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Comments

Reclaiming Rights: Combatting Employee-Sided Labor & Employment Legal Accessibility Issues for the New Working Class through Unionization

Evan Dandrea*

INTRODUCTION

A source of pride for the United States lies in the notion of maintaining equitable access to its justice system,¹ regardless of a litigant's social or economic status:

From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized

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1. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

if the poor man charged with crime has to face his accusers without a lawyer to assist him.²

These are the words not of a revolutionary figure or a grassroots politician. Instead, these are the words of the United States Supreme Court in *Gideon v. Wainwright*—a decision written nearly sixty years ago.³ Since then, any rise in the socioeconomic position of the metaphorical “poor man” has stagnated.⁴ Such stagnation raises the question: ought this “noble ideal” be applicable to every metaphorical “poor man” in all legal scenarios? The American Bar Association’s Standing Committee on Legal Aid and Indigent Defense qualifies this principle as “Civil Gideon.”⁵ The Committee defines Civil Gideon as the idea that “people who are unable to afford lawyers in legal matters involving basic human needs — such as shelter, sustenance, safety, health, and child custody — should have access to a lawyer at no charge.”⁶ Their belief is that Civil Gideon ought to be expanded beyond the criminal law practice and into the purview of civil plaintiffs.⁷

Low-wage employees fit squarely into the category of those who would benefit from Civil Gideon. The average salary for full-time, low-wage workers falls well below the average annual household spending in the United States.⁸ Exponential price increases only

2. *Id.*

3. *Id.*

4. See Lawrence Mishel, Elise Gould & Josh Bivens, *Wage Stagnation in Nine Charts*, ECON. POL’Y INST. (Jan. 6, 2015), <https://www.epi.org/publication/charting-wage-stagnation/> [<https://perma.cc/68RS-3P5B>] (“Our country has suffered from rising income inequality and chronically slow growth in the living standards of low- and moderate-income Americans. This disappointing living-standards growth—which was in fact caused by rising income inequality—preceded the Great Recession and continues to this day.”).

5. *Civil Right to Counsel*, A.B.A., https://www.americanbar.org/groups/legal_aid_indigent_defense/civil_right_to_counsel1/ [<https://perma.cc/27EJ-LWJ9>] (last visited Mar. 2, 2023).

6. *Id.*

7. *Id.*

8. See generally *Amazon Warehouse Salary*, ZIPRECRUITER, <https://www.ziprecruiter.com/Salaries/Amazon-Warehouse-Salary> (last visited: Mar. 1, 2023); *Starbucks Barista Salaries*, GLASSDOOR, https://www.glassdoor.com/Salaries/starbucks-barista-salary-SRCH_KOO,17.htm (Sept. 15, 2022); *The Frightening Cost of Living in the U.S: A Price Index Review*, OPEN ACCESS GOV’T (Sept. 2, 2022), <https://www.openaccessgovernment.org/the-frightening-cost-of-living-in-the-u-s-a-price-index-review/142843/> [<https://perma.cc/Q487-J6AM>].

add to the already-present income insecurity for such workers.⁹ Further, many employees at workplaces such as Amazon and Starbucks come from disenfranchised communities.¹⁰ This exacerbates bleak economic outlooks and legal accessibility issues, which in turn creates a toxic environment where employees cannot afford a labor and employment attorney even if they wish to pursue an action against their employer.¹¹ For workers who would like to dispute workplace actions, accessible labor and employment legal services ought to firmly be within reach.

This Comment will argue that unionization provides accessible labor and employment legal services for traditionally marginalized groups because an inherent function of a union is to take charge of employees' grievances against their employer—a similar function to labor and employment attorneys. Part I of this Comment will provide background on the history of unionization in the United States, as well as the recent unionization efforts by low-wage employees at Starbucks and Amazon. Part II will analyze the issues low-wage employees face, including socioeconomic barriers that make accessing civil legal services difficult, and the need for employee-sided legal services. Part III will then examine the functions of unions and how those functions provide a comprehensive solution to the issues described in Part II. Finally, Part IV will address counterarguments, including the shortcomings of traditional solutions.

9. *The Frightening Cost of Living in the U.S*, *supra* note 8.

10. See Katherine Anna Long, *Amazon's Workforce Split Sharply Along the Lines of Race and Gender, New Data Indicates*, SEATTLE TIMES (Sept. 23, 2021, 5:08 PM), <https://www.seattletimes.com/business/amazon/amazons-workforce-split-sharply-along-the-lines-of-race-gender-and-pay-new-data-indicates/> [<https://perma.cc/XW55-XMMY>]; Starbucks U.S. Workforce Demographics, STARBUCKS STORIES & NEWS, <https://stories.starbucks.com/uploads/2020/10/Starbucks-Workforce-Demographics-Data-Description-August-2020.pdf>. (last visited March 7, 2023).

11. See Aditya Aladangady & Akila Forde, *Wealth Inequality and the Racial Wealth Gap*, FED. RSRV. (Oct. 22, 2021), <https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.html> [<https://perma.cc/S2KB-EPFT>].

I. BACKGROUND

A. *History of Organized Labor and What It Offers for Employee Protections*

Organized labor's history in the United States can be traced back to the mid-eighteenth century, where New York journeymen tailors engaged in the earliest recorded strike in response to a wage reduction.¹² Some years later in 1886, the American Federation of Labor ("AFL") was founded.¹³ Moving into 1935, a set of craft unions obstructed the AFL's organizing efforts, resulting in several affiliated unions breaking off from the AFL and forming what would later be known as the Congress of Industrial Organizations ("CIO").¹⁴ Ultimately, the two groups would re-converge in 1955 to create the AFL-CIO.¹⁵ Today, the AFL-CIO encapsulates fifty-eight unions and over 12.5 million working people.¹⁶ Throughout the long history of the labor movement, both its leadership and its rank-and-file members have fought for better wages, reasonable hours, safer working conditions, health benefits, the abolition of child labor, and for the greater protection of working-class people.¹⁷ One successful effort was the Fair Labor Standards Act, which was passed in 1938 and established the first minimum wage and the forty-hour work week.¹⁸

Congress largely codified private employees' rights to unionize when it passed the National Labor Relations Act of 1935 ("NLRA").¹⁹ Two years later, the United States Supreme Court

12. *A Brief History of Labor Unions in the U.S.*, PITTA LLP (Apr. 21, 2017), <https://www.pittalaw.com/blog/2017/04/a-brief-history-of-labor-unions-in-the-us/> [<https://perma.cc/K5LW-PXRT>].

