

## Attack of the UFOs

*“Alt-labor,” worker centers, and the rise of Union Front Organizations*

**By F. Vincent Vernuccio**

**Summary:** As union membership continues its steep decline, labor union leaders are trying to use new organizations, including “public charities,” to harass employers and keep the money coming in.

Organized labor’s old business model is failing and union leaders know it. Top officers like AFL-CIO president Richard Trumka acknowledge that to survive—to keep the rivers of dues money flowing—unions need to change. Trumka and his colleagues now talk openly about alternative forms of unionization in which the first goal is to not be the exclusive bargaining representative for workers.

They claim that the new models, if properly executed, would be beneficial to workers and unions, and to society. But the reality is different. For all the talk of reinventing organizing, Big Labor is really doubling down on top-down politics and on old tactics of intimidation.

In recent years, new labor organizations known as “worker centers” have been growing in number and in size. Little-known concepts such as “members-only agreements” have gone mainstream. Both of these entities do not need to go through the normal organizing process—which means unions do not need to persuade the majority of employees in a workplace to sign off on union representation. Increasingly these organizations are being called



**Targets of “alt-labor” include restaurants, companies that hire immigrants or illegal aliens, even left-wing companies like Google.**

alternative labor unions or “alt-labor” (a term that entered public debate as the title of a January 2013 *American Prospect* article by Josh Eidelson).

The “corporate campaign” is quickly becoming the main tactic for these alt-labor groups, or worker centers, many of which are simply front groups for traditional unions. During a corporate campaign, a union attempts to use government regulations or attacks on a company’s reputation to pressure it into conceding to demands like taking away the secret ballot from workers—all to make traditional unionization easier. [See *Labor Watch*, June 2013, p. 3.]

Trumka has publicly stated that unions “are not going to rebuild the labor movement solely through NLRB [National Labor Relations Board] elections and voluntary recognition by employers” and that “the AFL-CIO’s door has to be—and will be—open to any worker or

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group of workers who wants to organize and build power in the workplace.”

### **The decline of traditional unions**

For years, union membership has been falling. After losing almost 400,000 members in 2012 alone, unions make up their lowest percentage of the American workforce since 1916. Only 6.6% of private-sector workers are union members.

In 2009, the number of members of government unions surpassed the membership of private-sector unions for the first time. That happened despite the fact that the public sector is only one-fifth as large as the private sector, in terms of total workers. But even that bright spot for unions is fading, due to reforms in states like Wisconsin that make it easier for government workers to escape the unions. [See *Labor Watch*, July 2012.]

Similarly, both Indiana and Michigan passed right-to-work laws in 2012, taking away unions’ ability to have workers fired if they refuse to pay union dues. This signaled a sea-change in labor relations, and it is resonating around the country. Michigan’s change to right-to-work status was particularly momentous, given that the state had the fifth highest rate of union membership in the country, was the birthplace of the United Auto Workers, and has been a union stronghold for three-quarters of a

century. Other states such as Ohio and Pennsylvania are considering similar changes.

Meanwhile, efforts at the federal level to extend private-sector unionism—the Employee Free Choice Act, for example—are flagging. EFCA’s key provision, “card check,” would effectively eliminate the secret ballot in unionization elections, but Democrats weren’t able to pass it even in 2010 when they controlled both houses of Congress.

Now, unions are looking to different types of organizations to preserve and extend their power.

### **Tactics and goals of worker centers**

What are the key elements of the alt-labor concept and of worker centers? Political activism; intimidation through “corporate campaigns” that smear businesses; avoiding legal restrictions that apply to “real” unions; and the ability to reach new members and new revenue sources.

Some alt-labor tactics are as simple as creating union front groups to pressure companies into taking away the secret ballot from workers, making unionization easier via a card-check election.

Other tactics involve moving into areas that have proved too difficult for traditional unions to organize, either because of lack of interest from workers or because labor law does not provide for unionizing those industries. These organizations can collect dues or membership fees, which can be used for representation or politics, without first getting a majority of workers to agree to the union. Some of these groups can even collect funds as nonprofits from foundations such as Tides, Kellogg, and Ford, and are also eligible for government grants.

### **Corporate campaigns**

Besides politics, worker centers’ main focus is on corporate campaigns. In a typical corporate campaign, a union attempts to pressure a company into

signing a “neutrality” agreement that is anything but neutral. These agreements generally include a gag order that prevents a company from talking to its employees about the harm that unionization would do to the business. Worse, the agreements take away the secret ballot from workers by requiring the companies to consent to a card-check election.

