

# Brewing Solidarity: Rights Consciousness and Class Consciousness in Coffeeshop Organizing

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*Almost ten thousand baristas have unionized since 2022 in cafes across the country. Their effort breaks with recent history in several respects. For example, baristas have used a novel “worker-to-worker organizing” model in which workers themselves—rather than union staff and leadership—design and manage campaigns. Also, while scholars and unionists have argued for decades that the National Labor Relations Board’s secret ballot elections process is a dead end, baristas have used that process quite effectively, winning over 85% of their elections against the major company involved. Through their organizing efforts, baristas have centered the issues and voices of LGBTQ+ workers and younger workers. This campaign therefore raises important questions about law’s role in contemporary worker organizing. To shed light on those questions, my research assistants and I carried out a set of IRB-approved interviews with worker-leaders in 2023 and 2024. This Article reports out our initial findings.*

*The Article argues that baristas’ self-education in law was critical to the campaign’s success. Our interviewees reported learning key labor law doctrines before organizing, refining their legal knowledge over time, and exercising legal rights in the workplace without extensive assistance from professional organizers or legal counsel. At the same time, interviewees reported feeling that our labor laws did not adequately protect them against employer retaliation. These findings have implications for perennial debates over labor law reform, and for scholarship on the role of law in social movements more broadly.*

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*Epigraphs:*

*In my experience with organizing, one of the biggest things is [that people are] not always aware of their rights. They're not always aware of the law. And one of your primary jobs as an organizer is to have eternal vigilance about this . . . it's this eternal diligence to just make sure that people know their rights [and] know the law.<sup>1</sup>*

*It's a very queer workspace. It's known for being a queer workspace. And I think that a lot of times, whether you like it or not, if you're queer or in queer spaces, you kind of do get radicalized because you can see that the system doesn't work for you in certain ways, right? And then being a worker, you are also able to see how the system isn't working in that way either.<sup>2</sup>*

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1. Interview by Anibha Singh (Mar. 25, 2024).

2. Interview by Anibha Singh (Feb. 26, 2024); *see also* Interview by Shiva Sethi (Apr. 21, 2024). (“Queer people are the most militant . . . because Starbucks is the only safe service industry fast food restaurant that like they can work at.”).

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## INTRODUCTION

Worker organizing and militancy surged during and after the COVID-19 pandemic, including in healthcare, warehouses, manufacturing, education, and foodservice.<sup>3</sup> In one of the most successful new unionization efforts, over ten thousand baristas have organized since 2022 at Starbucks stores across the country. To date, baristas have won over 85% of their union elections at the company,<sup>4</sup> cutting against scholars' and labor lawyers' longstanding arguments that the National Labor Relations Board's (NLRB's) secret-ballot election process does not adequately protect workers' rights to unionize.<sup>5</sup> Baristas have also sustained their efforts despite a massive anti-union push by Starbucks, which has come to the bargaining table and reached agreement on various issues.<sup>6</sup> Such victories suggest that the supposedly arid soil of the National Labor Relations Act (NLRA) may still bear fruit. But under which circumstances? Why exactly did baristas succeed where so many others have failed? And what does their success say about the state of our labor laws?

To shed light on those questions, my research assistants and I carried out a set of semi-structured interviews with worker-leaders in the effort. These interviews first sought to understand what led baristas to organize and how they built, sustained, or lost union support in their workplaces. Regarding baristas' motivations, our interviews suggest that certain background features of the industry and worksites encouraged both a strong craft ethic and a shared sense of physical and economic vulnerability. The interviews also suggest that a key reason for baristas' high success rate has been the baristas' de-centralized "worker-to-worker" organizing model, in which baristas themselves—not union staffers—developed and executed campaign strategies within their own shops.<sup>7</sup>

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3. See, e.g., Noam Scheiber, *How the Pandemic Has Added to Labor Unrest*, N.Y. TIMES (Nov. 3, 2021), <https://www.nytimes.com/2021/11/01/business/economy/strikes-labor-pandemic.html>. On the meaning of "militancy," in this context, see EDMUND HEERY & MIKE NOON, A DICTIONARY OF HUMAN RESOURCE MANAGEMENT 291–92 (2d ed. 2008) ("[M]ilitancy is the propensity of a trade union or group of workers to engage in strike action and other forms of industrial action. A militant orientation on the part of a union is often counterposed to union moderation or 'partnership.'").

4. The 85% figure is from Kevin Reuning, *Starbucks*, UNION ELECTIONS: STARBUCKS ELECTIONS, <https://unionelections.org/data/starbucks> (last visited June 25, 2025).

5. For leading criticisms of the NLRB elections regime, see generally Kate Andrias, *The New Labor Law*, 126 YALE L.J. 2 (2016); Benjamin I. Sachs, *Enabling Employee Choice: A Structural Approach to the Rules of Union Organizing*, 123 HARV. L. REV. 655 (2010); Cynthia L. Estlund, *The Ossification of American Labor Law*, 102 COLUM. L. REV. 1527 (2002); Craig Becker, *Democracy in the Workplace: Union Representation Elections and Federal Labor Law*, 77 MINN. L. REV. 495 (1993); Paul Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1769 (1983). I've made a version of this argument as well. Brishen Rogers, *Passion and Reason in Labor Law*, 47 HARV. C.R.-C.L. L. REV. 313 (2012).

6. Danielle Kaye & Rebecca Davis O'Brien, *Starbucks and Union Agree to Mediation in Quest for Contract*, N.Y. TIMES (Jan. 30, 2025), <https://www.nytimes.com/2025/01/30/business/starbucks-workers-united-union-mediation.html>.

7. On the worker-to-worker model, see generally ERIC BLANC, WE ARE THE UNION: HOW WORKER-TO-WORKER ORGANIZING IS REVITALIZING LABOR AND WINNING BIG (2025).

As part of that model, baristas emphasized their own particular concerns especially around wages and benefits, workplace safety, and LGBTQ+ equality.

Our interviews also explored the role of law in the organizing effort, asking baristas how they learned about and exercised their NLRA rights in the workplace, how they engaged with the NLRB, and how they would assess the law's overall efficacy and fairness. What we found was a classic example of "lawmaking from below" or "jurisgenesis," in which baristas' legal knowledge and claim articulation helped to define and maintain a rich culture of solidarity, and therefore to propel their campaign forward.<sup>8</sup> Interviewees reported having common concerns about wages, hours, benefits, workplace safety, harassment, and discrimination that predated the campaign. But they and their coworkers increasingly came to articulate those concerns in *class* terms as they learned about and exercised their Section 7 rights.<sup>9</sup> They also proffered a vision of good work as dignified work in networks of solidarity, work that produces both a high-quality commodity (beverages) and an honest community of practice.<sup>10</sup> In other words, baristas' rights consciousness and class consciousness were intertwined.

Of course, workers were not the only legal actors here. In response to the baristas' campaign, their employer reasserted its own legal and operational powers in the workplace.<sup>11</sup> That counteroffensive brought the longstanding weaknesses of the NLRA regime to the fore. Some interviewees reported enduring forms of retaliation that were likely illegal, but that the NLRB struggled to remedy. Others reported management responses that may have been lawful, but that pitted workers against one another, demoralized worker-leaders to the point of harming their mental health, or stamped out store-level

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8. See Robert Cover, *The Supreme Court, 1982 Term: Nomos and Narrative*, 97 HARV. L. REV. 4, 11 (1983) (defining "jurisgenesis" as "the creation of legal meaning . . . through an essentially cultural medium."); see also Martha Minow, *Interpreting Rights: An Essay for Robert Cover*, 96 YALE L.J. 1860, 1861 (1987) (defending a view of the "interpretive turn in law" that depicts "law as a communal language and attach[es] law to the social contexts in which norms can be generated and given meaning."); James Gray Pope, *The Western Pennsylvania Coal Strike of 1933, Part I: Lawmaking From Below and the Revival of the United Mine Workers*, 44 LAB. HIST. 15, 44–46 (2003) (discussing process of "lawmaking from below" in the 1933 coal strikes).

9. Section 7 is the provision of the NLRA protecting workers' rights to organize and take concerted action. 29 U.S.C. § 157. On different approaches to class analysis, see ERIK OLIN WRIGHT, UNDERSTANDING CLASS 1–19 (2015) (summarizing three such approaches: an "individual attributes" approach, a Weberian approach, and a Marxist approach). My approach in this Article is more-or-less Weberian.

10. On the role of such "cultures of solidarity" in organizing, see generally RICK FANTASIA, CULTURES OF SOLIDARITY: CONSCIOUSNESS, ACTION, AND CONTEMPORARY AMERICAN WORKERS (1998); see also Karen Brodtkin & Cynthia Strathmann, *The Struggle for Hearts and Minds: Organization, Ideology, and Emotion*, 29 LAB. STUD. J. 1, 3 (2004–2005) (describing union organizing as a process of building a "culture[] where worker solidarity . . . becomes emotional and conceptual 'common sense.'").

11. The company's resistance here has been well-documented elsewhere and has shocked even many hardened observers. As a D.C.-based think tank recently reported, "[t]he number of unlawful anti-union charges facing Starbucks is almost certainly the largest in the 90-year history of the NLRB," and the NLRB's regional offices have issued "135 complaints covering 434 [unfair labor practice] charges." JOHN LOGAN, ECON. POL'Y INST., CORPORATE UNION BUSTING IN PLAIN SIGHT: HOW AMAZON, STARBUCKS, AND TRADER JOE'S CRUSHED DYNAMIC GRASSROOTS WORKER ORGANIZING CAMPAIGNS, 4 (Jan. 28, 2025), <https://files.epi.org/uploads/295158.pdf>.

campaigns.<sup>12</sup> Those efforts did indeed erode union support at many stores, and led some of our interviewees to quit or to drop out of the campaign altogether. However, the company's resistance has not stymied the baristas' effort overall. As noted above, the parties are currently in negotiations for a master collective bargaining agreement.

Interviewees emerged from their experiences with a complex assessment of the legal system. When asked how they would explain labor law's protections to a coworker, nearly every interviewee said something like the following: "Labor law provides meaningful protections to workers. But, NLRB processes are slow and cannot remedy employer unfair labor practices (ULPs) that erode union support in real time. There is no substitute for worker militancy if the goal is to put pressure on employers."<sup>13</sup> Many also felt that the legal system was biased toward employers and capital, and unfair at a deep, fundamental, structural level. Here, too, workers interpreted the law in class terms and interpreted class relations in legal terms. But not a single interviewee said they regretted organizing.

These findings cast new light on longstanding arguments by scholars in labor law, labor history, and labor studies that the NLRA regime has become incapable of effectuating workers' rights to organize.<sup>14</sup> To be clear, nothing in this Article challenges past arguments that the NLRA's meager protections and the NLRB's remedial weaknesses can deter unionizing or enable employers to seriously erode union support. But the baristas' campaign does suggest that our labor laws can still foment unionization efforts where *workers themselves* take the lead. In fact, baristas' efforts echo various historical uprisings during which workers advanced their own collective interpretations of legal texts and legal obligations.<sup>15</sup> It may be no accident that the literature on the NLRA's disutility was developed in a period of secular union decline, during which there was no organic worker uprising like the one that emerged during and after COVID-19. In the Article's conclusion I will detail implications of these findings for law reform debates and trade union practices.

These findings also have implications for the cross-disciplinary literature on law's role in social movements, much of which studies laypeople's deployment of legal doctrines and norms. For example, they are consistent with past findings that laypeople's legal education and knowledge can be an

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12. In addition to the discussion below based on our interviews, see JAZ BRISACK, *GET ON THE JOB AND ORGANIZE: STANDING UP FOR A BETTER WORKPLACE AND A BETTER WORLD* 198 (2025) ("After months of harassment, [a] pro-union worker told me they were forced to drop out of the Arizona State University Program, take a mental health leave, and check themselves into a hospital."); *id.* at 198–200 (recounting the struggles of a pro-union barista who struggled with depression, faced what they believed to be retaliation, and later died by suicide). Brisack was the architect and lead organizer of the Starbucks campaign, and their book recounts much of the campaign's history.

13. This is a paraphrase. See quotes and discussions *infra* Part.III.

14. See sources cited *supra* note 5.

15. See *infra* Subpart.IV.A.

important basis for counter-hegemonic mobilization.<sup>16</sup> They are also consistent with past studies in which laypeople have evinced nuanced and realistic understandings of law's utility and limitations as a means of achieving social justice.<sup>17</sup> Our findings are largely *inconsistent*, however, with an earlier body of scholarship suggesting that legal strategies, rights consciousness, or rights claims tend to limit laypeople's political imaginations or enlist laypeople in their own subordination.<sup>18</sup>

### *Summary of Argument*

After this introduction and a brief overview of the research methodology, the Article proceeds as follows. Part I lays the groundwork, discussing the basic trajectory and model of the campaign, and suggesting that the worker-to-worker model may be especially effective because it enables workers to build strong cultures of solidarity. Parts II and III then summarize our interviews in detail, letting workers speak for themselves as often as possible. Part II discusses the material and social bases for solidarity in this effort, including baristas' craft ethic, their shared demographic backgrounds, and various aspects of workplace policy. While baristas had shared grievances around wages, hours, and benefits, in many cases their most important concerns related to safety. Those included risks of infection during the acute phases of the COVID-19 pandemic, and threats of violence and sexual assault by customers and coworkers. Part III then describes worker-leaders' legal work in detail, proceeding through the stages of an organizing campaign: (1) learning about the NLRA's protections, (2) enlisting support from coworkers, and (3) counteracting (or suffering through) management's resistance. Part III closes by summarizing interviewees' ultimate assessments of the law. Most interviewees felt that labor law provided important and essential protections, but also that the legal system as a whole was tilted against workers' rights and interests. Part IV steps back and concludes the Article's analysis, assessing why the baristas' campaign has been so successful, what the campaign suggests for law reform initiatives, and, more broadly, what it suggests for studies of law and social movements.

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16. See, e.g., MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION 283 (1994); Lauren B. Edelman, Gwendolyn Leachman & Doug McAdam, *On Law, Organizations, and Social Movements*, 6 ANN. REV. L. & SOC. SCI. 653, 661 (2010). Our interviews also resonated with Engel and Munger's analysis of how knowledge of the ADA shaped the self-understanding of people with disabilities. DAVID M. ENGEL & FRANK W. MUNGER, RIGHTS OF INCLUSION: LAW AND IDENTITY IN THE LIFE STORIES OF AMERICANS WITH DISABILITIES (2003).

17. See, e.g., George Lovell, *The Myth of the Myth of Rights*, 59 STUD. L., POL. & SOC'Y (SPECIAL ISSUE) 1, 20–22 (2012) (summarizing studies finding complex and nuanced legal consciousness among laypeople); Kathleen E. Hull, *Legal Consciousness in Marginalized Groups: The Case of LGBT People*, 41 LAW & SOC. INQUIRY 551, 563 (2016) (summarizing studies of legal consciousness of LGBTQ+ individuals); see also PATRICIA EWICK & SUSAN S. SILBEY, THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE (1998) (proposing model of lay legal consciousness based on in-depth interviews with over four hundred non-lawyers).

18. See *infra* Subpart.IV.B.

### *Summary of Research Process*

Before turning to the overall argument, a brief summary of the research process is warranted. I obtained Institutional Review Board (IRB) approval in May 2023. Through the summer of 2023, I did background interviews with a number of workers and organizers. I used those background interviews to develop an interview protocol and script. My research assistants and I then began on-the-record interviews with worker-organizers in Fall 2023. We structured those interviews around two questions. First, why and how did workers organize? Second, how did workers encounter law and the legal system through those efforts? Regarding the latter, we wanted to discern whether workers accurately understood their legal rights, how they exercised those rights, and whether they felt that the law adequately protected their rights and interests. We structured the interviews to facilitate theory development. In other words, we resisted presumptions about how workers had organized or how they had encountered the law and instead hoped to generate our theories based on what we heard.<sup>19</sup>

We identified initial interviewees through contact with professional organizing staff and campaign leadership. We identified others through two methods: (1) snowball sampling among the initial interviewees, and (2) cold contacts. The cold contacts occurred in two ways. In some cases we simply walked into coffeeshop locations that had unionized, obtained workers' contact information, and then followed up. In other cases, we identified shops that had organized through news media or social media, and then reached out to identified worker-leaders through social media platforms including Twitter, Facebook, Instagram, and LinkedIn.<sup>20</sup> All interviewees signed consent forms approved by the Georgetown University IRB. We conducted interviews in person or over a videoconferencing platform. Each interview lasted between forty-five minutes and two hours, with the typical length around ninety minutes. We recorded audio of the interviews and then used an AI-powered transcription software that was kept solely on my hard drive, so that no interview audio would be sent to any third party. All data was anonymized, with interviewee names recorded only on their signed forms. We completed twenty-two on-the-record interviews, as well as several background interviews.

