



THE DOUBLE STANDARD AT WORK:

EUROPEAN CORPORATE INVESTMENT
AND WORKERS' RIGHTS
IN THE AMERICAN SOUTH

AFL-CIO

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The American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) works every day to improve the lives of people who work. We are a democratic, voluntary federation of 55 national and international labor unions that represent 12.5 million working people. We help people who want to join together in unions so they can bargain collectively with their employers for better working conditions and the best way to get a good job done. We work to ensure that all people who work are treated fairly, with decent paychecks and benefits, safe jobs, respect and equal opportunities. To help working people acquire valuable skills and job readiness for 21st century work, we operate the largest training network outside the U.S. military. And we provide an independent voice in politics and legislation for working women and men, and make their voices heard in corporate boardrooms and the financial system.

Our roots are deep in communities and extend to countries across the world as we partner locally, nationally and worldwide with allies who share the values of working families.

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**Reference to Cornell University is for identification purposes only.*

FOREWORD

The stories of the workers of the U.S. South cannot be separated from the history and politics of the region—defined through slavery, uneven industrialization and “Jim Crow” segregation. On the other hand, Southern workers have taken some of the most courageous collective actions in history. Southern workers continue to organize in often-brutal struggles against oppression and exploitation. Unions are a critical part of this fight, too, aligning with Southern communities to fight for shared prosperity and equality.

Foreign investment long has been a critical, decisive force in the U.S. South. Neoliberalism and global trade once again redefined the region’s labor market and economy. Southern states now lavishly court investment from corporations in continental Europe, in particular, to place manufacturing operations. Wages and the cost of doing business are cheaper, and companies are drawn through expensive economic development subsidies. Almost every state in the South has social indicators that are among the lowest in the United States. Therefore, giving away public money occurs in a vastly different context than other places in the country. These policies harken back to the days of 19th century corporate robber barons in the United States.

This report explains what is unknown and even unfathomable to many Europeans. Universal rights and social values long upheld and woven into the social fabric of Europe are anathema in the American South. Between the state and private sector, a formidable anti-worker partnership is strengthened through unjust policies like “gerrymandering,” as described in the report. This allows the representatives that Southern communities elect to cater to corporate interests. Many Southern elected officials have



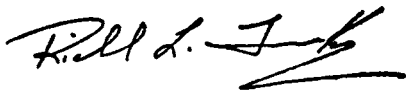
Farm Labor Organizing Committee (FLOC) rallies against an anti-worker state bill in Durham, North Carolina. Credit: Phil Forville

become all too engaged in doing companies' anti-union bidding. Unfortunately, this is perfectly legal within the confines of the faulty labor law system in the United States.

Across sectors, the report details an array of unions' organizing efforts across the U.S. South, in campaigns where European union counterparts played roles large, small or not at all. When left unchallenged, European firms (unknowing or apathetic) do business in the South by the ethos, "when in Rome, do as the Romans do." This presents a great danger to unions on both sides of the Atlantic. We must disavow a blanket adoption of U.S.-style anti-union campaigns wherever they occur. They are born of a violent history of suppressing workers' collective actions against oppression in the U.S. South.

We must not lose sight of the positive impact some European industrial relations practices have had on workers' well-being, especially during these difficult and politicized times. Most European countries uphold workers' rights to form and join unions and for workers to collectively bargain. Many European countries maintain a strong commitment to social dialogue with employers through tripartite structures. However, we cannot be complacent. A lot of work remains to be done to secure proper respect for trade union rights in both the United States and Europe, in particular to ensure that union-busting techniques highlighted in this report are not adopted by European companies, and that gaps in protection for trade union rights in Europe also are addressed. A great opportunity lies before us with the challenges workers face in the U.S. South.

We hope this report helps us redefine, together, what multinational employers can do to take the "high road." The AFL-CIO and the European Trade Union Confederation are committed to building strong, effective unions for workers on both sides of the Atlantic.



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SUMMARY

Multinational corporations based in Europe have accelerated their foreign direct investment in the Southern states of the United States in the past quarter-century. Some companies honor workers' freedom of association, respect workers' organizing rights and engage in good-faith collective bargaining when workers choose trade union representation. Other firms have interfered with freedom of association, launched aggressive campaigns against employees' organizing attempts and failed to bargain in good faith when workers choose union representation.

This report examines European companies' choices on workers' organizing rights with documented case studies in several American Southern states. In their home countries, European companies investing in the American South generally respect workers' organizing and bargaining rights. They commit themselves to International Labor Organization core labor standards, Organization for Economic Co-operation and Development Guidelines, UN Guiding Principles, the UN Global Compact, and other international norms on freedom of association and collective bargaining. But they do not always live up to these global standards in their Southern U.S. operations.

Two different scenarios may explain the contradiction between word and deed. In one, top European company management may indeed be hostile to trade unions and would prefer to operate "union free," but a web of national laws and regulations, effective unions, strong EU directives, social dialogue traditions and other factors in the European labor relations context prevents them from putting their anti-union views into practice.

In the United States, these constraints are lacking or weak. U.S. labor law gives management a free hand to launch aggressive anti-union campaigns when workers try to form unions. And even when employers are found to violate the law, legal delays and weak remedies often let them get away with frustrating workers' organizing efforts.

Flaws in U.S. labor law and practice are even more acute in the American South than in other regions. Some European companies appear to relish their newfound opportunities to attack trade unions in ways they cannot undertake in Europe, especially in Southern states where they have made substantial investments in recent years.

A second possible explanation for European firms' double standard is that top company leaders accept the role of trade unions and collective bargaining at home, but they wash their hands and let American managers deal with workers' organizing and the intricacies of U.S. labor law. This is a failure of due diligence for which firms should be held accountable. In either case, companies are violating international human rights and labor standards to which they have publicly committed themselves.

When they apply harsh anti-union strategies and tactics, European firms often argue that they simply are following advice from local business leaders and elected officials to adapt to the corporate customs and culture of the American South...

European companies' campaigns against workers' freedom of association in the Southern United States have wider implications and effects beyond whether employees succeed in forming trade unions. When they apply harsh anti-union strategies and tactics, European firms often argue that they simply are following advice from local business leaders and elected officials to adapt to the corporate customs and culture of the American South—a “When in Rome, do as the Romans” ethos. But in so doing, they also are reinforcing and validating a dominant economic, social and political model that has locked the South into the bottom tier among American states under every measure of people's well-being—living standards, employment security, health, education, environmental protection, democratic participation and more.

European firms' respecting workers' freedom of association could be a driving force for far-reaching change in the American South. It could demonstrate to Southern workers that job growth, economic development and unions are not part of a zero-sum game, as they often are portrayed, but have a symbiotic relationship. Making workforce development and high-road labor policies the rule, rather than the exception, can break the historical cycle of low wages, low labor standards, low social standards and other stains on the South.

European workers and trade unions have a stake in the American South, too. Southern state government officials stress low wages, low taxes and low levels of union representation in their appeals to Europe-based multinational firms to invest in the South. This creates a temptation to relocate jobs to the U.S. South to escape European social standards.

A longer-range interest comes into play, too. As European companies become accustomed to Southern U.S.-style anti-unionism, the temptation grows to apply the same blanket strategies and tactics in Southern and Eastern Europe, or even in the heart of the European Union. Such a turn by European firms would make it even easier for U.S.-based companies in Europe to export American management-style violations of workers' organizing and collective bargaining rights.

Workers' and trade unions' interests in Europe and the United States also converge in negotiations now taking place for a trans-Atlantic trade and investment pact, sometimes called TTIP. The United States likely will pressure Europe to accept a trade arrangement promoting weak labor laws, anti-unionism, decentralized collective bargaining, low wages, low taxes, privatization, deregulation of health and environmental rules, reduced public services and other features of the U.S. model that are most prominent in the American South.

Unless they are held accountable for their conduct and rectify their behavior, European companies might tell their governments “we like the U.S. system and the way we have profited from these policies, especially in the American South.” European and American workers and their allies must mobilize now to prevent American Southern-style labor practices from taking root in Europe.

The American South as Used in This Report

The map below shows (in red) the Confederate States of America, the slave-holding states of the “Old South” that launched the Civil War when the federal government prohibited the extension of slavery to new states. These are the states on which this report focuses.



PART ONE

FRAMING THE PROBLEM

INTRODUCTION: EUROPEAN COMPANIES AND THE U.S. SOUTH

European Direct Investment in the American South

Alabama, Mississippi, Tennessee, North Carolina, South Carolina and other states of the “Old South”—the states that formed the rebel Confederacy in the Civil War—have become targets for large-scale foreign direct investment by European firms in auto, steel and aircraft manufacturing; transportation and logistics; and such services as health care, banking, food services and telecommunications.

Such natural economic factors as available land, seaports, access to raw materials, lower-cost energy, efficient transportation networks and nearness to markets often drive investment decisions, whether in the North or in the South. But in many instances, persistent and problematic features of Southern states’ economic, social and cultural landscapes also affect firms’ choice of investment locations. They include:

- A harsh anti-trade union culture promoted by economic and political elites, with special emphasis on union-weakening right to work laws;¹
- Low standards and weak enforcement of wage and hour regulations, sick leave, health insurance and other benefits;
- A strict “at-will” common law employment regime, making it easy to fire workers for “a good reason, a bad reason, or no reason at all” so that employees remain in a state of constant fear about their job security;
- The country’s lowest minimum wages, creating a floor so low that a slightly higher-than-minimum wage is touted as fair, even when it is far below average wages in other states for the same work and Southern workers struggle to make ends meet;²
- The country’s lowest unemployment insurance and workers’ compensation benefits for work-related injury or illness, resulting in personal family crises and suppressed aggregate purchasing power in the state’s economy, especially at times of economic downturns;³
- Low standards and weak enforcement of environmental standards, land use rules, waste disposal requirements, workplace health and safety and other regulations, resulting in greater threats to the environment, public health and worker safety;⁴ and
- Low personal income and property taxes, mainly benefiting wealthy state residents and depriving public schools, public universities and public services of needed revenues.

Southern States’ Inducements to Foreign Investors

Powerful government, business and media figures in Southern states should be addressing these negative features of work, workplace standards and public policies, and trying to correct them. Instead, they boast about these features as reasons why multinational companies should invest there. Here are some examples in recent years:

Tennessee Governor Bill Haslam:

Tennessee is proud to be a right to work state with a low-cost labor force and no personal income tax on wages. Our state and local tax burdens are some of the lowest in the region. We have...

very low unionization rates—factors which continue to make our state attractive for foreign direct investment.⁵

Former Alabama Governor Robert Bentley:

I think being a right to work state is the reason many international companies look at Alabama and the other right to work states....It hurts Alabama...when a plant is nonunionized and suddenly it becomes a unionized plant.”⁶

Former South Carolina Governor Nikki Haley:

We discourage any companies that have unions from wanting to come to South Carolina because we don't want to taint the water....They're coming into South Carolina. They're trying. The good news is it's not working....You've heard me say many times I wear heels. It's not for a fashion statement. It's because we're kicking unions every day, and we'll continue to kick them.⁷

Mississippi Governor Phil Bryant:

Mississippi has some of the lowest union participation in the country....I believe that Mississippi's right to work status is a competitive benefit for the state, and I intend to keep it that way.⁸

Here is how Tennessee economic development officials describe their selling points:

- Numerous tax advantages and other financial incentives
- No personal income tax
- Consistently one of the lowest per capita taxed states in the nation
- Favorable workers' compensation programs
- A right to work state⁹

The Tennessee Chamber of Commerce begins its list of “Reasons Manufacturers Like Tennessee: Business-Friendly Environment” thusly:

- No personal income tax on wages and salaries.
- A right to work state...low union participation.¹⁰

Southern States and Trade Union Representation

Hostility to trade unions and collective bargaining in Southern states is deeply rooted. State and local political officials, business leaders and media executives sing together from the same songbook: that trade unions are a Northern-inspired “alien” force come to the South to stir up trouble among otherwise contented workers—the same arguments they made about anti-slavery abolitionists in the 19th century and about civil rights advocates in the 1960s.

Lowest Levels of Union Representation

U.S. Southern states are clustered at the bottom of all states for levels of trade union representation. Eleven Southern states are in the lowest 20; six of them are in the bottom eight states. North Carolina and South Carolina are Nos. 49 and 50, at 4% and 3.6% union “density.”

Average union representation for the former Confederate states is 6%. In contrast, average union representation for the 12 highest-density states is 17.3%, with New York state highest at 24% of its workers represented by unions (these figures exclude Alaska and Hawaii for their small populations).¹¹

UNION DENSITY IN SELECTED STATES

(Percentage (rounded) of workers represented by trade unions)

Northern and Western States	Union Density	Southern States	Union Density
California	16%	Alabama	10%
Connecticut	17%	Arkansas	5%
Illinois	15%	Florida	7%
Massachusetts	15%	Georgia	6%
Michigan	15%	Mississippi	7%
Minnesota	16%	North Carolina	4%
New Jersey	16%	South Carolina	4%
New York	24%	Tennessee	5%
Pennsylvania	18%	Texas	6%
Washington	21%	Virginia	6%
Average:	17.3%	Average:	6.0%

Public Employee Collective Bargaining is Unlawful in Every State of the South

While it does not directly affect private-sector multinational firms investing in the American South, every Southern state has adopted laws that prohibit collective bargaining by public-sector workers. In contrast, 30 of the remaining 39 states allow collective bargaining for public employees. These states' public employee bargaining systems usually contain European-style requirements for mediation and arbitration, maintenance of essential services and other features of a collective bargaining system for public-sector workers. But in the South, all public employees—whether schoolteachers or employees of any government agency—are legally prohibited from collective bargaining.¹²

Under constitutional rights of speech and assembly, Southern states cannot prevent public-sector workers from forming and joining trade unions. But their unions cannot bargain. All the states of the South have outlawed any form of collective bargaining, even with safeguards against strikes or loss of essential services. This leads to low levels of union membership among public employees, who think, “why join a union that cannot bargain for me?” This dynamic results in low wages and lack of voice and effectiveness in public affairs. This in turn leads to low levels of public services, low funding for education and infrastructure, low teacher salaries and other problems that ultimately *will* affect private-sector investors.

An ILO Case on Public-Sector Collective Bargaining

In 2006, public-sector workers in North Carolina filed a complaint with the International Labor Organization’s Committee on Freedom of Association on behalf of North Carolina public employees. Their complaint charged that the state’s ban on public worker bargaining, and the failure of the United States to take steps to protect workers’ bargaining rights, violated Convention No. 87’s principle that “all workers, without distinction” should enjoy organizing and bargaining rights. The complaint also cited Convention No. 98’s rule that all public employees except high-level policy makers should have the right to bargain collectively.

In April 2007, the committee ruled in the union’s favor and urged the U.S. government “to promote the establishment of a collective bargaining framework in the public sector in North Carolina...and to take steps aimed at bringing the state legislation, in particular through the repeal of NCGS §95-98 [the statute prohibiting collective bargaining by public employees], into conformity with the freedom of association principles.” However, since the ILO has no enforcement power to implement such decisions, the federal government and North Carolina government have ignored it.

Source: ILO Committee on Freedom of Association, Complaint Against the United States (Case No. 2460), Report No. 344 (2007).

Southern States and Social Standards

Low-union Southern states are almost uniformly in the bottom half—and more often in the bottom one-third—of social indicators for living standards, health, education, workplace safety and other measures of well-being in the states of the United States:

Poverty

Ten Southern states are in the bottom 20 states for the percentage of population living below the federal poverty level, with 13% or more living in poverty. Seven of the Southern states are in the bottom 10, with Louisiana and Mississippi having more than 20% of their residents living in poverty.¹³

Income

Ten Southern states are in the bottom 20 states for median household income. Seven of them are among the lowest 10 states in all, the 10 with incomes of less than \$50,000 per year for the entire household.¹⁴

Wage Theft

A study of five Southern states found that more than one in 10 construction workers (11%) have experienced wage theft at some point and one in two (23%) managed to recover these lost wages. The median amount of wages stolen was \$800 among workers who had experienced wage theft in the past year. One in three workers (32%) is misclassified as an independent contractor, denying their rights to minimum wage and overtime payments.¹⁵

Health

Ten Southern states are among the 20 “least healthy” states in the United States, using such measures as smoking, obesity, physical inactivity, low birth weight, drug deaths, environmental conditions like air pollution, and the number of doctors, dentists and mental health providers per 100,000 people in the state. Distressingly, eight of the 10 Southern states are in the bottom 10—all except Florida and North Carolina, which are ranked Nos. 32 and 33, respectively. Alabama (No. 47), Arkansas (No. 48), Louisiana (No. 49) and Mississippi (No. 50) are the bottom four states.¹⁶

Infant Mortality

Ten states make up those in the bottom-most quintile for the level of infant mortality in the United States—more than seven deaths per 1,000 live births. If these were spread evenly among all 50 states, two of the 10 would be in the South. However, six of the 10 are Southern states: Alabama, Arkansas, Georgia, Mississippi, North Carolina and Tennessee. Mississippi is last, with 8.6 infant deaths per 1,000 births. Florida, South Carolina and Texas are in the next-worst quintile, also out of proportion among the 40 remaining states. In contrast, New York, California, Washington, Massachusetts, Connecticut and other high-union-membership states are in the top-most quintile for the best performance regarding infant mortality.¹⁷

Workplace Safety

Southern states are more dangerous for workers than other states. Every Southern state except Florida and Georgia is in the bottom half of the United States for rate of workplace deaths (adjusted for size of the labor force—Florida is No. 22, Georgia No. 25). The average rate of workplace fatalities in Southern states is 4.7 deaths per 100,000 workers. In contrast, none of the 10 highest-union-density states is in the bottom half. The lowest-ranked of these is Michigan, at No. 21—still higher than Florida, the highest-ranked Southern state. Five of the high-union states are in the top 10 for workplace safety. The average rate of workplace fatalities in the high-union states is 2.8 deaths per 100,000 workers.¹⁸

Education

Eight of 10 Southern states are in the bottom half of primary and secondary education rankings for math and reading scores and preparation for college; a ninth, North Carolina, is No. 23.¹⁹

Workforce Development

Southern states rely heavily on low-wage, low-skilled jobs that offer little advancement. Southern workers do not have access to the training programs that better allow them to do middle-skill jobs, that require more than a high school education but not a four-year degree. Southern workers lack proficiency in “math, teamwork, problem solving, communicating and complex thinking,” and Southern communities lack high-quality “workforce development strategies like sector partnerships and work-based learning,” according to the Federal Reserve Bank of St. Louis, to close the wage gap. In 2016, the median annual wage for Southern states in comparison with non-Southern states was \$35,904 to \$37,799, respectively.²⁰

Teachers’ Pay

The quality of primary and secondary education is closely linked to teachers’ salaries: nine of 10 Southern states are in the bottom half of the 50 states for average annual teachers’ pay (the exception is Georgia, which is No. 25). The average annual salary for primary and secondary school teachers in the entire United States in 2017 was \$58,950. The average salary in the South was \$49,365. In contrast, the average annual teachers’ salary in 10 states with the highest level of trade union representation was \$68,235, almost \$20,000 more than in low-union Southern states.

University Professors' Pay

The same trend appears at the other end of the educational system, in state universities. At \$99,000 per year, the average salary of “full professors”—the highest faculty appointment in academia—in Southern state universities is in the bottom half of all state universities. Full professors’ average salary in the 10 high-union states is \$118,000—again, a nearly \$20,000 difference. The same disparity repeats itself going down the academic ladder. The average salaries of assistant and associate professors reflect the same South-North divide. Perhaps even more significant for businesses needing high-skilled workers, salaries of adjunct professors, who now teach a significant majority of university courses, and teachers’ salaries in two-year community colleges are lower in the South than in the North.²¹

Inequality

Income inequality in Southern states is disproportionately more acute than in the rest of the United States. The standard measure of inequality in a country is the Gini Coefficient, so called for the Italian economist who devised the method in 1912. The average Gini Coefficient for Southern states is .5386, indicating substantially higher inequality than the average for other states, which is .4998.²²

International comparisons are difficult because different institutions use different definitions (of income, for example) and methodologies (how to account for the effects of tax transfers and Social Security programs, for example), and data are not always up to date. The World Bank uses a methodology different from that used in the United States’ state-by-state calculation, so numbers are not comparable. The Bank’s Gini Coefficient method (based on a 0–10 scale, in which a lower number means greater equality) finds most European countries between 2.9 and 3.3, and the United States at 4.2.²³ As just seen, Southern states have a significantly higher level of inequality within the United States.

MINIMUM WAGE IN NORTHERN AND SOUTHERN STATES (Federal minimum \$7.25/hour applies in states with “None”)

Northern and Western States	Minimum Wage	Southern States	Minimum Wage
California	\$12.00	Alabama	None
Connecticut	\$10.10	Arkansas	\$9.25
Illinois	\$8.25	Florida	\$8.46
Massachusetts	\$12.00	Georgia	\$5.15
Michigan	\$9.25	Mississippi	None
Minnesota	\$9.86	North Carolina	\$7.25
New Jersey	\$8.85	South Carolina	None
New York	\$11.10	Tennessee	None
Ohio	\$8.55	Texas	\$7.25
Washington	\$12.00	Virginia	\$7.25

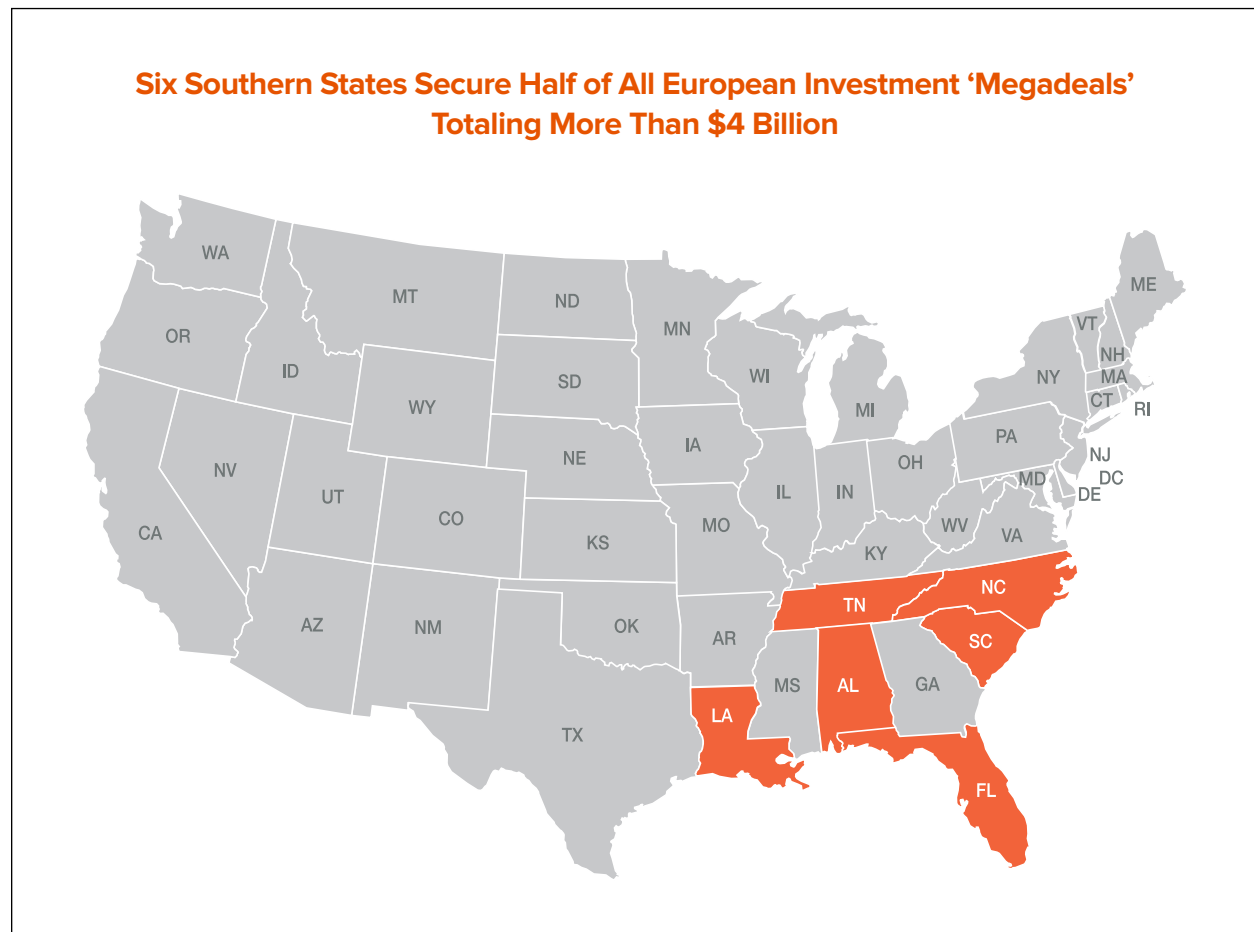
Southern States' Tax Giveaways to EU-based Corporations

All U.S. municipalities draw corporate investment through massive subsidy packages. In widely known cases like Amazon's HQ2, New York, the larger metropolitan area of Washington, D.C., and a host of other U.S. municipalities promised billions to Amazon. The tax giveaways by the municipalities of the U.S. South, however, are in a much different context.

European corporate investments have not helped solve social and economic deficiencies in the states of the American South. They may in fact worsen them, by extracting massive subsidies and tax breaks that divert funds away from meeting social priorities. Such tax giveaways to firms include decades' worth of low or no tax obligations, outright cash payments to set up shop in the attracting state, state subsidies for construction of facilities, transportation systems and other infrastructure, state funding for employee training, and even state funding for employees' wages in early periods of employment.

In the past quarter-century, multinational firms based in Europe have made 36 investment deals with state governments throughout the United States that range from \$50 million to more than a billion dollars in subsidies and tax benefits. In total, these 36 investment deals among the 50 states total \$8.5 billion.²⁴

If these "megadeals" were spread evenly across the country, any group of six states would have four of them, and any one state's deal would be worth \$170 million. But just six Southern states made 18—fully



half—of these \$50 million-plus deals with EU-based firms: Alabama, Florida, Louisiana, North Carolina, South Carolina and Tennessee. Their subsidies and tax breaks total more than \$4 billion, averaging \$667 million per state.