13. *Id.*

14. MICHAEL KAZIN, *THE POPULIST PERSUASION* 136 (1995).

15. *George Meany*, AFL-CIO, <https://aflcio.org/about/history/labor-history-people/george-meany> [<https://perma.cc/732G-E4SB>] (last visited Mar. 2, 2023).

16. *Our Unions and Allies*, AFL-CIO, <https://aflcio.org/about-us/our-unions-and-allies> [<https://perma.cc/TLQ6-2KZR>] (last visited Mar. 2, 2023).

17. *Labor Movement*, HISTORY, https://www.history.com/topics/19th-century/labor#section_8 [<https://perma.cc/F6VF-EYSJ>] (Mar. 31, 2020).

18. Patrick T. Kiger, *Minimum Wage in America: A Timeline*, HISTORY, <https://www.history.com/news/minimum-wage-america-timeline> [<https://perma.cc/R2KG-E5DK>] (Oct. 28, 2019).

19. *See generally National Labor Relations Act*, NLRB, <https://www.nlr.gov/guidance/key-reference-materials/national-labor-relations-act> (last visited Mar. 2, 2023).

decided the case of *NLRB v. Jones & Laughlin Steel Corporation*, where the NLRA's constitutionality was at issue.²⁰ Chief Justice Charles Evans Hughes wrote for the majority, ultimately finding that the NLRA was constitutionally valid. With that, the right to organize was acknowledged by both the highest legislative and judicial bodies in the United States.²¹

Fast forward to the modern era, and the history of American organized labor contorted once more, yet in the opposite direction. In 2018, the United States Supreme Court delivered a landmark decision in *Janus v. American Federation of State, County, and Municipal Employees*—a decision that jeopardized both the legitimacy of organized labor and the sincerity of constitutional law *stare decisis*.²² In a five-to-four opinion written by Justice Alito, the Court delivered a judgment that was ostensibly narrow in its focus: unions violate the First Amendment when they extract agency fees from non-union employees who are in a unionized workplace.²³ Justice Alito explained that “this arrangement violates the free speech rights of nonmembers by compelling them to subsidize private free speech on matters of substantial public concern.”²⁴ In delivering such a ruling, the United States Supreme Court directly overruled the precedent it set out in *Abood v. Detroit Board of Education*.²⁵ *Abood* was decided nearly four decades prior in 1977 and found non-member agency fees—the practice of unions charging fees to non-members that were receiving union benefits—constitutional.²⁶

20. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 25 (1937).

21. *See id.* at 24–31.

22. Johannah C. Pizzini, *Janus v. American Federation of State, County, and Municipal Employees: An Unprecedented Departure from Precedent*, 65 *LOY. L. REV.* 473, 500–01 (2019).

23. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emp., Council 31*, 138 S. Ct. 2448, 2486 (2018).

24. *Id.* at 2460.

25. *See Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 223–24 (1977) (holding that, “[a] union that obtains the support of a majority of employees in the appropriate bargaining unit is designated the exclusive representative of those employees. A union so designated is under a duty of fair representation to all employees in the unit, whether or not union members. And in carrying out all of its various responsibilities, a recognized union may seek to have an agency-shop clause included in a collective-bargaining agreement”).

26. *Id.* at 225–26.

Dissenters have argued that without the ability to charge agency fees for those not in the union, non-members are incentivized to free-ride on the dues paid by others.²⁷ These free-riders are thus obtaining the benefits of being in a union without having to pay for it.²⁸ Justice Kagan even posits that *Janus*' crystallization of free riding could result in unions lacking "the resources to effectively perform the responsibilities of an exclusive representative—or, in the worst case, to perform them at all."²⁹

Today, Justice Alito's philosophy has a firm hold on the United States Supreme Court.³⁰ Regardless, disenfranchised members of the working class have not slowed in the expression of their right to unionize, with recent private sector unionization efforts serving as a beacon.

B. *Modern-day Unionization Efforts and Corporate Response*

The United States Department of Labor reported that in 2021, union membership was most prevalent amongst middle-aged workers between the ages of forty-five and fifty-four.³¹ The lowest prevalence of union membership was amongst younger workers aged sixteen to twenty-four.³² However, figures for those younger workers may be on the rise, as indicated by various unionization

27. See generally Erwin Chemerinsky and Catherine L. Fisk, *Exaggerating the Effects of Janus: A Reply to Professors Baude and Volokh*, 132 HARV. L. REV. F. 42 (2018); Lee Saunders, *Why Janus v. AFSCME is a Threat to All Working People*, AFSCME, <https://www.afscme.org/blog/why-janus-v-afscme-is-a-threat-to-all-working-people> [<https://perma.cc/SKG6-BJ3A>] (last visited Mar. 8, 2023); Dylan Matthews, *The Supreme Court Decision Gutting Public Sector Unions, Explained*, VOX, <https://www.vox.com/2018/6/14/17437832/janus-afscme-supreme-court-union-teacher-police-public-sector> [<https://perma.cc/K6Y2-QFUH>] (Jun. 27, 2018, 10:08 AM EDT).

28. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emp., Council 31*, 138 S. Ct. 2448, 2489 (2018) (Kagan, J., dissenting).

29. *Id.* at 2491.

30. See Amelia Thomson-DeVeaux & Laura Bronner, *The Supreme Court's Partisanship Divide Hasn't Been This Sharp in Generations*, FIVETHIRTYEIGHT (Jul. 5, 2022, 1:08 PM), <https://fivethirtyeight.com/features/the-supreme-courts-partisan-divide-hasnt-been-this-sharp-in-generations/> [<https://perma.cc/2BFV-6KU9>].

31. Andrea Hsu, *Starbucks Workers Drive Nationwide Surge in Union Organizing*, NPR (May 1, 2022, 5:00 AM ET), <https://www.npr.org/2022/05/01/1095477792/union-election-labor-starbucks-workers-food-service-representation> [<https://perma.cc/TAD6-ZJEX>].

