ruthlessness and force more workers into uncertain or contingent work schedules. Increasingly, employers evade basic labor standards by misclassifying and subcontracting their workers.

Other harbingers of a poor labor market, like the terms

outsized political power Southern Democrats held during the New Deal. Many women also did not benefit from the promise of the era's new social contract. Lastly, service sector jobs remained largely non-union and disproportionately low-wage. As a result, the goal of full inclusion and equity in the U.S. labor market is still unmet. It is our goal to expand on the New Deal's original mission and extend modern protections to workers of all races, ethnicities, and gender identities.

The good news is that in 2011 and 2012, Americans finally woke up to the reality and consequences of stark economic inequality. The intense mobilization in Wisconsin when Governor Scott Walker introduced legislation to strip most public workers of bargaining rights, the emergence of the Occupy movement, the recent strikes by Walmart employees and fast food workers, and even the language of President Obama's speeches all show a broad public recognition that what Nobel laureate and Roosevelt Institute Chief Economist Joseph Stiglitz calls "the Great Divergence" is the fundamental economic challenge of our time.

Emerging activism among low-wage workers shows the necessity and potential of a new era of labor advocacy. Using a populist model, outside of classic union organization but with the support of union entities like the AFL-CIO, campaigns in cities like Seattle, San Francisco, and Los Angeles won phased-in minimum wage increases and are paving the way for further city and state initiatives on this and other topics, like paid sick days and scheduling. Organization efforts have been buoyed by some institutional reform: President Obama has issued a number of executive actions to improve labor standards for employees of federal contractors, including raising the minimum wage; and in August the National Labor Relations Board issued the aforementioned, potentially game-changing ruling on "joint employers." The combination of efforts has prompted some major low-income employers to voluntarily raise wages for their lowest-paid workers—a sign of the power of popular movements and a throwback to the era when union strength led to positive spillover effects across entire industries.

OUR APPROACH: WHY THE BLUEPRINT IS DIFFERENT

So far, the national discussion of solutions to growing

inequality has mostly centered on tax reform and social insurance programs—modest efforts to redistribute the benefits of economic growth after market allocation. Although these tax and transfer programs are vitally important, there is only so much that they can do to correct the massive failures of the labor market. In the long run, raising standards of living will require policies aimed at restoring balance to worker–firm negotiations in the 21st century context.

Our core principle is this: To challenge inequality and achieve economic justice, we must think beyond redistribution and reimagine the rules that structure the workplace. We can create broadly shared prosperity and restore the American people's faith that government can work for them and not just the wealthy. To do this, our leaders need to adopt a progressive and forward-thinking agenda for reshaping the U.S. labor market. This Blueprint explores five policy components of such an agenda: (1) maximizing worker power and voice in the new economy; (2) ensuring local residents receive a fair share of the wealth generated by publicly funded projects; (3) holding all employers accountable for violations of labor and civil rights; (4) promoting worker-centered business models and socially responsible business practices; and (5) valuing care by valuing care workers.²

Policy Framework

1. MAXIMIZE WORKER POWER AND VOICE IN THE NEW ECONOMY.

The history of the struggle for workers' rights in the United States teaches us that it takes decades of workers organizing collectively to win both the legal right to form unions and the exercise of that right to win better wages and working conditions. Workers organized, often at great risk to their jobs and livelihoods, to demand recognition of unions long before the National Labor Relations Act became law in 1935. And once the

² While this blueprint advances a bold set of new rules for rebalancing and rebuilding an economy that works for all, it does not include many other policies that are crucial for comprehensive reform of our economy. These include new rules for corporate governance; comprehensive immigration reform; and new priorities for macroeconomic, monetary and fiscal policy. We direct the reader to *Rewriting the Rules of the American Economy*, a report by Roosevelt Chief Economist Joseph Stiglitz, for a broad overview of these policy reforms.

NLRA became law, it took more organizing, job actions and strikes to translate the promise of the law into a reality for a sizeable portion of the workforce in many regions of the country represented by unions.

In many ways, organized labor is back where it was a century ago, with only a small percentage of the private labor force unionized, resistance by employers and government to unionization and a labor law which does not provide an effective framework for organizing in today's economy.

Our first policies on maximizing worker power and voice offer a dramatic reshaping of labor law that would facilitate organizing in the 21st century economy. A more detailed explanation of these ideas are laid out in Mark Barenberg's paper, *Widening the Scope of Worker Organizing: Legal Reforms to Facilitate Multi-Employer Organizing, Bargaining, and Striking*. From there, we leap to the practical, with a contribution from the Partnership for Working Families (authored by Ben Beach and Kathleen Mulligan-Hansel) on how community and labor organizing can leverage local government to build broader public support for the value of unions, democratize economic development in cities, while improving wages and working conditions now. Finally, we note how Haeyoung Yoon and Michael Piore's proposals not only address enforcement of wage laws but also increase the power and voice of workers.

Legal Reforms to Facilitate Multi-Employer Bargaining:

This first set of policy proposals highlights how crucial rules of the labor market are to empowering workers. Laws are important to protect workers and promote their realization of the right to organize for a fair share of the wealth they create. But passage of new federal laws will only follow worker organizing and policy experimentation at the local and state level.

Barenberg describes two central features of today's employer landscape:

1. The decentralization and fragmentation of collective bargaining. Bargaining that once spanned multiple employers in an industry has often disintegrated into single-employer units. And bargaining that once spanned multiple facilities of a single employer has often disintegrated into single-division or single-facility units.

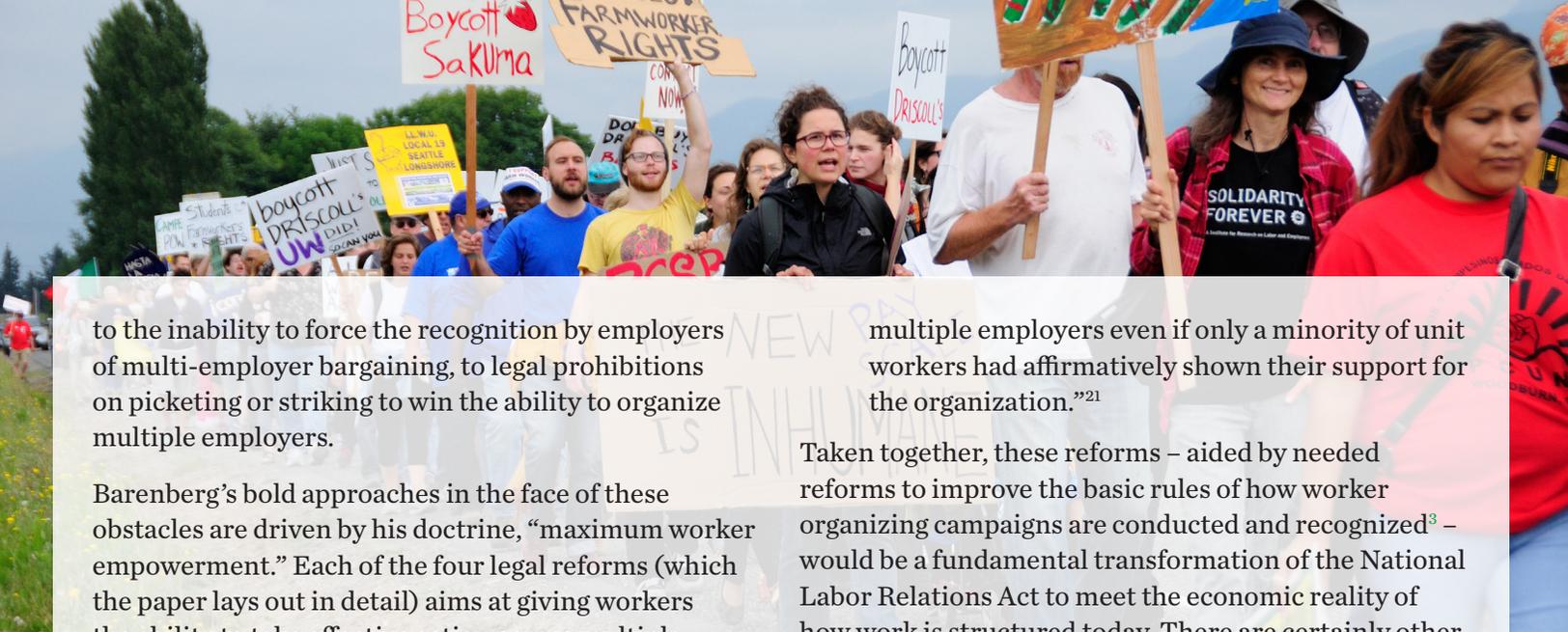
Our core principle is this: To challenge inequality and achieve economic justice, we must think beyond redistribution and reimagine the rules that structure the workplace. We can create broadly shared prosperity and restore the American people's faith that government can work for them and not just the wealthy. To do this, our leaders need to adopt a progressive and forward-thinking agenda for reshaping the U.S. labor market.