Alabama was the most profligate, giving five deals worth \$1.685 billion to thyssenkrupp, Daimler and Airbus. Tennessee was next with \$1.092 billion—more than \$800 million to Volkswagen and the balance to Electrolux, which recently announced the closure of one of its two plants in the state. South Carolina gave \$838 million to BMW, Continental, Michelin and Volvo. Mississippi gave a \$600 million deal to Continental, which now is hiring in advance of doors opening to its tire plant.²⁵

Many of these “megadeals” go back to the 1990s, but the subsidy-granting states have not advanced from the bottom of social standards indicators. The data only include deals worth more than \$50 million; many more smaller-scale deals multiply their tax-starving effects throughout the South.

The Trade Union Difference

Social outcomes in the American states are closely linked to levels of trade union representation. Higher levels of trade unionism give working people more voice and more strength in advocating for policies that put most of the high-union states in the upper half of social standards indicators. Correspondingly, low union representation locks Southern states into the bottom half.

To take just the example of the rate of workplace fatalities discussed above: abundant research has shown that union representation leads to better health and safety outcomes, since unions can negotiate with employers on workplace standards, joint health and safety committees, independent consultation with government inspectors and other features that protect union workers, compared with nonunion workplaces, where workers have no right to bargain over health and safety concerns.²⁶

One scholar explains why:

The presence of unions in the states increases political involvement, and efforts to de-unionize industries, via state legislation or through the decisions of businesses, will result in higher levels of economic and political inequality...Unions provide institutional structure for workers to organize for better labor conditions...and work within government and electoral politics to increase engagement... Unions help individuals to grow their civic skills and gain the ability to feel comfortable in political life...Lower levels of unionization move people away from government and increase the gap between the rich and the poor.²⁷

THE SOUTH AND LABOR

New South and Old

Elected officeholders, economic development officials, business leaders and media executives in Southern states often announce a “New South” to convince European companies to invest there. They insist that the South has moved beyond its historical legacy of slavery and the century of rigid “Jim Crow” racial segregation that followed the end of the Reconstruction period in the late 1870s.

What Does ‘Jim Crow’ Mean?

The term “Jim Crow” has its origins in an 1830s song-and-dance performance by white minstrels in blackface mocking African Americans (the song was titled “Jump Jim Crow”). “Jim” was a common slave name, and “Crow” signified blackness. Segregationist laws in the South from the 1870s to the 1960s became known as “Jim Crow laws.” They required “Whites Only” and “Colored Only” schools, hospitals, restaurants, hotels, swimming pools, water fountains, railroad passenger cars, and other public and private services. Another “Jim Crow” law in Southern states prohibited “miscegenation”—the marriage of a white person and a black person. The modern civil rights movement of the mid-20th century began in 1955 when an African American woman named Rosa Parks refused to sit in the “colored-only” back seats of a public bus in Montgomery, Alabama. Her act of defiance led to a black boycott of the municipal transit system, and a young minister named Martin Luther King Jr. came to Montgomery to help lead the movement that ultimately overturned “Jim Crow” in the South.



1963 protest to end discrimination at lunch counters in the South.
Credit: UMD Historical Archives

There is truth to the New South portrayal. Federal civil rights legislation in the mid-20th century—although mightily resisted by the Southern power structure—eliminated legalized forms of racial prejudice. African American mayors have been elected in many Southern cities with majority black populations, and many African Americans have achieved middle-class status.

Top Southern universities have become major research centers in many fields. Southern entrepreneurs, new high-tech companies and research centers, and industrial activity in aerospace, auto, steel and other sectors—including new technologies in the historically important textile industry—have injected a new dynamism into Southern economic life.

Much of the New South indeed is modern and modernizing. But much of the Old South endures. Corporate officials and political leaders touting the “New South” fail to account for continuing institutional racism and other forms of discrimination, as well as deeply rooted hostility to trade unions.

Voter Suppression

Southern states disproportionately adopt “voter suppression” measures making it more difficult for citizens to vote, and such tactics are aimed at reducing African American turnout in local, state and federal elections. For example, nine Southern states, out of just 15 states nationwide, require a government-issued photo identification to vote. The photo ID requirement disenfranchises many thousands of potential voters, most of them older African Americans, who do not have a driver’s license—usually the only form of official photo ID in most states. Birth certificates, tax bills, utility bills and other methods of showing citizenship and residence are not sufficient since they do not contain photographs.²⁸ An African American candidate’s loss in the 2018 Georgia gubernatorial election generally is blamed on voter suppression tactics that kept African American voters away from voting stations.²⁹

Gerrymandering

Southern states disproportionately draw congressional district boundaries to ensure Republican victories in all but a few “packed” (with African American voters) districts. Such line-drawing for political gain is called gerrymandering. This word stems from the early 19th century, when a Massachusetts governor named Elbridge Gerry and his allies created a voting district shaped like a salamander to guarantee their party’s victory in forthcoming elections.

In a recent study, Southern states were nine of 13 states overall whose gerrymandering practices deviated from an “average efficiency” measure, where the deviation favored Republican candidates. The result is African American mayors and city councils in some Southern cities, and African American state legislators from those voting districts. Most of them are Democrats aligned with the national party. But a much-larger white Republican majority from suburban and rural voting districts continues to dominate state affairs, and sometimes take pre-emptive action against local African American leaders to block progressive reforms favoring workers.³⁰

Margaret Newkirk and Erik Larsen of Bloomberg News discussed just this month the special case that is Mississippi. That state adopted a deliberately racist constitutional amendment in 1890, a time when the progressive advances of the post-Civil War Reconstruction era were destroyed by the advent of Jim Crow. It is noteworthy that Mississippi has the highest percentage of African American citizens of any state—almost 40%. But that 1890 amendment says a candidate can win election only by capturing more than 50% of the statewide vote and that has to be in more than half of the state’s 122 legislative districts—two-thirds of which are majority white. It sets nearly an impossible bar for African American candidates.

Pre-emption of Black-Led Cities

In many Southern states, white-dominated state legislatures have passed laws blocking or nullifying higher minimum wage standards in cities, most of which have black mayors and city councils. Nine states in the South have adopted such pre-emption measures; only eight of the other 41 states have done so.³¹

In one dramatic case still under way in the courts, workers and labor advocates have challenged a 2016 minimum wage act passed by the white-dominated Alabama state legislature after the city of Birmingham in 2015 had adopted a city-wide minimum wage of \$10.10 per hour. The state law blocked implementation of the new minimum wage.

A lawsuit brought by fast-food workers and civil rights groups challenged the state law based on charges of racial discrimination, pointing to statements by various white legislators suggesting racist motivation for the law. In July 2018, a federal appeals court allowed the lawsuit to proceed, saying “plaintiffs have stated a plausible claim that the Minimum Wage Act had the purpose and effect of depriving Birmingham’s black citizens’ equal economic opportunities on the basis of race.”³²

LGBT Intolerance

The proclaimed New South is also a stronghold of intolerance. In August 2018, 16 states with Republican attorneys general (the highest legal office in the states, named by Republican governors) intervened in a lawsuit against the federal government’s anti-discrimination agency to stop policies requiring equal treatment of people in the LGBT community.

The aim of the states’ lawsuit is to allow private-sector employers in those states to discriminate against gays, lesbians, bisexual and transgender individuals, same-sex spouses and other targeted groups without having to worry about federal discrimination charges (it goes without saying that state legislation in those states fails to protect these groups). Of the 16, eight are Southern states, far out of proportion among the 50 states.³³

Sexism

A recent economic research paper examined the effects of sexism on American women and how prevalent, among the 50 states, are stereotypical beliefs about women entering the workforce versus staying in the home. The study defines prevailing sexism in a state as the extent to which its residents believe that women’s abilities are inferior to men’s, that women getting a job is harmful to the family, and that men and women should occupy specific, distinct roles in society.³⁴

Nearly all the Southern states are in the bottom half of states based on various measures of prevailing sexist attitudes. Four Southern states (Arkansas, Kentucky, Mississippi and Tennessee) are among five in the “highest” level of sexism, in a methodology that divided states into septiles (seven tiers) based on the prevalence of sexist attitudes among state residents. Six Southern states (Alabama, Florida, Georgia, Louisiana, North Carolina and Texas) make up all of the sixth septile, the next highest incidence of sexism. The other 40 states are spread among the remaining five septiles.

The New South and Labor Rights

European companies investing in American Southern states should know the historical trajectory of the still-tenacious Southern culture of anti-unionism, low wages, racial divisions and low social standards. And they should use this understanding to implement employment policies and practices that begin to reverse that trajectory.

The End of Slavery and the Aftermath of the Civil War

The South has shaped a unique labor and employment culture that keeps Southern states in the bottom ranks of social standards indicators and impedes progress toward social justice and equality. Its origins lie in the centuries-old slave system that characterized the South before the Civil War, and what happened after the war.

For more than a decade after the Civil War’s end, in what is called the Reconstruction period, federal authorities enforced laws protecting former slaves and broadening civic participation. African Americans voted in large numbers, and many were elected to local governments, state legislatures and Congress.

These were Republican elected officials, when it was still the party of Abraham Lincoln that had won the war and ended slavery. Prof. Eric Foner of Columbia University, the most prominent historian of the period, explains:

The new governments had a solid record of accomplishment. They established the South's first state-funded public school systems, sought to strengthen the bargaining power of plantation laborers, made taxation more equitable and outlawed racial discrimination in transportation and public accommodations. They offered aid to railroads and other enterprises in the hope of creating a New South whose economic expansion would benefit black and white alike.³⁵

Many of the freed slaves created cooperatives and other collective institutions in the still-predominant agricultural economy. Dock workers in Southern coastal states and railroad workers throughout the South also turned to trade union formation as the South rejoined the nation's transportation system in the 1870s.

The Reconstruction period ended abruptly in 1877 when Rutherford B. Hayes took office. A Republican—but hardly in Lincoln's mode—Hayes promised to end federal enforcement of civil rights in the South. Racist Democrats quickly took control of state governments at all levels, and quickly moved to destroy the accomplishments of Reconstruction and replace them with the “Jim Crow” system of open, malicious discrimination against African Americans in the South. As Foner described it:

It was...widespread violence, coupled with a Northern retreat from the ideal of equality, that doomed Reconstruction....One by one, the Reconstruction governments fell. As a result of a bargain after the disputed presidential election of 1876, the Republican Rutherford B. Hayes assumed the Oval Office and disavowed further national efforts to enforce the rights of black citizens, while white Democrats controlled the South. By the turn of the century, with the acquiescence of the Supreme Court, a comprehensive system of racial, political and economic inequality, summarized in the phrase Jim Crow, had come into being across the South.³⁶

Southern employers and politicians' attitude toward workers and trade unions has been widely noted by prominent and respected historians of the South. In a classic 1941 work titled “The Mind of the South,” W.J. Cash wrote that after the war:³⁷

The standards of agriculture fetched over into industry....Like the industrial worker in New England and Lancashire seventy-five and a hundred years before, he [the Southern industrial worker] accepted them as in the nature of things.

Discussing the “Red Scare” of the post-World War I era, with revolution in Russia and the appearance of small socialist and Communist parties in the United States, Cash observed:

The passion for “Americanism” in the South was the passion that the South should remain fundamentally unchanged....“Red perils” and “alien menaces” sound absurd in connection with the region....Almost the sole content of immediate actuality in these phantasmagoric terrors was...the peril of the labor movement to the interests of the ruling classes....The Southern cotton mill baron saw the labor movement as the flaming archangel of Moscow itself, and promptly set up the formula: labor organizer equals Communist organizer....There was in the South in these years an active antagonism among the working men themselves to the idea of unionization...a glowering suspicion that unionism was communism, and so a menace to their Southern heritage. That itself was largely the result of the preachments of newspapers, politicians, and other masters of public psychology.

Cash then recounted the sudden, harsh wage cuts and longer hours imposed on cotton mill workers in 1929 as the economy moved toward the stock market crash. They provoked what Cash called “the

first genuinely serious labor revolt the South had ever known.” Still shut out of most Southern mills, the United Textile Workers union launched large-scale strikes in North Carolina, South Carolina and Tennessee. However, Cash noted, “they were inevitably doomed to defeat:”

The whole business community of the region participated in the feeling that the strike represented a direct and intolerable threat to their personal interests....The men in control of the mills clung to the notion that merely by operating them on any terms, they entitled themselves to the complete gratefulness of workman and public, and to be regarded as leading patriots of the South....If this thing succeeded, Southerners might be deprived of their pride against Yankeedom...with all that meant for the racial values of the region. Hence it must be put down at all costs....And so the masters of the mills, businessmen in general, planters, and farmers faced it with hot-eyed anger and determined to have none of it in Dixie.³⁸

Using both police forces and armed vigilante groups, political and business leaders violently crushed the textile mill strikes of 1929, killing some in assaults on picket lines and jailing many more on false charges. Cash concluded:

The union idea and the strikes...violated the whole notion of the South of the moral right of the captains of the upper orders to tell the people what to do and think....The revolt of the workers presented itself to them not only as an act of ingratitude, but as one of active rebellion against their own and all other rightful authority....The strikers also found themselves and their cause ranged against that old antipathy to the Yankees and all his ways which had always stood at the core of Southern patriotism. It was out of the North, you see, that the whole union idea had come to the South...

Unions = Foreigners and Communists

Writing about Southern states' efforts to attract business in the 1950s, historian James C. Cobb recounts anti-union propoganda that included such statements as “Who are the men who run this union?... Baldenzi, Rieve, Cheepka, Genis, Jabor, Knapik and Rosenberg. Where do you think these men come from? Are their beliefs and principles anything like yours and mine?” and “This outside influence is just a bunch of pot-bellied Yankees with big cigars in their mouths and the dues they will collect will go up North...if they come in you will share the same restroom with Negroes and work side by side with them. It comes right out of Russia and is pure communism, nothing else.”³⁹

In a telling case typical of Southern anti-union culture, Cobb reported:

After voters in Star City, Arkansas, approved a \$150,000 bond issue for a new garment plant, the city council passed an ordinance requiring union organizers to pay a daily license fee of a thousand dollars. The mayor explained that the manufacturer had made it clear that “if the union ever got into this plant here, they might have to close up. We’ve got too big a stake in this to let anything like that happen.”⁴⁰

In addition to business and political officials mobilizing against unions, Professor Cobb’s history also describes how other elements of the Southern culture’s power structure joined the anti-labor campaign:

- Local police took harsh measures against union organizers and striking workers, quickly arresting and detaining them while letting employers’ security agents run free;
- Local newspaper editors and columnists persistently denounced Northern unions and “labor agitators” for disrupting tranquil employment relations in the South; and
- Church leaders attacked unions as “sinful,” and preached sermons saying that union members would not be “saved” for Christ and that “CIO” means “Christ Is Out.”⁴¹

Labor and Politics in the South

Slavery ended with the Civil War. But it took another century for a new civil rights movement, new civil rights laws and reassertion of federal authority to put an end to Jim Crow in the 1960s and '70s. The Civil Rights Act of 1964 and the Voting Rights Act of 1965 outlawed workplace discrimination based on race and tore down many barriers to black citizens' voting that Jim Crow governments had erected.

Despite such progress, the workplace ethos embodied in slavery—the owner orders; the slave submits—has persisted in a free-labor guise through the Jim Crow century and into what is called the “New South” of today, even though it has moved beyond crude Jim Crow attitudes. Now, the employer mandates and the worker obeys. As Cash suggested, any interference in that relationship, whether from federal civil rights authorities or from trade unions when workers choose to organize, still is viewed as Northern interference in the Southern way of life.



Miami hotel workers on strike in 1955. Credit: UMD Historical Archives

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‘Yankee Unions’

The anti-North aspect of Southern anti-unionism still is evident today. Company managers and state and local government officials attack “New York unions” when workers try to organize in textile mills and warehouse distribution centers; “Detroit unions” in automobile plants, “Pittsburgh unions” in steel factories, “New Jersey unions” in chemical plants and “Seattle unions” in aircraft manufacturing—all coded references to what many Southerners still see as “Northern aggression” in the Civil War (even though the South started the war by bombarding a federal fort in South Carolina).

A leading American economic historian traced the trajectory of Southern anti-unionism and its relationship to state and local politics in the South in the first half of the 20th century—a trajectory that has continued into today. Prof. Gerald Friedman of the University of Massachusetts explains:

The South avoided forms of working-class collective action and political competition that were common in other industrialized places....Unions were rare, making the South the choice site of “American exceptionalism.” Southern politics was also exceptional. Instead of the vigorous party competition found in other democracies, the South was long dominated by a lily-white Democratic Party...Elsewhere, strong labor unions connected workers’ aspirations for higher wages with broader campaigns for social reform....There were periods of extraordinary union growth and strength in the northern states. But northern unions were undermined by union weakness in the American South. Union weakness there undermined unionization and social reform throughout the United States.

Friedman went on to note:

Political competition forced northern politicians to make concessions to organized labor; the absence of such competition in the South allowed southern politicians to cater to the region’s economic elites at the expense of organized labor....Nowhere else in the United States did state officials work so closely with employers against labor...Electoral security freed southern politicians to advance a one-sided pro-business agenda.⁴²

The Democratic-Republican Party Transmutation

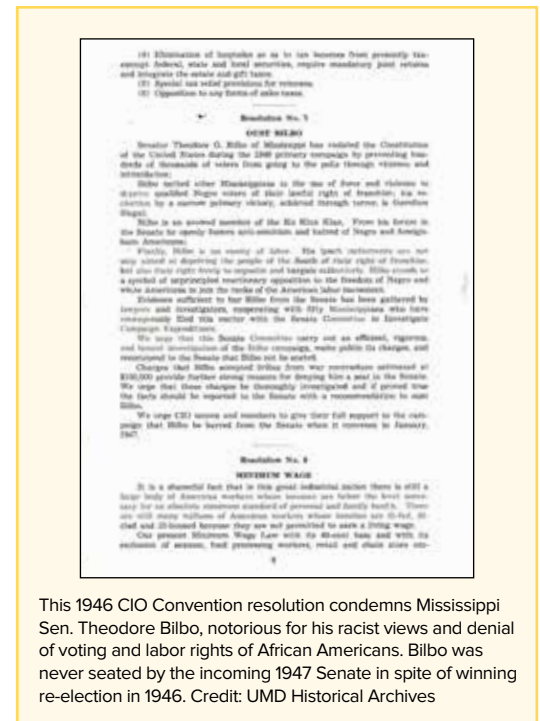
Foreign readers should understand the historic role reversal that has taken place between the Democratic and Republican parties in the South. For more than a century after the Civil War, which had been prosecuted by Abraham Lincoln and the Republican party, the Democratic party was the dominant white racist party that installed Jim Crow systems throughout the South.

The Republican party largely disappeared in the South for most of this period. In effect, the South was a region of one-party rule with little competition. Southern Democrats usually won state and local elections by wide margins, preserving racial divisions and anti-labor policies.

It was only in the 1980s, during the conservative, anti-union presidency of Ronald Reagan, that the Southern power structure “flipped” to the Republican party. By then, the national Democratic party had moved more strongly toward what are called “liberal” policies, including policies favorable to workers and unions.⁴³

In a relatively short space of some 20 years, the super-majoritarian anti-black, anti-union political power in the South shifted to the Republican party. Along the way, Republicans created voting districts packed with African Americans so some black candidates could be elected to office in their majority-black districts (usually running as Democrats allied with the national party). But many more voting districts were mostly white. The result was that African Americans had few seats overall, and limited political strength, while the traditional white power structure endured.

Most Southern states now are considered solidly “Red” (in American political terminology, this means conservative, pro-business and Republican), as opposed to more liberal, pro-labor Democratic party-supporting “Blue” states—the opposite of Red-Blue political color symbolism in Europe. All but one of the former Confederate states voted for Donald Trump for president in 2016.⁴⁴



This 1946 CIO Convention resolution condemns Mississippi Sen. Theodore Bilbo, notorious for his racist views and denial of voting and labor rights of African Americans. Bilbo was never seated by the incoming 1947 Senate in spite of winning re-election in 1946. Credit: UMD Historical Archives

Challenge for European Firms

This is the history and political context in which European multinational companies place their investments when they locate operations in the American South. Their challenge is: will they be part of the problem, wholly adopting Southern-style anti-labor ideology and union-busting practices that go hand in hand with low regional economic and social standards? Or will their important role be acknowledged as part of the solution, applying home country standards of respect for workers' rights to freedom of association, trade union organizing and collective bargaining, and thereby contributing to genuine social progress and enduring social justice in the American South?

The AFL-CIO and its European labor allies want to be clear: this is not a zero-sum game. Unions are not opposed to European corporate investment in the American South, or anywhere in the United States. Such investment is welcome as long as it does not harm workers in Europe and contributes to creating good jobs and successful businesses on a proper foundation of respect for American workers' rights. Unions could ensure job security and pragmatism in tax subsidy deals. Unions and growth are mutually reinforcing, rather than competing forces with one another.

Some European firms have applied high standards and are prospering in their Southern U.S. operations, while dealing forthrightly and honestly with trade unions chosen by their employees for collective representation. Most of them, too, received substantial subsidies and tax breaks from state governments to attract their investment. But they are giving back to the people whose taxes benefited them by honoring workers' organizing and collective bargaining rights, thus allowing workers and their trade unions to have a greater voice in the state's economic and social policy making to address working people's concerns.

Other European companies have fallen into a negative pattern of aggressive moves to thwart workers' organizing efforts, and even to refuse to bargain when employees choose union representation. They often turn to notorious "union-busting" law firms and consulting groups that specialize in breaking organizing campaigns and frustrating collective bargaining when workers win representation, with an eye to getting rid of the union later. Importuned by Southern states' siren song of a "right to work," deregulated and tax-free paradise, companies taking this low road will contribute only to continued social and political failings in the South and add fuel to the global race to the bottom.

THE RIGHT TO WORK FRAUD

The Origins of Right to Work

Political, media and business leaders repeatedly trumpet "right to work" laws in every Southern state as a reason for European companies to invest there. The phrase is simply a marketing "brand" invented by anti-union crusaders in the 1940s. These laws have nothing to do with rights, and nothing to do with work—but everything to do with weakening workers' organizations and their bargaining power and political strength.

Unions gained some footholds in Southern states in the 1930s, but in *The Mind of the South* in 1941, W.J. Cash foretold the challenges that awaited:

A reactionary Congress may be elected and emasculate the Wagner Act...and the mill owners of the South will seize upon the opportunity for a general offensive against the unions....In spite of slow changing, the old pattern is still too powerfully stamped upon the mind of most of the workers to make them able to stand up against the odds they would face.

Indeed, a reactionary Congress adopted the Taft-Hartley Act in 1947. While the National Labor Relations Act (NLRA, also known as the Wagner Act) of 1935 is often called “Labor’s Magna Carta” because it protects workers’ right to organize and bargain collectively, the Taft-Hartley Act of 1947 is considered “Management’s Magna Carta,” because it severely weakened many key features of the NLRA.⁴⁵

Among various anti-union clauses of the Taft-Hartley Act, the law allowed individual states to adopt right to work laws to undermine workers’ bargaining power. Most Southern states moved quickly to enact such laws. But the right to work phenomenon had an earlier and more sordid provenance than just a change in the labor law.



In 2018, Missouri defeated a ballot initiative that would have implemented “right to work” in the state.

What is Right to Work?

“Right to work” is a marketing slogan cleverly adopted by anti-union forces in the 1940s. The phrase does not appear in any legislation, and it has nothing to do with rights or work. The legal import of “right to work” laws is very precise: they prohibit employers and unions from including in a collective bargaining agreement any provision requiring payment by nonunion members so that the cost of representation is borne equally by all represented workers. Such “fair share” fees are prohibited under right to work laws notwithstanding that the union has a legal obligation to represent nonmembers as well as members in the bargaining unit covered by the collective agreement, and even if employers and unions are willing to agree to a fair share clause in the contract.

Many right to work proponents misleadingly assert that without such laws, workers are forced to join unions against their will. This is totally false. Under the First Amendment of the U.S. Constitution on freedom of speech and assembly, no one ever can be compelled to join an organization—a union, a church, a political party or any other group—if he or she does not want to become a member. However, in states where right to work laws do not prevent it, employers and unions can agree that all workers in a bargaining unit represented by the union must contribute to the cost of representation, either by union dues paid by workers who have voluntarily joined the union (again, membership is *always* voluntary) or by “agency fee” or “fair share” payments by nonmembers.⁴⁶

Contrary to a common misunderstanding, such “union security” fair-share payments are not required by law in states without a right to work law. A union security clause requiring fair-share payments is always a subject of bargaining. It only can take effect when the employer agrees to it. Indeed, in every non-right to work state such as high-union New York and California, some employers have not agreed to such a contract clause.

Right to work proponents dress up their cause with talk of “individual liberty” and “no forced tribute to union bosses.” But behind the rhetoric, the real goal is to divide workers and deprive unions of resources so they are less able to defend workers’ interests.

An early use of the term right to work in an anti-union context appeared in a Dallas Morning News column in 1941 by conservative editor William Ruggles. Ruggles was contacted a few days later by a man named Vance Muse. A legal scholar picks up the story thereafter:

No one was more important in placing right to work on the conservatives’ political agenda than Vance Muse of the Christian American Association....Muse had long made a lucrative living lobbying throughout the South on behalf of conservative and corporate interests....Over the course of his career, he fought women’s suffrage, worked to defeat the proposed constitutional amendment prohibiting child labor, lobbied for high tariffs, and sought repeal of the eight-hour workday law for railroaders.

By the early 1940s, Muse and his Christian American Association allies, like many southern conservatives, focused their wrath on the labor movement, especially the unions associated with the Congress of Industrial Organizations that were organizing sharecroppers and challenging the legal underpinnings of white supremacy....The Christian American Association warned that the CIO was sending organizers to the rural South...as the first step in a plot to Sovietize the nation....

The Christian Americans insisted that right to work was essential for the maintenance of the color line. Otherwise, “white women and white men will be forced into organizations with black African apes...whom they will have to call ‘brother’ or lose their jobs....”