That outreach process has implications for the analysis that follows, and the conclusions that can be drawn from our interviews. This is *not* a comprehensive or quantitative study of baristas' attitudes or engagements with

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19. On such "grounded theory," see ROYCE A. SINGLETON, JR. & BRUCE C. STRAITS, *APPROACHES TO SOCIAL RESEARCH* 385–86 (5th ed. 2010). On such interview research generally, see TED CONOVER, *IMMERSION: A WRITER'S GUIDE TO GOING DEEP* 76 (2016) and ROBERT S. WEISS, *LEARNING FROM STRANGERS: THE ART AND METHOD OF QUALITATIVE INTERVIEW STUDIES* 151 (1994).

20. The research assistant who did the most interviews reported that LinkedIn was the most fruitful way to reach workers.

law.<sup>21</sup> For example, we have not interviewed workers who opposed unionization or who had no exposure to the union, and cannot speak to their experiences. This Article is instead a qualitative study of how a cadre of worker-organizers engaged with law and the legal system.<sup>22</sup> I see it in the tradition of past socio-legal studies of law's role in social mobilization, which have often drawn on interviews with movement activists.<sup>23</sup> Like the interviewees in those past studies, this cadre's experiences may hold broader lessons for scholars and union strategists due to the novelty and political significance of their movement. Going forward, I hope to research similar organizing efforts in other economic sectors, to engage with non-union and anti-union workers as well as worker-leaders, and to bring survey and other quantitative data into the picture.

### I. WORKER-TO-WORKER ORGANIZING, CULTURES OF SOLIDARITY, AND THE LAW

Before discussing baristas' own experiences, this Part provides background on the campaign and the law. It first sketches the campaign's trajectory and the worker-to-worker organizing model baristas used. It then suggests that organizing model can overcome some of the NLRB's substantive and remedial weaknesses. Finally, it notes a few legal matters that contributed to the campaign's success, but which were less salient to baristas.

The baristas' movement emerged out of the union Workers' United's decision to place several "salts" in Starbucks stores in Buffalo, New York. Salts are trained organizers who get themselves hired by companies as line-level workers with a plan to organize from the inside.<sup>24</sup> Apparently the union's intention was *not* necessarily to organize Starbucks nationally, but rather to organize coffeeshops across the Buffalo region as part of a strategy to raise area standards.<sup>25</sup> The first several stores filed for union elections in mid-2021. The union had prepared social media accounts for the campaign, which launched on the same day the campaigns went public. The accounts tagged posts about the

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21. Our findings about baristas' key grievances and organizing strategies are virtually identical to the reporting in two books published after we completed and analyzed this tranche of interviews. BRISACK, *supra* note 12, at 162–89; BLANC, *supra* note 7, at 117–49.

22. We did not discern differences in overall assessments of the law between interviewees whose campaigns had succeeded and those whose campaigns had failed, nor between interviewees who had suffered retaliation up to and including termination and workers who had not suffered such retaliation. We *did* discern differences among workers on the basis of sex, gender, and race, with women, non-binary people, and people of color more likely to express concerns about sexual harassment, sexual assault, and racial discrimination. See *infra* Parts.II–III.

23. See, e.g., MCCANN, *supra* note 16, at 16–21 (discussing role of interviews with activists in study of rights consciousness within pay equity movement); Francesca Polletta, *The Structural Context of Novel Rights Claims: Southern Civil Rights Organizing, 1961-1966*, 34 LAW & SOC'Y REV. 367, 370 (2000) (addressing role of interviews and other research methods in study of rights consciousness within civil rights movement).

24. See, e.g., N.L.R.B. v. Town & Country Elec., Inc., 516 U.S. 85, 87 (1995) (holding that union "salts" are employees under NLRA and therefore protected against retaliation or termination for their union activities).

25. See BRISACK, *supra* note 12, at 38 ("We had to organize the whole coffee industry geographically . . . . Winning one shop meant committing to a strategy to win them all.").

campaign with #ToBeAPartner—a hashtag that the company had long encouraged employees to use in social media posts about their jobs—which helped ensure that workers from across the country saw the news quickly.<sup>26</sup> The company’s high profile also generated substantial media attention.

This set the stage for the nationwide upsurge in organizing.<sup>27</sup> As discussed in Parts II and III, many interviewees who had been frustrated with aspects of their jobs prior to Buffalo, or had even considered unionizing in the past, contacted the union after the Buffalo campaign became public because at that point they saw unionization as a realistic possibility.<sup>28</sup> The union would then put them in touch with union staff or unpaid worker-organizers at other stores who would act as coaches or advisors—explaining the NLRA’s protections and the unionization process, preparing workers to address management’s resistance, and then giving strategic advice and legal assistance going forward. Worker-leaders would then carry out most organizing tasks. First, they would typically build an “organizing committee” (OC) with a couple other workers who could lead the effort. The OC members would then talk with coworkers about their concerns and enlist their support, create group chats where they could discuss issues without management’s knowledge, and gather union authorization cards that would be used to request an NLRB election. Given the relatively small size of the workforce at each site, small organizing committees could often sign up most coworkers in a short period of time—even as little as three days in some cases.<sup>29</sup>

Although the campaign was centered in local workplaces, baristas also built power on a regional and national scale. As the campaign grew, worker-organizers and staff organizers from around the country would have regular videoconference check-ins about campaign developments. This cross-geographical coordination enabled the campaign to snowball across the country as worker-organizers shared tactical successes and failures with one another. Experienced worker-organizers also served as organizers and coaches for subsequent campaigns at other stores, whose leaders would then coach the next set of workers hoping to organize, and so on.<sup>30</sup>

The barista’s campaign is one in a recent series of worker victories that have used what sociologist Eric Blanc calls a “worker-to-worker” organizing

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26. Image posted by Starbucks Workers United (@sbworkersunited), INSTAGRAM (Aug. 23, 2021), [https://www.instagram.com/p/CS7L6gBL-4/?hl=en&img\\_index=1](https://www.instagram.com/p/CS7L6gBL-4/?hl=en&img_index=1) (including image of letter announcing the organizing committee in Buffalo). The post is captioned with the following text: “We are proud to announce the formation of our #SBWorkersUnited organizing committee! #partnersbecomingpartners #tobeapartner.” *Id.*

27. The next three paragraphs summarize the more detailed discussion *infra* Parts II–III.

28. BRISACK, *supra* note 12, at 166–67 (explaining that baristas at many other stores reached out and began to unionize after Buffalo stores filed for elections, but before their elections were held); *id.* at 168–69 (demonstrating that interest surged after Buffalo stores won their election in early December 2021).

29. *E.g.*, Interview by Shiva Sethi (Oct. 27, 2023) (signing up store over a long weekend).

30. BRISACK, *supra* note 12, at 189 (“We would join Zoom calls with workers and guide them through the organizing process, then they would turn around and start mentoring the next group.”).

model.<sup>31</sup> By way of comparison, many prominent unionization attempts in recent decades have been designed and managed by professional organizers and staff, with less involvement or leadership from rank-and-file workers.<sup>32</sup> In contrast, under the “worker-to-worker” model, “workers have a decisive say on strategy,” they “begin organizing before receiving guidance from a parent union,” and/or they “train and guide other workers in organizing methods.”<sup>33</sup> This model has various historical parallels, including in New Deal-era labor struggles, where workers often self-organized and sprang into action across vast distances almost all at once.<sup>34</sup> But this model is attuned to today’s political economy, where workers are in smaller, more geographically-dispersed shops rather than large factories, don’t tend to live in the same neighborhoods, and must coordinate using modern information technologies.<sup>35</sup> This model’s successes include the Amazon Labor Union’s organizing in Staten Island, the recent organizing victories at Whole Foods, and the wave of teachers’ strikes in “red” states in the late 2010s, many of which were organized by teacher activists outside the auspices of official unions.<sup>36</sup> Part IV elaborates further on the “worker-to-worker” model’s relation to prior organizing efforts, as well as its promise and potential weaknesses.

Workers can use that model to mitigate some of our labor law’s limitations, two of which are especially important. First, while the NLRA protects workers’ rights to organize, in practice the law gives employers substantial authority to resist unionization. Employers can campaign against unionization, including by “predicting” that it will lead to business closure; they can exclude union organizers from the premises in almost all cases; until recently, they could require workers to attend “captive audience meetings” where management delivers anti-union messages; and they can exploit procedural means to delay unionization votes and collective bargaining—all while acting within the law.<sup>37</sup> Employers also enjoy substantial self-help options in response to strikes,

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31. See BLANC, *supra* note 7, at 40.

32. Prominent critiques of staff-driven organizing efforts include *id.* at 153–74 and JANE F. MCALEVEY, NO SHORTCUTS: ORGANIZING FOR POWER IN THE NEW GILDED AGE 46–59 (2016). The differences between the worker-to-worker model and past efforts are matters of degree: Union organizers have long sought to devolve authority to local workplace leaders, and even in worker-to-worker models professional organizers often still play a critical role. BLANC, *supra* note 7, at 40–41.

33. BLANC, *supra* note 7, at 40.

34. See Pope, *supra* note 8, at 21 (quoting an organizer who said, “[i]t is rather difficult to report the campaign . . . as it developed almost simultaneously in a score of places over [a] vast expanse . . . .” (quoted in *To the Shirtmakers*, ADVANCE NEWS, May 10, 1933, at 3–5)). Some of our interviewees explicitly noted connections to past worker uprisings, though unfortunately I can’t give details so as not to disclose their identities.

35. The worker-to-worker model also differs from earlier waves of worker-driven organizing such as the construction of the Congress of Industrial Organizations (CIO) in the early 1930s, due to the tectonic economic, geographic, and technological shifts since the New Deal. See BLANC, *supra* note 7, at 47–63.

36. *Id.* at 18; see also ERIC BLANC, RED STATE REVOLT: THE TEACHERS’ STRIKE WAVE AND WORKING-CLASS POLITICS 1–11 (2019).

37. *N.L.R.B. v. Gissel Packing*, 395 U.S. 575, 618 (1969) (noting that employers may “predict” negative business consequences from unionization in many cases); *Peerless Plywood Co.*, 107 N.L.R.B. 427, 429–30

which can significantly erode workers' collective power.<sup>38</sup> Second, the NLRB has limited capacity to deter or remedy *unlawful* forms of opposition, such as retaliatory terminations. The standard remedy is reinstatement with backpay and a cease-and-desist order, because the NLRB has no power to levy punitive or exemplary damages.<sup>39</sup> Scholars have argued that this remedial scheme incentivizes employer lawlessness because damages awards are often less than the cost of a union contract.<sup>40</sup>

These aspects of the NLRB regime often make organizing economically *irrational* for workers, because the benefits of a union contract are speculative and far in the future, while the potential costs—including harassment, retaliation, and job loss—can be immediate and severe. As past scholars have shown, workers can overcome these hurdles by building a *culture of solidarity*, or a community defined by thick interpersonal duties of mutual support.<sup>41</sup> For workers considering whether to join an organizing effort, the moral and psychological benefits of membership may then outweigh the risks entailed.<sup>42</sup> Cultures of solidarity emanate from many different sources, including workers' occupational experience and traditions, shared experiences of social subordination on the basis of class, race, sex/gender, or other status, and even popular culture.<sup>43</sup> Worker-to-worker organizing may be able to overcome the NLRA's strictures because it facilitates strong cultures of solidarity, for the

(1953) (ruling that captive audience meetings are permitted in most cases), *overruled by*, *Amazon.com Services*, 373 N.L.R.B. No. 136 (2024); *Lechmere, Inc. v. N.L.R.B.*, 502 U.S. 527, 539 (1992) (noting that employers may exclude union organizers from premises in most cases). As this Article went to press, the Eleventh Circuit Court of Appeals was reviewing the NLRB's decision in *Amazon.com Services*, 373 N.L.R.B. No. 136. Petition for Review, *Amazon.com Services LLC v. N.L.R.B.*, No. 24-13819 (11th Cir. filed Nov. 21, 2024).

38. 29 U.S.C. § 158(b)(4) (secondary boycott ban); 29 U.S.C. § 158(b)(7) (limits on recognition picketing); *N.L.R.B. v. Fansteel Metallurgical Corp.*, 306 U.S. 240, 256 (1939) (sit-down strikes unprotected); *Elk Lumber Co.*, 91 N.L.R.B. 333, 337 (1950) (slow-down strikes unprotected); *N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 347 (1938) (allowing the permanent replacement of economic strikers).

39. *But see* *Thryv, Inc.*, 372 N.L.R.B. No. 22 (2022) (make-whole remedies can include "all direct or foreseeable pecuniary harm" from unfair labor practices).

40. Weiler, *supra* note 5, at 1790; Sachs, *supra* note 5, at 684–85.

41. *E.g.*, FANTASIA, *supra* note 10, at 19; Claus Offe & Helmut Wessenthal, *Two Logics of Collective Action: Theoretical Notes on Social Class and Organizational Form*, 1 POL. POWER & SOC. THEORY 67, 79 (1980); BRISHEN ROGERS, *DATA AND DEMOCRACY AT WORK: ADVANCED INFORMATION TECHNOLOGIES, LABOR LAW, AND THE NEW WORKING CLASS* 102 (2023) (drawing on Offe and Wessenthal to explain contemporary processes of class formation). On the role of popular culture in working class identity, see generally STUART HALL, *CULTURAL STUDIES 1983: A THEORETICAL HISTORY* (2016).

42. Offe & Wessenthal, *supra* note 41 ("No union can function for a day in the absence of some rudimentary notions held by the members that being a member is of value in itself.").

43. The political valence of such efforts can of course vary. Regarding race, for example, craft worker organizing in the late 19th century was largely limited to white protestant men, with all others excluded by social practice and law. *See* PHILIP S. FONER, *ORGANIZED LABOR & THE BLACK WORKER* 70 (1982); W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA* 700–01 (1935) (discussing psychological "wages of whiteness" that white workers obtained due to racial exclusions in labor market).

simple reason that in that model *workers themselves* develop, articulate, and advance their goals and desires.<sup>44</sup>

Cultures of solidarity often build on legal sources as well. In qualitative and historical studies, scholars have often found that laypeople's engagements with law help to generate collective mobilization, even where the legal system provides unclear or limited protections. The mechanism is simple: When people successfully articulate their needs in terms of rights, their demands may have greater social standing, and can help forge a collective identity among people with the same needs.<sup>45</sup> While this process has been less common in the unionization context in recent decades, it is quite common in our labor history, especially among more organic and autonomous worker uprisings. For example, a famed series of Appalachian coal strikes in 1933 were led by rank-and-file workers who advanced their own interpretation of Section 7A of the National Industrial Recovery Act, a precursor to Section 7 of the NLRA.<sup>46</sup> Then, after the NLRA's passage in 1935, many workers flooded into the newly-formed Congress of Industrial Organizations, inspired in part by the new legislation and its protections for concerted action. Employer resistance sparked a wave of sit-down strikes, in which workers articulated their own radical and militant understandings of what the new labor law meant for industrial capitalism, employers' property rights, and the broader constitutional order.<sup>47</sup> Organizing by health care and public sector workers in the 1960s and 1970s drew on our civil rights traditions, as memorably captured in the slogan "Union Power, Soul Power."<sup>48</sup> More recent efforts have often woven together concerns around workers' rights, immigrant rights, and women's rights.<sup>49</sup> Baristas' ambitious rights claiming is in this sense a return to form for workers.

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44. See BRISACK, *supra* note 12, at 170 (explaining that when baristas contacted the union "they knew they were getting real partners, who understood their struggles and who knew how to make memes. This created the trust needed to fuel the massive surge in organizing that took the campaign nationwide.").

45. See, e.g., MCCANN, *supra* note 16, at 65 (arguing that legal rights claims can provide "a compelling conceptual frame for making sense of existing injustices and for demanding remedial action."); see also FRANCES FOX PIVEN & RICHARD A. CLOWARD, POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL 4 (1977) (arguing that when individuals and groups "begin to assert their 'rights' that imply demands for change," they may develop "a new sense of efficacy; people who ordinarily consider themselves helpless come to believe that they have some capacity to alter their lot.").

46. Pope, *supra* note 8, at 48; see also "WE ARE ALL LEADERS": THE ALTERNATIVE UNIONISM OF THE EARLY 1930s 7–10 (Staughton Lynd ed., 1996) (summarizing the historiography of the 1933–1934 coal strikes).