32. *Id.*

successes at Amazon warehouses and Starbucks shops.³³ Per the National Labor Relations Board, over two hundred Starbucks stores have officially voted to unionize as of August 2022.³⁴ The recent Starbucks organizing efforts have largely involved baristas in their twenties.³⁵ Similarly, the president of the Amazon Labor Union—Chris Smalls—is a former warehouse supervisor in his early thirties.³⁶ First-ever unions have also recently been established at an Apple store in Maryland, a Google Fiber contractor, REI, Trader Joe’s, Kickstarter, and Activision Blizzard.³⁷ Further, union elections in the accommodations and food services industries made up 27.5% of all union election petitions in 2022.³⁸ A novelty of these first-time unions is that they are found in workplaces that tend to employ younger people—indicating that the labor movement may be growing.³⁹

The sheer quantity and average age of unionization efforts are not the only indicators of the movement branching out from its traditional roots. According to NPR, workers at Starbucks and Amazon note that the pandemic has been a stimulus for unionization, saying that “their companies did not do enough to protect them from the risks of COVID or reward them for carrying on with the work that has made their companies highly profitable over the past two years.”⁴⁰ A recent Gallup survey found that 68% of Americans approve of labor unions—a figure not seen since 1965.⁴¹ The recent private sector unionization efforts, most notably at Starbucks and Amazon, has captured the regard of both non-traditional workforce members and the support of the general American public.⁴²

The management wing of the private sector has not been so welcoming, intensifying the need for employee-sided labor and

33. *See id.*

34. Katie Tarasov, *Unions Are Forming at Starbucks, Apple and Google. Here’s Why Workers Are Organizing Now*, CNBC (Aug. 5, 2022, 9:00 AM EDT), <https://www.cnbc.com/2022/08/05/why-starbucks-apple-and-google-are-unionizing-now-for-the-first-time.html> [<https://perma.cc/V3YX-FDXH>].

35. Hsu, *supra* note 31.

36. *Id.*

37. Tarasov, *supra* note 34.

38. *See* Hsu, *supra* note 31.

39. *See* Tarasov, *supra* note 34.

40. Hsu, *supra* note 31.

41. *Id.*

42. *See id.*

employment legal services. Take Amazon, for example, which has experienced a meteoric rise in the past decade.⁴³ Their rise has been marred with criticism, namely centered around their response to unionization efforts.⁴⁴ A notorious YouTube video of an Amazon training video circulated the internet in 2018 in which the cartoon presenter on the training video relayed, “we are not anti-union, but we are not neutral either.”⁴⁵ Similarly, in April of 2022 the National Labor Relations Board found merit in a charge that Amazon had violated labor law in the company’s Staten Island warehouse.⁴⁶ Specifically, the National Labor Relations Board found credence in the union’s complaint that the company was holding mandatory worker meetings to persuade its employees not to unionize.⁴⁷ The Board also found merit in the union’s accusation that Amazon indicated to Staten Island employees that they could be fired if they voted to unionize and threatened to withhold benefits.⁴⁸

Amazon is not the only new-age company to teeter the line when it comes to their employees unionizing. The Starbucks Corporate CEO Howard Schultz is known to speak out against organizing employees.⁴⁹ In a 2022 interview, the Starbucks figurehead stated the company planned to “. . . reinvent the role and responsibility of [the company] . . .” when it came to their relationship with

43. See generally Daniele Palumbo, *Amazon: The Unstoppable Rise of the Internet Giant*, BBC (Feb. 7, 2021), <https://www.bbc.com/news/business-55927979> [<https://perma.cc/AR98-QYVZ>] (discussing Amazon’s exponential valuation increase since its inception).

44. See generally David Streitfeld, *How Amazon Crushes Unions*, N.Y. TIMES, <https://www.nytimes.com/2021/03/16/technology/amazon-unions-virginia.html> [<https://perma.cc/T44L-BEAV>] (Oct. 21, 2021).

45. Whole Worker, *Amazon’s Union-Busting Training Video*, YOUTUBE (Dec. 18, 2018), <https://www.youtube.com/watch?v=AQeGBHxIyHw>.

46. *Labor Agency Says Amazon Union’s Meeting Complaints Have Merit*, CNBC (May 7, 2022, 10:03 AM EDT), <https://www.cnbc.com/2022/05/07/labor-agency-says-amazon-unions-meeting-complaints-have-merit.html> [<https://perma.cc/98LN-YM99>].

47. *Id.*

48. *Id.*

49. See Robert Iafolla, *Starbucks CEO’s Anti-Union Comments Straddle Line of Legality*, BLOOMBERG LAW (June 14, 2022, 11:38 AM), <https://news.bloomberglaw.com/daily-labor-report/starbucks-ceos-anti-union-comments-straddle-line-of-legality> [<https://perma.cc/34LH-DHSN>] (“Starbucks Corp. CEO Howard Schultz’s disparaging comments about workers’ organizing efforts escalated a lengthy battle with employees who have unionized at 150 stores nationwide.”).

their employees.⁵⁰ Schultz affirmed that Starbucks would not embrace unions in that reinvention.⁵¹ He concluded his discussion on the topic by referring to employees organizing as “third par[ties].”⁵² This interview was given in response to over 200 NLRB labor violation charges filed against Starbucks since August of 2021.⁵³ In total, Starbucks and Amazon have consistently reacted to their employees’ unionization efforts with hostility.⁵⁴

II. THE SOCIOECONOMIC MAKEUP OF LOW-WAGE EMPLOYEES REQUIRES PROTECTION VIA UNIONIZATION

A. *Socioeconomic Makeup of Amazon and Starbucks Employees*

The Amazon and Starbucks corporations’ antagonism towards employee organizing efforts, in tandem with bleak economic prospects for such employees, ultimately hinders their ability to obtain legal services.⁵⁵ Amazon revealed their median full-time U.S. warehouse workers salary is \$37,903.00; the average full-time U.S. barista’s salary at Starbucks is \$34,580.00.⁵⁶ These salaries are at odds with a number of U.S. consumer price indices which, when outlined, reveal that Starbucks and Amazon employees are fiscally drowning in today’s economy.⁵⁷ Accordingly, access to legal services—including employee-sided labor and employment legal services—is a fiction to most of these employees.⁵⁸

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *See id.*

55. *See id.*

56. *Amazon Warehouse Salary, supra note 8; Starbucks Barista Salaries, supra note 8.*

57. *See The Frightening Cost of Living in the U.S, supra note 8* (outlining data reflecting dramatic cost of living increases).

58. *See generally* Greg Rosalsky, *Most People Can’t Afford Legal Help. 1 Reformer Wants To Change That*, NPR (Sept. 29, 2020, 9:35 AM EDT), <https://www.npr.org/sections/money/2020/09/29/917824026/most-people-cant-afford-legal-help-1-reformer-wants-to-change-that> [<https://perma.cc/3YB2-ZJMN>] (“Gillian Hadfield, a law professor and economist at the University of Toronto, argues . . . it’s time to completely revamp how we regulate the practice of law in the United States [,] . . . a system that raises the cost of legal services and contributes to an ‘access to justice crisis’ in the United States.”).

