

9-1-2005

Separate to Unite: Will *Change to Win* Strengthen Organized Labor in America?

Keith J. Gross

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/bpilj>



Part of the [Labor and Employment Law Commons](#)

Recommended Citation

Keith J. Gross, *Separate to Unite: Will Change to Win Strengthen Organized Labor in America?*, 24 Buff. Envtl. L.J. 75 (2005).

Available at: <https://digitalcommons.law.buffalo.edu/bpilj/vol24/iss1/2>

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Public Interest Law Journal by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

SEPARATE TO UNITE: WILL *CHANGE TO WIN* STRENGTHEN ORGANIZED LABOR IN AMERICA?

KEITH J. GROSS

INTRODUCTION

In 1956, union members accounted for 32 percent of the private sector workforce in the United States.¹ Today, organized labor's share of the private sector workforce is about eight percent – a considerable drop in less than 40 years.² There are many reasons for the decline in organized labor, including globalization, unfriendly labor laws and politicians, offshoring, and hostile employers. Aside from those factors, one key explanation for unions' troubles is a lack of organizing. Starting in the 1950s, unions made a conscious decision to reduce expenditures on union organization.³ Though this choice may have been a reaction to the pro-business political and economic environment developing in the United States, the fact remains that organizing efforts decreased and unionization rates and union density, i.e., share of the labor market, withered away.

At the start of 2005, the following question still remained: What did unions have to do in order to reverse the decline of organized labor? The United States' largest labor federation, the 13.6 million-member AFL-CIO, did not have a clear solution. However, Andrew L. Stern (better known as Andy Stern), president of the AFL-CIO affiliate Service Employees International Union ("SEIU"), believed he had the answer – simply stated, organize. The AFL-CIO did not flat out disagree with Stern's suggestions to increase organizing expenditures and use innovative organizing strategies, but did not embrace them to the same degree as Stern and his supporters. As a result, Stern led the creation of a new labor federation known as Change to Win

¹ Mike Healey, *The House of Labor Divided – AFL-CIO and Change to Win*, LABOR & EMPLOYMENT COMMITTEE NEWSLETTER (Nat'l Laws. Guild, Oakland, Cal.), Oct. 2005, at 1.

² *Id.*

³ James B. Atleson, *Law and Union Power: Thoughts on the United States and Canada*, 42 BUFF. L. REV. 463, 488 (1994) [hereinafter Atleson, *Union Power*].

(“CTW”).⁴

Besides SEIU, CTW now includes six other unions: the International Brotherhood of Teamsters, UNITE HERE, United Food and Commercial Workers International Union (“UFCW”), Laborers’ International Union of North America (“LIUNA”), United Brotherhood of Carpenters and Joiners of America, and United Farm Workers.⁵ The seven Change to Win unions have promised to organize the millions of unorganized workers in the United States,⁶ mostly in the low-wage service industries, and increase union density.⁷ With Change to Win in its nascent form, however, it is unclear what effect the split in organized labor will have on American workers and unions.

Many onlookers doubt CTW’s ability to organize and change organized labor’s fate, just as people did in the 1930s when the Congress of Industrial Organizations (“CIO”) broke away from the craft-based American Federation of Labor (“AFL”) to pursue industrial unionism. In the early 1930s, the AFL had failed to capitalize on the opportunity to organize the millions of unrepresented workers in industries such as steel, auto, and rubber.⁸ John L. Lewis, who helped form the Committee for Industrial Organization in 1935 (later changed to Congress of Industrial Organizations),⁹ believed that only a powerful, organized group of workers could improve labor’s economic and political status.¹⁰ Through industrial unionism, CIO-affiliated

⁴ Healey, *supra* note 1, at 1.

⁵ *Id.*

⁶ Steven Greenhouse, *Breakaway Unions Start New Federation*, N.Y. TIMES, Sept. 28, 2005, at A17, available at

http://www.teamster.org/05news/hn_050928_4.htm (last visited Dec. 21, 2005).

⁷ Aaron Bernstein, *Can This Man Save Labor?*, BUS. WK., Sept. 13, 2004 [hereinafter Bernstein, *Save Labor*].

⁸ ROBERT H. ZIEGER & GILBERT J. GALL, *AMERICAN WORKERS, AMERICAN UNIONS: THE TWENTIETH CENTURY* 62 (Johns Hopkins Univ. Press 3d ed. 2002) [hereinafter GALL, *AMERICAN WORKERS*].

⁹ *Id.* at 83-84.

¹⁰ MELVYN DUBOFSKY & WARREN VAN TINE, *JOHN L. LEWIS: A BIOGRAPHY* 206 (Quadrangle/The New York Times Book Co. 1977) [hereinafter DUBOFSKY].

unions achieved unprecedented gains in the workplace,¹¹ and, in less than two years, the CIO succeeded in doubling union membership and union density in the United States.¹²

Similarly, Change to Win seeks to organize the millions of workers in the unorganized service industries, including health care, retail, and food preparation; in other words, “jobs that can’t be offshored or digitized . . .”¹³ Despite hostile employers opposed to unionization and weak labor laws, the Change to Win affiliates, such as SEIU and UNITE HERE, have achieved organizing victories in the past through neutrality and card check agreements, and should be able to strengthen workers’ rights and organized labor in the future.

This paper will discuss the historical factors that led to the creation of the CIO, and will compare those circumstances to the environment that brought about the formation of Change to Win in 2005. Moreover, this paper will compare the organizing strategies of the CIO in the 1930s with those of the newly-formed Change to Win federation, in order to determine whether Change to Win can replicate the CIO’s organizing success. Through this comparison, it will be seen that CTW is in many ways different from the CIO and may not have the overwhelming impact that the CIO did on unionization rates and union density in the 1930s. Despite these differences, this paper will argue that CTW will play an important role in reviving organized labor and will have a positive impact on

¹¹ See GALL, *AMERICAN WORKERS*, *supra* note 8, at 86-90.

¹² Jack Metzgar, *Is This the Second Coming of the CIO?*, *NEW LAB. F.*, Summer 2005, at 12.

¹³ David Moberg, *The Lay of Labor’s New Land: As the Change to Win Federation takes shape, questions about how it will co-exist with the AFL-CIO remain*, *IN THESE TIMES*, Nov. 21, 2005, at 25 [hereinafter Moberg, *Labor’s New Land*]; Memorandum from James P. Hoffa, General President, and C. Thomas Keegel, General Secretary-Treasurer, International Brotherhood of Teamsters, to Teamsters Local Union Leaders and Joint Councils, regarding Change to Win Founding Convention 6 (Sept. 26, 2005), available at <http://www.wrca.com/downloads/PDF%20Files%2005/CTW%20meeting%20annouc.pdf> (last visited Dec. 21, 2005).

American workers and unionism, just like the CIO did when it split from the AFL.

I. THE WOES OF ORGANIZED LABOR IN THE 1920S AND 1930S

The American Federation of Labor was founded in 1886 as a federation of national and international craft unions.¹⁴ By organizing skilled craft workers, the AFL managed to expand its membership from under 300,000 in 1898 to over four million by 1919.¹⁵ After World War I, however, unionism and the AFL's membership started to decline.¹⁶

Many factors can be credited for the decline of unions during the 1920s.¹⁷ The expansion of industry and the mechanization of work resulted in a substantial degree of unemployment and the transformation of the concept of traditional skills.¹⁸ The expanding industries, including auto, utilities, chemicals and rubber, were openly anti-union and developed strategies, such as the company union, to frustrate true unionism.¹⁹ Employers harbored strong anti-union animus, advocating a concept known as the "American Plan" – a shop which did not deal with unions.²⁰ The position of U.S. Steel's executive committee best represents employers' hostile position on unionism:

That we are unalterably opposed to any extension of union labor and advise subsidiary companies to take a firm position when these questions come up, and

¹⁴ GALL, AMERICAN WORKERS, *supra* note 8, at 23-24; *see generally* PHILIP TAFT, ORGANIZED LABOR IN AMERICAN HISTORY 113-15 (Harper & Row 1964).

¹⁵ GALL, AMERICAN WORKERS, *supra* note 8, at 19.

¹⁶ *See* IRVING BERNSTEIN, THE LEAN YEARS: A HISTORY OF THE AMERICAN WORKER 1920-1933 (Houghton Mifflin Co. 1960) [hereinafter BERNSTEIN, LEAN YEARS].

¹⁷ *Id.* at 87-89.

¹⁸ *Id.* at 89, 506.

¹⁹ *Id.* at 88, 89. A company union has been defined as a labor organization, created by an employer, "whose structure and function are essentially determined by management." *Electromation, Inc.*, 309 N.L.R.B. 990, 995 (1992).

²⁰ TAFT, *supra* note 14, at 364.

say that they are not going to recognize it; that is, any extension of unions in mills where they do not now exist; that great care should be used to prevent trouble; and that they promptly report and confer with this corporation.²¹

Moreover, the courts tended to intervene on behalf of employers, granting injunctions against unions that went out on strike and supporting yellow-dog contracts,²² i.e., an employment contract forbidding membership in a labor union.²³ In addition, the social climate reflected President Calvin Coolidge's famous saying, "The business of America is business," with businessmen possessing strong political influence.²⁴ Business interests in the United States were complemented by an American philosophy that stressed individualism, symbolized in part by Horatio Alger's "rags to riches" stories, which suggested that lower-class individuals could rise up in society through hard work and luck.²⁵

Throughout the 1920s, the AFL attempted to counteract the opposition unions faced, but without much success. For example, in 1919 the AFL-affiliate Amalgamated Association of Iron, Steel and Tin Workers of America ("AA") organized a steel strike of over 350,000 workers in hopes of convincing U.S. Steel to recognize the union and agree to collective bargaining.²⁶ U.S. Steel refused to discuss the AA's demands, and simply responded by bringing in strikebreakers – both white and black – and suppressing the strikers with private guards and police.²⁷ Thereafter, AFL organizing efforts remained stagnant in the

²¹ *Id.* at 194.

²² BERNSTEIN, *LEAN YEARS*, *supra* note 16, at 89.

²³ BLACK'S LAW DICTIONARY 1610 (7th ed. 1999).

²⁴ BERNSTEIN, *LEAN YEARS*, *supra* note 16, at 88.

²⁵ *Id.*

²⁶ TAFT, *supra* note 14, at 356-57.

²⁷ *Id.* at 357, 358.

1920s.²⁸ At the same time, the existing AFL unions which were “industrial in structure,” like the International Ladies Garment Workers’ Union (“ILGWU”),²⁹ were “torn asunder by competition from non-union shops . . .”³⁰ While the ILGWU and other AFL industrial-based unions, including the United Mine Workers (“UMW”) and Amalgamated Clothing Workers of America (“ACW”), declined in the 1920s, the AFL craft unions managed to maintain or increase membership and strengthen their power, especially in the building and printing trades.³¹ As a result, craft unions – and their conservative outlook on the labor movement – came to dominate AFL policy, and the AFL did not adapt its organizational structure of craft unionism to organize the growing number of industrial workers.³² By 1933, AFL membership had fallen to fewer than three million workers.³³

In some sense, organizing along craft lines was preferable and logical in the 1920s and 1930s, because there did not exist a supplemental pool of workers who could step in and replace craft workers during labor disputes. As the 1919-20 steel strike demonstrates, employers in industries with semi-skilled or unskilled workers often can easily replace strikers, which is why unskilled workers have diminished bargaining power. In comparison, workers in craft unions cannot be replaced without difficulty, because they possess the knowledge of a specific craft or skill that not many individuals enjoy. Due to these skills, craft workers possess greater bargaining power than unskilled workers, which allows skilled workers and craft unions to attain workplace demands concerning union recognition and terms and conditions of employment with more ease. Therefore, craft unions’ success during the 1920s and early years of the Great Depression, a time when unemployment skyrocketed, was not that surprising.

With much unemployment and economic hardship during

²⁸ GALL, *AMERICAN WORKERS*, *supra* note 8, at 62.

²⁹ BERNSTEIN, *LEAN YEARS*, *supra* note 16, at 86.

³⁰ *Id.* at 85.

³¹ *Id.* at 86.

³² *Id.* at 84, 86.

³³ GALL, *AMERICAN WORKERS*, *supra* note 8, at 62.

the Great Depression, the federal government responded in 1933 by passing the National Industrial Recovery Act which included Section 7(a), a provision that guaranteed workers the right to organize and engage in collective bargaining.³⁴ The main purpose of the National Industrial Recovery Act was to “stimulate economic recovery” from the Great Depression through a National Recovery Administration (“NRA”), which would “[rely] on business groups and trade associations to develop codes of fair competition.”³⁵ Though the Recovery Act was later declared unconstitutional by the Supreme Court in 1935,³⁶ workers and unions capitalized on the opportunity to organize provided by the Act. President John L. Lewis of the UMW launched an intensified organization campaign in many areas of the anti-union bituminous coal industry, thereby reviving local unions which had faced strong opposition prior to the NRA and eliminating company unions.³⁷ In the clothing industry, the ILGWU and the ACW benefited from the NRA and allowed them to increase their membership and expand their jurisdiction into other parts of the industry and other markets.³⁸ Steel and iron workers, who had little success with unionism in the past, also joined the “explosion of organizing,” signing up with the AA.³⁹

The vast expansion in organizing and growth of unions revealed problems with the NRA and AFL bureaucracy. In 1934, 1.5 million strikers engaged in over 1,800 work stoppages – the highest figures for strikes since the early 1920s – in an attempt to exercise their collective bargaining rights guaranteed under the

³⁴ TAFT, *supra* note 14, at 416-17.