It is not coincidental that right to work first took root in the Jim Crow South. In those states, few blacks could cast free ballots...and political power was concentrated in the hands of an elite. Right to work laws sought to make it stay that way, to deprive the least powerful of a voice, and to make sure that workers remained divided along racial lines.⁴⁷

Right to work proponents today are careful not to employ the racist rhetoric of their forbears. But their arch-hatred of unions remains front and center. A long-sought goal of the National Right to Work Committee, an employer-sponsored organization devoted to undermining trade unionism in the United States, is to smash the collective bargaining system by allowing individual employees to abandon their co-workers and opt out of union representation.

The Right to Work Committee calls union representation:

Monopoly bargaining...a special coercive privilege given to unions by federal law...every worker loses his or her right to negotiate directly with the employer on his or her own behalf...trampling of individual rights...coercion to herd workers into collectives against their will...enthrones union-boss control over workers....⁴⁸

In the name of individual freedom, each worker would bargain for herself or himself individually. While a handful of highly skilled, high-in-demand employees might seek higher pay than that negotiated by the union, a much larger group of workers could agree to *lower* wages and benefits than those negotiated by the union, in hope of currying favor with the employer, thus triggering a race to the bottom among workers generally.

Another Fraud: Southern Workers Don't Want Unions

At the same time that political, corporate and media leaders in the South tell foreign investors “come to the South—we're a right to work state,” they propagate another myth: that Southern workers are different from Northern workers: they are individualistic, looking out for themselves and their families, not interested in joining with co-workers to make demands on employers. “Southern workers don't want unions” joins right to work as a mantra of Southern anti-union culture.

Politicians, business groups and editorialists repeat this mantra *ad infinitum*, counting on the maxim that if one repeats a big lie often enough, people will come to believe it. But it is a refrain that is belied both by history and by current events. To begin, unions represent more than 2 million workers in Southern states today.⁴⁹ But a look back over two centuries also disproves the myth and shows the courage of Southerners in taking collective action.

Southern slaves developed many forms of resistance, sometimes open rebellion, against their oppressors.⁵⁰ Likewise, Southern workers, black and white alike, stood up to their employers in the Jim Crow South:

- Southern railway workers played a leading role in building trade unions in the nation's railroad industry in the late 19th and early 20th centuries.⁵¹
- Textile workers' organizing and strikes marked much of Southern labor affairs in the first half of the 20th century.⁵²
- Southern workers, black and white together (including 10,000 workers at the R.J Reynolds plant in Winston-Salem, North Carolina), built a strong union in the Southern tobacco industry in the 1930s and 1940s, only to see employers counterattack using “Red Scare” tactics to destroy the union.⁵³
- Alabama steelworkers in the 1930s and 1940s—again, black and white workers united—built a strong union in the steel industry in Alabama, a union that still effectively represents employees in steel mills in that state.⁵⁴
- It is widely known that Dr. Martin Luther King Jr., the hero of the civil rights movement of the 1950s and '60s, was assassinated in Memphis, Tennessee, in 1968 when he went to support striking sanitation workers who had formed a union, but were (and still are!) denied the right to collective bargaining under state law.
- In 1978, more than 15,000 shipyard workers at Newport News Shipbuilding in Virginia voted for representation by the Steelworkers union, then carried out a long and ultimately successful strike after the company refused to recognize their union—which led to a collective agreement and continued contract renewals with wage and benefit improvements since then.⁵⁵

“Southern workers don't want unions” joins right to work as a mantra of Southern anti-union culture. Politicians, business groups and editorialists repeat this mantra *ad infinitum*, counting on the maxim that if one repeats a big lie often enough, people will come to believe it. But it is a refrain that is belied both by history and by current events. To begin, unions represent more than 2 million workers in Southern states today.

Into the 21st century and up to the present day, Southern workers have always belied the myth that they are not interested in trade union organizing. The two biggest private-sector union organizing victories in the United States thus far in the new century took place in 2002, when 6,000 workers at the Avondale shipbuilding facility in New Orleans chose union representation by the AFL-CIO Metal Trades Council,⁵⁶ and in 2008, when 5,000 workers at the world's largest meatpacking plant, Smithfield Foods in North Carolina, voted for representation by the United Food and Commercial Workers.⁵⁷

Unions have won bargaining rights at many other, smaller worksites throughout the South in recent years. And as the case studies in this report show, Southern workers continue to launch new organizing efforts and often succeed in winning union representation. If anything, the fact that Southern workers continue to build their unions in the face of employers' hostility and a dominant anti-union culture disproves the myth that they don't want unions.

PART TWO

CASE STUDIES OF EUROPEAN COMPANIES IN THE AMERICAN SOUTH

INTRODUCTION

The following case studies examine the conduct of European companies in response to workers' efforts to form and join trade unions and bargain collectively in the American South. Unfortunately, they often involve aggressive campaigns of fear and intimidation to break workers' organizing efforts.

When they adopt U.S. management-style anti-union strategies and tactics, European companies violate international standards on workers' freedom of association and collective bargaining. These include ILO Conventions 87 and 98; the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights, the UN Global Compact, and other international human rights and labor rights instruments. These are the very same standards that European companies celebrate in their public pronouncements on corporate responsibility. These standards uphold the principle of noninterference in workers' organizing. However, U.S. labor law allows managers to launch fierce anti-union campaigns in the name of "employer free speech" in violation of these international standards.

Anti-union campaigns in the United States include "captive-audience" meetings ("captive" because workers are required to attend them; if not, they can be disciplined for insubordination), in which managers make speeches, show films and PowerPoint slides, and use other methods to attack unions. The case studies provide vivid examples throughout. Most often, management makes implicit threats of dire consequences if workers join a union—most powerfully, the threat that workers will lose their jobs or that the workplace will close if they choose union representation.

Even more insidious are one-on-one meetings between supervisors and employees in which supervisors threaten workplace closure if workers form a union. All these meetings are scripted by consultants in the anti-union movement—a multibillion-dollar industry in the United States. As will be seen, many European companies engaged notorious "union-busting" law firms and consulting groups to fight workers' organizing moves.⁵⁸

Such anti-union campaigns are not required under U.S. law. They are just permitted under the rubric of "employer free speech." Nothing in U.S. labor law prevents European multinational companies from remaining neutral and letting workers decide for themselves whether to join a union and bargain collectively, without a harsh anti-union campaign of fear and intimidation. That is, European companies can consistently apply international standards in their American facilities—the same standards they apply at home.

Basic Elements of U.S. Labor Law

A brief description of the U.S. labor law system sets the stage for the case studies. To begin, American labor law contains a strong affirmation of workers' freedom of association. Often called "Section 7 rights" in U.S. labor discourse, that section of the National Labor Relations Act declares that:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.⁵⁹

Section 8(a) of the NLRA sets out "unfair labor practices" that are unlawful, including interference, restraint or coercion of employees in the exercise of Section 7 rights, discrimination against workers who exercise those rights, and refusal to bargain with workers' chosen representative. The National Labor Relations Board is empowered to investigate unfair labor practice charges and to take remedial action when violations are determined.

Unfortunately, the written guarantees of workers' organizing and bargaining rights often fail in practice. Many elements of U.S. law violate international freedom of association standards. They include:

- Allowing employers to mount one-sided, aggressive workplace pressure campaigns against workers' organizing efforts, marked by forced-listening "captive-audience" meetings filled with predictions of dire consequences if workers organize, without providing workers similar access to information supporting union organizing;⁶⁰
- Allowing employers to deny workers the right to meet union representatives at the workplace to discuss forming a union;⁶¹ and
- Allowing employers to permanently replace workers who exercise the right to strike for better wages and working conditions.⁶²

Each of these anti-union tactics is practically unheard-of in Europe. To take one example, that of captive-audience meetings: a German scholar explains that in Germany, "[T]he employer is not entitled...to force speeches against unionization on his employees....There is no room for American style captive audience meetings....If the employer wants to address issues typically addressed in American captive audiences, there is virtually no chance of doing so legally."⁶³



North Carolinians mobilized and protested to fight for a higher minimum wage in Durham in 2018. Credit: Phil Fonville

Three Key Features

Three other central elements of U.S. labor law are important to understand, especially as they differ from most European labor law systems: the principles of majority rule, exclusive representation and duty to bargain.

Majority Rule

Under the NLRA, only unions chosen by a majority of employees in a bargaining unit can gain recognition and collective bargaining. An NLRB-conducted secret ballot election is often the means of confirming majority status. But in some circumstances, unions can show majority support by signed membership cards, petitions and other methods. Unions and employers often agree on such a “card-check” method of gauging majority sentiment, often with employers’ promise of neutrality in organizing.

Exclusive Representation

The NLRA makes a certified union the exclusive representative of all employees in the bargaining unit, whether or not they are union members and whether or not they support the union. If 51% of employees choose union representation, and 49% are fiercely anti-union and want no part of it, the union is nonetheless the exclusive bargaining agent for all of them. All the workers’ terms and conditions of employment are those negotiated by the union.

Duty to Bargain

When a union is chosen by a majority of workers, employers have a legal obligation to come to the negotiating table and bargain with the union in good faith—in brief, with an open mind and sincere desire to reach an agreement. If an employer fails to meet this legal obligation, the union can file an unfair labor practice charge alleging bad-faith bargaining. But reflecting the weakness of U.S. labor law, the only remedy for bad-faith bargaining is an order to return to the table and bargain in good faith, whereupon the same cycle can repeat itself.

LABOR AND EMPLOYMENT LAW IN THE UNITED STATES

The U.S. Distinction Between ‘Labor Law’ and ‘Employment Law’

In the United States, the term “labor law” refers to collective labor relations—everything related to trade union organizing, collective bargaining, strikes and lockouts, mediation and arbitration, and other matters involving workers acting collectively and employers’ responses to union activity.

The term “employment law” refers to the individual employment relationship—everything that is *not* labor law-related. Laws and regulations on wages and working conditions, for example, fall within the employment law ambit as regards individual workers. When workers gain union representation, these become subjects of collective bargaining and move into the labor law realm. Laws and regulations are a “floor” on which workers can bargain for higher standards—they cannot agree to lower standards.

The ‘At-Will’ Employment System

The individual contract of employment is also part of the employment law system. However, in contrast to countries in Europe (and around the world), most workers in the United States typically do not have an individual written contract of employment. They are employed “at will” and can be terminated from employment at any time, for any reason—a good reason, a bad reason, or no reason at all, as long as it is not a reason prohibited by law (race or sex discrimination, for example).

The “at-will” rule also allows employers to reduce salaries, change job duties, mandate more or fewer hours of work, or make other changes without the consent of the employee. If the employee is unhappy with the changes, the only recourse is to quit the job and look for another.

Instead of a contract of employment, workers are bound by the employer’s unilateral policies often contained in a “handbook” distributed to employees. These handbooks all say, in one form or another: “This is not a contract of employment—you are an at-will employee—we can dismiss you at any time for any reason.”

Union-represented workers are protected against such treatment because they have a collective agreement requiring just cause for dismissal. The NLRA also prohibits employers from making any changes in terms and conditions of employment without first negotiating with the union. This is the main reason why managers in the United States fight so hard against unions: they want to maintain complete, unilateral control of the workplace without having to deal with a trade union. In the end, the question is one of power in the workplace. When workers successfully gain union representation by majority choice, management must cede a portion of its total power to them.

The Common Law System

Employment law also includes common law rules on the employment relationship—rules developed by court decisions rather than by laws and regulations. The common law system is part of the Anglo-Saxon legal tradition, in contrast to the civil law system that prevails in most of Europe. Common law is built by judicial decisions that over time create rules to regulate behavior. The rules are not written, except as they are contained in court decisions. In civil law systems, the legislature, not the courts, defines rules and regulations in extensive written codes.

Common law in the employment context is grounded in the “master-servant” relationship going back to medieval England, emphasizing the subordination of the “servant” and the authority of the “master.” This feature of common law is the source of the at-will rule. At the same time, the common law offers some recourse to workers when their employer commits a “tort,” a wrongful act such as negligence, invasion of privacy, intentional infliction of emotional distress, and so on.

FEDERAL AND STATE COMPETENCY IN LABOR AND EMPLOYMENT LAW

Labor Law: Exclusive Federal Jurisdiction

Federal law embodied in the NLRA and administered by the NLRB is the exclusive legal regime for collective labor relations. The individual states have no competence to adopt and enforce statutes covering labor law matters in the private sector. The only exception, as discussed earlier, is that the NLRA authorizes individual states to adopt right to work laws prohibiting voluntary agreements between unions and employers in those states to require nonunion members to pay a fair-share representational fee to the union.

In the case studies that follow, captive-audience meetings and other forms of anti-union campaigning by employers, unfair labor practice charges, NLRB elections, collective bargaining and other scenarios all are governed by federal law. In the same vein, appeals from decisions of the NLRB go to federal circuit courts of appeals, not to state courts. State courts have no role in the labor law realm.

This does not mean the labor relations climate in individual states does not make an important difference. Employers in Southern states are emboldened by the prevailing anti-union culture to fight union organizing, to challenge NLRB elections that result in union victories, to use spurious appeals to delay collective bargaining and to otherwise violate workers' right to freedom of association.

Moreover, federal appeals courts for regions that include Southern states are known by practitioners to be generally anti-union and pro-management in labor law cases. Federal judges are nominated by the president, but a strong "customary" rule gives senators from a prospective nominee's home state a veto power over the nomination. Senators from Southern states tend to be anti-union, so they would veto the nomination of anyone who might be sympathetic to trade unions.⁶⁴

Concurrent Federal and State Jurisdiction for Laws and Regulations

In the employment law arena, as distinct from labor law, federal laws and regulations set minimum standards. States can set standards at higher, more protective levels. For example, the federal minimum wage is \$7.25 per hour, but 29 states have set a minimum wage higher than the federal minimum. Only Arkansas and Florida among the Southern states have done so. This is a generalized pattern for most areas of employment law: Southern states, unlike many other states, usually do not set standards higher than federal minimums. This locks Southern workers into lowest-common-denominator terms and conditions of employment, compared with conditions for workers in the rest of the country.

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State-only Jurisdiction for Common Law Cases

Common law in the employment context is state-based, usually determined ultimately by the supreme court of each state. State courts vary widely in their application of common law to employment matters. In some states, courts are sympathetic to workers and tend to rule favorably for them. In other states it is the reverse: courts are sympathetic to employers and tend to rule in their favor.

This report does not allow space to enter into the intricacies of common law in the employment setting in 50 states. However, it is generally known among labor advocates and employment law practitioners that Southern states fall mainly in the latter group, tending to decide cases in employers' favor, not in the interest of workers.

OUTLINE OF CASE STUDIES

European Company	Sector	Southern State	U.S. Trade Union*
Airbus	Aerospace	Alabama	IAM
Fresenius	Health Care	Alabama	RWDSU, UFCW
IKEA	Retail	Florida, Virginia	UFCW
LSG Sky Chefs	Airline Food	Florida, Texas	UNITE HERE
Nestlé	Food	Georgia	RWDSU, UFCW
Schnellecke	Logistics	Alabama	UAW
Skanska	Construction	Tennessee	Building Trades
thyssenkrupp/Outokumpu	Steel	Alabama	USW
Volkswagen	Automotive	Tennessee	UAW

***Trade union glossary:**

Ironworkers, IUPAT, SMART: Ironworkers, Painters and Allied Trades, Sheet Metal, Air, Rail and Transportation Workers and other construction unions
(Building Trades)

IAM: International Association of Machinists

RWDSU: Retail, Wholesale and Department Store Union

UAW: United Automobile, Aerospace and Agricultural Implement Workers

UFCW: United Food and Commercial Workers

UNITE HERE: Hotel, restaurant, food service, airport, textile, manufacturing, distribution, laundry, transportation and gaming workers

USW: United Steelworkers of America

AIRBUS IN ALABAMA

Airbus in Mobile, Alabama

In July 2012 the European aerospace giant Airbus Corp. announced it was investing \$600 million in a new aircraft manufacturing factory in Mobile, Alabama. Alabama attracted Airbus to Mobile by offering \$158 million of public money to make the move. Public monies included state bonds for building construction, logistics facilities, road construction and other infrastructure improvement, onsite training assistance and a newly built training center, and other subsidies from Alabama taxpayers. Besides laying out public funds for Airbus, Alabama also agreed to various sales and use tax abatements, equipment tax abatement and a long-term corporate income tax credit. These tax inducements save Airbus millions of dollars that stay in the company's profit column instead of supporting state government operations and services.

A succession of Alabama state officials, from governors on down, had recruited Airbus over many years, starting earlier with a smaller helicopter factory and a maritime patrol aircraft maintenance facility. The 2012 decision was the big prize, promising a plant with more than 1,000 workers assembling A320 and A321 single-aisle passenger jets.

Then-governor Robert Bentley credited Alabama's status as a right to work state hostile to trade union formation and collective bargaining as the key factor in Airbus's move. He said, "I think being a right to work state is the reason many international companies look at Alabama and the other right to work states." In another interview, Bentley said, "It does hurt in the recruitment of companies to come to Alabama...when a plant is non-unionized and suddenly it becomes a unionized plant."⁶⁵



Machinists (IAM) mobilize with community partners in a 5K race in Mobile, Alabama, to support Airbus workers.
Credit: IAM

Airbus Americas Chairman Allan McArtor echoed this view: “I don’t think there is any question that right to work states have an advantage on recruiting out-of-country employers....I don’t think there is any secret of the fact that it is an advantage.”⁶⁶ In another interview, the Airbus chairman encouraged suppliers to relocate in anti-union states. McArtor said a supplier would have to “rethink how they want to set up their own capital investment. If we’re going to insist that they expand capacity, do they want to make that investment in a union environment...or do they want to make it in a right to work state in the Sunbelt?”⁶⁷

Alabama business officials joined state leaders in touting hostility to unions as an advantage in luring firms. The president of the Business Council of Alabama put it this way: ““A union presence in Alabama would only serve to stifle job creation and economic opportunity...free enterprise can best meet the needs of its employees by maintaining an open and direct relationship with them, without the interference of a third party....Companies looking to locate here must be confident that Alabama will remain a business-friendly state.”⁶⁸ The head of the Chamber of Commerce in Mobile said, “We see it as a huge economic-development advantage to be a right to work state.”⁶⁹

Airbus, International Labor Standards and the Alabama Factory

‘Direct Relationship’ = No Union

In Europe, Airbus recognizes trade unions in every country where it operates, and engages in ongoing social dialogue with its European Works Council. Airbus joined the UN Global Compact in 2003, committing itself to “uphold the freedom of association and the effective recognition of the right to collective bargaining” under Principle 3 of the Global Compact (incorporating the first ILO core labor standard, which covers workers’ organizing and bargaining rights under Conventions 87 and 98).

But when it began operations in Alabama, Airbus adopted a harsh, aggressive anti-union posture intent on stifling employee’s effort to organize with the International Association of Machinists (IAM), the main aerospace workers’ union in the United States—even before employees joined the company. Barry Eccleston, the company’s American president, said: “We told all the people we recruited that we were planning to create an environment where employees have a direct relationship with management.”⁷⁰ “Direct relationship with management”—like “open-door policy, “no third-party involvement” and variations on the theme—is corporate code-speak meaning union-avoiding, union-free, nonunion and other expressions of an intent to block workers’ organizing efforts.



IAM supports a 5K race in Mobile, Alabama, to support Airbus workers. Credit: IAM

An in-depth feature journalism article made clear the key factors in Airbus’ Alabama choice: “Airbus got \$158 million in state and local benefits, including a school where the state trains potential Airbus employees at public expense....It helps that in Alabama, labor is cheap....It is expensive to ship parts from Hamburg, but because the Mobile workers are not unionized, Airbus can hire fewer of them and pay them lower wages.”⁷¹

Airbus Captive-Audience Meetings

But Airbus management did not stop with anti-union statements in new-hire training and orientation settings. Management also instituted a program of captive-audience meetings employees were required to attend and listen to more anti-union importuning. Here is a sample of the kind of statements management conveyed in captive-audience meetings:⁷²

- If the union ever comes in here, the union divides people and creates conflict.
- We can't be flexible with you anymore. With a union we have to go by the book. I have to do what the contract says; I need 24 hours' notice from you if you need to come in late or leave early.
- All the union cares about is getting your dues. It's just another business, that's why they're here.
- You don't have to join the union but if you don't, the union will make your life miserable.
- In collective bargaining, everything is on the table....It can take years to get a contract. During that time you get no raises, no bonuses, no changes to your benefit package. Everything stays as it is.
- Collective bargaining means give and take. You could get more than what you have now, or it can stay the same, or you can end up with less than what you have. Including losing your jobs if the union takes too much. It can happen.
- If the union pulls you out on strike for higher wages and benefits, we can permanently replace you. The law lets us do that.
- Having a union can mean less job security. Since 1975, a big percentage of union plants have shut down.
- The union has its own rules and bylaws. If you don't go along, the union can put you on trial and fine you.
- Be very careful because the union card is a legal document. Look at it, it says authorized, act, bargaining agent....When you sign a card you give up your voice—the union takes over.
- The union can promise you the moon but they can't guarantee getting it. They can't guarantee anything.

This report does not dwell on the intricacies of U.S. labor law, so it will not go into detail about the misleading statements and implicit threats in the foregoing statements which could serve as the basis of unfair labor practice charges under the National Labor Relations Act. But just a commonsense reading and evaluation of these statements demonstrate their intimidating effects.

Even if they were legal under U.S. law, these statements amount to interference with workers' organizing in contravention of ILO norms—something that U.S. employers have openly acknowledged. The U.S. Council for International Business, the American employers' representative at the ILO and other international organizations, said "U.S. law and practice conflict with many of the requirements of the ILO standards....U.S. ratification of the convention [ILO Convention 87]...would eliminate employers' rights under the NLRA to oppose unions."⁷³

One statement in particular stands out in light of international labor standards: telling employees that the company can permanently replace them if they exercise the right to strike. The ILO's Committee on Freedom of Association has found that the permanent striker replacement feature of American labor law violates Convention 87 on freedom of association, one of the ILO core conventions.

After each captive-audience meeting, managers and supervisors walked through production areas to repeat the main themes of the meetings and asked employees what they thought about the meeting or whether they had any questions. This is a standard tactic by anti-union employers; based on workers' responses and questions, management begins creating profiles of individual employees' sentiments about the union.

Management Interference

More interference with workers' organizing rights is seen in statements by a management-fostered "Better Together" anti-union group. Ostensibly "a group of concerned Airbus Associates against the IAM," an internal Airbus document made clear that management promoted the group and coordinated its missives with captive-audience meetings.

A "Monthly HR Report" noted among "identified risks and issues" that "Company committee has formed to launch campaign against IAM; Facebook page up and flyers distributed." Then under "Next Steps:" "Union education sessions for employees planned last week of October—content being completed now" ("union education sessions" is management's name for captive-audience meetings).⁷⁴

Some workers at Boeing, Airbus' major competitor in the world, are represented by the IAM and other unions. Here are some of the statements emitted by the management-approved "Better Together" group:

We are lucky that we work for a union-free Airbus plant here in Alabama, a right to work state. Our state's leadership has spoken out against unions...**WE MUST KEEP IAM OUT OF OUR COMPANY IF WE ARE TO SURVIVE HERE.**

IAM is Boeing's union, not ours...The IAM will say and do anything to get us to sign their union's cards. It has been sent here by Boeing and its goal is to get our money. We can't fall for their lies, because lies is all that they are. The Truth is that the IAM is trying to help themselves, not us.

Don't Fall for the IAM's Lies...THE IAM IS HERE TO TAKE OUR MONEY AND BRING OUR PLANT DOWN...DON'T LET BOEING AND THEIR UNION KILL OUR JOBS.⁷⁵

A 2019 'Union Avoidance' Job Notice

Airbus underscored its continuing anti-union intentions in U.S. operations when the company posted a recruitment notice for a "union avoidance" manager in Mobile in July 2019.⁷⁶ The company sought applicants to "drive an effective Positive Employee Relations (PER) campaign by actively partnering with employees and the business." In corporate management-speak, "positive employee relations" is code for keeping unions out.

Airbus made its meaning clear in listing duties and requirements for the position:

- Participate in PER *rapid response* team as a trained member in PER and union campaign tactics should union organization efforts occur;
- Develop and deliver employee relations and union avoidance training for supervisors and employees;
- Experience requirement: Experience with labor organizing efforts; and
- Knowledge requirement: Knowledge of union avoidance techniques.

Two other features of the union avoidance job indicate the company's concern to keep unions out of Airbus. One would have the manager "monitor social media accounts related to employee relations activities." That is, this manager would invade workers' privacy to track their use of social media for any sign of discontent or organizing sentiments. Another would have this manager "chair Employee Activity Committee," another method of possible surveillance and control of workers' associational activity.

Conclusion

Airbus's Responsibility and Sustainability Charter says "We are a global company that believes in promoting responsible business practices across our value chain....Our approach to sustainable development is guided by the internationally recognized UN Sustainable Development Goals..."⁷⁷

UN Sustainable Development Goal 8 specifies "protect labour rights" as a key goal, requiring "increase in national compliance of labour rights (freedom of association and collective bargaining) based on International Labour Organization (ILO) textual sources."⁷⁸

As noted previously, Airbus's membership in the UN Global Compact also obligates the company to adhere to ILO core labor standards and conventions on freedom of association and the right to organize. But in launching a harsh, aggressive campaign of interference with workers' organizing rights at the Alabama factory, Airbus has broken these commitments. Beyond that, by incorporating Southern anti-union ideology, strategy and tactics in its Mobile plant, Airbus has aligned itself with the same economic and political culture that has kept Alabama in the bottom tier of most measures of social justice and residents' well-being.

Airbus still can rectify its conduct and join the ranks of European companies that honor ILO core labor standards in the American South as they do at home. To accomplish this, the company should forswear the use of captive audience meetings, anti-union vilification crusades and other interference with employees' organizing rights that runs afoul of international human rights standards on workers' freedom of association. Airbus management should tell employees that union organizing is their choice and not try to influence it, and that the company will apply its home-based practices of recognizing and bargaining in good faith should workers choose union representation.

