I. Presidential Address

Trends in Collective Bargaining and the Future of the Workplace

GORDON R. PAVY
AFL-CIO (Retired)

Like a lot of presentations, reports, and books that pretend to portray the future, I will focus much more on the past than try to predict the future. But my hope is to trace the path of collective bargaining across the arc of recent time in a quick enough fashion so that the arrow of time points to where I think we all can see it traveling.

The general public perception of organized labor in very large part rests on labor's influence in electoral politics and the public policy arena. In the 2006 off-year election, organized labor gained wide recognition as a significant contributor to the results that established a Democratic majority in both houses of Congress, and in 2008 to the election of Barack Obama and a Democratic supermajority in the Senate. Following the 2008 election, labor was front and center in the public debate over the Affordable Care Act.

In 2010, union-supported candidates lost ground in the state legislatures, the Democrats lost their majority in the House, and their Senate supermajority was eroded. This resulted in part from the fights in state legislatures over the rights of public workers to form unions and bargain collectively. Among other things, the fights in Wisconsin, Ohio, and many other states for collective bargaining rights have had at least the partial positive effect of popularizing the term "collective bargaining" and widening understanding among the general public for what it means.

The primary "reason for being" of the labor movement is collective bargaining—not electing politicians or lobbying for passage of worker-friendly legislation, however important those things may be. Collective bargaining is the means by which workers exercise their power and have a say over their standard of living.

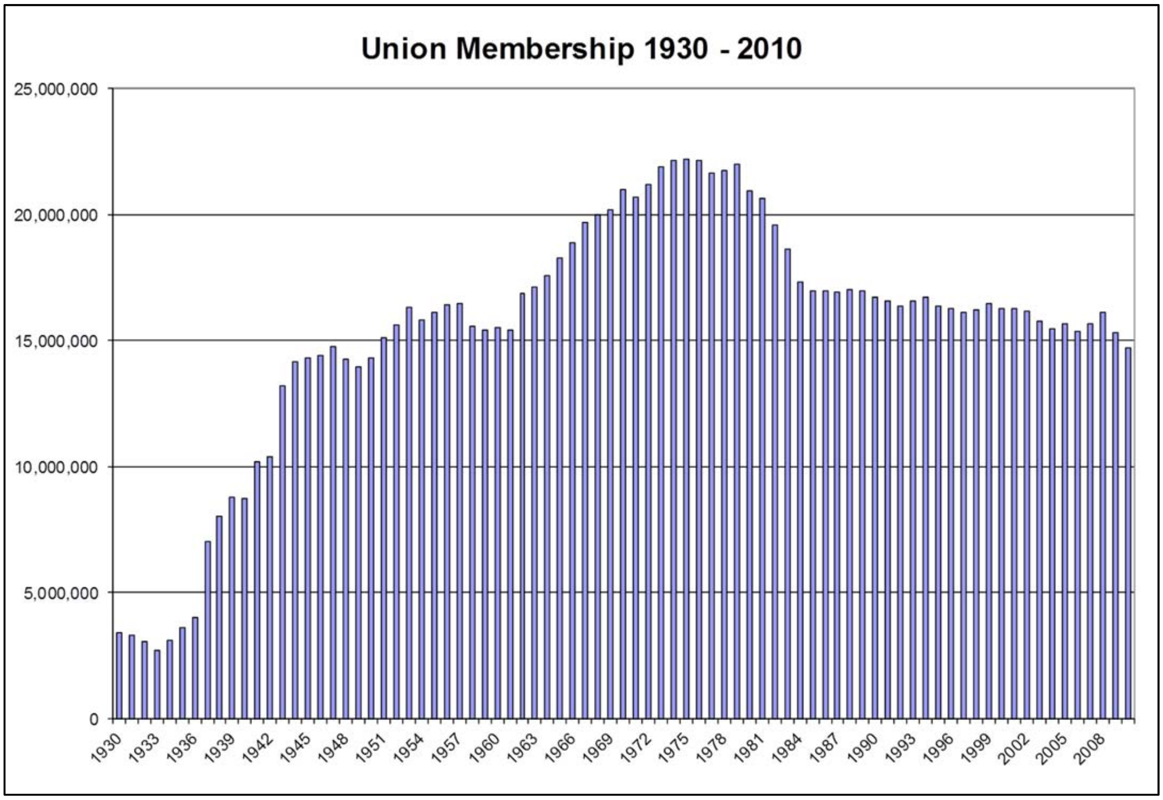
The NLRA and its sister legal agencies, the FLRA, National Mediation Board, along myriad state and local agencies, and their laws, are not just tools for empowering workers to form unions. Labor laws are a set of rules without which the settlement of labor–management conflict would be left to the raw exercise of power in the streets and on the picket lines. Labor laws establish an institutionalized process to minimize economic disruption in the resolution of labor–management conflict.