A Service Employees International Union “Contract Campaign Manual” that was uncovered in a 2011 racketeering and extortion case revealed the kind of tactics corporate campaigns may involve: “Outside pressure can involve jeopardizing relationships between the employer and lenders, investors, stockholders, customers, clients, patients, tenants, politicians, or others on whom the employer depends for funds.” A campaign may also use legal and regulatory pressure to “threaten the employer with costly action by government agencies or the courts.”

The SEIU manual also advises digging up “dirt” on both the company and individual officers in order to facilitate charges of “racism, sexism, exploitation of immigrants or proposals that would take money out of the community for the benefits of distant stockholders.” SEIU recommends that “leafleting outside meetings where [targeted managers] are speaking, their homes, or events sponsored by community organizations they are tied to are some ways to make sure their friends, neighbors, and associates are aware of the controversy.”

### **No election, no labor law—no problem**

The main allure of worker centers is that organizers can skirt limitations imposed on them by labor law. Labor attorneys Stefan Marculewicz and Jennifer Thomas wrote about this problem in the October 2012 issue of the *Federalist Society* law journal *Engage*. They argued that, in most cases, worker centers are little more than unions by another name. Marculewicz and Thomas note: “Increasingly, however, worker centers are

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directly engaging employers or groups of employers to effectuate change in the wages, hours, and terms and conditions of employment for their members. Indeed, when it comes to such direct engagement, these worker centers act no differently than the traditional labor organization.”

They add that “few, if any of these worker centers are required to comply with the laws that regulate labor organizations—meanwhile some worker centers use these same laws to promote the rights of the workers they represent. Many provisions of these laws were enacted to ensure certain minimum rights of workers vis à vis the organizations that represent them.” Those statutes include the National Labor Relations Act (NLRA) and Labor Management Reporting and Disclosure Act, which protect organizational democracy, transparency, and duties of fair representation.

Not being bound by these laws means that a union need not go through an election to represent workers. “Members-only agreements,” once very rare but now gaining in prominence, allow unions to represent workers in workplaces where they cannot gain approval from a majority of workers.

In April, former NLRB member and current AFL-CIO general counsel Craig Becker told the leftist magazine *The Nation*: “We want to figure out a way to make membership more open, to make membership in a union not depend on workers being willing to endure trial by fire in an election or extended pitched battle with the employer for voluntary recognition.” Voluntary recognition, as Becker uses the term, means the employer has agreed to a card-check election.

Other restrictions apply to unions, but not worker centers and the like:

► Unions cannot engage in “secondary picketing”; that is, picketing a supplier

of a company on the ground that the union is in a labor dispute with that company.

► Unions cannot picket a company for 30 days without filing for an election.

Protests and public actions such as secondary picketing are hallmarks of corporate campaigns.

Finally, the alt-labor concept may provide an avenue for unions to form groups and avoid required disclosure mandated by the Labor Management Reporting and Disclosure Act. Required “Form LM-2 disclosures” and other disclosures allow union members and the public to see how unions are spending their money; they expose officer salaries to scrutiny and put the spotlight on potential conflicts of interest.

#### **Alt-labor gaining traction**

According to Eidelson in the *American Prospect*, “Twenty years ago, when Rutgers labor professor Janice Fine first set out to count the nonunion groups that were organizing and mobilizing workers, she found just five in the entire country. Today, her tally stands at 214.”

The AFL-CIO in particular has made such organizing one of their top priorities. In March, the University of Illinois Labor Education Program, in partnership with the Illinois AFL-CIO, the Chicago Federation of Labor, and others, held a daylong conference on “New Models of Worker Representation.” The symposium asked, “What happens when workers begin to act like unions without petitioning for an election?”

The AFL-CIO is so serious about exploring this new form of unionism that its first “theme to discuss” at the September 2013 Convention is how to “enable more people to be part of the labor movement and create new models of representation while protecting and expanding collective bargaining.”

Earlier, in June, an entire panel at the Netroots Nation blogger conference

was devoted to the alt-labor concept. Its popularity has also been noted by the openly socialist *In These Times*: “Faced with a wave of new restrictions, some unions have begun to adopt a more confrontational, less legalistic mode of organizing that relies more heavily on collective action than on formal collective bargaining.”