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FRESENIUS IN ALABAMA

Fresenius and International Labor Standards

Fresenius SE & Co. KGaA is a German-based multinational health care company employing more than 283,795 workers around the world. With \$30 billion in annual revenues, its business includes medical services, devices, hospital management, engineering and other activities.⁷⁹

Fresenius claims a high level of commitment to social responsibility based on international human rights standards:

Our code of conduct, which is applied in every division worldwide, forms the framework for treating our patients, colleagues and communities with respect and commitment they deserve. It is based on our company's core values of quality, honesty and integrity, innovation and progress, as well as respect, teamwork and dignity. It also emphasizes our commitment to operate in accordance with the applicable laws and regulations and our own company policies. Our code of conduct and the underlying corporate values also include Fresenius Medical Care's commitment to respecting human rights, and govern our actions, as do the UN Guiding Principles on Business and Human Rights.⁸⁰

Fresenius goes on to say that its suppliers are bound by Sustainability Principles defined as follows:

The Principles are to be considered as minimum requirements and take into consideration international standards such as the Universal Declaration of Human Rights, the International Labour Organization's Declarations on Fundamental Principles and Rights at Work (ILO declarations), the UN Global Compact and the EU Green Public Procurement Guidelines.⁸¹

The UN Guiding Principles expressly invoked by Fresenius include ILO core labor standards on freedom of association, the right to organize and the right to collective bargaining. As for its sustainability principles, Fresenius would not impose on suppliers any responsibilities it would not assume in its own operations. Inside Germany, most Fresenius workers are represented by the service-sector union Ver.di. Fresenius management in Europe generally respects workers' right to organize and bargain collectively. But when workers in Fresenius locations in the American South sought to exercise these rights, the company responded with severe violations of both international standards and U.S. law.

Fresenius is the world's largest provider of products and services for people with kidney failure and other chronic diseases. Almost two-thirds of the company's kidney dialysis treatment clinics and more than half its employees—nearly 60,000—are in the United States, where Fresenius Medical Care North America (FMCNA) operates nearly 2,500 dialysis facilities. It also manufactures dialysis equipment, disposable medical supplies and other products, and self-purveys supplies and equipment from 14 Fresenius distribution centers around the country. Most Fresenius workers in the United States are nurses and technicians in the clinics, while others work in manufacturing and logistics.

Fresenius in the South

The American South is a center of Fresenius operations in the United States. Based on the number of facilities in each state, nine of the company's top 18 states are in the South, and 40% of all Fresenius locations are in 10 Southern states—far out of proportion among the 50 states. Adjusting for population only underlines the company's Southern focus: California and New York have 60 million people and

157 Fresenius locations. Six Southern states with 40 million people—Alabama, Georgia, Louisiana, North Carolina, South Carolina and Tennessee—have 557 Fresenius facilities.⁸²

In Alabama, the company has 95 dialysis clinics, more than half of all the service facilities in the state. Wages for clinical technicians start at \$12 per hour, compared with starting wages in New York and California of \$15–18 per hour.

This report has highlighted the anti-union ideology and culture that predominate among political, business and media interests in Alabama—for example, a governor who says “I think being a right to work state is the reason many international companies look at Alabama and the other right to work states,” and business leaders who say, “A union presence in Alabama would only serve to stifle job creation and economic opportunity,” and “We see it as a huge economic development advantage to be a right to work state.”

Alabama has also been a center of workers’ union organizing efforts—more disproof of the myth that “Southern workers don’t want unions.” But rather than respecting workers’ rights, Fresenius triggered aggressive campaigns of interference and intimidation, taking advantage of Alabama’s anti-union climate.

Workers Turn to Union Organizing

Fresenius’ Response to Workers’ Organizing

Concerned about low pay, scheduling abuses, understaffing and unsafe conditions for both staff and patients, workers in Alabama clinics reached out to the Retail, Wholesale and Department Store Union in early 2017 for help in forming a union to address their problems. The RWDSU is affiliated with the United Food and Commercial Workers (UFCW). A majority of workers at seven facilities joined the union and petitioned the National Labor Relations Board for elections. Where a majority chose union representation, the company would be obligated to enter into good-faith collective bargaining with the workers and their union.

Fresenius reacted to workers’ exercise of the right to freedom of association with multiple tactics to break the organizing effort. Management gave pay raises to employees in clinics where organizing had not gotten under way, but refused to treat workers in the organizing clinics equally. In three clinics where workers sought an NLRB election after the pay raise, management convinced workers to drop the organizing try to have their raises restored.

In four facilities where workers persisted in their organizing efforts, Fresenius management unleashed a harsh campaign rife with fear-mongering communications and discrimination against union activists.

In four facilities where workers persisted in their organizing efforts, Fresenius management unleashed a harsh campaign rife with fear-mongering communications and discrimination against union activists. A complaint issued by the NLRB details some of the company’s unlawful tactics:

- Soliciting workers’ complaints and grievances to suggest that only management can address them, while a union would be powerless;
- Promising more benefits and better treatment if workers abandon their organizing efforts;
- Interrogating employees about their union activities and support for the union; and
- Refusing to give wage increases to workers involved in organizing.⁸³

The NLRB concluded that this conduct unlawfully interfered with and coerced employees in the exercise of rights to organize, and discriminated against employees because they engaged in union activities. But this technical recitation of unfair labor practices in the NLRB’s complaint does not convey the full story of what happened.

Fresenius went on a war footing to destroy the workers’ organizing drive in the weeks leading up to NLRB elections in August 2017. Management forced workers into captive-audience meetings filled with anti-union speeches and videos attacking the union and suggesting that the clinic would close and workers would lose their jobs if the union won the election. Anti-union consultants trained supervisors to hold one-on-one meetings with employees to convey the same prediction of dire consequences. One

consultant in particular roamed workplace floors haranguing workers about the union and warning of dire consequences if the union came in. Union supporters were closely watched and harshly disciplined.

In spite of management’s tactics, workers at two Mobile-area clinics voted in favor of union representation in August 2017. One was at the Dauphin Island Parkway facility, and one at the Azalea location.

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Intimidation and Retaliation

Workers from Fresenius clinics in Mobile recounted what happened when they began their organizing efforts in early 2017.⁸⁴ “When we sent for an election it was hell on wheels,” one employee said. “They [management] kept asking, ‘who called the union, who called the union?’ Everybody was scared they might lose their job. When we had our huddles at the start of the shift, they turned them into anti-union meetings, talking against the union.”⁸⁵

Another worker said, “When it got close to a vote, they had us stay after work for meetings with a union-buster they brought in from outside. She said she was from HR but that was a lie. This was her business, talking down the union and scaring people to vote no.”⁸⁶ She put up PowerPoints and talked about how the union’s no good, it just wants your money, it’s a chicken-plant union, it can’t do anything for you.”⁸⁷

In addition to meetings, a worker described another action by the consultant:

She [the consultant] came in during lunch every day when we were trying to have a break to talk against the union. Just before the vote, she said “you have one last chance to think again.” It was a threat. Last chance or what, if we went for the union?”

In addition to captive-audience meetings and lunchtime interference, the anti-union consultant also held one-on-one meetings with employees. One worker explained, “She said the union only wants our dues money, that the union can’t do anything, that it would take three or four years for negotiations, that the company doesn’t have to agree to anything and we could lose what we have.”

Workers went on to describe what they perceived as retaliation at the clinics where they voted in favor of union representation:

After we won the vote, they gave raises [salary increases] at the other clinics but not us. When we asked why, they said it was because of the union, because the union won the election. They kept saying “go ask your union why you didn’t get a raise.” They played us so unfair.

Fresenius's granting of a pay raise to all but the two clinics where workers chose union representation was grounds for one of several unfair labor practice charges filed by the union—in this case, an act of discrimination against employees because of their support for the union.

Lost Pay for Temporary Assignments

Another act of retaliation involved a valuable feature of employment at the clinics. Workers normally have an opportunity to take temporary assignments at other Fresenius clinics where additional staffing is needed on an urgent basis. This provides them with substantial additional pay, along with travel and hotel expenses if it includes an overnight stay.

Interviewed workers said that before the NLRB election, management told them that “the union” would only let you go to other union-represented clinics if the union won any of the elections. This claim was totally fabricated to threaten more adverse consequences if workers voted for the union.

Since elections were scheduled only at four clinics, it would mean that the other more-than-90 Fresenius clinics in Alabama would be off-limits for temporary assignments. Workers said this threat had a big effect on the vote, which resulted in union losses at two of the four clinics. One worker said, “They told us ‘if you go union, you can only go to other union clinics, if there are any.’ They were telling us we were going to lose money if we vote union.”

After workers at two clinics voted “yes” for union representation, Fresenius management implemented the threatened retaliations. One employee explained, “They kept us out for about six months after the election. Finally, after they needed people to travel and no one else could do it, they started letting us go to other clinics again. But for six months they punished us for voting union. We all lost money because of that.”

After Workers Voted ‘Yes’

At the Dauphin Island Parkway facility, Fresenius refused to accept workers' desire for a union. The company filed “objections” to the election results, cynically arguing that actions by workers and the union made the election invalid. In July 2018, nearly a year after the elections took place, the NLRB regional director dismissed these objections.

Fresenius had the opportunity at that point to honor the election results and bargain in good faith with the union. Instead, it filed an appeal to the NLRB in Washington, D.C. The full labor board upheld the regional director's decision, saying “the Employer failed to proffer evidence which would constitute grounds for setting aside the election.”⁸⁸

At the time of interviews with Fresenius workers in early 2019, more than 18 months had passed since the favorable union votes at the Dauphin Island and Azalea facilities. At Dauphin Island, management still was resisting the election results with wasteful, time-consuming appeals to the NLRB and the courts. “Everything's taking so long,” said one employee. “We just want to sit down and bargain, but it's just one holdup after another.” At Azalea, the company had come to the bargaining table with the union, but a collective agreement still was not achieved after more than a year of negotiations.

Finally, in late April 2019, Fresenius and the union reached a collective bargaining agreement at the Azalea facility. Union members approved the agreement in a ratification vote. They were especially pleased by contract language on scheduling protections such as sufficient advance notice of schedule changes and opportunities to secure favorable scheduling.

The agreement also provided up to 6% wage increases in the first year of the contract, as well as ratification bonuses and guaranteed union access to the facility to ensure the collective bargaining agreement is being properly adhered to (it should be noted that U.S. labor law does *not* comply with the international standard requiring trade union access to the workplace to carry out representational activity. Employers can prohibit such access, unless the union is able to gain it through collective bargaining).⁸⁹

Fresenius should be credited with reaching a collective agreement at the Azalea location. In May 2019, Fresenius finally accepted the vote results at the Dauphin Island location and entered into bargaining. But these developments are not enough to balance the company’s continuing anti-union campaigns in other locations when workers seek to form and join trade unions.

Fresenius still has a long way to go to demonstrate respect for international labor standards and adherence to its own commitments on workers’ rights. As the head of the UNI global union said:

This is a great first step for Fresenius and their workers in the United States and will improve the quality of jobs and the quality of care in these facilities, and it shows that Fresenius can do better. However, there is still a long way to go on the path to ensuring that their workers’ rights are respected all over the world. We call on the company to allow workers to freely organize—without fear and intimidation—in all of its facilities in the United States and across the world. We urge the company to take the opportunity to capitalize on this moment and engage with the UNI and PSI and negotiate a global framework agreement.⁹⁰



Fresenius workers organizing in Alabama. Credit: RWDSU-UFCW

IKEA IN FLORIDA AND VIRGINIA

IKEA in Florida and the South

In 2007, Netherlands-based IKEA opened its first Florida store in Sunrise, near the large Fort Lauderdale metropolitan area. IKEA needs no introduction; it is the world’s largest retailer of home furnishings and related products. It has more than 400 stores and 200,000 employees in more than 30 countries around the world. It is also perhaps the most brand-identifiable in public eye—its giant blue-and-yellow stores are known instantly by consumers worldwide. Forbes magazine values the IKEA brand alone as worth \$15.3 billion as of May 2019.⁹¹

IKEA was founded as a Swedish company and still promotes a Swedish brand identity. But the company has been incorporated in the Netherlands since the 1980s in the form of two nonprofit foundations, a move that analysts attribute to a desire by the closely held, family-owned company to escape corporate taxes that help support the Swedish welfare state.⁹² IKEA’s global headquarters—including headquarters for global labor relations—is located in Leiden, between Amsterdam and The Hague.

In Sweden and in other Scandinavian countries, trade unions represent all nonmanagement hourly and white-collar IKEA employees in a constructive, mutually respectful and beneficial workplace relationship. Similarly, German trade unions represent all the nonmanagement IKEA employees at its stores in Germany, with normal labor relations characterized by social dialogue. The same is true for IKEA and employees in the Netherlands. Indeed, most IKEA store employees in the entire world bargain collectively through unions—but not in the United States.

Florida’s political and business elites share the prevailing anti-union ideology and culture of those in other states of the American South. As Florida’s governor put it in an advertisement to potential investors from other states: “Lower taxes, less regulation, you don’t have to become a member of a union if you don’t want to. We’re a right to work state. You don’t have to worry about your taxes going up.”⁹³ In 2018, Florida adopted a new law aimed squarely at destroying bargaining rights of school teachers in the state.⁹⁴



UNI IKEA Alliance supports workers’ rights in the United States. Credit: UNI Global Union

Organizing at IKEA

When workers at IKEA's Florida store turned to UFCW for organizing help in early 2016, IKEA management responded with an aggressive, fear-inducing, anti-union campaign of interference with their organizing rights. Management statements and tactics included:

- Falsely telling workers union representatives were impersonating IKEA employees;
- Telling workers that union representatives were engaged in “invasion of privacy” by contacting them;
- Surveilling workers’ union activities;
- Telling workers that management would undertake a “witch hunt” against union supporters;
- Putting anti-union propaganda on bulletin boards around the store;
- Disseminating false, derogatory statements to workers about union supporters; and
- Turning “team meetings” into anti-union forums with implicit threats of negative consequences if workers pursued an organizing effort.

Pro-union employees at Sunrise stated that many workers were so fearful of management retaliation they did not want to be seen in the company of known union supporters. Frightened employees avoided pro-union workers during break times and would not speak with them in the presence of management.

Pro-union employees at Sunrise stated that many workers were so fearful of management retaliation they did not want to be seen in the company of known union supporters. Frightened employees avoided pro-union workers during break times and would not speak with them in the presence of management. According to pro-union workers, their fearful colleagues believed if management thought they were involved with the union, they would be denied promotions, and would be turned down for scheduling or vacation requests. This type of intimidation made impossible any fair vote on union representation at the Sunrise store.⁹⁵

As a result of IKEA management’s aggressive anti-union campaign, the organizing move faltered, and employees at the Florida store remain unrepresented.

The Two Faces of IKEA

IKEA’s anti-union conduct in the Florida store evinces a shocking hypocrisy in its failure to comply with the company’s own claimed social responsibility principles requiring adherence to ILO core standards and other international norms.

IKEA’s heralded “IWAY” code of conduct purports to set “minimum requirements for environmental and social & working conditions.” The code states:

The IKEA Way...is based on international conventions and declarations. It includes provisions based on the United Nations Universal Declaration of Human Rights (1948), the International Labour Organisation Declaration on Fundamental Principles and Rights at Work (1998), and the Rio Declaration on Environment and Development (1992)...⁹⁶

IKEA’s “Sustainability Strategy for 2020” is clear on international standards to which it pledges adherence, namely the ILO Declaration on Fundamental Principles and Rights at Work, the Universal Declaration of Human Rights and the UN Guiding Principles on Business and Human Rights:

Our vision is to create a better everyday life for the many people. We are committed to having a positive influence on people’s lives across our value chain; supporting positive economic, social and

environmental development; promoting equality and placing respect for human rights at the centre of what we do by:

Continuing to use the UN Guiding Principles of Business and Human Rights, working to promote its implementation across our value chain....

Using the ILO Fundamental Principles of Rights at Work to have a positive impact on people's working conditions and respect labour rights....

The UN Universal Declaration of Human Rights is a common standard for all people. At IKEA, we will have this constantly in mind, promote and observe the respect for these rights throughout the scope of our business with the guidance of the 2011 UN Guiding Principles for Business and Human Rights.⁹⁷

The Universal Declaration of Human Rights declares that “everyone has the right to freedom of peaceful assembly and association” and “everyone has the right to form and to join trade unions for the protection of his interests.”⁹⁸ IKEA should live up to this commitment by halting its caustic anti-union campaigns in the Florida store and others.

‘Great Relationship with the Unions’—But ‘Union Avoidance’ Law Firms

Another marker of IKEA's failure to live up to its professed belief in workers' freedom of association and trade union rights can be seen in a recent recruiting notice for a senior human resources position. The notice was posted May 22, 2018, seeking a human resources manager at its global communications headquarters in Älmhult, Sweden. The notice stated that the candidate selected for this position would “reach out to the whole world” in an assignment that includes:

- Acting as a good example of IKEA leadership in ways that express the IKEA values and together with the manager's help to safeguard and promote the IKEA culture;
- Ensuring that all areas at ICOM [IKEA Communications] work with the labour relations principles and uphold local policies, procedures and laws; and
- Responsibility for union negotiations and that we are maintaining a great relationship with the unions.⁹⁹

In the United States, however, IKEA is not interested in a great relationship with trade unions. Human resources managers hired by IKEA in the United States list “union avoidance” as prized features of their résumés.¹⁰⁰ The company fiercely opposes trade union organization in its stores. No IKEA store employees in the United States exercise the right to collective bargaining with IKEA. In this respect, IKEA's infringement of workers' rights in the Florida store reflects its practices in the rest of the United States as well.

Underscoring the contradiction with “maintaining a great relationship with the unions” in its recent recruiting notice, IKEA has engaged the services of not one, not two, but three of the most prominent anti-union law firms in the United States. These law firms are notorious among labor advocates as “union-busters:” Ogletree Deakins, Littler Mendelson and Jackson Lewis.

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Swedish IKEA union members support U.S. workers' organizing rights. Credit: UNI Global Union

Ogletree Deakins brags about its “extensive experience representing management in union representation campaigns” and expertise in “maintaining union-free status.”¹⁰¹ The Littler Mendelson firm emphasizes its “union prevention” methods for “maintaining a union-free workplace...by helping employers “detect early warning signs of organizing activities, and minimize the risk of organizing campaigns.”¹⁰²

The Jackson Lewis law firm likens its anti-union campaign strategies to warfare, making a play on words of the well-known saying that “war is hell.” In a promotional brochure titled “War is Hel...pful” the firm says:

Everybody knows a key element of any union avoidance strategy is to ensure your supervisors are fully trained regarding their wide ranging rights to communicate with employees about the union...Take your training to the next level with union avoidance “war games” training....Participants learn about and experience first-hand the battlefield conditions of union organizing....Jackson Lewis attorneys in our 20 offices across the country are available to conduct “war games” training for your supervisors and managers.¹⁰³

Some Progress in Suppliers and Warehouses

IKEA's anti-union aggression is most evident in its retail stores, where management has pulled out all the stops to frustrate workers' organizing efforts. In contrast, the company has a mixed record in its manufacturing and warehouse facilities, many of them in the South.

IKEA opened a Swedwood subsidiary furniture manufacturing plant in Danville, Virginia, in 2008.¹⁰⁴ The state granted \$12 million in tax concessions and other incentives to attract the company.¹⁰⁵

IKEA's anti-union aggression is most evident in its retail stores, where management has pulled out all the stops to frustrate workers' organizing efforts. In contrast, the company has a mixed record in its manufacturing and warehouse facilities, many of them in the South.

Concerned about salaries, safety hazards, discrimination and other issues, workers began an organizing effort in 2009 with the International Association of Machinists (IAM).¹⁰⁶ Swedwood management responded with a harsh campaign directed by the Jackson Lewis law firm. Company tactics included numerous captive-audience meetings with union-attacking speeches and videos, scripted one-on-one meetings between supervisors and workers, pressure on union activists and other measures to stifle organizing.

The IAM turned for help to the Building and Woodworkers International (BWI), the global union for the construction, forest and wood-manufacturing sectors, and to the Swedish unions in IKEA. BWI and IKEA had fashioned a global framework agreement in 1998 guaranteeing respect for freedom of association throughout company operations, a policy clearly transgressed by Swedwood management's anti-union actions in Danville.

The Swedish unions have a healthy, good-faith relationship with management at home, as do most other northern European unions that represent IKEA workers. Together, BWI and the Swedish and other European unions convinced top corporate management in the Netherlands to soften Swedwood management's strident anti-union conduct.

A delegation from BWI and the Swedish unions came to Danville to meet with workers and support their organizing effort. The delegation also met with plant management to impress upon them the vigilance

with which unions around the world were watching developments in Danville. Local management still opposed the union, but halted the most aggressive tactics of typical anti-union campaigns designed by the Jackson Lewis firm.

The company and the union reached a good collective agreement, and continued to renegotiate successive agreements. Nonetheless, in July 2019, citing the high cost of raw materials, IKEA announced it would close the Swedwood plant in Danville at the end of the year.

In July 2011, Swedwood workers voted 221–69 in favor of IAM representation. This solid victory put the lie to the claim made by anti-union propagandists and economic development boosters that Southern workers are not interested in organizing and collective bargaining. The company and the union reached a good collective agreement, and continued to renegotiate successive agreements.¹⁰⁷ Nonetheless, in July 2019, citing the high cost of raw materials, IKEA announced it would close the Swedwood plant in Danville at the end of the year.¹⁰⁸

After the union victory in Danville, Virginia, IKEA workers at company warehouses began organizing, too. IKEA maintained a policy of “soft” opposition to the union in the warehouse organizing campaigns. Workers in the Savannah, Georgia, warehouse voted 53–3 in favor of IAM representation—more evidence that, given a fair chance, workers choose unions in the South.¹⁰⁹ Coincidentally, at the same time IKEA was preparing to announce closure of the Danville, Virginia, manufacturing plant, workers at company warehouses in Joliet and Minooka, Illinois, voted in favor of IAM representation in an NLRB election.¹¹⁰

But in its retail stores, IKEA has not relented from a hardline anti-union policy and practice. Challenged by BWI to implement the framework agreement between IKEA and the global union, the company’s management has taken the position that the agreement does not apply to workers organizing in the United States.

Postscript: IKEA Pulls the Plug in Tennessee

Some Southern states are learning the hard way that giving IKEA millions of dollars in taxpayer support is no guarantee of results. In 2017–18, at the company’s insistence, Tennessee spent more than \$25 million to build a completely new exit from an interstate highway to a promised IKEA store in Antioch, a suburb of Nashville.¹¹¹ One news report noted that “Before the Swedish furniture outlet store agreed to come, the city had to agree to give the store an exit of their own off Interstate 24,” and described how the construction disrupted traffic and nearby homeowners’ tranquillity for months.¹¹² In addition, the city spent more than \$5 million for infrastructure upgrades surrounding the store site.¹¹³

A year after the grand proclamation of IKEA’s coming to Nashville, the company announced it was abandoning the deal. Its retail strategy was now going to focus more on Internet retailing and smaller stores in big cities, not big suburban stores. Tennessee was left with a \$25 million highway exit to nowhere.¹¹⁴

LSG SKY CHEFS IN DALLAS AND MIAMI

LSG Sky Chefs, the Lufthansa Group and Commitments to Labor Rights

LSG Sky Chefs is one of the world's largest airline catering companies, providing everything from lounge offerings and premium onboard dining to full-tray menus, meals and snacks. The company was earlier a joint enterprise of American Airlines' Sky Chefs and Lufthansa's LSG. The German company acquired the entire business in 2001, creating LSG Sky Chefs, now headquartered near Frankfurt.¹¹⁵

Since the 2001 consolidation, LSG Sky Chefs has continued its global expansion with more joint ventures and partnerships throughout Asia and Africa. Today, LSG Sky Chefs employs more than 34,000 workers and provides more than 700 million meals a year at 205 airports in 59 countries. Its annual revenues are more than \$3 billion Euros.¹¹⁶

LSG Sky Chefs is a subsidiary of the Lufthansa Group, the largest airline in Germany and in Europe. Lufthansa and American Airlines remain two of the company's main catering customers, along with 30 other global, regional and national airlines.¹¹⁷ In the United States, LSG Sky Chefs is American Airlines' preferred catering partner, supplying AA's flights in dozens of airports, including seven of its biggest hubs. The company also is proud to provide food service to the International Space Station.¹¹⁸

As a Lufthansa subsidiary, LSG Sky Chefs is integrated into Lufthansa's corporate responsibility program and Code of Conduct. Lufthansa (and thus LSG Sky Chefs) joined the UN Global Compact in 2002. This means it took on the Global Compact's obligation to comply with ILO core labor standards on freedom of association and collective bargaining. In its latest Sustainability Report, Lufthansa states:

The Lufthansa Group is a member of the UN Global Compact, Transparency International, the German Network for Business Ethics and of institutions that support individual aspects of human



Local 23 airline catering workers and activists protest at American Airlines headquarters in Dallas. Credit: UNITE HERE

rights. In this way, the Group explicitly acknowledges its adherence to the respective standards and, implicitly, its respect for human rights....As a signatory to the UN Global Compact, Lufthansa has documented its support for freedom of association and the right to collective bargaining for all of its employees worldwide. Employees in any country where Lufthansa companies are active are free to lawfully organize themselves and become involved in defining their working conditions.¹¹⁹

In its Code of Conduct, the Lufthansa Group declares:

In all our actions, we ensure that we act in accordance with human rights, the principles of the UN Global Compact, and recognized international labor and social standards....We adhere to the right of free assembly, freedom of association, and collective bargaining, as well as the relevant regulations to ensure fair working conditions.¹²⁰

LSG Sky Chefs in the United States—and Bargaining Under the RLA

LSG Sky Chefs employs more than 10,000 workers in airports in 36 cities around the United States, making it the largest airline catering company in the country. Major centers include international airports in Chicago, Dallas, Los Angeles, Miami, New York, San Francisco, Seattle and Washington, D.C. U.S. operations account for 40% of LSG Sky Chefs' business worldwide.

