The National Labor Relations Board is Supporting Workers During an Upsurge in Union Organizing after the Coronavirus Pandemic

The National Labor Relations Board (NLRB) is an independent federal agency tasked with safeguarding employees' right to organize and remedying unfair labor practices in the private sector. It plays a key role in protecting labor rights and strengthening workers' economic security. In particular, their efforts protecting the right to organize help address economic inequality and ensure that workers see the benefits when the economy grows. Unionized workers get higher pay, better benefits and more flexibility in their work schedules compared to workers who are not in a union. These benefits are especially large for Black and Hispanic workers. Importantly, unions generate broader spillover effects for all workers in industries with high rates of unionization, even for workers who are not in unions. During the pandemic and in its aftermath, the NLRB has played a particularly important role in ensuring that workers' right to organize is protected.

The NLRB is taking meaningful steps to strengthen workers' rights

In the last year, the NLRB has moved decisively to strengthen workers' rights and economic status. For example, the NLRB's General Counsel has won settlements acknowledging that being illegally fired has consequences beyond income loss. In these settlements, employers are now required to pay an employee for consequential damages, such as job-hunting expenses. The Board is considering making this settled labor law. The NLRB is also considering including emotional damages, such as reputation loss, in their definition of consequential damages.

Over the past year, the NLRB has especially focused on improving the unionization process. For example, the NLRB's General Counsel has argued in favor of banning captive-audience meetings where employees are mandated to listen to arguments against unions, and the Board is currently considering this case. In late 2021, the NLRB negotiated a settlement that allowed Amazon workers to organize while at work, and throughout 2022, they have filed lawsuits on behalf of wrongly-fired Starbucks workers.

More broadly, the NLRB's General Counsel has proposed changing the unionization process in order to prevent employers from intimidating workers and causing delays in union elections. The proposal, which the board is currently considering, would reinstate the Joy Silk standard, which previously allowed workers to form a union without a formal election if they had a clear majority. Reinstating this standard would make it significantly easier for workers to unionize by streamlining the process and putting the onus on employers to demonstrate "good-faith doubt" in majority support.

The NLRB is also considering extending to gig workers the right to organize and other crucial labor protections. Since 2019, the NLRB has classified gig workers as independent contractors, which denies them the right to organize and other crucial protections such as a minimum wage. The Department of Justice has urged the NLRB to reverse this earlier decision, which would have far-reaching implications as 29% of Americans participate in the gig economy as their primary job, according to a 2018 Gallup poll.

The NLRB's caseload is growing sharply in 2022 as union organizing spreads and increases

In the past year, the strong labor market and the lingering effects of the COVID-19 pandemic have empowered many workers to organize. A series of high-profile service sector unionization efforts and the wave of strikes in fall 2021 have captured national attention, and the NLRB has played a key role during this uptick in organizing activity.