Another aggravating factor is the demographic makeup of Amazon and Starbucks employees. At Starbucks, 70% of their retail employees are women, 28.7% are Latinx, 8.4% are Black, 5.4% are Asian, and 4.9% are multiracial.⁵⁹ At Amazon, nearly 63% of their call center and warehouse workers are Black, Latinx, Native American, or multiracial.⁶⁰ According to the company itself, its percentage of women, Black, Latinx, Native American, and Asian employees is steadily on the rise.⁶¹ Thus, a growing percentage of Amazon and Starbucks workers are a part of demographic groups which have less access to wealth to begin with.⁶²

Finally, the age demographics of Amazon and Starbucks employees indicate a massive wealth gap between the bulk of their employees and the rest of society. People between the ages of twenty and thirty years old make up roughly 54% of Amazon employees.⁶³ Starbucks spokesperson Reggie Borges has noted that the company lacks readily available age demographics for their employees.⁶⁴ Nevertheless, the average barista in the United States is also between the ages of twenty and thirty years old,⁶⁵ similar to that of Amazon's age statistics.⁶⁶ These age statistics indicate that the majority of Amazon and Starbucks employees are categorized

59. *Starbucks U.S. Workforce Demographics*, *supra* note 10.

60. Long, *supra* note 10.

61. *Our Workforce Data*, AMAZON, <https://www.aboutamazon.com/news/workplace/our-workforce-data> (last visited Sept. 28, 2022).

62. See *Gender and Racial Wealth Gaps and Why They Matter*, NAT'L WOMEN'S L. CTR. (June 10, 2022), <https://nwlc.org/resource/gender-and-racial-wealth-gaps-and-why-they-matter/> [<https://perma.cc/FZ6P-88JC>]; Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FED. RSRV. (Sept. 28, 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.html> [<https://perma.cc/F4NP-4EF7>].

63. *Amazon Statistics and Demographics*, ZIPPPIA, <https://www.zippia.com/amazon-careers-487/demographics/> [<https://perma.cc/DRC5-A7EF>] (last visited Sept. 28, 2022).

64. Angelina Chapin, *Starbucks Discriminates Against Older Workers, According to Former Employees*, HUFFPOST, https://www.huffpost.com/entry/starbucks-age-discrimination_n_5b204db9e4b0adfb826eec77 [<https://perma.cc/NJY2-EY4F>] (Jun. 15, 2018).

65. *Barista Demographics and Statistics in the US*, ZIPPPIA, <https://www.zippia.com/barista-jobs/demographics/> [<https://perma.cc/L4LX-CE4F>] (last visited Sept. 29, 2022).

66. *Amazon Statistics and Demographics*, *supra* note 63.

as either a member of “Generation Z” or a member of the Millennial generation.⁶⁷ This reveals yet another layer of complexities: Millennials average merely \$68,871.00 of wealth per person, yet Generation X—the next youngest generation—boasts an average of \$440,000.00 of wealth per person.⁶⁸ The ethnic, gender, and age demographics of the average Amazon and Starbucks employee implicates a dire economic position, putting employee-sided labor and employment legal services largely out of reach.

B. *This Socioeconomic Makeup Has Put Employees in Harm’s Way*

Starbucks and Amazon warehouse workers need employee-sided labor and employment legal services. The economic disadvantages faced by those in this working class and the litany of adverse actions taken by large-scale employers against their own employees indicate the need for these legal services. The story of Tara Jones, a new mother who works at an Amazon warehouse in Oklahoma, is especially telling.⁶⁹ Ms. Jones wrote a letter to then-Amazon CEO, Jeff Bezos, stating that she was not being paid by the company: “I’m behind on bills, all because the pay team messed up . . . I’m crying as I write this email.”⁷⁰ This prompted the *New York Times* to conduct an investigation that found Amazon had shortchanged employees who were dealing with medical crises and employees who were new parents, amongst others.⁷¹ The

67. See Michael Dimock, *Defining Generations: Where Millennials and Generation Z Begins*, PEW RSCH. CTR. (Jan. 17, 2019), <https://www.pewresearch.org/fact-tank/2019/01/17/where-millennials-end-and-generation-z-begins/>.

68. Omri Wallach, *Charting the Growing Generational Wealth Gap*, VISUAL CAPITALIST (Dec. 2, 2020), <https://www.visualcapitalist.com/charting-the-growing-generational-wealth-gap/> [<https://perma.cc/5R5J-LJK2>].

69. Jack Kelly, *A Hard-Hitting Investigative Report into Amazon Shows that Workers’ Needs Were Neglected in Favor of Getting Goods Delivered Quickly*, FORBES (Oct. 25, 2021, 1:28 PM EDT), <https://www.forbes.com/sites/jackkelly/2021/10/25/a-hard-hitting-investigative-report-into-amazon-shows-that-workers-needs-were-neglected-in-favor-of-getting-goods-delivered-quickly/?sh=1ef63fd551f5> [<https://perma.cc/5VZP-QT3K>].

70. *Id.*

71. *Id.*

investigation encapsulated the full scope of this practice, noting that 179 other Amazon warehouses had similar incidents.⁷²

The voice of C.J. Craig, a union organizer at a San Antonio Starbucks, further indicates systematic issues which may be remedied by employee-sided labor and employment legal services.⁷³ Craig asserted his appreciation for the National Labor Relations Board taking action in response to charges made by Starbucks workers in Texas: “Myself and my fellow organizers are relieved to see steps are finally being taken to hold Starbucks accountable and achieve justice for the organizers this company has adversely affected.”⁷⁴ The Starbucks corporation prevented Craig’s store and other stores from receiving new Starbucks benefits that headquarters announced on May 3, 2022.⁷⁵ He further argued that, “[Starbucks] delayed giving us a raise that was rolled out in August by a month . . . They gave it to non-union stores at the top of the month, and they made us wait till [sic] the end of the month.”⁷⁶ Craig also alleged that Starbucks notified his store that they would not be receiving the new credit card tipping option.⁷⁷

Amazon and Starbucks have, in recent history, taken various amounts of adverse action against their employees.⁷⁸ Therefore, at a minimum, these employees need employee-sided labor and employment legal services.

C. Unions Already Protect Socioeconomic Demographics and Occupations that are Similarly Situated to Starbucks and Amazon Employees

The feasibility of unionization at Amazon and Starbucks emerges when looking at the socioeconomic makeup of already unionized occupations and industries. In the production,

72. *See id.*

73. *See* Josh Peck, *Labor Board Complaint Against Starbucks Alleges San Antonio Worker Illegally Fired, Other Violations*, TEX. PUB. RADIO (Oct. 7, 2022, 4:56 PM CDT), <https://www.tpr.org/technology-entrepreneurship/2022-10-07/labor-board-complaint-against-starbucks-alleges-san-antonio-worker-illegally-fired-other-violations> [<https://perma.cc/65Q9-G7QY>].