#### **Working America**

One example of a worker center is “Working America,” an effort by the AFL-CIO to organize non-union workers to promote the union’s political agenda. Working America describes itself as “the fastest-growing organization for working people in the country. At 3 million strong and growing, we use our strength in numbers to educate each other, mobilize and win real victories to improve working people’s lives.”

Richard Trumka told *The Nation* that Working America “has done really what nobody else thought could be done . . . and that’s recruit more than three million people without a union to be part of the labor movement.” Trumka is throwing money and manpower behind the effort. Organized labor veteran Karen Nussbaum, a former AFL-CIO special assistant to the president, is Working America’s executive director.

An April 17, 2013 press release boasts that, by 2018, Working America plans to expand into all 50 states by “organizing in neighborhoods.” It adds, “As Working America expands nationally, it will continue its year-round community organizing and electoral and legislative work, as well as pilot different methods of organizing workers on the job. Those models and tactics include a workplace organizing site launching in May called FixMyJob.com.” [*Labor Watch* first reported in depth on Working America in our November 2004 issue.]

#### **OUR WalMart**

The United Food and Commercial Workers union heavily supported “OUR WalMart” and “Making Change

at WalMart” as part of a corporate campaign against the nation’s largest retailer. David Tovar, a WalMart spokesman, told the *New York Times* in 2011 that “This is an effort to attract media attention to further [organized labor’s] political agenda” and that “There’s nothing new about the fact that labor unions want to unionize WalMart.”

Tovar explained that WalMart’s compensation for workers is better than that of the competition and that “our associates have concluded time and again that they are better off with the pay, benefits package and opportunities for advancement provided by WalMart and have chosen to reject unions.”

The war on WalMart rages today. On the day after Thanksgiving last year, so-called Black Friday, OUR WalMart attempted protests at WalMart stores across the country. For all the hype, most of these protests fizzled out and were lackluster at best. Still, Our-WalMart succeeded in gaining media attention and giving WalMart negative publicity.

In June, WalMart won a temporary restraining order from an Arkansas judge against the UFCW and OUR WalMart to prohibit them from engaging “in activities such as picketing, patrolling, parading, demonstrations, ‘flash mobs,’ handbilling, solicitation, and manager confrontations.” A spokesman for WalMart, Kory Lundberg, told MSNBC that OUR WalMart and the UFCW had trespassed in the past and that “We did this as a way to stand up for the rights of our associates and customers, and our very own property rights.... No reasonable person would say it’s okay to walk into a business and frighten customers.”

Still, the corporate campaign against WalMart may be succeeding. The political pressure exerted against the company resulted in the Washington, D.C. city council passing a measure in July to impose a \$12.50 per hour minimum wage on large retailers. That figure is

50% more than the D.C. minimum wage and more than some city employees receive. Although sponsors claimed the proposal wasn’t targeted at WalMart, the legislation apparently contained loopholes for every business in the city other than WalMart.

WalMart, which planned to open six stores in the city, has now threatened to leave the city entirely. The United Food and Commercial Workers Union noted sarcastically: “In a scenario many union reps could only dream of, WalMart is threatening to pull out of the Washington D.C. market due to the city’s temerity in passing a living wage law.”

### **Coalition of Immokalee Workers**

The Coalition of Immokalee Workers (CIW), one of the earliest worker centers, was established in 1993. CIW represents farm workers, mainly tomato pickers. Since agricultural workers are not covered under the National Labor Relations Act, they cannot be traditionally unionized. CIW has been well-served by its exemption from labor laws that restrict secondary picketing.

One of the coalition’s largest efforts is the penny-per-pound campaign in which buyers agree to pay an extra penny per pound for tomatoes, with the money supposedly passed on to farm workers. One of the key ways CIW gets this concession is to wage a corporate campaign against buyers of tomatoes until they agree to only buy tomatoes from growers that conform to CIW’s “code of conduct.”

Thus far, several fast-food restaurants and supermarkets have yielded to this pressure. For holdouts such as Publix supermarkets, CIW is continuing the corporate campaign tactics, including a hunger strike in July at Publix headquarters. Publix spokeswoman Brenda Reid said, “Publix does not get involved in labor disputes with its suppliers. We feel that labor costs should be included in the negotiated price of all products we purchase.”

The penny-per-pound program has received \$10 million from buyers. This money does not go straight to the workers but instead is distributed through an escrow fund controlled by CIW. In 2011, workers filed four lawsuits against fast-food companies, alleging the workers did not receive the extra compensation they were promised. The companies maintained, and CIW agreed, that they had paid into the fund. The problem arose from CIW’s plan for distributing the money. CIW claimed the agreement was for bonuses for current workers, not back wages for workers who had picked tomatoes when the program started.