³⁵ GALL, AMERICAN WORKERS, *supra* note 8, at 69.

³⁶ TAFT, *supra* note 14, at 422. The Supreme Court held that the National Industrial Recovery Act was unconstitutional in *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

³⁷ TAFT, *supra* note 14, at 426-27.

³⁸ *Id.* at 433.

³⁹ GALL, AMERICAN WORKERS, *supra* note 8, at 71.

National Industrial Recovery Act.⁴⁰ Both industrial workers and whole communities became involved in the labor disputes, due to their discontent with deficient federal enforcement of labor policy under the Recovery Act.⁴¹ During work stoppages in the summer of 1934, employers – and local and state governments – enlisted police and national guardsmen armed with tear gas and guns to quell unionists and their supporters, so that strikebreakers could resume factory production.⁴² Not only were the strikes put down, but many workers were wounded and some killed in these exchanges.⁴³ The unions involved in these labor disputes, such as the United Textile Workers and Teamsters, learned that the AFL bureaucracy “too often provided only dilatory and unresponsive leadership” during local strikes, and that “[l]ack of solid organization too frequently led to defeat.”⁴⁴ Moreover, workers realized that the Recovery Act was an ineffective mechanism for enabling union organizing and collective bargaining,⁴⁵ especially because a lack of government support for unions and police support for employers enabled employers to break strikes and suppress unions. Even though the federal government under President Franklin D. Roosevelt had started to show signs of supporting workers and unions, in hopes of recovering from the Great Depression, an anti-worker Republican presence in government on all levels continued to disadvantage workers when they attempted to organize.

Notwithstanding the benefits of craft unionism related to bargaining power, AFL unions took issue with the industrial unionism stimulated by the National Industrial Recovery Act based on jurisdictional grounds. Over the years, the AFL had “evolved the principle of exclusive jurisdiction, which meant that one union and one only would be authorized to recruit workers of a given

⁴⁰ *Id.* at 73.

⁴¹ *Id.*

⁴² *Id.* at 73-75.

⁴³ *Id.*

⁴⁴ *Id.* at 75.

⁴⁵ *Id.*

craft or calling.”⁴⁶ If workers were to pursue industrial unionism, both skilled craftsmen and unskilled industrial workers would be included in the same bargaining unit.⁴⁷ AFL craft unions objected to a policy of industrial unionism, because the policy would impinge upon their exclusive jurisdiction and take away skilled workers that belonged in the individual craft unions.⁴⁸ Moreover, the influx of industrial workers “in trades not easily classified under the AFL’s antiquated system of jurisdiction” confused the AFL leadership,⁴⁹ because the semi-skilled or unskilled industrial workers did not meet the AFL’s traditional definition of craft.⁵⁰ Rather than resolve the contentious issue, the AFL leaders thought up a temporary fix in which industrial workers were organized into federal labor unions, organizations which violated lines of exclusive jurisdiction and were directly operated by the AFL; in time, AFL officials would place the industrial recruits into the appropriate craft unions.⁵¹ To workers in the mass production industries, however, the AFL approach to organization made no sense since appropriate craft unions did not exist for many unskilled industrial workers, and because the AFL’s organizing method would fragment union solidarity in individual shops.⁵²

Underlying the jurisdictional debate concerning craft unionism and industrial unionism was a negative perception of industrial workers. Some AFL executives, representing the old craft guard, believed “that industrial workers were not quite fit to belong to a union,” and wanted nothing to do with the industrial form of union organization.⁵³ In the AFL craft leaders’ view, the

⁴⁶ TAFT, *supra* note 14, at 463.

⁴⁷ *Id.* at 464.

⁴⁸ *Id.*

⁴⁹ GALL, *AMERICAN WORKERS*, *supra* note 8, at 71.

⁵⁰ *Id.* at 71-72.

⁵¹ *Id.* at 72.

⁵² *Id.* at 73.

⁵³ RON E. ROBERTS, JOHN L. LEWIS: *HARD LABOR AND WILD JUSTICE* 140 (Kendall/Hunt Publishing Co. 1994).

unskilled industrial workers were inferior and nothing more than “scum,” and, therefore, AFL executives rejected industrial unionism.⁵⁴ By taking this position, AFL leaders continued to promote the “so-called aristocracy of labor,” a system under which craft workers were in power and unskilled workers were excluded.⁵⁵

II. THE CREATION OF THE CIO

Following the formation of federal labor unions and the labor disputes of 1934, traditional union leaders within the AFL began to speak out against the status quo, advocating groundbreaking change in the organized labor movement.⁵⁶ The main proponent of change was John L. Lewis, president of the UMW – a labor organization that had always recruited on an industrial basis.⁵⁷ By 1935, Lewis had led the industrial-based UMW for over 15 years.⁵⁸ Despite limited rank-and-file support, Lewis had maneuvered through the UMW bureaucracy in order to arrive at the top.⁵⁹ The UMW president was described as “an awesome figure” with a “larger-than-life physical appearance.”⁶⁰

Lewis grew dissatisfied with the AFL’s main concern for craft unionism, believing that recruiting on an industrial basis was required to build and strengthen organized labor.⁶¹ At the AFL’s October 1935 Convention, Lewis advocated the need for industrial unionism.⁶² Lewis’ comments created “an air of trouble[]” inside the convention hall, and were not well-received by the AFL

⁵⁴ *Id.* See also Jim Smith, *The Corporatization of Unions*, L.A. LAB. NEWS (Cal. Peace and Freedom Party, L.A. County, Cal.), May 2002, http://www.lalabor.org/Corporatization_of_unions.html (last visited Dec. 16, 2005)(stating “unskilled workers were seen not as fellow toilers but as enemies, inferiors and potential strikebreakers”).

⁵⁵ See Smith, *supra* note 54.

⁵⁶ GALL, AMERICAN WORKERS, *supra* note 8, at 63.

⁵⁷ *Id.* at 83.

⁵⁸ *Id.*

⁵⁹ ROBERT H. ZIEGER, *THE CIO, 1935-1955* 24 (The Univ. of North Carolina Press 1995).

⁶⁰ GALL, AMERICAN WORKERS, *supra* note 8, at 83.

⁶¹ *Id.*

⁶² *Id.*

leaders.⁶³ Not only did union leaders harbor disgust for what they felt were undeserving, lower-class, unskilled workers,⁶⁴ but they also believed that industrial unionism would be ineffective in strengthening organized labor, based on the failures of previous industrial unions like the Knights of Labor and Industrial Workers of the World.⁶⁵ Some AFL leaders questioned Lewis' motives for supporting a form of unionism with a history of "unbroken failure,"⁶⁶ seeing Lewis as "a power-hungry fraud,"⁶⁷ a man with "a certain keen instinct for power."⁶⁸ In other words, Lewis' critics thought "the opportunity that the activism of mass production workers offered was the opportunity Lewis saw for aggrandizing himself in the name of the toiling masses and at least realizing the ambitions for national leadership that, he believed, his talents entitled him to."⁶⁹

To achieve worker and union empowerment, Lewis did not believe workers and unions should rely only on federal legislation. On July 5, 1935, President Roosevelt and the federal government had again demonstrated their support for workers and unions with the passage of the National Labor Relations (or Wagner) Act ("NLRA"), a measure designed to "encourage collective bargaining through independent unions . . . [and] guarantee a fair procedure for determining bargaining rights."⁷⁰ Although the NLRA was important to the labor movement, for John L. Lewis "government labor policy remained secondary in 1935 to the crisis that he perceived in the labor movement itself" – deficient

⁶³ *Id.* at 84.

⁶⁴ See ROBERTS, *supra* note 53, at 140.

⁶⁵ IRVING BERNSTEIN, *TURBULENT YEARS: A HISTORY OF THE AMERICAN WORKER 1933-1941* 393 (Houghton Mifflin Co. 1970).

⁶⁶ *Id.*

⁶⁷ GALL, *AMERICAN WORKERS*, *supra* note 8, at 83.

⁶⁸ ZIEGER, *supra* note 59, at 26.

⁶⁹ *Id.*

⁷⁰ GALL, *AMERICAN WORKERS*, *supra* note 8, at 81.

organizing.⁷¹ Lewis believed that the AFL had wasted the “golden opportunity” to organize the immense mass production industries, such as steel, auto, and rubber.⁷² The economic landscape was changing, as modern industry eliminated the “traditional definition of skill.”⁷³ Lewis recognized that the AFL’s inability to organize “the central core of American industry doomed the labor movement to political and economic irrelevance.”⁷⁴ Therefore, despite the passage of the NLRA, Lewis understood that the AFL’s antiquated bureaucracy had to be challenged in order to maintain (and augment) a political and economic status for organized labor in American society.⁷⁵

On November 9, 1935, Lewis assembled a meeting of AFL leaders eager to institute widespread industrial unionism.⁷⁶ Attendees of this meeting included the presidents of the ILGWU, ACW, and the International Typographical Union (“ITU”).⁷⁷ At this meeting, those unions, along with Lewis’ UMW and four smaller AFL affiliates, created a Committee for Industrial Organization – a structure that vowed to encourage industrial unionism while operating within the AFL.⁷⁸ William Green, president of the predominantly craft-based AFL, and other AFL leaders denounced the CIO, asserting it as a rival union that threatened the established labor movement.⁷⁹

The CIO remained a part of the AFL until it adopted a constitution in November 1938, at which time the CIO changed its name to Congress of Industrial Organizations and broke all ties

⁷¹ *Id.* at 82. Also, there was the possibility that the NLRA would eventually be declared unconstitutional, just like the National Industrial Recovery Act. In 1937, the Supreme Court held that the NLRA was constitutional in *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

⁷² GALL, *AMERICAN WORKERS*, *supra* note 8, at 83.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 84.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 85.

with the AFL.⁸⁰ The CIO immediately began operating, however, as a separate entity to organize and represent workers in industrial unions.⁸¹ The improving economy favored the CIO, as steel and auto manufacturers expanded production and recalled workers.⁸² In two notorious anti-union industries – auto and steel – the CIO took on two large, anti-union employers and won historic organizing victories, which sparked a wave of mass organization.⁸³

The first great victory in the auto industry involved a battle between the United Automobile Workers (“UAW”) and the General Motors Corporation (“GM”) in Flint, Michigan – “the linchpin of GM’s nationwide production empire.”⁸⁴ Despite the fact that only 10 percent of the GM workforce were UAW members (about 4,700 workers), these UAW militants – some of whom were members of the Communist Party and Socialist Party – managed to disrupt operations and occupy critical GM plants for six weeks starting on December 29, 1936.⁸⁵ In addition to mass picketing outside the factories, the UAW employed a creative technique, the sit-down strike – “a strike in which employees occupy [or sit-down in] the workplace but do not work”⁸⁶ – which discouraged the typical modes of strikebreaking.⁸⁷ Some violence erupted in early January 1937, with 24 individuals being injured in the occupied Flint plants.⁸⁸ In anticipation of further violence, Michigan’s Democratic Governor Frank Murphy called a National Guard regiment to duty, but directed the troops “to remain outside

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² DUBOFSKY, *supra* note 10, at 255.

⁸³ GALL, AMERICAN WORKERS, *supra* note 8, at 87.

⁸⁴ *Id.*

⁸⁵ *Id.* at 87, 95.

⁸⁶ BLACK’S LAW DICTIONARY 1435 (7th ed. 1999).

⁸⁷ GALL, AMERICAN WORKERS, *supra* note 8, at 87. The Supreme Court later declared the sit-down strike illegal in *NLRB v. Fansteel Metallurgical Corp.*, 306 U.S. 240 (1939).

⁸⁸ TAFT, *supra* note 14, at 494.

of the strike zone.”⁸⁹ That was the extent of the troops’ involvement, as the federal government and Governor Murphy insisted that the labor dispute be settled peacefully.⁹⁰

Although the federal government and state governments had intervened in past labor disputes on behalf of employers, this time around the CIO enjoyed a labor-friendly political climate that supplemented its organizing efforts. The CIO had decided to reject the AFL tradition of voluntarism, under which unions denounced becoming dependent on any political party and stayed away from politics due to suspicion that government activity would work against union interests in the long run.⁹¹ Instead, Lewis and his CIO colleagues gave unprecedented financial support to the Democrats, particularly President Roosevelt (i.e., politicians who had supported the passage of the NLRA), prior to the 1936 presidential and congressional elections.⁹² The CIO’s decision to support President Roosevelt and the Democrats was a product of industrial unionism, in that transient industrial workers often moved from place-to-place and from job-to-job and looked to the government for the creation of a social welfare system.⁹³ Moreover, the CIO believed the reelection of President Roosevelt and increased Democratic majorities in Congress would bolster the CIO’s ability to organize the millions of workers in the auto, steel, rubber, and textile industries, whereas a Republican administration could bolster employers’ anti-union position by weakening the NLRA.⁹⁴ Political contributions to the Democratic Party, including \$500,000 by the UMW, the largest labor contribution to any political campaign at that time, spearheaded “a labor triumph,” which resulted in the election of numerous Democratic state and federal legislators and liberal local officials and governors.⁹⁵

With numerous Democrats in office on the federal, state,

⁸⁹ *Id.*

⁹⁰ *Id.* at 496.

