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THE LABOR MOVEMENT NEEDS A TWENTY-FIRST CENTURY COMMITTEE FOR INDUSTRIAL ORGANIZATION*

By Charles B. Craver**

I. INTRODUCTION

The American labor movement is in a moribund state. The percentage of private sector workers in unions has steadily declined from a high of 35 in 1954¹ to 7.9 today.² AFL-CIO leaders are exploring ways to reverse this ominous trend and reestablish the economic and political power of unions.³ In an effort to enhance organizing capacity, the AFL-CIO will eliminate 167 traditional jobs and create sixty-one new positions that will pertain to organizing and member mobilization.⁴

AFL-CIO President John Sweeney plans to dedicate more efforts to grass roots organizing. Union leaders from the Service Employees (SEIU), the United Food and Commercial Workers (UFCW), the clothing, restaurant, and hotel workers (UNITE-HERE), the Laborers, and the Teamsters have formed the Change to Win Coalition to generate inter-union cooperative organizing initiatives.⁵ SEIU and UFCW leaders also received authorization from their executive boards to disaffiliate from the AFL-CIO if they decide that such action is warranted. Despite the rhetoric of these two groups, it is clear that these labor officials plan to continue to use conventional organizing techniques to appeal to

new-age white-collar and service sector employees. Although the use of greater resources and more organizers may enable trade unions to slow their decline – or even achieve some slight gains – it should be clear that these activities are unlikely to provide a real solution.

American labor leaders are so focused on their planned future organizing efforts that they are unable to appreciate the potential lessons they could derive from their past endeavors. How did unions achieve a private sector membership rate of thirty five percent? In 1935, when the National Labor Relations Act (NLRA)⁶ first provided private sector employees outside the railroad industry with the statutorily protected right to form and join labor organizations and to bargain collectively through union representatives of their own choosing, there were only 3,584,000 union members comprising 13.2 percent of nonagricultural workforce participants.⁷ The vast majority of these workers were members of craft unions affiliated with the AFL. The traditional craft-oriented jurisdictions of most AFL unions did not fit the myriad of skilled, semi-skilled, and unskilled jobs associated with the mass production industries that were taking over the U.S. economy. AFL leaders initially sought ways to organize these manufacturing jobs and then divide the new union members among the appropriate existing craft unions.⁸ When they realized that this method would not work efficiently, a group of rogue leaders

decided to create industrial unions that were specifically designed to deal with these huge industries. They then proceeded to organize the automobile workers, the steel workers, the rubber workers, the electrical manufacturing workers, and employees at other production firms.⁹ By 1945, there were 14,322,000 union members, comprising 35.5 percent of nonagricultural workers.¹⁰

Contemporary AFL-CIO leaders face a situation quite similar to that confronting AFL officials in 1935. As a result of the transformation of the economy from a primarily industrial base to a white-collar and service base, existing unions no longer reflect the hopes and aspirations of new-age workers. When entities like the Service Employees Union try to organize well-educated academic personnel, these workers are often concerned about being represented by an organization that represents janitors. When conventional industrial or service sector unions try to appeal to health care, financial, or high-tech employees, these individuals are afraid their professional status will be diluted if they join entities that represent working class, blue-collar employees. To overcome these understandable concerns of these twenty-first century workers, AFL-CIO leaders should take the time to revisit their roots and appreciate how successfully they adapted to prior economic trends. If they can replicate their efforts of the 1930s and 1940s, they could again become significant economic forces.

II. PREVIOUS LABOR MOVEMENT TRANSFORMATIONS

Trade unions existed in the United States as early as the seventeenth century. These entities were guilds comprised of skilled artisans who produced and sold their own products.¹¹ They worked to preserve professional standards by prescribing apprenticeship rules and exercising control over the work of masters. It was not until 1792 that a continuing organization of wage earners was created. The Philadelphia shoemakers formed a trade union that existed for only a year.¹² Other craft unions were subsequently formed. While many of these initial entities functioned as social orders, they began to work for higher wages, shorter hours, the enforcement of apprenticeship rules, and a closed shop precluding the employment of nonmembers.¹³

The first national labor organization was not formed until 1834, when the National Trades Union (NTU) was created.¹⁴ The NTU constitution explicitly precluded political action, but it quickly became apparent that the organization's objectives could not all be attained without direct political involvement. Members thus formed the Working Men's Party, the first political party of workers in the world.¹⁵ This political group was not warmly received by existing political leaders who sought to divert the worker candidates into conventional party channels. The party sought to maintain its separate worker identity, but never became a

significant political force. It became defunct by 1931.

In 1866, seventy-seven delegates from different craft organizations created the National Labor Union (NLU).¹⁶ This was a loosely connected federation of national trade unions, city trades assemblies, local trade unions, and different reform organizations. NLU leaders opposed work stoppages, which they considered antithetical to the interests of working people.¹⁷ They lobbied for eight-hour statutes, equal pay for equal work regardless of the race or gender of those performing the work, and full employment rights for both women and blacks.¹⁸ Despite these egalitarian principles, William Sylvis, one of the NLU founders, suggested that women did not belong in the labor force.¹⁹ He also indicated that women who had to work should remain in traditional female occupations. Even though NLU officials advanced a national agenda, most member organizations were primarily interested in local issues. Following the death of Sylvis in 1869, the NLU began to decline, and it had become defunct by 1872.

In 1869, a group of Philadelphia tailors established the Noble Order of the Knights of Labor.²⁰ The leaders of this new organization recognized that the impotence that unions had previously exhibited was substantially affected by the lack of worker unity. They thought that economic and political power would come from a consolidation of all labor groups in a single organization that included both

skilled and unskilled workers. They even welcomed as members all workers regardless of their race or gender.²¹

The Knights of Labor adopted broad goals. They sought to secure for workers “a proper share of the wealth that they create; more leisure that belongs to them; more societal advantages; more of the benefits, privileges and emoluments of the world.”²² The Knights called for the creation of producer and consumer cooperatives that would advance worker interests.²³ It also lobbied for eight-hour laws and laws mandating equal pay for equal work regardless of gender. When the lobbying efforts did not prevail, the Knights resorted to more direct political action through which they ran candidates in many state races. Terence Powderly, one of the leaders of the Knights simultaneously served as mayor of Scranton, Pennsylvania.²⁴

One of the greatest achievements for the Knights came when they negotiated employment terms for employees of Jay Gould’s Wabash Railroad.²⁵ By 1886, membership in the Knights had declined. During a strike by employees of the McCormick Reaper Company, union leaders called for a rally in Haymarket Square in Chicago.²⁶ During the large demonstration, a bomb was tossed in the crowd which caused the death of seven persons, including several police officers. Public officials blamed the Knights for this incident, and by the late 1880s the

organization had lost its vitality.

By the late 1870s, American labor leaders began to appreciate the need for a large federation of trade unions. The Knights did not fulfill this objective, because of its expansive membership policy including skilled and unskilled workers. In 1881, following a meeting of labor officials in Terre Haute, Indiana, the Federation of Organized Trade and Labor Unions emerged.²⁷ In 1886, the Federation held a conference of trade unions in Columbus, Ohio, hoping to encourage the formation of trade assemblies and to solidify the trade union movement.²⁸ They transformed the Federation into the American Federation of Labor (AFL), with Samuel Gompers elected as the first AFL president.²⁹ Gompers led the AFL for thirty-eight years and ushered in what has become known as “business unionism” in the U.S.

Unlike the Knights, the AFL refused to admit to membership organizations that did not function primarily as trade unions, and it worked to preserve the craft exclusivity of each affiliate.³⁰ AFL leaders also refused to endorse the People’s Party, which the Knights supported.³¹ They preferred to work with candidates from the Democratic and Republican parties and used traditional lobbying efforts to further their legislative objectives. Although they were successful in procuring the enactment of various laws enhancing worker rights, conservative judges often

struck down these statutes as inappropriate interferences with contractual freedom.