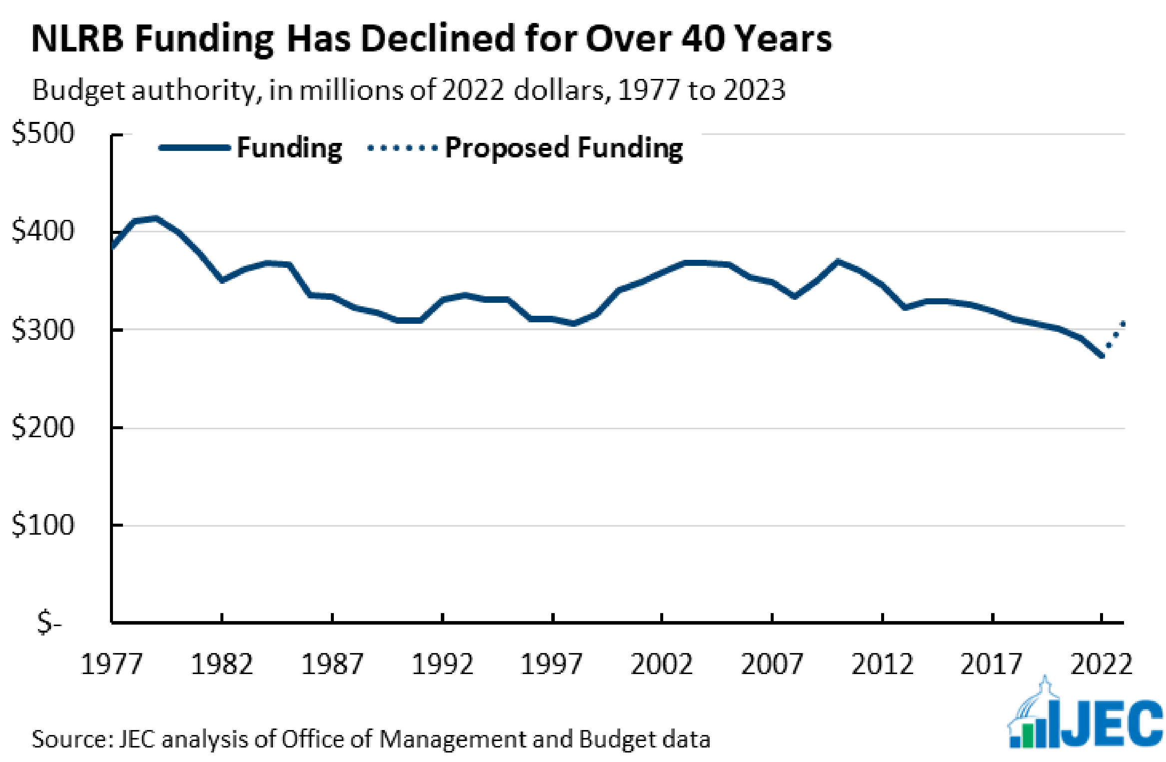
The far-reaching impacts of the COVID-19 pandemic include an increase in potential labor law violations and subsequent NLRB rulings. For example, many employees organized in opposition to their employers' COVID-19 protocols. As some of those employees were fired, the number of retaliation cases the NLRB reviewed increased.

The strong economic recovery has empowered workers to organize, including in sectors that have not traditionally unionized, such as retail and warehousing. While unionization efforts at Starbucks and Amazon have made international headlines, the increase in organizing activity is not limited to these high-profile cases but is spread across industries. But many employers in these sectors do not voluntarily recognize unions, and the NLRB is tasked with conducting an increasing number of union elections. There are also an increased number of unfair labor practice charges for the NLRB to rule on as some employers seek to deter workers from organizing. For example, some retail employers are now training managers to recognize and discipline union supporters, and the NLRB is responsible for enforcing labor laws against such union-busting tactics.

The number of cases before the NLRB has increased significantly, with fiscal year 2022 on track to see the largest single-year increase in decades. From October 2021 through the following June, union election petitions increased by 58% compared to the previous comparable time period. At the same time, charges of unfair labor practices by employers or unions have increased by 16%. These cases were filed across the country, with nearly every state seeing an increase (see table below for data on cases in each state and territory).

NLRB funding has fallen significantly, especially since 2010

In recent years, the NLRB's funding has fallen, including an especially sharp decline over the last decade. Between 2010 and 2022, NLRB funding decreased by 26% in real terms. The House and Senate Appropriations Committees and President Biden have proposed increasing NLRB's budget by $45.4 million in fiscal year 2023, a 13% increase in real terms. (See graph below.) These additional resources would allow them to fill empty field staff positions and develop an electronic voting system, making them more efficient and effective. By providing the NLRB with sufficient resources, these proposals would help the NLRB carry out its statutory responsibilities to ensure workers' right to organize.



Additional authorities would enable the NLRB to better protect workers' right to organize

While the NLRB has helped protect workers' rights under current labor law, additional authorities could greatly expand their impact. Right now, when an employer violates the law, the NLRB can compel them to compensate the impacted employees; however, the NLRB does not have the authority to levy fines. While existing financial penalties such as back pay are important to the employee, they are often not large enough to provide a significant deterrent effect. By attaching significant financial penalties to labor law violations, the NLRB could prevent future violations.

Legislation is also needed to codify recent NLRB decisions so that future boards cannot reverse them. For example, the PRO Act would codify the NLRB's recent moves to ban captive audience meetings where employees are forced to listen to anti-union arguments, reinstate wrongly fired workers, properly define independent contractors and streamline the union recognition process. Making these safeguards permanent law would allow more workers to pursue unionization, which both improves their own economic security and creates broader spillover effects for other workers and the economy as a whole.