⁹¹ GALL, AMERICAN WORKERS, *supra* note 8, at 94.

⁹² *Id.* at 86.

⁹³ *Id.* at 94-95.

⁹⁴ *Id.* at 86.

⁹⁵ *Id.*

and local levels, a new political and social climate existed to the benefit of labor organizations, in particular the CIO.⁹⁶ Besides Governor Murphy in Michigan, Democratic governors had been elected in key steel states, such as Pennsylvania, Ohio, Indiana, and Illinois.⁹⁷ Unlike their predecessors, these Democratic governors were likely to sympathize with organized labor, and would not intervene on behalf of the corporations in labor disputes.⁹⁸ Moreover, the so-called LaFollette Commission had been created by the U.S. Senate in 1936 to probe suspected employer violations of employees' rights.⁹⁹ The committee's investigation into the "use of espionage, stockpiling of arms and munitions, and the domination of local authorities by anti-labor corporations . . . attracted great public attention and provided a sense of governmental support for labor's organizing efforts rarely seen before."¹⁰⁰

The CIO's political action proved worthwhile and effective in the Flint strike. President Roosevelt and other federal officials criticized General Motors' refusal to negotiate with the UAW.¹⁰¹ Moreover, Roosevelt endorsed Governor Murphy's nonviolent approach to resolving the labor dispute, in part because of the financial support the CIO had given to the Democratic Party, but more so because he believed a peaceful settlement would result in political credit to all New Deal Democrats.¹⁰² As a result of this political backing, John L. Lewis was able to bring irritated GM executives to the bargaining table, and, in the second week of February 1937, the UAW and GM finally agreed upon a one-page contract.¹⁰³ Although the contract contained few concrete

⁹⁶ *Id.* at 89.

⁹⁷ *Id.*; ZIEGER, *supra* note 59, at 40.

⁹⁸ GALL, AMERICAN WORKERS, *supra* note 8, at 89.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ DUBOFSKY, *supra* note 10, at 265.

¹⁰² *Id.* at 267.

¹⁰³ GALL, AMERICAN WORKERS, *supra* note 8, at 88.

concessions for GM workers, it did contain “the critical stipulation: the company agreed to recognize the UAW as bargaining agent for its members in the struck facilities.”¹⁰⁴

A month after the Flint strike ended, the CIO prevailed in its confrontation with the steel industry.¹⁰⁵ Since the steel industry had a history of violent resistance to unionism, the CIO knew organizing the steel companies would be no easy task.¹⁰⁶ Considering the past practice of union opposition, large corporations like U.S. Steel, “which in the mid-1930s held about 40 percent of the nation’s steel producing capacity and employed over 220,000 workers,” were expected to fight the CIO’s organizing tactics.¹⁰⁷ To bring unionism to the 500,000 steelworkers in the United States and counteract the steel companies’ union avoidance tactics, Lewis created the Steel Workers Organizing Committee (“SWOC”).¹⁰⁸

In the industrial confrontation with the steel companies, SWOC employed innovative organizing strategies such as “supporting CIO militants in company-sponsored unions.”¹⁰⁹ By 1935, union sympathizers had infiltrated, through the established election processes, U.S. Steel’s company union and other company unions, which were “designed primarily to undercut true labor unions.”¹¹⁰ The company unions proceeded to attack management policies, therefore becoming a vehicle for worker empowerment rather than a form of control.¹¹¹ SWOC’s presence weakened the steel companies’ bargaining position:

Throughout 1936 and 1937, local activists constantly pressed the steel companies for wage and other concessions, demands that put the employers in a double bind. If they granted concessions,

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 89.

¹⁰⁷ *Id.* at 88.

¹⁰⁸ *Id.* at 86.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 89.

¹¹¹ *Id.*

SWOC members in the company unions escalated their demands and claimed that the companies were only trying to buy off union sentiment. If the companies turned a deaf ear, CIO supporters argued that only SWOC could force the steelmakers to come around.¹¹²

Moreover, SWOC enlisted communist organizers, who were known to be willing to do whatever was necessary to bring unionism to unorganized workers.¹¹³

The chairman of U.S. Steel's board, Myron Taylor, recognized that numerous steelworkers were signing up with SWOC and that company unions were asserting their independence.¹¹⁴ Further, political candidates aligned with the steel industry's interests had been defeated by Democratic labor supporters in the 1936 elections, including in states and local communities that steel companies had long dominated.¹¹⁵ With militant SWOC members backed by the government, a national steel strike seemed very possible, "and if it came, [steel] executives could not rely on the power of the state to smash it."¹¹⁶

Due to the threat posed by SWOC efforts within company unions and in the steel mills and the changing political environment, Myron Taylor decided that the time had come to recognize organized labor.¹¹⁷ Through secret negotiations between Taylor and John L. Lewis, the CIO-affiliate SWOC and U.S. Steel established an agreement which "conceded recognition of SWOC

¹¹² *Id.* at 89-90.

¹¹³ *Id.* at 95; HOWARD KIMELDORF, REDS OR RACKETS?: THE MAKING OF RADICAL AND CONSERVATIVE UNIONS ON THE WATERFRONT 10 (Univ. of Cal. Press 1988).

¹¹⁴ DUBOFSKY, *supra* note 10, at 275.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 276.

¹¹⁷ GALL, AMERICAN WORKERS, *supra* note 8, at 90.

by the steel corporation.”¹¹⁸ Similar to the GM-UAW agreement, modest concessions in wages and other terms and conditions of employment were obtained by SWOC, although the contract did create a grievance procedure – “an important factor in giving SWOC locals a day-to-day presence in the mills.”¹¹⁹ Nevertheless, once again a “fledgling union had compelled an enormously powerful corporation to deal with its representatives and to acknowledge the right of its members to a contractual relationship with the company.”¹²⁰

The CIO’s organizing efforts also included a focus on recruiting black workers.¹²¹ Significant numbers of blacks worked in CIO-targeted industries including steel, meatpacking, auto, and garment.¹²² For years, the AFL had disregarded and discriminated against black workers, which caused blacks to regard the organized labor movement, including the new CIO, with suspicion.¹²³ CIO leaders and organizers understood that they had to address black workers’ hostility towards unions if they wanted to build and strengthen the CIO, because blacks working at industrial plants performed key tasks in the production process.¹²⁴ Moreover, excluding blacks from the CIO’s organizing strategy could cause problems for the CIO, as blacks not involved in the production process represented a source of potential strikebreakers.¹²⁵ Therefore, the CIO targeted, with success, the recruitment of black workers by employing new organizing approaches, such as enlisting churches and black fraternal organizations on behalf of the CIO.¹²⁶

A unique and controversial aspect of CIO organizing was the inclusion of “anticapitalist radicals,” including communists and

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *See id.* at 92-93.

¹²² ZIEGER, *supra* note 59, at 83.

¹²³ GALL, AMERICAN WORKERS, *supra* note 8, at 92-93.

¹²⁴ *Id.* at 93.

¹²⁵ *Id.*

¹²⁶ *Id.*; ZIEGER, *supra* note 59, at 84.

socialists.¹²⁷ Though communists had abandoned the “boring-from-within” policy, which had been used in their attempt to dominate organized labor prior to World War I, the policy reemerged in 1934, and the advent of the CIO provided the ideal opportunity for communists to exercise the “boring-from-within” strategy.¹²⁸ “Unstable conditions – unemployment, low wages, poor working conditions . . . [and] weak union organization”¹²⁹ – before and during the Great Depression also provided communists and other radicals, who “collectively offered a vision that could, in their view, fundamentally transform the whole society,”¹³⁰ the opportunity to infuse themselves into the organized labor movement.¹³¹

Lewis and other veteran unionists understood that the CIO unions lacked experienced organizers who could rally worker support for unions, due to the hard times organized labor had gone through in the 1920s and early 1930s.¹³² Because of this dilemma, the CIO did not turn communists and socialists away – even though employers and the AFL condemned the CIO’s association with communists and other radicals – but rather welcomed them because “[such] radicals were often among the most energetic, committed, and effective organizers.”¹³³ In comparison to the average workers, communists were more willing to confront employer discrimination and violence and to work day and night on organizing campaigns, plus they were indifferent to being fired

¹²⁷ GALL, *AMERICAN WORKERS*, *supra* note 8, at 95.

¹²⁸ TAFT, *supra* note 14, at 618-19. By “boring-from-within,” communists attempted to take control over labor unions so that the unions could be used as a vehicle to advance the Communist Party’s agenda.

¹²⁹ DAVID J. SAPOSS, *COMMUNISM IN AMERICAN UNIONS* 109 (McGraw-Hill Book Co., Inc. 1959).

¹³⁰ Jerry Tucker, *A New Labor Federation Claims Its Space: If Enthusiasm on Display Were Substance, CtW Could Claim a Good Start*, *MONTHLY REV.*, Apr. 10, 2005, available at <http://mrzine.monthlyreview.org/tucker041005.html>.

¹³¹ SAPOSS, *supra* note 129, at 109.

¹³² GALL, *AMERICAN WORKERS*, *supra* note 8, at 95.

¹³³ *Id.*; TAFT, *supra* note 14, at 620.

– all of which made them successful organizers.¹³⁴

Opinions differ on whether communists “infiltrated” and “captured” leadership positions within the CIO, or if rank-and-file support and organizing results allowed communists to become influential CIO leaders.¹³⁵ Regardless of how communists within the CIO were perceived, Lewis dismissed concerns about the relationship between the CIO and communists because communists “knew how to organize” and did so successfully.¹³⁶ Even communists’ harshest critics admit that communists were more effective organizers than traditional labor leaders.¹³⁷ Moreover, Lewis was able to shrug off outside attacks regarding communists, given that the Communist Party “seemed to be cooling its revolutionary ardor” in the late 1930s,¹³⁸ advocating an anti-Facist policy in response to the threat of Nazi aggression.¹³⁹

By 1937, CIO membership had surpassed the four million mark – a result of creative organizing and political action.¹⁴⁰ In about two years, 6,000 new local unions had been formed,¹⁴¹ and the CIO had succeeded in doubling union membership and union density in the United States.¹⁴² CIO organizers had turned down hundreds of requests for CIO charters in order to concentrate on organizing the basic industries; but still, CIO affiliates integrated all kinds of workers – bank tellers, clerks, waitresses – into their local unions.¹⁴³

III. FACTORS LEADING TO THE AFL-CIO MERGER

Observing the significant gains the CIO had achieved with industrial organization, the AFL began to reform its organizing strategies. The AFL extended recruitment efforts in industries

¹³⁴ KIMELDORF, *supra* note 113, at 10.

¹³⁵ *Id.* at 9.

¹³⁶ GALL, AMERICAN WORKERS, *supra* note 8, at 95.

¹³⁷ KIMELDORF, *supra* note 113, at 10.

¹³⁸ GALL, AMERICAN WORKERS, *supra* note 8, at 96.

¹³⁹ TAFT, *supra* note 14, at 620.

¹⁴⁰ GALL, AMERICAN WORKERS, *supra* note 8, at 96.

¹⁴¹ *Id.*

¹⁴² Metzgar, *supra* note 12, at 12.

¹⁴³ GALL, AMERICAN WORKERS, *supra* note 8, at 91.

such as meatpacking, food processing, the service trades, and retail work, successfully organizing industrial workers that were targets of the CIO.¹⁴⁴ The AFL's established institutional structure, with central bodies in most cities and state federations, provided AFL organizers with greater political, legal, and organizing resources than those available to the CIO – a clear advantage for the AFL in competition for members with the CIO.¹⁴⁵ By 1939, AFL membership had surpassed CIO membership; the AFL claimed over 4 million members while the CIO estimated its membership at 3.5 million.¹⁴⁶

As the AFL regained its share of the labor market, the CIO faced various setbacks that revealed limitations in CIO organizing and collective bargaining efforts. Despite the impressive CIO victories in the steel and auto industries, the CIO failed to organize smaller steel corporations (known as “Little Steel”) and large auto companies like Ford.¹⁴⁷ The incomplete organization in areas such as auto and steel encouraged employers to resist bargaining and respond to strikes with force.¹⁴⁸ Employer hostility towards collective bargaining and unions, coupled with ineffective union leadership, led rank-and-file unionists in the auto industry to conduct “innumerable strikes and sit-downs,” and steelworkers became reluctant to support and pay dues to SWOC, which could not organize Little Steel.¹⁴⁹ In addition, although communist organizers had helped to expand union membership, by 1938 communists had secured “major strategic positions in the CIO,”¹⁵⁰ and critics feared that the CIO was becoming an appendage of the Communist Party.¹⁵¹

¹⁴⁴ *Id.* at 99.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 99, 102.

¹⁴⁷ *Id.* at 96-97.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 98.

¹⁵⁰ TAFT, *supra* note 14, at 620.

¹⁵¹ GALL, AMERICAN WORKERS, *supra* note 8, at 98.

