

Unionizing the Food Industry in California

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This Note situates the labor rights movement between two stories: that of the Hotel Employees and Restaurant Employees Union's (HERE) waitress locals and that of Genwa, a Korean barbecue (KBBQ) restaurant that organized with the help of the Koreatown Immigrant Worker Alliance (KIWA), a worker center. Highlighting the rise and fall of HERE's waitress locals from the late 1800s to the mid-twentieth century provides historical context for why unions became dominant as a source of worker rights. Limited state labor protections made workers more dependent on outside sources of power to enforce better working conditions. Union membership brought pride and protection to the average worker. But during the early 1900s, shifts in legislation and Supreme Court precedent brought the downfall of waitress unions and unions generally. Since then, organizers in the food industry have had to get creative. The tactics utilized by Genwa employees to successfully organize are the products of today's social and political landscape. Between a Supreme Court that has aligned more with conservative ideologies and restaurant lobbyists who have maintained strongholds in Washington, D.C., organizers have become more reliant on the powers afforded to them through state agencies. The progressive rights afforded to workers in California make the state's organizing landscape unique. In helping Genwa employees organize, KIWA utilized state enforcement mechanisms to not only help employees get retribution for labor law violations but also pressure employers into agreeing to unionization. Considering changes in worker composition, labor laws, enforcement, corporatization of the food sector, and the relevant jurisprudence, this Note compares organizing efforts at two points in time to propose how organizing in the food industry should continue in the future.

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Introduction.....	1285
I. The Rise of Waitress Unionization—A Case Study Comparison of HERE and Genwa	1287
A. HERE	1287
B. Genwa—California Retail & Restaurant Worker Union (RRWU)	1294
II. Comparing Genwa and HERE	1297
A. Worker Composition.....	1298
B. Legislation	1299
III. Looking Ahead—Labor Efforts in This Legal Moment	1310
Conclusion	1313

INTRODUCTION

Workers are struggling to make ends meet. As of 2022, California has a minimum wage of \$15 per hour for employers with twenty-six or more employees and a minimum wage of \$14 per hour for employers with fewer than twenty-six employees.¹ Unsurprisingly, the increase to a \$15 minimum wage meant 79.2% of individuals working in the restaurant industry received a wage increase.² Workers earning minimum wage are “disproportionately employed in part-time jobs and are less likely to have health insurance through their employer.”³ The majority of individuals working in the restaurant industry are dependent on a minimum wage that won’t cover a healthy lifestyle.⁴ As economic injustice persists, activists and scholars are considering ways in which workers can obtain socio-economic justice.⁵

Workers in the restaurant industry are being left behind and, as a result, are thinking of ways to obtain better working conditions. One option is to unionize. Unions have a history of creating “higher wage and benefit standards, working hours limits, workplace hazards protections . . . and promot[ing] well-being by encouraging democratic participation and a sense of community among workers.”⁶ Unions have previously been used by food servers to gain better and safer working conditions. The advent of waitress locals within the Hotel Employees and

1. *Minimum Wage Frequently Asked Questions*, CAL. DEP’T OF INDUS. RELATIONS, https://www.dir.ca.gov/dlse/faq_minimumwage.htm [<https://perma.cc/95G6-LSUK>] (last visited Jun. 18, 2024).

2. MICHAEL REICH, SYLVIA ALLEGRETTO & CLAIRE MONTIALOUX, INST. FOR RSCH. ON LAB. AND EMP., *EFFECTS OF A \$15 MINIMUM WAGE IN CALIFORNIA AND FRESNO* (2017), <https://irle.berkeley.edu/publications/brief/effects-of-a-15-minimum-wage-in-california-and-fresno/> [<https://perma.cc/W7Y5-AW2V>].

3. *Id.* at 6.

4. *Cost of Living Data Series*, MO. ECON. RSCH. AND INFO. CTR., <https://meric.mo.gov/data/cost-living-data-series> [<https://perma.cc/M2TF-YC7K>] (last visited Jun. 18, 2024).

5. Louise Simmons, *Economic Justice*, ENCYCLOPEDIA OF SOC. WORK, (Aug. 31, 2021), <https://oxfordre.com/socialwork/display/10.1093/acrefore/9780199975839.001.0001/acrefore-9780199975839-e-1266> [<https://perma.cc/42JG-BURT>].

6. Jenn Hagedorn, Claudia Alexandra Paras, Howard Greenwich & Amy Hagopian, *The Role of Labor Unions in Creating Working Conditions that Promote Public Health*, 106 AM. J. OF PUB. HEALTH 989 (2016).

Restaurant Employees Union (HERE) during the early to mid-twentieth century is a prime example. With fewer national and state regulatory mechanisms in place, unions were the primary advocates for better working conditions.⁷ Because membership in a union helped guarantee better working conditions, more workers joined, and with more members came more influence.⁸ This trend shifted after union density peaked in the mid-1900s. An increase in anti-union policy and anti-union jurisprudence required labor advocates and employees to shift organizing away from unions and, instead, use worker centers to create better conditions at their workplaces.⁹

Worker centers have become a useful tool used by both fast-food and independent restaurant workers for organizing.¹⁰ Critically, worker centers in California are an enforcement mechanism for state labor laws. By using regulations to better workplace conditions, worker centers benefit workers in various ways depending on the mission of the organization and the interests of the individuals they represent. This Note discusses how worker centers may be used by first considering mechanisms that allowed the HERE union, and waitress locals specifically, to organize workers and expand advocacy for better working conditions.

Part I tells two distinct stories. First, this Note uses the rise and fall of the HERE union's waitress locals to discuss not only the success of unions in the restaurant industry but also the reasons for their success. The second story recounts how Genwa, a Korean barbecue restaurant in Los Angeles, was independently unionized as an example of a more modern organizing success. But for the guidance and knowledge of the Koreatown Immigrant Worker Alliance (KIWA), an immigrant worker center, workers at Genwa would not have been able to better their working conditions.

Part II compares KIWA and HERE by considering the different societal and political landscapes in which each organizing model arose. Analyzing worker composition, legislation and enforcement, the private food sector, and Supreme Court and NLRB decisions, Part II reflects on what made unionizing possible in

7. Haley Hamilton, *Once Upon a Time, "Waitress" Was a Union Job. Could History Repeat Itself?*, ECON. HARDSHIP REPORTING PROJECT (Sept. 20, 2022), <https://economichardship.org/2022/09/once-upon-a-time-waitress-was-a-union-job-could-history-repeat-itself/> [https://perma.cc/VC7V-U36E].

8. *Id.*

9. KEVIN L. LEE, MAGALY LOPEZ & ANA LUZ GONZALEZ-VASQUEZ, UCLA LAB. CTR., *NEW DIRECTIONS IN RACIAL AND ECONOMIC JUSTICE: HOW CALIFORNIA'S WORKER CENTERS ARE BRINGING WORKER POWER INTO WORKFORCE DEVELOPMENT* (2022), https://www.labor.ucla.edu/wp-content/uploads/2022/01/Worker-Centers-and-Workforce-Development_v5.pdf [https://perma.cc/JS7M-Z9JU]; *see also* THOMAS A. KOCHAN, JANICE R. FINE, KATE BRONFENBRENNER, SURESH NAIDU, JACOB BARNES, YAMINETTE DIAZ-LINHART, JOHNNIE KALLAS, JEONGHUN KIM, ARROW MINSTER, DI TONG, PHELA TOWNSEND & DANIELLE TWISS, WORKER EMPOWERMENT RSCH. NETWORK, *U.S. WORKERS' ORGANIZING EFFORTS AND COLLECTIVE ACTIONS: A REVIEW OF THE CURRENT LANDSCAPE* (2022), <https://www.dol.gov/sites/dolgov/files/general/workcenter/Exec-Summary-WERN-Report.pdf> [https://perma.cc/4BV7-5WBR].

10. Mary Hannah, *The "Fight for 15": Can the Organizing Model that Helped Pass Seattle's \$15 Minimum Wage Legislation Fill the Gap Left by the Decline in Unions?*, 259 WASH. U. J.L. & POL'Y 257, 265 (2016).

the past to consider how these opportunities have shifted since. Having considered the rise in anti-union policy and jurisprudence, Part III proposes that worker centers are better equipped to uplift workers in this legal moment. First, worker centers have expertise in state policy, an important source of worker protections that has grown even more important as federal policies continue to favor employers. Second, while workers have a choice to pursue unionizing their workplace, workers do not have to unionize to advocate for better working conditions. Worker centers like KIWA use California's strong labor laws to protect workers. Furthermore, as the restaurant industry has increasingly diversified, with immigrant populations making up a larger share of the workforce, localized worker centers have focused on tailoring their support to workers within their community. Worker centers have become the superior model for uplifting restaurant workers because the restaurants and workers who make up the industry, as well as the legal framework that impacts it all, have drastically changed since peak unionization.

I. THE RISE OF WAITRESS UNIONIZATION—A CASE STUDY COMPARISON OF HERE AND GENWA

At the height of union membership in the United States, there were several successful efforts to unionize the restaurant industry. HERE, as one of the prominent examples, succeeded in gaining influence over the waitress economy.¹¹ Today, the restaurant workforce is increasing its demand for unionization. Genwa, a Korean barbecue restaurant in Los Angeles that unionized in 2022, is one such example. This Section considers the reasons for HERE's success in unionizing waitresses and compares them to Genwa's union realization. By comparing the two, we begin to understand how the California restaurant workforce has changed in the last fifty years and how that shift has impacted unionizing strategies.

A. HERE

Initially called the Waiters and Bartenders National Union, HERE was created in 1891 to help culinary workers install greater workplace protections.¹² HERE, a national labor organization, represented mostly bartenders, cooks, and waiters at the time of its inception.¹³ Waitress unions came later as more women joined the industry.

The feminization of food service began in the late 1800s when "waiting jobs opened up to women as new types of restaurants prospered and 'eating out' became a pastime no longer reserved for the rich or the single male businessman or

11. Dorothy Sue Cobble, *Organizing the Postindustrial Work Force: Lessons from the History of Waitress Unionism*, 44 INDUS. & LAB. RELATIONS REV. 419, 420 (1991).

12. *Hotel Employees and Restaurant Employees International Union (HERE)*, INFLUENCE WATCH, <https://www.influencewatch.org/labor-union/hotel-employees-restaurant-employees-union/> [https://perma.cc/67LA-FRPJ] (last visited Jun. 18, 2024).

