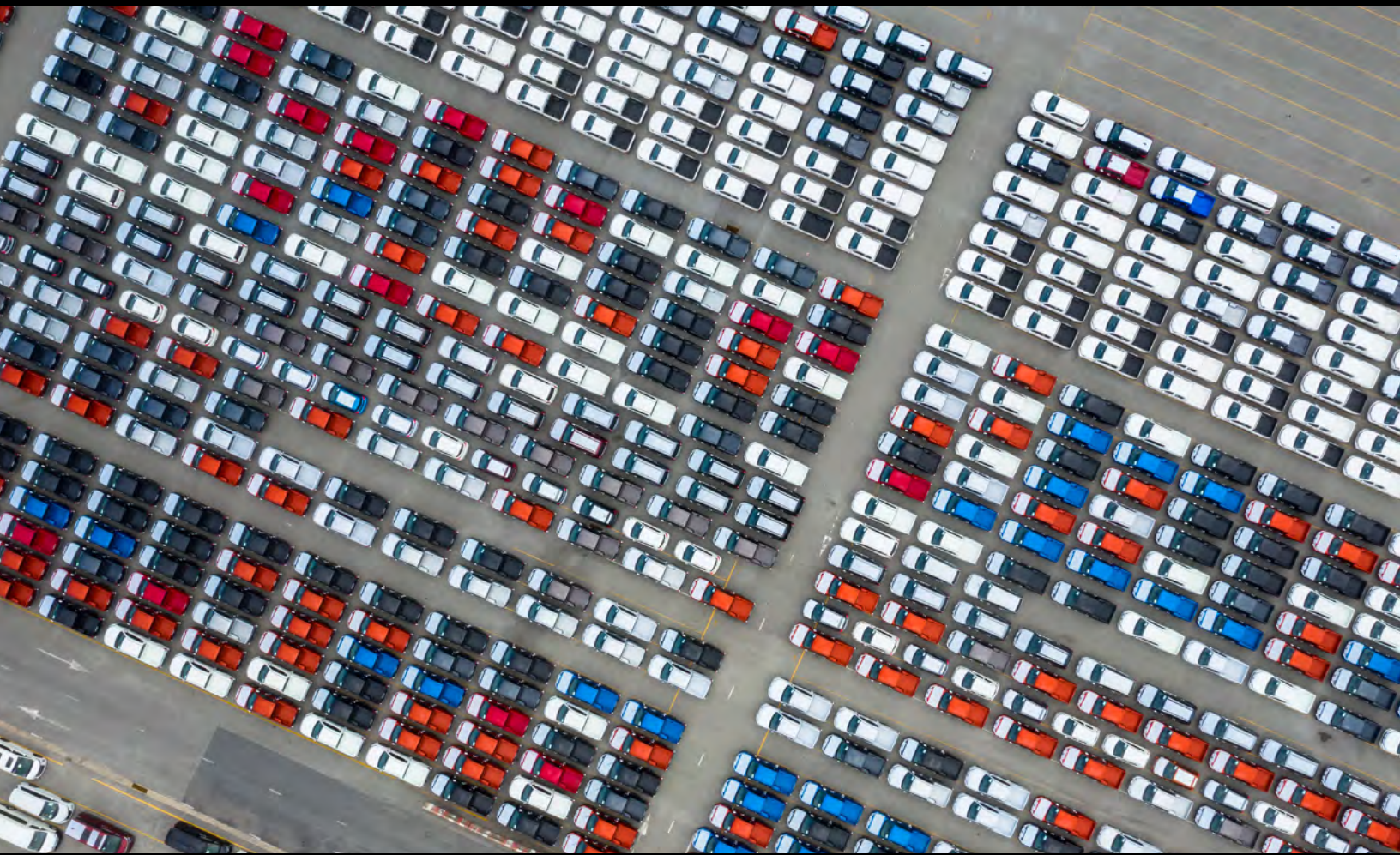


Building Back Better or **building back worse?**

**The challenge of building a
high-road EV industry with
anti-union employers**



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Executive Summary

In the coming decade, the U.S. economy will undergo a radical transformation as electric vehicles replace the gasoline-powered auto industry. This shift will bring profound changes not only for the environment, but also for employees in the auto manufacturing industry. This industry constitutes the country's single largest manufacturing sector, with nearly one-million jobs in auto and auto parts manufacturing. Further, with average earnings of \$55,000 per year, these are some of the most important jobs in the national economy – providing critical opportunities for workers to support their families in dignity.¹