After the explosion in organizing spurred by the CIO in the late 1930s, organized labor again faced problems and resistance. When the United States entered World War II following the Japanese attack on Pearl Harbor, President Roosevelt urged for labor-management cooperation during the war effort.¹⁵² The AFL and CIO heeded the call and agreed to support the cooperative program that took form in the National War Labor Board.¹⁵³ The board was an entity designed for the purpose of “adjusting and settling labor disputes which might interrupt work which contributes to the effective prosecution of the war,” and later to stabilize wages.¹⁵⁴ The board, however, was unable to prevent work stoppages, especially after President Roosevelt issued two executive orders in late 1942 and early 1943, which restricted wage modifications without approval of the board.¹⁵⁵ In response to the wage freezes associated with the executive orders, organized labor reneged on its no-strike pledge, and workers engaged in numerous work stoppages.¹⁵⁶

Towards the end of World War II, the number of workers on strike rose, and the increase in work stoppages only continued after the war concluded.¹⁵⁷ In addition to a sharp rise in labor disputes, “[t]he expansion of union membership brought with it new problems,” such as the “refusal of some unions to bargain in good faith” and “the use of the secondary boycott.”¹⁵⁸ Due to organized labor’s activities, a public demand developed for some corrective action.¹⁵⁹ In 1947, a Republican majority in Congress helped pass the Taft-Hartley Act, an amendment to the NLRA,

¹⁵² TAFT, *supra* note 14, at 546.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 546, 547.

¹⁵⁵ *Id.* at 551-54. In the fall of 1942, President Roosevelt issued Executive Order 9250, which “prohibit[ed] wage changes without the approval of the War Labor Board.” *Id.* at 551. On April 8, 1943, President Roosevelt issued Executive Order 9328, “which limited wage increases to cases where they were necessary to correct substandards of living.” *Id.* at 553.

¹⁵⁶ *Id.* at 553-54.

¹⁵⁷ *Id.* at 553-54, 579.

¹⁵⁸ *Id.* at 579.

¹⁵⁹ *Id.*

over the veto of Democratic President Harry S. Truman.¹⁶⁰ The Taft-Hartley Act weakened organized labor by making it illegal for a union to refuse to bargain in good faith, outlawing the secondary boycott, and including a provision for a decertification election if 30 percent of workers in a bargaining unit petitioned the National Labor Relations Board (“NLRB”).¹⁶¹

In the late 1940s, the CIO was further weakened by internal division caused by an anti-communist movement in the United States. Towards the end of World War II, communists within and outside the CIO proceeded to attack the labor movement, United States government, and democratic nations.¹⁶² CIO officials recognized that 18 unions in the CIO were under communist control.¹⁶³ Although individual unions traditionally were allowed to pursue their own policies and political views, the CIO saw communist union officials and members as a severe problem because “[c]ommunists had been shown to be ready to sacrifice the interests of their own members and the country and its people when it suited the ends of the Soviet Union.”¹⁶⁴ As a result of the anti-communist wave that spread through the United States during the Cold War, the CIO expelled 11 left-wing unions with a total membership of one million workers in 1950 for “following the Communist Party line. . .”¹⁶⁵ After the expulsion of communist-dominated affiliates, CIO organizing “ground to a halt” and major CIO unions experienced little or no membership growth; plus, the CIO abandoned its “ideological fervor” and drifted away from the political left.¹⁶⁶ It would appear that the removal of fervent union activists from the organized labor movement, due to the anti-

¹⁶⁰ *Id.* at 579, 583.

¹⁶¹ *Id.*; see Labor-Management Relations Act (Taft-Hartley Act), 29 U.S.C. §§ 158(b)(3), 158(b)(4), 159(e) (1988).

¹⁶² TAFT, *supra* note 14, at 623.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 624.

¹⁶⁵ KIMELDORF, *supra* note 113, at 127.

¹⁶⁶ *Id.* at 159.

communist ideology promoted by McCarthyism, hindered organizing efforts and union growth.¹⁶⁷

In 1952, in light of the changing conditions in society and within the labor movement, the groundwork was laid for reuniting the AFL and CIO. With the deaths of CIO president Philip Murray and AFL president William Green, the past conflict between the AFL and CIO began to dissipate.¹⁶⁸ The new AFL president, George Meany, had encouraged industrial unionism in the 1930s when most AFL leaders had rejected it and understood the importance of political action; therefore, Meany's economic and political views resembled those of the CIO.¹⁶⁹ The AFL was also "a good deal healthier" than the CIO by the early 1950s, as most CIO unions were dependent on financial subsidies from the CIO and struggled for existence.¹⁷⁰ When the 1952 elections resulted in the selection of Dwight Eisenhower, the first Republican president since 1933, and Republican majorities in the House of Representatives and Senate, George Meany and Walter Reuther, the new president of the CIO, foresaw the need for a unified labor movement and began merger discussions.¹⁷¹ In December 1955, the AFL and CIO merged to form the modern day AFL-CIO, thus ending a twenty year period of separation within the organized labor movement.¹⁷²

IV. THE SPLIT BETWEEN THE AFL-CIO AND CHANGE TO WIN COALITION

Around the same time of the AFL-CIO merger in 1955, American unions began their decline. Although there are many possible explanations for the decline of unionization in the United States, including changes to the NLRA and the application of labor law, one relevant factor for union decline was a decrease in

¹⁶⁷ Atleson, *Union Power*, *supra* note 3, at 489.

¹⁶⁸ GALL, *AMERICAN WORKERS*, *supra* note 8, at 204.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 206.

¹⁷¹ *Id.* at 204, 206.

¹⁷² ZIEGER, *supra* note 59, at 357.

organizing expenditures in the 1950s.¹⁷³ Unions like the AFL-CIO, whose leadership and members consisted of mostly white males, were not well-positioned to organize the women and minorities in the growing service sector and southern manufacturing.¹⁷⁴ With labor's inability and disinterest in organizing these industries, private sector unionization levels went from 32 percent in the mid-1950s to eight percent in 2005.¹⁷⁵

At the start of 2005, the AFL-CIO had a membership of over 13.6 million workers.¹⁷⁶ AFL-CIO affiliates included the SEIU (1.8 million members), Teamsters (1.4 million members), UNITE HERE (440,000 members), UFCW (1.4 million members), and LIUNA (800,000 members). In accordance with the AFL-CIO Constitution, each affiliated national union was required to make a per capita tax payment of 65 cents per member each month to the AFL-CIO starting in July 2005.¹⁷⁷ Under this financial arrangement, these five unions would be required to pay over \$39 million to the AFL-CIO in annual dues. Much of this money and the AFL-CIO's \$100 million budget¹⁷⁸ would be spent on the AFL-CIO's political lobbying activities at the federal level and little on organizing.¹⁷⁹ Traditionally, the AFL-CIO allocates roughly one-quarter of its budget to organizing, as indicated by the \$22.5 million the AFL-CIO had budgeted for organizing in 2005.¹⁸⁰ In comparison, the SEIU devotes about half of its international budget

¹⁷³ Atleson, *Union Power*, *supra* note 3, at 488.

¹⁷⁴ *Id.*

¹⁷⁵ Healey, *supra* note 1, at 1.

¹⁷⁶ See U.S. Dep't of Labor, <http://erds.dol-esa.gov/query/getOrgQry.do> (last visited Dec. 20, 2005). To see the specific information for the AFL-CIO, select "AFLCIO" for the union abbreviation and "International" for the union type.

¹⁷⁷ AFL-CIO Constitution, art. XVI, § 2, available at <http://www.aflcio.org/aboutus/thisistheaficio/constitution/art16.cfm> (last visited Dec. 16, 2005).

¹⁷⁸ See Moberg, *Labor's New Land*, *supra* note 13, at 24.

¹⁷⁹ Mark Hamstra, *New Union Group Eyes Local Political Issues*, SUPERMARKET NEWS, Oct. 10, 2005, at 8.

¹⁸⁰ See Moberg, *Labor's New Land*, *supra* note 13, at 24.

or \$50 million annually for membership growth, with the SEIU locals contributing another \$130 million for organizing.¹⁸¹

Half a century after the effectuation of the AFL-CIO merger, the 13.6 million-member AFL-CIO was set to hold its “50th Anniversary Convention” in Chicago, Illinois from July 25-28, 2005. Instead of being an opportunity for the AFL-CIO’s 13.6 million members to celebrate the federation’s 50 years of existence and discuss normal collective bargaining issues, the convention turned out to be of even greater significance for the organized labor movement. On July 25, 2005, SEIU and the International Brotherhood of Teamsters – two large and powerful unions – resigned from the AFL-CIO, taking with them more than three million members and leading the charge for other unions to follow suit.¹⁸² The departure of the SEIU and the Teamsters represented “the culmination of more than three years’ work in building an insurgency” by Andy Stern, “president of the fast-growing SEIU.”¹⁸³ Stern and other labor leaders, such as Teamster president James Hoffa, had pushed for vast reform of the AFL-CIO, in order to stop the long-term decline in union membership – something the AFL-CIO had been unable to accomplish.¹⁸⁴

On June 15, 2005, a little over one month prior to the disaffiliation of the SEIU and the Teamsters, five of the largest AFL-CIO unions – SEIU, Teamsters, UFCW, UNITE HERE, and LIUNA – formed the Change to Win Coalition – a new alliance devoted to organizing “the tens of millions of workers in the private sector who are desperate for a voice on the job.”¹⁸⁵ About two weeks later, the United Brotherhood of Carpenters, who disaffiliated from the AFL-CIO in 2001, joined the Change to Win Coalition, thereby increasing the alliance’s membership to 5.5

¹⁸¹ Bernstein, *Save Labor*, *supra* note 7.

¹⁸² Thomas B. Edsall, *Two Top Unions Split From AFL-CIO: Others Are Expected To Follow Teamsters*, WASH. POST, July 26, 2005, at A01 [hereinafter Edsall, *Unions Split*].

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Thomas B. Edsall, *Dissident Unions Form Coalition*, WASH. POST, June 16, 2005, at A13.

million workers.¹⁸⁶

The coalition proclaimed that June 15, 2005 was “a historic day” for the “new cooperative initiative to rebuild the American labor movement from the ground up.”¹⁸⁷ Similar to the CIO in 1935, the Change to Win Coalition sought to reform the AFL-CIO from within by submitting proposed amendments that called for substantial modification of AFL-CIO procedures, governance, and direction.¹⁸⁸ Interestingly, CTW compared the new coalition to the CIO in the 1930s:

Just as the Committees for Industrial Organization was formed in the 1930s when the AFL would not embrace the kinds of structural, resource allocation, and jurisdictional changes that were necessary to organize the new mass production industries of the time, the Change to Win Coalition has formed at a time when new strategies and structures are required to organize the growing non-union section of our private sector economy.¹⁸⁹

Like the CIO, the Change to Win Coalition pledged to use innovative organizing techniques – those pioneered by the founding CTW unions – to organize non-union workers in “key areas of the private sector economy.”¹⁹⁰

The coalition’s Restoring the American Dream Proposal

¹⁸⁶ See <http://www.changetowin.org/press/Carpenters062705.html> (June 27, 2005).

¹⁸⁷ The Change to Win Coalition Statement, *available at* <http://www.liuna.org/pubsnews/pdfs/coalitiontowin.pdf> (last visited Dec. 7, 2005) [hereinafter CTW Coalition Statement].

¹⁸⁸ See Amendments and Resolutions to Change the Federation to Win Better Lives for Workers and Their Families Through Organizing and Maintaining Contract Standards, *available at* <http://www.workinglife.org/FOL/pdf/CTWconventionproposals.pdf> (last visited Apr. 13, 2006).

¹⁸⁹ CTW Coalition Statement, *supra* note 187.

¹⁹⁰ *Id.*

called for making organizing the AFL-CIO's top priority.¹⁹¹ Ten years earlier, the elected AFL-CIO officers, including President John Sweeney, had spoke of increasing organizing to reverse the decline of unions.¹⁹² According to CTW, the AFL-CIO's organizing efforts and "voluntarism" were unsuccessful in maintaining union membership, and "few inroads [had] been made by workers in expanding sectors [of the economy],"¹⁹³ mainly referring to the service sectors. To capitalize on organizing potential, CTW proposed monetary incentives for AFL-CIO unions that "demonstrate[d] a strategy and commitment to organizing in the core industries." This concept of "changing to grow" would return \$35-\$45 million per year from the AFL-CIO budget to individual unions dedicated to organizing the unorganized.¹⁹⁴ In response, the AFL-CIO introduced a plan that would only return a total of \$15 million to such affiliated unions.¹⁹⁵ CTW's organizing reforms also called for the creation of a \$25 million fund for "movement-wide campaigns" to allow organized labor "to take on powerful anti-worker employers," like Wal-Mart.¹⁹⁶ In response, the AFL-CIO suggested shifting \$7.5 million from the existing organizing budget for movement-wide campaigns.¹⁹⁷

Another concern of CTW was the overlap of unions in certain sectors of the economy.¹⁹⁸ The AFL-CIO had commissioned studies which identified the problem of union

¹⁹¹ *What's the Difference?: Restoring the American Dream vs. the AFL-CIO Officers' Proposal, Change to Win Campaign, available at <http://www.changetowin.org> (last visited Dec. 20, 2005) [hereinafter CTW Proposal].*

¹⁹² *Id.*

¹⁹³ *Id.* It is interesting that Change to Win used the word "voluntarism" to describe the AFL-CIO's actions. In this situation, CTW used the term "voluntarism" in reference to the AFL-CIO's counterproposals, which did not obligate member unions to alter their organizing and bargaining strategies and proposed voluntary cooperation. In comparison, the AFL's tradition of voluntarism was related to political action.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

duplication and undercutting, but, according to CTW, had not taken any significant measures to stop these practices.¹⁹⁹ For instance, flight attendants in the United States “are now divided among several different unions, making it nearly difficult, if not impossible, for them to wield any leverage over an entire industry.”²⁰⁰ CTW insisted on “tough rules prohibiting one union from undercutting the standards won [by] union workers in an area,” and the coordination of bargaining by industry, employer or occupation.²⁰¹ Moreover, CTW believed the AFL-CIO “should establish financial incentives to facilitate mergers . . . that lead to increased power for workers in the same or complementary industries.”²⁰² CTW envisioned “slash[ing] the AFL-CIO’s 60 unions to 15 or 20 powerful mega-unions” to increase union density, thereby providing unions with the power to raise wages and improve working conditions.²⁰³ The AFL-CIO rejected the idea of incentives for union consolidation and mergers, instead proposing “encouragement of voluntary cooperation between unions.”²⁰⁴

The CTW proposal also spoke of “building political power” to increase union membership.²⁰⁵ CTW recognized that “[w]orking people cannot win consistently on political issues until many more workers are in unions,” and, therefore, suggested “a strategic plan” to back public officials with a track record of supporting workers who are trying to form unions, and focusing on “critical swing states.”²⁰⁶ This proposal was a response to the

¹⁹⁹ *Id.*

²⁰⁰ Matt Bai, *The New Boss*, N.Y. TIMES MAGAZINE, Jan. 30, 2005, at 38, 40.