Collective bargaining. When I say these words, we all have a slightly different picture in our minds based on our widely varying experiences at and around the bargaining table and in day-to-day labor–management relations in the workplace.

What I want to do is paint a decade-by-decade picture of the changes in collective bargaining (CB) and collective bargaining agreements (CBAs) beginning with the 1960s, before describing the path for the near future of collective worker organization and representation.

The following figure shows the level of union membership from 1930–2010. It shows that the decade of the 1960s produced a steady increase in union membership. In the 1960s, union membership grew from 15.5 million to nearly 21 million. Over that same time, union density fluctuated between 27% and 30%, and the workforce grew by 16 million to reach 70 million.

Author's address: 1714 Leighton Wood Lane, Silver Spring, MD 20910



In that decade, collective bargaining transitioned from annual negotiations over wage increases to the generally accepted practice of three-year contracts covering benefits and working conditions as well as wages.

In the 1960s and 1970s, large national industrial agreements set broad labor economic patterns in a marketplace that was almost purely domestic. Agreements in steel, auto, rubber and trucking set patterns that other manufacturers followed. In CBAs of the 1960s and 1970s,

- Wage improvements were tagged to productivity gains. Productivity improvements in the overall economy generally ran about 3%, and it was understood that these gains would be shared with workers in the form of annual across-the-board general wage increases.
- Annual wage increases tagged to productivity gains meant that workers who remained in the same jobs, doing the same work in much the same conditions for their careers, could reasonably expect that their standard of living would improve over time.
- Contracts had inflation protection on top of wage increases. Quarterly COLA adjustments to hourly rates pegged to changes in the CPI protected workers' buying power, and at the end of contracts, the accumulated COLA adjustments were folded into the base wage rate.
- Health care plans paid from the first dollar—no co-pays, no premium payments, and no deductibles. And pensions were regularly improved, all at a minor cost factor to the employer.
- Contracts regularly included
    - Additional holidays
    - Improved vacation schedules, with four and five weeks off for the most senior workers (20+ years of service)
    - Expanded paid time off for commitments such as jury duty, bereavement leave, and pallbearer leave for the funerals of co-workers

- Seniority clauses and layoff protections improved. Many companies contributed to supplemental unemployment benefit (SUB) plans to complement unemployment benefits to pay workers nearly 100% of their regular pay for short-term layoffs.
- Workers sent home for lack of work were regularly recalled to their old jobs after short layoffs.
- Safety and health protections were pioneered. After OSHA was enacted in 1970, employers were required to furnish individual safety equipment and workers gained input into company safety policies and practices.

The expanding coverage and benefits of CB continued for much of the early 1970s, but things started to shift, due in no small part to two periods of hyperinflation and rising oil prices brought on by the OPEC oil embargo in 1973 and the 1979 oil crisis. Wage and price controls put in place by President Nixon failed to quell high inflation. Rapidly rising gasoline prices led to increased imports of more fuel efficient small autos. The U.S. auto industry was slow to react; Chrysler required a federal loan guarantee to stay afloat, and American Motors went out of business.