CIW told the *Palm Beach Post* (Oct. 23), “Given the migrant nature of the work force, the astronomical turnover in the fields and the amount of money that would inevitably be wasted attempting to locate long-gone workers, mostly without success, any effort at retroactive distribution would have made no sense at all.” Yes, getting in touch with workers could be difficult because the penny per pound campaign focuses more on secondary protests and campaigns against the tomato buyers, rather than on the well-being of the harvesters themselves.

### **Restaurant Opportunities Centers**

Restaurant Opportunities Centers United (ROC), originally affiliated with the union HERE (Hotel Employees and Restaurant Employees), stages protests and files legal actions against restaurants. ROC’s campaign has taken a toll on high-profile restaurants in New York City, and its corporate campaign activities, raucous picketing, and political lobbying efforts are spreading across the country.

As Saru Jayaraman, co-founder and co-director of ROC, wrote in 2003, “The goal is to create a labor-friendly climate in these places, so the union can organize them in a few years.” But ROC prefers to remain a worker center rather than become a standard union.

Professor Alan Hyde interviewed Jayaraman for an article in the law review of New York Law School. Hales noted that Jayaraman preferred the “legal advantages that ROC-NY believes it gains from being a charity rather than a labor organization. First, ROC-NY does not service contracts. It does not expend resources on arbitrating grievances or owe a duty of fair representation. Second, the charity does not face the same limitations and restrictions that unions may face.”

In July, Rep. Darrell Issa (R-California), chairman of the House Oversight Committee, wrote a letter to the Secretary of Labor informing her of an investigation into ROC’s federal funds, including grants awarded by the Labor Department. [For a full profile of ROC, see our sister publication *Organization Trends*, Aug. 2013.]

### **Fight for 15**

“Fight for 15” is affiliated with the SEIU’s efforts to organize fast food workers. Currently, Fight for 15 and SEIU are organizing strikes involving fast-food workers and demanding \$15 an hour as a minimum wage. They have targeted cities around the country, with the largest strikes in New York and Detroit.

Unlike typical strikes of the past, which openly served as preludes for unionization or put pressure on businesses to make concessions in union contract negotiations, these actions are geared more toward media attention. The Fight for 15/SEIU campaign doesn’t try to sign workers up for SEIU, at least not in the short term. It says, in effect: Give us what we want and we will go away, for now anyway.

### **Members-only agreements**

A members-only agreement is a union agreement made without the exclusivity clause that is typical in collective bargaining. Such an agreement allows unions to represent only those who want

to be represented, and it allows workers who want to represent themselves to be free to do so—something workers are not free to do under normal union contracts, even in right-to-work states.

In typical collective bargaining, the union chooses to be the exclusive representative for all workers at a particular worksite. Then, in non-right-to-work states, workers must pay the union simply to keep their jobs, while in states with a right-to-work law, they have the option to pay. But in all states where a union is the exclusive representative for all workers, those workers are forced to accept the union’s negotiated contract whether they want to or not.

In both right-to-work states and non-right-to-work states, the union owes a duty of fair representation to all workers if the union chooses to be the exclusive representative. Unions derogatively call workers who do not want union representation in right-to-work states “free-riders,” because they receive representation from the union, although they do not want to pay for it.

At times, members-only agreements can be beneficial. If unions only represent workers who want to be represented, then workers who think they can negotiate a better contract for themselves would be free to do so, and neither the union nor the worker would have to provide or pay for an unwanted service.

James Sherk of the Heritage Foundation has written extensively about the benefits of members-only agreements. Sherk notes that members-only would allow workers to choose to be part of the union or not, and in right-to-work states it would allow unions to negotiate only on behalf of those paying them.

That raises an interesting prospect. If the new labor organizations actually focused on the original intent of unions, namely, to serve their members—if they acted as professional organizations of-

fering à la carte services such as insurance, representation in contract negotiations, and the like, only to those workers who want those services, without using intimidation and political influence to achieve their goals—that would be a good development for labor in America. But that’s not what is happening.

Instead, these worker centers are doubling down on the failed models of the past. As practiced so far, the alt-labor concept is focused not on beneficial workplace representation but on gaining more money for politics and on forming organizations that can strong-arm employers while taking away the hard-won secret ballot rights of workers. The new groups are less about what is best for the worker and more about political power and cold, hard cash.