²⁰¹ CTW Proposal, *supra* note 191.

²⁰² *Id.* See also Bernstein, *Save Labor*, *supra* note 7.

²⁰³ Bernstein, *Save Labor*, *supra* note 7. Union mergers have already begun to occur, as indicated, for example, by the merger of UNITE and HERE in July 2004. See <http://www.unitehere.org/about> (last visited Dec. 20, 2005).

²⁰⁴ CTW Proposal, *supra* note 191.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

AFL-CIO's dependence on federal lobbying and financial contributions to the Democratic Party, which CTW argued had not resulted in any significant benefits for workers.²⁰⁷ The AFL-CIO did not offer any type of strategic political plan, nor did it offer to reduce its political expenditures in any way, but instead proposed adding another \$7.5 million to the federation's existing political program.²⁰⁸

Reviewing the proposals suggested by CTW and the AFL-CIO's counterproposals, there does not appear to be much difference between the two in ideological terms.²⁰⁹ The AFL-CIO leadership offered to embrace organizing reforms, at least in part, by shifting union funds earmarked for political action to organizing. On the other hand, the AFL-CIO did not seem committed to coordinated bargaining and union consolidation to counteract giant, multinational employers, and did not indicate that it would change its political methodology. The modest changes the AFL-CIO was willing to accept were not enough for the five unions in the Change to Win Coalition – SEIU, Teamsters, UFCW, UNITE HERE, and LIUNA – and, therefore, they disaffiliated from the AFL-CIO and joined with the Carpenters²¹⁰ and United Farm Workers²¹¹ to form a separate labor organization to be known as Change to Win.

V. REUNITING AT THE STATE AND LOCAL LEVELS

Before departing the AFL-CIO, the Change to Win Coalition had contemplated the problems that disaffiliation would create for AFL-CIO central labor councils and state federations, as

²⁰⁷ Herman Benson, *A fine feud with no fighting!*, UNION DEMOCRACY REV. (Ass'n for Union Democracy, Brooklyn, N.Y.), Sept./Oct. 2005, at 2.

²⁰⁸ CTW Proposal, *supra* note 191.

²⁰⁹ John Gray, *Unions lose members and common cause as infighting divides the labour movement*, S. CHINA MORNING POST, Nov. 12, 2005, BUSINESS, at 4.

²¹⁰ The Carpenters departed the AFL-CIO in 2001. Steven Greenhouse, *Labor Leader Offers Locals 'Solidarity'*, N.Y. TIMES, Aug. 11, 2005, at A21.

²¹¹ The Farm Workers officially left the AFL-CIO in January 2006. Will Lester, *United Farm Workers leave AFL-CIO to join new group*, CHICAGO SUN-TIMES, Jan. 13, 2006, available at

http://www.findarticles.com/p/articles/mi_qn4155/is_20060113/ai_n16010416 (last visited May 8, 2006).

CTW unions participated in such labor groups.²¹² In regards to state and local labor federations, the coalition stated the following:

Affiliated labor organizations shall support each other's right to continued participation in central labor councils or state federations, regardless of each other's affiliation status with the AFL-CIO. Where they share membership in any of these bodies, they shall continue to work together to forge one unified voice within the labor movement at the state and local levels.²¹³

Therefore, CTW expressed its intention to remain within state and local labor federations affiliated with the AFL-CIO.

In October 2005, it appeared that the AFL-CIO and CTW unions had agreed upon special "solidarity charters" that would allow the CTW unions to remain within state and local labor federations.²¹⁴ The AFL-CIO and CTW are still ironing out the details, but under the solidarity charters, Change to Win local unions "will make per capita tax payments based on their membership to local and state AFL-CIO organizations at the rates applicable to other affiliated local unions."²¹⁵ In return, the CTW

²¹² Constitution and Bylaws of the Change to Win Coalition, art. III, § 4, available at

<http://www.workinglife.org/FOL/news/ChangeToWinCoalitionconstitution.doc> (last visited May 4, 2006) [hereinafter CTW Bylaws]. It should be noted that there are two documents that purport to be the Change to Win Constitution. The above document was composed in June 2005, when the Teamsters, SEIU, UNITE HERE, UFCW and LIUNA were still affiliated with the AFL-CIO. The actual Change to Win Constitution, adopted on September 27, 2005, can be located at <http://www.workinglife.org/FOL/news/CTWConstitution.pdf> (last visited Dec. 7, 2005).

²¹³ CTW Bylaws, *supra* note 212, art. III, § 4.

²¹⁴ Moberg, *Labor's New Land*, *supra* note 13, at 25.

²¹⁵ *AFL-CIO Rolls Out Solidarity Charter Program to Reunite Local Labor Movements*, <http://www.aflcio.org/aboutus/ns08262005.cfm?elink> (last updated Nov. 22, 2005).

unions will be granted the same rights as other affiliated local unions, including the ability to participate in political programs and the governance of the state or local labor group.²¹⁶ Moreover, Change to Win affiliates that agree to the solidarity charters' terms will support organizing campaigns, strikes, and other activities of unions in their jurisdiction, and will agree not to raid AFL-CIO unions that participate in the state or local labor federation.²¹⁷

Even though the details of solidarity charters are not complete, the CTW unions that are no longer part of the AFL-CIO national union continue to work with AFL-CIO affiliates.²¹⁸ For example, in September 2005, SEIU and the American Federation of State, County, and Municipal Employees ("AFSCME") signed a two-year "no-raiding pact" covering the organizing of home and child care workers in California and Pennsylvania.²¹⁹ Under the agreement, SEIU and AFSCME will jointly organize 25,000 home care workers in California,²²⁰ and will form statewide unions in California and Pennsylvania; the two unions "will split a portion of the dues typically paid to the (AFL-CIO) national union."²²¹ Though SEIU and AFSCME are working together, the Teamsters in Chicago have initiated raids on two different AFL-CIO affiliated unions since CTW was formed.²²² Therefore, it is unclear if the SEIU-AFSCME no-raid pact establishes a standard for future cooperation between Change to Win and the unions that remain within the AFL-CIO.

In view of the solidarity charters and some cooperation between CTW and AFL-CIO unions, the current split in organized labor seems to be "a fine feud with no fighting."²²³ It has been argued that CTW could have done everything it wanted to do from within the AFL-CIO and that a formal split was unnecessary. To a

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Benson, *supra* note 207, at 1.

²¹⁹ Thomas B. Edsall, *Unions Forge a 'No-Raid' Agreement*, WASH. POST, Sept. 20, 2005, at D03 [hereinafter Edsall, *No-Raid Agreement*].

²²⁰ Benson, *supra* note 207, at 2.

²²¹ Edsall, *No-Raid Agreement*, *supra* note 219.

²²² Moberg, *Labor's New Land*, *supra* note 13, at 25.

²²³ Benson, *supra* note 207, at 2.

certain extent this argument is true, because CTW could have targeted the service sectors with voluntary coordinated bargaining while retaining its affiliation with the AFL-CIO. Even though the AFL-CIO offered to return dues money to the CTW unions with a demonstrated commitment to organizing, such as SEIU and UNITE HERE,²²⁴ a fair portion of the \$39 million CTW would have contributed in dues to the AFL-CIO would not be returned and would be spent, in CTW's view, imprudently on lobbying for federal legislative reform. Considering that CTW believes workers and unions can emerge victorious without changes in labor law,²²⁵ continuing to spend money on lobbying for federal legislative reform would be unproductive and a waste of resources that otherwise could be allocated to organizing. Therefore, the CTW unions saw disaffiliation as the only way to get control over their finances and make organizing the number one priority, which CTW believes is necessary to change organized labor's fortune. Both the AFL-CIO and Change to Win unions recognized that organizing efforts had to increase, but the CTW unions seemed to embrace this fact to a greater degree, thus explaining the disaffiliation.

More importantly, the creation of the independent Change to Win federation may have been designed to send a message to employers, government and the courts. Labor history indicates that the legal system and the federal government only respond favorably to workers' interests when unions are perceived as powerful.²²⁶ By breaking away from the AFL-CIO, Change to Win has made a bold statement that employers and government

²²⁴ SEIU and UNITE HERE spend half of their international budgets on organizing new members. See Moberg, *Labor's New Land*, *supra* note 13, at 25; Bernstein, *Save Labor*, *supra* note 7.

²²⁵ See David Moberg, *All Apart Now: Unions sacrifice solidarity in their quest to be more effective*, IN THESE TIMES, Sept. 19, 2005, at 26, 27 [hereinafter Moberg, *All Apart*].

²²⁶ Atleson, *Union Power*, *supra* note 3, at 500; see DUBOFKY, *supra* note 10, at 257.

should take notice, because organized labor will not continue to just roll over and let its enemies take advantage of American workers. Employers and their attorneys seem to realize that a revitalized labor movement is materializing, and they are preparing for the “new, aggressive union world” that will place “significant pressure on employers. . .”²²⁷

In addition, CTW’s actions may have been aimed at the labor movement itself. Looking back on labor history, the CIO’s departure from the AFL swayed the established AFL to break tradition and organize industrial workers. Had the rival CIO not developed, the AFL’s rejection of industrial unionism may have led to a deterioration of organized labor similar to today – even with a strong NLRA in the late 1930s. Along the same lines, the AFL-CIO has already started to respond to its rival Change to Win by expressing a renewed commitment to coordinated organizing.²²⁸ The AFL-CIO might not have reacted in the same way if the CTW unions did not disaffiliate. Even though the AFL-CIO and CTW are reuniting at the state and local levels, it does not mean CTW’s actions were misguided. On the contrary, the disaffiliation was necessary to awaken the sleeping labor movement.

VI. CHANGE TO WIN AND ITS ORGANIZING STRATEGIES

On September 27, 2005, the Change to Win Coalition held its founding convention²²⁹ and changed the name of the “alliance” to Change to Win.²³⁰ At this convention, CTW adopted its

²²⁷ See, e.g., Andrew P. Marks, Gavin S. Appleby, & Gerald T. Hathaway, *The Splitting of the AFL-CIO: What It Means to the Nation’s Employers*, ASAP (Littler Mendelson, P.C.), Aug. 2005, available at <http://www.littler.com> (last visited Dec. 7, 2005).

²²⁸ Moberg, *Labor’s New Land*, *supra* note 13, at 24. In October 2005, the AFL-CIO launched an “industry coordinating committee” to develop a common organizing and bargaining strategy for 10 unions in the telecommunications, media, arts and entertainment industries, and is planning to create more such committees. *Id.*

²²⁹ Healey, *supra* note 1, at 1.

²³⁰ Change to Win Constitution, art. I, available at <http://www.workinglife.org/FOL/news/CTWConstitution.pdf> (last visited Dec. 7, 2005) [hereinafter CTW Constitution]. This is the actual Change to Win Constitution, adopted at the first CTW convention on September 27, 2005.

constitution, which focuses on “organiz[ing] workers now as the force for economic, political, and social change.”²³¹ In the Change to Win Constitution, the member unions expressed the organization’s mission:

We believe that only an active, focused and growing union movement can give voice to workers’ dreams and desires, balance unchecked corporate power and greed, generate economic growth with a fair share for those who work, put the concerns of working families at the forefront of community and national political agendas, and bring hope for a better future to workers and their children.²³²

The workers CTW seeks to organize are low-wage service sector workers, including immigrants, women, and minorities, groups the AFL-CIO has had difficulty organizing for years.²³³

To reduce costs so that maximum funds could be spent on organizing, CTW decided to employ minimal staff and no full-time officers,²³⁴ an organizational structure that is much different from the beefed-up AFL-CIO bureaucracy.²³⁵ None of the members of the Leadership Council – CTW’s principal governing body comprised of the principal officers of the seven CTW affiliates and three at-large members elected by the other members of the

²³¹ *Id.* at art. II, § 1.

²³² *Id.* at pmb1.