The U.S. color television industry was decimated in the 1970s by Japanese imports. The steel industry also faced increased foreign imports, and in 1974 the USW and the industry negotiated the "Experimental Negotiating Agreement" that sought to eliminate strikes by putting in place interest arbitration if no agreement was reached at the end of a contract. This agreement lasted until 1984 but did not stop the flow of imports. Imported radial tires took as much as 80% of tire sales by the end of the 1970s, with U.S. manufacturers still primarily producing bias-ply tires. Nevertheless, overall economic expansion continued to permit union membership to increase through 1979. But union density fell to 24%. That was a watershed year. Union density has declined every year since 1979 except for 2007 and 2008, when density increased by a very slight 0.4%. In 1979, there were approximately 21 million union members in a workforce of 87 million—about 24% union density.

The early 1980s was the first post-war period of what can only be called "concessionary bargaining":

- The PATCO strike in 1981 encouraged the use of permanent replacement workers during strikes in the private sector.
- Industrial capital started its flight to the Far East, seeking lower wages.
- In addition to deindustrialization and the loss of manufacturing jobs to imports, deregulation of airlines and trucking had a devastating effect on companies, workers, and their contracts.
- Continued high rates of inflation, particularly in energy and health care, led employers to call for the suspension of COLA provisions.

By 1985, there were 17 million union workers in a workforce of 95 million—18% density overall. Private sector union density fell to 14%. Between 1980 and 1986, unions lost more than 5 million members, about 20% of their membership, while employment over the decade grew by that same 20% to top 100 million for the first time.

In the late 1880s, concessionary bargaining continued. Productivity gains in the economy fell below the expected 3% annual rate. This further eroded the tie between productivity increases and wage increases that promised an improved standard of living and challenged what had been to this point a pact of workers sharing in the gains. The lack of COLA protection and end of the COLA fold-in also put downward pressure on wages. Contracts during this period included temporary (and some permanent) two-tier wage schedules that damaged the equal pay for equal work standard. Many agreements included lump sum annual bonuses instead of wage increases. Also, the introduction of 401(k) plans in the private sector became popular in place of improvements in defined benefit pensions.

In 1990, there were 16.7 million union members (6.1% density, 11.9% in private sector). Private sector union membership fell below 10 million for the first time. Organized labor debated how to stop the slide in membership. Unions struggled to change from a "servicing model" to an "organizing model" with mixed success and mixed support from members.

Also in the 1990s, the hopes for progress with a Democrat in the White House and a Democratic majority in both houses of Congress were dashed, NAFTA passed (in 1993), Senate Republicans filibustered the Workplace Fairness Act (the striker replacement bill), and labor lost the fight through the Dunlop Commission for Labor Law Reform in 1994.

As for CBAs in the 1990s,

- President Clinton's attempt at health care reform failed, and after a short respite, health care cost inflation returned to double digits.
- Companies pushed the introduction of managed care plans and shifted costs to workers, introducing and expanding premium payments and deductibles.
- By this time, COLA clauses and SUB plans became nearly extinct.
- FASB 106 was introduced, requiring employers to put future liability costs for retiree health care plans on their balance sheets. Employers responded by demanding benefit reductions and stricter eligibility rules for retiree health care.
- In search of more efficient operations, employers demanded limits on hourly overtime protections.
- Virtually no improvements in vacations and holidays were made.
- Traditional three-year contracts were extended to four- and five0year agreements in search of some longer-term stability in the labor market.

Productivity levels during the 1990s returned to historic levels through rapid introduction of computerized machine controls. Employers rapidly adopted new technology to reduce and de-skill the workforce: the newspaper industry goes to cold type, computer numerical control (CNC) equipment was introduced, and some workers were replaced by robots. Japanese models of workplace efficiency and productivity growth were imitated and popularized. Worker participation schemes were introduced, some with and some without union involvement and support, including

- Total Quality Management (TQM)
- Quality circles
- Kaizen
- Team concept
- Just-in-time inventory
- High-performance work organizations
- Lean manufacturing
- Continuous improvement

Work rules changed, collapsing job titles and pay grade differentials. "At-risk" pay programs were popularized (gainsharing, pay for performance, profit sharing).