13. DOROTHY SUE COBBLE, DISHING IT OUT: WAITRESSES AND THEIR UNIONS IN THE TWENTIETH CENTURY 4 (1991).

traveler.”¹⁴ The industry increasingly became female-dominated as “the cheaper labor of women” fit better with the nation’s shift towards “inexpensive, simple dining.”¹⁵ The first waitress local formed in 1900 in Seattle; from there, all-female unions were established in Chicago, San Francisco, Los Angeles, Cincinnati, and other communities across the country.¹⁶

When women joined the food server economy, waitresses largely filtered themselves into “craft- and sex-based locals” where women were central to all levels of the organization.¹⁷ Women also joined mixed culinary locals of cooks, waiters, and bartenders.¹⁸ These locals were the source of union power for workers. Women justified their demands for better working conditions through the union by basing claims on “their rights as individuals, as mothers, and as family providers.”¹⁹ Locals were mostly comprised of White women who “lived outside the traditional family setting and who looked to the union for comfort, friendship, and protection.”²⁰ The local was a haven for these women and attracted members, in part, by establishing solidarity through craft sisterhood.

Especially after the Great Depression and the rise of labor movement, HERE’s waitress locals gained traction and “remained among the largest and most powerful organizations until the 1970s.”²¹ Still, even at the peak of waitress unionization in the 1940s and 1950s, union waitresses comprised only one-quarter of the trade in the United States.²² Going further, the protections being negotiated were far from modern-day standards. Waitresses had to battle subminimum working standards.

Before World War I, working twelve- to fourteen-hour shifts seven days a week was standard in the food service industry.²³ Hours expectations were distinct from other trades; for example, only 4% of factory workers were being engaged in anything over sixty hours a week.²⁴ Waitresses typically had no say in the matter—they “either worked the hours demanded by the employer or moved on in search of another waitress job.”²⁵ Terrible working conditions and an exhausted workforce fueled desire for change; early union efforts improved conditions for some and inspired change for others. By 1902 in Seattle and 1907 in Cleveland, waitress locals had successfully bargained for their hours to be reduced to seventy hours a week.²⁶ More protections came, but progress was slow as federal legislation continued to marginalize restaurant workers.²⁷

14. *Id.* at 20.

15. *Id.* at 21.

16. Cobble, *supra* note 11, at 420.

17. COBBLE, *supra* note 13, at 4.

18. *Id.*

19. *Id.* at 169.

20. *Id.* at 116.

21. *Id.* at 4.

22. *Id.* at 58.

23. *Id.* at 116.

24. *Id.* at 36.

25. *Id.* at 35 (citation omitted).

26. *Id.* at 116.

27. Hamilton, *supra* note 7 (“Hospitality workers were explicitly excluded from the 1938 Federal

Unions were somewhat successful at gaining members because they organized female servers as professionals rather than domestic laborers. Fighting the societal consensus that waitressing was an unskilled craft that deserved little respect, waitresses elevated themselves and gained respect for their craft in society by unionizing.²⁸ Waitresses in these locals represented their craft as “a real trade by which any girl might be proud to earn her living.”²⁹ Striving to be distinct from their domestic counterparts, waitresses perceived their work as a craft and “their union as a vehicle for advancing the status of their craft.”³⁰

Waitress locals maintained power in strong part because members had strong pride in the system of which they were a part and the people they worked alongside. Two sources of identity were crucial to forming solidarity amongst waitresses. First, scholars credit separate female structures as playing a key role in augmenting female participation in the labor movement.³¹ The participation of waitresses in HERE reached its peak in the 1920s “when the greatest number of waitresses belonged to separate-sex locals; similarly, the decrease in waitress activity from the 1930s onward closely paralleled the decline of female locals.”³² Second, waitresses practiced a form of unionism called “occupational unionism” that emphasized “organizing around craft lines, an emphasis on craft specialization, restrictive membership rules, and union monitoring of performance standards.”³³ Because the roles played in the food industry (from waiter to waitress to chef) were sexually homogeneous, sexual divisions were also seen as craft divisions. As such, all-female waitress locals “had equal voting rights with waiter or bartender locals . . . and, like every other local, they elected delegates to HERE convention.”³⁴ Through all-female locals, the union increased gender consciousness, built leadership skills among women, and voiced the special concerns of women workers.³⁵

Restrictive membership and an emphasis on craft specialization were prominent in waitress locals. Standards were enforced to gain and maintain the identity of a waitress as a professional, distinct from a domestic service worker. For example, “[t]he Cleveland local specified in the 1920s that waitresses should not ‘make coffee, sweep, or mop floors, wash silver or dishes, mirrors, windows or coffee urns, clean fruit, vegetables or make salads, put away or count silver.’”³⁶ In California, “[p]rospective candidates for membership in San Francisco’s Local 48

Wage and Hour Law (it wasn’t until the early 1960s that a majority of restaurant workers were paid extra for anything over 40 hours).”).

28. Before unions, “[t]here was no pride or interest in work, no security, no future, and most important no social standing.” COBBLE, *supra* note 13, at 115 (quoting letter from Jane Morgan, Detroit Local 705 waitress, recounting her nonunion days in the 1920s and 1930s).

29. Cobble, *supra* note 11, at 422.

30. *Id.*

31. COBBLE, *supra* note 13, at 175.

32. *Id.*

33. Cobble, *supra* note 11, at 420.

34. COBBLE, *supra* note 13, at 176.

35. *Id.*

36. *Id.*

were not only expected to have prior experience, but from at least the 1930s to the 1950s, the local required a six-month probationary period.³⁷ Not all unions demanded applicants to be experienced waitresses; apprenticeship opportunities were instituted in the 1920s and 1930s to train and support inexperienced waitresses, upgrade the skills of union members and, consequently, maintain the reputation and appeal of the union.³⁸ Workers with less prior experience were typically provided wage gradations, where inexperienced workers would have to work their way up to union-scale pay only after completing the apprenticeship.³⁹

Upon entering the craft, union members had to vow to uphold craft standards, which were criteria created by fellow members.⁴⁰ Generally, the maintenance of these work performance standards was both developed and enforced by union members. Through a peer review system, “locals upheld the standards of competence in the trade by overseeing training for their members, by developing guidelines for acceptable work performance, and by devising just discipline for those who violated these group norms.”⁴¹ Infractions for violating group-made codes ranged from fines to the reduction of a few days’ pay and went as far as union blacklisting in the industry and social ostracism.⁴² Going beyond the requirements of waitressing, union membership obligated member support for union politics. For example, fines were routinely distributed “for failure to picket or for working with a nonunion worker.”⁴³

HERE’s regime placed unions, not employers, as the primary authority.⁴⁴ Locals maintained a grievance system where employers and fellow employees (waitresses, busboys, and cooks) could submit complaints regarding union members.⁴⁵ The union would then reprimand union members to act in accordance with standards of performance. For example, after a cocktail waitress had several complaints reported to the union regarding her conduct at work, the local’s president “scolded her and threatened to remove her from the job if the complaints persisted.”⁴⁶ When her manager tried finding out why the cocktail waitress was cited, the local asserted it was the business of the unions, not the manager.⁴⁷ This insulated grievance system benefited both union members and employers. Employers did not need to reprimand employees themselves and could easily seek replacement for noncompliant workers through hiring halls if they chose. For employees, union performance guidelines and enforcement mechanisms set

37. Cobble, *supra* note 11, at 420.

38. *Id.* at 426–27.

39. *Id.*

40. *Id.* at 427.

41. *Id.* at 426.

42. *Id.* at 427.

43. *Id.* at 426.

44. *Id.* at 230.

45. *Id.* at 232–33.

46. *Id.* at 232.

47. *Id.* at 428.

expectations and meted out punishment when those expectations were not met.⁴⁸ The insulated regulation of union member performance by both union leaders and general union members fostered a sense of duty and accountability on which employers and workers could depend.

Solidarity among union members and the sense of duty that came with union membership provided a self-sustaining and cooperative system of employment. The development and maintenance of professional standards by union members (as well as the insulated grievance system) nurtured a community where success of the individual was demonstrative of union success and vice versa. Failing one's individual professional performance hurt not only the individual union member but also the reputability of the union and thus fellow union members. Cooperation among union members was also demonstrated by local bylaws that required work-sharing and the equal division of overtime.⁴⁹ Locals prioritized equal treatment of all members, creating trust in their systems.⁵⁰ The legitimacy of union power and communal values not only encouraged new members to join but it also later encouraged them to stay.⁵¹ The cooperative system that local bylaws installed was a crucial component of HERE's union power, fostering occupational unionism and encouraging worker solidarity.⁵²

Unionization efforts have drastically shifted over the decades. When the feminization of the food industry began, waitressing opportunities were not open to everyone. Black women were excluded from jobs previously afforded to Black men in the hotel and restaurant industry because they were women.⁵³ Later, Black women were excluded from waitressing opportunities because they were Black and because "[m]ost employers preferred [W]hite applicants almost exclusively."⁵⁴ By the 1940s, few union bylaws or constitutions prohibited the admission of non-White women, "but the issue of racial and ethnic integration persisted."⁵⁵ Unionization peaked in the 1950s, when 35% of the entire workforce was unionized.⁵⁶ Since that time, union density in the United States has experienced a precipitous decline.⁵⁷ HERE's waitress locals also dwindled with time.

48. *Id.* at 429.

49. *Id.* at 420.

50. COBBLE, *supra* note 13, at 144. ("The union existed for the good of the whole; individual rights were subordinate to the advancement of the collective.")

51. Cobble, *supra* note 11, at 431 ("Most significant, however, was the continuing commitment to craft structures, to employment security rather than individual job rights, and to setting and regulating occupational standards.")

52. *Id.* at 420.

53. COBBLE, *supra* note 13, at 23.

54. *Id.* The preference for White waitresses was largely displayed in the North. In the South, "black women were more acceptable in visible public service jobs than in the North because southerners were accustomed to intimate social interactions with black servants in both the private and public realms." *Id.* at 24.

55. *Id.* at 123.

56. Simmons, *supra* note 5.

57. *Id.*

Race and communist fears played a significant role in the decline of union membership at the beginning of its downward trend. The Southern economy in the United States experienced a shock when slavery ended because “[l]andowners, businessmen and industrialists relied heavily on the racial system to maintain low wages and a ‘docile’ work force.”⁵⁸ After slavery ended, racial segregation was used to keep wages low and maintain White power.⁵⁹ Industrial unions opposed then-dominant power structures by calling on White and Black workers to unionize together.⁶⁰ In 1946, the Congress of Industrial Organizations (CIO) launched the Operation Dixie campaign, “the single largest labor organizing drive ever undertaken in the South,”⁶¹ bringing White and Black workers together in one union. The CIO reported enrolling 280,000 new members by the end of the campaign’s first year.⁶² This drive did not last long, however. Other unions, like the American Federal of Labor (AFL), practiced segregation and did not demand full racial equality between workers. The AFL launched its own campaign, which tried to convince the public of “the ‘communist’ domination of the CIO.”⁶³ The AFL’s red-baiting tactics had serious impacts on many Southern White workers.⁶⁴ It also contributed to the larger national narrative surrounding unions at the time.