2. The disintegration of employers. Instead of large, vertically integrated corporations, work that was once done in-house is increasingly scattered across multiple employers interconnected by a chain or network of contracts.

For workers, this new landscape raises the question, "Who's the boss?" This is not the narrow question of which employer issues their paychecks. Rather, it is the question of which economic enterprise(s) really controls the economic operations of workers' contractual employer and has the effective ability to determine their wages and working conditions.

In terms of exercising the right to organize a union and bargain, this landscape requires the legal ability to effectively organize either multiple employers and/or single employers with multiple locations. An example of the challenge presented with multiple employers in a supply chain, is the use by Wal-Mart of warehouses run by Schneider Logistics.²⁰ Even though Wal-Mart effectively controls the economics and operations of the warehouse, Schneider is the legal employer. An example of the challenge presented by multiple locations, each with few workers, is that under today's labor law, each separate McDonald's would be considered a separate bargaining unit, which means that workers at each would have to be organized.

Barenberg identifies seven key obstacles to effective multi-employer organizing and bargaining. They range from the difficulty of organizing a majority of workers in large bargaining units that span multiple employers,



to the inability to force the recognition by employers of multi-employer bargaining, to legal prohibitions on picketing or striking to win the ability to organize multiple employers.

Barenberg's bold approaches in the face of these obstacles are driven by his doctrine, "maximum worker empowerment." Each of the four legal reforms (which the paper lays out in detail) aims at giving workers the ability to take effective action across multiple employers:

- "First, legal reform could redefine 'employer.' An entity would be deemed an employer of multiple workforces if it has 'sufficient bargaining power' to determine the terms and conditions of all the employees in question, even if the entity is not currently exercising such power. By organizing and bargaining with that single entity, a worker organization would effectively organize and bargain with what is currently deemed a multi-employer association.
- "Second, legal reform could authorize worker organizations to unilaterally choose the scope of bargaining units, including multi-employer units. And, if the Board is called upon to select among differing units chosen by different worker organizations, the Board should define units based on the criterion of 'maximum potential worker empowerment.'
- "Third, legal reform could authorize bargaining units that are defined not only by employer boundaries (whether single or multiple employers) but also by such categories as geographic region, production-and-distribution network, occupation, or industry. Often, the particular employers that fall within such units would change over time.
- "Fourth, legal reform could eliminate the rule that worker organizations must demonstrate the support of a majority of workers in a given unit. Instead, bargaining rights or the substantive terms of employment would extend across

multiple employers even if only a minority of unit workers had affirmatively shown their support for the organization."²¹

Taken together, these reforms – aided by needed reforms to improve the basic rules of how worker organizing campaigns are conducted and recognized³ – would be a fundamental transformation of the National Labor Relations Act to meet the economic reality of how work is structured today. There are certainly other approaches to a new legal framework for achieving this goal. But as Barenberg's paper provides a sharply focused description of the new economic framework, a clear analysis of the current legal barriers and bold, innovative approaches to addressing both, it is an important launching pad for any discussions about a new legal structure for empowering workers today and in the future.

Barenberg acknowledges that "achievement of the full-blown reforms [he proposes] is conceivable only if there is a renewed progressive movement committed to re-empowering workers."²² Beach and Mulligan-Hansel, in their paper *Metropolitan Coalitions: Creating Opportunities for Worker Organizing*, describe model efforts in several cities that are beginning to build a movement to empower workers. These efforts are "winning campaigns that push cities to transform local sectors of the economy, raising standards for all workers and creating better conditions for organizing."²³

Urban Innovation to Improve Workers' Lives and Build Support for Unions

Beach and Mulligan-Hansel begin by pointing out that not only are workers further removed from the real boss, "workers are more distant than ever from a clear understanding of the benefit of unions." Furthermore, "Among some critical potential allies, there is even

³ The current law allows employers to resist union organizing, both legally and illegally. Reforms needed to the NLRA include: providing additional mechanisms for a majority of employees to express support for forming a union; eliminating employers' ability to give anti-union speeches to employees while union supporters are not allowed to respond or have the same opportunity; giving union organizers access to work places; and providing meaningful penalties and sanctions to employers who violate labor laws such as retaliating against employees who support forming a union.

distrust of unions or animosity toward them.”²⁴

The authors point out that with the shrinking of union density and presence in communities, “Fewer communities and leaders are making the argument for the public value created by union labor. And some communities, particularly communities of color, harbor distrust or resentment of particular unions.”²⁵

To build both the understanding and reality of how unions can improve workers’ lives, Beach and Mulligan-Hansel describe successful campaigns for policy “victories in cities across the country” that “bring unions into long-term, power-building relationships with community around a shared vision.”²⁶ The campaigns “have shown that advocates should build powerful local coalitions that include labor, community, environmental and faith organizations in order to leverage significant and lasting change for workers. These are not merely transactional formations aligning briefly to seize political opportunity. They are instead characterized by deep commitments to joint long-term power-building, multi-issue work and shared big picture strategizing.”²⁷

The benefit of such coalition efforts goes beyond “the political heft needed to develop and move effective policy.”²⁸ The coalitions can also focus on implementation of the policies, an area too often neglected. Beach and Mulligan-Hansel argue that cities are the best place to pioneer these efforts and to create leverage for their impact beyond the particular city. Cities often have a more favorable political climate, including the density of organizations needed to overcome resistance to new policy approaches. Cities are also anchors of regional labor markets and have regulatory and contractual tools to drive changes in regional economies.

The campaigns can also create a different vision among elected officials, seeing themselves as being able to use their own economic power not just to secure services, but to directly lift the earnings of their residents and establish a model for other employers to emulate. Among the approaches described in their paper are:

- A city may adopt a new requirement that economic development receiving public subsidy (and any public works project)

come with specified community benefits such as living wages or targeted hiring.

- A Community Benefits Agreement between a developer, a coalition and sometimes the local government to provide for a range of community benefits in connection with a particular development project, may be structured to give the coalition and the local government enforcement power directly against the developer and all the businesses in the project.
- A Community Workforce Agreement, a Project Labor Agreement containing community-serving measures such as targeted hiring requirements, may ensure that all contractors are legally accountable to the local government and to a special commission that includes coalition members.
- Measures that counter efforts by firms to place the burden of cost and risk onto workers such as: requiring classification of workers as employees by those entities with power over the terms and conditions of their work; limiting or prohibiting the use of temporary agencies and creating liability for violations of labor laws for those who engage labor contractors; and limiting the use of part-time employees and of designated classes of workers as independent contractors.



Fast Food Strikes in NYC in July of 2013.

A particular benefit of these approaches is that when workers are more confident of their workplace rights, including as against entities that exercise control over their work, they “can also be (rightly) more confident of the possible outcomes of workplace organizing.”²⁹

Effective Enforcement that Empowers Workers

Haeyoung Yoon proposes another way that workers can be empowered in her paper, *Local and State Business Registration Schemes: An Enforcement Lever to Strengthen Employer Compliance With Labor Standards and to Facilitate Worker Organizing*. In her paper (which is described in more detail in Policy Section 3 below), she proposes establishing a robust business registration scheme as an enforcement tool to tackle wage theft. Her proposal would allow governments to close down businesses that do not satisfy wage claims of wage theft (examples include not paying minimum wage; not paying overtime; stealing tips).

It is in Yoon’s mechanism for administering the law that she proposes a system meant to both make enforcement more effective and to empower workers. As she writes:

*To address the prevalent sense of disempowerment workers experience when they come forward to enforce their wage rights, my proposal creates an infrastructure called the “Business Registration Board” that would be governed by worker, employer, and government representatives to create opportunities for meaningful participation of workers and worker organizations in the implementation of the business registration scheme and to facilitate worker organizing and worker power-building.*³⁰

Workers and their organizations would be “fully integrated partner to the administering agency’s work, instead of merely a group to be consulted.”