²³³ See Thomas B. Edsall, *Anna Burger to Head Breakaway Labor Group: Coalition Hopes to Reverse Setbacks and Organize More Women and Minorities*, WASH. POST, Sept. 27, 2005, at A7 [hereinafter Edsall, *Anna Burger*]; Steven Greenhouse, *Union Claims Texas Victory With Janitors*, N.Y. TIMES, Nov. 28, 2005, at A1 [hereinafter Greenhouse, *Janitors*].

²³⁴ Moberg, *Labor’s New Land*, *supra* note 13, at 24.

²³⁵ Moberg, *Labor’s New Land*, *supra* note 13, at 24. The exodus of the CTW unions will force adjustments to the organizational and financial structure of the AFL-CIO. *Id.*

Leadership Council – are compensated by CTW, nor are the CTW Chair Anna Burger or Secretary-Treasurer Edgar Romney.²³⁶ What is especially interesting and different from the AFL-CIO is that CTW is headed by Burger and Romney, the first woman and African-American to head an American labor federation, respectively.²³⁷ By electing two individuals who represent the groups of workers Change to Win looks to organize, CTW denotes that it is different from the white male leadership of the AFL-CIO and will welcome female and minority workers.

The Change to Win Constitution is a product of CTW's commitment to organizing. Based on the "per capita tax of 25 cents per member per month" authorized by the constitution, CTW's initial budget will be \$16 million;²³⁸ at least three-quarters of those funds will be dedicated to organizing.²³⁹ CTW affiliates have stated that they will devote another \$23 million – the money saved by disaffiliating from the AFL-CIO – to organizing.²⁴⁰ In addition, the CTW Constitution authorizes the collection of funds from affiliates participating in organizing campaigns on a "monthly or periodic basis, based on the relative per capita of the affiliates involved in the campaign and the anticipated increased membership expected to result from the campaign."²⁴¹ Therefore, CTW estimates that a total of \$750 million will be spent on organizing,²⁴² an impressive amount in comparison to the \$22.5

²³⁶ CTW Constitution, *supra* note 230, art. V, §§ 2, 5, art. VI, § 3. The three at-large members of the Leadership Council are Burger of SEIU, Romney of UNITE HERE, and GERALYN LUTTY of UFCW. See Eric Lekus, *Constitution of Change to Win Federation Commits 75 Percent of Taxes to Organizing*, 19 LAB. RELATIONS WK 1309 (2005). The Leadership Council members, Chair, and Secretary-Treasurer all have official positions with the member unions and, accordingly, are paid by the union to which they belong.

²³⁷ See *New Labor Federation Pledges to Carry Out Most Aggressive Organizing Campaign in 50 Years*, SEIU Local 1984, http://www.seiu1984.org/news_stories/ctw_20050927.cfm (last visited Dec. 19, 2005); Lekus, *supra* note 236.

²³⁸ CTW Constitution, *supra* note 229, art. XI, § 2.

²³⁹ *Id.* at art. XI, § 5.

²⁴⁰ Lekus, *supra* note 236.

²⁴¹ CTW Constitution, *supra* note 230, art. XI, § 5.

²⁴² Tucker, *supra* note 130.

million the AFL-CIO budgeted for organizing in 2005.²⁴³ Taking into account conventional organizing standards, the CTW expenditures should result in 750,000 new union members per year.²⁴⁴ In recent years, organizing efforts by all unions have led to only 500,000 or fewer new members each year,²⁴⁵ and unions have been unable to reverse the decline in union membership, which from 2003 to 2004 fell by 247,000 in the private sector and 304,000 overall.²⁴⁶ In addition to the \$750 million in organizing funds, which are CTW's own organizing monies, the individual CTW unions are expected to spend even greater amounts on organizing.²⁴⁷

The decision on how to spend CTW organizing funds resides with the established Strategic Organizing Center ("SOC"), subject to the approval of the Leadership Council.²⁴⁸ The purpose of the SOC is to "conduct appropriate strategic research to assist affiliates and the alliance in effectively targeting and allocating organizing resources with respect to both individual and multi-union campaigns."²⁴⁹ All SOC organizing decisions must be approved by the Leadership Council before going into effect.²⁵⁰ Moreover, CTW has created Sector Coordinating Committees to coordinate organizing plans, bargaining goals, and contract standards for principal industries in which CTW affiliates currently represent or seek to represent workers, so that it can avoid the undercutting and overlapping that pervade the AFL-CIO.²⁵¹

Some observers are skeptical of CTW's declared

²⁴³ Moberg, *Labor's New Land*, *supra* note 13, at 24.

²⁴⁴ *Id.* at 25.

²⁴⁵ *Id.*

²⁴⁶ *More Union Jobs Disappear in the "Recovery,"* Labor Research Ass'n, <http://www.lraonline.org/story.php?id=374> (Feb. 2, 2005).

²⁴⁷ Tucker, *supra* note 130.

²⁴⁸ CTW Constitution, *supra* note 230, art. V.

²⁴⁹ *Id.* at art. XIII, § 2.

²⁵⁰ *Id.*

²⁵¹ *Id.* at art. XII.

commitment to organizing. Looking at the individual unions in Change to Win, there is a disparity in organizing expenditures. Although SEIU and UNITE HERE spend considerable amounts on organizing and have had success, other CTW unions like the Teamsters and UFCW have exhibited less of a commitment to organizing and “have been unable to organize more new members than they lose to offshoring and other employment cutbacks every year. . . .”²⁵² This criticism should be noted, but dismissed, because CTW’s organizational structure with the SOC and sector coordinating committees demonstrates that all seven CTW unions will spend on organizing. In regards to membership decline of CTW unions, since CTW will be targeting the growing service sectors and jobs that cannot be offshored or digitized,²⁵³ CTW should be able to build upon any gains it makes. The process may be slow and steady, but the Change to Win unions, armed with innovative organizing tactics, will be able to make progress in breathing life back into the labor movement.

In terms of organizing strategy, a key aspect of CTW’s plan is to “organiz[e] according to industry and occupation”²⁵⁴ – a policy which reflects the organizing tactics of Andy Stern and the 1.8 million-member SEIU. Rather than organize one employer at a time, Stern has set out to organize entire markets at once.²⁵⁵ This strategy of “targeting whole areas and industries” allows unions to “coordinat[e] their efforts against market forces that drive companies to undercut each other,” and has proved successful.²⁵⁶ For example, SEIU targeted 10,000 nonunion janitors in 11 New Jersey counties by formulating an agreement with the janitorial contracting companies whereby the contractors would not have to raise workers’ pay until SEIU signed up 55 percent of the janitors in the area.²⁵⁷ When SEIU reached the 55 percent target in 2001,

²⁵² Moberg, *Labor’s New Land*, *supra* note 13, at 25.

²⁵³ *Id.*

²⁵⁴ CTW Constitution, *supra* note 230, pmb1.

²⁵⁵ Bai, *supra* note 200, at 42.

²⁵⁶ Bernstein, *Save Labor*, *supra* note 7.

²⁵⁷ *Id.*; see also Bai, *supra* note 200, at 42.

the union contracts took effect.²⁵⁸ Through its efforts, SEIU helped raise janitorial wages from a little more than minimum wage to \$11.75 an hour plus benefits, and now SEIU represents about 70 percent of those previously nonunion janitors.²⁵⁹ According to the vice-president of one custodial services company, the benefits of unionization include reduction in turnover, increased worker dedication and loyalty, and the removal of wage undercutting by janitorial contractors.²⁶⁰

As demonstrated in the New Jersey organizing campaign, SEIU's organizing strategies include card checks, where employers agree to recognize a union when a majority of workers have signed union authorization cards.²⁶¹ By enlisting the process of card checks, Stern and SEIU have avoided the National Labor Relations Board's formal election process, in which management can easily influence the outcome through legal and illegal labor practices.²⁶² Card checks go hand-in-hand with neutrality agreements, which restrict employers from campaigning against a union during organizing drives and require an employer to recognize the union when a majority signs up.²⁶³ In 2005, SEIU obtained neutrality and card check agreements for over 5,000 janitors in Houston,

²⁵⁸ Bernstein, *Save Labor*, *supra* note 7.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ Moberg, *All Apart Now*, *supra* note 225, at 27; Richard M. Reice & Christopher Berner, *Unions favor card check recognition in organizing*, NAT'L L.J., Jan. 10, 2005, available at http://www.brownraysman.com/pubs/articles/pdf/NLJ_050110.pdf (last visited Dec. 7, 2005) [hereinafter Reice, *Card Check*]. Under a neutrality agreement, an employer and union can negotiate over various conditions, including what constitutes a majority for recognition purposes. For example, the parties may determine that obtaining cards from 55 percent of all eligible employees will constitute a majority, rather than the simple majority required by the NLRA. See Reice, *Card Check*.

Texas, who were backed by janitors in unionized cities.²⁶⁴ UNITE HERE also seeks neutrality agreements from hotel chains during organizing drives.²⁶⁵

In current and future organizing drives, Change to Win plans to target low-wage workers and immigrants, particularly in the Southern states.²⁶⁶ Over the years, labor organizations have had little success organizing in the South; however, SEIU's latest triumph in Houston may be an indication of what's to come. After securing a neutrality pledge from Houston's largest janitorial companies, SEIU organizers announced in late November 2005 that the union had obtained majority support.²⁶⁷ SEIU's unprecedented success in Houston can be attributed to "several unusual tactics," including "lining up the support of religious leaders, pension funds, and [Houston's] mayor, Bill White, a Democrat," and "sympathy strikes" in Houston and at 75 office buildings in California, Illinois, New York and Connecticut.²⁶⁸ SEIU hopes to build upon its Houston effort by unionizing 4,000 janitors in Atlanta and 2,000 in Phoenix.²⁶⁹ Although the Houston effort went smoother than expected, organizing in the South may still be problematic considering the strong opposition SEIU has faced from condominium companies in Miami.²⁷⁰

Part of the CTW organizing strategy is to "unit[e] workers across national borders," i.e., to create a global labor movement.²⁷¹ The economic world workers face today is a place where global

²⁶⁴ Moberg, *All Apart Now*, *supra* note 225, at 27.

²⁶⁵ *Id.*

²⁶⁶ Greenhouse, *Janitors*, *supra* note 233.

²⁶⁷ *Id.*

²⁶⁸ *Id.* Though sympathy strikes are technically illegal in the United States, it is often hard to differentiate between a primary strike and sympathy strike, therefore making sympathy strikes a useful organizing tactic. See James Atleson, *The Voyage of the Neptune Jade: The Perils and Promises of Transnational Labor Solidarity*, 52 BUFF. L. REV. 85, 150, 158-59 (2004) [hereinafter Atleson, *Neptune Jade*].

²⁶⁹ Greenhouse, *Janitors*, *supra* note 233.

²⁷⁰ *Id.*

²⁷¹ CTW Constitution, *supra* note 230, pmb1.

corporations dominate and global labor markets are the norm.²⁷² Andy Stern has suggested an international approach that includes the creation of a multinational federation of unions – an association similar to the AFL-CIO or CTW, but with member unions coming from all over the world – designed to combat the effects of globalization and the challenge posed by multinational corporations.²⁷³ International organizing strategies that target multinational companies based out of France, Great Britain and the Scandinavian countries have already begun to work for CTW unions, such as SEIU and UNITE HERE.²⁷⁴ For instance, Stern managed to bring Sodexho – a French company that operates in both France and the United States, and provides the various “services necessary to operate corporate buildings” – to the bargaining table by placing advertisements in French newspapers.²⁷⁵ The ads shamed Sodexho executives, who do not oppose unions in Europe, for their policy in the United States of discouraging unionization.²⁷⁶ SEIU also enlisted Swedish union support to secure a neutrality pledge from Securitas, a multinational building security corporation, for organizing campaigns in the United States.²⁷⁷

A multinational labor movement is not a new concept, and a type of international labor association already exists. In 1949, the International Conference of Free Trade Unions (“ICTFU”) was created to link unions around the world.²⁷⁸ Unlike the multinational federation of unions that Stern suggests, which would include national labor unions, the ICTFU membership consists of national union centers in each country.²⁷⁹ The existing

²⁷² Moberg, *All Apart Now*, *supra* note 225, at 26.

²⁷³ Bai, *supra* note 200, at 45.

²⁷⁴ *Id.*; Moberg, *All Apart Now*, *supra* note 225, at 27.

²⁷⁵ Bai, *supra* note 200, at 45.

²⁷⁶ *Id.*

²⁷⁷ Moberg, *All Apart Now*, *supra* note 225, at 27.

²⁷⁸ Atleson, *Neptune Jade*, *supra* note 268, at 108.