Most of the workers are minorities and immigrants who labor in difficult conditions, preparing and packing meals in hot kitchens and storing them in cold rooms; handling heavy weights with the large volume of food and drinks, and delivering them to planes on airport tarmacs. Despite record profits in the U.S. aviation industry and record profits for Sky Chefs' parent company, Lufthansa, LSG Sky Chefs has failed to provide the economic increases necessary to end poverty for its employees, nor has it provided affordable health care for its employees.¹²¹

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LSG Sky Chefs and its employees are covered by the Railway Labor Act, a specialized labor law regulating industrial relations in the railroad and airline sectors. Congress adopted the RLA in 1926, almost a decade before the National Labor Relations Act, which governs labor relations in the rest of private industry.

As seen in other case studies in this report, the NLRA envisions single “bargaining units” at different facilities of the same company. Under the NLRA's enterprise-based system, different unions often represent workers at different company locations. Each union bargains for its own collective agreement with the employer at that particular location.

In contrast, the RLA establishes nationwide bargaining units within each company in the railroad and airline sectors. A single trade union represents all workers employed by the company in the United States. Under the RLA system, LSG Sky Chefs employees are represented by UNITE HERE, the principal American union in the hotel, restaurant and food services sector. The union and the company bargain for a national collective agreement on terms and conditions covering all employees. Then local wage bargaining takes place within the framework of the national agreement.

Distinct from most other case studies in this report, LSG Sky Chefs workers organized their union decades ago, when the company was owned by American Airlines. In the 1990s, UNITE HERE became the union at the joint American-Lufthansa business, and is now the union for Lufthansa’s wholly owned and managed LSG Sky Chefs.

Distinct from most other case studies in this report, LSG Sky Chefs workers organized their union decades ago, when the company was owned by American Airlines. In the 1990s, UNITE HERE became the union at the joint American-Lufthansa business, and is now the union for Lufthansa’s wholly owned and managed LSG Sky Chefs.

Lufthansa and LSG Sky Chefs accept workers’ choice of the UNITE HERE union and its representational role. Unlike other cases, this report does not recount “union-busting” by the company, such as efforts to undermine and destroy the union, or to refuse to bargain in good

faith. Indeed, LSG Sky Chefs and UNITE HERE have reached successive collective bargaining agreements for many years.

Reaching agreements does not mean that LSG Sky Chefs and UNITE HERE enjoy a healthy collective bargaining relationship. A fundamental flaw in the Railway Labor Act blocks it: the RLA significantly limits workers’ right to strike.

The National Labor Relations Act guarantees the right to strike for a new collective agreement. But the Railway Labor Act forces workers and their union into a labyrinth of mandatory mediation overseen by the National Mediation Board, the government agency that administers the RLA. Unions cannot exercise the right to strike without the NMB’s “release,” as the law requires. There is no set time limit for the mediation process, and often it takes years. Then, even if release is granted, the president can declare a national emergency and force workers back to their jobs while a board appointed by the president investigates the dispute and reports to the president.

National Bargaining—But Taking Advantage of Conditions in the U.S. South

LSG Sky Chefs and UNITE HERE bargain for a national collective agreement on most terms and conditions of employment. Wages at each location are set at each kitchen facility through local bargaining.

Conditions in the Southern states where LSG Sky Chefs operates give rise to significant disparities in wages. Average pay for the 3,500 workers in Southern state airports is \$12 per hour, with starting pay as low as \$8.40/hour. In locations outside the South, wages for 7,100 LSG Sky Chefs workers average almost \$15 per hour.

Minimum wages are as low as \$8.40/hour in American Airlines’ Charlotte, North Carolina, hub, \$8.80 in Orlando, Florida, and even in Dallas—American Airlines’ headquarters city—wages are as low as \$9.85/hour.

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These low wages, not surprisingly, lead to high turnover, about 47% annually. But there are many workers who have remained in these jobs for decades, reflecting the fact that airline catering jobs were not always so bad, before the U.S.-based airlines used their power to drive wages down for their suppliers.

The low average wage of \$12.48/hour in Dallas is despite the fact that workers there average eight years on the job. Even in Charlotte and Orlando, where workers have spent an average of more than five years, average wages barely top \$10.

In fact, for workers who have spent decades at the company, the situation is even more bleak. Again, picking American Airlines' most profitable hub, Dallas, the average wage for the 140 workers who have worked there for more than 20 years is only \$14.82/hour.

One key factor in the North-South wage disparity for LSG Sky Chefs employees is the difference in regulatory regimes. Regional and municipal authorities in many Northern cities have adopted "living wage" policies for airport employees. UNITE HERE and other trade unions have mobilized support for such measures, finding allies among social justice advocates in their communities and among elected officials responsive to workers' concerns.

Living wage regulations have a public policy purpose. Decent jobs for airport workers reduce staff turnover and improve workers' sense of well-being and being respected for their work. The result is higher levels of service for travelers and enhanced reputations for airports, which are important economic hubs for the cities and regions they serve. Lower turnover at airports also enhances security, and higher wages make it less likely that workers and their families will have to rely on public benefits.

In several Northern airports where LSG Sky Chefs operates, public authorities have adopted living wage measures. For example:

- At the end of 2018, the Port Authority of New York and New Jersey adopted a minimum wage policy that will bring the wages for airport workers at JFK, Newark and LaGuardia airports to \$19/hour over the next four years.
- Los Angeles has set a minimum wage for airport workers of \$15.25/hour as of July 2019, not including an additional \$5/hour for health benefits.
- As of July 1, 2018, the minimum wage for airline catering workers in San Francisco is \$17.50, with annual increases in future years based on the cost-of-living index.



LSG Sky Chefs workers and UNITE HERE members rally outside Dallas/Fort Worth International Airport for a better collective agreement. Credit: UNITE HERE

In contrast to successful living-wage gains for airport workers in other parts of the United States, every Southern state blocks such local lawmaking. These “pre-emption” laws enacted by business-dominated Southern state legislatures prohibit local governments and airport authorities from adopting living wage policies. They must conform to the state-wide minimum wage, which in most Southern states rests on the federal minimum wage of \$7.25 per hour.¹²²

In Florida, Miami-Dade County authorities adopted a living wage ordinance for airport workers many years ago. LSG Sky Chefs has disputed the application of the requirement and has paid less than the set wage for many years.

In January 2017, based on a review of company payroll records, the Miami-Dade Aviation Department said, “LSG Sky Chefs has been in non-compliance with the living wage since 2006.”¹²³ LSG Sky Chefs responded to the airport authority by saying the company had joined a lawsuit to block enforcement of the living wage law and insisting that state law “pre-empts application of the LWO to LSG...[the LWO is] an ordinance we continue to believe is pre-empted by State law.”¹²⁴

Texas is another Southern state that blocks local initiatives to raise workers’ wages.¹²⁵ The nearly 900 LSG Sky Chefs employees at Dallas/Fort Worth International Airport average \$12.48 per hour. The lowest wage is \$9.85 per hour; the median is \$11.35 per hour. LSG Sky Chefs workers spoke about the challenges they face, not only in terms of pay, but also the harsh working conditions under which they labor.

Leticia Gomez has worked for LSG Sky Chefs for 22 years in Dallas. Her base pay is \$12.71 per hour. Based on a standard 40-hour workweek, her annual pay is \$26,437. She is a single parent with three children. The official federal poverty level income for a family of four in 2019 is \$25,100. That is, after 22 years with this large multinational company, Leticia Gomez’ pay is only slightly higher than a poverty-level wage. “I’m not sure I will ever be able to retire,” Gomez said. “A lot of people at Sky Chefs retire and then come back.”¹²⁶

“I make more with overtime,” Gomez said, “but this means time away from home and time away from my teenage children.” According to Gomez, many employees work double shifts several days a week, putting in 70–80 hours a week on the job. Many others work a second job with another employer, she said. “It’s a big safety concern,” she said. “You’ve got drivers taking food to the planes and kitchen employees in hot and cold conditions, and a lot of them are tired from overwork. It can be very unsafe.”

Preston Strickland has worked for LSG Sky Chefs in Dallas for what he calls “five cold years.” He works in cold storage areas. “Even with the gloves they give me, my fingers freeze,” he said. “I pay out of my own pocket for a warmer cold suit and boots, but warmer gloves would be too bulky for the job.”

Strickland starts his work shift at 5 a.m. His salary is \$11.35 per hour. Annualized for a standard 40-hour work week, this amounts to \$23,608. “I work as much overtime as I can, a couple hours more each day, usually six days a week,” he said. “For three months I worked seven days a week. But I still can’t afford the health insurance and I can’t afford to contribute to the 401(k) plan,” he said.¹²⁷ On and off for the last four years, despite working full time, Preston has been homeless and living in a shelter.

Pham Lam Ngoc started working for LSG Sky Chefs 35 years ago. Now 62 years old, he works in the Equipment/Utility Department making \$13.50 per hour. He works the day shift, assembling and pushing carts for loading onto trucks and onto the aircraft. “We used to have two buildings,” he said, “but now we are all crowded into one building. It’s very crowded; we worry about safety.”

Preston Strickland, LSG Sky Chefs in Dallas

“Even with the gloves they give me, my fingers freeze. I pay out of my own pocket for a warmer cold suit and boots, but warmer gloves would be too bulky for the job.... I work as much overtime as I can, a couple hours more each day, usually six days a week. For three months I worked seven days a week. But I still can’t afford the health insurance and I can’t afford to contribute to the 401(k) plan.”

His salary is \$11.35 per hour. Annualized for a standard 40-hour workweek, this amounts to \$23,608. On and off for the last four years, despite working full time, Preston has been homeless and living in a shelter.

“Last year Sky Chefs changed shifts from eight hours a day to 10,” Ngoc said. “I push a thousand carts a day on these 10-hour shifts. The carts are overloaded now, the work is a lot heavier and harder.”

Ngoc said, “I have to pay \$130 a week for health insurance for me and my wife. Then we have to pay \$1,500 before the insurance starts paying. I can’t afford to put money into the 401(k) plan.”

The problems of poverty wages and unaffordable health coverage go hand in hand. The company health plan costs anywhere from \$100 to \$200/month for the employee only, or \$475 to \$500 for family coverage. Thus, in Dallas, only 26% of the employees buy the company’s health insurance plan for themselves, and only 8% buy the insurance for their children. In Miami, only 15% of the employees buy the health insurance for themselves, and only 2% of the workers buy coverage for their children.¹²⁸

As this report goes to press, negotiations between UNITE HERE and LSG Sky Chefs are continuing under the auspices of the National Mediation Board. Union members voted in June 2019 in favor of a strike authorization if they cannot reach an agreement with the company through mediation. But under the RLA, the specialized labor law for the railroad and airline industries, their hands are tied. They cannot exercise the right to strike without a “release” from the NMB. So far, the board has not made a determination about release.¹²⁹

NESTLÉ IN McDONOUGH, GEORGIA

A ‘Megabrand’ Commitment to Freedom of Association

Based in Switzerland with sales of nearly \$100 billion and profits of more than \$15 billion, Nestlé is the world’s largest maker and distributor of food, beverage, cosmetic and other consumer products. Nestlé is ranked third among global megabrands, behind only Coca-Cola and PepsiCo.

Nestlé’s brands are ubiquitous—Nescafé, Gerber, Galderma, Purina, Haagen-Dazs, Carnation, KitKat, Perrier and many more iconic lines. The company employs more than 300,000 workers in most countries of the world. Almost 50,000 of them work in more than 300 locations in 36 states of the United States.

Nestlé considers itself a leader in the corporate social responsibility field. “We have defined and made public 41 commitments to society, each linked to the UN Sustainable Development Goals, to guide our action,” says the company on its “Nestlé in Society” website.¹³⁰ The company identifies freedom of association and collective bargaining as a focus of its human rights initiatives.¹³¹



Nestlé workers organized and bargained their first contract with RWDSU-UFCW in McDonough, Georgia. Credit: RWDSU-UFCW

In the United States, Nestlé’s commitment to workers’ rights falters. When 100 workers at the company’s distribution center in McDonough, Georgia, tried to form a union with the Retail, Wholesale and Department Store Union (RWDSU-UFCW) in 2016, Nestlé management unleashed a fierce campaign to thwart their efforts.

In May 2013, Nestlé and the International Union of Food and allied workers (IUF)¹³² agreed on a statement of “Joint Operating Principles” acknowledging that “it is in their mutual interest to establish a constructive and ongoing engagement on global labour topics.”¹³³ The “Principles” statement emphasizes “the respect for freedom of association and collective bargaining” and calls for “action points” on this area of common interest. It also creates a program of biannual meetings between top company officials, including the global head of human resources, and top IUF representatives accompanied by leaders from regional affiliates.

Under the aegis of their joint operating principles, Nestlé officials and IUF leaders have been meeting in the United States since 2017 to discuss a protocol relating to freedom of association and collective bargaining in North America. They have been joined in these meetings by representatives of four trade unions in the United States, along with Nestlé USA management.

At these meetings, the American unions protested Nestlé USA management’s continuing interference with workers’ organizing rights, and asked for “action points” to halt the company’s anti-union campaigning when employees attempt to form and join trade unions. Nestlé rejected the unions’ proposals for neutrality. The company insisted that its interpretation of neutrality allows continued use of anti-union campaign tactics permitted by U.S. labor law.¹³⁴

Nestlé Workers' Organizing in Georgia

In the United States, Nestlé's commitment to workers' rights falters. When 100 workers at the company's distribution center in McDonough, Georgia, tried to form a union with the Retail, Wholesale and Department Store Union (RWDSU-UFCW) in 2016, Nestlé management unleashed a fierce campaign to thwart their efforts.

Georgia is typical among Southern states in promoting an anti-union, low-standards agenda to attract investment. In 2018, the business publication *Area Development* ranked Georgia No. 1 overall for business-friendly environment and tied for No. 2 in the competitive labor environment category. The publication cited Georgia's right to work laws as a major factor in the competitiveness of its labor environment.¹³⁵ In the category "Favorable General Regulatory Environment," the business journal said:

When it comes to business regulations, the climate can make or break the viability of a location or expansion project, as well as the ongoing health of the operation. Environmental laws and how they are enforced can determine whether a particular site will work or not, and there are numerous other legal considerations that also impact the big picture and bottom line. Workers' compensation laws and other labor factors can be a big deal, as can various other administrative hurdles—or lack thereof. Georgia moves up to the top in this category this year."¹³⁶

All this is code for saying that Georgia has weak environment laws, weak enforcement, weak workers' compensation laws that favor employers over workers, and a "lack of" regulation giving companies a free hand to exploit workers and despoil the environment.

The LaGrange economic development agency cited as "additional benefits" for investors: "NON-UNION ENVIRONMENT—Georgia is a right to work state; LOW TAXES—traditional government services without levying taxes on property owners; 100% INVENTORY TAX EXEMPTION—on inventory and finished goods."¹³⁷

The Putnam development authority in Georgia went into more detail:

- **Low Unionization Rates**

According to The Bureau of National Affairs, just 2.9 percent of Georgia's private manufacturing workers are unionized, compared to 9.6 percent for the nation overall. Georgia is an employment-at-will, right to work state.

- **Employment-at-Will State**

Georgia recognizes the doctrine of employment-at-will. Employment-at-will means that in the absence of a written contract of employment for a defined duration, an employer can terminate an employee for good cause, bad cause or no cause at all.

- **Right to Work State**

Georgia has been a right to work state since 1947. Fewer than half of the states in the United States grant workers this protection. Georgia has a very low unionized membership. Right to work legislation assures that:

- Workers will not be forced to join a union by employers or other union members.
- Employees working for a company with a union presence may decide for themselves whether or not to join a union.
- Workers cannot be forced to join a strike.
- Interference with an employer's lawful business through violence or mass picketing will not be allowed.¹³⁸

Georgia Power company's "community and economic development" promotional publication pointed to the Atlanta region's "business-friendly tax structure, incentives and low operating costs," and boasts:

- **Georgia: Right to work, Employment-at-Will**

Georgia is a right to work state. Businesses must operate open shops with hiring conducted without regard to union membership. Employers in Georgia are legally able to dismiss employees at will. "Wrongful discharge" is nonexistent in Georgia law.¹³⁹

Nestlé Workers Speak Out

Nestlé began operations at the McDonough distribution center nearly 30 years ago. The facility handles such well-known brands as Carnation evaporated milk and Gerber baby food and infant formula, along with bulk cheese, cookie mix, pumpkin products and meat sauce for Arby's fast food restaurants.

Concerned about favoritism, discrimination and a general lack of respect, Nestlé workers reached out in 2016 for help in forming a union at the McDonough distribution center. They also identified such other issues as unfair productivity measures and extremes of summer heat and winter cold as problems to be addressed with the union's help.

Lewis Barton, Nestlé employee, 25 years of service

"The real problems were favoritism and discrimination, the way they disrespected us. The way management treated us is what really made people want the union. They would tell us on Friday afternoon that we had to work overtime on Saturday. People couldn't make plans for the day with their family."¹⁴⁰

Edwin Murray came to Nestlé after many years working in a union-represented workplace. "I know the benefits of a union," he said. "It's having somebody to back you up. You're not just out there by yourself." Murray, an inventory control specialist with 12 years' service at McDonough, echoed Barton's view. "We had no voice, they didn't listen to us," he explained.

McDonough workers' concerns were exactly those featured by Nestlé in its social responsibility declaration: "We aim to provide a safe, rewarding workplace that inspires employees to fulfil their potential. We provide people with equal development opportunities and treat each other with dignity and respect."¹⁴¹

An Anti-Union Onslaught

Instead of honoring employees' move to gain dignity and respect on the job, Nestlé management responded to their organizing effort with a massive campaign to suppress it. In weeks and days before a union representation election in April 2017, the company brought in teams of Human Resources managers from around the United States to break workers' organizing will.

Instead of honoring employees' move to gain dignity and respect on the job, Nestlé management responded to their organizing effort with a massive campaign to suppress it.

"They brought in HR managers from all over the country to talk against the union," said Edwin Murray. "Close to 20 of them, in different groups every week, people we never saw before. Suddenly they were

all over the place, telling us the union's no good, trying to discourage us. They had town hall meetings with everyone and small-group meetings covering everyone, too. They were riding around on golf carts, stopping and talking to people about how bad the union would be. A top guy from Switzerland even came to talk to us."

"They said if the union got in they couldn't be lenient with us anymore because of union rules," Murray said. "They kept hinting that they would close the place if we voted union. They didn't come right out and say it, but they kept saying 'you never know, somewhere down the line, we don't need the problems a union brings, it's just a distribution center, we could put it anywhere,' things like that to make us think twice about the union. Another thing they kept saying was they could go third-party, get rid of the employees and use people from a labor supply agency instead."

Kim Carmichael, a 17-year Nestlé employee, spoke of her experience: "There were HR people from everywhere, from California. They stayed a week at a time, then a new group came in, then the others would come back. We had two or three meetings with everybody every week before the election, plus small meetings, they would go around and talk to people in small groups, all about how bad the union is. The union told us how Nestlé in Europe accepts unions, they don't fight them, but this was totally the opposite of what they did here."

"It was all about the negatives of having a union," Carmichael said. "They told us the union would make us pay outrageous dues and fees. They said the company didn't have to agree to anything, we could lose our benefits, that the union could strike for months and we'd be out there with no pay, if we strike we could lose our jobs."

In spite of Nestlé management's anti-union offensive, workers voted 49–46 in favor of union representation in an NLRB election in April 2017. The narrow victory margin reflected the effects of the meetings and management's veiled threats about dire consequences if workers voted for the union. "It's definitely a harder fight for us here in the South," said Kim Carmichael.

In spite of Nestlé management's anti-union offensive, workers voted 49–46 in favor of union representation in an NLRB election in April 2017. The narrow victory margin reflected the effects of the meetings and management's veiled threats about dire consequences if workers voted for the union.

After the Vote: New Challenges

The fight continued after the election, too. Nestlé first refused to accept the vote results and enter into bargaining with the union. The company filed objections to the election alleging union misconduct. The NLRB dismissed the objections, saying "the Employer has failed to establish that its objections to the election...tended to interfere with employee free choice" and "the employer's objections should be overruled in their entirety."¹⁴²

Nestlé workers and their union finally began bargaining with management in June 2017. Collective bargaining was a new experience with a new set of challenges. Kim Carmichael, Edwin Murray and Lewis Barton served on the bargaining committee. "I feel like we and the management reps were very professional," said Murray. "There was not a lot of jumping up and down. It got tense a few times but we got through it OK."

“I think it turned out good,” said Murray. “We solved the Friday–Saturday overtime notice problem. Now they have to give us 48 hours advance notice, not Friday afternoon they tell you to come in Saturday morning. We took it to the membership for ratification and they voted overwhelmingly for the contract.”

Kim Carmichael said, “It’s better now. It’s still mixed, we still have problems. Management is still fighting us on different things. But now we have a voice, we can sit down and try to solve the problems, and if we can’t agree, a neutral arbitrator will decide, not management all by itself.”

Lewis Barton said, “I got into the union because I was there from the start. I saw how things got taken away over the years. I wanted to change it for the better even if it’s hard. We did it for the people coming after us. You want family members coming after you to have a good working environment.”

Nestlé deserves a measure of credit for negotiating in good faith and reaching a collective bargaining agreement with workers and their union in McDonough. But it does not excuse the company’s harsh pressure campaign to break the organizing effort. Edgar Fields, the RWDSU’s regional vice president based in Atlanta, said “We met with Nestlé USA officials in St. Louis and they said they would stay neutral, but they didn’t stay neutral in McDonough. They fought hard against the union.”¹⁴³

Workers’ International Connections

Fields points to support from Nestlé unions in Europe as an important factor in gaining the collective bargaining agreement in Georgia. “The international connection works,” he said. “We met with the European unions and we got a lot of support from them. I think they helped convince Nestlé headquarters to get a contract settlement with the RWDSU in McDonough.”

Nestlé USA and four unions representing company employees have met several times with a goal of reaching an agreement on ground rules for union organizing in the United States. They have not achieved it. According to union participants, the company continues to insist that management can hold captive-audience meetings to give employees “factual information.”

As this report is completed, Nestlé USA and four unions representing company employees have met several times with a goal of reaching an agreement on ground rules for union organizing in the United States.¹⁴⁴ They have not achieved it. According to union participants, the company continues to insist that management can hold captive-audience meetings to give employees “factual information.”

“Factual information” in U.S. labor relations means that managers can tell workers: “the union just wants your dues money;” “we don’t have to agree to anything;” “bargaining can drag on for years;” “you can lose what you have;” “if the union makes us uncompetitive we’ll have to consider closing;” “Georgia is an at-will

state and we can fire you for any reason;” “if the union pulls you out on strike we can permanently replace you;” and other “facts” that employers convey to frustrate workers’ organizing efforts, all in violation of international standards on workers’ organizing rights. As long as Nestlé insists on using these fear-mongering, intimidating tactics and arguments in Georgia and other Southern states, the company betrays its purported commitment to workers’ freedom of association and collective bargaining rights.

SCHNELLECKE LOGISTICS IN VANCE, ALABAMA

Schnellecke and the Alabama Labor Relations Climate

Schnellecke Logistics is a German-based multinational company serving industrial supply chains worldwide, mainly in the automotive sector. In the firm's own words:

We manage and optimize supply streams, pick as needed, deliver to the production lines just in time and just in sequence, and take on the assembly of components as well as the pre-assembly and finishing of complete assemblies....For many large automobile manufacturers, we are a recognized system partner who takes on the responsibility for the development of the assembly and delivery process, reliably assembles components worldwide, and then supplies them just-in-sequence to the production lines.¹⁴⁵

Schnellecke employs 20,000 workers at 70 locations in 14 countries around the world, with annual revenues of 1 billion Euros. In the United States, the company concentrates its operations in the South. It has two facilities in Alabama and another in Tennessee, each with hundreds of employees.

In 2017, Schnellecke began providing logistical services to Mercedes-Benz inside the auto manufacturer's complex in Vance, Alabama. As noted elsewhere in this report, Alabama business leaders and state officials maintain that a labor relations climate hostile to trade

unions is an advantage in luring firms to their state. The governor of Alabama said, "I think being a right to work state is the reason many international companies look at Alabama and the other right to work states," and "It does hurt in the recruitment of companies to come to Alabama...when a plant is nonunionized and suddenly it becomes a unionized plant."¹⁴⁶

The president of the Business Council of Alabama said, "A union presence in Alabama would only serve to stifle job creation and economic opportunity...free enterprise can best meet the needs of its employees by maintaining an open and direct relationship with them, without the interference of a third party....companies looking to locate here must be confident that Alabama will remain a business-friendly state."¹⁴⁷ The head of the Chamber of Commerce in Mobile said, "We see it as a huge economic development advantage to be a right to work state."¹⁴⁸

Schnellecke's Commitment to Freedom of Association and Collective Bargaining

Schnellecke holds itself out as a paragon of adherence to international human rights standards, including workers' freedom of association. The company says in its Corporate Social Responsibility statement:

Sustainability has been a consistent principle at Schnellecke since the founding of the company.... Corporate social responsibility is therefore not new territory for us but everyday reality. Good working conditions and fair wages are not only a matter of course in Germany but also in all countries in which we operate. We also expect the same commitment from our business partners....We globally observe the internationally recognized human rights and fundamental freedoms in accordance with the principles set down in the UN Global Compact. Our actions contribute to their protection and promotion.¹⁴⁹

Schnellecke employs 20,000 workers at 70 locations in 14 countries around the world, with annual revenues of 1 billion Euro. In the United States, the company concentrates its operations in the South. It has two facilities in Alabama and another in Tennessee, each with hundreds of employees.

In its Code of Conduct, Schnellecke declares:

As an international and cosmopolitan group of companies, the Schnellecke Group respects human rights as well as the international working and social standards, and is firmly committed to ensuring that these are observed. We promote the equal opportunities and equal treatment of employees, and refrain from any type of discrimination. We disassociate ourselves from any type of forced and child labour, and orient ourselves to the international standards of the UN Global Compact, as well as the OECD guiding principles and the ILO (International Labour Organisation).¹⁵⁰

Both the UN Global Compact and the OECD Guidelines incorporate ILO core labor standards on freedom of association and collective bargaining. Schnellecke appears to honor its commitment, at least in Germany and the rest of Europe, and in many other countries where Schnellecke has operations. But not in the United States.