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *See* Kelly, *supra* note 69; Peck, *supra* note 73.

transportation, and material moving occupations—jobs in the manufacturing, truck transportation, and air transportation industries for example—12% of employees were part of a union in 2021.⁷⁹ The average annual salary in these occupations is \$37,401.00,⁸⁰ and 17.9% of all workers in production, transportation, and material moving are non-white.⁸¹ These figures mirror the statistics previously outlined for Amazon and Starbucks employees.⁸²

In 2021, 14.9% of employees working in the natural resources, construction and maintenance occupations were unionized.⁸³ These employees included construction equipment operators, ironworkers, and hazardous materials removal workers.⁸⁴ The average annual salary of these workers is \$47,24.00,⁸⁵ a figure slightly higher than the average annual salary at Amazon or Starbucks.⁸⁶ Non-white workers represent 41.3% of the natural resource, construction, and maintenance workforce.⁸⁷

Finally, in 2021, 9.6% of the employees in the service occupations—such as food and personal service workers—were unionized.⁸⁸ Workers in those occupations earn an average annual salary of \$27,803.00, which is markedly lower than the average annual salaries at Starbucks and Amazon.⁸⁹ The percentage of non-white

79. U.S. BUREAU LAB. STAT., NEWS RELEASE: UNION MEMBERS – 2022 (2023), <https://www.bls.gov/news.release/pdf/union2.pdf>.

80. *Transportation & Material Moving Occupations*, DATA USA, <https://datausa.io/profile/soc/transportation-material-moving-occupations> [<https://perma.cc/KA46-TP5B>] (last visited Oct. 10, 2022).

81. *Id.*

82. *Amazon Warehouse Salary*, *supra* note 8; *Starbucks Barista Salaries*, *supra* note 8.

83. U.S. BUREAU LAB. STAT., *supra* note 79.

84. *Construction and Extraction Occupations*, U.S. BUREAU LAB. STAT., <https://www.bls.gov/ooh/construction-and-extraction/home.htm> (Sept. 8, 2022).

85. *Natural Resource, Construction, & Maintenance Occupations*, DATA USA, <https://datausa.io/profile/soc/natural-resources-construction-maintenance-occupations> (last visited Oct. 10, 2022).

86. *Amazon Warehouse Salary*, *supra* note 8; *Starbucks Barista Salaries*, *supra* note 8.

87. *Natural Resource, Construction, & Maintenance Occupations*, *supra* note 85.

88. U.S. BUREAU LAB. STAT., *supra* note 79.

89. *Service Occupations*, DATA USA, <https://datausa.io/profile/soc/service-occupations> [<https://perma.cc/3VNJ-L6KW>] (last visited Oct. 11, 2022); *Amazon Warehouse Salary*, *supra* note 8; *Starbucks Barista Salaries*, *supra* note 8.

employees in service occupations is 49.2%, much closer to the makeup of workers at Amazon and Starbucks.⁹⁰

The socioeconomic makeup of the production, transportation, material moving, natural resource, construction, maintenance, and service occupations closely resembles those of their Amazon and Starbucks counterparts. In addition, the union membership percentages in these occupations remains steady and continues to grow annually.⁹¹ This translates to the weekly earnings of unionized employees being \$194.00 higher than those not holding union membership in these occupations.⁹² Ultimately, it is not outside the realm of possibility for the unionization efforts of similarly situated workers, like those at Amazon and Starbucks, to succeed to the extent of their fellow private sector workers. With union membership burgeoning at Amazon and Starbucks, union members may be in a better position to not only afford their own legal services, but also to receive union-initiated labor and employment legal services.

III. OTHER ALTERNATIVES ARE NOT ADEQUATE REMEDIES TO HIGH EMPLOYEE-SIDED LABOR AND EMPLOYMENT LEGAL SERVICES

A. *Private Counsel is too Expensive for the Working Class, While Union Dues are More Reasonable*

If one were to suspend reality and dream of a world where money, class, and status are meaningless, private counsel would provide the most obvious and straightforward version of labor and employment legal services. However, this dream is unlikely to become a reality. As previously discussed, the United States working class has continued to face the ramifications of disenfranchisement for some time.⁹³ The high costs of private counsel remain firmly out of reach for working class people.

Like all goods and services, many factors lead to the high cost of legal services. One crucial factor is the location of the plaintiff

90. *Service Occupations*, *supra* note 89; see Long, *supra* note 10; see Starbucks U.S. Workforce Demographics, *supra* note 10.

91. See U.S. BUREAU LAB. STAT., *supra* note 79.

92. See *id.*

93. *Supra* discussion Section III.A.–B.

and the attorney.⁹⁴ For example, the Northeast region of the United States houses three of the top five States with respect to the Human Development Index.⁹⁵ As such, the cost of living is higher in the Northeast.⁹⁶ This correlates to the region's attorney fees being, on average, higher when compared to most of the other regions in the United States.⁹⁷ Other factors that play a large role in determining an attorney's fee include the attorney's level of experience and the complexity of the plaintiff's case.⁹⁸ The "case by case" nature of these factors makes predicting attorney costs challenging—specifically for plaintiff attorneys in employment law matters.

The average labor and employment attorney costs anywhere from \$100.00 to \$600.00 an hour.⁹⁹ Consequently, an employment suit can cost upwards of \$10,000.00 or more depending on the complexity of the case.¹⁰⁰ Those figures represent an hourly fee, which is not the only fee that an attorney may charge, as contingency fees play a large role for plaintiff's attorneys in employment suits.¹⁰¹ A contingency fee calls for no up-front payment, with the plaintiff only having to pay their attorney if they are successful.¹⁰² Upon success,

94. See *How Much Does an Employment Lawyer Cost?*, HALT (Sept. 13, 2020), <https://www.halt.org/how-much-does-an-employment-lawyer-cost/> [<https://perma.cc/9LUQ-LTAZ>].

95. See *Human Development Index (HDI)*, UNITED NATIONS DEV. PROGRAMME, <https://hdr.undp.org/data-center/human-development-index#/indicies/HDI> [<https://perma.cc/VF8E-2RW8>] (last visited October 5, 2022) ("The Human Development Index (HDI) is a summary measure of average achievement in key dimensions of human development: a long and healthy life, being knowledgeable and have a decent standard of living. The HDI is the geometric mean of normalized indices for each of the three dimensions."); *Subnational HDI*, GLOB. DATA LAB, <https://globaldatalab.org/shdi/table/shdi/USA/?levels=1+4&extrapolation=0> [<https://perma.cc/WTP2-H8B3>].