By the end of the nineteenth century, AFL leaders began to realize that political efforts could not always generate lasting results. They decided that they could more effectively achieve worker advancements through the traditional collective bargaining process. Even though they continued to seek gains through the political process, they worked to negotiate contractual provisions that protected employee interests. As trade unions attained bargaining gains, employer opposition to labor grew.³² By the early 1900s, most corporate employers were completely opposed to unionization. Business organizations were concerned about the growing economic power of trade unions, and they encouraged their employer-members to thwart labor expansion.

Despite strong business opposition, union membership increased from 447,000 in 1897 to over 2,000,000 by 1904.³³ At this point, the AFL business union philosophy was challenged from the opposite direction. In June of 1905, a group of revolutionary activists convened a conference in Chicago which culminated in the formation of the Industrial Workers of the World (IWW).³⁴ The opening line of the IWW preamble declared that “[t]he working class and the employing class have nothing in common.”³⁵ IWW leaders decided to endorse both industrial and political action. Although the organization abandoned the

extreme anarchistic Socialists in its ranks, it did support Socialist Party candidates who ran for public office.

During World War I, IWW supported strikes in the lumber and copper industries created severe public attacks from persons who accused IWW leaders of sabotaging America's war efforts.³⁶ Many IWW members were prosecuted under newly-enacted criminal syndicalist statutes which made it illegal to advocate violence or sabotage as a means of industrial or political reform.³⁷ By the end of the 1920s, the IWW had ceased to be a significant labor entity.

Although the IWW had aggressively sought to organize female employees, most AFL affiliates were not supportive of women workers. From 1890 through 1910, the number of female labor force participants grew from four million to over eight million, but by 1910, only 73,000 women were trade union members.³⁸ As AFL leaders began to appreciate the threat posed by unorganized women to the negotiated wages of union men, they began to encourage affiliate unions to bring women into their ranks.³⁹ Nonetheless, the AFL did nothing to discourage gender restrictions imposed by member unions.⁴⁰

The dearth of female union members was not caused by a lack of interest by women in labor organizations. Representatives from the clerks, garment workers, and meat cutters unions created the separate Women's Trade Union League

(WTUL) at the 1903 AFL convention.⁴¹ Over the next fifteen years, WTUL affiliates, comprised primarily of women workers, grew substantially.

AFL unions treated minority workers as badly as they treated female employees.⁴² Despite efforts by Samuel Gompers to have affiliate craft unions eliminate constitutional provisions limiting membership to white males, many affiliates continued to exclude minority workers.⁴³ After the end of World War I, thousands of southern black workers migrated to northern metropolitan areas.⁴⁴ Since they were not allowed to obtain skilled jobs with employers that had closed shop agreements with racially restrictive craft unions, many were induced to work as strikebreakers when union personnel went on strike.⁴⁵ In subsequent years, many AFL unions eliminated their racially restrictive membership rules, but for some, it was not until the enactment of the Civil Rights Act of 1964 that the remaining affiliates finally discarded this practice.

When Congress enacted the NLRA in 1935, there were 3,584,000 union members in the U.S., most of whom were members of AFL craft unions.⁴⁶ The passage of this critical statute coincided with an important structural change taking place within the American labor movement that was designed to enhance the capacity of unions to organize workers in the emerging mass production industries. Traditional craft unions were still limiting membership to highly skilled

artisans, which made it difficult to organize the skilled, semiskilled, and unskilled individuals employed by manufacturing firms.⁴⁷ To overcome this structural deficiency, groups like the United Mine Workers, the Amalgamated Clothing Workers, the Pacific Coast Longshoremen, and the Teamsters began to unionize the heterogeneous people working in the coal, clothing, longshore, and trucking industries.⁴⁸ Other labor leaders began to recognize that such comprehensive organizing efforts would have to be employed if unions were going to successfully organize the individuals employed in the automobile, electrical manufacturing, rubber, steel, chemical, glass, and other mass production industries.

AFL officials initially sought to shoe-horn manufacturing employees into conventional craft unions. For each large industry, they established a federal labor union that would conduct a coordinated organizing campaign.⁴⁹ Once the workers had been induced to join the federal union, the skilled workers were assigned to the trade unions having jurisdiction over their respective crafts.

At the 1934 AFL convention, William Green and John L. Lewis proposed the creation of new industrial unions.⁵⁰ After acrimonious debate, this proposal was soundly defeated. The industrial union issue was reintroduced at the 1935 convention. Although the Resolutions Committee rejected the propriety of separate industrial unions, a strongly worded minority report eloquently stated

why new industrial organizations were needed.

The time has arrived when common sense demands [that] the organization policies of the American Federation of Labor must be molded to meet present-day needs. In the great mass-production industries and those in which the workers are composite mechanics, specialized and engaged upon classes of work which do not fully qualify them for craft union membership, industrial organization is the only solution. Continuous employment, economic security and the ability to protect the individual worker depends upon organization upon industrial lines.⁵¹

When Carpenters Union President William Hutcheson objected to the presentation by United Mine Workers President John L. Lewis in support of new industrial unions, fist-fights resulted and the proposal was again rejected.⁵²

Following the 1935 convention, officers from the United Mine Workers, the International Typographical Workers, the Amalgamated Clothing Workers, the International Ladies Garment Workers, the United Textile Workers, the Oil Field, Gas Well, and Refining Workers, the United Hatters, Cap, and Millinery Workers, and the Mine, Mill, and Smelter Workers met in Washington, D.C., to create the Committee for Industrial Organization.⁵³

The Committee for Industrial Organization created a series of specific organizing committees pertaining to the steel, textile, automobile, rubber, chemical, shipping, and electronics industries. AFL President Green contacted the

leaders of the Committee for Industrial Organization and expressed his “feelings of apprehension over the grave consequences which might follow from the formation of [such an industrial union] organization within the American Federation of Labor.”⁵⁴ Although the leaders of the Committee for Industrial Organization indicated that they did not intend to infringe the jurisdictional coverage of existing AFL affiliates, they decided to continue their industrial organizing. When Green demanded that they dissolve the different industry organizing committees, they ignored his directive.⁵⁵

At the 1937 AFL convention, trade union leaders expressed their concern that the Committee for Industrial Organization was already granting charters to industrial unions that would evolve from the specific industry organizing committees that had been established.⁵⁶ Convention delegates authorized the AFL Executive Committee to revoke the charters of any AFL affiliates that engaged in “dual unionism” by supporting these industrial union efforts. In November of 1938, the unions participating in the Committee for Industrial Organization formally withdrew from the AFL and formed the Congress of Industrial Organizations (CIO).⁵⁷ During the following two decades, AFL craft unions and CIO industrial unions competed with one another to organize the workers employed in the mass production industries.

Most of the industries organized by the CIO unions employed numerous minority and female workers. The CIO affiliates welcomed these individuals into their ranks and worked hard to advance their employment interests. The Women's Trade Union League enthusiastically supported the organizing efforts of these industrial unions, because they appreciated the desire of female employees to obtain union representation.

The competition between AFL craft unions and CIO industrial unions generated substantial representational achievements. Union membership expanded from under fifteen percent of nonagricultural workers in 1935 to over thirty-five percent by the mid-1950s.⁵⁸ By this time, corporate leaders had become concerned about the diminishing profits caused by the increased labor costs associated with unionization and the collective bargaining process.⁵⁹ As a result, an expanding number of unorganized firms redoubled their efforts to prevent the unionization of their employees.