47. Jim Pope, *Worker Lawmaking, Sit-Down Strikes, and the Shaping of American Industrial Relations, 1935–1958*, 24 LAW & HIST. REV. 45, 46–47 (2006); see also Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937–1941*, 62 MINN. L. REV. 265, 324–25 (1978) (discussing the role of sit-downs in pushing the Court to uphold the NLRA's constitutionality); *N.L.R.B. v. Jones & Laughlin Steel*, 301 U.S. 1, 49 (1937) (upholding the NLRA's constitutionality).

48. Leon Fink, *Union Power, Soul Power: The Story of 1199B and Labor's Search for A Southern Strategy*, 5 S. CHANGES 9, 9–10 (1983).

49. E.g., ELLEN CASSEDY, *WORKING 9 TO 5: A WOMEN'S MOVEMENT, A LABOR UNION, AND THE ICONIC MOVIE* 28 (2022); Ruth Milkman, *Immigrant Organizing and the New Labor Movement in Los Angeles*, 26 CRITICAL SOCIO. 59, 60 (2000).

Before turning to the campaign and the baristas' own engagements with labor law in detail, it is important to note several background legal factors that contributed to the baristas' success. First, the fact that workers organize toward the goal of obtaining union certification differentiates worker organizing from other forms of organizing where movements need to develop goals on more of a blank slate.<sup>50</sup> The law here is quite complex, but the basic idea is that unions have no bargaining rights unless and until they can show majority support in an appropriate bargaining unit, often through a secret-ballot election, after which the employer has a duty to bargain exclusively with the union.<sup>51</sup> The construction of organizing committees, the gathering of authorization cards, and of course the period preceding the union election are all structured by that set of rules. This fact may also help explain the success of the worker-to-worker organizing model across sectors: It is an excellent adaptation to the structure of organizing and bargaining envisioned by the NLRA.

Second, Starbucks directly owns most of its locations in the U.S. rather than using the franchisor/franchisee model common in fast food, where individual franchises lease operating rights from the franchisor and then run the franchise as a quasi-independent business.<sup>52</sup> Because baristas are direct employees of the company, not of franchisees, they have been able to obtain bargaining rights against the company and hold it directly responsible for unfair labor practices within stores. While that can be possible in franchised operations, doing so requires showing that the franchisor is the "joint employer" of the workers in question, which can be difficult under existing legal tests. The effort to organize McDonald's workers in the Obama years foundered on this issue. The union involved filed some election petitions and many unfair labor practice charges that languished and grew stale as the company argued that it did not employ the workers and therefore had no duties toward them.<sup>53</sup> Here, the

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50. That also differentiates unionization drives from some recent social movements that have gained massive public support quickly around compelling but broad demands, while at times struggling to articulate and move toward concrete goals and consolidate their gains. *See, e.g.*, ZEYNEP TUFEKCI, TWITTER AND TEAR GAS xxiii (2017) (addressing this dynamic in the context of Occupy, the "Arab Spring" protests and the "color revolutions," noting that modern communications technologies make large-scale viral organizing cheaper and easier and cautioning that movements also need to build organizational capacity and discipline).

51. 29 U.S.C. § 159.

52. The exceptions include locations in grocery stores, airports, and hotels. In some cases, where other workers at these locations are unionized, the baristas at those shops have also been unionized and been members of the same bargaining units. Nelson Lichtenstein, *The Unionized Starbucks in Your Neighborhood*, AM. PROSPECT (Dec. 22, 2021), <https://prospect.org/labor/unionized-starbucks-in-your-neighborhood>.

53. *See* Press Release, NLRB Off. of Pub. Affs., NLRB Office of the General Counsel Authorizes Complaints Against McDonald's Franchisees and Determines McDonald's, USA, LLC Is a Joint Employer (July 29, 2014), <https://www.nlr.gov/news-outreach/news-story/nlr-office-of-the-general-counsel-authorizes-complaints-against-mcdonalds> (on file with author). The litigation was settled by the Trump NLRB soon after Trump took office; *Fast Food Workers Comm. & Serv. Emps. Int'l Union v. N.L.R.B.*, 31 F.4<sup>th</sup> 807, 810 (D.C. Cir. 2022) (discussing the organizing effort, case, and eventual settlement, and denying the union's petition for review of the settlement).

company's direct ownership of stores made it possible to file for and carry out elections without first litigating questions of employment status.

Third, the NLRB's posture toward the campaign was significant. In NLRB litigation early in the campaign, Starbucks challenged workers' petitions for elections at single stores, arguing that only a regional bargaining unit was appropriate. The Board rejected that argument and ordered elections at individual stores.<sup>54</sup> This was likely crucial, because it would have been far more difficult for the union to build majority support at a city-wide, regional, or state level in the first instance. Individual stores tend to be rather small and close-knit workplaces, making it possible for a dedicated organizing committee to build majority support quickly. It is also easier to maintain the close networks of solidarity needed for union election victories in smaller groups who work in the same shop. As the campaign developed, the Biden NLRB also processed election petitions quickly and aggressively prosecuted various unfair labor practice charges.<sup>55</sup> This contributed to the pressure on the company and helped workers maintain momentum. Interviewees seemed familiar with those efforts, but did not emphasize them, and some expressed general displeasure with the Biden administration.<sup>56</sup>

## II. BASES FOR SOLIDARITY

Cultures of solidarity are built on a material and social foundation, which this Part outlines based on our interviews. It first addresses background features of the company and the labor process that created fertile ground for organizing, especially by generating a craft ethic among baristas. It then discusses demographic aspects of the workforce that placed workers in positions of shared vulnerability, including age, class background, race, sex/gender, and LGBTQ+ status. Finally, it summarizes material factors that led workers to organize, especially those that stemmed from a political and social response to the COVID-19 pandemic. The most important factors included wages, hours and benefits, and acute threats to personal safety. Worker-leaders built collective power by highlighting the tensions among workers' values, the company's stated

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54. Starbucks Corp., Case Nos. 03-RC-282115, 03-RC-282127, 03-RC-282139 (N.L.R.B. Region 3, Oct. 28, 2021) (Decision and Direction of Elections). The NLRB has long had a rebuttable presumption that a single-store unit of a multi-location employer is appropriate for purposes of ordering an election, *Dixie Belle Mills, Inc.*, 139 N.L.R.B. 629, 631 (1962), and the party contesting a single store has a "heavy burden of overcoming the presumption," *Cal. Pac. Med. Ctr.*, 357 N.L.R.B. 197, 200 (2011). That said, a contrary decision by the Board could have slowed down the campaign considerably.

55. For example, the NLRB's General Counsel sought injunctive relief against Starbucks at least five times during the campaign. See Bryce Covert, *Meet the Activist Championing the Rights of Workers from the Inside*, NATION (Feb. 13, 2023), <https://www.thenation.com/article/society/jennifer-abruzzo-national-labor-relations-board> (discussing such efforts).

56. *E.g.*, Interview by Anibha Singh, *supra* note 2 ("I'm not sure how many people at my job are Joe Biden fans . . . I think that he could have done a lot more already to implement better like funding and procedures [at the NLRB]."); see also Interview by Anibha Singh, *supra* note 1 (reporting that for their store-level organizing, Biden's support for unions was less important than support at the city and state level).

values, and the company's actual practices. This sets up Part III's more detailed discussion of the baristas' deployment of law and legal ideals in the campaign.

#### A. SMALL SHOPS, SKILLED WORKERS

Almost across the board, interviewees manifested what labor scholars and unions call a "craft ethic." Craft ethics entail shared commitments within an occupation to (1) perform high quality work, and (2) maintain workers' autonomy, especially against managers' efforts to erode that autonomy.<sup>57</sup> Historically, commitment to a craft and the shared experience of learning that craft have been a very important basis of worker solidarity.

Several aspects of the company's structure and labor process encouraged a craft ethic. The coffee shops that organized are relatively small workplaces, usually employing around twenty people.<sup>58</sup> The occupational structure is also quite flat: Most employees are baristas or shift managers, and all are usually expected to be able to work any station in the shop.<sup>59</sup> Depending on needs at the moment they might take orders, prepare drinks, prepare food, or work a pickup window. Although shift managers distribute work assignments and resolve disputes that arise during shifts, much of their time is spent performing the same tasks as the other baristas.<sup>60</sup> In contrast, table-service restaurants have a major division between "front of the house" (hosts, waitstaff, bartenders) and "back of the house" (cooks and dishwashers), as well as divisions of labor in both spaces.<sup>61</sup> Many other industries have far more complex divisions of labor.

A barista's job also requires substantial training and expertise. The necessary skills include making beverages with hundreds of possible customizations, operating checkout systems and other machinery, and navigating customer interactions, all under intense time pressure. As in other jobs where craft identification is common, skills are often transmitted among

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57. See generally DAVID MONTGOMERY, *WORKERS' CONTROL IN AMERICA: STUDIES IN THE HISTORY OF WORK, TECHNOLOGY, AND LABOR STRUGGLES* (1979) (discussing history of the craft ethic in the United States up to the New Deal, as well as recurrent tensions between craft workers and employers).

58. A dataset compiled by Kevin Reuning (Associate Professor of Political Science, Miami University) shows that the average number of eligible voters in the 961 Starbucks store elections as of July 23, 2025 is around twenty-two. Kevin Reuning, Starbucks with Location (July 23, 2025) (unpublished data) (on file with author).

59. Interview by Shiva Sethi & Katie Parker (Jan. 24, 2024) (discussing ability to work different stations and struggling to do so without sufficient training); Interview by Anibha Singh (Mar. 1, 2024) (shift supervisor, describing how a barista "does everything," meaning "they're washing dishes, they're doing the cleaning, the deep cleaning, they're making the drinks or food . . . they are interacting with the customers."); *Id.* (explaining how job of shift supervisor is to assign people to different stations based on their mood and capacity).

60. Interview by Anibha Singh *supra* note 59.

61. Other fast food restaurants, most notably McDonald's, have a more formal division of labor, perhaps due to the greater complexity of production and to the risks involved in operating deep fryers and ovens. As one datapoint, the U.S. Department of Labor has sued a number of franchises for child labor violation, specifically for employing minors to operate deep fryers and ovens, which is illegal. Press Release, U.S. Dep't Lab. Department of Labor Finds Louisiana, Texas McDonald's Franchisees Allowed Minors to Work Longer, Later Than Law Permits, Operate Dangerous Equipment (July 25, 2023), <https://www.dol.gov/newsroom/releases/whd/whd20230725-0>.

workers informally rather than through formalized training programs.<sup>62</sup> In interviews, baristas often recounted that they found it difficult to learn how to do the job. The issue came up in general discussions of workday frustrations, and in response to a question we asked about why baristas needed a union, since they were not “in a factory or a coal mine.”<sup>63</sup> One interviewee had heard almost that exact same question from industrial workers at a labor event, and explained how they had responded:

When we talk about whether or not working in a coffee shop is skilled labor, like I can look that guy in the face and tell him, we average 150 drinks every half hour. I want you to try to picture you making 150 drinks in a half an hour. Can you do that? No, you don’t have the skills, right? Building that muscle memory, it is a skill. And it does take time to learn that. Is it the same thing as a trade? Not exactly. But what I will say is that during your training, right, during the first, I don’t know, anywhere from ninety days to a year, you’re learning much the same way that an apprentice would.<sup>64</sup>

Once trained, however, workers often expressed deep pride in their ability to do the job. When asked why baristas had organized while other foodservice workers had not, one said that “the coffee maker is kind of like an artisan in their production,” which has “given us a sort of attachment to our labor that makes it feel more meaningful than say, if we were working on a conveyor belt food process.”<sup>65</sup> Another memorably described coffee making as an “edible art form.”<sup>66</sup>

Some interviewees also noted a second craft-specific skill: creating and maintaining community within stores. As one interviewee put it when we asked what they liked about the work: “I loved a shift, like four to six hours being in a drive-thru, talking to people, getting to see everyone who comes through, asking them how their day was going, whether it was good or bad, and having those discussions. I loved that.”<sup>67</sup> Others said they felt responsible for ensuring that stores were safe spaces for sexual and gender minorities, and supportive

62. Interview by Shiva Sethi & Katie Parker, *supra* note 59 (describing negative experience of being thrown into work without adequate preparation); *see also* BRISACK, *supra* note 12, at 65 (“Being ‘fully trained’ at Starbucks is a misnomer. None of our new hires . . . myself included, were ever given our certification tests.”).

63. The specific text of that question was as follows: “I’m interested why you think unionization is important for coffeeshop workers. For example, some people say ‘coffeeshop workers don’t need a union. They’re not in a factory or a coal mine.’ How would you respond?” Brishen Rogers, Principal Investigator, Sample Interview Questions, Socio-Legal Study of Coffeeshop Worker Organizing (Feb. 19, 2024) (on file with author).

64. Interview by Anibha Singh (Apr. 25, 2024); *see also id.* (“The automaticity that you develop after years of doing the same thing over and over again is also like a really nice feeling.”). Another interviewer described the job in very similar terms, saying, “It is an incredibly difficult job and it is skilled labor. It takes at least six months for someone to even be competent working at a [coffee] bar. Like just mildly competent.” Interview by Shiva Sethi (Mar. 19, 2024).

65. Interview by Christine Keating & Katie Parker (Feb. 25, 2024).

66. Interview by Anibha Singh, *supra* note 59.

67. Interview by Anibha Singh, *supra* note 1; *see also* Interview by Anibha Singh, *supra* note 2 (reporting that they loved getting “to meet so many people in my community”).

environments for community members needing assistance of one sort of another. One interviewee said that they had used store bulletin boards or other spaces to provide information about local shelters, food banks, and other services for people in the neighborhood who were experiencing homelessness or struggling with addiction.<sup>68</sup> In that sense, baristas were front-line care providers, and even social services providers, who had a ground's-eye view of developments within their communities.

The intensity of work, the flat division of labor, and the specific skills required also meant that baristas had a great deal of autonomy behind the bar. Baristas were constantly navigating around one another and collaborating to prepare orders, so they *had* to trust one another while working. This later facilitated their interpersonal trust while organizing. Two different baristas said that the intensity and difficulty of the work led baristas to “trauma bond.”<sup>69</sup> Many also said that company management was often unaware of shop floor realities. When asked what they “hate” about their job, one said “every time there’s a change, it definitely seems like it’s a change that’s been made by somebody who has probably never worked on the cafe floor, right?”<sup>70</sup> That included increasing customization options, expanding online ordering, and some new equipment installations.<sup>71</sup> Another noted that a top company manager had been posting videos of himself working a floor shift each month, and said, “he’s moving so slow. Doing everything wrong. It’s funny. Because that’s the stuff they release. Imagine just being there and seeing the stuff they don’t show.”<sup>72</sup> All these dynamics encouraged baristas to see the company as divided between an “us”—baristas defined by an honest and organic community of practice—and a distant corporate “them” focused on the bottom line.

## B. WORKFORCE DEMOGRAPHICS

Baristas also built solidarity around shared experiences of vulnerability due to class background, age, race, gender, and LGBTQ+ status.<sup>73</sup> Regarding class background, we did not ask interviewees about their wealth or their parents’ wealth, but we did ask about their own educational attainment. Some interviewees had not completed high school, others were in college or had completed some college but not gotten a degree, and still others were college

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68. *E.g.*, Interview by Shiva Sethi (Sep. 15, 2023).

69. Interview by Shiva Sethi (Mar. 8, 2024); Interview by Anibha Singh (Apr. 17, 2024) (“It’s a joke that like, if you’ve ever worked at Starbucks, you kind of trauma bonded over it.”).

70. Interview by Anibha Singh, *supra* note 2; *accord* Interview by Christine Keating (Mar. 7, 2024) (“They don’t see what we see day-to-day and we know kind of what fits best in our location.”).

71. *E.g.*, Interview by Shiva Sethi, *supra* note 69 (recounting conversation with manager who replied to workers’ request for higher pay by saying new cold foam blenders would soon be delivered).