From Labor Standards to Business Practices

We explore the policy proposal of another of our authors, Michael Piore, in detail in Policy Section 4 below. Piore’s paper, *Labor Standards and Worker Organization Strategy*, looks at how worker organizations can play a role not just in enforcing individual labor standards but in an integrated approach which looks at workers leveraging government to

address the business practices driving non-compliance with labor standards. For the purposes of this section, we want to elevate that, as Piore writes:

*In so doing, these organizations can assume an active role in overseeing and potentially even directing managerial practice comparable to the role assumed by works councils in the German industrial relations system. It would involve a role for workers’ organizations very different from that which they have become adept at playing in the post-war period, but is potentially more effective in the economic and technological environment, which is so different from that in which union organization and collective bargaining emerged in the 1930’s and the early postwar decades.*³¹

Which returns us to where we began this section, how can we maximize worker empowerment? As Piore writes of his proposal:

*On one level, this strategy can be thought of as a way of re-equilibrating the balance of power between labor and management which has been progressively undermined in the last thirty years by the decline of trade union membership and the withdrawal of government from active management of economic activity, particularly in the workplace. But at another level, it could be thought of as a part of the ongoing attempt to create and maintain a system of economic coordination, which combines economic prosperity and technological dynamism with social equity and worker and environmental protection.*³²

2. ENSURE LOCAL RESIDENTS RECEIVE A FAIR SHARE OF THE WEALTH GENERATED BY PUBLICLY FUNDED PROJECTS

The imbalance between the wealthiest in our society and the great majority of working people has continued to widen even as the U.S. economy has shown signs of recovery since the Great Recession. Workers of color have been particularly hard hit, with many continuing to struggle to find full employment, while white workers have benefited more from the gradual increase in job opportunities. There is much that local governments

can do by rewriting the rules of the local economy to provide a democratic voice and good jobs to low-income residents, especially workers of color, through publicly funded or subsidized economic development projects.

This section draws largely on two papers, which set forth strategies to maximize the power of the public purse in creating good jobs for low-income communities, and in particular, workers of color. The first is Olatunde Johnson's paper, *Promoting Racial And Ethnic Inclusion In Employment Through Regulatory Mandates And Incentives*. The second is the paper by Beach and Mulligan-Hansel, referenced above. Their strategies, which are intermixed here, have four elements:

1. Ensure the public obtains a broad set of returns when the government spends public money;
2. Raise labor standards and mandate inclusion on all publicly funded projects;
3. Link community-based institutions to unions and employers involved in publicly funded projects; and
4. Harness the local governments' contract power to further public policy goals that benefit low-wage workers.

Ensure the public obtains a broad set of returns when the government spends public money

In their paper, Beach and Mulligan-Hansel emphasize the important role of community-labor coalitions in creatively focusing or shifting the scope of local authority to make bolder and more effective policy change possible. One policy change they recommend is for cities to adopt a new requirement that economic development projects that receive public subsidies, and any public works project, come with specific community benefits such as living wages or targeted hiring. In a similar vein, Johnson recommends cities funding community revitalization projects to leverage bond, state, or federal money to train and develop the local workforce.

The rationale for these proposals is that using the public's money to develop an area should guarantee its local residents a range of benefits equivalent to the wealth gained by developers.

While targeted hiring is one way of addressing the exclusion of workers of color from the labor market, other barriers to inclusion such as childcare can also be addressed through the provision of community benefits.

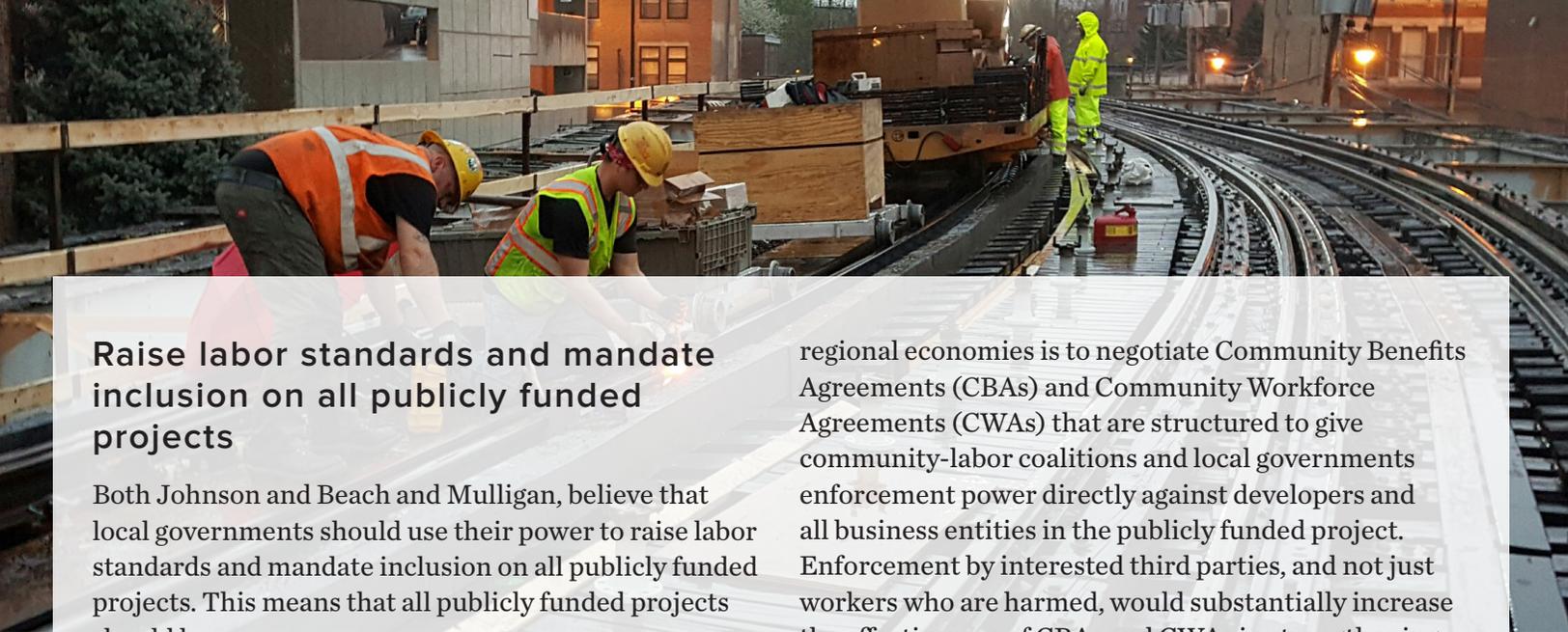
A second policy change Beach and Mulligan-Hansel recommend is for local governments to alter their relationships to local sectors, from passive regulation, such as a permit scheme with minimal requirements, to a more active partnership such as a competitive service contract, development agreement, or franchise. These public-private partnerships could raise workplace standards and enhance compliance, not to mention strengthen business-community relations.

To ensure communities receive real benefits from the use of public money, Beach and Mulligan-Hansel suggest city officials convene a stakeholder process that leads to political consensus, and builds momentum, around a set of workplace-related issues. Johnson posits that such a convening would also enable the local government and stakeholders (employers, unions, training institutions, local community groups) to establish a framework for pooling public and private resources and expertise more effectively.

The final component of this first prong, proposed by us, would amend local procurement laws that currently require governments to award contracts to the lowest bidder. Rather than putting undue emphasis on the bottom line, we recommend placing more weight on factors such as job quality, inclusion of racial and ethnic minorities, and environmental benefits.



Children are looked after in a community childcare center.



Raise labor standards and mandate inclusion on all publicly funded projects

Both Johnson and Beach and Mulligan, believe that local governments should use their power to raise labor standards and mandate inclusion on all publicly funded projects. This means that all publicly funded projects should have:

- Strong job quality standards, including project labor agreements, requirements that workers be paid prevailing wages, and standards that ensure apprentices receive high quality training;
- A workplace equity and inclusion component that would require the hiring and training of workers from low-income, traditionally excluded groups;
- Strategies for ensuring minority contractors can bid for and win the work such as major investments in targeted capacity building and business support; and
- Implementation, monitoring, and accountability strategies that can make good on the promise of good jobs for disadvantaged communities.

The importance of effective monitoring cannot be understated. Incorporating meaningful monitoring and participation increases the likelihood of buy-in by the employers or unions subject to the agreements. Effective monitoring requires not only the tracking of numbers, but also qualitative information about access and implementation barriers that may be obtained through self-evaluation by unions and employers. The accountability mechanism, which is necessary to ensure good faith implementation of the project agreement, should include a review mechanism by the enforcement authority and other key stakeholders, as well as penalties and rewards according to compliance. For an example of a monitoring program for construction projects that worked, see Janice Fine's case study on the LA Black Worker Center and Metro.³³

Another way local governments can shape local and

regional economies is to negotiate Community Benefits Agreements (CBAs) and Community Workforce Agreements (CWAs) that are structured to give community-labor coalitions and local governments enforcement power directly against developers and all business entities in the publicly funded project. Enforcement by interested third parties, and not just workers who are harmed, would substantially increase the effectiveness of CBAs and CWAs in strengthening labor standards and protecting workers.