Business leaders decided to resort to political activity in an effort to curtail the rights of labor organizations and their members. In 1947, they induced the conservative Eightieth Congress to enact the Labor Management Relations Act (LMRA)⁶⁰ amendments which created union unfair labor practices and specifically limited secondary activity by unions engaged in bargaining disputes. The LMRA

amendments deprived labor of the ability to control the supply of labor. Under the original NLRA, representative labor organizations could negotiate closed shop union security agreements which required employers to hire only union members. Individuals denied union membership were simply not eligible for employment. The LMRA changed this by providing that new employee “membership” in representative unions could not be mandated until after their thirtieth day of employment.⁶¹ In addition, “membership” meant only “financial core” membership – employees had to tender the initiation fee and the monthly dues, but they did not have to become actual union members.⁶²

Business groups induced Congress to further narrow worker and union rights in the 1959 Labor Management Reporting and disclosure Act (LMRDA)⁶³ amendments to the NLRA which expanded the scope of proscribed secondary activity and outlawed many forms of organizational and recognitional picketing.⁶⁴ The LMRDA also regulated internal union affairs. It required annual financial reports, and imposed fiduciary obligations on labor officials.⁶⁵

Despite the organizing achievements of CIO affiliates and the continued vitality of AFL unions, labor leaders did not like the overt competition between AFL and CIO entities. Throughout the 1940s, AFL President Green and CIO President Murray explored ways to unite their respective member unions, but they

were unable to agree upon ways to resolve jurisdictional issues.⁶⁶ In November of 1952, both Green and Murray passed away, and George Meany became AFL President and Walter Reuther became CIO President.⁶⁷ They worked hard to form a single labor federation. In December of 1955, the merger of AFL and CIO unions was finally achieved,⁶⁸ reuniting labor organizations with over fifteen million members. It was agreed that unions with overlapping craft jurisdictions would be encouraged to merge, and that independent CIO industrial unions would be permitted to maintain their separate industry-specific identities.

Although the reunited AFL-CIO decided not to form a separate labor party, the labor movement did exert substantial political influence.⁶⁹ Political action committees contributed considerable financial support to individuals supportive of worker rights. AFL-CIO affiliates lobbied in favor of social legislation designed to protect employee rights. Some of the beneficial enactments that received labor support include the Equal Pay Act of 1963,⁷⁰ precluding compensation differentials between men and women performing equal work, Title VII of the Civil Rights Act of 1964,⁷¹ prohibiting employment discrimination based upon race, color, religion, sex, or national origin, the Age Discrimination in Employment Act of 1967,⁷² prohibiting employment discrimination against individuals forty and older, the Occupational Safety and Health Act of 1970,⁷³

protecting the employment environments of workers, the Employee Retirement Income Security Act of 1974,⁷⁴ safeguarding employee pension and welfare benefits, and the American's with Disabilities Act,⁷⁵ enhancing the employment rights of individuals with significant disabilities. Organized labor also lobbied in favor of employee rights under worker and unemployment compensation statutes, and a myriad of other laws designed to further worker interests.

Business opposition to unions grew exponentially during the inflationary years of the 1970s, as cost-of-living adjustment clauses in bargaining agreements required employers to increase wage levels with rising consumer prices.

Companies began to work diligently to reduce labor costs. Some transferred production to lower wage areas of the U.S. or to other countries, while others demanded concession bargaining that forced unions to agree to wage and benefit reductions. Labor organizations were not only being challenged by these developments, but also by significant demographic, technological, industrial, and international changes which hastened the loss of union employment opportunities.

From the mid-1950s through 1980, union membership increased from 17,000,000 to 22,000,000, but the percentage of nonagricultural labor force participants actually declined from 35 to 23 since the union growth did not keep pace with the labor force growth.⁷⁶ During the 1980s and 1990s, the position of

organized labor declined in both absolute terms and as a percentage of the nonagricultural labor force. By 1990, there were only 16,740,000 trade union members in the U.S., comprising a mere 16.1 percent of labor force participants.⁷⁷ Today, there are only 15,470,000 union members, comprising 12.5 percent of labor force participants.⁷⁸ This figure masks the true decline in private sector membership, since it includes the 36.4 percent of government personnel who are union members. When only private sector workers are considered, the number of union members falls to an anemic 8,205,000 consisting of 7.9 percent of employed persons.⁷⁹

Various factors have contributed to the decline in private union membership.⁸⁰ The changing composition and geographical distribution of labor force participants has eroded traditional union strength. Female labor force participation has increased dramatically over the past thirty years from approximately forty-five percent to almost sixty percent.⁸¹ Despite the growth in female labor force participation, however, the vast majority of women continue to be employed in four lower-wage job categories: clerical, health and education, domestic service, and “peripheral industries,” including light manufacturing and retail trade.⁸² These are areas in which unions have not achieved substantial organizational strength. They will have to do so if they hope to expand female

membership.

The gender gap between the earnings of females and males has narrowed in recent years, with the median wages of women increasing from 63.1 percent of the median wages of men in 1973 to 81 percent by 2003,⁸³ but women have a ways to go before they achieve compensation parity. Some labor organizations have worked to alleviate this differential through both legal actions and the collective bargaining process. To the extent unions demonstrate their commitment to the elimination of gender-based inequalities, they can encourage female workers to consider the benefits of unionization.

The labor force is becoming increasingly non-white. The percentage of Hispanic workers is expected to rise from 7.4 in 1988 to 12.7 by 2008.⁸⁴ Asian and African-American participation is expected to increase similarly.⁸⁵ These are groups unions have not historically found easy to organize, in part because of past labor exclusionary practices – especially among traditional craft unions.

Another momentous labor force change concerns the impact of an aging post-war baby boom generation. While only twenty percent of Americans were fifty-five and older in the late 1980s,⁸⁶ by 2030 such individuals will constitute almost one third of the general population.⁸⁷ People sixty-five and older will comprise about fourteen percent of the population by 2010 and over twenty

percent by 2030.⁸⁸ Many of these people will continue to work either by personal choice or economic necessity. Some will work full-time, while others fill part-time positions. Older, part-time workers have not been historically inclined to seek union representation. As more of these persons view their employment situations as long-term, they may become more receptive to appropriate union appeals.

Although most workers have resisted technological advances, especially those that threatened their job security, such developments have contributed to the erosion of union strength. Business firms are constantly searching for ways to streamline the production process or their service capabilities, both to reduce labor costs and to enhance product or service quality. We have witnessed extraordinary industrial developments over the past century. Perhaps the most remarkable aspect of these technological changes has concerned the accelerating rate of change. Although it took fifty-six years (1820-76) to develop the telephone, thirty-five years (1867-1902) to generate the radio, and thirteen years (1923-36) to invent the television, it took only five years (1948-53) to create the transistor.⁸⁹ This voracious developmental process will undoubtedly continue, as unimagined technological advancements significantly transform future employment environments. Robotics are an integral part of most manufacturing facilities today. Most travelers no longer talk to airline personnel when they obtain boarding

passes; they insert their credit cards, select their seats, and withdraw their passes. Grocery store shoppers are increasingly being checked out by automated scanners that add up the total due and take credit cards or cash payments. Most fast-food chains use automated devices to cook different items to minimize their dependency on human beings.

The continued substitution of capital-intensive technology for traditional blue-collar production workers will further erode the traditional membership base of industrial unions.⁹⁰ These developments have already depleted the ranks of major unions like the Steelworkers, the Auto Workers, the Electrical Workers, and the Chemical Workers. As robots displace service sector and retail personnel, the Retail Clerks and the Service Employee unions will sustain the loss of many jobs.

As blue-collar manufacturing jobs have declined, we have witnessed significant growth in white-collar and service occupations.⁹¹ Between 1900 and today, the proportion of the labor force comprised of white-collar positions grew from one-fourth to three-fourths.⁹² These white-collar personnel will probably continue to identify more with management than with labor, making it difficult for traditional unions to organize them.

During the twentieth century, most firms hired individuals to work on a relatively on-going basis. It was not unusual for people to work for the same

company for many years. In recent years, the nature of employment relationships has been changing.⁹³ Many positions are short-term, and workers are expected to change jobs frequently. Firms increasingly rely on temporary employment agencies, like Manpower, Inc., to satisfy their flexible employment needs. These “permatemps”⁹⁴ do the work of previously long-term employees, but they have more tenuous relationships to the firms for which they are working. They are not sure whether they should identify more with the regular employees of the borrowing firm or with the other persons working for the temporary employment agency that directly pays their wages and benefits.