Southern Democrats joined Republicans in Congress to establish the House Un-American Activities Committee in 1945, unleashing a barrage of propaganda to convince the public that prominent union organizations were subversive.⁶⁵ For example, one group of conservative southern industrialists disseminated its “Militant Truth” newspaper to raise fears of “black domination in the South, with one of its leaflets attacking fair employment proceedings under the heading ‘Shall We Be Ruled By Whites or Blacks?’”⁶⁶ The anti-union propaganda had hundreds of thousands of dollars funneled into its efforts. Arkansas’ Hardin College planned to spend nearly half a million dollars in 1946 to spread anti-labor messaging, “[w]hile Texas lumber and oil barons funded ‘Christian American,’ probably the most well-endowed anti-union organization in the South.”⁶⁷ With propaganda circulated in the millions through the media, state and local governments passed a series of anti-union ordinances.⁶⁸

Beginning in the later twentieth century, the rise of corporate power also contributed to the decline in labor union membership.⁶⁹ For decades, anti-union

58. Michael Honey, *Operation Dixie: Labor and Civil Rights in the Postwar South*, 45 *MISS. Q.* 439, 439 (1992).

59. *Id.*

60. *Id.* at 440.

61. *Id.* at 443.

62. *Id.* at 444.

63. *Id.*

64. *Id.*

65. *Id.* at 445–46.

66. *Id.* at 446.

67. *Id.*

68. *Id.*

69. Hagedorn et al., *supra* note 6, at 994.

campaigns and corporate lobbying have crippled workers' ability to form unions.⁷⁰ In 2020, estimates suggest that corporate employers "spend nearly \$340 million per year hiring union avoidance advisers to help them prevent employees from organizing."⁷¹ Corporations have stirred anti-union sentiment among key stakeholders by spending millions on anti-union propaganda.

Racist and anti-union propaganda were intertwined and extremely well-funded. As propaganda was promulgated, constituents demanded that the government respond to mounting anti-union fears. Laws targeting union progress were instituted. Governments adopted "anti-violence" laws to use against union picketers,⁷² and city councils passed anti-union ordinances.⁷³ The Taft-Hartley Act of 1947 "allowed states to ban the union shop, required union leaders to sign anti-communist oaths, allowed greater government intervention against strikes, and limited union political contributions," throwing Southern organizing into chaos.⁷⁴ In addition, the Taft-Hartley Act significantly limited union capacity by categorizing boycotts and mass picketing as unfair labor practices.⁷⁵ This provision, as will be discussed later on, affects how restaurant workers today advocate for benefits once afforded by unionization.

The Taft-Hartley Act also instituted union-weakening policies including "right to work" (RTW) laws that were adopted and amended into state constitutions.⁷⁶ These laws are still prevalent today.⁷⁷ RTW laws diminish member motivation to maintain union membership and handicap union funding. These laws do not require workers represented by union contracts to join the union nor pay its dues; as a result, unions represent the needs of workers who do not contribute to the financial maintenance of the organization.⁷⁸ Sinking union dues then reduces union bargaining power, and the benefits typically conferred by union membership—

70. *Id.* at 18.

71. HEIDI SHIERHOLZ, ECON. POL'Y INST., THE NUMBER OF WORKERS REPRESENTED BY A UNION HELD STEADY IN 2019, WHILE UNION MEMBERSHIP FELL 4 (2020), <https://files.epi.org/pdf/183317.pdf> [<https://perma.cc/KX3Q-J2HB>].

72. An anti-union militant had killed a Black member of the Food, Tobacco and Agricultural Workers' Union when he was on picket duty. In turn, the state exonerated the attacker and prosecuted fellow union picketers under the state's "anti-violence" laws. Honey, *supra* note 58, at 446.

73. *Id.*

74. *Id.* at 447.

75. Hannah, *supra* note 10, at 265.

76. Colin Gordon, *Right to Work (For Less): By the Numbers*, DISSENT (May 10, 2016), <https://www.dissentmagazine.org/blog/right-to-work-impact-wages-union-density-economic-analysis> [<https://perma.cc/CC59-A6M8>].

77. Right to work states include Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming. ELISE GOULD & WILL KIMBALL, ECON. POL'Y INST., BRIEFING PAPER NO. 395, "RIGHT-TO-WORK" STATES STILL HAVE LOWER WAGES 15 n.1 (2015), <https://files.epi.org/pdf/82934.pdf> [<https://perma.cc/5R2A-59GR>].

78. *Id.*

including increased wages—are diminished.⁷⁹ One report found that wages in RTW states are over three percent lower than non-RTW states, amounting to a \$1,558 deficit for a full-time, fifty-two-week worker.⁸⁰ RTW laws hinder union membership and dues payments and demand more of unions for represented, non-member workers. RTW laws entitle “employees to the benefits of a union contract—including the right to have the union take up their grievance if their employer abuses them—without paying any of the cost.”⁸¹ This demands unions prosecute employers for grievances submitted by non-dues-paying employees and therefore forcing unions to face thousands of dollars of potential costs for which union members will receive no compensation.⁸²

Changes to unionization practices and laws shifted the political and social landscape, impacting the ways in which workers may successfully organize at their place of work. As Genwa’s story will demonstrate, workers in California’s restaurant industry are responding to changes in labor laws, politics, and the social landscape by engaging in alternative forms of organizing.

B. Genwa – California Retail & Restaurant Worker Union (RRWU)

Genwa is a Korean barbecue (KBBQ) restaurant with three locations in Los Angeles, California. These shops, known for high prices and occasional celebrity sightings, were places of discomfort for their employees. KBBQ restaurants are arduous workplaces where employees can be seen carrying large trays of food and working over hot stoves. Cleaning these restaurants also presents physical risks. One Genwa dishwasher went blind after using a certain type of solution on the grills.⁸³ Genwa employees had expectations to satisfy beyond those of the average KBBQ restaurant worker. With plates of beef short ribs or *galbi* costing around \$75, clients at Genwa are paying for quality food and efficient service.⁸⁴ Higher expectations mandate a faster work pace. The physical demands of the job made the work tough on its own, but the hardship experienced by Genwa employees went beyond physical demands. For instance, employees were typically given two-hour breaks in the middle of their shifts. While these breaks were long, they were not long enough for most workers to go home. As a result, workers only had the option to wait around the restaurant until their break was over.⁸⁵ Employees expressed that this created dangerous and poor working conditions.⁸⁶

Folks working at Genwa’s Koreatown location sought help from KIWA, an

79. *Id.*

80. *Id.* at 2.

81. *Id.*

82. *Id.*

83. LA Times Today Staff, *Why Employees at One LA Korean Barbecue Restaurant Unionized*, SPECTRUM NEWS 1, (Aug. 11, 2022, 8:00 PM), <https://spectrumnews1.com/ca/la-west/la-times-today/2022/08/11/why-employees-at-one-la-korean-bbq-restaurant-unionized> [https://perma.cc/5FQE-R8SQ].

84. *Id.*

85. *Id.*

86. *Id.*

immigrant worker center that combines grassroots organizing and strategic partnerships to help immigrants working in the food industry better their working conditions.⁸⁷ Previously known as the *Korean Immigrant Worker Alliance*, the organization shifted its name to *Koreatown Immigrant Worker Alliance* “because there was not a workplace in Koreatown with Korean workers that didn’t also have Latino workers.”⁸⁸ In 2020, 50.7% of Koreatown’s population was Hispanic, and 57.1% of the population was foreign-born.⁸⁹ The most common non-English household languages are Spanish at 47.3% and Korean at 19.7%.⁹⁰ KIWA’s name change “signaled not only internal organizational changes but also a reimagining of ‘Koreatown’ as community and social space, and a repositioning of KIWA within that space.”⁹¹

KIWA is an “explicit spatial justice organization”⁹² that caters its mission and work to the ethnic politics of Koreatown: “Koreatown was much more than simply a context for KIWA’s activities; its characteristics shaped the organization’s strategies and behavior.”⁹³ Repositioning Koreatown’s socio-legal identity was crucial to creating solidarity among workers seeking to better their labor conditions. To properly address labor concerns in the community, KIWA recognized the need to give voices to all workers across multiple ethnicities and realized the need to help dismantle seemingly impenetrable walls that elites had put up. Because Koreatown was born out of Korean immigrants, elites wanted to foster Korean solidarity and maintain a Korean voice for the area. As such, they focused on Korean narratives, diminished immigrant solidarity across ethnicities, and pushed a homogenous identity: “The assumption of unity makes it easier to conceptualize processes of inclusion and exclusion, but it risks ignoring internal cleavages among immigrants and between those of the first and later generations.”⁹⁴ In the first generation of Korean migrant communities, “early elites enforced a politically hegemonic project of pro-US and anti-Communist homeland-oriented politics.”⁹⁵

KIWA recognized the need to rebrand Koreatown, dismantle singular elite

87. Worker centers have been defined as community-based institutions that organize, advocate, and provide services for low-wage workers. JANICE FINE, ECON. POL’Y INST., BRIEFING PAPER NO. 159, *WORKER CENTERS ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM* (2005), <https://files.epi.org/page/-/old/briefingpapers/159/bp159.pdf> [<https://perma.cc/JEZ8-EKA2>].

88. *Our History*, KIWA, <https://kiwa.org/history> [<https://perma.cc/WHJ5-3LRZ>] (last visited Jun. 18, 2024).

89. *LA City (Central/Koreatown) Puma, CA*, DATA USA, <https://datausa.io/profile/geo/los-angeles-county-central-la-city-centralkoreatown-puma-ca> [<https://perma.cc/C2Z7-Q6DV>] (last visited Jun. 18, 2024).

90. *Id.*

91. Jong Bum Kwon, *The Korean Immigrant Workers Alliance: Spatializing Justice in an Ethnic Enclave*, in *WORKING FOR JUSTICE: THE L.A. MODEL OF ORGANIZING AND ADVOCACY* 23, 24 (Ruth Milkman, Joshua Bloom & Victor Narro eds., 2010).

92. *Id.*

93. *Id.* at 28.

94. Angie Y. Chung, Irene Bloemraad & Karen Ivette Tejada-Peña, *Reinventing an Authentic ‘Ethnic’ Politics: Ideology and Organizational Change in Koreatown and Field’s Corner*, 13 *ETHNICITIES* 839, 842 (2013).