Link community-based institutions to unions and employers involved in publicly funded projects

Community-based credentialing and training institutions, along with unions and high-road employers, play important roles in preparing workers, especially workers of color, for publicly funded projects and creating good job opportunities for them. "Access to a changing workplace environment," Johnson notes, "depends on the development of skills that some groups cannot access because of discrimination and structural exclusion."³⁴ The proposed linkages would help workers of color develop the skills they need to obtain good jobs in the modern economy and advance in their careers. Johnson also notes that linking community institutions to training and workforce development programs is important for implementation as this approach connects community stakeholders traditionally focused on minority "rights" with those engaged in access, training, education, and workplace conditions.

Recognizing that some employers may need incentives to participate in this type of workforce development program, Johnson recommends using tax breaks to encourage them to partner with credentialing and training institutions such as community and technical colleges.

Unions also play an important role in training and placing workers of color, and to maximize the benefit of having publicly funded projects in communities of color, Beach and Mulligan-Hansel suggest they

partner with employers to increase the supply of union apprenticeship opportunities and high road union construction jobs.

Harness local governments' contract power to further public policy goals that benefit low-wage workers

The fourth, and final, prong of the Beach, Mulligan-Hansel, and Johnson strategy focuses on the power of community-labor coalitions to influence the decisions of local governments. Beach and Mulligan-Hansel suggest that to maximize local governments' ability to shape markets that broadly distribute wealth, community-labor coalitions should help officials effectively employ their contract power to further public policy goals that benefit low-wage workers. One way of doing so is contributing strategic ideas about how to structure transactions, such as leasing rather than selling land, and then using the lease terms as vehicles for the governments' policy goals.

3. HOLD ALL EMPLOYERS ACCOUNTABLE FOR VIOLATIONS OF LABOR AND CIVIL RIGHTS.

In our first policy section, we described the challenges organized labor has faced due to the changing employer landscape. But the decline of the large, vertically integrated corporation, referred to by Barenberg as the “disintegration of employers,” has not only weakened workers' bargaining power, it has also shielded companies with economic power over workers' jobs from liability for the labor standard violations of the business entities they effectively control.⁴

To strengthen worker power and hold all employers accountable, we draw on four papers. Two are papers we have referenced above, from Beach and Mulligan-Hansel, and Yoon. The other two were not commissioned by Future of Work, but make significant contributions to the field: Janice Fine's paper, *Tackling Exploitation Through the Co-production*

⁴ The term “economic power,” as used in this blueprint, is consistent with the broad definitions of employer (“any person acting directly or indirectly in the interest of an employer in relation to an employee”)(29 U.S.C. 203 ‘(d)) and employ (“includes to suffer or permit to work”)(29 U.S.C. 203 ‘(g)) found in the FLSA.

of Labor Standards Enforcement, and a paper by Catherine Ruckelshaus and colleagues at the National Employment Law Project, *Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work*. Together, this body of work puts forth a multi-pronged approach to uplifting and upholding US labor standards. We also extend the reach of their proposals, and draw on Johnson's paper, to reconfigure existing paradigms on how to address racial and ethnic discrimination in the workplace.



Sakuma Brothers Farms Workers March for a Labor Contract and Against Exploitation and Abuse in Burlington, Washington on July 11, 2015.

There are seven elements in our approach:

1. Use business registration and licenses as a labor standards and civil rights enforcement tool;
2. Use Community Benefit Agreements and Community Workforce Agreements to hold employers strictly liable for workplace violations;
3. Challenge the contingent and outsource work models by expanding liability to cover all companies with economic power over workers' jobs;
4. Increased use of the “Hot Goods” provisions, which make it illegal to ship goods in interstate commerce that were produced in violation of labor standards;
5. Assure racial and ethnic inclusion by holding all companies that control access to good jobs accountable for civil rights violations;
6. Obtain favorable settlements that address a broad range of workplace concerns; and

7. Connect regulation of workplace conditions with anti-discrimination and inclusionary goals.

Use business registration and licenses as a labor standards and civil rights enforcement tool

In her paper, Haeyoung Yoon builds on existing registration and licensing schemes to construct a robust regime that would “require all businesses within a jurisdiction, as a condition of doing business, to annually register and disclose information regarding outstanding wage judgments or pending claims against them with a designated enforcement agency.”³⁵ The proposed regime would compel employers to resolve all wage claims quickly and it would provide expedited relief to workers who have had their wages stolen.

Yoon explains, “by tying the annual issuance and renewal of business registration to compliance with wage and hour laws, we can leverage and activate the power to shut down business operations by denying or suspending employers’ registration until violations are remedied. Any business with pending wage claims would be issued a temporary registration to operate, and any wage claims against a business that is up for registration renewal would be fast-tracked to ensure that no business would be allowed to operate permanently until all wage claims are resolved and proof of payment of the unpaid wages is submitted.”³⁶

The effectiveness of this regime hinges on employers’ compliance with, and the government’s enforcement of, its comprehensive reporting and disclosure requirements. The following information will be required of businesses:

- “1. the business, i.e., ownership, principal officers, investors, shareholders, ‘doing business as’ (DBAs);
2. the number of employees and independent contractors employed (here, one could require a breakdown of the percentage of employees by full-time, part-time, and temporary status);
3. wage rates and benefits provided;
4. any entities in a subcontracting chain;
5. any corporations or entities the business and its principal officers have operated previously;
6. any outstanding judgments, court orders, settlement agreements, or other contracts/agreements of unpaid wages against businesses and

corporate officers;

7. any judicial or administrative determinations of wage and hour violations or resolutions of claims, including those that resulted in settlements within the last three years; and

8. any claims pending against the employer.

“As part of the registration process, employers would be required to submit documents to substantiate the disclosures they have made, as well as documents to show that they are in compliance with the workers’ compensation, unemployment insurance, and tax laws.”³⁷

Effective implementation of Yoon’s business registration program would also require the following:

- An aggressive, proactive investigation strategy by the administering agency
- A strategic complaint-based process
- A \$150,000 bond requirement for employers who have a history of violating employment laws
- A written contract between a lead company and its subcontracted entities holding the lead company jointly liable for violations committed in multi-tiered subcontracting systems; all businesses in these multi-tiered systems would be required to comply with the business registration program
- Periodic educational training to all workers, provided by businesses on their premises, on the registration process and other back workplace laws

Fine, using the example of the Los Angeles CLEAN Carwash campaign, proposes an exception to the bond requirement for employers who agree to a collective bargaining agreement with favorable terms for workers.

Besides compelling full and speedy compensation for stolen wages, Yoon’s regime would also deter employers from committing future violations by levying higher registration fees on employers with a history of registration denials or suspensions and findings of violations. Mandatory and strict corrective action plans for employers with repeat violations, as described in Fine’s case study on the Coalition of Immokalee Workers, could further strengthen the deterrence effect of Yoon’s regime.

The corrective action plans, along with the data collected by the business registration program, would also be critical to the proactive investigation strategy noted above. These two sources of information could be particularly useful to combat wage theft in the care work industry and to hold repeat offender clients accountable by suspending or revoking their “right to care.”

To broaden the impact of this regime, we suggest expanding its scope to cover violations of safety and health as well as anti-discrimination laws. We also recommend utilizing this regime to penalize employers for misclassifying workers as independent contractors and exploiting vulnerable immigrant workers, especially those who are undocumented.

While this widened mandate would require more funding, it would also increase efficiency in the enforcement of workplace laws and maximize the potential of the regime to transform entire industries.

Use Community Benefit Agreements and Community Workforce Agreements to hold employers strictly liable for workplace violations

Publicly funded development projects should guarantee local residents a broad set of returns including jobs with good employment conditions. But to realize this benefit, Community Benefit Agreements (CBAs) and Community Workforce Agreements (CWAs) must be upheld and all employers must be held accountable for violations of the agreements. These projects should meet higher standards because of the public money used to finance them.

Recognizing this, Ben Beach and Kathleen Mulligan-Hansel recommend community-labor coalitions structure CBAs and CWAs to enable local governments and workers to hold employers strictly liable for violations of laws relating to wages, unemployment insurance, workers compensation, workplace health and safety, and misclassification. Incorporating a strict liability standard into these agreements would greatly enhance protection for workers since they and local governments would only need to prove the employer committed the violation to hold them accountable; negligence or intent, a requirement for many workplace violations, would not have to be proven. To strengthen

implementation of the agreements, we suggest granting community-labor coalitions enforcement power as well.