Globalization has also had a substantial impact on the employment opportunities and compensation levels of American workers.⁹⁵ Large corporations are no longer ethnocentric entities with ties to particular nations. They are increasingly becoming geocentric, with operations in different countries around the world. In their efforts to maximize shareholder returns, they constantly search for lower-cost labor. When it is more efficient to have labor-intensive tasks performed by workers in low-wage emerging nations, they establish factories in those areas.⁹⁶ Huge retailers like Wal-Mart strongly encourage their major goods suppliers to open factories in China to enable them to keep product costs low. It is extremely difficult to purchase electrical products today that have been

manufactured entirely in the U.S. Almost all electrical items have had their parts produced in countries like China or Malaysia, even if the parts were finally assembled in America. It is similarly difficult to find clothing or sporting goods produced within the U.S.

It is amazing how many personal services are now conducted abroad. Many toll-free, help-line numbers are serviced by persons in India or Ireland. CAT-scans and X-rays are now being read electronically by individuals in India. I have been told that some international law firms use lawyers in India to carry out legal research that used to be done by American attorneys or legal assistants.

Accounting firms are similarly employing low-cost foreign accountants to perform professional services. Computer experts in Bangalore can develop computer software programs for companies at one-tenth the cost of American programmers.

American labor organizations are feeling significant pressure from international business firms. If these unions seek to protect the wages and benefits enjoyed by U.S. workers, they risk the transfer of their positions to low-cost countries around the world. If they give in to corporate demands that they reduce labor costs, they generate employee dissatisfaction that makes the affected employees wonder why they bother to remain union supporters.

Corporate employers have become increasingly opposed to unions. They

regularly retain the services of labor relations consultants or aggressive law firms to oppose union organizing campaigns. Employers may post anti-union messages on firm bulletin boards, conduct “captive audience speeches” which employees may be required to attend during which they urge workers to reject unionization, and have supervisors talk to small groups of workers about the negative effects of organization.⁹⁷ Although employers may not threaten workers about the possible adverse effects of unionization, they may make “predictions” regarding the economic consequences that are likely to result from increased labor costs such as the loss of jobs and the relocation of current facilities.⁹⁸ It is thus easy for employers to chill employee enthusiasm for organizing activities.

One last factor of a sociological nature causes many workers to hesitate to join labor organizations. The vast majority of Americans consider themselves to be “middle class.” Most believe that upward mobility is available to anyone willing to work hard and strive for success. Stories are told about individuals who developed special skills or obtained advanced education and moved up the socio-economic ladder. Persons who are unable to achieve economic success only have themselves to blame for their failures.⁹⁹

Although Americans can accept the thought of being lower middle-class, they have an aversion to the possibility of becoming lower class.¹⁰⁰ The media and

the business community have repeatedly portrayed union members as “working class,” with the implication that “working class” equates to “lower class.”¹⁰¹ Most middle- and upper-class Americans think of union members as bigoted and semiliterate. Television and newspaper reporters treat wrongdoing by labor and business leaders quite differently. When labor officials misappropriate thousands of dollars for themselves, they are charged with embezzlement and sent to regular prisons for a number of years. When corporate officials cheat shareholders and employees out of tens of millions of dollars in company worth or pension fund money, they are charged with white-collar offenses and sent to minimum-security facilities for a few months.

Class-based propaganda has been especially persuasive with respect to white-collar personnel. As the U.S. has been transformed from a production economy into a white-collar, service society, corporate leaders have subtly suggested to lower level management workers that they have more in common with their highly paid superiors than they do with their blue-collar compatriots.¹⁰² Whenever labor unions begin to organize banking, insurance, health care, computer processing, and similar industries, the affected employers disseminate anti-union literature suggesting that persons employed in such white-collar occupations will lose their professional status if they succumb to unionization.

Business leaders often suggest that unions are antiquated institutions that no longer provide essential services. They believe that more humane employment policies and generous compensation packages make labor organizations obsolete. On the other hand, most contemporary employees are not satisfied with their working conditions. They increasingly realize how tenuous their continuing employment relationships are, and they feel that their respective employers have almost no interest in their future careers.¹⁰³ These firms utilize their services only to the extent they cannot substitute permatemps, robots, or foreign workers to perform their tasks for less money.

A recent study by Professors Richard Freeman and Joel Rogers found that 87 percent of workers would still like some form of collective influence with respect to firm decisions that affect their employment circumstances.¹⁰⁴ They realize that as individuals they possess no meaningful bargaining power vis-a-vis their corporate employers. They merely have the “exit voice” – *i.e.*, they can depart from their present employers if they are dissatisfied with their working conditions. Since it is not easy for people to locate better employment elsewhere, given the declining impact of labor organizations, they appreciate the fact they need a collective voice to have any influence over their basic employment conditions. On the other hand, many of the people who would like representation

would prefer to have less adversarial labor-management relationships.¹⁰⁵

III. CREATING NEW UNIONS TO ORGANIZE NON-UNION OCCUPATIONS

Some of the largest American industries that perform services primarily within the U.S. remain unorganized. These include health care, finance, insurance, hard-ware and soft-ware computer producers, retail stores, and fast food chains. Labor leaders realize that they must appeal to workers in these twenty-first century industries if unions are to remain viable institutions, but they do not agree upon the proper approach. AFL-CIO officials have suggested modest changes designed to enhance the organizing capabilities of current affiliates. Other labor leaders have proposed more dramatic changes.

AFL-CIO President John Sweeney recently recommended that half of the sixty-one cent per member per month tax that affiliate unions pay to the AFL-CIO for political and grassroots mobilization be earmarked for organizing activities.¹⁰⁶ He also proposed that up to \$15 million in rebates be provided to affiliate unions that devote thirty percent of their budget to organizing, have formally trained organizers, and create strategic plans to organize their core industries. Although these plans were approved by the AFL-CIO Executive Committee at its March 2005 meetings in Las Vegas, the Committee defeated a proposal by Teamsters

Union President James Hoffa that called for a fifty percent rebate of the sixty-one cent per capita tax to unions that commit either ten percent of their budgets or \$2 million to organizing their core industries.¹⁰⁷

Service Employees (SEIU) President Andrew Stern believes that union fragmentation has undermined labor movement strength. He has suggested that the current AFL-CIO affiliate unions be consolidated into twenty or fewer larger entities, by requiring smaller unions to merge with one another to create more expansive unions.¹⁰⁸ He would designate up to three lead unions for each major industry that would compete with each other to organize targeted occupations. Special funds should also be set aside to target firms like Wal-Mart that have worked diligently to avoid unionization.

Union officials from the SEIU, UFCW, UNITE-HERE, the Laborers, and the Teamsters recently formed the Change to Win Coalition which they hope will stir more expansive changes.¹⁰⁹ They hope to further the suggestions of President Stern and to induce AFL-CIO leaders to devote a greater percentage of union funds to organizing efforts. They also believe the AFL-CIO created ULLICO, primarily an insurance provider, should be converted into a broad-based financial services firm that would assist all workers with their financial planning.¹¹⁰

Although the AFL-CIO leaders and the union officials who created the New

Unity Partnership are endeavoring to reverse the declining fortunes that labor organizations have experienced over the past twenty-five years, their efforts are insufficient. This fact was recently acknowledged by labor studies professors Dorothy Sue Cobble of Rutgers University and Richard Hurd of Cornell University who spoke at a meeting of the Labor and Employment Relations Association in Philadelphia.¹¹¹ Professor Cobble noted that labor unions thrived when AFL craft unions and CIO industrial unions competed with one another to organize the workers in the mass production industries from 1935 through 1955.¹¹² While the expenditure of more money on organizing campaigns today would undoubtedly generate a few more union victories in Labor Board representation elections, this approach would be unlikely to produce the dramatic results unions must achieve if they hope to regain their once vaulted status.