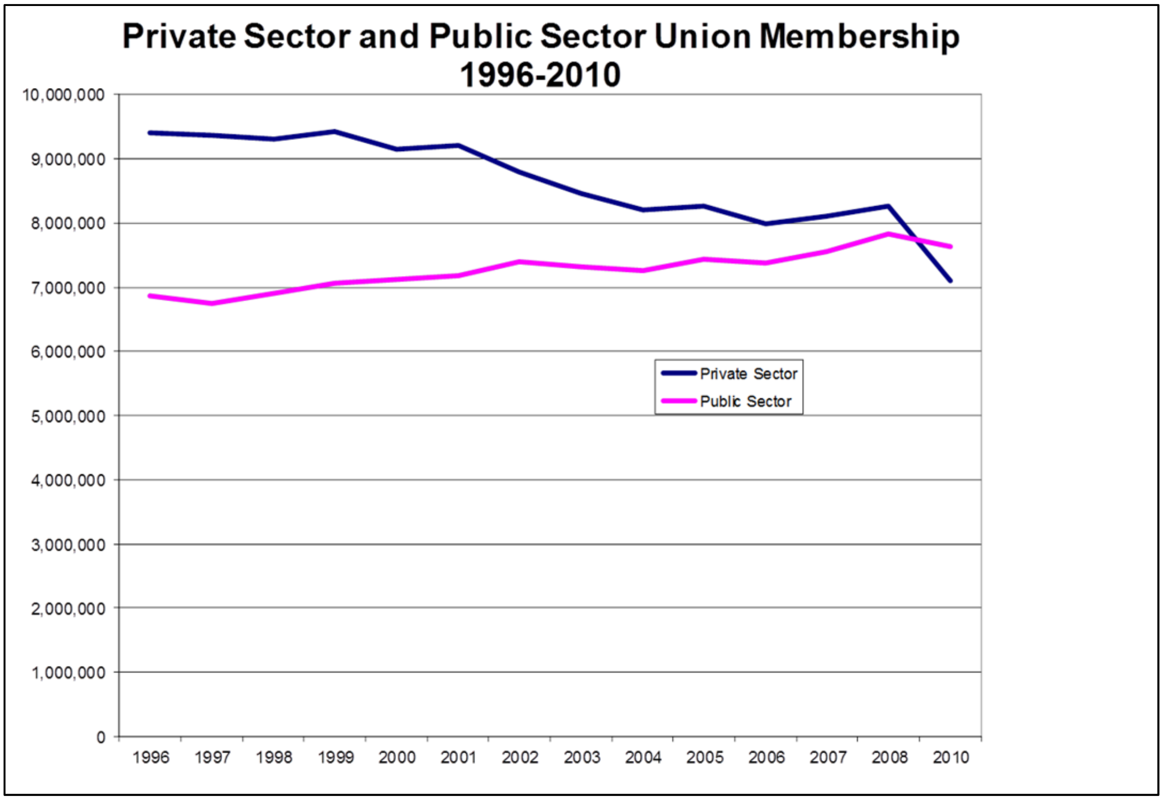
Job security and layoff protection and improved severance packages became increasingly important to successful contract renewal. The bargain of wage increases based on productivity increases changed to a bargain of increased severance and training benefits for those permanently laid off and part of the labor savings being directed to wage increases for remaining workers. Wage improvements helped workers keep up with inflation, at best.

The 1990's were the first period of post-war sustained economic growth that did not result in growth in the labor movement

By the end of the millennium, the sense of a broad economic pattern of bargaining driven by big industrial contracts and enjoyed by all workers had all but disappeared. The notion of a full career with a single employer eroded as workers expected to change jobs throughout their career. Two-income families became commonplace.

The 2000s brought continued globalization of the private economy. U.S. imports of foreign goods increased rapidly, and the annual trade deficit, which had hovered around $100 billion, started a steep increase to $400 billion by 2000 and went to $800 billion in 2005.

In the year 2000, the workforce had grown to 120 million. Union membership had held steady at 16 million during the 1990s but density dropped to 13.5% as the workforce grew and union membership fell below 16 million in 2002. Private sector density dropped to single digits, 9.0%, and the private sector service economy continued to grow away from traditional union strength at a rapid pace. During the period 1996–2010, public sector union membership was the only area of numerical growth.