95. *Id.*

voices, and uplift all worker voices, including those of Latinos. In the 1990s, elite voices were of special importance because Koreatown operated “outside the bounds of mainstream law enforcement.”⁹⁶ KIWA needed to target elite voices because those very voices were the ones disabling the organization from successfully mobilizing workers across ethnic lines. As one KIWA member explained, “[s]ometimes it feels like a company town . . . the market owner owns the building that is evicting tenants or the market owner is the best friends with the editor of the *Korea Times*, we can’t get stories published.”⁹⁷ Power structures in the community needed to be dismantled to give a voice to all workers.

Addressing racial tensions and gaining trust in the community was critical to KIWA’s success. The 1992 Los Angeles Civil Uprising, known in the Korean community as Sa-I-Gu, was a significant moment for Koreatown.⁹⁸ These riots were in response to multiple incidents experienced by the Black community. Notably, the riots were a result of the Rodney King decision. They were also a response to the 1991 South Central shooting of Latasha Harlins, a 15-year-old, by Soon Ja Du, a Korean shopkeeper.⁹⁹ Soon Ja Du testified that “she was certain Latasha had a weapon.”¹⁰⁰ However, only the two dollars (the price of her orange juice) were in Latasha’s hand.¹⁰¹

Tensions within the community were tangible without Latasha’s murder.¹⁰² Operating in predominantly Black neighborhoods, Korean “[s]hopkeepers complained that they felt threatened by their customers, while customers felt that shop owners didn’t respect them.”¹⁰³ Black, Korean, and Latino communities were living within and near Koreatown. Tensions also grew as Latino employees working in Korean businesses were, more often than not, deprived of their fair wages.¹⁰⁴

96. Kwon, *supra* note 91, at 28.

97. *Id.*

98. *SA-I-GU* (Center for Asian American Media 1993).

99. BRENDA STEVENSON, *THE CONTESTED MURDER OF LATASHA HARLINS: JUSTICE, GENDER, AND THE ORIGINS OF THE LA RIOTS* xvi (2013).

100. *Id.* at 5.

101. *Id.* at 3.

102. Black and Korean community members grew impatient with one another so much so that it prompted the creation of nonprofit dispute resolution centers to ease tensions between patrons and business owners. Sarah Parvini & Victoria Kim, *25 Years After Racial Tensions Erupted, Black and Korean Communities Reflect on L.A. riots*, L.A. TIMES (Apr. 29, 2017), <https://www.latimes.com/local/lanow/la-me-ln-la-riots-unity-meeting-20170429-story.html> [<https://perma.cc/A9X9-A2UP>].

103. Rachel Monroe, *Common Ground: Brenda Stevenson’s “The Contested Murder of Latasha Harlins,”* L.A. REV. OF BOOKS (Sept. 29, 2013), <https://lareviewofbooks.org/article/common-ground-brenda-stevensons-the-contested-murder-of-latasha-harlins/> [<https://perma.cc/DSX6-GZGN>].

104. A federal investigation into labor law violations experienced by restaurant workers in Koreatown reported that forty-one of the forty-three restaurants randomly surveyed had violated labor laws, resulting in 200 workers being underpaid by \$200,000. SIOBHÁN MCGRATH, BRENNAN CTR. FOR JUST., *A SURVEY OF LITERATURE ESTIMATING THE PREVALENCE OF EMPLOYMENT AND LABOR LAW VIOLATIONS IN THE U.S.* (2005), https://www.brennancenter.org/sites/default/files/legacy/d/download_file_8418.pdf [<https://perma.cc/GH3D-4QFS>]. In a context where 95% of restaurants were failing to pay workers minimum wage, KIWA launched a successful campaign to increase the minimum wage in the Koreatown restaurant industry. Kwon, *supra* note 91, at 35.

Nonetheless, Korean entrepreneurial elites maintained power in the community, structuring “community politics around relatively homogenous conceptions of ethnic political solidarity.”¹⁰⁵ “The 1992 uprising confirmed [KIWA] founders’ apprehension about the consequences of unchallenged ethnic elite hegemony.”¹⁰⁶

These power structures were challenged by KIWA. During the Civil Uprising, protestors took to the streets to protest “poverty, police brutality, and tense relations with Korean merchants.”¹⁰⁷ The result was devastation to Korean businesses. Protests resulted in over three hundred million dollars in property damage.¹⁰⁸ Demonstrating support for the health of all of Koreatown, KIWA fought “for the equitable distribution of relief funds to Korean and Latino workers after the L.A. civil uprising.”¹⁰⁹ Thereafter, KIWA’s support increasingly focused on expanding worker protections.¹¹⁰

In leading the campaign against Genwa, KIWA assisted folks with filing claims for sexual harassment, wage theft, and lack of meal and rest breaks.¹¹¹ In 2020, the California Labor Commissioner’s Office fined the owners of Genwa over two million dollars for labor law violations committed against 325 servers, dishwashers, and cooks.¹¹² One server and organizer at Genwa reported that employees negotiated to see if the state would bring down the fine if Genwa’s owners agreed to a stipulation that would allow future employees to unionize; management agreed.¹¹³ Since then, Genwa employees at one of the three restaurants have voted to unionize, forming the California Retail & Restaurant Worker Union (RRWU), an independent union.¹¹⁴ Unionizing has enabled workers to negotiate for a thriving wage that accounts for retirement benefits, vacation, and sick time off work.¹¹⁵

II. COMPARING GENWA AND HERE

There are notable differences between HERE and Genwa. HERE’s waitress

105. Kwon, *supra* note 91, at 28 (citation omitted). Roy Hong, former Executive Director of KIWA, noted, “Frankly speaking, the [conservative] Korean community and its ethnic media were fanning nationalist and racist views towards the black community, which weren’t in the interest of the community as a whole.” *Id.* at 30.

106. *Id.* at 30.

107. Chung et al., *supra* note 94, at 850. *Do the Right Thing*, a film by Spike Lee, speaks to Korean-Black tensions even on the East Coast in Brooklyn, NY.

108. *Id.*

109. Kwon, *supra* note 91, at 25.

110. *Id.* at 25–26.

111. Jireh Deng, *How Genwa Korean BBQ Workers Won a Groundbreaking Union Contract*, NEXT CITY (Aug. 16, 2022), <https://nextcity.org/urbanist-news/how-genwa-korean-bbq-workers-won-a-groundbreaking-union-contract> [<https://perma.cc/TKJ4-CEL2>].

112. CAL. DEP’T OF INDUS. RELATIONS, NEWS RELEASE NO. 2020-15, CALIFORNIA LABOR COMMISSIONER’S OFFICE CITES RESTAURANT OWNERS OVER \$2 MILLION FOR WAGE THEFT (2020).

113. Caitlin Hernández, *Workers at Genwa Korean BBQ in LA Just Scored a Union Contract*, *In an Industry First*, LAIST (June 1, 2022, 5:23 PM), <https://laist.com/news/food/workers-genwa-korean-bbq-la-unionize-score-contract-kbbq> [<https://perma.cc/8YT5-L2PU>].

114. *Id.*

115. Deng, *supra* note 111.

locals developed during the feminization of the food server industry and the introduction of women in the public workspace. The women who comprised HERE's waitress locals were largely White and were native English speakers. Waitresses in these locals typically came from untraditional households so each found community in fellow union members.¹¹⁶ Workers organized around an occupational identity that gave them pride in themselves and in their profession, brewing solidarity within the craft. HERE was a union with locals where leadership was at the local and national union levels. Waitress locals had their own distinct power that was tied to a broader organization. Unions were the primary source of protection for workers as government legislation and enforcement of minimum standards were limited.¹¹⁷ When HERE was at its peak, unions were the constant, and employers could be rotated out. As legislative, judicial, and regulatory schemes began challenging unions, their power declined and, with it, their use for workers.¹¹⁸ Facing a shifting social and government landscape, labor organizers have begun to think creatively about the ways in which they may help workers achieve socio-economic justice.¹¹⁹ This Section explores crucial shifts in worker composition and government regulation of food workers to better understand how unionization efforts like Genwa's are succeeding today.

A. Worker Composition

The composition of the restaurant industry's workforce has dramatically shifted over the last seventy years. In 2021, the median age of restaurant and other food service workers was between 28.7¹²⁰ and 31.6.¹²¹ The national restaurant workforce is 55% White, 11% Black/African American, 25% Latinx, 8% Asian, and 1% other.¹²² In California, 31% of restaurant workers are White, 3% are Black/

116. COBBLE, *supra* note 13, at 29 ("Sitting down to a meal, the patron is as likely to be greeted by a thin, tired, young mother of three as a robust, wise-talking, middle-aged divorcee Indeed, waitresses as a group exhibited a notable degree of homogeneity, especially in regard to ethnicity, family status, and economic situation. These shared characteristics . . . facilitated the formation of a work-based community.").

117. Hamilton, *supra* note 7.

118. COBBLE, *supra* note 13, at 203.

119. Achieving socio-economic justice includes the "prevention of conditions that limit human rights, the elimination of poverty, and the enhancement of the quality of life for all persons, locally and globally." Simmons, *supra* note 5. Lack of economic security and socio-economic justice not only contribute to domestic violence, substance abuse, and family stress but also "destabilize[] communities and lead[] to tax base erosion, the curtailment of public services, potentially higher crime rates, and abandonment." *Id.*

120. U.S. BUREAU OF LAB. STAT., HOUSEHOLD DATA ANNUAL AVERAGES 18B. EMPLOYED PERSONS BY DETAILED INDUSTRY AND AGE (2021).

121. *Restaurants & Food Services*, DATA USA, <https://datausa.io/profile/naics/restaurants-food-services> [<https://perma.cc/R2TH-FTGR>] (last visited Jun. 18, 2024).

122. REST. OPPORTUNITIES CENTERS UNITED, ENDING JIM CROW IN AMERICA'S RESTAURANTS: RACIAL AND GENDER OCCUPATIONAL SEGREGATION IN THE RESTAURANT INDUSTRY 12 (2015), https://workercenterlibrary.org/wp-content/uploads/2021/08/2015_Ending-Jim-Crow-in-Americas-Restaurants-Racial-and-Gender-Occupational-Segregation-in-the-Restaurant-Industry.pdf [<https://perma.cc/ER2L-LFR9>].