Union leaders are unwilling to think outside the box. They are trying to use twentieth century institutions to deal with twenty-first century circumstances. They hope to use existing old-age unions to appeal to new-age workers. Despite the excellent reputations of many existing unions and their historical organizing successes, they are not apt to enthrone white-collar and professional personnel in contemporary occupations. AFL craft unions learned this lesson in the 1930s, when they tried to maintain strict homogeneous craft jurisdictions while trying to

organize heterogeneous mass production occupations. It is time for AFL-CIO leaders to acknowledge that they are trying to do the same thing now with respect to new-age workers.

When unions like the Teamsters or the SEIU organize highly educated academic personnel or health care professionals, they are met with extreme skepticism. How can organizations that represent truck drivers and janitors understand and advance the interests of professional workers? Won't individuals who join such trade unions undermine their professional status – and risk being viewed as “working class”? Similar difficulties will be encountered if conventional craft or industrial unions seek to represent white-collar personnel in finance, insurance, or computer fields.

Existing AFL-CIO affiliates can succeed if they work within their existing jurisdictions. For example, the Retail Clerks and the SEIU should focus their efforts on retail clerks at grocery and department stores. A concerted plan to organize Wal-Mart and similar targets could succeed if sufficient funds and organizers were dedicated to this substantial task. In this regard, the recently articulated plans of people like John Sweeney, James Hoffa, and Andrew Stern could prove decisive. Coordinated efforts by all AFL-CIO affiliates to assist the union(s) chosen to target Wal-Mart employees should be used. Most Wal-Mart

personnel are underpaid compared to their union counterparts at firms like Costco, and their fringe benefits are less generous. It takes months before regular Wal-Mart employees become eligible for health care coverage, and a year or two before part-time workers qualify. Employee premiums exceed \$1000 per year, which is high for people earning what they make.¹¹³ An all-out union movement undertaken on a region-by-region basis – beginning with the geographical areas most likely to support labor organizations – could lead to inroads that could culminate in the organization of most of the 1.2 million persons employed by Wal-Mart.

To reach the employees at firms like Wal-Mart, unions need to make better use of the Internet. Although employers may restrict employee e-mail use to firm-related business, almost none do so. If they allow workers to use e-mail for personal and nonbusiness purposes, they may not limit employee electronic communications during their non-work time pertaining to union organizing issues.¹¹⁴ Unions must establish flashy homepages that workers can visit to learn about organizing efforts, and they have to send e-mail messages to all of the employees of targeted firms.¹¹⁵ They should also encourage firm employees who support the union campaign to communicate with their fellow workers – during their non-work times – regarding their desire for union representation. These communication channels are inexpensive and effective. No longer do organizers

have to use phone calls, home mailings, and off-work meetings to reach the individuals they are trying to unionize.

An entirely different approach, however, must be used with respect to new-age workers in academics, health care, finance, insurance, and computers. It is in these areas that union officials must learn from the previous efforts of the Committee for Industrial Organizing. New labor organizations must be created that will be specifically designed to reflect the hopes and aspirations of persons employed in these industries. Specific entities must be established for each major group. In addition, to avoid the professional stigma associated with conventional trade “unions,”¹¹⁶ these institutions should be characterized as professional associations – like the British Medical Association which represents physicians employed by the government-operated health service in Great Britain. This necessity was previously acknowledged by entities used to organize teachers and nurses.

When school teachers first contemplated collectivization to enhance their economic and professional interests during government cut-backs, they were initially attracted to the National Education Association which was then a professional organization opened to all teachers and administrators. Many teachers felt comfortable using this association to further their representational interests

than they would have joining the American Federation of Teachers, the AFL-CIO affiliate. I can recall talking with NEA members who were highly offended when I referred to that entity as a “labor union.” They thought it was unprofessional for teachers to join a trade union, and clearly thought their occupational status would be undermined by such action. Similar circumstances influenced nurses who were comfortable seeking collective action through the American Nurses Association, rather than through an organization with the word “union” in its name.

Just as innovative AFL leaders established the Committee for Industrial Organization in the mid-1930s, recognizing that AFL craft unions could not effectively reach workers in the mass production industries, current AFL-CIO officials should establish a Committee for Professional Organization that would create new affiliates with jurisdictions pertaining to new-age occupations. The Association of College Professionals could be used to organize the growing number of adjunct professors who are employed by many institutions on a relatively long-term basis to teach courses previously taught by regular faculty members. This entity could also seek to organize graduate teaching and research assistants. Although the Labor Board held in the *New York University* case¹¹⁷ that graduate teaching assistants are “employees” covered by the NLRA,¹¹⁸ in the more recent *Brown University* decision,¹¹⁹ they found such individuals to be excluded

“students.” Even without a new Board decision, this association could work to represent such individuals at colleges willing to recognize their right to organize on a voluntary basis. If a court of appeals or a new Labor Board majority were to return to the *New York University* approach, these individuals would enjoy full statutory rights. This association could also organize thousands of persons teaching at community colleges and state universities covered by separate public sector labor relations laws. To be successful, this organization would have to be led by people who understand and reflect the hopes and aspirations of professional educators, and the organizers employed to reach these persons would have to be specifically trained to reflect the values of the teachers being targeted. To provide this group with a solid economic and administrative foundation, it could become a semi-independent branch of the American Federation of Teachers (AFT) which represents thousands of public school teachers throughout the U.S.

An Association of Health Care Professionals could be established to organize nurses, staff professionals, and even physicians employed by health maintenance organizations, public and private hospitals, and similar institutions. Despite Supreme Court decisions excluding all registered nurses and licensed practical nurses who direct the work of orderlies as part of their regular duties,¹²⁰ the Labor Board has sought to distinguish between nurses who really do supervise

the work of other persons and those whose positions necessitate the giving of routine directives to others whom they do not have the authority to hire or discipline. As larger for-profit firms take over more health care institutions, including many university and community hospitals, the nurses and physicians may feel more like rank-and-file employees than traditional health care professionals. Patient care becomes secondary to cost-cutting considerations. Individual nurses and doctors affected by these changes may depart if they are no longer satisfied with their personal situations. As they begin to appreciate the need for a collective voice that could influence their basic employment conditions, they may contemplate representation by an Association of Health Care Professionals.

The Association of Finance Professionals could be created to organize people working for commercial banks, mortgage companies, brokerage firms, and similar financial institutions. As these individuals are forced to work longer hours and are affected by competition from workers in low cost countries like India, they may become more receptive to unionization. The Association could tailor its appeals to their particular needs by emphasizing the need for employer-provided training courses designed to keep worker skills current with respect to the latest computer technologies. The Association could also address the need to limit the outsourcing of jobs to foreign workers and/or to provide for retraining and

relocation opportunities for persons displaced by outsourcing decisions. Profit sharing compensation packages could also be considered to allow employees to share directly in the financial gains they help to generate.

The expansive insurance industry has not been especially receptive to union appeals. I think this is due in large part to the apprehension insurance employees have to being viewed as working class or blue-collar. If the AFL-CIO established the Association of Insurance Professionals and hired educated organizers who could reflect the professional values of insurance industry personnel, significant inroads could be achieved. The insurance business is highly competitive, and firms are constantly trying to devise ways to reduce labor costs and to increase worker productivity. Employees affected by these business practices should be susceptible to unionization – so long as they do not think they are actually joining a “union.” Association organizers should emphasize the need for on-going professional training to keep their skills up to date. Organizers should also look for ways to limit outsourcing to foreign workers and the use of permatemps to keep labor costs down.

During the explosive high-tech grown of the early 1990s, Silicon Valley businesses flourished and many capable workers became wealthy. Almost none of these highly mobile hardware and software specialists contemplated

collectivization. Once the high-tech bubble burst and many skilled professionals lost their jobs, many began to appreciate the fact that their individual bargaining power was minimal. An Association of Computer Professionals could be formed to convince these high tech employees how much they could gain through concerted action. This Association could focus on professional training programs, and ways to minimize the adverse consequences associated with industry vicissitudes. It could also work to minimize the impact of foreign outsourcing.