72. Interview by Christine Keating, *supra* note 70.

73. I do not have good data on the racial demographics of the workforce. Our interviewees were disproportionately non-white, and as discussed below a number expressed concerns about racial discrimination at the company. But those concerns were less immediately salient than LGBTQ+ concerns, and the workers were not disproportionately part of an identifiable racial or ethnic group akin to their age cohort.

graduates. In contrast to some media reports suggesting that the most militant workers were college students, several interviewees reported that college students and college-educated workers were actually *less* likely to support organizing efforts because they often saw the job as transitional.<sup>74</sup> This suggests the workforce that organized was from a less privileged class position. Another data point supporting this proposition was that many interviewees said they went to work at the company because it had a benefit providing for free college tuition.<sup>75</sup> Others reported that some coworkers had been afraid to unionize because if they lost their jobs, they would lose their college tuition benefit.<sup>76</sup>

Age was another commonality. All interviewees who volunteered their age were thirty or under, and many were under twenty-five. One stated that thirty was “seventy in barista years.”<sup>77</sup> Many volunteered that their age cohort was facing systemic economic disadvantage. As one put it, “Post COVID, like the breakdown of late stage capitalism just became really evident.”<sup>78</sup> Others said that younger workers were especially supportive of the effort.<sup>79</sup> As one of those interviewees put it, “The appeal to authority” is less significant for Gen Z.<sup>80</sup> They added: “I guess millennials are pretty pro [union], but the Gen Z-ers, I mean, the kids are wild. They love a picket line. They thirst to chant outside of a store.”<sup>81</sup>

While we did not ask workers specifically about their racial identification, several volunteered it, all of whom stated they had suffered racial discrimination or harassment.<sup>82</sup> Others noted that Palestinian and Muslim employees were especially vulnerable to customer harassment.<sup>83</sup> Regardless of their own identification, numerous interviewees noted that union support was higher among racial minorities, women, and LGBTQ+ individuals than among “cisgender white men.”<sup>84</sup> As one put it, “People that are of different religious

74. Interview by Anibha Singh, *supra* note 1; Interview by Anibha Singh, *supra* note 64.

75. *E.g.*, Interview by Christine Keating & Katie Parker, *supra* note 65; Interview by Shiva Sethi & Katie Parker, *supra* note 59; Interview by Anibha Singh, *supra* note 59.

76. *E.g.*, Interview by Shiva Sethi, *supra* note 2.

77. Interview by Anibha Singh, *supra* note 2.

78. Interview by Shiva Sethi, *supra* note 2; *see also* Interview by Christine Keating, *supra* note 72 (describing contemporary economy as “capitalist hellscape”).

79. Interview by Shiva Sethi, *supra* note 69 (“A lot of [workers here] are like Gen Z and everybody is pretty liberal, if not very, very, very liberal. And I think that definitely, definitely helped.”).

80. Interview by Anibha Singh, *supra* note 2. That same interviewee explained Gen Z’s militancy as follows: “I think that also going through COVID and seeing how the world has worked for them, that they’re able to see that there’s issues with the systems that we currently have and that it’s not sustainable.” *Id.*

81. *Id.*

82. *E.g.*, Interview by Shiva Sethi (Nov. 20, 2023) (“I faced a lot of racial discrimination at work [after manager who had been supportive left.]”); Interview by Shiva Sethi & Katie Parker, *supra* note 59 (describing multiple racist encounters with customers); Interview by Shiva Sethi, *supra* note 2 (“During strike lines we would get called slurs.”); Interview by Shiva Sethi (Feb. 4, 2024) (explaining that a manager had “said some racist things in the past,” which led interviewee to interpret their actions as “racist micromanaging”).

83. *E.g.*, Interview by Shiva Sethi (Feb. 4, 2024) (describing customer harassment of Palestinian workers); Interview by Shiva Sethi (Apr. 8, 2024) (describing harassment of Muslim employees).

84. *E.g.*, Interview by Shiva Sethi & Katie Parker, *supra* note 59; Interview by Anibha Singh, *supra* note 2.

backgrounds or minorities or women tend to support the union” because they have the experiences of “just not being listened to or not being heard,” or even being put “in danger.”<sup>85</sup> Women interviewees were also more likely to raise concerns about customer harassment and assault, as discussed below.

Finally, many of our interviewees self-identified as LGBTQ+ and were attracted to the company because of its reputation for welcoming LGBTQ+ workers and consumers. As one interviewee put it, “You can count on Starbucks being the same everywhere you go, which is to say that it’s like a place that’s filled with very young, very queer people, which is really nice when you’re moving to a new community and you don’t know anybody.”<sup>86</sup> Several said Starbucks was known for a long time as the only major fast food or foodservice brand that was LGBTQ+ friendly, and as a site where LGBTQ+ individuals could carve a career path.<sup>87</sup> That reputation was institutionalized: The company was an early adopter of domestic partner benefits and gender-affirming care, and outwardly supported LGBTQ+ pride events.

Over the course of the campaign, LGBTQ+ identity became a central basis for worker solidarity for at least two reasons. First, numerous interviewees said that LGBTQ+ employees shared an experience of social and economic marginalization, including in the workplace and other economic spheres like housing and education. The second epigraph above captured this view: “If you’re queer or in queer spaces, you kind of do get radicalized because you can see that the system doesn’t work for you in certain ways, right?”<sup>88</sup> Second, the fact that the company had cultivated an image as a safe space for LGBTQ+ workers and consumers left workers upset when they felt the company walked back some of those commitments amid the nationwide retrenchment on LGBTQ+ rights.<sup>89</sup> Some workers reported that they decided to unionize after those experiences, because they felt doing so was the only way to protect themselves. As one interviewee put it:

[The company] targets a particular type of marginalized person as a sort of marketing tool, largely queer people, young queer people, ‘cause they want to be seen as a business that is young and hip and left leaning progressive, right? They aren’t any of those things, but they want to be seen in that way ‘cause it helps them with their target demographic, which is largely middle-class white people . . . They want those middle-aged white Democrats to come in and feel

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85. Interview by Shiva Sethi (Apr. 8, 2024).

86. Interview by Anibha Singh, *supra* note 64.

87. Interview by Anibha Singh, *supra* note 2; Interview by Shiva Sethi, *supra* note 2 (“Queer people are the most militant . . . because Starbucks is the only safe service industry fast food restaurant that like they can work at.”).

88. Interview by Anibha Singh, *supra* note 2. Another interviewee described herself and co-workers as “queer young protesting crazy lunatics who just went ‘Well, I mean there’s no like negative to trying to [unionize].’” Interview by Shiva Sethi (Nov. 12, 2023).

89. BRISACK, *supra* note 12, at 218–19 (describing “anti-trans hate” that “swept the country” in 2022 and 2023).

satisfied, [and think] “I have this cool young queer barista who talks to me every day.”<sup>90</sup>

Another worker who identified as “queer” and was attracted to the company due to its reputation as “LGBT friendly” said they became disillusioned over time, feeling that the company engaged in “more liberal pandering than actual commitment.” They described their experience as a slow “unpeeling” or realization that “that the company that you’re working for is actually not representing you or your values and in the same breath is kind of taking your community and making them a poster child for sales.”<sup>91</sup> These dynamics left many workers feeling extremely vulnerable and led them to support collective action that would hold the company to its own stated values.<sup>92</sup>

### C. WAGES, HOURS, BENEFITS—AND SAFETY

Finally, shared economic and physical vulnerabilities were a critical basis for solidarity and organizing.<sup>93</sup> Interviewees often discussed those concerns in light of the company’s recent history, or their shared understanding of that history. In their shared account, the company long advertised itself as both a coffeeshop and a hub for the community, a “third place” between work and home where all were welcome—but had in recent years focused increasingly on the financial bottom line and de-emphasized community. As one interviewee who had worked at the company for over a decade explained:

Cafes used to be really warm and welcoming and have comfortable seating and just be places where people would want to stay. What I’ve noticed is that even architecturally, the cafes have become less welcoming. . . . There used to be a really big priority on connecting with people on a personal level . . . , making sure that they feel comfortable, asking if they need anything, focusing on the customer areas at the store . . . [but] there has been just a big change from being a welcoming space to becoming more like a fast food restaurant.<sup>94</sup>

Many pointed to the COVID-19 pandemic as an inflection point. The company needed to shut down for a time; it furloughed most workers, then

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90. Interview by Shiva Sethi, *supra* note 64.

91. Interview by Shiva Sethi (Apr. 8, 2024).

92. Interview by Shiva Sethi (Nov. 20, 2023) (discussing Strike with Pride); BRISACK, *supra* note 12, at 218–19 (describing Strike With Pride as response to national retrenchment, writing that it may have “set[] a record as the largest work stoppage over LGBTQ+ rights”).

93. Workers did *not* often express concerns of privacy, electronic surveillance, and data protection in relation to their employers. That may be for a few reasons, which bear further analysis. First, workers already used secure platforms like Signal for communications to keep their conversations private from employers. In-person surveillance of workers was common and salient because store managers were typically on site. As a result, electronic surveillance may have been unnecessary or impossible. Second and conversely, a great deal of employer surveillance was enacted through demands to process higher order volume—many stores now have screens showing how long it is taking orders to be processed. But that was not perceived as “surveillance” so much as a classic form of speedup. Third, unlike in Amazon warehouses or McDonald’s restaurants, an individual barista’s contribution to the product is difficult to quantify. The surveillance that does occur happens to the store or shift as a whole.

94. Interview by Anibha Singh, *supra* note 64.

invited them back with hazard pay when stores began to re-open.<sup>95</sup> Because not everyone returned, however, many stores were short-staffed, and interviewees said that new hires often had difficulty getting the training they needed to do their jobs effectively.<sup>96</sup> Meanwhile, the company opened more drive-through windows and opened up to app-based food delivery services and online ordering, which themselves had surged in popularity during the pandemic. As a result, the total volume of orders went up substantially in a short period.<sup>97</sup> Meanwhile, interviewees reported, over a similar time period the company had increased the number of menu options and customization options for drinks, which made preparation of drinks more time-consuming.<sup>98</sup> This made baristas' jobs much more difficult.

Interviewees reported longstanding concerns about wages and benefits that became more acute during this post-pandemic speedup.<sup>99</sup> Many felt wages had stagnated unfairly, especially amid the post-COVID inflationary period, and noted that they had difficulty affording rent in the towns where they worked.<sup>100</sup> Nearly all interviewees reported feeling economically precarious. A few mentioned living in their cars, or that other coworkers were “unionizing [because they] are homeless, and they’re not being paid a livable wage.”<sup>101</sup> As noted above, some interviewees worked at the company to access gender-affirming care, a preeminent safety issue itself given the risks of violence against transgender individuals, but found it difficult or impossible to access those benefits because they could not get enough hours of work. They often attributed this to the company’s decision to maintain short staffing even after the COVID pandemic, and to cut on costs wherever possible.<sup>102</sup> Those working conditions directly conflicted with baristas’ craft ethic, because it became impossible for baristas to connect with customers and coworkers and sustain any sort of

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95. *E.g.*, Interview by Shiva Sethi, *supra* note 88.

96. *E.g.*, Interview by Shiva Sethi & Katie Parker, *supra* note 59.

97. *E.g.*, Interview by Anibha Singh, *supra* note 2 (describing worker frustration because manager refused to turn off mobile ordering while store was short-staffed); Interview by Katie Parker & Anibha Singh (Feb. 21, 2024) (“You have like such a huge influx of drinks, uh, and not really enough people, or you really just not even like the, uh, mechanical ability to keep up with that demand.”); Interview by Shiva Sethi (Nov. 20, 2023) (stating that one of their demands for bargaining is the ability to turn off online orders). Note that drive-through ordering had an ambitious effect here. It tended to increase overall order volume, but there were natural limits on the pace of orders from the drive-through because cars had to pass. The greater spike in volume seems to have come from app-based ordering.

98. *E.g.*, Interview by Anibha Singh, *supra* note 2.

99. In the labor movement vernacular, “speedup” signifies “[a]n employer’s demand for more output without more pay.” WIKTIONARY, <https://en.wiktionary.org/wiki/speedup> (last visited Oct. 12, 2025).

100. *E.g.*, Interview by Shiva Sethi, *supra* note 29; Interview by Shiva Sethi, *supra* note 69.

101. Interview by Shiva Sethi (Feb. 4, 2024).

102. Interview by Christine Keating, *supra* note 70 (stating that baristas’ hours can be cut at manager’s will, to the point that baristas can lose benefits); Interview by Anibha Singh, *supra* note 2 (describing benefit cuts). An interviewee reported that they went to work at the company for “trans healthcare reimbursement,” but that “by the time I made enough hours to use that benefit, that benefit was like dissolved.” *Id.* That interviewee explained benefit cuts as motivated by profit motive: “I think it all has to do with like . . . ways to cut costs. Even those costs that are cut affect the quality of worker life.” *Id.*

communal environment in stores. As one put it, “They paint an ideal experience for both the customer and the barista, but then they won’t provide the resources for it or have standards that go directly against that.”<sup>103</sup>

Finally, all but three of our interviewees said that safety concerns were a major reason they decided to unionize.<sup>104</sup> Some safety concerns were dangers common to restaurant work like burns, falls due to badly maintained staircases, and injuries due to lack of floor mats, all of which could become more frequent due to speedup and lack of maintenance.<sup>105</sup> Others were specifically linked to COVID-19. As one worker explained, at the beginning of the pandemic the company “really took care of us,” putting together a food pantry for furloughed workers and otherwise supporting them.<sup>106</sup> But as the company’s losses mounted, that worker explained, it reopened stores but “safety was no longer a concern . . . They forced indoor seating early to make a better profit.”<sup>107</sup> Another felt the company required coworkers to return to the store too quickly after testing positive for COVID and recounted frightening experiences with customers who, for example, “could come through the drive-thru with positive COVID tests on their laps” or would “cough[] on their hands” before handing over their credit card.<sup>108</sup> The entire experience led one interviewee to feel “disposable.”<sup>109</sup> Or as another put it, some baristas came to feel that “\$11 an hour isn’t ‘risking your life’ kind of money,” and that “management doesn’t actually care whether [they] live or die.”<sup>110</sup>

Many interviewees also felt acutely unsafe due to threats from customers who would get frustrated or angry.<sup>111</sup> As one explained, “People come in every day and they get their food or they get their drinks and every day . . . someone

103. Interview by Christine Keating, *supra* note 70; *see also* Interview by Shiva Sethi, *supra* note 69; Interview by Anibha Singh, *supra* note 2.

104. The exceptions were: Interview by Christine Keating & Katie Parker, *supra* note 65, Interview by Christine Keating, *supra* note 70, and Interview by Christine Keating & Katie Parker (Feb. 25, 2024).

105. Interview by Shiva Sethi, *supra* note 88 (“One time I was out of work for two and a half months because I sprained my ankle falling down [the stairs], [because I was] trying to compensate for lack of staffing. The stairs were often chipped or crumbling [and there was] just [a] complete and total lack of safety concerns.”); Interview by Anibha Singh, *supra* note 59 (expressing concern over lack of slip mats). This last interviewee explained, “I always tell my fellow [workers], like, buy non-slips. I don’t want to see you die because we work with liquids and slippery floors.” Interview by Christine Keating, *supra* note 70 (noting a bargaining demand for reimbursement for non-slip shoes).

106. Interview by Shiva Sethi, *supra* note 88.

107. *Id.*

108. Interview by Shiva Sethi & Katie Parker, *supra* note 59.

109. Interview by Shiva Sethi (Nov. 27, 2023); Interview by Anibha Singh, *supra* note 2 (stating that “we’re still running on skeleton crews” long after COVID).

110. Interview by Shiva Sethi, *supra* note 29.

111. *E.g.*, Interview by Anibha Singh, *supra* note 64 (reporting that baristas would see “people verbally assaulting and sometimes trying to physically assault our workers”). For the union’s bargaining proposal around health and safety to address these issues, *see also* BRISACK, *supra* note 12, at 205 (“The health and safety language we wrote would ensure that no partner ever again had to hide from an abusive customer in the back of the house; that partners . . . would . . . be protected if they refused unsafe assignments; that mental health would be taken as seriously as physical conditions.”).

can just decide to take it out on us.”<sup>112</sup> Another said they had seen “people throwing tables, people throwing drinks, like hot drinks right across the bar at baristas.”<sup>113</sup> Others either experienced or witnessed racial harassment, including slurs and threats of violence.<sup>114</sup> In some cases, those tensions may have arisen in part due to speedup. As one interviewee said:

One thing [the company is always] talking about is [how] they want us to have time to connect with the customers. But . . . if I have a conversation with the customer while I’m handing them off their drink, I’m not making the drink for the other person in the cafe who’s waiting and now they’re impatient and not being nice and stuff.<sup>115</sup>

In other cases, customers harassed workers in response to their union activities. One interviewee whose store was in a wealthy neighborhood said that “during strike lines, we would get called slurs. Sometimes we even had stuff thrown at us, but that just meant that we were doing our job extra well.”<sup>116</sup>

Interviewees also reported grave concerns about store security. Some stores were in areas populated in part by individuals experiencing homelessness or struggling with addiction, and where drug dealers would be visible on the street.<sup>117</sup> One interviewee whose store was in a safer area nevertheless reported that people would come in carrying visible weapons, use drugs in the store bathrooms, or threaten to kill baristas or others.<sup>118</sup> That same interviewee said that at times she had to confront people drinking alcohol in the store. She added that she was a young woman of average height, “and the immediate impulse from any man who’s in his fifties and is drunk would be to try to physically intimidate me and yell in my face and tell me that I can’t tell him what to do . . .”<sup>119</sup> Interviewees also reported sexual misconduct by customers, including stalking, indecent exposure, and sexual assault.<sup>120</sup> Women and LGBTQ+ baristas seemed particularly vulnerable, in part because more

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112. Interview by Shiva Sethi (Apr. 8, 2024).