The year 2009 marked the first time public sector union members exceeded private sector membership, even though public sector employment was about one sixth of that of the private sector. Also during that time:

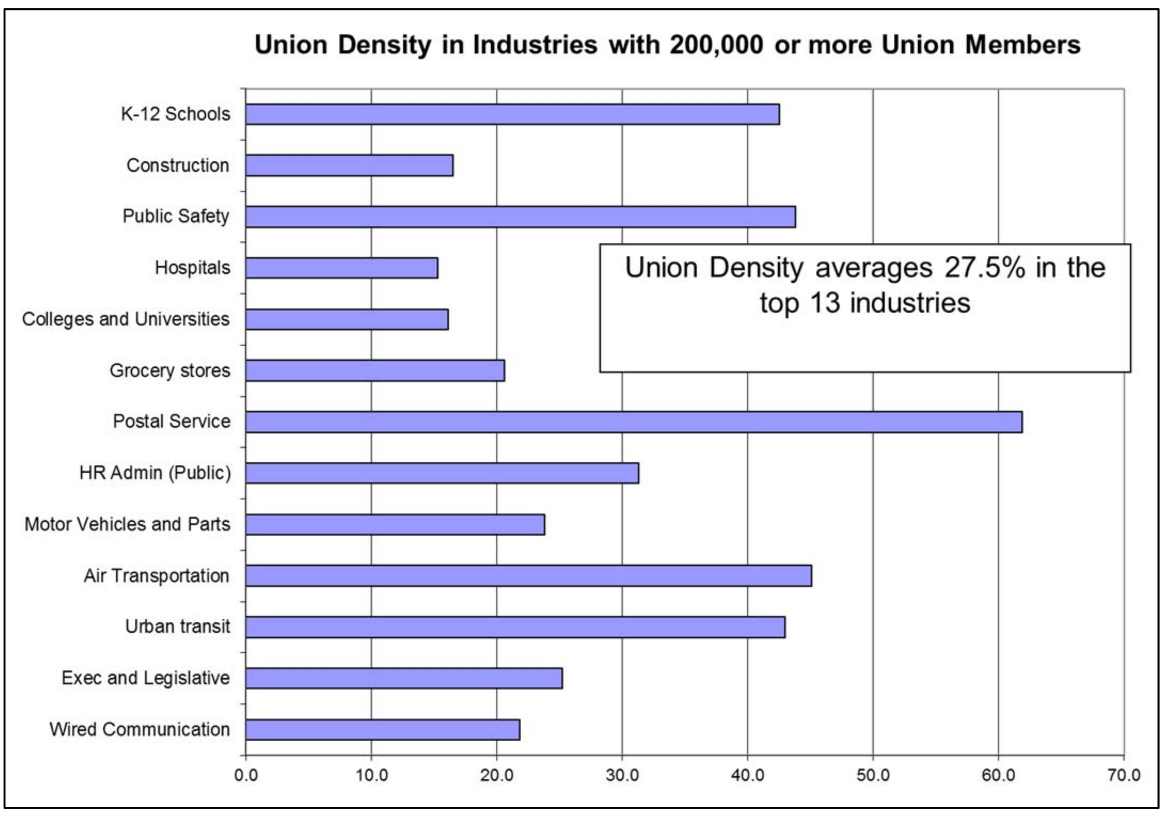
- The labor movement largely gave up on the NLRB as a protector of workers in organizing through representation elections.
- Unions struggled to reorganize to be able to devote more resources to organizing.
- Health care and pension costs became the primary forces at the bargaining table, and this remains true today.
- Limiting or eliminating retiree health care and defined benefit pensions for new hires became a major focus for employers.
- Employers and unions negotiated Voluntary Employee Beneficiary Association (VEBA) trusts to fund retiree costs for existing workers and curtailed or eliminated benefits for new hires.
- 401(k) plans proliferated, shifting the burden of risk from employers to employees:
  - In 1984, 7.5 million participants and $92 billion in assets
  - In 2008: 60 million participants and $2.2 trillion in assets
  - All reports indicate 401(k) savings are inadequate for the task of replacing lost income during retirement
- Employers increasingly reduced the number of employees covered by a CBA by contracting out all but the “core operations” to subcontractors and even contracting out the entire management of operations.