The associations covering health care, financial, insurance, and technology professionals could be semi-autonomous outgrowths of the SEIU. This arrangement would provide these new entities with strong leadership, effective legal assistance, and a solid financial base. Their status as separate professional associations would be critical, however, if they hope to appeal to new-age workers in these industries in ways that old-line unions could not.

Organizers working for these new professional associations would have to approach targeted employees carefully. They would have to emphasize that almost all American businesses have created professional associations to further their economic interests. Large groups like the U.S. Chamber of Commerce and the National Association of Manufacturers speak for expansive industries, while narrower entities represent the plastics, chemical, pharmaceutical, and similar

industrial groups. The American Bar Association furthers the interests of attorneys, while the American Medical Association works to advance doctor interests. Workers are the only major group without collective representation. AFL-CIO leaders have to demonstrate to new-age employees how impotent they are when acting individually. They must either accept the terms unilaterally set by their employers or look for positions elsewhere.

Professional association organizers must note that the shareholders who get together to form corporate firms certainly do not view collectivization as unprofessional or working class. These are quintessential capitalists who have combined their economic efforts to enhance their personal wealth and economic power. As Congress recognized in the original NLRA, individual employees lack the ability to counteract corporate power except through united efforts.¹²¹

Professional association leaders must also acknowledge that many new-age workers do not wish to join organizations that plan to foster adversarial relationships with their employers.¹²² They would prefer more cooperative interactions. In a highly competitive global economy, employee representatives must work with U.S. firms to create successful businesses. They need not, however, do this at the expense of employees.

Over the past thirty years, shareholder wealth has grown steadily as the

Dow-Jones average has risen from under \$1000 to over \$10,000.¹²³ Corporate CEOs who used to earn forty times what regular workers earned now receive compensation packages almost five hundred times what typical employees receive.¹²⁴ Real employee compensation has barely kept pace with inflation. Generous health coverage has been diluted or terminated entirely, just as beneficial defined benefit pension plans have been replaced with less generous defined contribution plans or nothing. Why have regular workers fared so poorly? Because of their lack of a collective voice.

As the union density rate has fallen from the late 1950s to today, the rights of individual employees have declined. If unions were to virtually disappear, workers would be completely powerless. Corporate employers would dictate their parsimonious terms of employment. Business organizations have greatly expanded their power during the same period through both commercial endeavors and political action. If AFL-CIO leaders could convince American workers that they need a similar collective voice to advance their interests, they could make inroads not seen since the heyday of competition between AFL craft unions and CIO industrial unions. If a Committee for Professional Organization could be created to establish new professional associations designed to appeal to new-age employees in specific industries, these new entities could revitalize the

labor movement. Just as industrial unions had to be created to organize mass production industries in the mid-1930s, new professional associations must be created today to appeal to the millions of unorganized white-collar and professional employees in our post-industrial economy.

What else could union organizers do to appeal to twenty-first century workers? It is time to cease focusing on issues that were relevant when most targeted employees were white males who were the principal family wage earners. Today, spouses and significant others contribute to family economic viability. Almost half of labor force participants are women. A growing percentage consist of minority group members. Many are over fifty or even sixty. Studies indicate that both female and minority employees are receptive to collectivization.¹²⁵ As more older persons retain full or part time jobs following their retirement from other positions, many will be concerned about their basic wages and the health care coverage available to supplement Medicare. They might begin to appreciate the gains they could achieve through unionization. Union organizers need to appeal to these growing labor force participants. First, they should establish relationships with existing special interest organizations like 9-to-5, the National Organization for Women (NOW), MALDEF, the NAACP, and AARP. Local community groups may also be good organizing partners. Labor leaders have to

convince these entities that they really plan to advance the particular interests of these members.¹²⁶ They could use their existing affiliations with organizations like the Coalition of Black Trade Unionists, the Labor Council on Latin American Advancement, the Coalition of Labor Union Women, the Asian Pacific American Labor Alliance, and Pride at Work to advance their efforts to reach out to these diverse groups.¹²⁷

Women workers are more concerned about family obligations than many of their male cohorts. Far more single-parent families are headed by females than males. Unions need to discuss family leave policies, the availability of day care for young children, and job sharing for parents who wish to work less than full-time to spend more time with their children. Organizers must also emphasize efforts to further female advancement within business firms where managers are predominantly male. Compensation equity is another important issue, because so many women earn less than their comparable male colleagues.

Minority employees are similarly concerned about equal employment opportunity. Too many are in lower positions. Unions could work to obtain necessary job training to qualify people for advanced positions, and equal employment opportunity policies that will insure their fair treatment. Even though federal civil rights laws do not currently prohibit discrimination based upon sexual

orientation, unions should work to prohibit such pernicious discriminatory treatment against the millions of workers who are gay.

As the average age of labor force participants rises due to the impact of the post-war baby boom generation and Social Security benefits fail to keep pace with inflation due to this factor, more older workers will have to remain actively employed. Seniors who once considered their post-retirement positions of secondary importance will begin to rely upon the income from these jobs to supplement their retirement payments. As they view these positions as long term, many may contemplate unionization. Union organizers should talk about Medigap medical insurance to supplement decreasing Medicare coverage, long-term nursing home insurance, policies precluding discrimination against older workers, and similar issues of interest to senior employees.

A factor which makes it especially difficult for unions to organize U.S. workers – and to engage in interest group organizing – concerns the majority-rule concept incorporated in the NLRA. Under Section 9(a),¹²⁸ labor organizations selected by a majority of the employees within an appropriate bargaining unit become the exclusive bargaining agents for all of the individuals within that unit. What if a union is unable to attain majority status? The common wisdom would suggest that the labor organization would have to give up. In a recent book,

Professor Charles Morris¹²⁹ challenged this view. He examined the practices which existed just before and after the enactment of the NLRA in 1935 and noted that members-only bargaining was common during that period.. Many companies negotiated with labor organizations about the wages and benefits received by actual union members. He then carefully explores the legislative history and language of the NLRA and argues that Congress intended to oblige employers to bargain in good faith with labor organizations that do not have majority support on a members-only basis.

Union lawyers should explore Professor Morris' interpretation of the relevant NLRA provisions and look for ways to test his theories before the Labor Board and the courts. If they could generate judicial recognition of this critical legal theory, it would allow unions to gain footholds on a members-only basis in many establishments in which they could not yet attain majority status. If these labor organizations successfully advanced the employment interests of their members, other employees would undoubtedly consider union membership. Once a majority of bargaining unit members supported the union's bargaining efforts, exclusive bargaining relationships could be created. If courts were to reject Professor Morris' statutory interpretation of current NLRA provisions, AFL-CIO leaders should lobby Congress for statutory changes that would formally recognize

this members-only bargaining right. Although business firms would undoubtedly oppose such legislative changes, if union officials could convince the vast majority of labor force participants to support their lobbying efforts, even moderate representatives might listen and be induced to vote for these NLRA modifications.

A members-only bargaining right would also further interest-group organizing. Where an employer has recognized a majority-designated union as the exclusive representative for its employees within a particular unit, a group purporting to speak for only minority employees would have no statutory rights. If the firm were to deal with such a minority entity, it would impermissibly derogate from the exclusive bargaining status of the majority union.¹³⁰ On the other hand, where no majority representative has been selected, if Professor Morris' thesis were accepted, AFL-CIO affiliates could join with MALDEF, NAACP, 9-to-5, NOW, AARP, and similar entities to demand bargaining rights on a members-only basis.¹³¹ Such joint ventures might focus exclusively on the rights of African-American, Hispanic, Asian, older, gay, or female workers, or it might alternatively be comprised primarily of such individuals but also work to advance the employment interests of other organization members who are not part of the primary group base.