African American, 51% are Latinx, 14% are Asian, and 1% are unidentified.¹²³ The majority (78.4%) of U.S. restaurant workers were born in the United States.¹²⁴ However, restaurant workers are significantly more likely to be non-naturalized immigrants with roughly one-sixth of restaurant workers (15.7%) being non-naturalized immigrants—“nearly double the share outside the restaurant industry.”¹²⁵

Labor activists have responded to changes in workforce composition by changing the way they approach unionizing. For instance, occupational identity was crucial to the success of waitress locals within HERE because it brought women together and emphasized the respect for the profession. In contrast, Genwa employees did not center their solidarity around their occupation. There are many reasons why. First, gaining membership in RRWU (the independent union created by Genwa employees and KIWA) is not limited based on sex or national origin. Second, the union is not limited by craft. RRWU represents the interests of not only food servers but also cooks, hostesses, and dishwashers. RRWU members shared other commonalities to maintain solidarity. While HERE’s locals centered gender and race, immigrant and low-skilled worker identities were pivotal to the Genwa unionization because most of the restaurant’s employees are Korean and Latino immigrants. Despite commonalities between workers, racial tension continues to present its own challenges to organizing efforts.

KIWA reported one of its biggest challenges is building solidarity between Latino and Korean workers.¹²⁶ Division between the two is distinct in Koreatown as Korean employers often split workers along racial lines (with Latino workers in back-of-house positions and Korean workers in front-of-house positions) and preach a Korean worker’s sense of ethnic solidarity.¹²⁷ To successfully unionize, KIWA recognized the importance of communication and solidarity amongst coworkers. KIWA enabled Genwa employees to break down ethnic barriers by offering a space for workers to come together and share their experiences with translators available.¹²⁸ As a restaurant largely comprised of Korean and Latin immigrants, KIWA provided the tools required to overcome the language barrier so that fellow employees who typically would not have had the opportunity to exchange ideas and experiences could do so.

B. Legislation

Through the early to mid-1900s, food servers could not depend on legislators

123. *Id.*

124. HEIDI SHIERHOLZ, ECON. POL’Y INST., BRIEFING PAPER NO. 383, LOW WAGES AND FEW BENEFITS MEAN MANY RESTAURANT WORKERS CAN’T MAKE ENDS MEET (2014), <https://files.epi.org/2014/restaurant-workers-final.pdf> [<https://perma.cc/RZZ5-BUZ5>].

125. *Id.* at 6.

126. Cindy Cho, *In Koreatown, Los Angeles Workers Center Fights for Immigrant Worker Rights*, LABORNOTES (Oct. 1, 2003), <https://www.labornotes.org/2003/10/koreatown-los-angeles-workers-center-fights-immigrant-worker-rights> [<https://perma.cc/NK9R-XUJE>].

127. *Id.*; see also Kwon, *supra* note 91, at 28.

128. Kwon, *supra* note 91, at 28.

because national labor protections were inefficient, excluded servers from protections, and lacked dependable enforcement mechanisms.¹²⁹ The National Recovery Administration was established in response to the Great Depression,¹³⁰ requiring the private sector to “create industry-wide ‘codes of fair competition that effectively fixed prices and wages.’”¹³¹ However, the Hotel and Restaurant Codes enacted “did little to remedy the situation, setting an abysmally low minimum wage—‘too low for even an adequate standard of living’—and a fifty-four-hour maximum work week.”¹³²

Federal legislators continued to dismiss food server protections. Five years later, the Federal Wage and Hour Law—which excluded waitresses until the 1960s—was established in 1938.¹³³ Waitresses who were not union members were left reliant on whatever state protections were guaranteed at the time, which didn’t provide much: “Not until the early sixties, the peak of state protective coverage, did a majority of states have laws setting a forty-hour week for hotel and restaurant workers.”¹³⁴ While this change was positive, regulations such as the Federal Wage and Hour Law were not consistently enforced—even though protections advanced over time, they were not consistently put into practice.¹³⁵ Restaurant employers defied minimum standards and waitresses continued to experience harsher working conditions.¹³⁶ Employers justified minimizing work conditions for waitresses because they were female and their jobs paralleled domestic work.¹³⁷ Before the twentieth century, most female food servers worked in private homes as domestic labor.¹³⁸ The occupational identity of female food servers shifted as women entered public waiting work and were removed from the commercial home sphere.¹³⁹ Now entering a public labor market, waitresses

129. “During the 1930s and the decades following, the five-day, forty-hour week remained a dream for most culinary workers. Excluded from the 1938 Federal Wage and Hour Law until the 1960s, unorganized hotel and restaurant employees relied on what little state protective legislation existed.” Cobble, *supra* note 13, at 117; *see also* Hamilton, *supra* note 7.

130. *National Industrial Recovery Act (1933)*, NATIONAL ARCHIVES, <https://www.archives.gov/milestone-documents/national-industrial-recovery-act> [<https://perma.cc/9L4M-5KST>] (last visited Jun. 18, 2024).

131. *Id.*

132. COBBLE, *supra* note 13, at 36. The National Industrial Recovery Act was deemed unconstitutional in *Schechter v. Poultry Corp. v. United States*, 295 U.S. 495 (1935), and it was abolished January 1, 1936, by EO 7525. *National Recovery Administration (NRA) and the New Deal: A Resource Guide*, NAT’L LIBR. OF CONG., <https://guides.loc.gov/national-recovery-administration> [<https://perma.cc/Z2RG-5X22>] (last visited Jun. 18, 2024).

133. COBBLE, *supra* note 13, at 117.

134. *Id.*

135. A report appearing in the Women’s Bureau newsletter, *The Woman Worker*, revealed that 23% of workers in independent restaurants and 63% of hotel workers still had a seven-day week in 1939. Another survey found that fully 40% of the stores violated both the six-day clause and the twelve-hour maximum for work “on premises” or “on call.” *Id.* at 36.

136. *Id.*

137. *Id.*

138. *Id.* at 17.

139. *Id.*

strove to have their craft be respected and seen as skilled work.¹⁴⁰

Legislation contributed to the downfall of waitress unions. The institution of the Taft-Hartley Act to hotel and restaurant sectors in 1955 and the passage of the Landrum-Griffin Act in 1959 severely hampered restaurant industry unions.¹⁴¹ “Closed shops, the removal of members from the job for noncompliance with union bylaws and work rules, union membership for supervisors, [and] top-down organizing . . . all became illegal. Locals lost their ability to set entrance requirements for the trade, to oversee job performance, and to punish recalcitrant members.”¹⁴² After the institution of laws targeting union conduct, training programs declined, and hiring halls suffered.¹⁴³ The end of craft-based union structures came in the 1970s when HERE, in response to the threat of legal action, started demanding the fusion of separate-craft and gender-based locals nationwide.¹⁴⁴ The occupational identity on which the union depended for its power dwindled into nothingness.

At the federal level, Congress considered in 2021 and again in 2023 the Protecting the Right to Organize Act (PRO Act).¹⁴⁵ The PRO Act protects the basic right to join a union by empowering workers to exercise their right to organize, holding employers accountable for violating workers’ rights and securing free, fair, and safe union elections.¹⁴⁶ In 2021, the bill did not pass the Senate and, to the same fate, the 2023 attempt has not been met with much progress. In February 2023, the Act was introduced in the House and referred to the House Committee on Education and the Workforce without further legislative action. Nonetheless, the PRO Act has important policies which are worth discussing as they could be installed in the future in perhaps more piecemeal legislative attempts.

To empower workers in their right to organize, among other provisions, the PRO Act would streamline access to justice for employees experiencing retaliation by mandating “the NLRB to immediately seek an injunction to reinstate employees

140. Waitressing was initially seen as immoral because women were meant to be in the home and were not meant to be talking with men or many people. By the 1920s and 1930s, the immoral cast was lost; however, the status of waitressing remained low. The work was considered “menial, unskilled work, and waitresses were to be treated accordingly.” *Id.* at 45.

141. *Id.* at 194. In response to greater concerns regarding union corruption, racketeering, and other misconduct, the Landrum-Griffin Act was instituted. Among other things, the Act banned secondary boycotts and limited the right to picket. *1959 Landrum-Griffin Act*, NAT’L LAB. RELATIONS BD., <https://www.nlr.gov/about-nlr/who-we-are/our-history/1959-landrum-griffin-act> [<https://perma.cc/4PB8-THW5>] (last visited Jun. 18, 2024).

142. COBBLE, *supra* note 13, at 194.

143. *Id.*

144. *Id.*

145. Don Gonyea, *House Democrats Pass Bill That Would Protect Organizing Efforts*, NPR (Mar. 9, 2021, 9:18 PM), <https://www.npr.org/2021/03/09/975259434/house-democrats-pass-bill-that-would-protect-worker-organizing-efforts> [<https://perma.cc/W6MG-MEKX>]; Richard L. Trumka, *Protecting the Right to Organize Act of 2023*, H.R. 20, 118th Cong. (2023).

146. EDUC. & THE WORKFORCE COMM. DEMOCRATS, *PROTECTING THE RIGHT TO ORGANIZE ACT: FACT SHEET* (2023), https://democrats-edworkforce.house.gov/imo/media/doc/richard_l_trumka_protecting_the_right_to_organize_act_hr20factsheet1.pdf [<https://perma.cc/72WD-YUKD>].

while their case is pending.”¹⁴⁷ Furthermore, instead of waiting for a decision from the Court of Appeals, the NLRB would be empowered to enforce its own rulings, like other federal agencies. Empowering workers even more, the PRO Act would give workers the power to override RTW laws and allow unions to collect dues from the workers they represent.¹⁴⁸ Additionally, the PRO Act would authorize a private right of action, allowing workers to seek justice in court when the NLRB’s General Counsel fails to prosecute their case.¹⁴⁹ This is monumental to uplifting worker voices because workers currently have no recourse if the NLRB’s General Counsel does not take their case.

To better hold employers accountable for violating workers’ rights, the PRO Act authorizes the NLRB to install monetary penalties against companies that violate worker protection laws. Personal liability could even be experienced by “corporate directors and officers who participate in violations of workers’ rights or have knowledge of and fail to prevent such violations.”¹⁵⁰ Closing loopholes further, the PRO Act would enhance the “joint employer” standard, giving employees the right to collectively bargain with all companies that control the terms and conditions of their employment.¹⁵¹ This policy especially targets the inhibitions the corporate franchise model imposes on workers as it creates a pathway for franchisee workers to sue franchisors. Also of great importance, the PRO Act would require mediation and arbitration to settle disputes between employers and newly formed unions. Oftentimes, despite successfully unionizing, workers are left in limbo as “barely one-third of newly formed unions even reach a first contract within a year of election.”¹⁵² This provision would hopefully, at the very least, expedite the enforcement and creation of union protections.

Lastly, to secure free, fair, and safe union elections, the PRO Act would prevent employers from interfering in union elections and would require employers to be more transparent with their workers. Employers have created a policy where workers are required to attend meetings designed to dissuade workers from unionizing.¹⁵³ The PRO Act would prohibit this requirement. Adding to the sense of security for workers, the Bill allows employees to conduct voting procedures away from their employers’ premises with the hope of fostering a noncoercive, neutral environment where workers feel safer voting.¹⁵⁴ While the PRO Act provides an abundance of rigorous policies that seek to uplift workers in their fight for socio-economic justice, this federal push will likely not prevail. Thus, remaining focused on state landscapes will be pivotal to amplifying worker voices and enforcing worker rights.

