



BETTER JOBS, BETTER WAGES, BETTER FUTURE A BETTER DEAL

#ABETTERDEAL

Give Workers the Freedom to Negotiate a Better Deal

Over recent decades, as union density has sharply declined, we have seen the largest increase in income inequality since the Great Depression. Today, working families are finding it increasingly hard to obtain basic economic security. Since the 1970s, almost all new wealth has become concentrated in the hands of a tiny sliver of the population, while wages for low- and middle-income workers remain stagnant.¹ In the years following the Great Recession (2009-2012), 91 percent of all new wealth created accrued to the top one percent of earners.² Over a broader 34-year period from 1980 through 2014, incomes for the top 1 percent rose by 204 percent while incomes for the bottom 50 percent rose by just 1 percent.³ In stark contrast, over the preceding 34-year period from 1946 through 1980, incomes for the top 1 percent rose by 47 percent, while incomes for the bottom 50 percent rose by more than twice that: 102 percent.⁴

The more income inequality increases, the harder it is for working families to obtain a quality education, safe housing, sustainable work, and a secure retirement. To keep the American dream alive and allow workers to once again share in the economic prosperity of this country, we must build an economy that works for all—not just those at the top. Strengthening the collective voice and negotiating rights of workers is an essential first step. While many companies invest in their workers through workforce training, fair wages and good benefits, A Better Deal for workers' rights fights to ensure that all Americans have a seat at the table and a voice on the job. We should be rewarding businesses that do right by their employees, not helping corporations that outsource American jobs, lower wages or take advantage of hardworking Americans.

Working people deserve A Better Deal that protects their freedom to negotiate with their employer.

Federal labor law makes two fundamental promises to working people: 1) the right to freely choose whether to join with coworkers to form a union, and 2) the right to jointly determine their wages, benefits, and working conditions through negotiation with their employers. Though unions created the middle class and lifted many working families out of poverty, it is clear that current protections are no longer adequate to guarantee these basic promises. In recent decades,

¹ David Madland and Alex Rowell, *Unions Help the Middle Class, No Matter the Measure*, Center for American Progress Action Fund (2016), available at <https://cdn.americanprogress.org/wp-content/uploads/2016/06/08122007/BenefitsOfUnions-brief.pdf>

² Emmanuel Saez, *Striking it Richer: The Evolution of Top Incomes in the United States (Updated with 2015 Estimates)*, University of California, Berkeley (June 30, 2016), available at <https://eml.berkeley.edu/~saez/saez-UStopincomes-2015.pdf>

³ Thomas Piketty, Emmanuel Saez, and Gabriel Zucman, *Distributional National Accounts: Methods and Estimates for the United States* Table II (Sept. 25, 2017), available at <http://gabriel-zucman.eu/files/PSZ2017.pdf>

⁴ *Id.*

corporate interests have intensified their attacks on these rights. As collective representation of workers has declined, so have the voices speaking for working people. A Better Deal on workers' rights will give working families a real voice on the job.

Specifically, A Better Deal will:

- **Strengthen penalties on predatory corporations that violate workers' rights, and combat misclassification of workers as supervisors and independent contractors.**
- **Strengthen workers' right to strike for basic workplace improvements, including higher wages and better working conditions.**
- **Create a mandatory mediation and arbitration process to ensure corporations and newly formed unions reach a first contract.**
- **Ban state laws that undermine worker freedoms to join together and negotiate.**
- **Provide millions of public employees with the freedom to join a union and collectively bargain with their employers.**
- **Streamline the National Labor Relation Board's (NLRB) procedures to secure worker freedoms and effectively prevent violations.**
- **Protect the integrity of union elections against coercive captive audience meetings.**
- **Use federal purchasing power and policy to help expand opportunities to negotiate.**

Strengthen penalties on predatory corporations that violate workers' rights, and combat misclassification of workers as supervisors and independent contractors. While a growing number of workers would join a union if given a free choice, many fear retaliation for supporting one. Studies confirm this fear is warranted. Companies threaten to close shop in 57 percent of union elections, fire union supporters in 34 percent of elections, threaten to cut wages in 47 percent of elections, and use one-on-one supervisory meetings to threaten union supporters in 54 percent of organizing campaigns. The frequency of illegal coercion makes the right to organize, "at best a promise indefinitely deferred."⁵

A Better Deal will increase penalties on companies who violate the law, hold bad actors individually responsible, and give workers the option of holding violators accountable in court. Using the Civil Rights Act as a model, this reform will deter companies from intimidating workers who exercise their rights. In addition, all workers with rights under the NLRA will have access to remedies like back pay—regardless of their immigration status.