Several similar identity-based labor organizations could simultaneously seek to negotiate on behalf of their respective members without contravening NLRA exclusivity principles, so long as none claimed majority support and sought exclusive bargaining rights. Although this could force a single employer to negotiate with several separate entities with respect to the employment terms applied to different workers within the same overall unit, such circumstances would not be unprecedented. Many business firms presently negotiate with different craft unions over the working conditions of electricians, plumbers, tool and die makers, and similar craft groups within their overall maintenance unit.¹³²

If different identity-based groups representing different workers at a single firm ultimately aggregated their support into a single organization with support among a majority of the workers within one unit, they could demand exclusive bargaining rights for all of the individuals employed in that unit. This result might make it easier for the employer, since it would only have to deal with one union, instead of three or four members-only organizations. This would also give the unified labor organization greater bargaining power, because it could threaten a work stoppage by all unit employees.¹³³ On the other hand, the different identity-based groups involved might not like to have their ethnic or gender identities submerged into a more expansive organization that might not be as sensitive to the

special interests of each unique group of workers.¹³⁴

IV. CONCLUSION

During the 1800s and early 1900s, most labor organizations were AFL unions with memberships limited to skilled craft workers. When the NLRA was enacted in 1935, AFL leaders sought to organize the mass production industries through federal labor unions that would then distribute the new members among the different craft affiliates. This was to be accomplished through the Committee for Industrial Organization. When innovative leaders suggested the establishment of industrial unions, their efforts were rebuffed. They then broke away from the AFL and formed the Congress of Industrial Organizations with unions designed to organize the steel, auto, rubber, and electrical manufacturing industries. The percentage of workers in unions grew rapidly from 13.2 percent of labor force participants to 35 percent by 1955 when the AFL and CIO unions reunited in the AFL-CIO. Thereafter, the union density rate began to decline. By 1980, 23 percent of labor force members were union members, and today only 12.5 percent are in such organizations. A mere 7.9 percent of private sector workers are union members.

During the past fifty years, union membership has been significantly affected by the transformation of the American economy from a mass production

society to a white-collar and service economy. Automation has caused the loss of many production and service jobs, and the use of permatemps and the outsourcing of work to low-wage workers in foreign countries have combined to displace millions of more employees. AFL-CIO leaders are endeavoring to develop new ways to organize new-age workers. They plan to spend more money on organizing and to devise new organizing strategies. They are unfortunately doing what AFL officials tried to do in the mid-1930s, when they sought to use craft unions to organize industrial workers.

The AFL-CIO needs to learn from its past successes. Instead of the old Committee for Industrial Organization, it needs to create a Committee for Professional Organization that will appeal to new-age workers in academics, health care, finance, insurance, and computers. These new entities should be called associations, instead of unions, to avoid the negative connotation most educated employees have about becoming union members. They also have to avoid anything that would undermine the professional image these workers have of themselves. Different entities must be created to cover new jurisdictions. The Association of University Professionals, the Association of Health Care Professionals, the Association of Finance Professionals, the Association of Insurance Professionals, and the Association of Computer Professionals should be

established to appeal to the educated individuals employed in these different sectors. These organizations would have to reflect the aspirations of the persons working in these fields, and seek to advance their professional goals.

Old and new unions should also seek to advance their interests by working with identity-based groups like MALDEF, NAACP, 9-to-5, and AARP to appeal to minority, female, senior, and gay employees. They might initially seek to accomplish their objective on a members-only basis, supporting the theory of Professor Morris that the current NLRA actually obliges employers to deal with unions that wish to represent employees on a members-only basis. When such entities perform well and gain support among a majority of workers within specific units, they could seek exclusive bargaining rights that would cover everyone within those units.

Unions are facing a life-or-death situation. If they continue to decline as they have over the past fifty years, they will soon become almost irrelevant organizations with no real economic power outside limited industries. On the other hand, if they can use a Committee for Professional Organization to create twenty-first century unions that will appeal to new-age white-collar and professional employees, they can again become formidable entities that can advance the rights of millions of workers who have not done well economically or emotionally over

the past few decades. To accomplish this result, AFL-CIO leaders must remember the lessons of the past and create new organizations similar to those established in the mid-1930s to deal with the challenging circumstances they faced then as a result of changes in the American economic system.

ENDNOTES

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1. See MICHAEL GOLDFIELD, THE DECLINE OF ORGANIZED LABOR IN THE UNITED STATES 10 Table 1 (1987).

2. See Daily Labor Report (B.N.A.) No. 18 (Jan. 28, 2005), at AA-1.

3. See Daily Labor Report (B.N.A.) No. 42 (Mar. 4, 2005), at AA-1.

4. See Daily Labor Report (B.N.A.) No. 85 (May 4, 2005), at A-11.

5. See Daily Labor Report (B.N.A.) No. 115 (June 16, 2005), at AA-1.

6. 49 Stat. 449 (1935). The NLRA, as amended, is codified at 29 U.S.C. §§ 151-169 (2000).

7. See MICHAEL GOLDFIELD, *supra* note 1, at 10 Table 1.

8. See PHILIP TAFT, ORGANIZED LABOR IN AMERICAN HISTORY 464-65 (1964).

9. See *id.* at 484-527.

10. See MICHAEL GOLDFIELD, *supra* note 1, at 10 Table 1.

11. See PHILIP TAFT, *supra* note 8, at 3-5.

12. See *id.* at 5.

13. See *id.* at 6-8.

14. See *id.* at 24-28.

15. See *id.* at 15-16.

16. See *id.* at 60.

17. See *id.* at 61.

18. *Id.*

19. See PHILIP S. FONER, *WOMEN AND THE AMERICAN LABOR MOVEMENT* 55 (1982).
20. See PHILIP TAFT, *supra* note 8, at 84-85.
21. See *id.* at 665.
22. PHILIP FONER, *supra* note 19, at 61.
23. See PHILIP TAFT, *supra* note 8, at 89.
24. See *id.* at 90.
25. See *id.* at 99-100.
26. See *id.* at 130-31.
27. See *id.* at 93-94.
28. See *id.* at 113.
29. See *id.* at 115-16.
30. See *id.* at 117-18.
31. See *id.* at 119.
32. See *id.* at 136-58.
33. See *id.* at 162.
34. See *id.* at 290.
35. *Id.*
36. See *id.* at 334-36.
37. See *id.* at 336-37.
38. See DONNA VAN RAAPHORST, *UNION MAIDS NOT WANTED: ORGANIZING DOMESTIC WORKERS 1870-1940* 165 (1988).
39. See PHILIP FONER, *supra* note 19 at 247.
40. See ALICE KESSLER-HARRIS, *OUT TO WORK* 157 (1982).
41. See PHILIP S. FONER, *supra* note 19, at 128-29.

42. See PHILIP TAFT, *supra* note 8, at 666-67.
43. See *id.* at 666.
44. See *id.* at 670-71.
45. See *id.* at 671.
46. See note 7, and accompanying text, *supra*.
47. See PHILIP TAFT, *supra* note 8, at 464-65.
48. *Id.*
49. *Id.*
50. See *id.* at 468-69.
51. PHILIP TAFT, THE A.F. OF L. FROM THE DEATH OF GOMPERS TO THE MERGER 141 (1959).
52. See PHILIP TAFT, *supra* note 8, at 471-72.
53. *Id.*
54. See *id.* at 472..
55. See *id.* at 472-79.
56. See *id.* at 480.
57. See *id.* at 528-29.
58. See PAUL WEILER, GOVERNING THE WORKPLACE 9 (1990).
59. Business experts estimated that the enactment of the NLRA and resulting unionization of millions of workers caused a 15.9 percent decline in shareholder wealth. See Craig Olson & Brian Becker, *The Effects of the NLRA on Stockholder Wealth in the 1930s*, 44 INDUS. & LAB. RELS. REV. 116 (Oct. 1990).
60. Pub. L. No. 80-101, 61 Stat. 136 (1947).
61. See 29 U.S.C. § 158(a)(3) (2000).
62. See *Union Starch & Ref. Co.*, 87 N.L.R.B. 779 (1949), *enforced*, 186 F.2d 1008 (7th Cir.), *cert. denied*, 342 U.S. 815 (1951).