Expand labor standards enforcement and create new laws to hold accountable all companies with the economic power to safeguard their workers’ jobs

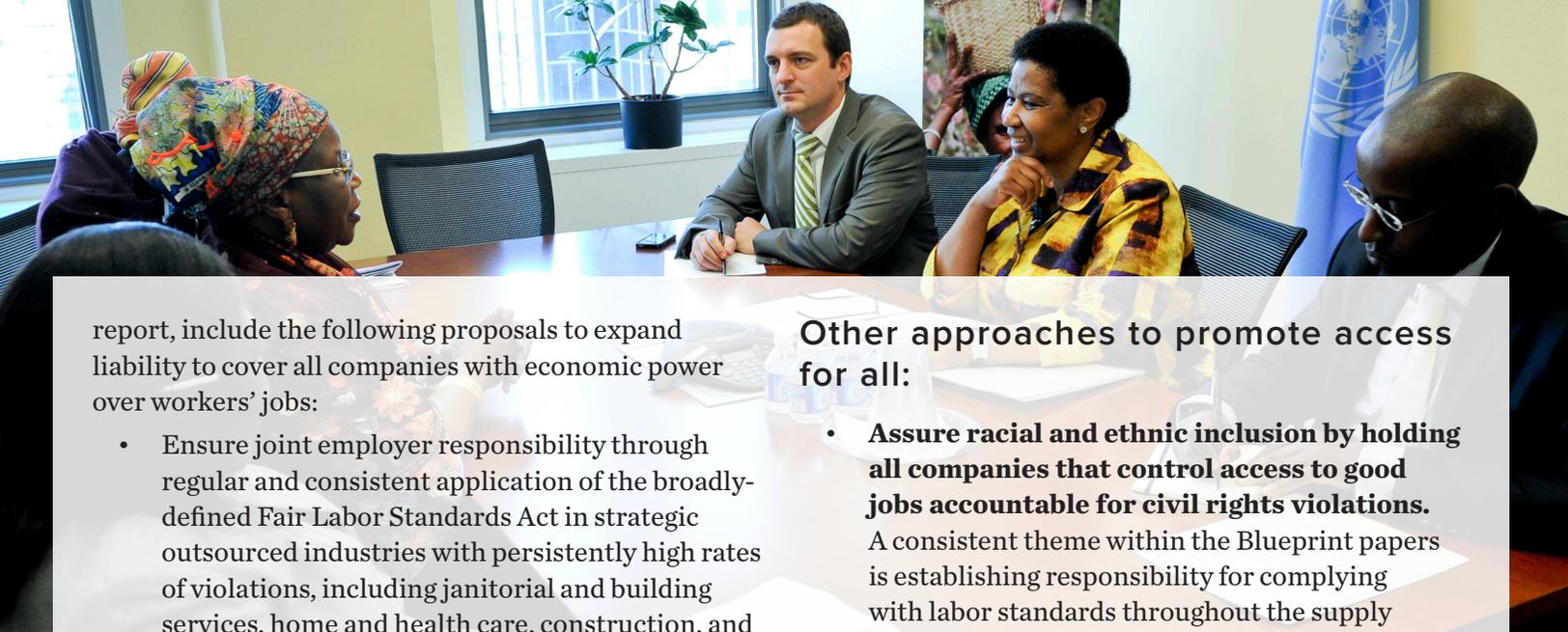
Throughout the economy and across industries, corporate restructuring has spawned various forms of contracting-out. These structures obscure the legal ties between workers and often-remote corporate entities controlling multi-tiered business arrangements, making it harder for workers to exercise their rights. These practices often pass off costs of doing business to under-capitalized middlemen—who cut corners on labor standards to cover costs and realize a profit—or to low-wage workers themselves, and too frequently result in dismal working conditions and unfair competition in highly competitive industries.

A modern twist on outsourcing—the “on-demand” economy—is in some cases permitting companies to evade accountability for the working conditions in the jobs they post on online platforms, with recognizable names like Uber and Lyft, Mechanical Turk, and Care.com. Too many of these jobs do not offer the economic security individuals need and expect from work; workers in those jobs should not fall through the cracks in our outdated labor and economic policies.

Catherine Ruckelshaus and her co-authors, in their report, *Who’s the Boss: Restoring Accountability for Labor Standards in Outsourced Work*, propose several approaches to strengthening enforcement of workplace laws and challenging the contingent and outsourced-work models that have become a dominant feature of our modern economy.⁵ Their proposals complement Barenberg’s approach to maximizing worker power and voice.

The approaches, which are detailed in Ruckelshaus’s

⁵ The term “contingent work” covers the use of independent contractors and temporary and leased workers, among related categories (http://www.dol.gov/_sec/media/reports/dunlop/section5.htm); “outsourced work” includes practices such as multi-layered contracting, use of staffing or temp firms, franchising, and misclassifying employees as independent contractors (Ruckelshaus, et al., Executive Summary, 1). Outsourced workers include agency temporary workers (temps), contract company workers, day laborers, direct-hire temps, and independent contractors (Ruckelshaus, et al., 4).



report, include the following proposals to expand liability to cover all companies with economic power over workers' jobs:

- Ensure joint employer responsibility through regular and consistent application of the broadly-defined Fair Labor Standards Act in strategic outsourced industries with persistently high rates of violations, including janitorial and building services, home and health care, construction, and hotels.
- Make all entities in supply chains “employers,” or responsible for the workers in the chain under the law.
- Enact laws that create a presumption that all workers are “employees.”
- Establish premises liability that holds landlords jointly liable for the labor standards violations of the commercial tenants operating in their buildings.

Continue to use the “Hot Goods” provisions

Since the FLSA was enacted in 1938, the DOL has used the Act’s “hot goods” provisions to secure payments for workers who have worked on tainted, or “hot,” goods. The “hot goods” provisions “generally make it illegal to ship goods in interstate commerce that were produced in violation of the minimum wage or overtime requirements of the FLSA.”³⁸ Tainted goods are subject to temporary seizure by the DOL until violations are remedied.³⁹ The “hot goods” provisions have been effective in holding lead companies, their sub-entities, and even some purchasers, accountable for producing or procuring tainted goods.⁴⁰ The DOL should continue to use the “Hot Goods” provision when circumstances allow it.⁶

⁶ The effectiveness of using this provision depends on a number of factors including (i) length of time it takes to enforce the law; (ii) presence of the workers who have had their rights violated; (iii) strength of the employers and industry in fighting this law; and (iv) viability of alternative means to hold businesses accountable; see, e.g., the Oregon Blueberry case (Ruckelshaus, et al., 34-35; Perez v. Pan-Am. Berry Growers, LLC, No. 6:12-cv-01474-TC, 2014 WL 1668254 (D. Or. Apr. 24, 2014)). Oregon blueberry growers have succeeded in constraining the DOL’s use of the “Hot Goods” provisions.

Other approaches to promote access for all:

- **Assure racial and ethnic inclusion by holding all companies that control access to good jobs accountable for civil rights violations.** A consistent theme within the Blueprint papers is establishing responsibility for complying with labor standards throughout the supply chain. Racial and ethnic exclusion should also be effectively challenged by using the joint liability approach to remedy civil rights violations. This would require regular and consistent application of anti-discrimination laws against all entities that control access to jobs, including both lead companies and their staffing agencies.⁴¹
- **Obtain favorable settlements that address a broad range of workplace concerns.** Beach, Mulligan-Hansel, and others have recognized that settlement agreements can often times be more effective in remedying violations than winning cases in court. Settlements, if negotiated well, can cover many different areas of workplace regulation and be enforced through monitoring agreements and accountability mechanisms.
- **Connect regulation of workplace conditions with anti-discrimination and inclusionary goals.** Enhanced cooperation between the DOL and EEOC is needed where wage and hour trends in certain sectors indicate systemic discrimination against workers of color.⁴² The EEOC currently does not have the power to initiate investigations on its own whereas the DOL does.

To hold employers accountable for both labor and civil rights violations, Johnson recommends our government rethink the boundaries between the EEOC and the DOL to better integrate their investigations, guidance, and compliance activity. She also suggests the government harness the DOL’s enforcement and regulatory power to extend beyond the complaint-driven approach of the EEOC and connect regulation of workplace conditions with anti-discrimination and inclusionary goals.

4. PROMOTE WORKER-CENTERED BUSINESS MODELS AND SOCIALLY RESPONSIBLE BUSINESS PRACTICES.

The focus in this section is on proposals for new rules to encourage business practices that include good wages and working conditions and other socially responsible practices, such as environmental stewardship.

Using Local Government to Reform Industry Practices

We have discussed above how local governments, prodded by and working with labor and community groups, have used their purchasing and regulatory power to establish better wages and working conditions and encourage more equitable hiring practices, as well as enforce labor standards. When the focus of these practices is on an industry, one result can be to change that industry's business practices.