- With external cost pressures on health care and pension obligations dominating collective bargaining, contract expiration deadlines lost a lot of their effect in pressuring both sides to reach agreement at deadline.

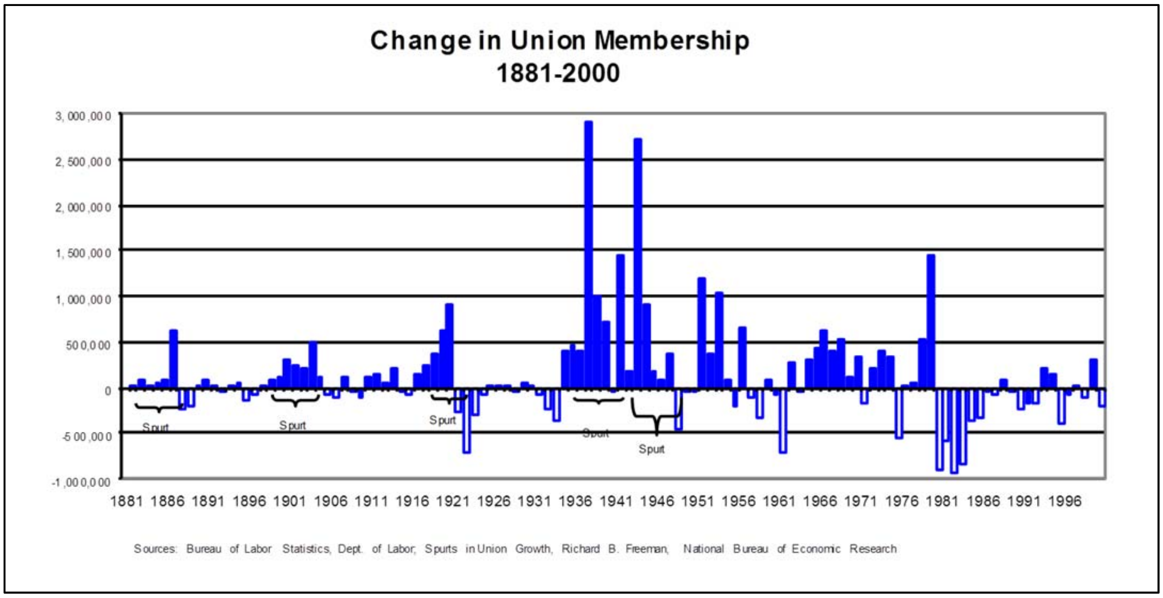
Where we are in 2012:

- We will have 2011 union membership numbers by the end of the month, but for 2010, there were 14.7 million members (11.9% union density).
- 7.1 million private sector members are outnumbered by 7.6 million public sector members.
- We have lost 1.4 million members since 2008, roughly one tenth of union membership.
- We have an overall workforce of 124 million, which is 5 million down from 2007 and 12 million behind the "full employment" rate for today.

Despite the steady decline of union membership and the erosion of CBA protections in the last 30 years, there is hope. In the 13 industries where unions have 200,000 or more members (see figure below), the average union density is 27.5%, and almost all of them are industries where jobs cannot easily be moved overseas. Traditional collective bargaining is still a powerful means for sustaining a middle-class standard of living for workers in these and other industries.



The following chart by Richard Freeman, now over two decades old, shows that when union growth occurs, it occurs in spurts. And when it occurs, it is the result of workers organizing themselves and taking control over their situation, not because some bill gets passed or some politician gets elected.



What path workers and their organizations will take in the current decade and the next is yet to be determined. But there are some signs of hope for a new activism that will shape the future of collective bargaining and worker representation and turn around the decades of decline.