63. Pub. L. No. 86-257, 73 Stat. 519 (1959).
64. *See* 29 U.S.C. §§ 158(b)(4) & (b)(7) (2000).
65. *See* 29 U.S.C. § 431 (2000).
66. *See* PHILIP TAFT, *supra* note 8, at 647-52.
67. *See id.* at 652-55.
68. *See id.* at 660-61.
69. *See id.* at 609-17.
70. 77 Stat. 56 (1963).
71. 78 Stat. 253 (1964).
72. 81 Stat. 602 (1967).
73. 84 Stat. 1590 (1970).
74. 88 Stat. 832 (1974).
75. 104 Stat. 327 (1990).
76. *See* MICHAEL GOLDFIELD, *supra* note 1, at 11 Table 2.
77. *See* Daily Labor Report (B.N.A.) No. 26 (Feb. 7, 1991), at B-8.
78. *See* Daily Labor Report No. 18 (Jan. 28, 2005), at AA-1.
79. *See id.* at E-4 Table 3. The other 7, 267,000 union members are federal, state, and local government employees.
80. *See* HOYT N. WHEELER, THE FUTURE OF THE AMERICAN LABOR MOVEMENT 12-13 (2002).
81. *See* LAWRENCE MISHEL, JARED BERNSTEIN & SILVIA ALLEGRETTO, THE STATE OF WORKING AMERICA 2004/2005 247 Figure 3R (2005); HOYT N. WHEELER, *supra* note 80, at 30-31.
82. *See* DIANE BALSER, SISTERHOOD AND SOLIDARITY 21 (1987).
83. *See id.* at 165-66.
84. *See* HOYT N. WHEELER, *supra* note 80, at 31.

85. *Id.*

86. *See* Staff of Senate Special Committee on Aging, 101st Congress, 1st Session, *Aging America: Trends and Projections* 8 (1988).

87. *See* B.N.A., *OLDER AMERICANS IN THE WORKFORCE: CHALLENGES AND SOLUTIONS* 5 (1987).

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89. *See* GILES RADICE, *THE INDUSTRIAL DEMOCRATE* 34 (1978).

90. *See* HOYT N. WHEELER, *supra* note 80, at 33-38.

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94. *See id.* at 68-70.

95. *See* HOYT N. WHEELER, *supra* note 80, at 25-27.

96. *See* KATHERINE V.W. STONE, *supra* note 93, at 100.

97. *See* *NLRB v. United Steelworkers*, 357 U.S. 357 (1958).

98. *See* *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

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101. *See id.* at 140-41.

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103. *See* KATHERINE V.W. STONE, *supra* note 93, at 68-72.

104. *See* RICHARD B. FREEMAN & JOEL ROGERS, *WHAT WORKERS WANT* 147 (1999).

105. *See id.* at 150-52.

106. See Daily Labor Report (B.N.A.) No. 42 (March 4, 2005), at AA-1.; Daily Labor Report (B.N.A.) No. 37 (Feb. 25, 2005), at AA-1.
107. See Daily Labor Report (B.N.A.) No. 42 (March 4, 2005), at AA-1.
108. See 176 Labor Relations Reporter (B.N.A.) (Jan. 10, 2005), at 103.
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111. See 176 Labor Relations Reporter (B.N.A.) (Jan. 17, 2005), at 126-27.
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113. See Abigail Goldman & Nancy Cleeland, *The Wal-Mart Effect*, Los Angeles Times, Nov. 23, 2003, available at <http://www.latimes.com/business/la-fi-walmart23nov2303,1,1465953.story?ctrack=1&cset=true>
114. See United Services Automobile Assn., 340 N.L.R.B. No. 90, 173 L.R.R.M. 1331 (2003); Electronic Data Systems Corp., 331 N.L.R.B. 343 (2000). See generally Christine Neylon O'Brien, *The Impact of Employer E-mail Policies on Employee Rights to Engage in Concerted Activities Protected by the National Labor Relations Act*, 106 DICK. L. REV. 573 (2002).
115. See Frederick D. Rapone, Jr., *This is Not Your Grandfather's Labor Union – or Is It? Exercising Section 7 Rights in the Cyberspace Age*, 39 DUQ. L. REV. 657 (2001); Martin H. Malin & Henry H. Perritt, *The National Labor Relations Act in Cyberspace: Union Organizing in Electronic Workplaces*, 49 KAN. L. REV. 1 (2000). See generally ARTHUR B. SHOSTAK, CYBER UNION: EMPOWERING LABOR THROUGH COMPUTER TECHNOLOGY (1999).
116. See RICHARD B. FREEMAN & JOEL ROGERS, *supra* note 104, at 150-51.
117. 332 N.L.R.B. 1205 (2000).
118. See also Boston Medical Center Corp., 330 N.L.R.B. 152 (1999) (holding that interns and residents at private hospitals constitute covered “employees”).
119. 342 N.L.R.B. No. 42, 175 L.R.R.M. 1089 (2004).
120. See NLRB v. Health Care & Retirement Corp., 511 U.S. 571 (1994) (nurses who direct work of less skilled aids or orderlies constitute “supervisors”); NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706 (2001) (registered nurses who use “ordinary professional or technical judgment” to direct the work of orderlies still excluded “supervisors” so long as these actions involve “independent judgment” on their part).

121. See 29 U.S.C. § 151 (2000), in which Congress noted “[t]he inequality of bargaining power between employees who do not possess full freedom of association . . . and employers who are organized in the corporate or other forms of ownership . . .”

122. See RICHARD FREEMAN & JOEL ROGERS, *supra* note 104, at 141-42.

123. See Floyd Norris, *With Bull Market Under Siege, Some Worry About Its Legacy*, N.Y. TIMES, Mar. 18, 2001, at 1.

124. See Jennifer Reingold, *Executive Pay*. BUS. WK., Apr. 17, 2000, at 110.

125. See James Medoff, *AFL-CIO Study on Public Image of Unions*, Daily Labor Report (B.N.A.) No. 247 (Dec. 24, 1984) at D-2.

126. In 2001, the AFL-CIO established the Alliance for Retired Americans which is designed to address issues of interest to retirees. See HOYT N. WHEELER, *supra* note 80, at 63. A similar Alliance of Older Workers could be created to work with the AARP to focus on topics of interest to senior labor force participants.

127. See Calvin William Sharpe, Marion G. Crain & Reuel E. Schiller, *The Story of Emporium Capwell: Civil Rights, Collective Action, and the Constraints of Union Power* in LABOR LAW STORIES 241, 277 (Laura J. Cooper & Catherine L. Fisk, eds. 2005).

128. 29 U.S.C. § 159(a) (2000).

129. CHARLES J. MORRIS, THE BLUE EAGLE AT WORK (2005).

130. See *Emporium Capwell Co. v. Western Addition Community Organ.*, 420 U.S. 50 (1975). See generally Norman L. Cantor, *Dissident Worker Action After The Emporium*, 29 RUTGERS L. REV. 35 (1975); Charles B. Craver, *Minority Action Versus Union Exclusivity: The Need to Harmonize NLRA and Title VII Policies*, 26 HASTINGS L.J. 1 (1974); Eileen Silverstein, *Union Decisions on Collective Bargaining Goals: A Proposal for Interest Group Participation*, 77 MICH. L. REV. 1485 (1979).

131. See generally Ruben J. Garcia, *New Voices at Work: Race and Gender Caucuses in the U.S. Labor Movement*, 54 HASTINGS L.J. 79 (2002); Marion Crain & Ken Matheny, “*Labor’s Divided Ranks*”: *Privilege and the United Front*, 84 CORNELL L. REV. 1542 (1999).

132. Each craft group would technically constitute a separate unit for bargaining purposes, but the overall situation within the maintenance department would be similar to what would occur if identity-based organizations bargained on a members-only basis for particular groups of employees within the same overall department.

133. See Marion Crain & Ken Matheny, *supra* note 119, at 1620-25.

134. Such a unified organization might endeavor to protect the special interests of each identity-based group by requiring the approval of negotiated agreements by a majority of the members of *each* identity-based group as part of the ratification process.