Beach and Mulligan-Hansel describe how the City of Los Angeles used its regulatory power to transform practices in commercial waste hauling. Whereas residential garbage collection was done by unionized, public employees, in safe, clean trucks to a state-of-the-art collection facility, commercial waste hauling was delivered by private firms, who paid low wages to workers who drive dangerous, polluting trucks without adequate safeguards on disposal. Beginning in 2017, the City's licensing of commercial waste haulers will be replaced by long-time franchises awarded by bids to haulers who comply with standards including (among other provisions): living wage; use of clean-modern trucks; use of city-certified disposal facilities; and collection of recyclables and organics.

Organizing Workers and the Public to Reform Industry Practices

A remarkable example of worker organizing transforming an industry is that of the Coalition of Immokalee Workers (CIW), profiled in Fine's paper *Tackling Exploitation Through the Co-production of Labor Standards Enforcement*. CIW organized farmworkers in the Florida tomato industry, which "had been notorious for the depth of oppression of its workforce including forced labor, physical violence, sexual harassment, grueling working conditions, low wages and wage theft."⁴³ They also exposed the

farmworkers' working conditions in public campaigns aimed up the supply chain at the consumer companies that purchase tomatoes in high volume. As a result of these tactics, they won agreements from consumer companies, beginning with Taco Bell in 2005, McDonalds in 2007, and continuing with many others, including Wal-Mart in 2014. The companies agreed to only buy tomatoes from growers who agreed to CIW developed standards. The result was a worker designed and enforced Fair Food Program Premium and Fair Food Code of Conduct. The Premium requires the consumer companies to pay an additional 1.5 cents per pound (up from 1 cent) of tomatoes, with those funds used to raise farmworkers' pay. The Code of Conduct, which applies to growers, includes extensive regulations to protect wages and working conditions, far beyond any current legal requirements in agriculture.

Worker Organizations Partnering with Governments to Reform Business Practices

The CIW example is unusual in that government has not played a leading role. However, the focus of Fine's paper is on examples of worker organizations partnering with government and including employers, in a strategy to raise wage standards and living conditions in cities and industries. Fine titles this "co-production", which she defines as worker participation in enforcement, worker organization participation in enforcement, high road firm participation in enforcement and greater transparency between government and worker organizations. Fine emphasizes that "Workers have unique capabilities to enhance enforcement because they are present at the worksite every day, have direct knowledge of the work process itself and firsthand experience with changes in working conditions and employer practices over time."⁴⁴

At the same time, "High road firms have the power to establish a set of best practices at their own firms regarding wages, working conditions, benefits and scheduling and to use their buying power to require these practices of firms throughout their supply chains with whom they do business, backed up by strong market consequences for violators."⁴⁵

As most of Fine's case examples illustrate, government power is almost always essential to "set standards and strongly advocate for them, to incentivize behavior and compel firms to undertake improvements."⁴⁶

Fine points out that the U.S. Department of Labor's Wage and Hour Division has recently adopted a new "strategic enforcement strategy [that] entails focusing at the top of industry structures, targeting entire business entities rather than individual workplaces, holding joint employers liable for violations and expanding the use of the "hot goods" provision of FLSA [which enables DOL to block shipment of goods produced in violation of wage standards.]"⁴⁷

The data collected through Yoon's Business Registration Program, which would identify industries with high rates of violation that require government intervention and significant reform of business models, could enable more widespread implementation of this strategy.

This new practice of DOL's Wage and Hour Division is a step toward Michael Piore's innovative and comprehensive way of approaching enforcement as a process by which businesses are encouraged to adopt "high-road" practices.

Moving Enforcement from Sanctions to Reform of Business Practices

Piore starts with the observation that enforcement in the United States is both specialized, with work regulations administered by a number of federal and state agencies, and sanctioning, with violations punished through the imposition of a penalty. This is in contrast with the enforcement model used in Southern Europe and Latin American (Franco-Latin), which is general and remedial. General, in that the whole of the labor code is enforced by a single agency. Remedial, in that the focus is on identifying the underlying causes of the violations and developing a plan of action that addresses those causes and corrects them. While penalties may be imposed for persistent or egregious violations, the enterprise is expected to come into compliance with the law over time; obligations cannot be discharged through a payment of a penalty.

The Franco-Latin strategy assumes that the work practices of a company reflect the company's production practices and business strategy. Remedies crafted by the regulatory agency should aim to change those practices and address the root causes, if violations are to be corrected for the long term.

Government agents emphasize that some ways of doing so are more conducive to worker welfare and more efficient than others, and that profit can be had without

low road models or practices. The government may assist in developing the adjustments within companies that are required for them to remain efficient and competitive at a higher minimum wage and with improved labor standards.

Piore does not imagine that the United States could simply adopt the Franco Latin model, but he proposes some steps to incorporate that model's strengths into U.S. enforcement. One is concerted actions by worker organizations "to file complaints against the targeted enterprise or enterprises with a variety of different regulatory agencies at once... The coordinating organization could combine these multiple complaints with other pressures exerted on the targeted enterprises and the government agencies involved."⁴⁸ The strategy aims to "bring about negotiations leading to an agreement between the enterprises and the regulatory agencies on a plan to upgrade employment practices in the industry."⁴⁹ In fact, several of the case examples in Fine's paper show that worker organizations in the United States have employed such a strategy. Piore's vision and Fine's co-production model are strongly aligned.

Piore also proposes that the Federal Department of Labor could play a coordinating role across agencies, even those outside of its jurisdiction. This approach could be used by a mayor, county executive, governor, or president who wants to test models for inter-agency enforcement aimed at developing high-road business practices.

Piore's proposal is a long-term vision of a strategy to promote business practices that value workers. In the next section we look at a proposal for a strategy to raise wages and improve working conditions for care workers, who deliver vital services to families, but whose work is sorely undervalued.

5. VALUING CARE BY VALUING CARE WORKERS.

Our last policy section focuses on an issue that impacts 5.5 million workers and the millions of families to whom they provide indispensable care. In focusing on care workers, we highlight a strategy that encompasses all of the issues raised in the previous policy sections: how do we provide care workers, who are largely women and disproportionately of color, a voice at work, compensate

them adequately, assure that they are paid for the work they do, and improve their work environments?

This section draws from Laura Dresser’s paper, *Valuing Care by Valuing Care Workers: The Big Cost of a Worthy Standard and Some Steps toward It*. Dresser eloquently sets the context:

Care workers—including both child care and hands-on direct care providers primarily for the elderly and people with disabilities – number 5.5 million and are employed in some of the most dynamically growing and lowest paying jobs in the American economy. Their “priceless” work, of such critical importance to families and society, rarely offers more than miserable wages and shoddy benefits. Improving these jobs and securing a decent standard of care requires fundamentally and dramatically reshaping the nation’s understanding of what care work is, what it is worth, and how to pay for it.⁵⁰

Her data demonstrates that over the last two decades, care work wages have stagnated despite the increasing demand and our growing understanding of the links between quality care and quality jobs. Care workers are paid on the average less than \$10.00 an hour and only 47 percent have health benefits at work, compared with 66 percent of all workers.

More than 90 percent of care workers are women. The care workforce contains a much higher proportion of African American workers than in the population as a whole and in most sectors of care work, care workers are also disproportionately Hispanic.

The education level of the workforce does not explain the low wages. Between 81 percent and 88 percent of in-home workers in both child and health care graduated from high school, compared to 91 percent in the national workforce. Even “pre-school teachers,” nearly all of whom (97 percent) are high school graduates only earn around \$11, compared to the national median of \$16.79 for all workers.

Much of child care is paid for privately, out of parents’ pocketbooks; “family payments for child care increased 89 percent in real (inflation adjusted) terms from 1997 to 2011, from an average of \$94 per week in 1997 (in 2011 dollars) to \$179 per week in 2011.” Health care is characterized by publicly financed care, through Medicare and Medicaid, delivered through “an array

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of non-profit and for profit providers, independent contractors, and agencies, as well as residential care facilities and institutions.”⁵¹

Dresser reviews efforts to raise wages and standards in care work, noting in particular the success of the Service Employees International Union (SEIU) in organizing half a million workers through a “public authority,” model, which establishes collective bargaining for state funded, private home health agencies. However, a 2014 Supreme Court decision weakened the ability for unions to collect dues from these workers.

Starting from the realization that all care workers are working in both the public and private interest she concludes, “A long-term strategy around care work needs to increase the resources dramatically, but also find a new infrastructure to manage and organize the industry.” Her policy proposals are aimed at implementing that strategy, with long-term goals and interim measures, aimed at:

1. Decent wages: A public vision of and investment in a decent standard of care;
2. Directed to workers pockets: A simple and direct way to deliver worthy wages and benefits to workers;
3. For quality care: A standard of care linked to the standard of the job.