113. Interview by Anibha Singh, *supra* note 64.

114. *E.g.*, Interview by Shiva Sethi & Katie Parker, *supra* note 59 (recounting racial harassment of interviewee and coworker, including use of racial slurs and threats). Due to the specificity of that event, I can’t provide further details without compromising interviewee confidentiality.

115. Interview by Anibha Singh, *supra* note 2.

116. Interview by Shiva Sethi, *supra* note 2.

117. *E.g.*, Interview Shiva Sethi, *supra* note 68 (reporting concerns about opening the store early in the morning, especially when alone).

118. Interview by Anibha Singh, *supra* note 64 (explaining that they regularly get threatened by customers with knives); Interview by Shiva Sethi, *supra* note 68 (discussing customers’ use of drugs); Interview by Anibha Singh, *supra* note 69 (describing extensive drug and alcohol use by customers); Interview by Shiva Sethi (Apr. 8, 2024) (describing a time when one customer told a barista of his plans to physically harm a woman, and a different time when a customer took a photograph of a barista at work); Interview by Shiva Sethi, *supra* note 2 (describing customers’ drug use in bathrooms and an incident when a customer brought a gun to store).

119. Interview by Anibha Singh, *supra* note 64.

120. *E.g.*, *id.* (describing male customers exposing themselves); Interview by Shiva Sethi, *supra* note 64 (reporting that a co-worker was sexually assaulted by a customer while off the premises).

privileged customers felt empowered to cross boundaries with them. As one put it:

Like, it's even sort of a meme joke, to have a crush on your local barista, you know? And that can be kind of a funny thing, but it definitely goes into territory that's not funny for a lot of workers because customers can be creepy, and especially male customers can be really, really weird and creepy.<sup>121</sup>

Interviewees commonly felt that the company's responses to customer misconduct were inadequate. Under store policy, interviewees reported, baristas themselves did not have the authority to ban customers from stores. Instead, managers would need to file incident reports with a central office, and a ban could only be put in place after three offenses. As one interviewee said, even where baristas know that a customer "is carrying a knife or someone is following baristas home" they would "just have to let it happen again several more times before corporate will give you permission to actually tell that person they're not welcome back, which is, I think, really disgusting."<sup>122</sup>

In at least two instances, interviewees alleged that coworkers had experienced sexual harassment or assault by a coworker or supervisor at the company.<sup>123</sup> One of those interviewed reported that the union's bargaining survey had asked about sexual assault, and many of the responses followed the same pattern: "The barista . . . was sexually assaulted and then made to work alongside her [assailant] and then fired and then fac[ed] retaliation for coming forward about it. There's just so many so many stories like that."<sup>124</sup> Some also reported that what they saw as the company's tepid response to such incidents spurred them to unionize.<sup>125</sup> But even workers who had not experienced such misconduct often felt vulnerable, or felt a duty to stand in solidarity with coworkers who had been victims. This complex of grievances—around wages, hours, benefits, safety, customer harassment, and sexual misconduct—led many baristas to see the company as simply unconcerned about their well-being. As one explained, reflecting a common sentiment, over time baristas lost faith that the company would "uphold its mission and values," and came to feel that "the only other option there is for the workers to try and fix issues. And the only way they can do that is through a union."<sup>126</sup>

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121. Interview by Shiva Sethi, *supra* note 64.

122. Interview by Anibha Singh, *supra* note 64.

123. Interview by Shiva Sethi, *supra* note 69; Interview by Shiva Sethi (Feb. 4, 2024).

124. Interview by Shiva Sethi, *supra* note 69.

125. *Id.* ("When we found out [about an assault in store], it really became like, 'Oh, shit, like we need the union, not just because like we want to get paid more. Like it's this very serious need now.'").

126. Interview by Anibha Singh, *supra* note 1.

### III. RIGHTS CONSCIOUSNESS AND CLASS CONSCIOUSNESS

The union's first victories in Buffalo ignited a tinderbox. Inspired by those victories, workers across the country moved into action based on longstanding frustrations combined with immediate threats such as unfair terminations, acutely unsafe working conditions, changes in management policies, or customer or coworker harassment or assault. Continuing the analogy, fire also requires oxygen, which was provided in part by baristas' engagements with the law.

This Part discusses those engagements, addressing how baristas learned about their rights, how they exercised those rights in the workplace, how the company pushed back, and how workers viewed the legal system in the wake of these experiences. I want to suggest that "law" was not an alien force here. Rather, it was a living and contested body of rules and norms surrounding daily workplace exchanges. I also want to suggest that baristas' efforts might never have gotten off the ground without the campaign's democratization of legal knowledge and baristas' application of that knowledge in the workplace. In other words, baristas' legal praxis was constitutively linked to their worker-to-worker organizing model. This process was radically democratic and empowering, at least for a time, and notably different from many other recent unionization efforts. But law also enabled the company to push back, in a concerted effort to re-establish its unilateral authority in the workplace, and its social and economic dominance. Law thus both facilitated and inhibited workers' organizing, encouraging baristas to stand together but also helping the company to erode their bonds of solidarity. Interviewees reported feeling both empowered *and* disillusioned—first sequentially, then all at once.

#### A. LEARNING SECTION 7

A substantial part of the initial organizing process here involved workers demystifying labor law for themselves, their coworkers, and even their managers. For example, workers with no union experience might not realize that unions are legal in the private sector, and that employers cannot just fire workers for unionizing.<sup>127</sup> As their campaigns progressed, interviewees reported using their legal knowledge while soliciting union support, planning for strikes and ensuring that their strikes would be lawful, gathering evidence for unfair labor practice charges and litigation, and contesting management's anti-union tactics and messages in the workplace. Almost all our interviewees described that

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127. "Right to work" is the rule in many states that unions organized under the NLRA cannot require non-members to help defer the costs of representation through so-called "agency fees." *See generally* *Comm'n Workers of Am. v. Beck*, 487 U.S. 735 (1988) (establishing rules around agency fees for workers covered by NLRA); *see, e.g.*, Interview by Shiva Sethi (Jan. 29, 2024) ("Some [coworkers] had heard of right to work, but thought that it meant that you couldn't organize at all. So one or two people had said, 'Well, I don't even know why you're trying 'cause it's illegal for you to even try to organize.'").

knowledge as empowering and indicated that they felt more confident in their organizing efforts as they learned and exercised their NLRA rights.

Interviewees started the process with varying degrees of legal knowledge. Some said they knew nothing or almost nothing about the law. As one said, “I had never read that poster in the back that’s in every break room. Like I had no idea about anything.”<sup>128</sup> Many interviewees’ first exposure to NLRA rights came after the Buffalo effort, when they began speaking with coworkers about organizing. In some cases, another coworker had some background legal knowledge.<sup>129</sup> In other cases, interviewees would reach out to the union involved, which would quickly get in touch and tell them some basics about the organizing process and their legal protections. As one put it, the union provided a packet that “told us what is legal and what we’re within our rights to do, and then cited the NLRA and different sections and different articles out of that.”<sup>130</sup> While the union stood ready to answer legal questions, it also pointed workers to other online resources such as the NLRB’s website and union websites.<sup>131</sup>

Workers also engaged in extensive self-education in labor law. As one interviewee put it, after some initial conversations, “Suddenly I was reading through the NLRA and annotating it and taking notes [to make] sure I understand what exactly constituted a ULP [unfair labor practice] and when we can and can’t be protected by striking.”<sup>132</sup> Others started with a bit more background knowledge but did similar amounts of self-education, often because they saw legal knowledge as essential to self-protection. As one interviewee said, “I was a huge nerd and I spent many, many an hour on the NLRB.gov site looking at like those different things.” They explained that after learning some basics from the union, “I put little notes and I was like, okay, I’m going to see this for myself. Like I need to see it in writing.”<sup>133</sup> Another interviewee did extensive legal research because they had learned working in foodservice that “everything’s either hot or can harm you in some way,” and wanted to understand their legal protections in the event of an injury.<sup>134</sup> Others reviewed key cases from the

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128. Interview by Shiva Sethi, *supra* note 2; *accord* Interview by Christine Keating & Katie Parker, *supra* note 65 (“I really did not know what the NLRA actually like afforded workers in the U.S. until we were actually like organizing and actually having to like read it to understand like what our rights were.”).

129. Interview by Shiva Sethi (Nov. 20, 2023) (“I actually did not know what unions really were until my co-worker educated me on them and told me about how what Starbucks workers united was doing, and what other unions did and how it all worked.”).

130. Interview by Shiva Sethi (Feb. 4, 2024). In other instances, those details were provided by local organizations other than unions. Interview by Anibha Singh, *supra* note 1 (“We got from a local—actually unrelated to our union—from a local organization, we got cards to hand out that’s like, here’s your legal rights.”).

131. Interview by Christine Keating & Katie Parker, *supra* note 65 (recounting that “a lot of the organizers would just directly source it. They would like give us direct links to the NLRB website. They would give us like the infographics about like the National Labor Relations Act.”).

132. Interview by Shiva Sethi, *supra* note 2; *see also* Interview by Christine Keating, *supra* note 72 (reading NLRB website); Interview by Shiva Sethi, *supra* note 68 (other self-research).

133. Interview by Anibha Singh, *supra* note 2.

134. Interview by Shiva Sethi (Apr. 8, 2024).

NLRB or courts, and one even filed FOIA requests for NLRB documents in relevant cases that had not yet been made public.<sup>135</sup>

Collective self-education was also common. Reflecting the relative youth of the organizers, that sometimes took place on Discord servers.<sup>136</sup> For example, some shops set up a Discord server to identify unfair labor practices across their region, in conjunction with the union's professional organizers. There, workers would share facts on workplace interactions and occurrences that felt problematic to them, and other workers and the organizer would help assess whether they constituted unfair labor practices, and if so talk to the union lawyer about filing charges.<sup>137</sup> While those conversations were not limited to worker-organizers themselves, the discussion process helped worker-organizers understand their rights in more detail.

A common theme in our interviews was that worker-organizers' legal knowledge was more nuanced and sophisticated than the workers themselves realized or acknowledged. For example, when asked what they knew about the NLRA before organizing, one interviewee said "I was fortunate enough that I . . . knew [that] once you start to talk about a union, then you're a union. That's kind of how it works. Two people just have to talk about it, then you're a union."<sup>138</sup> This assertion is legally correct, in a sense: Section 7 applies even if those workers have not unionized or even have no intention of unionizing.<sup>139</sup> Another common theme was the daily work of organizing often entailed educating coworkers on their rights. As one interviewee said, "It's this eternal diligence to just make sure that people know their rights, [that] they know the law, and that they are feeling comfortable" taking collective action.<sup>140</sup> Another made that point in more detail, showing an appreciation for NLRB procedure as well as substantive doctrine, and linking legal knowledge directly to organizing capacity:

I think not a lot of people know what rights they have as working people, which is intentionally done by design. Nobody's going to read that poster in the back. But just being more knowledgeable of what we can and can't do to make better strategic decisions is the number one thing. And then [people need to learn] how NLRB adjudication works, specifically with ALJs and then how the General Counsel then solidifies everything and how this is actually a vehicle for keeping corporations accountable to their workforce. People have

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135. Interview by Anibha Singh, *supra* note 59 ("Usually [to learn the law], I am just reading labor law. Just making my way through it. And trying to read through cases where precedent was set, as well as the actual written law."); Interview by Shiva Sethi, *supra* note 2 (FOIA requests).

136. *E.g.*, Interview by Shiva Sethi (Nov. 20, 2023).

137. Interview by Shiva Sethi (Feb. 4, 2024).

138. Interview by Anibha Singh, *supra* note 1.

139. 29 U.S.C. § 157; *see generally* N.L.R.B. v. Wash. Aluminum, 370 U.S. 9 (1962) (holding that impromptu strike to protest extremely cold working conditions was protected under Section 7 even though the striking workers were not unionized and apparently had no intention to unionize).

140. Interview by Anibha Singh, *supra* note 1.

a real mechanism for doing it. They just have to be informed and be organized and be strategic.<sup>141</sup>

Reflecting the worker-to-worker nature of the campaign—and, ultimately, of the legal knowledge and expertise gained by the workforce—some interviewees reported preparing materials on unionization rights as part of their local efforts. Those materials were distributed either directly between workers or via social media or other public postings. From the outside, local preparation of such materials may seem unnecessarily duplicative, since labor law is the same across the country. But in the context of a worker-led campaign, it may have been an important means of leadership development and self-education. Workers may have *wanted* to prepare those sorts of documents themselves or may have revised and edited existing documents to incorporate new lessons or to reflect local traditions. As one put it, “Like many things with [the campaign], we’re pretty excited it’s very decentralized. We have general paperwork. So like for instance, we have a ‘Know Your Rights’ sheet” that is shared across the campaign. “But things like . . . our specific meetings, our style of communication is kind of like, I wouldn’t say unique because it probably happens to other stores, but it’s something that we developed in-house, so to speak.”<sup>142</sup>

#### B. EXERCISING SECTION 7 RIGHTS: ORGANIZING, RESISTANCE, AND EXHILARATION

Workers put that knowledge into practice on a daily basis while organizing their stores. This Subpart discusses workers’ positive experiences doing so, which mostly involve cases where workers were able to exert power vis-à-vis management through collective action. During interviews, workers often became noticeably animated when recounting these experiences, suggesting they were vivid and personally meaningful. The next Subpart discusses instances where workers’ efforts were less successful and workers became demoralized.

Under the NLRA, workers can file for a union election once they have collected authorization cards or from at least 30% of eligible workers, though in practice unions tend to file only once a supermajority of workers have signed.<sup>143</sup> In many shops, worker-organizers were able to collect cards very quickly after a little coaching because their shops were already personally close and had shared grievances. One interviewee reported that they gathered sufficient cards over a long weekend while the manager was on vacation: “I went into the store on a Friday, sat in the lobby, and every worker that walked in or out of the store, I was like, ‘Hey, we should do this thing. It’s called organizing a union, and this

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141. Interview by Shiva Sethi, *supra* note 2.

142. Interview by Anibha Singh, *supra* note 1.

143. See BRISACK, *supra* note 12, at 274 (“Today, most unions refuse to file for an NLRB election with less than 70 percent of a workforce signed up on union cards.”). Notably, Brisack argues that this practice can limit unions’ power and growth by preventing them from taking on risky campaigns. *Id.* at 275.

is why.”<sup>144</sup> By Sunday, the interviewee reported, enough workers had signed up that they could file for an election.

Baristas often made their campaigns public with letters outlining their reasons for wanting to unionize, which they delivered to store managers and often posted online.<sup>145</sup> The union would then file paperwork at the NLRB for elections, likely because there were various technicalities and judgment calls involved in such proceedings. Baristas reported that after campaigns went public, management very often pushed back on their efforts, seemingly in an effort to erode the baristas’ bonds of solidarity. Whether that worked or not would depend on local circumstances and relationships among workers, but in many cases management’s resistance actually solidified workers’ bonds. As one interviewee told us:

Everyone I’ve talked to across the country who’s organized, it is the case of workers having complaints, having genuine issues, going to the company and saying, these are issues. We want to solve these issues. And the company responding by being just straight malicious to them. And just this endless cycle of workers standing up for themselves and the company responding maliciously and the workers organizing even more.<sup>146</sup>

The company’s opposition reflected a standard anti-union playbook. One common anti-union strategy is to increase tension in the workplace in hopes that workers will associate the union with that tension. In this case, some local managers took the union filing as a personal affront, crying in meetings with worker-organizers.<sup>147</sup> In other cases, especially early on, the company flew in upper-level managers or attorneys to investigate what led workers to unionize. As one interviewee explained, those managers were “in our store for like three days, interviewing everybody that signed the letter.” But the workers soon realized that the managers weren’t trying to better understand their concerns. “It was like, they’re just trying to find out who wrote this letter.”<sup>148</sup>

Where the company wasn’t able to quash the campaign immediately, it sometimes pivoted to communicating that unionization is futile, suggesting to workers that they will never be able to win better wages and benefits through unionization. Baristas were often able to counteract that message by noting its self-serving nature. For example, one barista recounted pushing back on a district manager’s messaging:

He said something along the lines of, “Well, if you unionize, you won’t get a contract for about a year and a half.” . . . I said no, because at the time the L.A.