⁵ Kate Bronfenbrenner, *No Holds Barred: The Intensification of Employer Opposition to Organizing*, Economic Policy Institute and American Rights at Work Education Fund (2009), available at <http://www.epi.org/publication/bp235/>

Additionally, A Better Deal will secure workers' rights amid the growing outsourcing and subcontracting trend, ensuring that every employer who controls employees' work in the real world is at the bargaining table. In too many cases, companies dodge their obligation to bargain with employees by inserting second- and third-level employers between themselves and the workers who create their profits. A Better Deal will solve this problem by codifying the NLRB's well-reasoned *Browning-Ferris* joint employer standard. A Better Deal will also clarify that NLRA-protected activity includes the right to concerted litigation. Companies have no business forbidding workers from joining together to vindicate their legal rights.

Lastly, A Better Deal will combat bad actors who misclassify workers as supervisors or independent contractors to shirk their responsibilities under the NLRA.

Strengthen the right to strike. When all other negotiating tactics fail, workers strike to obtain higher wages, safer workplaces, and a dignified retirement. Although workers may not be fired for striking, they may be “permanently replaced.” At the end of the day, the result is hardly different—working people who strike can lose their livelihoods overnight. Companies' increased use of permanent replacement and other aggressive tactics explain why big work stoppages are down more than 95 percent in the last 60 years—workers are rightly afraid of losing their jobs.⁶ To make the right to strike once again meaningful, A Better Deal will ban the permanent replacement of striking workers.

Additionally, workers are often punished for engaging in “secondary strikes,” which are essentially strikes in solidarity with workers at other companies. Acting in solidarity for mutual protection is the core activity protected by labor law, and if such activity is to be meaningful in an increasingly fissured economy, it should be extended beyond the single shop floor.

Create a mandatory mediation and arbitration process to ensure corporations and newly formed unions reach a first contract. Even when workers succeed in forming or joining a union, some companies attempt to impede the process by dragging out negotiations with the newly certified union. This disadvantages responsible employers who respect workers' rights by forcing them to compete with bad actors who try to sabotage the process. Despite labor law's promises, even when a majority of workers successfully votes to form a union, barely over half of newly formed unions ever reach a contract with their employer.⁷

A Better Deal will incentivize corporations to respect workers' right to negotiate with them. If corporate management and newly formed unions cannot agree to terms of a contract, A Better Deal will provide workers with the option to require mediation to encourage agreement—and, if that fails, binding arbitration.

A Better Deal will also permit workers and companies, when both sides agree, to include in their contracts provisions that prevent the company from doing business with other companies that do not treat their workers fairly. Workers should have the freedom to reach such agreements, which

⁶ Bureau of Labor Statistics, *Work Stoppages summary* (Feb. 9, 2017), available at <https://www.bls.gov/news.release/wkstp.nr0.htm>.

⁷ Andrew G. Lawrence, EMPLOYER AND WORKER COLLECTIVE ACTION 216 (2014).

were permitted for decades under the National Labor Relations Act (NLRA) and benefit the broader community outside of a single workplace.

Ban state laws that undermine worker freedoms to join together and negotiate. While federal law requires unions to provide equal representation to all workers, regardless of union membership, 28 states have passed laws that strip workers of the resources they need to have a real voice to speak out for higher wages, better benefits, and improved working conditions. These laws—often misleadingly called “right to work” laws—do not give anyone the right to a job; they merely weaken unions by starving unions of the compensation they need to get their job done. These state laws, which have been bankrolled by special interests, have one simple goal: destroy unions. They have been found to reduce union membership by up to 10 percent and have resulted in lower wages and decreased access to employer-provided health care and pensions—for *union and nonunion* workers alike.⁸ A Better Deal will end these special-interest laws and ensure that workers have the freedom, and resources, to build a future for themselves and their families.