96. See *Cost of Living Data Series*, MO. ECON. RSCH. & INFO. CTR., <https://meric.mo.gov/data/cost-living-data-series> [<https://perma.cc/96B9-PN2E>] (last visited Sept. 28, 2022).

97. See *Average Attorney Fees by State 2022*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/average-attorney-fees-by-state> [<https://perma.cc/GMU2-L8DG>] (last visited Sept. 28, 2022).

98. See generally *How Much Does an Employment Lawyer Cost?*, *supra* note 94.

99. *How Much Does an Employment Lawyer Cost?*, *supra* note 94.

100. *Id.*

101. *See id.*

102. *Id.*

the plaintiff typically surrenders anywhere from one-third to 40% of their recovery to their attorney.¹⁰³

The use of contingency fee arrangements may make employee-sided labor and employment litigation more affordable as it creates no up-front cost to the plaintiff.¹⁰⁴ However, a contingency fee is not the cost-effective solution that some may see it as. For one, a contingency fee may result in the plaintiff having to give a large percentage of their damages to their attorney.¹⁰⁵ Undoubtedly, an attorney ought to be compensated for their work, but if the high cost of an attorney is simply put off to another day, is that sincerely a cost-effective solution to the issue? Additionally, a contingency fee is conditional on the plaintiff's case succeeding.¹⁰⁶ The plaintiff and their attorney have *both* effectively wasted their time and efforts when a contingency fee scheme is utilized and the plaintiff's case is unsuccessful.¹⁰⁷ Attorneys who use a contingency fee scheme may also have to pay filing fees, deposition fees, and expert witness payments themselves.¹⁰⁸ This often plays into the cost-benefit analysis that attorneys formulate when deciding whether to take a case: if an attorney knows that they will have to pay for these fees out of their own pockets regardless of the outcome, they may choose not to take the case at all.¹⁰⁹ Neither an hourly-rate scheme nor a contingency fee scheme are reliable ways for providing affordable employee-sided labor and employment legal services; the working class is unable to afford to pay hundreds of dollars an hour for an attorney, and a contingency fee scheme may be an undesirable route for attorneys who often have to pay various fees themselves.¹¹⁰

In contrast with hourly rate and contingency fee schemes, union dues may be a more affordable and reliable charging scheme for employee-sided labor and employment legal services. For the

103. *Fees and Expenses*, A.B.A. (Dec. 3, 2020), https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/working_with_lawyer/fees_and_expenses/ [<https://perma.cc/UL35-RHLX>].

104. *How Much Does an Employment Lawyer Cost?*, *supra* note 94.

105. *Fees and Expenses*, *supra* note 103.

106. *How Much Does an Employment Lawyer Cost?*, *supra* note 94.

107. *See id.*

108. Jean R. Sternlight, *Disarming Employees: How American Employers are Using Mandatory Arbitration to Deprive Workers of Legal Protection*, 80 BROOK. L. REV. 1309, 1335 (2015).

109. *Id.*

110. *Id.*; *How Much Does an Employment Lawyer Cost?*, *supra* note 94.

Starbucks Workers' United union, weekly dues contribution rates vary.¹¹¹ At the Buffalo Starbucks Workers' United, for example, the dues for full time employees are \$10.84 per week.¹¹² If a Buffalo Starbucks Workers' United member happens to work less than twenty-five hours per week, their dues are effectively halved.¹¹³

The Amazon Labor Union's (ALU) constitution and bylaws note that dues amounts and payment frequency will be "democratically voted upon" by the membership.¹¹⁴ The ALU notes that they have established a Dues Committee whose goal is to discuss appropriate dues rates and report back to their Executive Board within five days.¹¹⁵ The ALU's constitution and bylaws note that a special membership meeting will be called in order to vote on dues rates.¹¹⁶ For eligible workers not subject to a collective bargaining agreement (hereinafter CBA), they can voluntarily contribute dues at a rate of \$5.00 a week.¹¹⁷ In both the Starbucks Workers' United and Amazon Labor Union, the members democratically set their dues amount, which helps to maintain their affordability.¹¹⁸

Outside of the Starbucks and Amazon unionization efforts, elected officials within unions typically set the dues amount.¹¹⁹ The standard scheme relies on a percentage of each employee's gross earnings set aside for dues,¹²⁰ which usually sits around one to two percent.¹²¹ Thus, a union member expects to pay \$1.00 to \$2.00 in union dues for every \$100.00 they take home.¹²² The Starbucks Workers' United, Amazon Labor Union, and the rest of the

111. *FAQ's*, STARBUCKS WORKERS UNITED, <https://sbworkersunited.org/new-page-2> [<https://perma.cc/4GVP-3MAS>] (last visited Sept. 28, 2022).

112. *Id.*

113. *Id.*

114. AMAZON LABOR UNION CONSTITUTION AND BYLAWS art. VIII, § 1 (2022), <https://static1.squarespace.com/static/62923f4f74bc7d0c025784fc/t/63bd8a11f8e15869be2588a1/1673366034831/FINAL+Constitution-and-By-Laws> [<https://perma.cc/4G6D-KUNY>] [hereinafter AMAZON UNION CONST.].

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*; STARBUCKS WORKERS UNITED, *supra* note 111.

119. Megan McRobert, *Union Dues Explained*, UNIT (Mar. 3, 2021), <https://guide.unitworkers.com/union-dues-explained/> [<https://perma.cc/264X-CS2N>].

120. *Id.*

121. *Id.*

122. *Id.*

labor movement's dues are collectively decided and come out to a small percentage of their take home pay.¹²³

B. *Unions Provide Affordable and Superior Legal Services Compared to Employee-sided Labor and Employment Attorneys*

Union dues provide a more affordable option when compared to private employee-sided labor and employment legal counsel, but can the former perform the functions of the latter? Private counsel is one of the few avenues for an employee to bring an action against their employer for numerous workplace violations and disputes. An employee-sided labor and employment attorney may be tasked with initiating a suit based on an employer retaliating in response to employees reporting discrimination, disability-related claims, racial discrimination, sex-based discrimination, age discrimination, sexual harassment, discrimination based on national origin, religious discrimination, Equal Pay Act violations, or the misuse of or discrimination on the basis of genetic information, among other charges.¹²⁴ Without the help of counsel, employees would have little chance pursuing a suit against their employers, as employers generally retain their own attorneys for these matters.¹²⁵

The functions of a union vis-à-vis their membership are extremely comparable—and in the case of disenfranchised communities, superior—to the functions of private counsel vis-à-vis their clients.¹²⁶ One major difference between private attorneys and unions surrounds the idea of a CBA.¹²⁷ A CBA is negotiated between the union and the employer and typically covers wages, work hours, job specifications, terms and conditions of employment, and,

123. See STARBUCKS WORKERS UNITED, *supra* note 111; AMAZON UNION CONST., *supra* note 114; McRobert, *supra* note 119.

124. *How Much Does an Employment Lawyer Cost?*, *supra* note 94.