In its latest Sustainability Report, Schnellecke says:

In the following countries...collective agreements have...been concluded with individual companies of the Schnellecke Group: Germany, Italy, Mexico, Poland, Portugal, Spain, Slovakia, South Africa and the Czech Republic.

Such collective agreements contain, for example, provisions on the following:

- Benefits for company pension plans and/or asset accumulation,
- Agreement on the terms of employment of temporary employees, including remuneration,
- Regulation on flexible transition into retirement for older employees,
- Subsidies for day care,
- Agreements on demographic change, health promotion, grants for fitness programs, and job security and promotion,
- Agreements for additional annual remuneration payments (e.g., collectively agreed additional remuneration, Christmas (special annual payment) and holiday bonuses, etc.),
- Insurance benefits (e.g., group accident insurance, etc.),
- Granting of voluntary benefits on special occasions (company anniversaries, retirement etc.),
- Regulations for employees on granting working time autonomy (e.g., time instead of money).¹⁵¹

Schnellecke reports that in Germany, 94% of the company's 6,700 employees are represented by trade unions. In the rest of Europe, unions represent 57% of workers in Spain, 58% in Portugal and 83% in the Czech Republic. More than 80% of Schnellecke's 6,700 workers in Mexico are union-represented, and 88% in South Africa.

In the United States, the number and the percentage of union-represented employees is zero.

Betraying Commitments in the American South

In establishing operations in Alabama and Tennessee, Schnellecke had an opportunity to introduce its human rights and labor rights commitments to the American South. But when workers at the Vance facility tried to form a union, Schnellecke betrayed its commitments with a fierce attack on their organizing efforts.

Workers' Organizing in Vance, and an Unfair Labor Practice Complaint

After Schnellecke began operations at the Mercedes-Benz property in Vance, workers turned to the UAW for help in forming a union. The pace of work, health and safety problems, discrimination concerns, and pay and benefits were among employees' concerns that led to the organizing effort.

Schnellecke management responded to workers' organizing move with an aggressive campaign to destroy it. An unfair labor practice complaint issued by the National Labor Relations Board revealed the company's anti-union tactics.

Before examining Schnellecke management's conduct, it is important to understand that the labor board is scrupulous in deciding to take the important step of issuing a complaint. Workers and unions can file "charges" with the NLRB claiming a violation of their rights, but the charges by themselves are allegations. The labor board issues a "complaint" when its investigation finds merit in the charge. "Merit" means that the board's investigation indicates that unlawful conduct likely occurred, and the case should proceed to trial on the evidence before an administrative law judge.

The NLRB is careful in evaluating unfair labor practice charges to determine their merit. Findings of merit are based on detailed investigations of charges by regional agents of the NLRB and evaluations by experienced labor law attorneys in the regional offices. These investigations include interviewing and taking affidavits from workers who filed charges and from potential witnesses. They also involve consulting extensively with employers and offering them opportunities to rebut any charges through written position statements and dialogue with the NLRB regional officials. Based on these investigations and evaluations of the evidence, labor board officials decide whether charges have merit, and to issue a complaint.

After finding merit in the charges and issuing a complaint, the NLRB sets the case for trial on the evidence before an administrative law judge, normally several months in the future. In the period before trial, board attorneys seek to settle cases so as not to overburden the administrative court system.

Settlements obligate employers to take certain remedial action based on merit findings by the NLRB. Remedial actions include such measures as posting workplace notices promising not to commit the specific acts that are the subject of unfair labor practice charges found to have merit (in posted statements headed "WE WILL NOT..."), and affirmative remedies such as reinstating fired workers, paying back pay, rescinding other disciplinary measures, and the like (in posted statements headed WE WILL...").

Schnellecke's Anti-Union Assault

Issued in October 2017, the NLRB's complaint in the Schnellecke case detailed the company's harsh reaction to workers' organizing efforts. According to the complaint, company managers in the Vance facility engaged in the following conduct:

- Threatening employees that management would fire a union supporter because of his union activities;
- Interrogating employees about their union activities and sympathies, and the union activities and sympathies of other employees;
- Threatening employees with discharge if they talked about the union;
- Telling employees not to attend union meetings because top management knew which employees attended union meetings;
- Telling employees that management had the names of employees who engaged in union activities;
- Promising increased benefits and improved conditions if employees rejected unionization; and
- Discharging two union supporters because of their union activities.¹⁵²

Weaknesses in the U.S. Labor Law System

The Schnellecke case exposes serious flaws in the U.S. labor law system. It is common for employers to respond to workers' organizing with unlawful threats and intimidation that crush the organizing effort at its inception. Such threats often are accompanied by action: discharging key union activists to frighten the rest of the employees, afraid now that the same fate might befall them if they keep trying to form a union.

The U.S. labor law system has weak, ineffectual remedies to deter an employer determined to crush an organizing effort by using threats, intimidation and firings of union activists. Employers suffer no monetary fines or other penalties for unlawful threats and intimidation. The only remedy is a requirement to post a notice in the workplace promising not to repeat the unlawful conduct. But when the unlawful conduct has had the desired effect of destroying the organizing attempt, employers willingly agree to post a notice, knowing it will make no difference to workers frozen in fear by management's lawbreaking.

Remedies for fired workers are also feeble. Again, employers face no fines or other penalties for discharging union activists. An employer might be faced with an order to reinstate the dismissed worker, but employers are able to delay any resolution for years by pursuing appeals at the NLRB and federal courts. Any income received by workers awaiting the outcome of their case is subtracted from the employer's back pay obligation, and workers themselves have an obligation to seek other work and other sources of income.

As a result of delaying tactics available to employers and the absence of any financial penalty, the vast majority of unlawful dismissal cases end in a settlement by which the fired worker accepts a modest financial compensation and agrees not to return to the workplace. Once again, at a very low cost, employers achieve their goal of ridding themselves of key union activists and sending a message to the rest of the employees that union involvement means lost jobs.

Settling the NLRB Cases—and Frustrating Union Formation

Schnellecke's anti-union campaign in Alabama is a textbook example of employers taking advantage of U.S. labor law weaknesses to achieve their goal of halting workers' organizing. The destructive effects of management's threats, intimidation and firings of union activists took hold among the rest of the workers, making them now fearful of continuing their organizing efforts.

In December 2017, confident it had successfully quashed workers' union organizing, Schnellecke acceded to a settlement agreement with the NLRB. Management agreed to post in the workplace for 60 days, and to read to employees in a meeting, a notice saying:

- WE WILL NOT make it appear to you that we are watching out for your union activities.
- WE WILL NOT ask you about employee support for a union.
- WE WILL NOT...hold meetings...to ask you about your complaints and grievances and to imply that we will fix them in order to discourage you from supporting a union....
- WE WILL NOT threaten you with discharge if you choose to be represented by or support a union.
- WE WILL NOT stop you from talking about a union.
- WE WILL NOT...interfere with your rights under [the National Labor Relations Act].¹⁵³

Experienced trade unionists know the effect of such notices in the workplace is often the opposite of what they intend. Rather than reassuring workers that they can engage in union organizing activity, they remind workers of the company's violations and the lengths management was willing to go to crush their organizing effort.

Schnellecke took similar steps with regard to the two workers fired for union activity. The company offered a monetary settlement if the workers agreed not to return to work at Schnellecke. Otherwise, management would contest their unfair labor practice complaints before the NLRB and the courts, meaning possibly years more of delayed legal proceedings before their cases were resolved. Both workers opted for the settlement.¹⁵⁴

Schnellecke's anti-union actions at the Vance facility destroyed employees' efforts to form and join a trade union and to bargain collectively with the company. These are the very rights that Schnellecke embraces in its corporate responsibility and sustainability statement, and rights that Schnellecke recognizes and accepts everywhere else in its global operations.

SKANSKA IN NASHVILLE, TENNESSEE

Skanska and Its Social Responsibility Commitments

Sweden-based Skanska is one of the world's largest multinational construction and project development companies, undertaking residential and commercial property development and large-scale infrastructure

projects. The firm concentrates its work in three geographic markets: the Nordic countries of Northern Europe, the rest of Europe, and the United States. Skanska employs almost 40,000 workers in these three regions. More than 9,000 work in the United States, which accounted for more than one-third of the company's \$170 billion revenues in 2018.¹⁵⁵

Skanska employs...more than 9,000 [workers] in the United States, which accounted for more than one-third of the company's \$170 billion revenues in 2018.

According to Skanska's social responsibility statement: "Skanska builds for a better society. Our values guide what we do and how we work."¹⁵⁶ In its Code of Conduct, the company says:

Skanska is a signatory to the United Nations (UN) Global Compact, and we adhere to its Ten Principles...We support global human rights and fair working conditions for persons working on our projects...You [Skanska suppliers and subcontractors] ensure that working conditions, hours, wages and benefits comply with applicable national and local laws and relevant ILO conventions...You recognize and respect employees' right to freedom of association and collective bargaining, where permissible by law...¹⁵⁷

Firms like Skanska that join the UN Global Compact commit themselves "to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labor standards, the environment and anti-corruption." More specifically, corporations commit themselves to the Global Compact's Ten Principles on those core subjects.¹⁵⁸

The Global Compact's Principle 3 declares: "Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining." The UN body notes that "the labor principles of the Global Compact are taken from the International Labor Organization's Declaration on Fundamental Principles and Rights at Work" and that "the Principles and Rights identified in the ILO Declaration comprise the labor portion of the Global Compact."

In 2001, Skanska and the Building and Woodworkers International union federation (BWI) reached a Global Framework Agreement. The agreement says:

Employee rights to form or join trade unions shall be recognized in accordance with each respective country's laws and principles. Trade union representatives of the employees may not be discriminated against and shall be provided access to work sites as required to fulfill duly and legally assigned obligations to their members. The employer and its representatives shall respect the trade union's activities.¹⁵⁹

The global framework agreement also calls for fair compensation, reasonable working hours, and safe and healthy worksites.¹⁶⁰

In U.S. states with high levels of trade union representation, Skanska generally lives up to its commitments under international standards and the framework agreement with BWI. The company recognizes building trades unions in the North and West, and encourages its subcontractors to employ union-represented workers. The company has been recognized for successful safety programs in New Jersey, New York, Oregon, Pennsylvania and other high-union states.

In the American South, Skanska is falling short of its commitment to international human rights and labor standards, and even its own agreement with BWI. The company has taken advantage of low labor standards in Southern states, accepting the region’s anti-union ideology and culture and engaging low-road, nonunion subcontractors in a system that perpetuates economic and racial disparities and exploitation of immigrant workers.

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Construction Work in the American South

The Role of General Contractor

Skanska is a general contractor for many large development projects in the United States, including many states in the South, such as Tennessee. The attitude of Tennessee power brokers toward trade unions was noted earlier in this report—starting with a governor who says, “Tennessee is proud to be a right to work state with a low-cost labor force....We have very low unionization rates—factors which continue to make our state attractive for foreign direct investment.”¹⁶¹

The Skanska case arises in the distinctive structure of large-scale construction and development projects and in the labor-management relations system in the construction sector. Skanska is usually the general contractor for these projects. Skanska employees provide some direct services, but more often the company engages subcontractors for different elements of the project—site preparation, iron and steel erection, concrete, electrical, plumbing, sheet metal, masonry, carpentry, drywall, painting, roofing, insulation, elevator, sprinkler systems and other construction tasks. In some instances, these subcontractors themselves “sub-sub-contract” to other firms for parts of their jobs.



Subcontracted workers at Skanska-JW Marriott project protest after experiencing alleged wage theft. Credit: IUPAT

Trade unions in the U.S. construction industry are organized in different unions according to the “craft” or “trade” that workers bring to a job—electricians, plumbers, carpenters, glaziers, drywallers, painters, bricklayers and others in fields just mentioned. Together, they are known as the “building trades unions”

or sometimes just “the trades,” as they represent workers in each of the specific skills that go into a construction project.

As the general contractor, Skanska is responsible for successful completion of a project. Accordingly, Skanska managers select contractors and oversee their work. An important consideration for Skanska, for contractors and for workers is whether a project will be “union” or not; that is, whether Skanska agrees with the building trades to use union-represented workers on a project, and to engage subcontractors who themselves pledge to use union labor.

Project Labor Agreements

In a majority of states, what are called “project labor agreements” in publicly funded projects commit general contractors and subcontractors to employ union-represented workers. As part of the agreement, unions agree to supply all needed skilled labor and guarantee no strikes while the project is under way.

Along with skilled workers and labor peace, PLAs ensure good wages and working conditions for construction employees on publicly funded projects. Skanska has entered into several PLAs with building trades unions in states with high level of union representation.

But 10 Southern states, including Tennessee, expressly prohibit such agreements. Anti-union laws prohibiting PLAs are part of the overall anti-union culture and ideology that prevail in the American South. The Associated Builders and Contractors, the association of anti-union employers in the construction sector, calls PLAs:

Anti-competitive and costly government-mandated special-interest schemes that end open, fair and competitive bidding on contracts to build taxpayer-funded construction projects....nothing more than a market recovery program for unions...special-interest handouts designed to increase union membership and funnel work to favored unionized contractors and their unionized workforces....PLAs force employees to pay union dues, accept unwanted union representation and forfeit benefits earned during the life of a PLA project unless they join a union and become vested in union benefits plans.¹⁶²

Construction Workers' Conditions in the South

Without union protection, construction workers in the South face difficult circumstances. A comprehensive study of wages and working conditions in five southern states, including Tennessee, found that:

- Just 5% of workers who were injured in the past 12 months had workers' compensation insurance to cover their medical expenses;
- One-third of workers do not have drinking water provided on their worksite, a basic necessity that employers are required to provide under federal law;
- Less than half (43%) of construction workers are offered medical insurance by their employer;
- Approximately three out of four workers lack paid personal time (73%) or paid sick time (78%), which means workers lose wages if they become ill or have to take time off work to deal with family needs;
- Eight out of 10 workers lack a retirement or pension plan;
- More than half (57%) of workers surveyed earn less than \$15 per hour despite high average levels of experience in the industry;
- Thirty-six percent of workers struggle to pay for such basic necessities as rent or food, even though 82% of workers reported working overtime with their current employer;
- More than one in 10 (11%) workers have experienced wage theft at some point in their construction career. Among workers who have not been paid for their labor in the past year, the median amount of wages stolen was \$800 (57 hours of labor for the average construction worker). Only 23% of workers have managed to recover their lost wages; and

- One in three (32%) workers is misclassified as an independent contractor, denying their rights to minimum wage and overtime payments.¹⁶³

Wage Theft in the South

Construction workers with union representation and a union contract do not suffer these and other abuses, especially “wage theft.” Wage theft is an especially serious problem faced by workers without union representation, when contractors and subcontractors fail to pay full wages earned by workers on construction projects.

Here is how a construction industry consulting group describes the problem:

The construction industry, both residential and commercial, is not immune to the growing epidemic of wage theft. Wage theft occurs when a worker is denied full payment of the wages and benefits they legally [are] owed by their employer.

While accurate numbers are hard to pin down on the true extent of wage theft in the [United States], the problem seems to be growing in the construction industry. It is more common among residential construction workers, nonunion employees and immigrants who work as laborers or craft professionals.

In the construction industry, employers commit wage theft in many ways. It can be as simple as refusing to pay workers minimum wage, illegal deductions, refusing to pay overtime at the correct rate, writing bad checks or simply refusing to pay workers.



Nashville community members protest in front of Skanska-JW Marriott construction project for workers allegedly robbed of wages. Credit: IUPAT

Misclassifying workers as independent contractors is another common way employers rip off their workers. Independent contractors don't have the same protections that an employee does under the Fair Labor Standards Act. This means employers who misclassify construction workers as independent contractors aren't required to pay a minimum wage, overtime, worker's compensation and don't have to withhold or pay any taxes on payments to contractors.

Another type of misclassification occurs when prevailing wages are required. Sometimes employers will misclassify the type of work an employee is performing, for example classifying an electrician as a laborer, to pay the worker less.¹⁶⁴

Skanska in the South

Skanska's Southern Exceptionalism

American construction union leaders credit Skanska with dealing fairly, in most instances, with building trades unions outside the South. It enters into project labor agreements on publicly funded work, and agrees to use union labor in private-sector projects, as well. Those union-represented workers on Skanska projects have good wages, benefits and working conditions. To that extent, Skanska lives up to its commitment to respect workers' organizing and collective bargaining rights.

But the situation in the South is more complicated. Union leaders point to Skanska's widespread use of anti-union subcontractors and tolerating those subcontractors' violations of labor standards.

Events at a Skanska-managed project in Nashville, Tennessee, reflect the difference. Until the 1970s, union-organized general contractors and subcontractors performed most large building projects in Tennessee. But then construction contractors withdrew their recognition of building trades unions in favor of nonunion operations in private- and public-sector construction. Only federal government projects, mainly related to the Tennessee Valley Authority electric power system, were carried out by union-represented workers.

For decades afterward, four large, family-owned nonunion construction firms dominated the sector in Nashville. In recent years, however, a building boom in Nashville brought other general contractors, including Skanska, to the Nashville construction market.¹⁶⁵

At the site of a large-scale project building—a new 33-story J.W. Marriott hotel in downtown Nashville—Skanska engaged a nonunion contractor named MR Drywall Services to drywall hotel interiors. That contractor in turn engaged a drywall labor supply company, First Class Interiors of Naples, Florida (FCI), to provide workers to complete the work.

The drywall work at the Marriott hotel project was carried out during the year between July 2017 and June 2018. Most of the workers were Latino immigrants who do not speak English. Without union representation, they were unaware of wage and overtime pay requirements.

Those drywallers employed by FCI took spontaneous action when, according to workers, the contractors failed to pay them for overtime work and for the final weeks of their regular working time. Their claims included:

- Improperly classifying the workers as independent contractors, thus depriving them of Social Security coverage, workers' compensation coverage, unemployment insurance coverage and other benefits related to proper classification as employees;

- Failure to pay the legally required 150% of regular pay for overtime work beyond 40 hours per week;
- Improperly deducting payments from workers' wages for required equipment;
- Promising hotel lodging for workers coming from other states, but forcing them to live 8 to 10 persons in a single small apartment and improperly deducting payments from workers' wages for such substandard housing;
- Failing to pay workers for their last two weeks on labor on the project; and
- Wrongfully dismissing workers who protested their treatment.

Skanska managers had direct knowledge of the wages, hours and conditions of drywall workers. Workers began each day with a meeting held by Skanska managers based in the Skanska trailer at the building site. They reported in and out of work by signing in and later by using a fingerprint-reading sensor system.

Dozens of workers protested at the Skanska trailer on the building site in May 29, 2018, demanding their unpaid wages. "People were scared but angry at not getting paid," said Nelson Eguizabal Brito, one of the affected workers who took a leadership role in pressing the companies for proper wage payment. "Many are afraid because they are not Americans, some are undocumented. They need to know what their rights are, so things can change."¹⁶⁶

Eguizabal Brito said that he and the workers observed MR Drywall and FCI managers consulting with Skanska management about the protest before telling them to go home, there was no work for them and no money to pay them. "To me it seems like Skanska is really in charge of everything," he commented. "If we can get the big company to do what it should, then the smaller companies should do it, too."¹⁶⁷

Following the events of May 2018, drywall workers in Nashville filed lawsuits in federal and state courts against Skanska, MR Drywall, First Class Interiors and the J.W. Marriott project. Workers sought \$1.6 million in back pay related to those companies' treatment of their wages, hours and working conditions. It also alleged that workers were fired in retaliation against their protest.¹⁶⁸ When members of the Metropolitan Council of Nashville and Davidson County wrote to Skanska asking the company to take responsibility for lost wages and other workers' concerns, the company replied:

Skanska...did not employ the Plaintiffs in the lawsuit....It is up to the subcontractors on the project to pay their staff of work performed.... Skanska is unaware of any "abuses" at the site...Skanska is not involved in the day-to-day operations of its subcontractors and is not responsible for their business practices, including making direct payment of wages to the workers hired by these companies.¹⁶⁹

The state court case was settled in March 2019. Skanska agreed to pay \$181,514 "for the benefit of approximately 96 employees of First Class Interiors of Naples, LLC and who were not paid for work

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performed as described in the complaint.”¹⁷⁰ The federal court lawsuit for unpaid overtime is pending as this report goes to press; Skanska is not a named employer party in that case.

Skanska’s use of nonunion contractors in Tennessee and other Southern states and its failure to take prompt responsibility for ensuring proper wage payments and other legal compliance has the effect of perpetuating substandard working conditions in the construction industry in the South. In contrast, Skanska could demonstrate leadership in moving Southern states toward higher standards by insisting that subcontractors engage union-represented workers and ensuring that workers are properly classified as employees, not independent contractors.

In a recently published white paper, American building trades unions note that Skanska “still has not embraced a consistent operational policy in the U.S. that ensures the safety, health, and fair and equitable treatment of employees on Skanska worksites.” Instead, the unions say:

Skanska can partner with experienced Building Trades Unions throughout the U.S. and not only address the shortfalls in meeting the company’s own ethical guidelines, but Skanska can lead, take the high road, and create lasting change for working families in vulnerable communities. In reality, with union jobs and consistent application of workers’ rights across the U.S., Skanska could realistically live up to its claim of “building a better society.”¹⁷¹

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THYSSENKRUPP AND OUTOKUMPU IN ALABAMA

Outokumpu Takes Over—With Subsidies

In 2012, Outokumpu Oyj Corp. bought the stainless steel operations of a still-new factory in Calvert, Alabama, constructed by the German-based multinational firm thyssenkrupp steel in 2009. Thyssenkrupp had made a \$5 billion investment in construction and operation of the Alabama plant in the face of the global economic recession. The decision to proceed was disastrous for the German company. After two years, it sold the Alabama plant's stainless steel operations to Outokumpu, and rolling mill operations to a joint venture between EU-based Arcelor/Mittal and the Japanese firm Nippon Steel.

Alabama's giveaways to thyssenkrupp deprived citizens of more than a half-billion dollars in tax revenue that could otherwise go toward meeting health, education, housing and other social needs. On top of tax abatements and exemptions, Alabama taxpayers in effect paid the company to open its factory through outright cash grants, paying for workers' training and building a new port facility aimed specifically at meeting thyssenkrupp's needs—not the needs of the people of Alabama.

Outokumpu is based in Helsinki, Finland. It is the largest producer of stainless steel in Europe and the second largest producer in the Americas. The company employs thousands of workers in 30 countries around the world. Most of them are represented by trade unions. But not in Alabama.

Outokumpu inherited the benefits of a huge incentive package given to thyssenkrupp of \$1.073 billion, the largest in Alabama history. The figure consisted of \$487 million in property tax abatements, \$125 million in sales tax exemptions, and \$461 million in cash, worker training and infrastructure projects. Infrastructure investments included the construction of a specialized \$115 million port facility on Pinto Island in Mobile Bay for loading and unloading steel slabs from ocean-going cargo ships that was financed by the state.¹⁷²

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Outokumpu's most advanced mill in the United States for stainless steel.
Credit: Outokumpu

Violating Workers' Rights

Workers' Organizing and thyssenkrupp's Response

Outokumpu inherited more than tax breaks from thyssenkrupp. It inherited, and then perpetuated, violations of workers' trade union rights that U.S. labor law authorities found unlawful.

When thyssenkrupp workers began an organizing effort with the United Steelworkers union in 2010–2011, management responded with an aggressive campaign to break it. Management told newly hired workers that the company was and intended to remain union-free, and held frequent captive-audience meetings with anti-union speeches and videos.

In its anti-union campaign, the company crossed the line into unlawful conduct. The National Labor Relations Board found that management:

- Threatened workers that they would lose everything and that collective bargaining would start from zero if they voted for union representation;
- Spied on workers' union activity;
- Prohibited employees from talking about the union at work (while allowing them to talk about other nonwork-related topics); and
- Disciplined two union supporters for talking about the union in the workplace.¹⁷³

In the face of management's intensive assault on workers' rights, the Steelworkers union filed unfair labor practice charges with the NLRB, blocking an election originally set for December 2011. The union thought management's unfair labor practices made a fair election impossible.

The case was set for trial before an NLRB judge, but the company and the NLRB reached a settlement in the case in May 2012 before going to trial. Under the settlement, management posted in the workplace a notice written by the NLRB acknowledging its unlawful conduct and promising not to repeat it.

The NLRB notice stated:

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice...

WE WILL NOT place you under surveillance by photographing you while you engage in union activities.

WE WILL NOT prohibit you from talking about the Union during working time while permitting you to talk about other nonwork subjects.

WE WILL NOT promulgate or maintain a rule that prohibits you from discussing the Union during working hours.

WE WILL NOT discipline you for violating a rule prohibiting discussion of the Union during working hours and to discourage you from engaging in concerted activities.

WE WILL NOT threaten you that if you select the Union as your bargaining representative, you will lose everything and collective bargaining will start from zero.¹⁷⁴

'Side Letter' Undermines NLRB Notice

Significantly, the notice also stated "WE WILL NOT post, email or otherwise distribute any letters or notices to employees that modify, alter, or undermine the effectiveness" of this notice.¹⁷⁵

Management disregarded this clause by sending employees a "side letter" *before* posting the notice. The side letter blamed the union for delaying the election, and said the company only agreed to post the notice so that an election would occur sooner. In effect, the company was suggesting that it did not really violate federal labor law, even though the notice clearly stated it.¹⁷⁶

The company's letter also emphasized that it did not have to pay any "fines, penalties or other monetary requirements" for its anti-union conduct. This was a gratuitous and misleading statement because the National Labor Relations Act does not provide for fines, penalties or other monetary requirements for violations of workers' organizing rights. It only provides for remedial steps such as rescinding unlawful rules and posting a notice to employees inside the workplace promising not to repeat unlawful conduct.

In September 2012, the NLRB regional director told management that its side letter violated the settlement agreement. The director told the company to repost the NLRB notice for an additional 60 days, with added language that the "side letter" did not properly represent the Board's findings or the purpose of the notice.¹⁷⁷

Outokumpu's Defiance

In 2019, more than six years later—the last five under Outokumpu—company management still had not obeyed this order. First thyssenkrupp, and then Outokumpu, filed one appeal after another to avoid posting a notice to cure its violation of the 2012 settlement agreement.