But will the new jobs in electric vehicle (EV) manufacturing be decently-paid jobs? Or will they be lower-wage jobs that serve to exacerbate the current crisis of inequality? The answer to this question depends, above all, on employees' ability to secure a fair share of the profits their work creates, through collective bargaining. Unfortunately, in recent years many auto manufacturers and suppliers have subjected their employees to a wide range of threats and intimidation tactics – many illegal, others legal only under labor law but banned in normal democratic elections – that have effectively blocked employ-

ees from exercising their right to collective bargaining. As a result, the share of auto workers who enjoy the right to collective bargaining has shrunk, leading to a dramatic falloff in wages. Indeed, the average hourly wage in the auto manufacturing industry, after adjusting for inflation, has declined by over 20% from 1990-2018.²

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President Biden has celebrated the transition to electric vehicles, and has proposed dedicating nearly \$200 billion to supporting this shift.³ If the administration and Congress adopt policies to keep most of this work within the country, the switch to EVs could add 150,000 new jobs to the American auto industry.⁴ But if we are truly to build back better, we must guarantee that these auto workers can choose to form unions through a truly democratic process, free from fear of retaliation by their employers. If we are to reverse

the national crisis of inequality, it is critical that we restore genuine organizing rights in this important industry.

In this sense, what happens in the electric vehicle industry is a bellwether for the country as a whole. The central fact of our economy is the long-term decline of employment conditions over the past 40 years. We live in an economy where corporate profits, executive salaries and shareholder returns have all grown steadily, while those who do the work that creates the corporate profits have seen their wages stagnate.⁵ One of the primary causes of growing inequality over the past four decades is the shrinking share of Americans who have unions in their workplace.⁶ No matter what new technologies may be invented or what new skills workers may acquire, if employees lack the ability to bargain for their share of corporate success, GDP growth will continue to be dominated by a small slice of the economic elite.

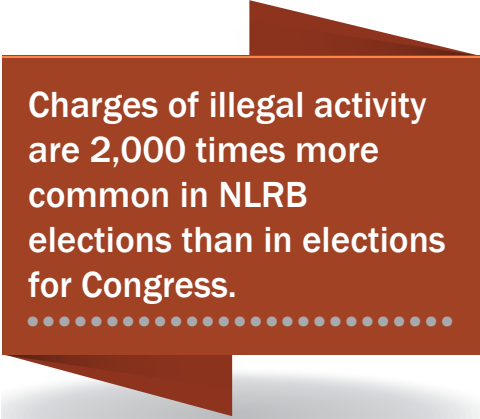
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Perhaps in response to this crisis of inequality, Americans' support for unions has grown steadily over the past decade, reaching a 55-year high point in 2021, with 68% of the country voicing support for unions.⁷ Indeed, there is good reason for this: if one compares two employees of the same gender, race, ethnicity, education and experience, and working in the same occupation, but one has a union and the other does not, the unionized worker will enjoy significantly better wages and benefits.⁸ Unions also create much safer work environments: as one example, the chance of losing a finger or a limb in non-union auto parts plants in Alabama is twice the national average, far higher than that faced by people doing the same work in heavily unionized Michigan.⁹ So too, unions have negotiated binding nondiscrimination policies in their workplaces, with the result that both the gender and racial wage gap is significantly smaller than in non-union companies.¹⁰ In the auto industry, this has made unionized auto manufacturing a backbone of the Black middle class.

The most recent survey data suggests that nearly 60 million non-union employees in the U.S. would vote for a union in their workplace if given the chance.¹¹ Yet only 50,000 workers per year are able to establish a new union

through National Labor Relations Board (NLRB) elections, or less than 1% of the number who want a union.¹²

What makes unions so rare despite being so popular? The simple answer is that employers take advantage of a profoundly undemocratic federal labor law that makes NLRB elections look more like the sham practices of rogue regimes abroad than like anything we would recognize as American democracy.



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NLRB elections are characterized by a remarkable degree of illegal activity. Compared with federal elections, charges of illegal activity are 2,000 times more common in NLRB elections than in elections for Congress.¹³ Across the country as a whole, employers are charged with lawbreaking in more than 40% of all NLRB-supervised elections, and charged with illegally firing pro-union employees in nearly

20% of elections.¹⁴ Unfortunately, anti-union intimidation tactics have come to define a growing share of the auto industry. At Tesla, for instance, the Labor Board recently concluded that the company committed a series of violations, including illegally firing one union supporter and disciplining another because of their union activity; threatening employees with a loss of stock options if they joined a union; restricting employees from speaking with the media; coercively interrogating union supporters; and barring employees from distributing union information to their co-workers.¹⁵ So too, the CEO at Fuyao Glass – the country's largest producer of automobile glass – was filmed openly reporting to the firm's chairman that he had fired employees who tried to organize a union.¹⁶

Because there are nearly no effective penalties for violating workers' labor rights, employers ignore the law with near-total impunity. At Nissan's Canton, Mississippi plant, for instance, the NLRB in 2018 issued a formal complaint charging the company with 24 counts of lawbreaking, including prohibiting employees from talking to the public about their working conditions, banning distribution of pro-union literature, interrogating employees about their voting intentions, threatening to falsify documents in order to discipline