²⁷⁹ *Id.*

ICTFU has helped facilitate transnational solidarity; however, transnational solidarity can be problematic, as some nations like the United States and Germany prohibit sympathy strikes and secondary labor activity within and outside national borders.²⁸⁰ At the same time, identifying sympathetic action is not always easy, which means unions can and will continue to cross borders and enlist the assistance of foreign labor unions.²⁸¹ Moreover, the right to engage in solidarity and sympathy strikes is protected in a number of European nations, including Sweden, France, Spain, and Denmark, and, therefore, CTW will be able to utilize relationships with foreign labor unions as an organizing and bargaining technique.²⁸²

Although CTW had indicated that it would “secure legislation in the common interests of affiliate labor organizations, their members and all working women and men,”²⁸³ legislative reform and political action on the federal level are not a main focus for now. As demonstrated by Change to Win’s enlisting of local politicians during the Houston janitorial campaign, whatever political activity CTW engages in will likely be geared toward the state and local levels on a non-partisan basis.²⁸⁴ However, CTW has already been criticized for its non-partisan position due to past follies. In 2004, after “SEIU donated \$500,000 to the Republican Governors Association, not a hotbed of pro-union sentiment[,] [t]hree Republican governors, by executive decree, illegalized [public sector] collective bargaining.”²⁸⁵ Based on this track record, SEIU and CTW have been disparaged for their political stance. Nevertheless, CTW claims that clinging to the Democratic Party has done nothing for labor of late.²⁸⁶ Backing the New Deal Democrats did benefit the CIO, but neither of the two major U.S. political parties can be called a true friend of workers. Therefore,

²⁸⁰ *Id.* at 150, 156, 160, 161-62.

²⁸¹ *Id.* at 150, 156, 160-62.

²⁸² *Id.* at 158-64.

²⁸³ CTW Bylaws, *supra* note 212, art. II, § 7.

²⁸⁴ Hamstra, *supra* note 179.

²⁸⁵ Benson, *supra* note 207, at 2.

²⁸⁶ *See id.*

CTW should align its interest with those politicians who have consistently supported unions and workers in the past, regardless of party affiliation.²⁸⁷

Ironically, the AFL's original concerns regarding political action seem to have come back to haunt the AFL-CIO and the labor movement. In the early 20th century, the AFL followed its tradition of voluntarism and avoided political action, believing that organized labor "could not become tied to any political party," and that government activity would hurt union interests in the long run.²⁸⁸ For years now, the AFL-CIO has been wedded to the Democratic Party; obviously that policy of voluntarism is long gone. Considering that advocating for legislative reform and relying on the Democrats has not worked for the AFL-CIO, CTW's political strategy and commitment to organizing seems more rational.

Unlike the AFL-CIO, which continues to push for legislative change, "[t]he CTW unions argue that even without new [federal] legislation unions can win new large-scale organizing campaigns now."²⁸⁹ However, a piece of pro-labor legislation known as the Employee Free Choice Act currently has 204 sponsors in the House of Representatives and 40 in the Senate.²⁹⁰ This Act would legally recognize a bargaining unit when a majority of workers signed authorization cards, create binding arbitration for the first contract negotiated between a new union and employer, and increase employer penalties for unfair labor practices.²⁹¹ In the past, similar legislation has come close to

²⁸⁷ Still, the CTW unions will most likely support Democrats, because they have supported unions and workers in the past.

²⁸⁸ GALL, *AMERICAN WORKERS*, *supra* note 8, at 94.

²⁸⁹ Moberg, *All Apart Now*, *supra* note 225, at 27.

²⁹⁰ Christopher Hayes, *Symbol of the System: What do you get when you cross gutted labor laws with a corporate culture of impunity? Why, Wal-Mart, of course!*, IN *THESE TIMES*, Nov. 21, 2005, at 22, 23.

²⁹¹ *Id.* at 23.

passing, but has ultimately been defeated²⁹² and, therefore, CTW is wise to push forward regardless of what the U.S. government may or may not do.

Focusing on organizing makes the most sense right now for CTW. As John L. Lewis put it, “politicians react[] to power, not sentiment” and workers can “advance their cause only through the exercise of power . . . , not through appeals for sympathy as oppressed Americans.”²⁹³ In other words, only when unions are perceived as powerful does the legal system and government respond favorably.²⁹⁴ CTW has already begun to make some noise with its organizing work in Houston. If Change to Win can build upon that victory, politicians and the federal government will take notice, and then CTW can concern itself with labor law reform.

VII. CHANGE TO WIN’S IMPACT ON ORGANIZED LABOR

Much of the debate surrounding Change to Win has been whether the split from the AFL-CIO was necessary or prudent. Just as people in the labor movement questioned John L. Lewis’ motives for supporting industrial unionism, today’s union leaders are wary of Andy Stern’s reasons for encouraging the formation of Change to Win. Some labor leaders, including Tom Buffenbarger, president of the AFL-CIO’s International Association of Machinists and Aerospace Workers, view Andy Stern as “an arrogant usurper,”²⁹⁵ a man who is “power-hungry.”²⁹⁶ Buffenbarger believes that when Stern talks about union density, or market share, and “loss and gain,” Stern “sound[s] so much [more] like management” than a union leader.²⁹⁷ Stern’s critics also have doubts about CTW’s organizing potential in the “tough-as-nails” private sector, since much of the SEIU’s organizing success has been in the public sector with “easy-to-organize” home health care workers.²⁹⁸ Moreover, the top-down organizing approach

²⁹² *Id.*

²⁹³ DUBOFSKY, *supra* note 10, at 257.

²⁹⁴ Atleson, *Union Power*, *supra* note 3, at 500.

²⁹⁵ Bai, *supra* note 200, at 41.

²⁹⁶ Bernstein, *Save Labor*, *supra* note 7.

²⁹⁷ Bai, *supra* note 200, at 41.

²⁹⁸ Bernstein, *Save Labor*, *supra* note 7.

advocated by Stern and other CTW leaders is a stark contrast to the CIO, and has been denounced by Larry Cohen, president of the AFL-CIO affiliate Communication Workers of America (“CWA”), who believes organized labor should pursue grassroots organizing and labor law reforms.²⁹⁹

At this point, discussing the reasons for Andy Stern and the Change to Win unions’ disaffiliation from the AFL-CIO is superfluous. The crucial question is whether CTW can silence its critics by living up to its hype and achieving similar gains to those of the CIO in the 1930s. Although comparing the CIO and CTW is not exactly fair, as the political and economic environment of the late 1930s is quite distinguishable from that of the early 21st century, the comparison reveals promise and suggests that CTW can make some important headway in reviving unionism in the United States.

The growth of the CIO was rooted in rank-and-file activism and facilitated by sympathetic politicians at the federal, state, and local levels of government. It was no coincidence in the 1930s that organized labor’s fate began to improve after pro-labor legislation was enacted and supportive politicians gained control of the federal government and various state governorships. In contrast, the present day federal government is not an ally of labor and the NLRA is an ineffective piece of legislation that allows employers to steer clear of unionized workplaces. Moreover, many CIO members were communist “big picture” activists,³⁰⁰ and it does not appear that Change to Win leaders can provide a specific idea of what a just American society should look like. On the surface, therefore, one would think that a comparison between the CIO and CTW is unwarranted and reveals little promise for CTW.

Aside from the noticeable political, legislative, and

²⁹⁹ Jim Grossfeld, *Labor Gains? For a change, a piece of good news from the world of labor: Larry Cohen takes the reins at the CWA, a union that’s adapted to the times*, AM. PROSPECT, Oct. 2005, at 15.

³⁰⁰ Tucker, *supra* note 130.

organizational differences, unions and workers in the early 21st century find themselves in an economic situation quite comparable to that of the 1930s. In the 1920s and 1930s, the United States was in the process of moving from a craft-based economy to an industrial economy. AFL leaders disregarded industrial organization because they believed it to be an ineffective form of unionism, and found industrial workers to be “beneath” craft workers and, therefore, unworthy candidates for unions.³⁰¹ The CIO unions, however, recognized the opportunity associated with the socio-economic transformation and successfully pursued industrial unionism on a massive scale.³⁰²

Similarly, the modern day economy can be described as a service economy, with much of the former industrial sectors disappearing and being moved abroad. Like the old AFL, the AFL-CIO for years essentially ignored the development of a service economy and put forth little effort into organizing service workers.³⁰³ More likely, AFL-CIO unions dominated by white men did not perceive the benefit in organizing women and minorities in the low-wage service industries – who may have been viewed as “scum” like industrial workers in the 1930s – and probably were not well-positioned to mobilize such service workers.³⁰⁴ In comparison, the Change to Win unions realized that the future of American workers was tied to a service economy comprised of immigrants, women, and minorities, and, therefore, has begun its mission to bring unionism to the millions of workers in the service industries – something that is very “CIO.”³⁰⁵

Jack Metzgar claims that the CIO and Change to Win are not one and the same, especially because “the CIO leaders saw an opportunity [to organize], whereas the [CTW] unions see only a

³⁰¹ See ROBERTS, *supra* note 53, at 140; TAFT, *supra* note 14, at 464; Smith, *supra* note 54.

³⁰² GALL, AMERICAN WORKERS, *supra* note 8, at 83, 84, 96.

³⁰³ See Atleson, *Union Power*, *supra* note 3, at 488.

³⁰⁴ See *id.* at 470, 488.

³⁰⁵ See CTW Coalition Statement, *supra* note 187; Greenhouse, *Janitors*, *supra* note 233; Edsall, *Anna Burger*, *supra* note 233.

dire need.”³⁰⁶ There is some truth in that statement. The National Industrial Recovery Act and then the Wagner Act gave industrial workers the opportunity to form unions and they jumped at the chance. Since the antiquated AFL leadership objected to industrial organization, the rank-and-file workers were merely waiting for a labor organization to welcome them in. Therefore, John L. Lewis and the CIO capitalized on the opportunity found in industrial unionism by forming a rival labor federation in response to workers’ demands.

On the other hand, Change to Win is pretty much a manifestation of union leaders’ reactions to the ongoing destruction of organized labor. For years, unions have been unable to reverse labor’s decline, which has left organized labor in a dire, crippled state. Unlike the CIO, Change to Win was not created because workers were calling for union representation. Rather, CTW leaders formed a new labor federation because they believed workers needed to belong to unions in order to protect workers’ rights, interests and future.³⁰⁷ Both the CIO and CTW recognized that the point of no return for organized labor was rapidly approaching – and, in Change to Win’s case, it may have already arrived – and that a massive restructuring of the labor movement was needed if organized labor and workers wanted to retain any type of economic and political power. In that sense, CIO and CTW leaders did play a role in founding new labor federations. However, the reasons for creating Change to Win came solely from the top, with little influence or demand from the bottom.³⁰⁸

Therefore, there are dissimilarities between the CIO and CTW regarding rank-and-file organizing and a top-down approach; however, they do not matter significantly. Considering the 21st century’s political and legal realities, if CTW were a carbon copy of the CIO, Change to Win would not be able to save organized

³⁰⁶ Metzgar, *supra* note 12, at 15.

³⁰⁷ See CTW Constitution, *supra* note 230, pmb1.

³⁰⁸ See Edsall, *Unions Split*, *supra* note 182.

labor. The political obstacles, which translate into weak labor laws and support for employers' economic interests, prevent Change to Win from considering the grassroots organizing (at least for the time being) that allowed the CIO to double union membership in only two years.³⁰⁹

Accordingly, CTW cannot rely on the rank-and-file and workers' self-activity to resurrect the organized labor movement. Although polls show that 40 million American workers would like to join unions³¹⁰ and that 40 percent would vote for union representation if an election were held at their workplace,³¹¹ workers are not lining up to join unions. Why is that? According to Andy Stern, the explanation for workers' actions and unions' inability to organize is simple – employers.³¹²

Under existing labor laws, “an employer is free to wage an aggressive campaign” to dissuade its employees from joining unions.³¹³ In those situations where employees do seek union representation and file an election petition with the NLRB, employers manage to avoid unionization more than 50 percent of the time.³¹⁴ Three-quarters of employers involved in NLRB elections hire “union-busting firms” to avoid unionization,³¹⁵ and 25 percent of employers fire union supporters in those elections.³¹⁶ Even if employers' actions are eventually deemed unfair labor practices by the NLRB, employers view remedies like backpay for fired employees as a routine business expense.³¹⁷ Firing union supporters during an organizing campaign has a chilling effect on other employees, who may be considering voting for a union, because it sends a strong message that they will meet a similar fate

³⁰⁹ See *id.* at 12.

³¹⁰ *Workers' Rights Statistics*, American Rights at Work, <http://www.americanrightsatwork.org/resources/statistics.cfm> (last visited Dec. 20, 2005).

³¹¹ Reice, *Card Check*, *supra* note 263.

³¹² Tucker, *supra* note 130.

³¹³ Reice, *Card Check*, *supra* note 263.

³¹⁴ *Id.*

³¹⁵ Hayes, *supra* note 290, at 22.

³¹⁶ Reice, *Card Check*, *supra* note 263.

³¹⁷ Hayes, *supra* note 290, at 23.

if they support a union. Employees are thus forced to choose between a job and no union, or no job and possibly a union. Seventy percent of the time the employer comes out ahead by running an anti-union campaign,³¹⁸ as it avoids the costs associated with union representation. Therefore, it is not surprising that union victories are becoming increasingly rare and that traditional grassroots organizing, an “arduous, risky and costly” process,³¹⁹ is ineffective in bringing unionism to the masses.

Perhaps if Change to Win had the communist presence of the CIO then today’s hostile employers would not be able to prevent union organizing. The CIO was home to many left-wing activists, especially communists, who were indifferent to being fired and were willing to engage in militant battles with employers.³²⁰ If a sizeable communist or socialist presence existed in American society or Change to Win, then maybe grassroots organizing and rebuilding the labor movement from the bottom-up might be a prudent option. On the other hand, communist militancy probably would not be able to circumvent the weak labor laws, which favor employers in union campaigns. Moreover, the CIO’s inclusion of and affiliation with communists contributed to the CIO’s decline in the early 1950s, as the CIO expelled communist union members in response to society’s rejection of any association with the communist ideology, and so it might be best that the extreme left is not involved in Change to Win’s organizing mission.