147. *Id.* at 1.

148. *Id.* at 2.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

The growth in California's unionization is the product of a labor-friendly legislature that chooses to enact measures that crack down on wage theft and retaliation against union organizers.¹⁵⁵ The misclassification of employees as independent contractors is a known problem in the food industry. The purpose of this decision provides employers an opportunity to “avoid a host of employment-related obligations, such as paying for unemployment insurance and workers’ compensation and even paying a minimum wage.”¹⁵⁶ Beyond these detriments, employee misclassification prevents employees from joining together in a union.¹⁵⁷ “Misclassification is rampant in many industries such as food services and construction. The practice contributes to an economy where wages are flat, profits are soaring, and companies that do not arrange their businesses to avoid their employment responsibilities are disadvantaged.”¹⁵⁸

California and some other states have made efforts to mitigate the problem of employment misclassification. For example, the ABC test was adopted to help determine the status of an individual as either an employee or independent contractor. “The ABC test establishes a presumption of employee status unless an employer can meet three factors and show the individual is truly an independent entrepreneur.”¹⁵⁹ Reportedly, the test has reduced misclassification for the states that have adopted it. The ABC test was codified in California in 2019 when the governor signed Assembly Bill (AB) 5 into law.¹⁶⁰ The utilization of the ABC test is one of the many demonstrations of California's unique organizing landscape as it provides mechanisms to uplift workers through proper legal classification.

Southern California recently took significant action toward helping hourly hotel, restaurant, and business employees earn a living wage. The West Hollywood City Council unanimously approved an increase in the minimum wage to \$17.64 an hour, effective as of July 1, 2023.¹⁶¹ This rate had already been implemented in Santa Monica and Los Angeles.¹⁶² In addition, West Hollywood's ordinance provides at

155. *Id.*

156. JOSH BIVENS, LORA ENGDahl, ELISE GOULD, TERESA KROEGER, CELINE MCNICHOLAS, LAWRENCE MISHel, ZANE MOKHIBER, HEIDI SHIERHOLZ, MARNI VON WILPERT, VALERIE WILSON & BEN ZIPPERER, ECON. POL'Y INST., *HOW TODAY'S UNIONS HELP WORKING PEOPLE* 21 (2017), <https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/> [<https://perma.cc/95NA-QHR2>].

157. *Id.*

158. *Id.*

159. LYNN RHINEHART, CELINE MCNICHOLAS, MARGARET POYDOCK & IHNA MANGUNDAYAO, ECON. POL'Y INST., *MISCLASSIFICATION, THE ABC TEST, AND EMPLOYEE STATUS* 2 (2021), <https://www.epi.org/publication/misclassification-the-abc-test-and-employee-status-the-california-experience-and-its-relevance-to-current-policy-debates/> [<https://perma.cc/L65Y-4T9Q>].

160. *Id.*

161. Hayley Smith, *West Hollywood Ok's Highest Minimum Wage in the Country for Some Workers: \$17.64 an Hour*, L.A. TIMES (Nov. 5, 2021, 5:00 AM), <https://www.latimes.com/california/story/2021-11-05/west-hollywood-moves-to-hike-minimum-wage-to-17-64-highest-in-the-nation> [<https://perma.cc/9Q9K-BUUR>].

162. *Id.*

least ninety-six hours of paid sick, vacation, and personal leave for workers.¹⁶³ “Employees that work less than forty (40) hours a week must receive the compensated time off in proportional increments.”¹⁶⁴ When the allocated time is not used, the paid-leave hours accumulate until they reach a maximum of 192 hours.¹⁶⁵ Thereafter, the employer must provide cash once every thirty days for the accrued compensated time off.¹⁶⁶ In addition, all cashless service charges must be paid to employees before the next payroll period; cash service charges must be paid the same day the cash is collected.¹⁶⁷ These provisions provide valuable benefits for workers, in part, because stiff penalties may be collected from employers who fail to meet the requirements of the ordinance.¹⁶⁸

Those who opposed West Hollywood’s ordinance, mostly restaurant representatives, said the increase in the minimum wage was unnecessary as tips, service charges, and commissions provided employees total compensation that met the living wage.¹⁶⁹ Thus, the California Restaurant Association and other restaurant representatives proposed that the city establish a “minimum wage ordinance that would not apply to workers whose total compensation reached a higher level than that required by the ordinance.”¹⁷⁰ This proposition, however, carries significant negative potential. Seeing as the minimum wage has not been able to keep up with increasing costs of living, it would not be surprising if setting a cap on restaurant worker wages could be used as another mechanism with the potential to hinder progress in restaurant worker wages. As it stands, the ordinance benefits restaurant employees. These provisions enable workers to prioritize their health by providing them the opportunity to have sick leave, and the ordinance affords workers the opportunity to build and maintain outside relationships by affording workers paid vacation time.

Enforcement. The success of Genwa employees in their unionizing effort came, in part, because of increased labor regulations. The California Labor Commissioner’s office, also known as the Division of Labor Standards and Enforcement (DLSE), prides itself on providing better working conditions for restaurant workers.¹⁷¹ The DLSE is responsible for administering and enforcing California’s labor laws, including adjudicating wage claims, investigating retaliation complaints, enforcing California Industrial Welfare Commission (IWC) wage orders, and investigating public works complaints.¹⁷²

163. *Id.*

164. Kelly Scott, *West Hollywood Establishes Highest Minimum Wage in the Nation*, JD SUPRA (Nov. 8, 2021), <https://www.jdsupra.com/legalnews/west-hollywood-establishes-highest-3685967/> [<https://perma.cc/64YM-TZSV>].

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Labor Commissioner’s Office*, CAL. DEP’T OF INDUS. RELATIONS, <https://www.dir.ca.gov/dlse/> [<https://perma.cc/DD3N-8XL9>] (last visited Jun. 18, 2024).

172. CAL. LAB. CODE §§ 76–106 (West 2024).

The Commissioner provides a means through which employees file complaints against their employers to have them be penalized for violations of labor laws. Since 2018, the Commissioner has gained an expanded authority to investigate employers with or without claims being filed against them if they suspect retaliation or discrimination.¹⁷³ The DLSE may represent claimants who cannot afford counsel.¹⁷⁴ As exemplified by Genwa’s story, these regulatory mechanisms are being used to leverage employer power. The Commissioner only began investigating Genwa Korean BBQ after KIWA and its allies contacted the office. After conducting a payroll audit, the investigation revealed that the Genwa full-time staff were deprived of wages because they were forced to remain off the clock for one hour up to three times a day during their 11-hour workday.¹⁷⁵ The Commissioner further found that none of the workers were provided proper rest or meal breaks, nearly half of the workers were not paid the required minimum hourly wage, and more than half of the workers were deprived of overtime pay.¹⁷⁶

Because KIWA was able to leverage the Commissioner’s enforcement power, Genwa employees were able to get a seat at the negotiating table with their employers. It was then, during negotiations regarding the fines imposed on Genwa by the Labor Commissioner’s office, that advocates were able to demand an ability to unionize. As opposed to HERE, which had workers use the union as a primary enforcement mechanism, advocacy groups like KIWA are able to use the regulatory and enforcement powers—like those of the Commissioner’s office—as a tool to gain better and safer working conditions.¹⁷⁷

While the safeguards of California’s Commissioner are strong, the Commissioner’s office has been experiencing a backlog in workers’ wage theft claims.¹⁷⁸ In 2021 alone, “California workers filed nearly 19,000 individual claims totaling more than \$338 million in stolen wages.”¹⁷⁹ Despite these successes, “many

173. SEYFARTH SHAW, CAL-PECULIARITIES: HOW CALIFORNIA EMPLOYMENT LAW IS DIFFERENT 24 (2019), <https://www.seyfarth.com/a/web/7137/2019-Cal-Peculiarities.pdf> [<https://perma.cc/9ES5-SNQ8>]; CAL. LAB. CODE § 98.4.

174. SEYFARTH SHAW, *supra* note 173, at 25.

175. CAL. DEP’T OF INDUS. RELATIONS, *supra* note 112.

176. *Id.*

177. Despite the benefits of added protections, labor law can present obstacles for labor activists. Inadequate worker protections, sluggish administrative schemes, government preference for employer interests, and the NLRA’s bargaining by job site, instead of by industry or geography, made meaningful growth an unlikely prospect. Michael M. Oswalt, *Improvisational Unionism*, 104 CALIF. L. REV. 597, 607 (2016). All these changes in labor law “rendered activism not just legally risky, but prohibitively so.” *Id.* at 605. Enforcing labor laws through regulatory schemes like the Labor Commissioner’s office will provide political support to private efforts to enforce laws through unionization.

178. Alejandro Lazo & Jeanne Kuang, *California Workers Can’t Get Timely Hearings on Wage Theft Claims. State Orders Audit*, CALMATTERS (Mar. 22, 2023), <https://calmatters.org/california-divide/2023/03/wage-theft-hearing/#:~:text=Each%20worker’s%20claims%20by%20law,their%20claims%20are%20never%20paid> [<https://perma.cc/8BPZ-M9YH>].

179. Alejandro Lazo, Jeanne Kuang & Julie Watts, *Agency Battling Wage Theft in California Is Too Short-Staffed to Do Its Job*, CALMATTERS (Oct. 17, 2022), <https://calmatters.org/california-divide/2022/10/agency-battling-wage-theft/?series=unpaid-wages-california-workers> [<https://perma.cc/2BVQ-3ZQE>].

claims take three times longer than the legal minimum of 135 days to resolve.”¹⁸⁰ Great policies go a long way, but California needs to increase the amount it is spending on enforcement for workers to actually be protected. The “Labor Commissioner does not have enough agents or other workers to process all of the wage claims made by California workers effectively.”¹⁸¹ And it is not the money that is the problem. “The Labor Commissioner’s budget [in 2022 was] \$166 million, enough funding for nearly 840 positions.”¹⁸² Instead, employee turnover has been what is most hard to keep up with.¹⁸³ “Experts and legislators say California’s bureaucratic hiring processes and below-market salaries are complicating its hiring efforts.”¹⁸⁴ An investigation by the Little Hoover Commission found that state investigators are paid less than those in other positions despite their positions requiring more training and education: “The civil servant might be better educated, yet be paid much less than his or her peer at a different level of government. This results in high turnover in these positions.”¹⁸⁵

California needs to address its employee turnover problem, and therefore the inequity experienced by state employees, to become a better advocate and enforcer of worker rights. High turnover not only diminishes the power of the Commissioner’s office by minimizing the rate at which investigators may prosecute employers and provide remedies to employees, it also uses funds that could otherwise be devoted to enforcement to train people who leave positions too soon. Still, regardless of delays, it is important to continue utilizing the tools California law provides to seek justice. While enforcement mechanisms may be slow, in the end, they still are a means to provide workers justice. At the very least, stakeholders being aware of slow enforcement should help set expectations on remedial timelines.