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**Terrence Scanlon  
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# LaborNotes

During the campaign for **Obamacare**, unions and their political allies said their opponents were motivated by racial hatred and a desire to deny healthcare to the poor and sick. Now some unions are singing a different tune. The **United Union of Roofers** has called for “repeal or complete reform” of the program. Leaders of the **Teamsters**, the **United Food and Commercial Workers**, and **UNITE-HERE** (mostly hotel and restaurant employees) wrote a letter saying Obamacare “will shatter not only our hard-won health benefits, but destroy the foundation of the 40 hour work week that is the backbone of the American middle class. . . . Perverse incentives are already creating nightmare scenarios . . . [and the law] will hurt millions of Americans including the members of our respective unions.”

The **Association of American Educators**, a non-union professional teachers association, reports that teachers in at least 15 school districts across the country have declared their independence from state and national teachers’ unions—most recently in **Deerfield, Kansas**, where the local teachers’ group split from the **National Education Association** and the NEA’s state affiliate. Many teachers oppose the NEA’s left-wing politics but feel obligated to join the union in order to obtain necessary benefits such as liability insurance and access to counsel. Now, groups like the AAE are providing teachers with access to such benefits, freeing them of the need to join a union.

**San Diego Mayor Bob Filner** (D), a former congressman, is facing charges of sexual harassment and a campaign for his recall. As he has become a national laughingstock, “His list of supporters has shrunk to just one major group—organized labor and its allies,” the **U-T San Diego** newspaper reported. “Filner was swept into office last year largely thanks to efforts by the **San Diego and Imperial Counties Labor Council**, which contributed more than \$2 million as well as shoe leather, phone banks and related efforts to get the city’s first Democratic mayor in two decades into office.” Said **Tom Lemmon**, head of the **San Diego Building and Construction Trades Council**: “It’s an awkward situation, but we have a lot invested in him.”

That investment is paying off. With Filner’s backing, unions won a 5-4 city council vote requiring payment of the “prevailing wage” (i.e., union wage) on nearly all city projects, a measure that makes it impossible for non-unionized companies to give taxpayers a break. According to **UnionWatch**, Filner also backs a convention center expansion that construction unions will monopolize through a Project Labor Agreement with the city—a project that, counting the expense of borrowed money, will cost more than 1 billion tax dollars.

Gerrymandering in the workplace? That’s a major threat under a **National Labor Relations Board** ruling in the **Specialty Healthcare** case. The ruling allows unionization in part of a business. As the **Retail Industry Leaders Association** notes, micro-unions interfere with cross-training and with efforts to cover absences between departments or different stores, and also make it harder for workers to earn money with extra shifts or to advance their careers by getting a broad range of experience. Actual examples since Specialty Healthcare: unionization of just the cosmetic and fragrance workers at a **Macy’s** department store in **Massachusetts** and of just the second- and fifth-floor women’s designer and contemporary shoe departments at a **Bergdorf Goodman** store in **New York**.

The union front organization **OUR WalMart** is working across the country to force the retail giant to pay a so-called “living wage.” That sounds benign, but when governments require a higher minimum wage, the effect is to deny employment to unskilled or inexperienced workers and to anyone else whose labor is worth less than the minimum. The campaign has found success in **Washington, D.C.**, where the **city council** passed a \$12.50-an-hour minimum wage for WalMart. (Although the law supposedly applies to other stores, technicalities in the legislation limit the effect to WalMart.) In response, WalMart threatened to cancel plans for six stores in the city, including stores in poor neighborhoods, but council member **Vincent Orange** said, “We’re at a point where we don’t need retailers. Retailers need us.” Meanwhile, a new, 79,000-square-foot WalMart, with 200 jobs, has opened in the Washington area, but safely *outside* the city itself, in **Tyson’s Corner, Virginia**.

**The Nation**, published by the **Nation Institute**, is a left-wing magazine that has been leading the charge against WalMart, backing a “living wage” of \$12 an hour or more and calling the retailer one of the “biggest abusers of low-wage labor.” This fall, for the first time, the Nation Institute will pay its full-time interns the legal minimum wage of \$7.25 an hour. Previously, full-time interns at the Institute received a stipend: \$150 a week, which works out to \$3.75 an hour. To the Left, it seems, rules are for other people.

*CRC’s Haller intern Paul McGuire contributed to this report.*