Thyssenkrupp's sale of the stainless steel plant to Outokumpu was in process throughout 2012 while the NLRB proceedings were under way. The two firms reached an agreement to proceed with the sale in January of that year, and completed the deal in December 2012.¹⁷⁸

Outokumpu was fully aware of the unfair labor practice case. Due diligence required knowledge of any legal matters, and the same plant management involved in the case remained at the Calvert stainless steel plant in the transition from thyssenkrupp.

Outokumpu had an opportunity to rectify thyssenkrupp's anti-union conduct when it took full control of the Calvert plant at the end of 2012. It failed to take any action. Instead, the company intensified its defiance of the NLRB's order. An NLRB judge ruled in 2016 that the company's refusal to post the notice violated its obligations under the settlement agreement. Outokumpu appealed that decision to the full NLRB in Washington.

The NLRB affirmed the judge's decision that the company's side letter was an attempt to minimize the effect of the board's notice. The board said that by issuing the side letter, management wanted to convince workers that the NLRB notice was posted as a mere formality, and that the company's true sentiments are to be found in its side letter, not the notice under the settlement agreement.

The board added that management "falsely suggested that the posting of a notice was the only action it was required to take." The NLRB also said the company was putting its own "spin" on the notice before the notice itself was posted, with the intention of undermining the notice and blaming the union for election delays.¹⁷⁹

It is important to recognize that the settlement agreement itself was meant to cure management's threats, unlawful rules, discriminatory discipline and other unlawful conduct. These are the underlying workers' rights violations that remain unresolved by management's intransigence.

Outokumpu appealed the NLRB's 2017 decision to the 11th U.S. Circuit Court of Appeals in Atlanta. On May 13, 2019, the appeals court rejected the company's claims and upheld the NLRB decision in a strongly worded decision:

The Side Letter constitutes non-compliance with the Settlement Agreement's terms. The Side Letter, posted and distributed before the Notice, blamed the union for delaying the election, emphasized that the Company did nothing wrong, and suggested that the Company had no other obligations under the Settlement Agreement. The Side Letter thus subverted the purpose and effectiveness of the Notice...undermining the negotiated resolution of the unfair practice charges lodged by the union.

The Company is a sophisticated employer. It is bound by the contract that it signed with the NLRB and must face the consequences....Default judgment was proper here....The Company's petition for review is DENIED and the Board's Application for Enforcement of its Order is GRANTED.¹⁸⁰

Two Faces of Outokumpu

The deeply rooted anti-union culture of Alabama has already been reflected in the introduction to this report and in other case studies involving that state (for example, a governor who says "being a right to work state is the reason many international companies look at Alabama and the other right to work states").¹⁸¹ Rather than applying its promised policies respectful of workers' freedom of association, Outokumpu bent itself to Alabama's anti-union ideology in violation of its own stated principles.

All nonmanagement Outokumpu employees at company facilities in Finland enjoy trade union representation. The same is true in most company operations around the world.

All nonmanagement Outokumpu employees at company facilities in Finland enjoy trade union representation. The same is true in most company operations around the world. On its website, the company says:

The Group endorses the values of the United Nations Universal Declaration of Human Rights. All of the major Outokumpu locations are situated in Europe, the US and Mexico, where risk related to human rights are not considered to be high. Outokumpu follows the spirit of international labor treaties and condemns the use of forced and child labor.

Outokumpu maintains a consistent policy of freedom of association. All employees of the Group's operations are free to join trade unions in accordance with local rules and regulations. More than 80% of our permanent employees are covered by collective agreements.¹⁸²

Outokumpu joined the UN Global Compact in 2008 with a "commitment letter" pledging support for the Global Compact's 10 principles, which include respect for workers' freedom of association and the right to organize and bargain collectively.¹⁸³ Outokumpu's Code of Conduct features a Freedom of Association clause that says: "Outokumpu employees have the right to organize themselves, join associations and bargain with the company collectively."¹⁸⁴

Except in Alabama. In this case, the only thing demanded of management by the NLRB is the extremely weak remedy of posting the original notice for 60 additional days, and renouncing the company's misleading side letter.

It would have been simple at any point in the process for Outokumpu to obey the board's order, explain that the unlawful conduct occurred under thyssenkrupp, and affirm to workers that Outokumpu would apply the freedom of association principles contained in its sustainability program and Code of Conduct. Instead, Outokumpu prolonged the case for more than six years.

VOLKSWAGEN IN TENNESSEE

The Tennessee Labor Relations Climate

The anti-union culture of the United States South is deeply rooted in Tennessee. As the state’s governor noted: “Tennessee is proud to be a right to work state. We have very low unionization rates—factors which continue to make our state attractive for foreign direct investment.”¹⁸⁵ The Tennessee Chamber of Commerce cites “a right to work state” and “low union participation” among “Reasons Manufacturers Like Tennessee’s Business-Friendly Environment.”¹⁸⁶

In 2008 the state of Tennessee gave Volkswagen the largest single subsidy ever recorded by that time—more than a half-billion dollars—to set up an auto assembly factory in the city of Chattanooga.

In 2008 the state of Tennessee gave Volkswagen the largest single subsidy ever recorded by that time—more than a half-billion dollars—to set up an auto assembly factory in the city of Chattanooga.¹⁸⁷ After it opened in 2011, workers at the plant began an organizing effort with the UAW.

An attack on the UAW by a prominent anti-union consultant reflects the challenge workers faced. Characterizing trade unions as a “Northern invader” is a common theme in the South’s anti-union culture. This newspaper diatribe in 2013 repeated the same charge, as though nothing had changed since workers tried forming unions in the textile mills in the 1920s:

One hundred and fifty years ago an invading Union army was halted at Chattanooga by the Confederate Army of Tennessee under General Braxton Bragg. The Battle of Chickamauga was a resounding defeat for the Northern forces.

Today Southeastern Tennessee faces invasion from another union—an actual labor union, the United Auto Workers (UAW). The UAW has its heart set on organizing Chattanooga’s Volkswagen plant...



VW workers outside the plant in Chattanooga, Tennessee. Credit: Chris Brooks

Unionization will be like a cancer on Chattanooga's economic growth... though perhaps an infection is a more apt metaphor, an infection borne by an invading union force from the North. One hundred and fifty years ago, the people of Tennessee routed such a force in the Battle of Chickamauga.

Let their descendants go now and do likewise.¹⁸⁸

Volkswagen's Commitments on Freedom of Association

In 2002 Volkswagen agreed to a Declaration on Social Rights and Industrial Relationships at Volkswagen with the global metalworkers federation and the Volkswagen Global Works' Council. The declaration states that the principles of the ILO Core Labor Standards, including freedom of association and the right to collective bargaining, will be assured within Volkswagen.¹⁸⁹

VW's 2017 Sustainability Report says:

The cornerstones of collaborative and harmonious labor relations at Volkswagen Group are a raft of charters and declarations agreed with our Group European Works Council and Global Group Works Council. They safeguard employment rights and human rights, such as the right to freedom of association, collective bargaining, equal pay, and the prohibition of discrimination in the workplace.

To safeguard universal human rights, we take our lead from various international, European and national agreements. These include:

- the United Nations Universal Declaration of Human Rights;
- the UN Guiding Principles on Business and Human Rights;
- the Declaration on Fundamental Principles and Rights at Work by the International Labour Organization (ILO);
- the European Convention on Human Rights;
- the OECD Guidelines for Multinational Enterprises; and
- the German federal government's National Action Plan for Business and Human Rights.¹⁹⁰

Letting Tennessee Power Brokers Do the Dirty Work

In dealings with the German union IG Metall and trade unions in other Volkswagen factories around the world, the company often has lived up to its declared principles. Workers in every Volkswagen plant in the world are represented by trade unions and bargain collectively with the company—except in Tennessee.

Workers in every Volkswagen plant in the world are represented by trade unions and bargain collectively with the company—except in Tennessee.

Based on Volkswagen's commitments to international standards on freedom of association and its recognition of trade union rights around the world, workers in Tennessee at first felt confident they could exercise their right to organize with the UAW without interference. IG Metall maintained a positive relationship with the company and appeared to make progress in convincing management to maintain a neutral stance in the Tennessee organizing effort, which began in 2013.

Volkswagen publicly presented a posture of neutrality, not using the most blatant and aggressive fear-mongering tactics that typify anti-union campaigns in the American South. But Volkswagen's public posture was overshadowed by the entire Tennessee political and economic power structure's aggressive move to break the organizing drive. Volkswagen stood silent while the anti-union assault continued.

After the UAW organizing drive began, Tennessee’s two senators wrote a letter in September 2103 to the then-CEO of Volkswagen, Martin Winterkorn, saying:

During our negotiations to bring Volkswagen to Tennessee, your recruitment team made clear commitments to Senator Corker that the company did not have any interest in associating with the United Auto Workers and would resist efforts they might make to organize the plant. Despite that understanding, we have been very disappointed to learn that there are active conversations going on between Volkswagen and the UAW....

[W]e want to reiterate how concerned we are about the damage we believe will be caused to Chattanooga, the state of Tennessee and over time possibly the entire southeastern United States if you invite the UAW to organize the plant....

We are very concerned the UAW’s presence in your plant would greatly damage the momentum that Tennessee has developed in attracting great businesses to our state....We hope that you will clarify your position with your employees and with the Chattanooga community in the very near future. This is a critical issue for our state....¹⁹¹

The tone and content of the senators’ letter conveyed a not-so-veiled threat of adverse consequences if Volkswagen maintained an open attitude toward workers’ organizing efforts. From there, Tennessee political and economic elites escalated a vicious campaign of anti-union threats and intimidation that eclipsed Volkswagens’ claimed neutrality before the NLRB election in February 2014. The New York Times reported that in days leading up to the vote:

Governor Bill Haslam, a Republican, warned that auto part suppliers would not locate in the Chattanooga area if the plant was unionized. Senator Bob Corker said Volkswagen executives had told him that the plant would add a new production line, making SUVs, if the workers rejected the U.A.W. In a series of interviews this week, Mr. Corker, a Republican and a former mayor of Chattanooga, asserted that a union victory would make Volkswagen less competitive and hurt workers’ living standards.¹⁹²

On the first day of a three-day voting schedule at the VW plant, Senator Corker declared, “I’ve had conversations today and based on those am assured that should the workers vote against the UAW, Volkswagen will announce in the coming weeks that it will manufacture its new mid-size SUV here in Chattanooga.”

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A key figure in the Tennessee state senate said “Should the workers choose to be represented by the United Auto Workers, then I believe additional incentives for expansion will have a very tough time passing the Tennessee Senate.” A prominent Chattanooga

management lawyer told the media, “Further financial incentives—which are absolutely necessary for the expansion of the VW facility—simply will not exist if the UAW wins this election.”¹⁹⁴

A group funded by anti-union businesses called the “Center for Worker Freedom” rented a dozen digital billboards on roadways leading to the plant trumpeting anti-union messages. They showed images of

factories closed decades ago with the message: “Detroit: Brought to You by the UAW.”¹⁹⁵ The unrelenting pressure by the Tennessee political and business elite had its intended effect: employees voted “no union” 712–626 in February 2014.

A UAW Victory—and VW’s Refusal to Bargain

VW Workers Persevere in Organizing

In the aftermath of the 2014 election, VW management agreed to consult informally with a large bloc of UAW supporters as well as a smaller faction of employees supported by outside anti-union groups.¹⁹⁶ But workers did not abandon the union. More than 150 UAW adherents in skilled trades and maintenance groups persevered in an organizing drive and petitioned for an NLRB election in 2015 to demonstrate majority support for their new union bargaining unit, UAW Local 42.

At first, Volkswagen said it would accept the results of the NLRB election among skilled trades and maintenance workers. In a memorandum to employees, management pledged to “remain neutral throughout this process” and said “In the event the UAW is elected as the bargaining representative for the maintenance employees, the Company and the UAW would enter into collective bargaining.”¹⁹⁷

Engaging a ‘Union Avoidance’ Law Firm and Defying Workers’ Choice

In a result called “historic,” workers voted 108–44 in favor of union representation in December 2015.¹⁹⁸ But instead of honoring its promise to enter into collective bargaining, VW management signaled a new hard line stance against the union by refusing to accept the election results.

Volkswagen was guided now by its choice of labor relations counsel in the UAW organizing effort: Littler Mendelson, the most prominent anti-union law firm and consulting group in the United States. Volkswagen knowingly chose to engage a notorious “union-busting” law firm famous for its aggressive tactics to break up workers’ organizing efforts.¹⁹⁹ The company refused to obey the board order to bargain with the UAW, and appealed to the NLRB to nullify the outcome. After several months, the board rejected the appeal and once again ordered VW to bargain with the union.²⁰⁰

In a result called “historic,” workers voted 108–44 in favor of union representation in December 2015. But instead of honoring its promise to enter into collective bargaining, VW management signaled a new hard line stance against the union by refusing to accept the election results.

Volkswagen refused to obey the NLRB’s re-affirmed order. Instead, the company appealed the board’s decision to a federal appeals court.²⁰¹ Meanwhile, management made changes in terms and conditions of employment without bargaining with Local 42. This prompted the NLRB regional office to issue an unfair labor practice complaint in May 2017 against the company for unlawfully refusing to bargain with the union. VW cited its appeal of the election results, saying “Until the court makes a decision on this matter [the election results], we are unable to bargain with the UAW.”²⁰²

This statement is misleading. At any moment since the board certified the election results and ordered the company to bargain, Volkswagen could accept workers’ choice and sit down to negotiate a contract with the union. The company was under no legal compulsion to persist in its defiance of the NLRB’s bargaining order.

Playing the Trump Card

Instead of obeying the NLRB order, Volkswagen followed the advice of Littler Mendelson’s anti-union lawyers and continued its legal appeals to nullify the union vote. This strategy relied on the election of Donald Trump and Trump’s new appointments to the NLRB.

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A new Trump-appointed majority on the NLRB created expectation that it would roll back decisions favorable to workers’ organizing and bargaining rights. Indeed, the Trump-dominated NLRB already has rolled back workers’ rights in many areas of labor law.²⁰³ Not least because one of Trump’s appointments to the board was a prominent partner in the Littler Mendelson firm who built his career breaking up union organizing efforts, most recently by Uber and Amazon workers, among many others.²⁰⁴

IG Metall tried to persuade top headquarters officials to instruct American management to accept the vote results in Tennessee and bargain with the UAW.²⁰⁵ But Littler Mendelson and VW’s American management have proven to be more persuasive. Echoing Tennessee management’s argument to the NLRB, Volkswagen Human Resources Director Karlheinz Blessing rejected IG Metall’s request. He declared, “We don’t want to establish some kind of a branch union in Chattanooga and, with it, a split of the workforce.”²⁰⁶

In December 2017, the court sent the VW case back to the board for a new decision. In early 2019, this was the status of the case: the NLRB had not yet issued its decision in the case, and Volkswagen continued to violate workers’ organizing and collective bargaining rights by refusing to bargain with their chosen union.

Spring 2019: VW Exposes Its Anti-Union Core

The UAW Moves for a Plant-wide Election

Events at the Volkswagen plant in Chattanooga took a sudden turn in the spring of 2019. In April, believing it had enough support to win an NLRB election in a plant-wide bargaining unit, the UAW withdrew its petition to represent the smaller skilled-trades and maintenance group. The union filed for an election in one bargaining unit for all assembly-line production workers and skilled trades and maintenance workers in the plant.²⁰⁷

The union’s move appeared to satisfy VW management’s demand that an election take place among all workers—the foundation of the company’s 3½-years-long refusal to accept the results of the 2015 election in the smaller unit. But now Volkswagen reversed course. The company said it would not agree to a plant-wide election until the NLRB ruled on the earlier case.

Already, the Trump-dominated labor board had delayed making its decision in the case for 16 months. The board immediately granted the company’s demand, delaying the election.²⁰⁸



VW workers outside the VW plant in Chattanooga, Tennessee. Credit: Chris Brooks

Volkswagen Launches Anti-Union Campaign and Tennessee Power Structure Returns

By itself, Volkswagen's procedural maneuvering to delay a plant-wide election blocked workers' freedom of association in the Tennessee plant. But what followed was even worse. On April 17, 2019, Volkswagen issued a letter to all Chattanooga employees saying:

We've heard the concerns that our workers have raised in an open dialogue....We intend to continue that open dialogue but we believe we can achieve more for us all by continuing that open dialogue directly.... The company will hold special information sessions and provide additional communication in the coming weeks." (emphasis in original)²⁰⁹

"Open dialogue directly" is coded language that means "without a union." "Special information sessions" means that VW management will conduct captive-audience meetings with workers to pressure them to vote against union representation.

As happened in 2014, VW management again took advantage of Tennessee's anti-union political culture and power structure to interfere with workers' organizing. In 2018 congressional elections, Marsha Blackburn won the seat vacated by the retirement of Sen. Bob Corker, who had played a key role in intervening in the 2014 election. When the UAW sought a new election at the plant in April 2019, Sen. Blackburn continued in the same anti-union tradition, saying "Tennessee has prospered because it is a right to work state with no income tax....We don't need union bosses in Detroit telling Tennessee what's best for our workers." Blackburn said that UAW attempts to unionize the Chattanooga plant "will harm its workers."²¹⁰

As happened in 2014, VW management again took advantage of Tennessee's anti-union political culture and power structure to interfere with workers' organizing.



Because they are banned from using fliers inside the factory, VW workers get tattoos of the UAW logo instead. Credit: Chris Brooks

Republican Rep. Chuck Fleischmann echoed the anti-union refrain among Tennessee politicians. “I really think Volkswagen is better served and the suppliers are better served with the employers and employees working that out on their own,” he said. “I just think that some of the labor union tactics have been very disadvantageous to industries in other parts of the world. That’s why they’re here. I would rather see a situation where...we’re going to remain union free.”²¹¹ Other elected officials repeated the same threats made before the 2014 election to withhold future economic incentives if workers voted for UAW representation.²¹²

In the most dramatic move, reprising the intervention of former governor Bill Haslam in the 2014 election, VW invited Tennessee’s new governor Bill Lee into the factory to deliver a speech on April 29, 2019, to employees assembled in a captive-audience meeting. The company shut down production for the speech and denied journalists access to the meeting.

The governor’s office refused to issue a text of the speech, but workers recounted Lee describing employment relations in the nonunion company he managed before taking office. He said, “I believe that when I have a direct relationship with you, the worker, and you’re working for me, that is when the environment works the best.”²¹³ Again, “direct relationship” is coded language in the union-avoidance field that means “without union representation and collective bargaining.”

In another captive-audience meeting in late May, the VW plant manager reached back more than 30 years to blame the UAW for closure of a Pennsylvania factory that produced the Rabbit, a model that failed in the U.S. marketplace. Referring to an earlier lawful strike at that plant, the top manager said, “In the end Volkswagen took the consequences and had to close the factory.”²¹⁴

Blaming the UAW for the 1988 Pennsylvania plant closure was belied by the explanation of a VW official when the plant closed. He said at the time that the plant closure had nothing to do with the union but was a result of overcapacity. He said that the plant: “is designed to produce upwards of 240,000 vehicles a year while the present car market calls for only about a third of that number.”²¹⁵ But the Tennessee plant manager did not mention this. The implied threat was clear: a vote for the union means a vote to close the factory.

The onslaught of anti-union interference by the Tennessee state power structure and VW management’s open, aggressive campaign against workers’ organizing had the desired effect. In the election concluded June 14, 2019, the vote was 833–776 against UAW representation.²¹⁶

Top state officials reveled in the results of their interference. “They didn’t need someone else speaking for them,” said Gov. Bill Lee.²¹⁷ One congressional representative highlighted Tennessee’s anti-union culture and VW’s embrace of it: “It’s much easier to defend incentives, the use of tax dollars, when they’re going into an investment that follows our state’s philosophy.”

Two Faces of Volkswagen and a Global Union Response

Volkswagen’s trade unions have recognized the company’s hypocrisy on workers’ freedom of association. In December 2018, the global union federation IndustriALL asked Volkswagen to end its refusal to bargain with UAW Local 42 and to enter into good-faith bargaining. The global union declared:

We protest against the fact that Volkswagen has still not accepted the election of the maintenance workers and has not complied with related bargaining rights and thereby tries to use the anti-union legal environment in the USA to avoid entering into collective bargaining.²¹⁸

In January 2019, Volkswagen rejected IndustriALL's request. The union then suspended its global agreement with VW because "the German car manufacturer consistently refuses to accord the same rights to its workers in Chattanooga, Tennessee, US, as it does in the rest of the world." The global union noted, "The vote held by the skilled workers at the Chattanooga plant is in accordance with ILO Convention No. 87 as well as US law, and Volkswagen must respect the right of the workers to freely choose their union."²¹⁹

Volkswagen refused to bargain with workers at the Tennessee plant when they chose UAW Local 42 to represent them. Management obstructed a new plant-wide election, relying on the anti-union majority on the NLRB appointed by Donald Trump to delay it. The company colluded with Tennessee political and business powers, welcoming their interference in what should be workers' choice. All these actions directly contradict VW's commitments to freedom of association and collective bargaining under international human rights and labor standards in the instruments cited in the company's 2017 sustainability report.

[Volkswagen] colluded with Tennessee political and business powers, welcoming their interference in what should be workers' choice. All these actions directly contradict VW's commitments to freedom of association and collective bargaining under international human rights and labor standards...

PART THREE

RECOMMENDATIONS

Nothing in American labor law or practice forces European companies to adopt practices that undermine workers' freedom of association, practices enabled by shortcomings in U.S. law and all too common among U.S. companies, especially in the American South. European companies are fully capable of acting in compliance with international human rights standards on workers' freedom of association—standards that companies studied in this report have publicly promised to uphold—in their American labor relations practices, rather than descending to behavior and practices typical in the U.S. Southern states that violate international norms. At this critical and politicized point in time in transatlantic trade relations, the danger lies in European firms' blanket adoption of U.S.-style anti-union campaigns.

TO EUROPEAN COMPANIES IN THE AMERICAN SOUTH

1. European companies develop and agree to binding mechanisms that ensure neutrality for workers that organize and that stop anti-union campaigns.

European companies investing in the American South should turn their rhetoric about ILO core labor standards into reality. Rather than adopting a “When in Rome, Do as the Romans” approach to workers' organizing in U.S. Southern states, European companies should acknowledge the anti-union environment in the U.S. South and implement consistent policies of respect for workers' organizing and collective bargaining rights, and tell state officials not to interfere with management's labor and employment relations. This also means making a binding commitment to remain neutral on workers' organizing—*not* launching aggressive anti-union campaigns with captive-audience meetings and predictions of job loss and other adverse consequences when workers try to form and join trade unions. Such binding commitments can be strengthened with monitoring and enforcement mechanisms that ensure workers' right to organize is respected.

2. European firms apply due diligence in U.S. labor practices.

Develop U.S.-specific internal management training and implementation systems to ensure that U.S. managers understand and implement freedom of association policies that comport with international standards. Create rigorous internal “due diligence” systems to evaluate the labor relations performance of all U.S. operations. Where such evaluation finds evidence of violations of workers' right to organize and bargain collectively, take steps needed to change management policies and behavior, and to hold U.S. management accountable for any further violations. In a few cases, European firms have successfully intervened to stop anti-union behavior by U.S. management in the U.S. South.

3. European companies create internal systems to increase transparency along supply chains.

The internal systems should utilize third-party monitors to verify allegations in cases where companies repeatedly violate workers rights'. They should include binding mechanisms to compel U.S. management to institute remedies and restitution and/or sever business relations with violating contractors or subcontractors.

Internal systems should be developed that compel U.S. management to hold European firms' contractors and subcontractors accountable for noncompliance with U.S. labor laws. For example, such systems should prevent wage theft and incentivize business partners to uphold health and safety regulations along the supply chain. In industries like construction, a lack of transparency allows companies to evade accountability for workers' rights violations. In cases where firms along a supply chain have repeated allegations of workers rights' violations, third-party monitors should be utilized to verify the reports at the contractor or subcontractor level. If they are verified, European companies

should have binding mechanisms in place that compel their U.S. management to take the appropriate steps to institute remedies or restitution, or sever business ties.

4. European companies negotiate international framework agreements with global union federations.

Some of the companies studied in this report have reached international framework agreements with global union federations or with European trade unions negotiating on behalf of global partners. Others have not. However, even those firms that have reached such agreements are not consistently applying freedom of association principles and policies in their Southern U.S. operations. All European companies investing in the American South should have framework agreements embodying freedom of association principles and policies with effective oversight and enforcement mechanisms. International framework agreements can be strengthened with the creation of mutually agreed upon independent ombudsman associated with global institutions, such as the International Labor Organization.

5. Where workers choose unions, European firms partner with them to raise standards in the U.S. South.

By avoiding taxes, resisting trade union formation and denying workers an organized voice in public policy, European companies are complicit in keeping Southern states in the bottom tier of social standards among the American states. European companies first should stay neutral when workers organize. Then, if workers choose union representation, companies should work together with their employees' unions to promote progressive policies in labor, employment, education, health, environmental and other social welfare arenas.

6. European firms with longstanding, successful apprenticeship programs should work with Southern communities to replicate them in the U.S. South.

There is a long tradition of workforce development strategies and work-based learning, or apprenticeship programs, in Europe. Generally, these are regarded as a resounding success for developing middle-skill jobs. In concert with Southern communities, European firms can offer similar models of training and apprenticeships to develop the workforce in the U.S. South. These programs are needed across the board, including where unions exist already, and especially make sense in cases where firms receive large public subsidies.

TO STATE GOVERNMENTS IN THE SOUTH

1. Southern states stop selling anti-union ideology and culture.

State governments in the American South should renounce their emphasis on right to work laws, low levels of union representation, employment-at-will rules, “business-friendly” deregulation of employment standards, and other policies that lock them into the lowest tier of social standards among the 50 U.S. states. They do not have to suddenly become champions of union organizing and collective bargaining, but state governments should allow companies, workers and unions to resolve labor relations matter among themselves, without state government intrusion and interference.

2. Southern states stop excessive tax giveaways.

State governments should stop excessive subsidies and tax advantages to corporations that deprive residents of needed social, educational, health, environmental and other protections. Such giveaways perpetuate the status of the South as the region with lowest social standards among the 50 states.