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144. Interview by Shiva Sethi, *supra* note 29.

145. *E.g.*, Interview by Shiva Sethi & Katie Parker, *supra* note 59 (reporting that their store’s letter discussed race and disability concerns); Interview by Shiva Sethi, *supra* note 109 (reporting their store’s “intent to unionize” letter addressed post-pandemic staffing issues); Interview by Shiva Sethi, *supra* note 69 (reporting that after their store wrote such a letter, partner relations staff were flown in).

146. Interview by Anibha Singh, *supra* note 1.

147. Interview by Christine Keating, *supra* note 70.

148. Interview by Shiva Sethi, *supra* note 69.

nurses were striking, and I was like, “They got a contract in six hours.” So I’m like, “You could give up the contract whenever you’d like.”<sup>149</sup> In another case, an interviewee pushed back hard on the company’s futility message by highlighting its incoherence:

The big metaphor that they use, it’s really silly, was they said, right now you have a Venti cup full of benefits, right? (laughs) And Venti’s the biggest size, you know? So you’re not going to get any more benefits by unionizing, right? All you can do is pour out a little bit of the benefits you have now and you might get different benefits poured in, right? But you’re never going to get more, which is, as far as I know, that metaphor is incredibly illegal. (laughs) ‘Cause it’s not true, right? You can make obvious gains and it’s normal to make really clear gains. Like, also there’s a bigger size, it’s Trento . . .<sup>150</sup>

At other times, the company described the union or worker-organizers as third parties with ulterior motives. For example, some interviewees said managers told other workers that worker-organizers were being paid by the union based on how many members they could sign up, which was false.<sup>151</sup> As one responded: “I was like, ‘Here’s my banking app. If I was getting two paychecks from two different organizations, why do I have sixteen cents in my savings account right now? Why do I have \$84 in my checking account?’”<sup>152</sup> Another interviewee recounted a longer back-and-forth battle with their manager after the manager posted flyers suggesting that “Workers United is a for-profit organization,” mixed with a futility message to the effect that “You’re going to lose your benefits. You won’t be able to get raises.”<sup>153</sup> The worker responded by posting flyers of her own that addressed workers’ rights and the employer’s duties. They described what happened next as follows:

My boss caught me one time like putting posters up and she was like, “You can’t do that.” And I was like, “Actually I am allowed to by law . . .” We did a SparkNotes review of NLRB law just to triple check all of our bases. It was like, actually, you know, I am, and we are allowed to have this up here . . . She was like, “Well, it actually is [company] policy [not to allow postings like this].” Okay, fine, I continue to put stuff up. I think they’ve been torn down every single time. So I started using sticky notes. Kind of like writing things like, “Hey, I just want all of you partners to know like, you’re not gonna get fired. Your benefits, they can’t take your benefits.” Just little things like that. We put sticky notes up, those would get taken down.<sup>154</sup>

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149. Interview by Shiva Sethi (Feb. 4, 2024).

150. Interview by Shiva Sethi, *supra* note 64.

151. Interview by Shiva Sethi, *supra* note 29.

152. *Id.*

153. Interview by Shiva Sethi, *supra* note 127.

154. *Id.* Another interviewee had a similar story in which a manager asserted that the company’s policy on communications with media prevented posting about the unionization campaign. Interview by Shiva Sethi (Feb. 4, 2024). The interviewee pointed out in response that company policy could not override employees’ Section 7 rights. *Id.*

Workers also pushed back by striking over worksite issues, especially safety concerns.<sup>155</sup> Because the issues in those strikes were often very localized, I can't say more without threatening interviewee confidentiality. But workers commonly reported that they only achieved concrete changes at their worksites through strikes or the threat of strikes. As one put it, "All of the major victories we've won on the campaign are through direct actions, marching on the boss, striking, making demands at the shop level, and saying, 'We're not working until you fix it.'"<sup>156</sup> Workers taking such actions often developed detailed understandings of what sorts of tactics could render a strike unprotected.<sup>157</sup> One interviewee told us that learning the rules around proper and improper tactics was largely a matter of "common sense," and that "people are mostly reasonable and rarely offer an idea to put pressure on a manager or the company that would break a law."<sup>158</sup> That may undersell that worker's own legal knowledge, as some of the issues involved here can be quite nuanced.

Where workers could present a united front, managers often backed down and either stopped making anti-union statements or stopped threatening to discipline union activists. As one worker put it, "If you're educated on it and you know your rights and you're able to stand up for it . . . managers came to realize that, 'Oh, this person is educated on this, that this is not something that we can bully them about.'"<sup>159</sup> Another interviewee described a meeting with management after the drive went public, in which managers asked him to sign a "corrective action" that the worker said was based on false statements. As the interviewee said:

So, when they handed me this piece of paper that's a corrective action, I told them a few things. I said, "First of all, you're saying I didn't do this recently, and that is a lie. And I won't put my name on a lie. And if you ask me to sign this, you can consider this my resignation then, because I'm not going to sign something that is a direct lie. I'm not going to lie like that." And two, "If you give this to me, everybody upstairs is waiting for me to come back up and they're ready just to walk out. Are you sure you want that?" And they backed down.<sup>160</sup>

The campaign's experience in spotting and filing ULPs also helped, especially as the volume of litigation became substantial over time. As another interviewee told us, for some store managers, having a worker say "'This is an unfair labor practice, I'm going to call my union rep and we're going to call a lawyer,' that

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155. Interview by Shiva Sethi, *supra* note 2; Interview by Shiva Sethi (Nov. 20, 2023).

156. Interview by Shiva Sethi, *supra* note 29.

157. Interview by Shiva Sethi, *supra* note 88 (describing learning "how do you do an unfair labor practice strike and cite it correctly" in campaign communications so as to ensure legal protection).

158. Interview by Shiva Sethi, *supra* note 29.

159. Interview by Shiva Sethi (Nov. 20, 2023).

160. Interview by Anibha Singh, *supra* note 1.

can be a scary thing, especially if they're not intimately acquainted with what that means."<sup>161</sup>

When workers won their unionization efforts, worker-organizers often found that they needed to take various actions to maintain solidarity. One way they did that was by exercising rights that are afforded to unionized workers even before a collective bargaining agreement has been reached. For example, under the Supreme Court's *NLRB v. J. Weingarten, Inc.* case, unionized workers have the right to have a coworker or union representative present in any interview with management that might lead to discipline.<sup>162</sup> The core rationale, as the Supreme Court itself made clear in the case, is that solidarity is essential to unionization, and having another worker in the room during such an interview can protect the targeted worker against unfair treatment. Unionized stores began exercising *Weingarten* rights whenever possible, both to protect workers' interests and to continue maintaining a culture of solidarity within stores. This may have been an especially important tactic during the long period between certification elections and meaningful collective bargaining.<sup>163</sup>

Unionized workers also have rights to engage in "effects bargaining" when management makes changes that are justified on business grounds but have a detrimental effect on workers, such as closing stores for renovations.<sup>164</sup> Unionized stores exercised those rights, bargaining for example over whether workers would receive pay during closures, whether they could pick up shifts at other stores, or whether they would have preferential rights to get permanent jobs at other stores. As one worker said, while effects bargaining did not deliver a great deal to workers, it felt empowering "because it felt like we could actually hold them accountable to whatever they agreed to."<sup>165</sup> Interviewees noted that in the past, the company had simply closed without notice and without giving workers any backup plan. Like *Weingarten* rights, effects bargaining seems to be an important means of maintaining a culture of solidarity in the face of management intransigence and delays in bargaining.

Workers often described the experience of successful collective action as exhilarating. One said it was "blissful [] to feel not just a part of a community, but to really feel like everyone's success depends on each other's success and everyone's well-being depends on each other's well-being," and "that feeling of solidarity is just unlike anything else."<sup>166</sup> Another worker, who ended up

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161. Interview by Anibha Singh, *supra* note 64.

162. 420 U.S. 251, 251 (1975).

163. *Weingarten* rights were addressed, for example, in Interview by Shiva Sethi (Nov. 20, 2023), Interview by Shiva Sethi, *supra* note 109, Interview by Katie Parker & Christine Keating, *supra* note 104, and Interview by Christine Keating, *supra* note 70.

164. *First Nat'l Maint. Corp. v. N.L.R.B.*, 452 U.S. 666, 681–82 (1981).

165. Interview by Christine Keating, *supra* note 70.

166. Interview by Anibha Singh, *supra* note 59; *accord* Interview by Shiva Sethi, *supra* note 88 ("It was the worst and best year of my life. . . . The energy that you feel at a picket is unlike anything else—like when you have that bullhorn in your hand and people are like answering what you're saying and you're all just . . . regardless of who you are or where you're from or what you're doing, you are all there for like the same

extremely demoralized by the end of the campaign, described the early stages of organizing as life-changing. As they said, “It made us all feel like we were a team. . . . I will never forget the feeling at our highest where . . . literally we felt like we could take on this company.”<sup>167</sup> Another said that even though they had left the company and lost their campaign, “I would do it all over again—exactly the same way—in a heartbeat.”<sup>168</sup>

### C. RETALIATION, THE NLRA’S LIMITS, AND CLASS DISSOLUTION

In many cases, however, the company was able to erode union support at the store level. In this Subpart, I want to try to capture how interviewees described their experience of that erosion, and how the company’s acts affected their sense of autonomy, collective efficacy, and dignity.

A number of interviewees reported experiencing rather crude forms of retaliation. One interviewee, who later won a substantial settlement from the company, said that the company gave him “a final written warning out of nowhere,” after he had not been written up once in five years of employment, and then terminated him three days before the election period started.<sup>169</sup> Another alleged they were selected from among their coworkers to do a weekly deep clean of the store, which involved “getting on my hands and knees, like scrubbing the drains and like whatever.” The interviewee considered that a form of “punishment,” saying “It’s disgusting . . . it’s just, it’s so vile, I hated it.” They were assigned to do so every week until they quit the company.<sup>170</sup> Other interviewees alleged blacklisting<sup>171</sup> and denial of promotions.<sup>172</sup> Another described their experience of having their hours cut until they quit:

I told my store manager, “Hey, I need more hours, because I haven’t been getting hours, like this is the situation I’m in now.” The next schedule that came out, I had four hours. So that retaliation, like I was not prepared for that . . . to where it was like, I am literally crying to my district manager. And she’s somebody that plays this nice role and like, shares so much about her life with her employees and always tries to befriend everybody. And then . . . when I was down . . . she just like kicked me while I was down.<sup>173</sup>

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purpose. That’s what I remember most.”); Interview by Shiva Sethi, *supra* note 2 (“[Organizing] brought a lot of us closer. Like we would then hang out like way more outside of work and have sleepovers. I think it fostered a lot of community, which in and of itself is another threat to Starbucks and [good for] like the working class as a whole.”).

167. Interview by Shiva Sethi, *supra* note 69. Another worker expressed similar joy at learning about the legal protections they could exercise in unionized workplaces, saying, “I love finding out through being a unionized store like oh well they can’t do that because that’s illegal. I love finding out those things.” Interview by Shiva Sethi (Apr. 8, 2024).

168. Interview by Shiva Sethi, *supra* note 68.

169. Interview by Shiva Sethi, *supra* note 29.

170. Interview by Shiva Sethi, *supra* note 127.

171. Interview by Shiva Sethi (Feb. 4, 2024).

172. Interview by Christine Keating, *supra* note 70.

173. Interview by Shiva Sethi, *supra* note 69.

A number of interviewees also reported that they believed the company was threatening their health care benefits, which could literally be a matter of life and death. One interviewee reported that a coworker who had been involved in the organizing efforts had quit while receiving chemotherapy, because the stress of the company's anti-union campaign became too much to bear.<sup>174</sup> Workers who had joined in order to access gender-affirming care were especially vulnerable, because they could lose access to hormones and transition-related care, leaving them at risk of social exclusion, harassment, and even violence. As one interviewee put it, even though the company "prides itself on being pro-trans," it also "threaten[ed] union workers with trans health care." Adopting the company's own viewpoint, they said "Yeah, you just won't get it. We know you're trans . . . you're wearing your trans pants and everything like that. We won't give you health care if you unionize."<sup>175</sup>

In other cases the company's tactics were more subtle. For example, one interviewee said the company's statements about bargaining and benefits frightened workers who were less informed about unions' powers and bargaining processes:

They pulled everyone aside and were telling us that because we had filed for an election that all of our benefits would be frozen. Now what they claim, their justification for that, is [that they] aren't allowed to offer you new benefits if you join a union, right? You have to bargain for those. But what it sounds like to a worker who's hearing that from their manager is like, my healthcare is going to be inaccessible because we've done this, right?<sup>176</sup>

Other interviewees said the company enforced work rules more strictly and precisely after workers started to unionize. Work rules had long been a flashpoint in some stores, with interviewees reporting that the most effective managers had applied rules with a commonsense flexibility. As one explained to us, "The best managers I've seen are ones who do like actually care about their team and go above and beyond and generally kind of like are loose with the rules." In contrast, they said, some managers "try to be by the book so that they can impress their district manager. And they are much less helpful."<sup>177</sup> After stores filed for elections, interviewees often said, such rigidity became more common. Some interviewees reported that the company started enforcing dress code requirements more rigorously after the campaign went public.<sup>178</sup> And another interviewee explained that after their store filed, management put in

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174. Interview by Shiva Sethi, *supra* note 29.

175. Interview by Shiva Sethi (Feb. 4, 2024); *see also* BRISACK, *supra* note 12, at 218 (recounting a manager threatening a trans worker with loss of gender-affirming healthcare benefits).

176. Interview by Shiva Sethi, *supra* note 64.

177. Interview by Christine Keating, *supra* note 70.

178. *E.g.*, Interview by Shiva Sethi, *supra* note 88; Interview by Shiva Sethi & Katie Parker, *supra* note 59; Interview by Shiva Sethi, *supra* note 2; Interview by Shiva Sethi, *supra* note 68; Interview by Shiva Sethi (Feb. 4, 2024).

place new procedures for leaving the bar area that made it effectively impossible to get a drink of water during the morning rush.<sup>179</sup>

Others reported that the company became more rigorous about COVID-19 check-ins, in a way that reinforced managerial power. For example, while the company technically had a longstanding policy that everyone certify they were symptom-free at the beginning of each shift, that policy had been inconsistently enforced. After some stores started to organize, interviewees reported that management began checking whether everyone had filled out those certifications going back several months. Some interviewees interpreted this as an effort to develop a paper trail that would justify disciplining organizers.<sup>180</sup> One store began requiring an in-person check-in with managers to screen for COVID-19 symptoms. An interviewee said that check-in often turned into “a five-to-ten-minute discussion with your manager about whatever is happening and policy. And they’re basically repeating the same policy reminders to you every single day.”<sup>181</sup> Such repetition may have been unnecessary for compliance, but it delivered the message that the company was in sole control of the workplace, and perhaps gave managers an opportunity to discern whether store morale had shifted.

In other cases, the company took steps that interviewees felt were designed to drive a wedge between workers. For example, one store began prohibiting employees from sitting in the back office before or after shifts, which an interviewee interpreted as “trying to keep us away from each other.”<sup>182</sup> Other interviewees reported that managers would gossip about them and other union supporters to pit workers against each other.<sup>183</sup> Still others said the company would hold “captive audience meetings,” or meetings that workers are required to attend in which management communicates its view on unionization, during busy shifts. The effect was to take one or more baristas off the floor, so that those left behind needed to work much harder.<sup>184</sup> That tactic could deliver the message that the union drive was making everyone’s work lives more tense and difficult, and could spark resentment among the workers left on the floor.

Another move in the anti-union playbook is to delay meaningful collective bargaining in hopes that workers will lose interest in the union. Here, interviewees who attended early bargaining sessions came away feeling that the

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179. Interview by Shiva Sethi, *supra* note 68.

180. Interview by Anibha Singh, *supra* note 64; Interview by Anibha Singh, *supra* note 1 (as possible pretext); *see also* Wright Line, 251 N.L.R.B. 1083 (1980) (establishing a burden-shifting framework for cases where employee alleges unlawful retaliation, but employer claims it had valid reason for its action).