125. *Id.*

126. See Michael Z. Green, *Finding Lawyers for Employees in Discrimination Disputes as a Critical Prescription for Unions to Embrace Racial Justice*, 7 U. PA. J. LAB. & EMP. L. 55, 58 (2004) (“Unions have the financial wherewithal to obtain legal support directly and use it in bringing reverse discrimination claims or other challenges to affirmative action, whereas individual black employees do not have financial or other means to obtain the legal support needed to confront direct discrimination in the workplace.”).

127. See *Collective Bargaining*, AFL-CIO, <https://aflcio.org/what-unions-do/empower-workers/collective-bargaining> [https://perma.cc/MDC9-EAQJ] (last visited Mar. 5, 2023).

most crucially, a grievance procedure.¹²⁸ In this context, a grievance is a “claim by an employee that [they are being] adversely affected by the misinterpretation or misapplication of a . . . collective bargaining agreement.”¹²⁹ The grievance procedure outlines the process for filing and resolving said grievances, with union personnel generally taking charge of it in a similar way to which a plaintiff’s attorney would take charge of their client’s claim.¹³⁰

Generally, legal departments within unions operate as the primary handlers of union members’ grievances.¹³¹ This practice is neither clandestine nor rare, as the United States Supreme Court has crystalized a union’s ability to establish their own legal department.¹³² Writing for an eight-to-one majority in the 1967 case of *United Mine Workers v. Illinois State Bar Association*, Justice Black held, “the freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments gives petitioner [the union] the right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights.”¹³³ As a result, the highest judiciary in the country recognized and normalized unions operating as attorneys for their members.¹³⁴

The idea of a union representing their members in a quasi-attorney fashion is not only recognized by the United States Supreme Court but is essentially codified through the idea of a union member’s right to fair representation.¹³⁵ The right to fair representation, recognized by the National Labor Relations Board, requires a union to represent all employees—regardless of membership

128. *Collective-Bargaining Agreement*, BLACK’S LAW DICTIONARY (6th ed. 1990).

129. *Grievance*, BLACK’S LAW DICTIONARY (6th ed. 1990).

130. *Id.* See *Union Grievances*, ROMANO L., <https://www.romanolaw.com/employment-law/union-grievances/> [<https://perma.cc/CVU7-GH2C>] (last visited Mar. 3, 2023).

131. Pamela L. Reeves, *Prepaid Legal Plans: A Glimpse of the Future*, 47 TENN. L. REV. 148, 155 (1979).

132. See *United Mine Workers v. Illinois State Bar Ass’n*, 389 U.S. 217, 221–22 (1967).

133. *Id.*

134. *Id.*

135. *Right to Fair Representation*, NAT’L LAB. RELS. BD., <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/employees/right-to-fair-representation> [<https://perma.cc/69AC-GRNH>] (last visited Mar. 4, 2023).

status—without discrimination and in good faith.¹³⁶ This duty applies to almost every action a union may take in dealing with the employer, including “collective bargaining, [and] handling grievances.”¹³⁷ A union has a duty to legitimately represent their members regardless of whether a member solicited the aid of the union.¹³⁸ This duty differs from that of private counsel, who are free to decline representation and hold no legal duty until the attorney chooses to engage in an attorney-client relationship.¹³⁹ The formation of a union brings with it a baseline duty to represent union members—a duty not in play in the realm of private counsel.¹⁴⁰

Aside from ordinary representation of their members in collective bargaining and grievance scenarios, some unions offer pre-paid legal funds.¹⁴¹ In 1973, Congress amended section 302(c) of the Taft-Hartley Act to grant employers the ability to establish and contribute to trust funds, which would defray the cost of legal services for employees and their families.¹⁴² Employers now can offer funds to cover the cost of employees’ legal services, so long as the services are not used against the employer itself, its agents, the labor union, or related parties.¹⁴³ Ultimately, this amendment categorized pre-paid legal plans as a mandatory subject of bargaining.¹⁴⁴ This categorization means that the employer would be required to negotiate over a prepaid legal fund if the union made such a proposal.¹⁴⁵ For example, the Rhode Island Public Service Employees Union

136. *Id.*

137. *Id.*

138. *Id.*

139. See MODEL RULES OF PRO. CONDUCT r. 1.16 (AM. BAR ASS’N 2022).

140. *Id.*; *Right to Fair Representation*, *supra* note 135.

141. Reeves, *supra* note 131, at 166–67.

142. See *generally* Lab. Mgmt. Rel. (Taft-Hartley) Act of 1947, Pub. L. No. 80-101, 61 Stat. 136 (codified as amended at 29 U.S.C. §§ 141-187 (2012)).

143. See *generally id.* Using employer-funded legal services against workplace parties would likely create a conflict of interest. *Id.*

144. See *id.*; see also Reeves, *supra* note 131, at 167 (“Under section 8 of the National Labor Relations Act, employers are obliged to bargain in good faith with respect to wage and fringe benefits. As a consequence of the amendment to section 302(c), a union can now make the establishment of a prepaid legal plan a legitimate fringe benefit demand in its negotiations.”).

145. *Subjects of Bargaining*, UNITED STEELWORKERS, <https://m.usw.org/workplaces/public-sector/2015-conference-material/5-Subjects-of-Bargaining.pdf> (last visited Mar. 6, 2023).

contract for Local 1033 includes such a legal services plan.¹⁴⁶ Local 1033 plans cover both eligible union members and their dependents, and provides free-of-charge legal services for several scenarios, including consumer transactions, domestic relations, real estate dealings, wills and minor's trusts, estates, traffic violations, immigration issues, insurance claims, criminal matters, and taxes.¹⁴⁷ Local 1033 provides a cost-effective, around-the-clock, legitimate, and resource-rich alternative to the standard employee-sided labor and employment attorney. This alternative is pivotal for many in the disenfranchised working class, as their socioeconomic position within the United States does not leave them with many options.