Looking at the Communication Workers of America (“CWA”), communist or socialist ideology does not appear to be the controlling factor for union organizing success. In the last twenty years, the CWA, which favors “organiz[ing] from the

³¹⁸ See Kim Freeman, *Widespread Use of Firings, Bribes, and Threats by Employers: New unionbusting data released by American Rights at Work*, Dec. 6, 2005, at <http://araw.org/press/press.cfm?pressReleaseID=29> (last visited May 5, 2006).

³¹⁹ See Reice, *Card Check*, *supra* note 263.

³²⁰ See KIMELDORF, *supra* note 113, at 10.

workplace up, not the top down” and is not a communist organization, has used grassroots organizing to increase CWA membership from 580,000 to 700,000.³²¹ The CWA’s grassroots organizing has been successful because its organizing methods are coupled with card check recognition and neutrality agreements, just like the Change to Win unions.

It would seem then that increasing unionization rates will not be determined by whether unions employ a bottom-up approach (with or without a presence from the left) or CTW’s top-down sector organizing; both organizing strategies can work with help. What workers and unions need to do to reverse labor’s decline is to secure neutrality and card check arrangements by various means, including enlisting public support from civic and religious leaders³²² – a tactic the CIO used when trying to organize black workers.³²³ One study shows that when a neutrality provision is combined with a card check agreement, the union organizing success rate is almost 80 percent.³²⁴ In contrast, unions win only 45 percent of NLRB elections, a statistic which does not include those instances where unions anticipate defeat and withdraw an election petition.³²⁵ Interestingly, the Change to Win unions won 60 percent of all NLRB elections in 2004, which illustrates that CTW does have some of the best strategic organizers.³²⁶ Still, combining card check recognition with neutrality agreements is CTW’s – and other unions’ – best option because it eliminates employer opposition and, therefore, makes

³²¹ Grossfeld, *supra* note 299.

³²² See Gerald Mayer, *Labor Union Recognition Procedures: Use of Secret Ballots and Card Checks*, Congressional Research Service, at 10, available at <http://www.workinglife.org/FOL/pdf/CRS%20may%202005%20reportcardcheck.pdf> (May 23, 2005).

³²³ See GALL, *AMERICAN WORKERS*, *supra* note 8, at 93.

³²⁴ Adrienne E. Eaton & Jill Kriesky, *Union Organizing Under Neutrality & Card Check Agreements*, 55 *INDUS. & LAB. REL. REV.* 42, 45-48, 51-52 (2001).

³²⁵ Reice, *Card Check*, *supra* note 263.

³²⁶ *New Union Federation: “Lean, Mean Organizing Machine,”* Sept. 30, 2005, available at <http://www.fordharrison.com/fh/news/articles/20050930union.asp> (last visited Dec. 8, 2005).

the unionization process much easier.³²⁷

Although many American employers are willing to fight unions tooth and nail, not all employers reject neutrality and card check agreements.³²⁸ At times, employers consent to neutrality and card checks to achieve labor peace or gain a union's support on a key business initiative outside of the employer's control, such as securing public approval for an expansion in operations.³²⁹ Moreover, unions with significant bargaining power, like Change to Win's SEIU, are best suited for obtaining neutrality and card check agreements.³³⁰ Therefore, CTW is on the right path with its strategy of organizing entire sectors at once through card checks and neutrality, and should be able to reproduce its Houston victory in other cities and sectors.

In regards to CTW's method of sector organizing, targeting whole markets at once is a practical strategy. When unions succeed in organizing an entire sector, "the presence of a union no longer puts any particular enterprise at a disadvantage in the marketplace."³³¹ Accordingly, by taking on a whole industry in a certain locality at once, employers should not feel as much pressure to fight a union and its request for neutrality, since all companies in that industry will be in the same boat. CTW can use the organizing examples in New Jersey and now Houston to show employers and workers that unionization is in no way a bad thing and does in fact have various benefits, such as reduced employee turnover and the elimination of wage undercutting by rival employers.³³²

CTW will be able to win some critical victories with sector organizing through card check and neutrality agreements, but

³²⁷ Mayer, *supra* note 322, at 14-15.

³²⁸ Reice, *Card Check*, *supra* note 263.

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ Stephen F. Befort, *Labor and Employment Law at the Millennium: A Historical Review and Critical Assessment*, 43 B.C. L. REV. 351, 362 (2002).

³³² See Bernstein, *Save Labor*, *supra* note 7.

employer opposition to unionism will no doubt remain strong in the United States, just as it did when the CIO was formed in 1935. One thing that generated the CIO's massive growth was the ability to bring General Motors and U.S. Steel, two large, anti-union employers, to the bargaining table. CTW has already begun to make significant progress by achieving union recognition for 5,000 janitors in Houston – an accomplishment that speaks volumes in the anti-union South.³³³ Although more victories should follow the Houston campaign, CTW's credibility and the future of organized labor may have to involve a battle between CTW and a large, anti-union employer – perhaps Wal-Mart.

Wal-Mart could be considered CTW's modern day General Motors or U.S. Steel, as Wal-Mart's position is that unionism is not permitted in its U.S. stores and the company openly communicates to its employees that they cannot join unions, in violation of the NLRA.³³⁴ Similar to U.S. Steel in the early 20th century, Wal-Mart instructs its store managers to contact corporate headquarters in Bentonville, Arkansas via the "Wal-Mart Hotline" when employees display the slightest sign of union support.³³⁵ Wal-Mart's anti-union policy and methods are not a secret, nor are its violations of federal labor laws and its poor treatment of employees. Since 1999, unions and workers have filed more than 300 unfair labor practice charges with the NLRB accusing Wal-Mart of such violations as firing employees for suspected union activity.³³⁶

As Change to Win indicated in its proposals to the AFL-CIO, a massive campaign to take on Wal-Mart and other anti-worker employers is needed. If Change to Win managed to force Wal-Mart to the bargaining table, it would not only add one million Wal-Mart employees to the ranks of organized labor, but it could spark a wave of mass organization reminiscent of the CIO in the 1930s. One obstacle, though, is that CTW cannot use neutrality agreements and card checks to force Wal-Mart to

³³³ Greenhouse, *Janitors*, *supra* note 233.

³³⁴ For U.S. Steel's anti-union position, *see infra* p. 4 and note 21.

³³⁵ Hayes, *supra* note 290, at 22.

³³⁶ *Id.*

negotiate because Wal-Mart will categorically reject these union requests. Since CTW's typical organizing methods and the traditional store-by-store strategy or rank-and-file organizing cannot work with Wal-Mart, Change to Win has taken a different approach and decided to go after "the hearts and minds of [Wal-Mart's] customers."³³⁷ The UFCW has launched WakeUpWalMart.com, "a public awareness campaign designed to educate the public about Wal-Mart's [harmful] business impact and negative community effects,"³³⁸ and has provided legal support to communities trying to fight off new Wal-Mart stores.³³⁹ SEIU helped start a similar movement called WalMartWatch.com.³⁴⁰

With the Change to Win unions engaged in corporate campaigns that criticize Wal-Mart and its business practices, some observers believe the groundwork is being laid for a successful organizing effort against Wal-Mart.³⁴¹ Tom Weir notes that "[v]ery little could have as much publicity value [for Change to Win] as forcing Wal-Mart to the bargaining table," and that Wal-Mart "may be helping the union cause with the way it's been addressing employee issues."³⁴² In fact, due to discontent with low wages and poor working conditions, employee associations made up of Wal-Mart workers are springing up throughout the United States with the help of the UFCW and SEIU.³⁴³ In central Florida,

³³⁷ *Can Wal-Mart change its spots?*, ST. LOUIS POST-DISPATCH, Dec. 17, 2005, at A49.

³³⁸ Hayes, *supra* note 290, at 22.

³³⁹ Bill Sheets, *Wal-Mart foes press on*, THE DAILY HERALD (Wash.), Dec. 19, 2005, available at <http://www.wakeupwalmart.com/news/20051219-dh.html> (last visited Dec. 21, 2005).

³⁴⁰ Hayes, *supra* note 290, at 22.

³⁴¹ See Tom Weir, *Wal-Mart, the union shop? Recent developments may favor labor's efforts to get the mega-retailer's employees on board*, GROCERY HEADQUARTERS, Nov. 1, 2005, at 122.

³⁴² *Id.*

³⁴³ See, e.g., Brendan Coyne, *Kitchen-labor Union Launching Wal-Mart Workers Association*, NEW STANDARD, Nov. 7, 2005, available at

for example, Wal-Mart employees have formed the Wal-Mart Workers Association, headed by SEIU organizer Rick Smith,³⁴⁴ “to publicly raise complaints about the way members are treated at work, especially with regard to scheduling and cutbacks in hours they say put their health benefits at risk.”³⁴⁵ Though this association is not technically a union, the Wal-Mart employees’ concerns sound a lot like the concerted activity that leads to unionization, and the association, which collects monthly dues from its members,³⁴⁶ may be a step in that direction.

CONCLUSION

Change to Win does not have to be exactly like the CIO in order to rescue workers and protect them from vicious employers and unsympathetic politicians. CTW does not need an overriding vision of what American society should look like or a bottom-up approach.³⁴⁷ Arguably, it is enough that Change to Win is willing to do what is necessary to promote and improve the economic interests of American workers and their children, and give working families a strong political voice.³⁴⁸ The fact that CTW appears to be ready to fight for workers’ rights at any cost may be sufficient to help unions grow once again.

Excluding any noticeable differences between the CIO and CTW, the two labor organizations are alike in one important way: both recognized that without a change in union organizing strategy, unions would fall into “political and economic irrelevance.”³⁴⁹ Consequently, the individuals affiliated with the two labor federations were willing to do what was necessary, within the

http://newstandardnews.net/content/?action=show_item&itemid=2572 (last visited Dec. 19, 2005); Benson, *supra* note 207, at 2.

³⁴⁴ Stephen Franklin, *Activists pressure Wal-Mart: Sophisticated campaign takes place of traditional union organizing*, CHI. TRIB., Nov. 20, 2005, available at <http://www.walmartwork.org/index.php?id=73> (last visited Dec. 21, 2005).

³⁴⁵ Weir, *supra* note 341.

³⁴⁶ Members of the Wal-Mart Workers Association are not required to pay dues, but some enlisted workers contribute monthly dues of \$5 – dues which “are more symbolic than anything else.” Franklin, *supra* note 344.

³⁴⁷ Tucker, *supra* note 130.

³⁴⁸ See CTW Constitution, *supra* note 230, pmbl.

³⁴⁹ See GALL, *AMERICAN WORKERS*, *supra* note 8, at 83.

political and economic confines of American society, to bring unionism to the millions of unorganized workers in the United States. As it turned out, the CIO's departure from the AFL was the right move. Likewise, the formation of Change to Win may turn out to be exactly what the organized labor movement needs. Only time will tell if Change to Win and service sector workers will emerge victorious in their confrontation with anti-union employers; but workers should be hopeful because a revitalized labor movement is developing and gaining ground.

Change to Win's journey might not be as easy as the CIO's considering contemporary labor law and the current political environment, both of which operate against workers and unions. Change to Win should not be expected to double union membership in a matter of two years³⁵⁰ or have the immediate impact that the CIO's industrial unionism had. However, CTW's massive organizing expenditures, commitment to organizing the service sectors, and creative organizing tactics, including organizing entire sectors or markets at once, should allow the new labor federation to increase union membership and union density ever so steadily. Since CTW will be organizing the growing service industries in which the jobs cannot be offshored or replaced with technology, any progress Change to Win makes should be sustainable.

With no-raid agreements and solidarity charters maintaining relationships between AFL-CIO affiliates and CTW unions, organized labor has not been divided. Solidarity will continue on the local and state levels, and that is good news for workers. Even though some may argue that this reunification proves the CTW disaffiliation was unwarranted, the opposite is probably true. By breaking away from the AFL-CIO, Change to Win not only alerted employers and politicians that a revitalized

³⁵⁰ This would be nearly impossible, as there are 8 million union members in the private sector. See <http://www.lraonline.org/charts.php?id=53> (last visited May 6, 2006).

labor movement is developing, but it also sent a message to the AFL-CIO to wake up and change.

Ten years ago, the AFL-CIO recognized the problem of union decline but did not make a genuine attempt at figuring out a solution. Considering the AFL in the 1930s and the present day AFL-CIO, organized labor has a pattern of rebuffing change, even when it is needed. Only when an actual division takes place within organized labor does the AFL-CIO seem to react. Given this history, CTW's decision to depart from the AFL-CIO was essential for workers, and also to convince the AFL-CIO leadership to change its organizing strategy.

When the CIO started to organize along industrial lines, it ended up being a turning point for organized labor, as it caused the AFL to do away with its antiquated jurisdictional system and spurred massive union organization. Change to Win has started to fulfill its organizing mission, and the AFL-CIO has begun to show signs of change. If the history of the AFL and CIO is indicative of what happens when there is a split in the labor movement, notwithstanding the political and legal differences of the 1930s and early 21st century, Change to Win's actions may represent a critical turning point for organized labor and a sign of better days to come.