181. Interview by Shiva Sethi, *supra* note 68.

182. Interview by Shiva Sethi, *supra* note 109.

183. Interview by Shiva Sethi, *supra* note 127; Interview by Anibha Singh, *supra* note 2; Interview by Shiva Sethi, *supra* note 69.

184. Interview by Shiva Sethi, *supra* note 127. Another interviewee recounted the experience as follows: “I’m just sitting there, and I’m like, ‘You could have just not done this. You could have just scheduled a certain time where there’s an extra person on schedule, but instead you wanted to make this already a hard shift even worse.’” Interview by Shiva Sethi (Feb. 4, 2024); *see also* BRISACK, *supra* note 12, at 115 (describing this tactic).

company had contempt for them. One described the company's representatives as showing "complete unprofessionalism." As they said, "I think they made fun of somebody going homeless. They made [fun of] somebody's body image. They made fun of somebody's ability. . . . You're probably like fifty years old. Act like it. It was absolutely insane."<sup>185</sup> Another interviewee recounted that in bargaining, the company required baristas to wait a long time, then would "find one thing and use that one thing as an excuse to push the meeting back two weeks. And that one thing could be as small as, 'The shirt you're wearing is not technically Starbucks dress code, so we're not going to have this meeting because you're not in dress code.'"<sup>186</sup>

Workers experiencing such acts—retaliation, bullying or harassment, and dilatory bargaining—needed to make sense of them. In many cases interviewees criticized these efforts as unfair and unjust in light of their craft-based understanding of fair dealing. Humor and ridicule were very powerful tools here. Some described management's anti-union efforts as childish: Grown adults unable to comprehend or relate to employees' relatively tame assertions of established legal rights.<sup>187</sup> Another interviewee who worked weekends joked that they never met the company's attorneys who came into the store because "corporate union busters only work Monday through Friday."<sup>188</sup> In many cases, however, they interpreted these acts, and the company's lack of accountability for them, as signs that the law was tilted against workers and toward capital.

#### D. LAWS WRITTEN FOR GOLIATH

Toward the end of our interviews, we asked baristas two specific questions seeking their ultimate views on the law and its role in their efforts. I will conclude this discussion with their answers to those questions, which showed consistent patterns and have been the basis for the conceptual model of workers' uses of law through this Article.

First, we asked baristas how they would describe labor law's protections to a co-worker. The following quote is representative of what many said:

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185. Interview by Shiva Sethi (Feb. 4, 2024). A similar experience was recounted in Interview by Anibha Singh, *supra* note 2 (recounting that management representatives at bargaining table "nitpick[e]d the truth of our story," and "misgender[ed] a trans partner.").

186. Interview by Shiva Sethi, *supra* note 68.

187. Interview by Christine Keating & Katie Parker, *supra* note 65 (describing it as "childish" to delay bargaining so long); Interview by Anibha Singh, *supra* note 64 (describing regional managers calling baristas at home to complain about their job as "like middle school behavior, right? Like you expect a 13 year old girl to do something like that. Not a 60 year old man.").

188. Interview by Anibha Singh, *supra* note 64.

Labor law is designed to protect workers. Even though at most instances it fails, it is designed to protect you. I'm walking proof of that. I lost my job, and if I wasn't organizing a union and didn't have labor law to protect me, I would be working somewhere else. . . . It's there to help. It does help. Don't be afraid because it will protect you.

But don't expect anything quickly. . . . And don't expect that some major decision is going to come in and cripple Starbucks financially or economically because there is no current fine that the NLRB has a jurisdiction to give out that would cripple a multi-billion-dollar international corporation. They just don't have the power. So you have to look at them as allies, but not anything that is going to win you a campaign. . . . The only thing that's going to win your campaign is militancy and pressure on the company through the lens of the eyes of the public.<sup>189</sup>

A number of interviewees echoed the point that *workers* need to enforce the law in everyday practice. As one put it, labor law “protects you as like a human in making sure that you are in a safe workplace” and provides “avenues for getting things done when your manager won't listen to you or your company won't listen to you. You can force them to listen to you.”<sup>190</sup> Others pointed out that legal claims could deter employer malfeasance, echoing a point made above,<sup>191</sup> and that existing laws guaranteed some modicum of safe working conditions.<sup>192</sup>

Our second question was more evaluative: We asked interviewees whether they felt the law had protected their rights to organize, and whether the law was “fair to working people.” Some interviewees had broadly positive assessments. For example, one said that “In terms of unionizing and in terms of striking, there's a lot of protections. And if you can look into it and really do the work to figure out those protections, then you're good. I was never worried about striking affecting my employment or my pay or anything like that.”<sup>193</sup> Another interviewee said that simply knowing the law gave them more faith in the system, because they could protect their rights in a unionized workplace.<sup>194</sup> And one said they had enormous faith in union counsel and NLRB attorneys.<sup>195</sup>

But most interviewees said the delays in NLRB cases, and the NLRB's remedial limitations, made the law ineffective in too many cases. As one put it,

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189. Interview by Shiva Sethi, *supra* note 29. Another barista said labor law is “the best protection of your autonomy as a human being.” Interview by Christine Keating, *supra* note 65.

190. Interview by Shiva Sethi, *supra* note 2.

191. Interview by Shiva Sethi (Feb. 4, 2024) (“Some management, like regional managers, they know it's like, this isn't worth trying to do litigation about. . . . So they try to avoid it.”).

192. *Id.* (noting that weekends, child labor, and OSHA were all won by unions).

193. Interview by Shiva Sethi, *supra* note 68.

194. Interview by Shiva Sethi (Apr. 8, 2024).

195. Interview by Anibha Singh, *supra* note 2 (specifically stating they had faith in NLRB and union lawyers, but not SCOTUS). Another said that their “experience with the NLRB is they will back us up, which gives us a lot of confidence in the legal system, but they lack funding.” Interview by Anibha Singh, *supra* note 1.

“For corporations at least, the law is kind of a suggestion.”<sup>196</sup> The following quote captures much of the consensus among workers:

It’s a good system that I think eventually you’ll get outcomes from. I just believe that . . . it takes way too long to get anywhere with it. That people lose hope, especially at our workplace surrounding unions. . . . I do believe that it does get results. It definitely does. I just think it’s like a very long process for what it is, which I understand because like a lot of unions are filing charges now so that NLRB is like as busy as ever.<sup>197</sup>

Some other interviewees were significantly more negative about the legal system. Some seemed demoralized by how long it took for ULP claims to be resolved,<sup>198</sup> or by the lack of “real bargaining.”<sup>199</sup> Another interviewee who had been litigating their ULP case for a long time said what they most wanted was for the company to admit fault or be found at fault. As they said, “I want you to admit that you were wrong. (laughs) I want somebody to say that you were wrong here [and to say] ‘Yeah, just don’t do it again. Just don’t do it again.’ That would be nice.”<sup>200</sup>

Even those who expressed faith in union counsel and NLRB attorneys often said those individuals and the system they were working within had little capacity to hold the company accountable.<sup>201</sup> They reached for analogies for the company, calling it “Goliath,”<sup>202</sup> or noted the power of “billionaires” in our political economy,<sup>203</sup> or said the fines levied against Starbucks were paltry in comparison to its profits.<sup>204</sup> As one interviewee said, “The differences between the circumstances of the two sides [are] just so drastic that [while] the law does technically protect us, it’s not enough in a way that would be meaningful to these workers who are risking so much.”<sup>205</sup> Or as another put it, “I think from an outsider perspective, people would probably assume that the NLRB has a hell of a lot more teeth than they really have.”<sup>206</sup>

While we did not ask, many interviewees specifically discussed those aspects of the legal system in class terms. As one put it, “I think the law as it stands is very much built towards one class of Americans in terms of like the

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196. Interview by Christine Keating & Katie Parker, *supra* note 65. As another said, “The laws that we have in place don’t dissuade companies from union busting right now.” Interview by Christine Keating, *supra* note 70.

197. Interview by Shiva Sethi (Nov. 20, 2023). Another interviewee said labor law is “there as a backup,” but obtaining a remedy “takes months and months and months.” Interview by Shiva Sethi, *supra* note 127. And another said if explaining labor law to a coworker, they would “warn them about literally how slow it is.” Interview by Shiva Sethi, *supra* note 69.

198. Interview by Shiva Sethi, *supra* note 109; Interview by Christine Keating, *supra* note 70.

199. Interview by Anibha Singh, *supra* note 2.

200. Interview by Christine Keating, *supra* note 70.

201. Interview by Anibha Singh, *supra* note 2.

202. Interview by Shiva Sethi, *supra* note 127.

203. Interview by Christine Keating & Katie Parker, *supra* note 65.

204. Interview by Anibha Singh, *supra* note 59.

205. Interview by Christine Keating, *supra* note 70. Another interviewee expressed outrage at “how far insane amounts of money can get you.” Interview by Anibha Singh, *supra* note 69.

206. Interview by Anibha Singh, *supra* note 64.

property owning class, a wealthy class.”<sup>207</sup> That interviewee put their skepticism in historical perspective, saying “In a post-Freddie Gray and George Floyd United States, I think skepticism of the law is just kind of natural.”<sup>208</sup> As another interviewee put it, when asked whether the law is fair, “It’s not fair, but I also don’t think it could be fair, because, you know, at the end of the day, the law is designed to protect those who pass it.” They added, “I think it’s very fair for capitalists and business owners though.”<sup>209</sup>

#### IV. IMPLICATIONS

This final Part steps back and takes up some of the questions noted at the outset of this Article: Why did the baristas’ unionization effort succeed where so many others have failed? And what does their success say about the state of our labor law? This Part first addresses the baristas’ worker-to-worker model in a bit more detail, comparing it to past organizing models and suggesting some lessons and lingering questions for policymakers and unions. It then situates this account in legal and socio-legal debates about law’s role in social movements more generally.

##### A. THE ORGANIZING MODEL, THE POLITICAL CONTEXT, AND POLICY IMPLICATIONS

As Part I suggested, the baristas’ worker-to-worker model was well-suited to their campaign. The model enabled baristas to build strong cultures of solidarity at the local and national levels, and in most cases to maintain that solidarity despite management’s pushback. With their story on the table, we can now step back and compare their model to two other models employed by unions in recent decades as they sought to rebuild membership and power: (1) the “corporate campaign” model and (2) the “sectoral bargaining” model.

At its best, the corporate campaign model combined top-down pressure on companies from political and civil society actors with bottom-up mobilization by workers.<sup>210</sup> That top-down pressure often aimed to get companies to remain neutral toward organizing and/or to allow workers to unionize through a showing of authorization cards, given unions’ lack of faith in the NLRB elections process.<sup>211</sup> Professional organizers, meanwhile, would go into the field to meet workers, discuss their concerns, and try to build worker organizing committees. This model had important successes, including the Justice for

207. Interview by Christine Keating & Katie Parker, *supra* note 65.

208. *Id.*

209. Interview by Katie Parker & Anibha Singh, *supra* note 97. As another said, “The United States has, really has this precedent of supporting its companies over people.” Interview by Christine Keating, *supra* note 70.

210. MCALEVEY, *supra* note 32, at 50–56.

211. On card check organizing and the debates surrounding it, see generally James J. Brudney, *Neutrality Agreements and Card Check Recognition: Prospects for Changing Paradigms*, 90 IOWA L. REV. 819 (2004-2005); see also Rogers, *supra* note 5.

Janitors campaign that organized building services workers in major cities. But many other corporate campaigns generated little worker mobilization and ultimately failed. Labor studies scholar and organizer Jane McAlevey argued that this model's flaw was that it did not engage rank-and-file workers to the degree necessary to build sustainable organizations.<sup>212</sup> Blanc builds on McAlevey's argument, arguing that the model is simply too expensive given the staff costs involved. Based on the staff time typically required to organize new workers through that model, Blanc suggests that even if today's unions devoted thirty percent of their liquid assets to organizing, they could only hope to unionize around 1.1 million workers. That would barely change overall unionization rates.<sup>213</sup>

The sectoral bargaining model emerged in the Obama years, and involved advancing working-class interests through legislative changes and new bargaining structures. Those efforts built on the "Fight for \$15" campaign, in which a major union sought both to raise minimum wages and to form unions among swaths of low-wage workers, especially in fast food.<sup>214</sup> The campaign's efforts to raise wages legislatively were wildly successful, with numerous cities and states passing higher statutory minimums. But the unionization efforts were not.<sup>215</sup> Some unions then suggested that Congress or the states should create "wage boards," or administrative bodies through which workers, companies, and representatives of the state could set wages and other basic standards at the sectoral level.<sup>216</sup> A common rationale for such proposals was that unions were finding it impossible to build power at scale through worksite-level organizing in today's economy, where major low-wage employers have thousands of job sites.<sup>217</sup> While sectoral bargaining proposals have sparked extensive public debate, only a few have been adopted into law.<sup>218</sup>

The worker-to-worker organizing model has significant advantages over both the corporate campaign model and the sectoral bargaining model. Where workers themselves can take on most organizing tasks, campaigns can be cheaper and spread rapidly.<sup>219</sup> This model also tends to democratize knowledge

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212. See generally MCALEVEY, *supra* note 32 (discussing the flaws of the corporate campaign model).

213. BLANC, *supra* note 7, at 156.

214. They also built on similar efforts by other unions, such as "OUR WalMart." See *id.* at 15.

215. See *Fast Food Workers Comm. & Serv. Emps. Int'l Union v. N.L.R.B.*, 31 F.4th 807 (D.C. Cir. 2022) (discussing organizing effort against McDonald's, NLRB's claims that the company was a joint employer, and eventual settlement, and denying union's petition for review of settlement).

216. SHARON BLOCK & BENJAMIN SACHS, CLEAN SLATE FOR WORKER POWER: BUILDING A JUST ECONOMY AND DEMOCRACY, HARV. L. SCH. LAB. & WORKLIFE PROGRAM 37 (2020), <https://clje.law.harvard.edu/clean-slate-for-worker-power-building-a-just-economy-and-democracy>; KATE ANDRIAS & BRISHEN ROGERS, REBUILDING WORKER VOICE IN TODAY'S ECONOMY, ROOSEVELT INST. 30-31 (2018), <https://rooseveltinstitute.org/publications/rebuilding-worker-voice-in-todays-economy>.

217. ANDRIAS & ROGERS, *supra* note 216, at 26.

218. One notable example is a new law in Massachusetts permitting ride-share drivers to unionize. See Andrea Perdomo-Hernandez, *Ride-Hailing Drivers in Mass. Moving to Unionize Under New Law*, WBUR (Dec. 4, 2024), <https://www.wbur.org/news/2024/12/04/ride-hail-union-massachusetts-uber-lyft> (discussing that law).

219. BLANC, *supra* note 7, at 154-55.

and organizing skills, which can make the resulting unions more nimble, and in some sense more responsive to workers' own desires and needs. Workers who are not co-located can also use that model and modern communication technologies to combine forces and build power at scale. And as the account above has suggested, this model encourages lay engagements with law.<sup>220</sup> In a sense, this model is exactly what the NLRA envisions: a form of workplace-centered organizing where union power depends primarily on workers' own capacity to take collective action.<sup>221</sup>

Baristas' success may also be attributable to the fact that the campaign launched in a somewhat favorable political and institutional context.<sup>222</sup> The immediate post-pandemic period saw a pro-labor presidential administration, a bona fide labor shortage, public sympathies for essential workers and other exploited workers, and a loss of faith in many institutions, all of which may have fostered public support for unionization.<sup>223</sup> Baristas were also well-positioned to organize given some features of their employment relations and structure, as discussed in Part I. They had a strong craft ethic that differentiated them from "management" along us/them lines, de facto control of the workspace during busy shifts, and shared experiences of vulnerability and solidarity that predated organizing. The company was also especially vulnerable due to its small shops, direct ownership of shops, and longstanding commitments to worker engagement and LGBTQ+ rights. Baristas also had some cultural capital based on the company's prominence and their own age and social media prowess, which enabled them to build public support.

The fact that so many baristas identified as LGBTQ+ is also surely important. As discussed above, the campaign coincided with a period of retrenchment that threatened to strip away hard-won rights of citizenship and reinstate de jure legal subordination.<sup>224</sup> An important question for subsequent research is how past LGBTQ+ legal victories helped pave the way for this worker organizing. A standing critique of the "mainstream" LGBTQ+ movement is that it has focused too much on rights desired by "respectable" and upper-middle class gay couples—especially marriage equality—and has tended

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220. Blanc also notes the importance of legal knowledge and self-education for worker-to-worker organizing. *Id.* at 215–17.