3. Southern states research the role of strong labor institutions in supporting macroeconomic growth and develop policies that limit acute inequality.

Southern state governments aiming to promote stable, inclusive growth should support and implement policies that benefit workers and curb rising and acute levels of inequality. Not only should Southern governments create more pragmatic tax subsidy programs to draw corporation investment, at the same time they should research the positive role of quality jobs and strong labor institutions in macroeconomic growth and stability. As well, Southern states governments' research should inform policy development that lowers inequality and its accompanying risks to the U.S. economy.

TO EUROPEAN GOVERNMENTS AND THE EUROPEAN COMMISSION

1. European governments and the European Commission adopt national and EU legislation requiring that European firms operating in the United States conform their behavior to ILO core labor standards.

National governments in Europe as well as the European Commission should make their home-based companies responsible and accountable for freedom of association policies and behavior in their foreign operations, with special attention to the American South.

2. European governments and the European Commission develop systematic means of scrutinizing freedom of association policies and practices of EU-based firms operating in the United States by means of independent reviews, reports and public hearings.

European national governments and the European Commission should create a broad-based program of self-reporting by firms, starting with a public annual report on workers' rights in their U.S. facilities and including information on any unfair labor practice cases or representation proceedings under the National Labor Relations Act. Such scrutiny also should involve investigations and reports by independent researchers and analysts, and periodic public hearings at which workers, trade unions, employers and NGOs can participate and offer testimony.

3. European governments and the European Commission form a new due diligence directive.

Develop, promote and adopt a new EU directive incorporating the recommendations above regarding due diligence, public commitments, dissemination of policies, training and implementation systems, and the development of framework agreements regarding workers' right to freedom of association.

TO THE SOCIALLY RESPONSIBLE INVESTMENT COMMUNITY

1. Socially responsible investors hold European companies accountable.

Socially responsible investors in Europe and around the world should monitor practices of European companies in the American South and hold them accountable for violations of workers' organizing and bargaining rights. Investors should press management at annual general shareholder meetings about anti-union conduct in Southern states and the long-run effect on investments that perpetuate low social standards. SRI rating programs should evaluate European firms on their labor practices in the U.S. South in light of international labor standards, and adjust company ratings accordingly.

TO U.S. AND EUROPEAN TRADE UNIONS AND GLOBAL UNION FEDERATIONS

1. Globally, unions promote solidarity among European workers and workers in the American South.

National labor movements in the United States and European countries, together with Europe-wide and global trade union federations, should accelerate efforts to advance organizing and collective bargaining for Southern workers employed by European multinational companies. This means educating their affiliates and their wider societies about the special challenges faced by workers in the American South, and exposing European companies' anti-union practices in the South contrary to their sustainability and responsibility declarations. It also means a stepped-up program of European and global trade union delegations visiting the South for first-hand investigation and reporting on violations of workers' rights by European companies there.

2. Globally, unions work together to stop the export of U.S. Southern states' anti-union ideology and culture to Europe.

European unions and those in the United States should challenge moves by U.S. corporations to export Southern-style anti-unionism into Europe, or by European companies to import the Southern U.S. model. Southern and Eastern Europe (in some ways the European counterpart to the American South) are the most likely targets for such moves. But if they are unchecked, European and U.S. companies will next target countries in the heart of Europe to introduce the U.S. brand of anti-union labor relations and deregulated labor markets.

3. Globally, unions unite to prevent a race to the bottom in European-U.S. trade negotiations.

European and U.S. unions should do their utmost to keep American Southern-style anti-unionism, deregulation, privatization and low social standards off the bargaining table in talks on a trans-Atlantic trade and investment deal. Trade unions on both sides of the Atlantic should meet proposals for such retrograde policies not only with effective policy responses, lobbying efforts, and in national and European elections, but also with mobilization of protests and demonstrations in Washington and Brussels, or wherever else negotiations take place.



Arnise Porter was an organizing lead for the Communications Workers of America and the Committee for Better Banks in Dallas. For several years, she worked on a campaign to organize a European bank (Banco Santander) that has large investments in the U.S. South. Arnise suddenly passed away in May 2019. We dedicate this report to her memory, her unwavering commitment and enthusiastic spirit to making it easier for Southern workers to organize unions in the American South. Here she is pictured at left with Lariesse Reeves, right, a worker at Santander Consumer USA.

Endnotes

- 1 For an overall discussion of right to work laws, see Jamie Peck, “Right to Work and the Right at Work,” 92:1 *Economic Geography* 4 (2016), at www.tandfonline.com/doi/full/10.1080/00130095.2015.1112233. See also the discussion below in Section III.
- 2 Seven U.S. states have no minimum wage or a state minimum lower than the federal minimum wage of \$7.25 per hour. Six of the seven are Alabama, Georgia, Louisiana, Mississippi, South Carolina and Tennessee (the seventh is Wyoming). Of the six, Alabama, Louisiana, Mississippi, South Carolina and Tennessee have a zero minimum wage. The minimum wage in Georgia is \$5.15 per hour. Workers in those states employed by companies engaged in interstate commerce are covered by the federal minimum wage, but workers in micro-businesses or intrastate businesses are not covered, and are subject to the state minimum wage.
- 3 Nine Southern states are among the lowest 12 states for unemployment insurance weekly benefits. Five Southern states—Alabama, Florida, Louisiana, Mississippi and Tennessee—are among the lowest six states. Mississippi is last, with a maximum weekly benefit of \$235. See “Maximum Weekly Unemployment Benefits By State,” *Saving2Invest* (2018), at www.savingtoinvest.com/maximum-weekly-unemployment-benefits-by-state/. Eight Southern states are among the bottom 25 states for maximum weekly workers’ compensation benefits. Mississippi is last, with a maximum benefit of \$494 per week. See “Chart of States’ Maximum Workers’ Compensation (WC) Benefits,” Social Security Administration, at <https://secure.ssa.gov/poms.nsf/lnx/0452150045#c1>.
- 4 See Eva Fedderly, “Greens Say EPA Lets Southern States Play Fast & Loose,” *Courthouse News Service*, Oct. 2, 2017, at www.courthousenews.com/greens-say-epa-lets-southern-states-play-fast-loose/.
- 5 See “TN touts ‘low-cost labor force’ to lure foreign business,” *Associated Press*, Sept. 2, 2015, at www.tennessean.com/story/news/2015/09/02/tn-touts-low-cost-labor-force-lure-foreign-business/71617998/. The same article reports that in contrast, the Democratic governor of Kentucky said “We have an open-door policy and welcome companies no matter what their desires may be in terms of labor-management relationships. We don’t try to dictate what that relationship should be. We think that’s up to the company and to the employees.”
- 6 See Cliff Sims, “Alabama plant unionizes in spite of Bentley’s warnings that it could kill jobs,” “Yellowhammer” Alabama state business newsletter, Nov. 19, 2015. Gov. Bentley later resigned in the wake of a sex and cover-up scandal; see Alan Blinder, “Robert Bentley, Alabama Governor, Resigns Amid Scandal,” *The New York Times*, April 10, 2017, at www.nytimes.com/2017/04/10/us/robert-bentley-alabama-governor.html.
- 7 See Rudolph Bell, “South Carolina: Union jobs aren’t welcome here,” *Greenville (South Carolina) News*, Feb. 20, 2014, at www.usatoday.com/story/money/cars/2014/02/20/no-south-carolina-union-jobs/5642031/. Haley was later appointed by Donald Trump to be U.S. ambassador to the United Nations.
- 8 See Pamela Wolf, “Mississippi Puts Three More Nails in the Union Coffin,” *Wolters Kluwer* (April 22, 2014) at www.employmentlawdaily.com/index.php/2014/04/22/mississippi-puts-three-more-nails-in-the-union-coffin/.
- 9 See “Tennessee Advantages,” *Knoxville-Oak Ridge Innovation Valley*, at www.knoxvilleoakridge.com/taxes-incentives/tennessee-advantages/.
- 10 See Tennessee Chamber of Commerce, “Reasons Manufacturers Like Tennessee,” at www.tnedc.com/images/uploads/content_files/2017_TEDC_Memphis.pdf.
- 11 See “Union Members—2018,” U.S. Bureau of Labor Statistics (Jan. 18, 2019), at www.bls.gov/news.release/pdf/union2.pdf.
- 12 Some states make exceptions only for police officers and firefighters, who have the political influence to win bargaining rights.
- 13 See “Population Below Poverty Level by U.S. State” at <http://factsmaps.com/population-below-poverty-level-line-rate-united-states/>.
- 14 See “Household Income 2016,” U.S. Census Bureau (September 2017), at www.census.gov/content/dam/Census/library/publications/2017/acs/acsbr16-02.pdf.
- 15 See Nik Theodore, Bethany Boggess, Jackie Cornejo and Emily Timm, “Build a Better South: Construction Working Conditions in the Southern U.S.” (2017), at www.workersdefense.org/wp-content/uploads/2017/05/Build-a-Better-South-Full-Report-Digital.pdf; see also David Cooper and Theresa Kroeger, “Employers Steal Billions from Workers’ Paycheck Each Year,” *Economic Policy Institute*, May 10, 2017, at www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/.
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- 17 See “Infant Mortality Rates by State (2017),” *Centers for Disease Control and Prevention*, at www.cdc.gov/nchs/pressroom/sosmap/infant_mortality_rates/infant_mortality.htm.
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- 22 See Laura Bucci, “Organized Labor’s Check on Rising Economic Inequality in the U.S. States,” *State Politics and Policy Quarterly* (2018). The Gini Coefficient method cited by Bucci calculates economic inequality on a scale between 0 and 1. At 0, there is perfect equality among the entire population of the entity being measured. At 1, one person has everything and the rest of the population has nothing. Obviously these extremes are unrealistic, so most of the state-by-state Gini coefficient calculations cluster toward the center, usually between .4 and .6. The difference between .4 and .6 is significant. So is the difference between .4998 and .5386.
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- 28 See Carol Anderson, *One Person, No Vote: How Voter Suppression Is Destroying Our Democracy* (Bloomsbury Publishing 2018); Maggie Astor, “Seven Ways Alabama Has Made It Harder to Vote,” *The New York Times*, June 23, 2018 (focusing on Alabama for having “enacted a slew of restrictive laws and policies...under the guise of preventing election fraud”), at www.nytimes.com/2018/06/23/us/politics/voting-rights-alabama.html.
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36 *Id.*

37 For this and following quotations, see W.J. Cash, *The Mind of the South* (Alfred A. Knopf publisher, 1941).

38 In the American North-South divide, Southerners referred to Northerners as “Yankees” and to their own region as “Dixie.” Even today, the use of “Dixie” is viewed by many as a racist approval of the slave-holding South.

39 See James C. Cobb, *The Selling of the South* (University of Illinois Press, 2nd edition 1993). Many U.S. union leaders in the 20th century were European immigrants or children of European immigrants.

40 *Id.*

41 Founded in 1937, the CIO was the Congress of Industrial Organizations, the arm of the American labor movement that organized factory workers around the country. In 1955, the CIO and the older American Federation of Labor (AFL) merged to create the AFL-CIO.

42 See Gerald Friedman, “The Political Economy of Early Southern Unionism: Race, Politics, and Labor in the South, 1880–1953,” *The Journal of Economic History*, Vol. 60, No. 2, (June 2000), pp. 384–413.

43 The term “liberal” in the American political context means what Europeans would call “social democratic,” distinct from the more common use of “liberal” in Europe meaning free markets, reduced state regulation and other elements of what in the United States would be “conservative” policies.

44 The lone exception is Virginia, which has become largely “Blue” thanks to population growth in the economically vibrant northern Virginia suburbs near Washington, D.C., where liberal-leaning voters now outnumber conservative voters in the rest of the state.

45 U.S. laws often bear the name of the legislators who sponsored them. Sen. Robert Wagner of New York was the sponsor of the National Labor Relations Act of 1935, so the NLRA is also known informally as the Wagner Act. Sen. Robert Taft of Ohio and Rep. Fred Hartley of Michigan were the sponsors of the Labor Management Relations Act of 1937, so the LMRA is also known as the Taft-Hartley Act.

46 Under a 1988 Supreme Court ruling, nonunion members obligated to pay “fair share” or “agency fee” payments are entitled to receive a rebate of the portion of their compelled payments that are not devoted to representational purposes. See *CWA v. Beck*, 487 U.S. 735 (1988). This “Beck rule” applies only to private-sector employers and workers. A different legal regime now applies to public-sector workers: the U.S. Supreme Court decided in 2018 that, in the public sector, nonunion members cannot be compelled to pay agency fees to the union that represents them. See *Janus v. AFSCME Council 31*, 585 U.S. ____ (2018).

47 See Michael Pierce, “Vance Muse and the Racist Origins of Right-to-Work,” American Constitution Society, Feb. 22, 2018, at www.acslaw.org/acsblog/vance-muse-and-the-racist-origins-of-right-to-work/. “Sharecropper” is the term used to describe a semi-feudal system in which farmers do not own the land that they farm; they must pay a high percentage of their income to the landowner.

48 See National Right to Work Committee, “The Problem of Compulsory Unionism,” at www.nrtwc.org/about-2/the-problem/.

49 See “Union Members—2018,” U.S. Bureau of Labor Statistics (Jan. 18, 2019), at www.bls.gov/news.release/pdf/union2.pdf.

50 See Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (1956); Eugene D. Genovese, *From Rebellion to Revolution: Afro-American Slave Revolts in the Making of the Modern World* (Louisiana State University Press, 1979).

51 The International Association of Machinists, now the leading union in the aerospace sector, was founded by railroad mechanics in Atlanta in 1888 (it must be acknowledged that in their early years, the railroad unions in the South maintained separate black and white unions).

52 See John A. Salmond, *Gastonia 1929: The Story of the Luray Mill Strike* (University of North Carolina Press, 1995).

53 See Robert Korstad, *Civil Rights Unionism: Tobacco Workers and the Struggle for Democracy in the Mid-Twentieth-Century South* (University of North Carolina Press, 2003).

54 See Judith Stein, “Southern Workers in National Unions: Birmingham Steelworkers, 1936–1951,” in Robert H. Zieger, ed., *Organized Labor in the Twentieth Century South* (University of Tennessee Press, 1991).

55 See “Shipbuilders Ready to Celebrate as USW Local 8888 Turns 40,” United Steelworkers Local 8888 (Feb. 27, 2018), at www.usw.org/news/media-center/articles/2018/shipbuilders-ready-to-celebrate-as-usw-local-8888-turns-40.

56 See “A New Era for Avondale’s Work Force: First Union Contract Overwhelmingly Approved,” IBEW Journal (January/February 2001), at <http://www.ibew.org/articles/01journal/0102/avondale.htm>.

57 See Steven Greenhouse, “After 15 Years, North Carolina Plant Unionizes,” The New York Times, Dec. 12, 2008, at www.nytimes.com/2008/12/13/us/13smithfield.html.

58 For an analysis of the anti-union consulting industry in the United States, see John Logan, “The Union Avoidance Industry in the United States,” 44:4 *British Journal of Industrial Relations* 651 (2006), at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.334.8885&rep=rep1&type=pdf>.

59 See NLRA Section 7.

60 The only limitation on captive-audience meetings is that they may not be held within 24 hours of an NLRB representation election. See *Peerless Plywood Co.*, 107 NLRB 427 (1953).

61 See *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992).

62 See *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938). See ILO CFA, United States, Case No. 1543, Report No. 278, para. 89 (1991).

63 See Christopher Gyo, “Legitimacy of Captive Audiences in Germany,” in *Comparative Labor Law & Policy Journal* Volume 29 (Winter 2008). A special issue titled “The Captive Audience,” an examination of law and practice around the world on what Americans know as the captive-audience meeting, in which journal editors wrote that in Europe “the law conceives of a captive audience as an affront to human dignity, of the right to be treated as an autonomous adult, not a child in tutelage to one’s employer, subject to its instruction on political or social subjects including unionization.”

64 For more discussion, see James J. Brudney, Sara Schiavoni and Deborah J. Merritt, “Judicial Hostility toward Labor Unions—Applying the Social Background Model to a Celebrated Concerns,” 60 *Ohio State Law Journal* 1675 (1999), at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=224253.

- 65 See Cliff Sims, “Alabama plant unionizes in spite of Bentley’s warnings that it could kill jobs,” Yellowhammer Alabama state business newsletter, Nov. 19, 2015. Gov. Bentley later resigned in the wake of a sex and coverup scandal; see Alan Blinder, “Robert Bentley, Alabama Governor, Resigns Amid Scandal,” *The New York Times*, April 10, 2017, at www.nytimes.com/2017/04/10/us/robert-bentley-alabama-governor.html.
- 66 See Sean Higgins, “Alabama governor on how they snagged Airbus: We’re a right to work state,” *Washington Examiner Magazine*, July 2, 2012, at www.washingtonexaminer.com/alabama-governor-on-how-they-snagged-airbus-were-a-right-to-work-state; see also CEO Wire, “Airbus America—Chairman Interview, CNBC-Dow Jones Business, July 2, 2012.
- 67 See Brad Harper, “Q & A: Airbus Chairman discusses suppliers for plant,” *Associated Press State & Local*, Dec. 8, 2013.
- 68 See Elizabeth BeShears, “Alabama’s right to work status a significant contributor to recent manufacturing boom,” *Yellowhammer Alabama state business newsletter*, Jan. 20, 2015.
- 69 See Dominic Gates, “Airbus, unionized in Europe, wants no such thing in Mobile,” *Seattle Times*, March 19, 2016, at www.seattletimes.com/business/boeing-aerospace/airbus-unionized-in-europe-wants-no-such-thing-in-mobile/.
- 70 *Id.*
- 71 See Binyamin Appelbaum and Christopher Payne, “A Look Inside Airbus’s Epic Assembly Line,” *The New York Times Magazine*, May 3, 2017, at www.nytimes.com/2017/05/03/magazine/a-look-inside-airbuss-epic-assembly-line.html.
- 72 Based on union representatives’ accounts of discussions with employees after captive audience meetings.
- 73 See U.S. Council for International Business, “U.S. Ratification of ILO Core Labor Standards,” Issue Analysis, April 2007, at www.uscib.org/docs/US_Ratification_of_ILO_Core_Conventions.pdf; see also Edward E. Potter, “Freedom of Association, the Right to Organize and Collective Bargaining: The Impact on U.S. Law and Practice of Ratification of ILO Conventions No. 87 and No. 98” (1984) (saying “These are all forms of interference with organizing...[A]cts of interference permitted under the NLRA would be illegal under Convention No. 87.”
- 74 See “FAL Management Mobile Meeting Monthly HR Report,” Oct. 13, 2015.
- 75 See “Better Together” fliers distributed inside Airbus plant, October 2013 (all emphases in originals).
- 76 See “Employee Relations Business Partner” posting, Airbus Americas, July 2019, at www.indeed.com/viewjob?k=457d993ca03685b3&q=Union+Avoidance&tk=1deqktf9j3h11800&from=ja&lid=59600a76e4b04554dbc8e1c7&utm_campaign=job_alerts&utm_medium=email&utm_source=jobseeker_emails&rtk=1deqktf9j3h11800. The fact that “Union+Avoidance” appears at the start of the link confirms what the job really involves.
- 77 See “Airbus Responsibility and Sustainability Charter,” at www.airbus.com/content/dam/channel-specific/website/-/company/responsibility-and-sustainability/responsibility-and-sustainability-landing-page/Responsibility-and-Sustainability-Charter-English.pdf.
- 78 See United Nations, “Sustainable Development Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all,” at <https://sustainabledevelopment.un.org/sdg8>.
- 79 See Fresenius Annual General Meeting media packet, May 19, 2019, at www.fresenius.com/media/FSE_AGM_2019_Presentation.pdf.
- 80 See Fresenius, *Sustainability Principles*, at www.freseniusmedicalcare.com/fileadmin/data/de/pdf/About_us/FME_Sustainability_Principles_EN_September_2017.pdf.
- 81 *Id.*
- 82 Findings by RWDSU-UFCW research department on kidney dialysis service locations in the United States.
- 83 See NLRB, *Bio-Medical Applications of Alabama/Fresenius Kidney Care and RWDSU*, Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, Case Nos. 15-CA-207273 / 214338 / 214371, July 18, 2018.
- 84 Interviews took place in February 2019. Interviewed workers asked not to be identified because they fear reprisals by Fresenius management. To further protect their identity, the particular clinic in which they work is not identified.
- 85 “Huddle” is a term drawn from American football, meaning the circular gathering of teammates to plan their play and inspire each other before taking the field.
- 86 In required expense reporting to the U.S. Department of Labor, Fresenius disclosed that it paid the PJF Consulting firm more than \$80,000 (at a rate of \$275 per hour) for conducting anti-union campaigns inside the Mobile-area clinics in August and September, 2017.
- 87 In addition to representing thousands of health care workers, the RWDSU-UFCW represents thousands of poultry workers in the South. Fresenius management seized on the union’s role as a defender of poultry workers to disparage the union as a “chicken-plant union.”
- 88 See NLRB, *Bio-Medical Applications of Alabama/Fresenius Kidney Care and RWDSU Local 932*, Order Denying Employer’s Request for Review, Oct. 1, 2018.
- 89 See UNI Global Union, “Breaking through for Alabama Fresenius Workers,” Press Release April 30, 2019, at www.uniglobalunion.org/news/breaking-through-alabama-fresenius-workers.
- 90 See statement of UNI Deputy General Secretary Alke Boessiger, April 30, 2019.
- 91 See “The World’s Most Valuable Brands,” *Forbes* magazine, May 2019, at www.forbes.com/powerful-brands/list/#tab:rank.
- 92 See Rex editorial feature, “Flat-pack accounting: Forget about the Gates Foundation. The world’s biggest charity owns IKEA—and is devoted to interior design,” *The Economist*, May 11, 2006. In December 2017, the European Commission initiated an investigation into IKEA’s tax avoidance schemes. A nonconfidential version of the decision to launch the investigation published in March 2018 contains a detailed history of IKEA’s tax maneuvering in the Netherlands and Europe generally. See “EU Commission publishes decision to investigate IKEA’s Dutch tax rulings,” *MNE Tax*, March 27, 2018, at <https://mnetax.com/eu-commission-publishes-decision-to-investigate-ikeas-dutch-tax-rulings-26896>; the full 73-page decision is at http://ec.europa.eu/competition/state_aid/cases/272426/272426_1973466_49_4.pdf.
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- 96 See IKEA “IWAY Standard” at https://www.ikea.com/ms/en_SG/pdf/IWAY_Standard_Ed_5-2.pdf.
- 97 See “People and Planet Positive: IKEA Group Sustainability Strategy for 2020,” at http://www.ikea.com/ms/en_US/pdf/reports-downloads/sustainability-strategy-people-and-planet-positive.pdf.
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- 127 "401(k)" retirement plans have largely replaced guaranteed pension plans at many companies in the United States. 401(k)s are optional for employees, putting the contributions of those who participate in the plans into investment funds, where employees bear all the risks of market fluctuations.
- 128 Information from UNITE HERE research department.
- 129 See Noam Scheiber, "11,000 People Who Prepare Your Airline Food Are Considering a Strike," *The New York Times*, June 4, 2019, at www.nytimes.com/2019/06/04/business/economy/airport-workers-union.html.
- 130 See "Nestlé in Society" at www.nestle.com/csv.
- 131 See "Addressing human rights impacts" at <https://pub-preprod.current.nestle.com/csv/impact/respecting-human-rights/human-rights-impacts>.
- 132 The full name of the IUF is the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association. It is the global union federation for workers and unions in a wide variety of industries worldwide, many of which are related to food processing and food services.
- 133 See Nestlé and IUF, "Nestlé and IUF Engagement – Joint Operating Principles," May 24, 2013 (on file with IUF).
- 134 Interviews with U.S. union representatives who participate in meetings with Nestlé management, March 2019.
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- 142 See NLRB Region 10, *Nestlé USA Distribution Center and RWDSU Southeast Council*, Case No. 10-RDC-194739 (May 24, 2017).
- 143 Interview with Edgar Fields, March 14, 2019.
- 144 The four unions are: Retail, Wholesale and Department Store Union (RWDSU), United Food and Commercial Workers (UFCW), International Brotherhood of Teamsters (IBT), and Bakery, Confectionary, Tobacco Workers and Grain Millers (BCTGM).
- 145 See Schnellecke Logistics, "Tailored Solutions to Increase Your Efficiency," at www.schnellecke.com/services.
- 146 See Cliff Sims, "Alabama plant unionizes in spite of Bentley's warnings that it could kill jobs," *Yellowhammer Alabama state business newsletter*, Nov. 19, 2015. Gov. Bentley later resigned in the wake of a sex and coverup scandal; see Alan Blinder, "Robert Bentley, Alabama Governor, Resigns Amid Scandal," *The New York Times*, April 10, 2017, at www.nytimes.com/2017/04/10/us/robert-bentley-alabama-governor.html.
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- 148 See Dominic Gates, "Airbus, unionized in Europe, wants no such thing in Mobile," *Seattle Times*, March 19, 2016.

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- 153 See NLRB, Settlement Agreement in the Matter of Schnellecke Logistics Alabama LLC, Cases 10-CA-201235, 10-CA-205320 and 10-CA-207265 (Dec. 13, 2017) (emphasis in original).
- 154 The individual settlement agreements between Schnellecke and the workers are confidential.
- 155 See the Skanska website at www.skanska.com/ for this and other information about the company.
- 156 See Skanska Sustainability website at <https://group.skanska.com/sustainability/>.
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- 158 See www.unglobalcompact.org/AboutTheGC/index.html.
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- 161 See “TN touts ‘low-cost labor force’ to lure foreign business,” Associated Press, Sept. 2, 2015, at www.tennessean.com/story/news/2015/09/02/tn-touts-low-cost-labor-force-lure-foreign-business/71617998/.
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- 166 Interview with Nashville drywall workers, March 14, 2019.
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- 168 See *Alvarado Martinez et. al. v. First Class Interiors et. al.*, U.S. District Court, Nashville Division, Case No. 3:2018cv00583 (June 25, 2018); *Martinez et. al. v. Skanska USA Building et. al.*, Chancery Court, Davidson County, Tennessee, Case No. 18-1268-IV (Nov. 20, 2018).
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