Resources to Raise Wages and Benefits

Dresser calculates that raising wages for care workers to \$15 an hour, and assuring that workers have health coverage and retirement benefits would cost \$110 billion a year, mostly in public funds. She notes that those public funds could be raised through taxes if the political will was there. (Although the actual additional cost to the public would be reduced by the amount spent currently on providing public programs like Medicaid, SNAP, etc., to eligible care workers.)

Dresser emphasizes that building that political will starts with supporting and expanding the current advocacy efforts develop community-based infrastructure, workers organizations and campaigns to bring all care work and workers into the light of public awareness.

Other key stepping stones are:

- Union organizing of care workers, which could be enhanced by extending the public authority model to more workers. Another course, as Dresser notes, would be to make care workers public employees, for whom union dues collections would not be restricted.
- Making care work a central part of campaigns to raise the minimum wage. In doing so, it will force the public question of valuing care work, since government-funded entities that employ care workers will need additional funds.

Other public policies can also increase awareness and improve care work:

- In a paper for the Harvard Law and Policy Review (Volume 5, 2011), Noah Zatz proposes that to combat child-care invisibility, especially for low-income families, child care needs could be fully incorporated into needs and resources prongs of “means testing” for low-income households.
- Local and state government funding or licensing of care services could also be tied to wages, benefits and rationalization of work, following the models proposed in other sections of this paper.

Care Hubs to Assure that Workers Benefit from New Resources

Dresser’s deep appreciation of the complex funding

streams for care work and of the real possibility that increases in funding for services will not necessarily end up in the wages and benefits of care workers, leads her to propose a new system aimed at assuring that the money is delivered to the care workers. Building that infrastructure would start with two lists:

1. Those who qualify for care, including:
 - a. due to age, health or disability.
 - b. all children of pre-school age
2. Those who can provide quality care.

The public’s role would be to: maintain the lists; connect those who need care to those who provide it; and monitor and uphold standards in care and job quality produced by the system.

Dresser imagines the establishment of care hubs, which she sees emerging out of the ongoing organizing of care workers:

Think of care hubs in the next decade as dynamic spaces to register, coordinate, and support the field, at once: a care focused worker center; a hiring hall for connecting demand and supply; a nexus of adult training and learning infrastructure; and an organization with the capacity to research the field. These hubs would provide a mechanism to define and register the care work field, identify the universe of providers and workers in it, and document the wages, benefits, and attributes of the workforce. They would actively engage the care workforce, care consumers, and care agencies in the development of advocacy campaigns, in the practical work of improving schedules, certification, skills and training, in the long-term project of transforming the approach to care work and workers.

The hubs could function as a co-employer to deliver benefits like health insurance, while agencies or individuals would continue with the responsibility for hiring, firing and other employment decisions.

We conclude this section by recognizing that raising the livelihoods of care work underscores the importance of the United States adopting social policies that address today’s society, where women are in the workforce and people are living longer:

- paid family leave, including substantial paid leave for new parents as well as time off to care for infirm or disabled family members;
- a robust system of quality, publicly funded child care, making pre-K and after-school programs a regular part of all public education;
- long term care coverage.

When we recognize the essential value of social policies to care for our families from birth through old age, we should assure that those who provide the care are equally valued.

Conclusion

It took decades of movement-building to win the New Deal’s transformative advances in social insurance, labor rights, and labor standards. Today we see new movements to address the escalating inequities of the 21st century economy and society. The Fight for 15 and a Union is providing movement energy and strategy to raise wages and labor standards and organizing workers to make demands on employers. The movement to win legal status for immigrants is pressing to recognize the dignity and humanity of all our nation’s residents as it creates the conditions to stop the systemic exploitation of immigrant workers. The Black Lives Matter movement’s focus on the structural racism of the criminal justice system links to the structural racism embedded in the economies of low-income communities of color.

Unlike the movements of the first half of the 20th century, each of today’s movements is being led by young people of color. In this, we are witnessing an awakening and outcry of ordinary people at a scale and depth not seen since the civil rights movement of the 1960s. In fact, today’s movements build on the unfinished work of the civil rights movement, which sought to broaden from a focus on civil rights to economic opportunity. Half a century later, these twin challenges remain deeply interwoven.

The next progressive transformation of our nation will result from social movements such as Black Lives Matter, DREAMers, and the Fight for 15 forming a broad coalition to win comprehensive reforms of our economy, our political system, our criminal justice

system, and the rigged rules that favor the wealthy and powerful over everyone else.

Movements have broad vision and advance specific policies to implement that vision. In this Blueprint, we have outlined transformative new rules for taking on economic and racial inequality and ensuring a labor market that works for all. The policies are described in more depth in the papers drawn on for this Blueprint. The good news is that many of these transformative policy ideas are already being implemented in cities across the country, that the policies are deeply interconnected, and that strategies to advance one can advance many.

Our belief is that the movement energy and fervor at the state and local level will advance additional campaigns and experiments, which will ultimately create the conditions for large-scale, fundamental national policy reform. This is the Blueprint for a 21st century New Deal that empowers all workers for broadly shared opportunity, security, and prosperity.

Appendices

APPENDIX A – EXECUTIVE SUMMARIES OF THE FOW-COMMISSIONED POLICY PAPERS

Mark Barenberg, *Widening the Scope of Worker Organizing: Legal Reforms to Facilitate Multi-Employer Organizing, Bargaining, and Striking*

For legal, social, and economic reasons, it is difficult for worker organizations to organize, bargain, and strike across entire contractual supply-chains, networks, industries, occupations, or regions.

This paper proposes four large-scale reforms to diminish these difficulties and actively facilitate organizing and striking across multiple employers:

First, an entity should be deemed an “indirect” employer of multiple “direct” employers’ workforces if it has “sufficient bargaining power” to determine the standards of all the employees in question, even if the entity is not currently exercising such power.

By organizing and bargaining with that single entity, a worker organization would effectively organize and bargain with what is currently deemed a multi-employer association.

Second, the law should authorize worker organizations to unilaterally choose multi-employer units. And, if a government agency is called upon to select among differing units chosen by different worker organizations, the agency should define units based on the criterion of “maximum potential worker empowerment.”

Third, legal reform should authorize bargaining units that are defined not only by employer boundaries but also by such categories as geographic region, production-and-distribution network, occupation, or industry.

Fourth, bargaining rights or the substantive terms of collective agreements should extend across multiple employers even if only a minority of unit workers have affirmatively shown their support for the organization.

Each of these reforms would require large-scale legislative transformation and zealous enforcement that are only imaginable in the event of deep progressive renewal in our politics. The four reforms could be enacted separately but would, if concurrently implemented, be mutually reinforcing.

Ben Beach and Kathleen Mulligan-Hansel, *Metropolitan Coalitions: Creating Opportunities for Worker Organizing*

Today, the ever-more-attenuated relationship between workers and companies with economic power over their jobs creates obstacles for those who wish to expand opportunities for worker organizing, especially among low-wage workers. The ever more distant nature of the relationship between unions and communities makes those obstacles harder to surmount. Changing this landscape will require new strategies. Major cities are the place to start, as they are where capital wants to be, where favorable politics and constituencies are concentrated, and where government has the power to shape regional economies for the better. In the last several years, community-labor coalitions working in cities have demonstrated what is possible. Working in permanent coalition, they are winning campaigns that push cities to transform local sectors of the economy, raising standards for all workers and creating better

conditions for organizing. Their campaigns have focused on, among other things, community benefits at major development projects, real construction careers for excluded communities, and a waste and recycling sector that respects workers, the environment, and local communities. Those interested in expanding opportunities for worker organizing should invest in such strategies.

Key Arguments

- The fissuring of the economy and the diminished relationship between organized labor and key constituencies create powerful impediments to worker organizing.
- Community-labor coalitions have shown a path to overcoming these impediments by doing three critical things:
- Bringing unions into long-term, power-building relationships with communities around a shared vision.
- Pushing local government to be bold about how it can strengthen local economic conditions, including by broadening the local government’s relationship to a sector to open up opportunities for policymaking.
- Advocating for policy and contract terms that directly confront the contingent work model and raise standards for all workers.
- Major cities today offer a set of conditions in which these coalition efforts can thrive.

Laura Dresser, *Valuing Care by Valuing Care Workers: The Big Cost of a Worthy Standard and Some Steps toward It*

Care workers, including both child care and hands-on direct care providers, number 5.5 million and are employed in some of the most dynamically growing and lowest-paying jobs in the American economy. Their “priceless” work, of such critical importance to families and society, rarely offers more than miserable wages and shoddy benefits. Improving these jobs and securing a decent standard of care requires fundamentally and dramatically reshaping the nation’s understanding of what care work is, what it is worth, and how to pay for it.