Composition of the private food sector. Coinciding with national trends, the rise of corporate power and the expansion of fast-food chains diluted union density in the dining industry.¹⁸⁶ The corporation’s dependence on unskilled workers increased corporate power and expendability of workers, causing a shift in the workforce.¹⁸⁷ “To maximize profits and increase employer flexibility, fast-food restaurants sought out unskilled employees willing to accept low pay for part-time hours rather than a stable, well-trained workforce.”¹⁸⁸ McDonalds, for example,

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. LITTLE HOOVER COMM’N, REPORT NO. 226, LEVEL THE PLAYING FIELD: PUT CALIFORNIA’S UNDERGROUND ECONOMY OUT OF BUSINESS 47 (2015).

186. LAWRENCE MISHEL, LYNN RHINEHART & LANE WINDHAM, ECON. POL’Y INST., EXPLAINING THE EROSION OF PRIVATE-SECTOR UNIONS (2020), <https://files.epi.org/pdf/215908.pdf> [<https://perma.cc/BNR3-28G4>]. Union density, like union concentration, are terms used to determine power maintained by unions. When union members make up a larger share of the industry, we can expect greater bargaining power exerted in the interest of union members.

187. Hannah, *supra* note 10.

188. *Id.* at 261.

proliferated throughout the suburbs, and teenagers were deemed the ideal employee candidates.¹⁸⁹ Since the initial rise of corporate power, however, the average fast-food worker has drastically changed.

Today, fast-food labor markets have a different pool of candidates willing to work for low wages: the elderly, immigrants, and the handicapped.¹⁹⁰ 80% of fast-food workers are above the age of twenty today.¹⁹¹ As the makeup of the workforce has changed, the needs of workers have shifted with them. Teenagers, in part, were ideal candidates because their cost of living was lower. With more adults employed, the average fast-food employee now has a higher expected cost of living. Even worse, when comparing the spending potential of the U.S. dollar to the minimum wage over time, fast-food workers are making 27% less than they did in the late 1960s.¹⁹² The needs of fast-food workers are increasing, but their compensation has been decreasing for decades. It comes as no surprise that workers began demanding more from employers. These demands have resulted in contentious litigation and aggressive anti-union campaigns by industry leaders.

Today, McDonald's, and other fast-food franchisees, actively work against the expansion of union power. Corporate employers spend nearly \$340 million per year employing union avoidance advisers.¹⁹³ In addition, case law seems to benefit employers more than employees. With strong lobbying power, it's understandable to see corporate interests being showcased in public policies. For instance, during the Trump administration, the NLRB narrowed the definition of joint employer, effectively removing corporate liability for how franchisees treat their employees.¹⁹⁴ The ability to hold corporate employers liable is important to employees feeling able to channel change where they work, but, when franchisors are limited in liability, the likelihood that franchisees adopt equitable provisions for their workers is slim.

Changing the liability of franchisors, the definition of "joint employer" has recently been updated.¹⁹⁵ Previously, the franchisor would only be considered a joint employer when there was a finding that an entity affects matters relating to the employment relationship between employer and employee or that the entity had "substantial direct and immediate control over one or more essential terms or conditions of their employment."¹⁹⁶ The NLRB changed its definition so that "an entity may be considered a joint employer of another employer's employees *if the*

189. *Id.*

190. *Id.* at 262.

191. Jena McGregor, *Fast Food Workers Are Staying Longer on the Job—and Wanting More*, WASH. POST (Aug. 29, 2013, 2:06 PM), <http://www.washingtonpost.com/blogs/on-leadership/wp/2013/08/29/fast-food-workers-are-staying-longer-on-the-job-and-wanting-more/> [https://perma.cc/VDW3-8BWV].

192. Hannah, *supra* note 10.

193. SHIERHOLZ, *supra* note 71, at 4.

194. Joint Employer Status Under the National Labor Relations Act, 60 Fed. Reg. 11184 (Feb. 26, 2020).

195. Standard for Determining Joint Employer Status, 88 Fed. Reg. 73946 (Oct. 27, 2023) (to be codified at 29 C.F.R. pt. 103).

196. *Id.*; Joint Employer Status Under the National Labor Relations Act, *supra* note 194.

two share or codetermine the employees' essential terms and conditions of employment."¹⁹⁷ The PRO Act attempted to ensure that a company with either direct or indirect control over the terms and conditions of employment can now be liable for harms created by other employers with indirect or direct control over the same employee. Therefore, an employee working at a franchise location can sue not only the location's franchisee but also the franchisor for violations of the NLRA and California Labor Code.¹⁹⁸

This defining shift impacts organizing methods—franchise workers now have an opportunity to organize major corporations all at once, rather than through piecemeal efforts. Furthermore, “[i]t also requires that both entities engage with any union that represents these jointly employed workers and allows unions to target both a parent company and its associated entities with ‘picketing or other economic pressure if there is a labor dispute.’”¹⁹⁹ This is a monumental shift for employees working within the franchise model.

Supreme Court and NLRB Decisions. The NLRB and Supreme Court operate as the judicial arm of labor law. While the NLRB has been generally pro-worker, the Supreme Court has increasingly become more hostile to union efforts since the waitress era of *HERE*.

Recent cases decided by the Supreme Court favor industry. In *Janus v. American Federation of State, County, And Municipal Employees Council 31, et al.* (2018), the Supreme Court, by a 5-4 vote, ruled that government workers who choose not to join unions may not be required to help pay for collective bargaining.²⁰⁰ These “right-to-work” laws meant public-sector unions could lose tens of millions of dollars and, subsequently, see their effectiveness diminished.²⁰¹ In the same year, the Court reversed a Ninth Circuit decision impacting the validity of arbitration agreements that require individual settlement for internal dispute resolution.²⁰² In *Epic*, Plaintiff tried to file a collective action suit with his fellow employees against their employer, claiming individualized arbitration was not permissible under the NLRA.²⁰³ Because he had signed an arbitration agreement mandating that all disputes be violated individually, the Court decided the Federal Arbitration Act (FAA) required these arbitration agreements to be enforced.²⁰⁴ Another case, *Linden Lumber*, also provided a huge victory for employers. In *Linden*, the Court decided

197. Standard for Determining Joint Employer Status, *supra* note 195, at 73946 (emphasis added).

198. Amy McCarthy & Jaya Saxena, *Why Restaurant Lobbying Groups Oppose the NLRB's New Joint Employer Rule*, EATER (Nov. 3, 2023, 11:53 AM), <https://www.eater.com/23944204/national-labor-relations-board-nlrj-joint-employer-rule-update-explained-restaurant-franchises> [https://perma.cc/6MCH-FPHP].

199. *Id.*

200. *Janus v. Am. Fed'n of State, County, and Mun. Employees, Council 31*, 585 U.S. 878 (2018).

201. Adam Liptak, *Supreme Court Ruling Delivers a Sharp Blow to Labor Unions*, N.Y. TIMES (Jun. 27, 2018), <https://www.nytimes.com/2018/06/27/us/politics/supreme-court-unions-organize-labor.html> [https://perma.cc/7UD7-CQ1W].

202. *Epic Systems Corp. v. Lewis*, 584 U.S. 497 (2018).

203. *Id.*

204. *Id.*

employers could deny recognition of a union even where most workers signed petitions or cards indicating their support for forming a union.²⁰⁵ By deciding as such, the Court undermined the ability of workers to engage in a standard feature in U.S. labor relations because it required that they engage in the NLRB election process with its attendant delays.²⁰⁶

The NLRB's decision-making also contributed to the changing landscape of unionizing efforts by uplifting employer interests. As previously discussed, the passage of the Taft-Hartley Act was a crucial turning point for union organizing. For instance, before the passage of Taft-Hartley, the NLRB ruled that employers violated labor laws if they mandated employees attend meetings where anti-union views were being expressed.²⁰⁷ After Taft-Hartley became law, the NLRB changed their position saying it was not an unfair labor practice for employers to hold mandatory meetings of employees to express anti-union views so long as these workers were not being threatened or bribed to attend.²⁰⁸ The NLRB later reversed earlier decisions mandating that unions have an opportunity to respond at such meetings.

More recently, the NLRB has sided with employers in major decisions. In 2023, it invalidated an employer's policy that prohibited employees from wearing union shirts, buttons, or other insignia.²⁰⁹ A significant win for workers is further displayed in the NLRB's expansion of its remedial power, holding that the traditional "make whole" remedy under Section 10(c) of the NLRA captures all "direct foreseeable pecuniary harms."²¹⁰ While employers have been required to pay for lost earnings and other benefits, they now must also pay workers for other foreseeable harms attributable to the loss of employment. This includes out-of-pocket medical expenses, credit card debt, missed mortgage or rental payments, and related fees.²¹¹ Siding with employers too, the NLRB reversed precedent in deciding a business can exclude contract workers from their property when their protected activities (picketing, leafletting, etc.) significantly interfere with the property's use.²¹²

205. *Linden Lumber Div., Summer & Co. v. N.L.R.B.*, 419 U.S. 301 (1974).

206. *Mishel et al.*, *supra* note 186.

207. *Id.*

208. "As a result, employers got the green light to hold mandatory anti-union meetings, and unions were denied the legal right to enter the employer's premises to respond." *Id.* (citing *Clark Brothers*, 70 N.L.R.B. 802 (1946)).

209. *Tesla Inc.*, 370 N.L.R.B. (2022); *see also Board Rules Workplace Policies Limiting Wearing Union Insignia, including Union Apparel, are Unlawful Absent Special Circumstances*, NATIONAL LABOR RELATIONS BOARD (Aug. 29, 2022), <https://www.nlr.gov/news-outreach/news-story/board-rules-workplace-policies-limiting-wearing-union-insignia-including> [<https://perma.cc/E2E2-G74Y>].

210. *Thryv, Inc. and International Brotherhood of Electrical Workers, Local 1269*, Cases 20-CA-250250 and 20-CA-251105 (2023) (single decision not reported in Board volumes).

211. *Id.*

212. *Bexar County Performing Arts Center Foundation d/b/a Tobin Center for the Performing Arts and Local 23, American Federation of Musicians*, Case 16-CA-193636 (Dec. 16, 2022) (not reported in Board volumes).