221. For criticisms of the NLRB's emphasis on localized organizing and bargaining, see ANDRIAS & ROGERS, *supra* note 216. On notion that collective bargaining is a private process whose results depend on the parties' relative economic weaponry see *N.L.R.B. v. Int'l Union*, 361 U.S. 477, 488–89 (1960).

222. Michael McCann, *Law and Social Movements: Contemporary Perspectives*, 2006 ANN. REV. L. SOC. SCI. 17, 26 (2006) ("[M]ovement formation and action are more likely in periods when dominant groups and state-authorized relationships are perceived as vulnerable to challenge.").

223. On the impact of the pandemic on public opinions regarding the value of work, see Rachel Treisman, *The Pandemic Pushed People to Reevaluate Their Jobs. Meet 5 Who Reinvented Themselves*, NPR (July 10, 2022, at 07:00 ET), <https://www.npr.org/2022/07/10/1108555815/pandemic-reinvention-stories-work-life-balance>. On changing levels of public support for unions, see Megan Brenan, *U.S. Approval of Labor Unions at Highest Point Since 1965*, GALLUP (Sep. 2, 2021), <https://news.gallup.com/poll/354455/approval-labor-unions-highest-point-1965.aspx>.

224. On the importance of the recent history of de jure marginalization to LGBTQ+ individuals views of the law see Hull, *supra* note 17.

not to represent working-class, non-white, and transgender LGBTQ+ individuals.<sup>225</sup> At the same time, success in marriage equality and in obtaining Title VII protections may have helped pave the way for this organizing. Those victories partially de-marginalized LGBTQ+ individuals, making it possible for more mainstream institutions to present themselves as “safe spaces.” Thirty years ago, in contrast, LGBTQ+ individuals were more likely to work in specific neighborhoods that were considered safe or to hide their sexuality and/or gender identity at work.<sup>226</sup> In any event, the specific nexus of LGBTQ+ legal consciousness and class consciousness here deserves further study.

While the institutional and political context of the baristas’ campaign may be unique, many other workers are similarly situated in important respects, and can draw strategic guidance from the baristas’ campaign. Today’s working class is primarily in services jobs, many of which involve a combination of technical specialization, interpersonal judgment, and care provision.<sup>227</sup> An important task for subsequent research would be to discern the extent to which craft ethics predated recent organizing in other sectors, including health care, education, and foodservice. Teachers, nurses, and journalists seem to have strong levels of occupational identification rooted in their common educational experiences and work experiences, and occupational identifications can in many cases generate a craft ethic. Similar dynamics may characterize graduate teaching assistants, adjunct professors, school support staff, and many health care workers. Warehouse workers and grocery store workers may be differently situated—but it is simply not possible to know without further research, and at least some grocery store workers have recently organized using a very similar model. Another factor is that the company involved here was a major consumer brand with a very strong public identification with progressive politics. Not all other companies are similarly positioned—but some are, and nearly all major brands are acutely vulnerable to consumer pressure. In that respect, many aspects of this campaign are likely replicable in other low-wage service sectors.

The baristas’ victories and struggles also have two policy implications. I will note those briefly, since neither is especially novel. First, the account highlights that workers very often remain in the dark about their rights. This is also a theme in reported cases on workers’ collective action outside the union context, where workers tend to take collective action without realizing it could be protected under Section 7 of the NLRA.<sup>228</sup> To remedy this, Congress could

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225. *E.g.*, LIBBY ADLER, *GAY PRIORI: A QUEER CRITICAL LEGAL STUDIES APPROACH TO LAW REFORM* 2 (2018).

226. *E.g.*, KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* 76–78 (2006).

227. *See generally* GABRIEL WINANT, *THE NEXT SHIFT: THE FALL OF INDUSTRY AND THE RISE OF HEALTH CARE IN RUST BELT AMERICA* (2021) (discussing rise of service sector jobs, especially in health care, and the political-economic challenges faced by workers in those sectors).

228. That was apparently the case in the canonical Supreme Court decision on point, *N.L.R.B. v. Wash. Aluminum*, 370 U.S. 9, 15 (1962), and in the NLRB’s leading decision on the need for “concert” in Section 7 cases, *Meyers Indus., Inc.*, 281 N.L.R.B. 118 (1986). It also appears to have been the case in some other leading

require a posting of NLRA rights in the workplace.<sup>229</sup> States and localities could mandate education of high school students on their rights as workers, and elected officials and agency heads could certainly do more to educate workers on their rights. Doing so could encourage more organizing, especially on a worker-to-worker model. That being said, even the most ambitious democratization of legal knowledge may prove insufficient to protect workers' rights given the remedial shortcomings of the NLRA regime. That is the second policy implication. While I have emphasized the generative role of law in this campaign, the baristas' experiences reinforce longstanding arguments that the NLRB's limited protections and remedial weaknesses can undermine organizing drives. It seems very likely that many more stores would now be unionized, and perhaps that the baristas would already have a national collective bargaining agreement, under a different enforcement and remedial regime. What's more, the NLRB's remedial weaknesses likely deter class formation in the workplace in an iterative fashion, insofar as workers who have no experience with unions will tend not to think of unionization as a realistic possibility.

This account also has implications for union strategy. Most obviously, it suggests that unions should consider investing more in worker-to-worker organizing. Of course, doing so carries risks. There is a long history of more autonomous worker uprisings generating conflict with union leaders who need to (or want to) mediate between restless rank-and-file workers and employers who want production stability. That dynamic famously played out in the pre-NLRA Appalachian coal strikes,<sup>230</sup> and hints of it were apparent in our interviews as well. In noting this tension, I do not want to romanticize local unionization. Rank-and-file control can go hand-in-hand with discriminatory practices, and power at scale is essential for workers to win. Rather, I want to suggest that local power projection is essential for large-scale power projection. I also want to emphasize that union leaders may have disincentives to organize new militant rank-and-file constituencies whose interests are not fully aligned with those of existing members—and, as all unionists know, some leaders just aren't up to the task, and would rather oversee a long decline than take the risks needed to generate a rebirth.

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cases on Section 7 protection in the Obama years, such as *Hisps. United of Buffalo*, 359 N.L.R.B. 368 (2012), and *Triple Play Sports Bar & Grille*, 361 N.L.R.B. 31 (2014).

229. The D.C. Circuit has held that the NLRB has no power to require employers to post notices about workers' NLRA rights, except as a remedy for unfair labor practices. *Nat'l Ass'n of Mfrs. v. N.L.R.B.*, 717 F.3d 947, 963–64 (D.C. Cir. 2013), *vacated on other grounds*, *Am. Meat Inst. v. U.S. Dep't of Agric.*, 760 F.3d 18, 2122 (D.C. Cir. 2014) (*en banc*).

230. Those led to substantial tensions with the United Mine Workers' union, which by many accounts positioned itself as a mediating force between the state, the employers, and the unruly, anarchic, organic uprising in the mines. Pope, *supra* note 8, at 25.

## B. LESSONS FOR SCHOLARS OF LAW AND SOCIAL MOVEMENTS

This account also has implications for debates around the role of law in social movements. With other socio-legal scholars, I want to suggest that a convincing account of law's role in society needs to view it as pluralistic and contested, and as a living process of collective self-governance. In this view, legal rules as promulgated and enforced by agencies and courts become truly binding only once incorporated into social practice and social relations.<sup>231</sup> As Martha Minow has argued, "Efforts to create and give meaning to norms, through a language of rights, often and importantly occur outside formal legal institutions such as courts," and are undertaken by non-lawyers as well as lawyers.<sup>232</sup>

Such lay legality may be especially common in the private sector workplace, which is governed a complex mixture of common law, statutes, local tradition, and social norms.<sup>233</sup> To illustrate, take the employment-at-will rule, which allows an employer to terminate a worker without cause or notice, as long as the termination does not violate a statute or other legal obligation. The rule as stated is highly formal and specific. But in practice, whether an employer can lawfully terminate a particular worker will depend in part on how it has treated similarly situated workers in the past; differential treatment may suggest the employer in fact had a motive banned by statute.<sup>234</sup> In other words, the employer's customs and policies, which may reflect norms insisted upon by workers over time, can affect the employer's formal legal obligations. Other examples abound in the collective bargaining context, where arbitrators and courts have often looked to the "common law of the shop" to discern whether a termination was justified.<sup>235</sup> In that sense, our labor and employment laws give workers some lawmaking authority, the extent of which varies based on their

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231. See generally Cover, *supra* note 8; see also MCCANN, *supra* note 16 (legal discourses are not "disembodied abstractions and ideas. Rather, they are inscribed in, and become meaningful through, the practical social activity of conscious legal agents. . . . [They] become material in the very process of action within different social spaces and institutional sites.").

232. Minow, *supra* note 8, at 1861–62 (1987). In another classic study of the role of rights and legal consciousness in shaping movements, Willy Forbath showed that American Federation of Labor (AFL) unionists' political aperture narrowed as they navigated judicial doctrine around labor injunctions. WILLIAM E. FORBATH, *LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT* 8–9 (1991).

233. A similar normative complexity is apparent in Lauren Edelman's studies of civil rights compliance, which have found that companies tend to interpret civil rights statutes in line with managerial needs. See generally LAUREN B. EDELMAN, *WORKING LAW: COURTS, CORPORATIONS, AND SYMBOLIC CIVIL RIGHTS* (2016). One difference between the contexts is important here: companies confronting unionization drives often openly flout their legal obligations and deny the legitimacy of unions per se. In contrast, companies do not usually deny the legitimacy of civil rights commitments, even if they might honor them in the breach.

234. See Cynthia Estlund, *Rethinking Autocracy at Work*, 131 HARV. L. REV. 795, 803–05 (2018) (book review) (discussing these and other complexities of employment at will today); Vicki Schultz, *Reconceptualizing Sexual Harassment, Again*, 128 YALE L.J. F. 22, 64 (2018) (discussing how antidiscrimination laws lead to rationalization of employer processes).

235. *N.L.R.B. v. Strong*, 393 U.S. 357, 364 (1969) (Douglas, J., dissenting) (on role of "common law of the shop" in union arbitration); see also *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 580 (1960) ("A collective bargaining agreement is an effort to erect a system of industrial self-government.").

degree of organization.<sup>236</sup> That is what I mean when I say the baristas' campaign was *jurisgenetic*: It involved legal claims, legal interpretation, and the creation of legal meaning.

Our finding that law played a positive and generative role here is in tension with some more critical arguments regarding law's impact on social movements. One line of critique holds that legal strategies can enable lawyers to dominate movements or limit their political aperture, especially in the context of impact litigation.<sup>237</sup> Perhaps because this campaign did not involve impact litigation, we simply did not see evidence for that here. While some of our interviewees bristled against the restrictions that union counsel tried to levy on their activities, the lawyers did not seem dominant, and we heard no complaints that lawyers were seeking to be change-makers in their own right. Rather, worker-organizers and lawyers typically partnered to navigate the law's strictures.<sup>238</sup>

A second line of critique holds that law's very contradictions may lead laypeople to accept it as legitimate, insofar as that complexity could lead them to see particular results as unjust while believing that the overall legal system contains a strand of more pure and formal right.<sup>239</sup> Our findings again point in another direction, though that might be due to the context of our research, which involved social movement actors engaged in a heavily legalized process. Our interviewees saw legal rights as an important part of their structure of action, but they also remained quite critical of the legal system.<sup>240</sup> In that respect our findings echo past findings that laypeople in social movements often have quite nuanced understandings of law, and of law's real but limited capacity to reorder social relations.<sup>241</sup> For example, Kathleen Hull found that LGBTQ+ people had

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236. See also PHILIP SELZNICK, *LAW, SOCIETY, AND INDUSTRIAL JUSTICE* 122 (1969) (arguing that collective bargaining relationships tend to produce internal commitments to the rule of law).

237. See generally Derrick A. Bell Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *YALE L.J.* 470 (1976); see also Douglas NeJaime, *The Legal Mobilization Dilemma*, 61 *EMORY L. REV.* 663, 665 (in study of marriage equality campaigns, arguing that "litigation facilitates access to power for marginalized groups, [but] it also allows individuals to speak on behalf of a group and bind other group members.").

238. See also Jennifer Gordon, *Law, Lawyers, and Labor: The United Farm Workers' Legal Strategy in the 1960s and 1970s and the Role of Law in Union Organizing Today*, 8 *U. PA. J. LAB. & EMP. L.* 1, 2–3 (2005) (discussing strategic use of litigation tactics in UFW campaigns). For other recent suggestions that scholars should pay more attention to lawyers' positive role in social movements, see Scott L. Cummings, *The Social Movement Turn in Law*, 43 *LAW & SOC. INQUIRY* 360, 365 (2018); Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 *YALE L.J.* 546, 552–54 (2021); Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 *STAN. L. REV.* 821, 825–27 (2021).

239. EWICK & SILBEY, *supra* note 17, at 15.

240. *Contra* Simon Halliday & Bronwen Morgan, *I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination*, 66 *CURRENT LEGAL PROBS.* 1, 21 (2013) (discussing a qualitative study of radical environmental activists, suggesting that those who were disappointed by movement losses would tend not to embrace law's justice claims or hegemony, but rather to retreat to a sort of isolationism and fatalism).

241. *E.g.*, Lovell, *supra* note 17, at 4; Sally Engle Merry, *Concepts of Law and Justice Among Working-Class Americans: Ideology as Culture*, 9 *LEGAL STUD. F.* 59, 60 (1985) (finding complex legal consciousness among working-class individuals who turn to courts to resolve disputes); Monica C. Bell, *Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism*, 50 *LAW & SOC'Y REV.* 314, 316–17 (2016) (showing

quite complex views on marriage equality, supporting it in general as a means of achieving full and equal citizenship, but also expressing “more tepid support for marriage as an institution and a relationship model for same- sex couples, as well as mixed views on personal aspirations to marry.”<sup>242</sup> Hull interpreted those findings as evidence of “a critical perspective on law, if not outright resistance to hegemonic legality, among many LGBT people.”<sup>243</sup>

A final line of critique suggests that rights consciousness can alienate people from one another and occlude our capacity for collective self-governance.<sup>244</sup> If anything, we found the opposite: Rights consciousness helped move workers into collective action against a major corporation. In that respect, our findings bring to mind Michael McCann’s classic book on the role of rights consciousness in the pay equity movement. In interviews, McCann found again and again that rights claims and litigation strategies helped to foment political consciousness, solidarity, and a sense of efficacy among movement participants, and that organizational actors like unions and social movements could use those strategies appropriately to mobilize workers. Rather than rights claims positioning individuals as supplicants before the state, they instead showed “the diverse, often defiant forms of practical legal knowledge shared among citizens *in* society that are not reducible to official legal texts.”<sup>245</sup>

#### CONCLUSION

Our interviewees’ class consciousness and their legal consciousness were intertwined. As worker-leaders learned about and exercised their NLRA rights, they felt more confident in their organizing efforts. They also drew on legal doctrines and broader legal ideals while constructing the culture of solidarity that nurtured and sustained their efforts. Over time, many worker-leaders developed sophisticated understandings of law, its role in society, and its utility and limits for the working class. In other words, while the legal system thwarted baristas’ ambitions in various respects, the law also played a generative role here, one familiar from our labor history and from other social movements.

Yet perhaps paradoxically, I am reluctant to attribute too much causal power to law *per se*. For one thing, our interview records do not enable strong arguments in that respect, since we lacked control interviews with workers who opposed unionizing or had no experience with the campaign. More importantly, the fact that lay legal engagements and autonomous worker organizing have

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several scripts used by Black women who call police which mitigate their distrust of the police or state in general); Laura Beth Nielsen, *Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment*, 34 *LAW & SOC’Y REV.* 1055, 1056 (2000) (arguing that the desire to regulate street harassment varies based on race, gender, and class).

242. Hull, *supra* note 17, at 562.

243. *Id.*

244. *E.g.*, Peter Gabel, *The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves*, 62 *TEX. L. REV.* 1563, 1563 (1984).

245. MCCANN, *supra* note 16, at 228.

coexisted so often historically suggests that the relationship between the two is dialectical rather than causal, such that each is necessary for the other. The broader lesson here is humbling: Nobody controls the law. Agencies and courts can of course state what the law requires, but they usually shape behavior only indirectly. The actual governing law in any scenario—the codes of conduct that are understood by all, and often binding in a formal sense—emerges in a thick social context, where legal rules, social norms, and accepted (or disputed) practices overlap, interpenetrate, and even contradict one another. When baristas learned and exercised their Section 7 rights, they put their unique stamp on that body of law, at the same time that they altered the governing code of their workplaces. The law that emerged was both profoundly democratic and deeply authoritarian. It could not be otherwise.

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