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union supporters, and issuing multiple threats to fire employees in retaliation for pro-union activities or to close the plant as a whole if employees voted to unionize.¹⁷ Yet this campaign of illegal threats was initiated less than two years after an earlier complaint in which the NLRB asserted that Nissan managers had “interfered with, restrained, and coerced” pro-union employees.¹⁸ The company’s sole punishment in that case was a requirement that Nissan post a notice recognizing that such acts are illegal and pledging to respect employees’ labor rights from here on. That Nissan management so quickly broke this promise points up how ineffective such remedies are.

Even when employers obey the law, they rely on a set of tactics that are legal under the National Labor Re-

lations Act (NLRA) but illegal in elections for Congress, and that violate fundamental norms of democracy.¹⁹ A multi-billion-dollar industry of “union avoidance” consultants and law firms helps employers exploit the weakness of federal labor law in order to deny workers the right to collective bargaining.²⁰ Over the past fifty years, these advisors have developed cookie-cutter strategies that are applied across industries. By the early 2000s, over three-quarters of all large firms employed anti-union consultants when faced with employee organizing.²¹ In the auto industry, Toyota, Nissan, Hyundai, Mercedes-Benz, BMW, Volkswagen and Honda have all called on “union avoidance” specialists to guide their anti-union campaigns in the United States.²² Thus, workers who seek to organize a union are forced by their employers to run a gauntlet of fear, threats, intimidation, forced propaganda, and stifled speech – all things that are illegal in any election to public office, but allowed under current labor law.

The report that follows outlines both the legal and illegal means that have been used to stop auto workers from exercising their right to collective bargaining. If we are serious about enabling American workers to support their families in dignity, we must

restore employees’ ability to negotiate with their employers. It is particularly important that we address this issue at the moment that the federal government is poised to invest hundreds of billions of dollars to support the transition to electric vehicles. As we stand on the cusp of reinventing the auto industry, we face a choice of either taking steps to ensure that this highly profitable sector provides family-wage jobs, or allowing employers to use federal investments, in part, to deny their employees the right to collective bargaining and continue eroding job standards in this industry and in the country.

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they had a union in their workplace. But under current law, virtually none of these employees will see their wish come true.

The profoundly undemocratic nature of NLRB elections, and the ease with which employers can evade or ignore the few rights provided under federal labor law, has made it almost impossible for American workers to exercise the legal right to collective bargaining.

The decline of unions is one of the most important factors that has suppressed wage growth and led to an economy of unprecedented inequality. If we are serious about restoring American families' ability to support their families in dignity, we must restore workers' ability to negotiate with their employers – in reality and not just on paper.

The U.S. House of Representatives took an important step in the direction of restoring workers' collective bargaining rights when it passed the Protecting the Right to Organize (PRO) Act in February 2020.¹⁰⁸ Some of the most damaging tactics used by employers to oppose union organizing efforts would be restricted under the legislation, and meaningful penalties would be imposed when employers violate the law. But the prospects for this federal

legislation passing are slim, and we can't wait for that to happen before insisting on more democratic procedures for union elections.

A number of employers have already taken steps to establish fairer processes for workers who want to establish a union, without relying on the NLRB and without waiting for federal legislation. In the private sector, companies including UPS, AT&T, US Steel, Kaiser Permanente, Safeway and Ford have all signed agreements that provide a democratic path to establishing a union, without forcing workers to go through the gauntlet of threats and intimidation that have come to define NLRB elections.¹⁰⁹ In the public sector, the states of California, Illinois, New Hampshire, New Jersey, New York and Oregon have long established procedures for enabling employees to form a union without fear of retaliation from their employers.¹¹⁰ There is no reason that all employers in the auto industry can't follow this example.

The auto industry constitutes the country's single largest manufacturing sector, accounting for 3% of the entire U.S. GDP.¹¹¹ If we are to reverse the crisis of inequality and restore family-wage jobs, it is critical that we restore genuine organizing rights in this industry. In the coming years, the

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federal government will spend many billions of dollars helping the auto industry transition to electric vehicles – including subsidies to producers and consumers, construction of a national charging-station infrastructure, and commitments to large-scale purchase of electric vehicles for federal, state and local government fleets.¹¹² As we stand on the brink of reinventing the auto industry, we must ensure that employees in this industry are free to exercise their right to collective bargaining free from intimidation or fear or reprisals. By insisting on workplace democracy in the next-generation auto industry, we can ensure that Americans' tax dollars serve not only to develop clean energy technologies but also to restore American workers' ability to support their families at a dignified and secure standard of living.

About the author

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