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Labor Organizing Activity Increased Nationwide in Fiscal Year 2022								
	Union Election Petitions				Unfair Labor Practice Charges			
	October 2020 - June 2021	October 2021 - June 2022	Percent Change		October 2020 - June 2021	October 2021 - June 2022	Percent Change	
Nationwide	**1,197**	**1,892**	**58%**	▲	**11,082**	**12,819**	**16%**	▲
Alabama	5	9	80%	▲	99	100	1%	▲
Alaska	2	4	100%	▲	11	27	145%	▲
Arizona	12	26	117%	▲	166	222	34%	▲
Arkansas	0	5	*	▲	77	61	-21%	▼
California	162	256	58%	▲	1,273	1,623	27%	▲
Colorado	15	33	120%	▲	151	225	49%	▲
Connecticut	28	33	18%	▲	128	173	35%	▲
District of Columbia	28	37	32%	▲	103	122	18%	▲
Delaware	4	10	150%	▲	60	62	3%	▲
Florida	17	32	88%	▲	358	337	-6%	▼
Georgia	6	18	200%	▲	228	271	19%	▲
Guam	0	1	*	▲	11	1	-91%	▼
Hawaii	22	11	-50%	▼	116	113	-3%	▼
Idaho	3	8	167%	▲	42	25	-40%	▼
Illinois	76	125	64%	▲	580	783	35%	▲
Indiana	23	29	26%	▲	270	243	-10%	▼
Iowa	4	14	250%	▲	48	60	25%	▲
Kansas	8	6	-25%	▼	53	83	57%	▲
Kentucky	11	14	27%	▲	167	175	5%	▲
Louisiana	5	6	20%	▲	111	157	41%	▲
Maine	3	9	200%	▲	25	31	24%	▲
Maryland	31	56	81%	▲	308	248	-19%	▼
Massachusetts	34	66	94%	▲	272	334	23%	▲
Michigan	42	57	36%	▲	550	606	10%	▲
Minnesota	25	65	160%	▲	158	226	43%	▲
Mississippi	2	3	50%	▲	81	63	-22%	▼
Missouri	18	57	217%	▲	183	237	30%	▲
Montana	4	9	125%	▲	52	62	19%	▲
Nebraska	0	2	*	▲	22	26	18%	▲
Nevada	17	21	24%	▲	269	318	18%	▲
New Hampshire	3	4	33%	▲	15	16	7%	▲
New Jersey	51	72	41%	▲	526	410	-22%	▼
New Mexico	4	11	175%	▲	124	94	-24%	▼
New York	172	203	18%	▲	1,003	1,137	13%	▲
North Carolina	8	15	88%	▲	206	249	21%	▲
North Dakota	1	0	-100%	▼	18	12	-33%	▼
Ohio	27	67	148%	▲	547	573	5%	▲
Oklahoma	1	8	700%	▲	49	61	24%	▲
Oregon	35	85	143%	▲	176	208	18%	▲
Pennsylvania	94	115	22%	▲	441	513	16%	▲
Puerto Rico	26	11	-58%	▼	206	283	37%	▲
Rhode Island	14	10	-29%	▼	92	93	1%	▲
South Carolina	2	8	300%	▲	127	103	-19%	▼
South Dakota	1	2	100%	▲	5	24	380%	▲
Tennessee	9	18	100%	▲	214	291	36%	▲
Texas	38	43	13%	▲	520	708	36%	▲
Utah	2	10	400%	▲	49	56	14%	▲
Vermont	3	12	300%	▲	20	31	55%	▲
Virgin Islands	1	0	-100%	▼	4	6	50%	▲
Virginia	16	42	163%	▲	208	214	3%	▲
Washington	58	101	74%	▲	355	435	23%	▲
West Virginia	6	9	50%	▲	74	101	36%	▲
Wisconsin	17	21	24%	▲	127	173	36%	▲
Wyoming	1	3	200%	▲	4	14	250%	▲

Source: National Labor Relations Board

* No cases were filed in the first three quarters of FY 2021 in these states.