Provide millions of public employees with the freedom to join a union and collectively bargain with their employers. There is currently no federal law that provides public workers with the same rights and freedom to engage in collective bargaining as their private sector counterparts. Less than half of all states provide their workers with such freedom under state law and some states, such as Wisconsin and Iowa, have repealed workers’ rights to the detriment of public workers and the communities they serve. A Better Deal will provide public employees such as first responders, teachers, librarians and other public service workers with the same rights and freedom to engage in collective bargaining as their private sector counterparts. A Better Deal will also safeguard the labor and collective bargaining rights of public servants working throughout our federal government.

Streamline the NLRB’s procedures to secure worker freedoms and effectively prevent violations. Companies often exploit procedural loopholes in the union election process to engage in delay tactics—pushing elections further and further down the road. This undermines workers’ core right to organize and creates additional time for companies to intimidate workers and try to kill their organizing momentum. As such, companies should not be permitted to interfere with workers’ core freedom to organize.⁹ A Better Deal will reorder the focus in representation disputes to where it should be: on whether the employees want to band together and join a union, rather than on whether the boss wants employees to join a union.¹⁰

⁸ See Elise Gould and Will Kimball, “Right to Work” States Still Have Lower Wages, EPI (Apr. 22, 2015) available at <http://www.epi.org/files/pdf/82934.pdf>; Frank Manzo IV and Robert Bruno, *Union Decline and Economic Redistribution A Report on Twelve Midwest States* (2017), available at <https://ler.illinois.edu/wp-content/uploads/2015/12/ILEPI-PMCR-Union-Decline-and-Economic-Redistribution-Midwest-FINAL.pdf>

⁹ Many employers strive to create the labor peace that is the goal of the NLRA by voluntarily recognizing unions that demonstrate majority support among workers. Current law permits such a path to collective representation, and A Better Deal will preserve it.

¹⁰ The National Mediation Board (NMB), which administers the Railway Labor Act (the NLRA’s sister statute), gets it right: the NMB flatly denies standing to employers in *representation* cases. See *Brotherhood of Railway Clerks v. Association for the Benefit of Non-Contract Employees*, 380 U.S. 650, 666-667 (1965). A Better Deal will ensure that the NLRB follows suit, removing opportunities for employers to stymie and interfere with the election process. Representation cases exist to determine the free and uncoerced choice of *workers*, not their bosses. See 29. U.S.C §

A Better Deal will also require companies to post a notice informing employees of their rights under the NLRA. To make the NLRB more effective, a Better Deal will give the force of law to NLRB orders until they are superseded by court order or expire according to their terms. Currently, the NLRB must seek judicial enforcement of its orders, creating unnecessary delay and judicial expenditures. Additionally, A Better Deal will strengthen the NLRB's authority to seek court orders to prevent unfair labor practices. Finally, A Better Deal will restore the NLRB's ability to support its positions through economic analysis. Restoring such authority to the NLRB would be an affirmative step in support of workers' rights to organize and bargain collectively with their employer.

Protect the integrity of union elections against coercive captive audience meetings. Many companies respond to worker organizing by forcing all workers to attend meetings where representatives of the company or paid consultants give one-sided, campaign-style speeches discouraging workers from exercising their rights under the NLRA. Unlike a political election, however, unorganized workers in an organizing campaign understand the economic power of the employer could be brought to bear on them and their families if they make the "wrong" choice. Even in the absence of explicit threats, given the disparity of bargaining power between individual workers and companies, workers are sure to "get the message." A Better Deal will address this inherently coercive practice. When companies taint the election process by using captive audience meetings, the NLRB will set the corrupted election results aside and require the employer to bargain with the worker representative.

Use federal purchasing power and policy to help expand opportunities to negotiate. Through contracts, grants, loans, loan guarantees, tax breaks, and other means, the federal government funds work performed by millions of people. A Better Deal will ensure that attached to this financial support are conditions requiring companies to affirmatively notify workers of their rights and refrain from activity aimed at interfering with workers' to join a union and bargain collectively. The federal government can also help expand the number of workers who are able to join together to improve their working conditions through policy that encourages innovative labor arrangements while maintaining the government's core promise to safeguard workers' rights. This change will ensure that the federal government does not use taxpayer dollars to drag down labor standards.

159(b) (requiring the NLRB to determine appropriate bargaining units "in order to assure to *employees* the fullest freedom in exercising the rights guaranteed by [the NLRA]") (emphasis added).