IV. COUNTERARGUMENTS AGAINST UNIONIZATION ARE EITHER INACCURATE, INAPPLICABLE, OR HIGHLY OUTWEIGHED BY ANY BENEFITS

The benefits of unionization vis-à-vis affordable labor and employment legal services admittedly depends on members feeling comfortable filing grievances against their employers and secure in the notion that their employer will not retaliate in response.¹⁴⁸ Employer retaliation is a legitimate concern for both non-unionized

146. *Rhode Island Public Service Employee's Legal Service Plan*, LABORERS' INT'L UNION OF NORTH AMERICA LOCAL 1033, <https://www.localunion1033.org/legal-services> [https://perma.cc/DU9U-RNLV] (last visited Mar. 4, 2023). LIUNA Local 1033 represents: City of Providence Municipal Employees (excluding Police, Fire and Teachers); City of Providence School Department Bus Monitors, Crossing Guards, Business Educational Specialists Technical Staff, and Teaching Assistants; Narragansett Bay Commission Field's Point Clerical & Administrative Staff and Field's Point Operations and Maintenance Division; Town of North Providence Town Hall and Public Safety; North Providence School Department Teacher Assistants, Crossing Guards, Secretaries, and Clerks; Town of Lincoln Library, Water Commission, Town Hall, and Department of Public Works; Town of North Kingstown Town Hall, Public Safety, and Department of Public Works; Town of Narragansett Administrative Staff, and the State of RI Department of Transportation Maintenance Division. *Id.*

147. *Id.*

148. Examples of employer retaliation are: “[t]ermination or demotion[,] [u]njustified low or negative performance evaluations[,] [t]ransfer to a less desirable position[,] [a]lterations in work conditions, such as work hours, schedule, or location[,] [r]eductions in salary, wages, or benefits[,] [or] [d]enial of promotion or pay increase[.]” *Examples of Workplace Retaliation*, SLOAN L. FIRM (Jan. 10, 2022), <https://www.sloanlawfirm.com/examples-of-workplace-retaliation/> [https://perma.cc/QV9Z-L7DE].

workers and unionized workers alike,¹⁴⁹ and occurs when an employer engages in any type of adverse action against an employee for engaging in a protected activity, such as union activity and the filing of grievances.¹⁵⁰ Thus, even if a workplace is unionized, employees at Starbucks, Amazon, or elsewhere may face adverse action in response to asserting their rights.¹⁵¹ Despite the fact that the National Labor Relations Board has articulated that employers are prohibited from retaliating against employees for engaging in protected activity, employer retaliation remains a pervasive issue.¹⁵² In 2021, 56% of all charges filed with the United States Equal Employment Opportunity Commission (hereinafter EEOC) contained a charge of retaliation.¹⁵³ Although there are legitimate concerns regarding employer retaliation in both unionized and non-unionized workplaces, resources are available for employees in these scenarios.¹⁵⁴ Employees may effectively respond to workplace retaliation by checking their employee handbook for an anti-retaliation policy, inquiring as to how managers are being trained to react to workplace concerns, discussing with other employees about their experiences in bringing up workplace issues, and keeping documentary evidence of the retaliation incident in case the

149. See generally *Retaliation*, U.S. DEPT OF LAB., <https://www.dol.gov/agencies/whd/retaliation> [<https://perma.cc/3J5Z-GZRA>] (last visited Mar. 4, 2023).

150. *Id.*

151. *Retaliation: Things You Should Know About Protected Workplace Rights*, LEGAL AID AT WORK, <https://legalaidatwork.org/factsheet/retaliation-things-you-should-know-about-protected-workplace-rights/> [<https://perma.cc/5MB3-XS2T>] (last visited Mar. 4, 2023).

152. *Discriminating Against Employees Because of Their Union Activities or Sympathies (Section 8(a)(3))*, NAT'L LAB. RELS. BD., <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/discriminating-against-employees-because-of-their-union> [<https://perma.cc/M4ZG-UMAH>] (last visited Mar. 4, 2023); *Retaliation After Filing a Charge Against Your Employer*, U.S. DEPT. OF LAB., <https://www.worker.gov/retaliation-after-complaint-employer/> [<https://perma.cc/94TY-DU2L>] (last visited Mar. 4, 2023). See generally *Retaliation in the Workplace: How Companies Can Prevent It and What Employees Can Do if It Happens*, PROJECT WHEN, <https://projectwhen.org/resources/combating-retaliation-in-the-workplace/> [<https://perma.cc/2GHN-LWUZ>] (last visited Mar. 4, 2023).

153. *Charge Statistics (Charges Filed with EEOC) FY 1997 Through FY 2021*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/data/charge-statistics-charges-filed-eeoc-fy-1997-through-fy-2021> [<https://perma.cc/Q9RV-2F4C>] (last visited Mar. 4, 2023).

154. See *Retaliation: Things You Should Know*, *supra* note 151.

employee decides to file a charge with the EEOC.¹⁵⁵ These steps may successfully mitigate employer retaliation, put the employer on notice of their misconduct, or help employees build a case if they decide to pursue an action. Thus, the threat of employer retaliation in response to union organizing may be effectively combatted.

Another concern that holds weight is that unionization efforts will not drive down the cost of private counsel. It fails to address the true issue at hand: the exorbitant expenses associated with legal representation, which has left millions of Americans unable to afford an attorney.¹⁵⁶ However, when it comes down to brass tacks, unions have consistently provided their members with labor and employment legal services.¹⁵⁷ It may not force white-shoe law firms to drive down their hourly rates, but it does provide workers with a bevy of human resources who commandeer grievances and negotiate collective bargaining agreements on their behalf.¹⁵⁸

CONCLUSION

The American working class faces a bleak socioeconomic reality. The price of goods and services is increasing at an exponential rate and real wages have been stagnant for decades; therefore, not many people can afford legal services.¹⁵⁹ Those who work at Starbucks and Amazon exemplify this dire socioeconomic position. For those who would like to address adverse actions in the workplace, unions providing affordable employee-sided labor and employment legal services may work as a dependable alternative to private counsel. Ultimately, the goals and ideals of Civil Gideon are achievable through the organization of labor in the American workplace.¹⁶⁰

155. *What is Workplace Retaliation and How to Address It*, EMPOWER WORK (Jan. 12, 2021), <https://www.empowerwork.org/blog/what-is-workplace-retaliation-and-how-to-address-it> [<https://perma.cc/VU46-7QV8>].

156. Benjamin C. Carpenter, *A Solution Hidden in Plain Sight: Closing the Justice Gap by Applying to Legal Aid the Market Incentives That Propelled the Pro Bono Revolution*, 25 CHAP. L. REV. 1, 5 (2021).

157. See Michael J. Hayes, *Let Unions Be Unions: Allowing Grants of Benefits During Representation Campaigns*, 5 U. PA. J. LAB. & EMP. L. 259, 282 (2003).

158. See Reeves, *supra* note 131, at 167.

159. See *The Frightening Cost of Living in the U.S.*, *supra* note 8.

160. *Civil Right to Counsel*, *supra* note 5.