There is also some hope for unions to increase their numbers through traditional means. New NMB representation election rules requiring a majority of votes cast be counted instead a majority of eligible voters puts the airline and rail system of determining union representation on par with the NLRB and other laws. Furthermore, new NLRB rules for streamlining representation elections hold promise for giving workers a more independent say in forming unions.

Traditional collective bargaining will always have its place, but workers and the labor movement cannot rely on the tool of CB alone if unions are to grow. A CBA is not the only solution to the collective needs of workers, and the path to effective workplace representation is not limited to a union representation election or card check recognition. In the last 30 years, collective bargaining has had to adjust to a changing economic and legal atmosphere that included the following:

- Automation
- Deindustrialization
- Deregulation
- Use of temporary and permanent replacement workers
- Watering down of wage and hour protections
- Cost and risk shifting to individual workers for health care and retirement benefits
- Globalization
- Outsourcing and subcontracting
- Virtual workplaces and the virtual employers
- The Affordable Care Act

In the last 30 years, workers have made the transition from single-earner families to multi-earner families and from career employment with a single company to serial employment with multiple employers. Many workers have also gone from direct employment by an employer to indirect employment through a subcontractor.

Many new entrants to the workforce have been effectively excluded from traditional CB coverage and left to their own individual initiative for protection of their statutory employment rights.

- Larger and larger numbers of workers do not have a direct employment relationship with the source of funding for their paychecks.
- Younger and new entrants to the workforce recognize that the direct, permanent career employment model is of a bygone era.
- Their connection to the workplace, their economic security, is their skill set, not their employment relationship. Their occupational skills, not their relationship to any one employer, are their ticket to a decent standard of living.
- The traditional labor agreement with a single employer and a union local covering wages, hours, and working conditions does not provide economic security for the large number of workers who must plan their careers around serial short-term jobs.

Organized labor must find new ways to meet the collective needs of new workers that can give them voice—and these new forms of representation must be able to financially sustain the organizations that represent them. This new, sustainable model for workplace representation has yet to be found, but workers and unions are exploring what these new forms of worker representation will be. Last May, the AFL-CIO signed partnership agreements with the National Domestic Workers Alliance and the National Guestworkers Alliance, building on existing partnerships with worker centers around the country. These landmark agreements outline a framework for the groups to partner on issues of organizing, protecting statutory employment rights, and building long-term relationships among workers.

- The three-year old Car Wash campaign in Los Angeles netted gains for workers last August:
  - $1.25 million wage theft judgment against one firm whose owners were sentenced to a year in jail
  - Three firms recently signed union recognition agreements with USW.
- Hundreds of young workers and unions from across the nation converged in Minneapolis last fall for the second annual AFL-CIO Young Workers Conference to focus on building a collective vision for a new generation of working people in the country.
- In October, the AFL-CIO issued a charter to the Taxi Workers Alliance, which will serve as a national umbrella organization for organizing new unions of taxi workers.
- Working America, with more than 3 million members has been
  - Building on their successes
  - Identifying members' occupations and employers and finding neighborhood organizing targets
  - Partnering with unions to build membership
- The National Day Laborer Organizing Network has partnered with the AFL-CIO and the laborers to help day laborers protect their workplace rights.
- Restaurant Opportunities Centers operate in cities around the country to protect workers against wage theft.

These efforts should not be limited to workers on the edges of the economy but must include high-tech and professional workers who build careers on short-term project employment contracts. Over the longer term, these efforts will also need to go beyond protecting statutory rights and help workers advance their standard of living.

The fact of ever widening income inequality and the persistent lack of jobs for young workers has led to the Occupy Movement and the recognition that the 99% have power in numbers, if not direct financial influence, over their futures. The Occupy Movement can help inspire worker activism and reignite a vision of collective action. Unions are working alongside the 99% to help grow that movement.

I take great hope in these efforts of workers to form new types of organizations to protect themselves on the job, and the efforts of unions to assist them, and believe that the 2010s and 2020s will bring the beginnings of a new growth spurt fueled by a re-energized movement of worker collective action and self-organization in a vibrant labor movement and a strong LERA organization.