Raising job quality and the standard of care will require a substantial infusion of public money and a simple and

direct means of delivering that investment directly to care workers. To get there, we will need to build on the important work already being done by coalitions on care work throughout the nation. Child care and health care workers, as well as their advocates and unions, need to be increasingly connected to city and state minimum wage campaigns to ensure that care workers are covered by increases and to begin securing public and private resources needed to make higher care wages a reality. This can be the start of strong community-based care work infrastructure to identify, organize, and rationalize the work, to create infrastructure that could bring health insurance or other benefits directly to the care workforce, and to build the case, constituency, and infrastructure for the transformation of these jobs in the long run.

Key Arguments

- Earning roughly \$10 per hour, care workers—nearly all women and disproportionately women of color—are seriously underpaid for the essential work that they do.
- Only a substantial public commitment to these workers and a significant public investment in their jobs will make decent care and decent jobs a reality.
- To raise care workers' wages to \$15 per hour and provide decent benefits (valued at 30 percent of wages) would require an infusion of roughly \$110 billion. Think of this as the social debt to the care workforce: \$350 annually for every single person in this nation.

Olatunde Johnson, *Promoting Racial and Ethnic Inclusion in Employment through Regulatory Mandates and Incentives*

Fifty years after the Civil Rights Act of 1964 first prohibited racial and ethnic discrimination in employment, more remains to be done to fulfill the Act's promise of integration. Discrimination continues to be a consistent feature of American labor markets. Disparities in access to education, skills, training, networks, and mentoring contribute to inequalities and occupational segregation. At the same time, changes in labor markets and unionization are having impacts on wages, conditions, and availability of employment generally, with disparate effects on

workers of color. These latter changes, especially, blunt many of the traditional tools for addressing racial and ethnic inequality. This paper argues that while litigation remains an important component of an effective inclusionary regime, jurisprudential and enforcement limitations, as well as the complexity of the challenges facing lower-wage workers, require additional regulatory solutions. The paper calls for the use of affirmative regulatory mandates to spur inclusion using government spending, procurement, licensing, zoning, and labor agreements. In particular, the paper builds on existing community-benefits agreements and "first-source" hiring requirements to describe a model of localist regulatory innovation targeted at integrating entry-level work in growth industries. This regime would include both hard and soft regulatory tools of mandated and targeted hiring, and incentives to link community-based credentialing and training institutions to institutions with capacity to hire and train workers.

Michael Piore, *Labor Standards and Worker Organization Strategy*

This paper explores a new strategy for workplace-based worker organizations. The strategy is suggested by the contrast between the U.S. system of work regulation, in which regulations are administered by a number of different agencies, each with a relatively narrow jurisdiction, and the system prevailing in Southern Europe and Latin America, where a single agency administers the whole of the labor code. The latter system is particularly effective where, as is generally the case, the work practices of a company are interrelated and "patterned." The patterns typically reflect the company's production practices and business strategy; these are the ultimate determinant of work practices and need to be adjusted if violations are to be remedied. The Franco-Latin approach encourages the regulatory agency to recognize these patterns, and then to look for remedies that address the root causes. Workplace-based worker organizations could simulate the Franco-Latin approach by identifying violations, bringing complaints simultaneously to all the different agencies that have jurisdiction over them, and pressuring those agencies and employers involved to work together with the worker organization to identify the underlying causes of the problems and develop appropriate remedies. This strategy could be developed by a local organization operating on its own or in coordination with other

organizations at the local, state, or national level on the model of the recent campaigns to raise the minimum wage.

Haeyoung Yoon, *Local and State Business Registration Schemes: An Enforcement Lever to Strengthen Employer Compliance with Labor Standards and to Facilitate Worker Organizing*

We have a wage theft epidemic in our country, especially in the low-wage labor market, where too many workers are cheated out of their fair pay. There are many factors that contribute to the wage theft epidemic, from woefully under-resourced public enforcement agencies, to inadequate anti-retaliation protections for workers who come forward to enforce their rights, to a lack of strong consequences for employer noncompliance with labor standards. Moreover, for too many workers, efforts to hold their employers accountable for wage violations turn out to be disempowering experiences, as it is common for workers to wait for years with little or no information as their wage claim languishes at a public enforcement agency, or to never collect their unpaid wages even after an employer is found liable. To turn the tide against the wage theft crisis, I explore the use of registrations and licenses that businesses are often required to obtain as a prerequisite of doing business as a labor standards enforcement tool, with the goal of creating strong consequences for violating wage laws and thus motivating employers to change their behavior. I also explore ways in which the business registration scheme, as an enforcement tool, could facilitate worker organizing and worker power-building by creating opportunities for meaningful participation by workers and worker organizations in the implementation and enforcement of the program. This could be done through the creation of an infrastructure called the “Business Registration Board,” which would be governed by worker, employer, and government representatives.

ADDITIONAL PAPERS PRODUCED FOR FUTURE OF WORK INITIATIVE

Annette Bernhardt, *The Role of Labor Market Regulation in Rebuilding Economic Opportunity in the U.S.*

At the start of the 21st century, millions of Americans face a daunting labor market that, absent coherent and sustained policy intervention, will very likely provide them with fewer career opportunities and less economic security than their parents enjoyed. While globalization is often blamed for the deterioration in labor standards, it is domestic service industries where the low-wage problem is most acute. One of the key drivers of precariousness in these sectors is employers’ growing evasion and violation of both legal and normative standards, facilitated by the withdrawal of government’s hand in the labor market. Myriad factors describe this new world of work: the weakening of employment and labor laws; under-resourced enforcement of a host of regulations; production chains that mask legal accountability; the exclusion of groups of workers from legal protection; and a dysfunctional immigration policy. To reinvigorate labor market regulation opportunity, government should: establish a strong floor of labor standards; vigorously enforce that floor; and build a base of good jobs on top of that floor.

Richard Kirsch, *The Future of Work in America: Policies to Empower American Workers and Secure Prosperity for All*

This background paper provides a short history of the rise and decline of unions and then explores reforms in labor policy to empower American workers to organize unions and rebuild the middle class. The ground covered includes:

- The corporate effort beginning in the 1970s to grab more of the nation’s wealth, at the expense of workers.
- Why labor law in the U.S. provides a fragile, limited foundation for giving workers the power to claim a share of economic wealth or have a voice at work.
- The major challenges posed by the changes in how employment is structured, which new policies

must address.

- Possible policy solutions to several major challenges to organizing workers in today's economy.

Dorian Warren, *Union Organizing In National Labor Relations Board Elections*

Is the NLRB broken? Yes. But does that mean it is irrelevant for workers attempting to organize? No. As data in this paper shows, particularly when focused on certain demographic groups, labor unions are still using the NLRB, and in many cases, very effectively. This paper examines the use of the NLRB election process since 2000, and especially from 2008-2012. We find that while the majority of new private sector union members have not gained recognition through the broken NLRB election process, the data show a significant number of workers who do in fact gain representation through NLRB elections. The data also show a notable decline in the numbers of workers gaining unionization through the NLRB, though at the same time, the “win” rates of workers who do use the process have increased over the last decade. Based on analysis of original data on the demographics of those organized using the NLRB process, the win rates for workers in NLRB elections increases the more diverse the workplace. Specifically, workers of color, women, and especially women of color overwhelmingly vote in favor of unionization through the NLRB election process.

Dorian Warren, *Tackling Workplace Segregation Through Collective Bargaining: The Case of UNITE-HERE and the Hotel Industry*

More than fifty years since passage of the landmark 1964 Civil Rights Act, the little progress we made as a country in ending job segregation by race and gender has stalled. As women and people of color make up a growing majority of America's workforce, we must find new and innovative solutions to ending workplace segregation and promoting equal opportunity for all. This case study of UNITE-HERE's work in the hotel industry demonstrates one effective solution in lieu of the inadequacy of the Civil Rights Act: collective bargaining. We identify direct ways in which UNITE-HERE, through the collective bargaining process, influenced the racial and ethnic division of labor beyond

network recruitment among individual members. We show how outside of apprenticeship programs, unions may directly influence racial, ethnic and gender representation by legislating hiring practices through specific contract language, such as mandating diversity commitments from employers, implementing stronger nondiscrimination practices, and requiring direct outreach to underrepresented applicants.

APPENDIX B – PARTICIPANTS AT FUTURE OF WORK CONVENINGS

We are deeply appreciative of the following people, with their organizations listed for the purposes of identification, for participating in the Future of Work convenings. While those rich conversations were instrumental to the commissioning and review of the papers included in this Blueprint, the authors of the Blueprint is solely responsible for its contents.

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- Haeyoung Yoon, National Employment Law Project
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