III. LOOKING AHEAD – LABOR EFFORTS IN THIS LEGAL MOMENT

California is a union-friendly state that balances state protections against federal judicial and legislative positions, which lean in favor of employer interests. As such, these federal bodies are likely not going to produce union-friendly policies but instead may set precedents that hinder workers' rights and their ability to unionize. This Section considers the nuanced ways in which restaurant employees today try to gain advantages typically associated with union membership—increased wages, better benefits, and employee-interest representation—with or without formal union formation.

The choice to unionize is impacted greatly by employer type. Franchise employers are considered first. Individuals working in the fast-food industry have previously been faced with hurdles that made unionizing their sub-industry impossible. Thus, employees have opted to engage in union activities without being in unions. The Fight for \$15 was started by fast-food workers in New York City who walked off the job and demanded a \$15/hour minimum wage. This protest was led by the Fast-Food Forward movement.²¹³ While this protest was organized by social groups in New York, such as Communities for Change, United NY.org, and the Black Institute, the Service Employees International Union (SEIU) played two key roles in the fight. First, SEIU provided financial support for the Fight for \$15, being its primary sponsor.²¹⁴ Fight for \$15's success in New York led to \$15 minimum wage laws being adopted in California, New York, the District of Columbia, and twenty-one other cities and counties.²¹⁵ In addition, it added momentum for other campaigns seeking smaller wage increases in eighteen other states.²¹⁶ Going further, the Fight for \$15 benefited individuals working beyond the fast-food industry specifically as it sought to install widespread change in large jurisdictions by changing minimum wage requirements. Despite federal legislation meeting great opposition from the legislative and judicial branches, workers were individually able to demand more from their employers without formal unionization.²¹⁷

213. Ken Green, *The Fight for \$15: How a 200-Person Protest Turned Into a National Labor Movement*, UNIONTRACK BLOG, (Aug. 27, 2019), <https://uniontrack.com/blog/fight-for-15> [<https://perma.cc/G44R-84UZ>].

214. Steven Greenhouse, *With Day of Protests, Fast-Food Workers Seek More Pay*, N.Y. TIMES (Nov. 29, 2012), <https://www.nytimes.com/2012/11/30/nyregion/fast-food-workers-in-new-york-city-rally-for-higher-wages.html> [<https://perma.cc/C8QF-JRKU>]. SEIU is a union working with employees in healthcare, property services, and public services. SEIU, <https://www.seiu.org/cards/these-fast-facts-will-tell-you-how-were-organized> [<https://perma.cc/SSP4-RZJQ>] (last visited Jun. 18, 2024).

215. Bivens et al., *supra* note 156, at 10.

216. *Id.*

217. The SEIU continues to play a significant role in the organizing efforts of fast-food workers and only recently shifted its position within the Fight for \$15 movement. Since 2012, SEIU has removed itself from the Fight for \$15 and has, in turn, replaced its participation with the National Fast Food Workers' Union (NFFWU), which it established as the lead organizing entity for the unionization of the Fight for \$15 campaign. INFLUENCE WATCH, <https://www.influencewatch.org/labor-union/seiu-national-fast-food-workers-union-nffwu/> [<https://perma.cc/B4BA-V6QG>] (last visited Jun. 18, 2024).

Since the NLRB's 2023 decision to expand the definition of "joint employer," workers could consider shifting their tactics to take advantage of this policy change. However, it likely is wiser to supplement tactics with tools previously utilized. Already facing animosity, a collection of business associations have filed a lawsuit in Texas attempting to prevent the implementation of the NLRB's new rules.²¹⁸ Meanwhile, lawmakers have also announced they will make efforts to overturn the rule.²¹⁹ The various threats facing the updated NLRB definition should encourage workers within the franchise model to continue using organizing methods previously employed and instead supplement efforts where possible to take advantage of the NLRB's new rule.

While workers operating under corporate employers may need the strength of a national union to truly fight the power of their employer, it is not necessary to unionize to gain better work conditions. The same holds true for local chains—while unionizing is often framed as the goal, it is not the only means to achieve success. Organizing methods deployed by worker centers are typically focused and designed to inform local communities on specific state tools that can be used to better socio-economic positions. Success can be defined as utilizing state tools, like the enforcement mechanisms of the Commissioner's office, to achieve individual wins for workers. With federal support for unionization limited, worker centers should continue to advocate for shifts in policy at the state level.

In 1996, when KIWA first started campaigning, 97% of the restaurants in Koreatown were noncompliant with California labor standards on overtime, wages, and health and safety.²²⁰ In order to overcome these limitations, worker centers focused on how they can empower each employee. For example, KIWA provides opportunities for learning organizing skills because it is a critical community organizing tool, especially for organizing immigrant and low-income populations.²²¹ In addition, KIWA has translators who could create materials that are accessible to all immigrants the organization represents. As was previously discussed, having translators available provided a forum where employees of different ethnic and lingual backgrounds could understand each other and their shared experiences. Investing in language accessibility allowed employees to be more engaged in organizing and was critical to building solidarity amongst workers.

218. Nick Niedzwiadek, *Fight Over NLRB's Joint Employer Rule Ramps up*, POLITICO PRO (Nov. 9, 2023, 4:47 PM), <https://subscriber.politicopro.com/article/2023/11/fight-over-nlrbs-joint-employer-rule-ramps-up-00126435> [<https://perma.cc/4VFY-CLQQ>]; *Chamber of Commerce v. NLRB*, 6:23-cv-00553 (2023).

219. Press Release, Joe Manchin, *Manchin, Cassidy Lead Effort to Overturn Biden Administration Rule Threatening American Franchise Model* (Nov. 9, 2023), <https://www.manchin.senate.gov/newsroom/press-releases/manchin-cassidy-lead-effort-to-overturn-biden-administration-rule-threatening-american-franchise-model-small-businesses> [<https://perma.cc/X42X-469H>].

220. Cindy Cho, *In Koreatown, Los Angeles Workers Center Fights for Immigrant Worker Rights*, LABOR NOTES (Oct. 1, 2003) <https://www.labornotes.org/2003/10/koreatown-los-angeles-workers-center-fights-immigrant-worker-rights> [<https://perma.cc/S5NJ-Q25N>].

221. *Id.* at 273.

One notable worker center specific to restaurant workers is the Restaurant Opportunities Center United (ROC). The ROC has a “what-you-can-pay” membership system where workers choose their own monthly dues based on capacity.²²² Currently, ROC has chapters in the Bay Area, Chicago, Los Angeles, Michigan, Minnesota, Mississippi, New Orleans, New York, Pennsylvania, and Washington, D.C.²²³ The national organization currently has two primary programs. The first is the establishment of COLORS Hospitality Opportunities for Workers (CHOW) Institute, a program providing “professional workforce development training in front- and back-of-house restaurant skills at no cost to either employers or employees across seven cities.”²²⁴ Participants work through a set curriculum designed to prepare them for living wage jobs, including fine dining serving positions, bartending, and managing positions.²²⁵ The result of their training is tangible, with 60% of participants obtaining hourly wage increases of \$2-3/hour. On the East Coast, ROC has partnered with the State University of New York (SUNY) to allow members’ work experience to translate into college credit.²²⁶

Restaurants Advancing Industry Standards in Employment (RAISE) is another program offered by ROC, which alternatively targets employers instead of employees. The 900 restaurant partners are “dedicated to professionalizing restaurant work and promoting fair wages, better benefits, as well as racial and gender equity for their employees and across the restaurant industry.”²²⁷ RAISE partners provide above-industry wages, protections, and benefits and serve as allies in policy initiatives for improving restaurant jobs across the country.²²⁸ RAISE restaurants also partner with CHOW graduates, creating job opportunities for trained workers. In the future, ROC United plans to create a digital jobs board platform to serve as a nationwide resource for quality restaurant jobs.²²⁹

Some of the successful organizing mechanisms utilized by HERE, like the availability of trainings, have been adopted by worker centers. If ROC successfully develops a platform where employers providing living wages and benefits can post openings, this tool could serve as an alternative to HERE’s usage of hiring halls. Like hiring halls, an online job portal would not only serve as a space where workers can find desirable jobs but also ensures that the worker center would play a central role as the center would decide who gets to post open positions and who does not.

222. *Membership*, RESTAURANT OPPORTUNITIES CENTER UNITED, <https://rocunited.org/membership/> [<https://perma.cc/J8MG-G37J>] (last visited Aug. 10, 2024).

223. *Chapters*, RESTAURANT OPPORTUNITIES CENTER UNITED, <https://rocunited.org/chapters/> [<https://perma.cc/LN2W-QBP2>] (last visited Aug. 10, 2024).

224. *CHOW*, RESTAURANT OPPORTUNITIES CENTER UNITED, <https://rocunited.org/training-classes/> [<https://perma.cc/Y5X7-FNVA>] (last visited Aug. 10, 2024).

225. *Id.*

226. *Id.*

227. *Welcome to RAISE*, RESTAURANT OPPORTUNITIES CENTER UNITED, <https://rocunited.org/raise/> [<https://perma.cc/J545-9EYC>] (last visited Aug. 10, 2024).

228. *Id.*

229. *Id.*

There is potential for more to be adopted. For example, waitresses in past locals relied on unions for enforcement of better working conditions and depended on the union to represent their interests. Worker centers are similar in that they, as in the case of KIWA, can be used to enforce California labor laws. With the expansion of worker centers and their emphasis on empowering workers to implement organizing tools independently of the worker center, employees can hold their employers accountable and help the enforcement that is otherwise lacking.

CONCLUSION

This Note prioritizes informing stakeholders on how they may act to better working conditions and living standards for restaurant employees. It considers unionizing a viable option to do so but not a necessary one. This Note considers waitress unionization in HERE, whose membership rose and fell in the span of a few decades, to inform organizing recommendations for the future. Given the current legislative climate and limitations set by the NLRA, formal union formation may not be the optimal means to collectively bargain on behalf of restaurant employee interests. However, the potential to unionize is still very present, as displayed by the success of Genwa employees in forming their own independent union. Worker centers are exciting as they provide workers with resources that parallel successful mechanisms utilized by unions like HERE. Empowering workers to achieve socio-economic justice in their current industry, worker centers will continue to provide valuable resources to workers to not only uplift those seeking higher-paid positions but also inform workers on how they may best organize at their own individual places of work. By providing knowledge of California's labor laws and their enforcement mechanisms, worker centers, whether they encourage employees to unionize or not, offer employees the ability to receive increased compensation and advocate for policies, such as paid vacation and sick leave, which enhance their quality of life. Worker centers thus have been and will continue to be a valuable tool for individuals working in the food industry as workers strive to achieve socio-economic justice.