

## ISSUE BRIEF

# MEMBERS-ONLY UNIONS: CAN THEY HELP REVITALIZE WORKPLACE DEMOCRACY?

Moshe Z. Marvit and Leigh Anne Schriever | October 1, 2015

On July 10, 2014, when the United Auto Workers (UAW) Local 42 was officially announced, many Americans were introduced for the first time to an old labor practice: members-only unions.<sup>1</sup>

Local 42 was formed at the Volkswagen plant in Chattanooga, Tennessee, after the UAW was defeated in “one of the most closely watched unionization votes in decades,”<sup>2</sup> which many on both sides staked out as a symbol of labor’s prospects in the South. Typically, after facing such an election loss, most union organizers either regroup for another election, or simply walk away. In the case of Local 42, the UAW chose a largely forgotten third option: forming a nonexclusive, members-only union.

Members-only unions, like the name implies, are unions that comprise only a portion of the employees in a workplace, rather than including all workers in the bargaining unit. Workers who do not wish to be members do not have to join, and in turn, the union

does not have to provide non-member employees with any services. In fact, by law, a members-only union can only represent those who have joined, as opposed to representing all employees as in a traditional bargaining unit. They are not as powerful as a bargaining unit that results from an election, but in some circumstances they are the easier—and sometimes the only—option.

While the concept is new to many, the practice of members-only unionism preceded passage of the National Labor Relations Act (NLRA) of 1935.<sup>3</sup> In his seminal book on the history of members-only unionism, Charles Morris shows that, before the NLRA and its judicial interpretations institutionalized a preference for union elections, a significant percentage of workers bargained through members-only unions.<sup>4</sup> For instance, in a November 1933 statistical study of 3,314 companies employing 2,585,740 wage earners, approximately 31.1 percent of companies engaged in bargaining with either a company union or independent union. Morris shows that over 18 percent of this group bargained

---

This brief can be found online at: <http://tcf.org/blog/detail/members-only-unions-can-they-help-revitalize-workplace-democracy>

with unions on a nonexclusive, members-only basis.<sup>5</sup> However, following the passage of the NLRA—and the attendant right of union elections and exclusive representation based on majority support—the practice of members-only unionism quickly diminished.

While under the law workers can still form members-only unions, there has been an ongoing debate as to whether the NLRA provides them the right to bargain with their employers on a members-only basis. Morris argues persuasively that the text and history of the NLRA, as well as congressional intent, point strongly to such a bargaining right. However, in 2006, the United Steelworkers tested Morris's theory in the *Dick's Sporting Goods* case, and the General Counsel's Division of Advice issued a memorandum concluding that the Board should not issue a complaint because nonexclusive unions did not have a right to bargain. Therefore, the National Labor Relations Board never had an opportunity to consider the case, and has still not yet fully considered this question.<sup>6</sup>

The legal issue of employees' bargaining rights in a members-only setting has stood in limbo since then, with a variety of scholarly articles addressing what legal rights workers in members-only unions may or may not have, and the possible future successes of such unions.<sup>7</sup> This question is certain to become more important in the upcoming years. In 2014, Wisconsin became the nation's twenty-fifth right-to-work state—which means that, in any of these states, if a union is the exclusive representative of all workers in the bargaining unit, any worker can choose not to pay any union dues. And in the upcoming term, the U.S. Supreme Court will hear *Friedrichs v. California Teachers Association*, which considers whether union security clauses in public sector contracts violate the First Amendment. If the Supreme Court rules the way that many expect, all public-sector workers will be under right-to-work, which could serve to defund public-sector unions.

Such developments make organizing and maintaining a union more difficult, and so if voluntary payment of dues becomes the norm, then some unions may choose the voluntary nature of members-only unions. What is often lost in many of the discussions on workers' rights is that members-only unions are not a theoretical construct or historical remnant. In fact, beyond UAW Local 42, a variety of public and private-sector locals have operated on a members-only basis for many years, with varying degrees of success. For example, the American Federation of Teachers (AFT) has approximately 120,000 members in members-only unions spread across Texas, Utah, Arizona, Colorado, Louisiana, Mississippi, Alabama, Georgia, North Carolina, Tennessee, West Virginia, Wisconsin, and Virginia.

Most of the existing members-only unions are located in southern states, because legal conditions in those states such as right-to-work laws make it difficult to organize a majority union. Similarly, most members-only unions are public-sector unions, because many states that are inhospitable to labor can easily pass laws that limit collective bargaining rights in the public sector. However, there are members-only unions in the private sector and in other geographic locations as well.

Based on numerous interviews with those involved with members-only unions, this report presents several case studies—one southern private-sector union, one northern private-sector union, and one southern public-sector union—in order to demonstrate the various benefits and hurdles of members-only unionism. It reveals that the problems exclusive-representative unions face are felt far more acutely in the members-only context. Because almost all members-only unions work outside of the confines of a contract, successful unions must be in constant communication with the membership to find out about issues at work and must address them in creative fashions. And because employers will not usually meet with a members-

only union, let alone bargain a contract, success in this context is defined differently—comprised mainly of retaining a significant membership and winning discrete battles in the workplace.

## CASE STUDIES

### Texas Workers Alliance

The Texas Workers Alliance (TWA) is a members-only union in the San Antonio, Texas area, whose membership consists of non-teaching staff, such as custodians, bus drivers, secretaries, and clerks at area public schools.

There are a number of factors in Texas that are conducive to the formation of members-only unions. Both public-employee and private-employee unions in Texas must operate under right-to-work. Public employees (excluding police and firefighters) also have the additional disadvantage of being banned from collectively bargaining over wages, hours, or conditions of employment.<sup>8</sup> Without the ability to bargain these essential issues, it can make it hard for traditional unions to attract members and fight for better working conditions. Some unions such as the AFT, however, are able to offer their members-only workers essential services such as occupational liability insurance and a measure of legal defense protection. But for other unions in Texas, the benefits to joining may be less tangible, while the fear of retaliation from the employer remains acute.

Texas is not alone in banning of collective bargaining for groups of public employees. North Carolina, South Carolina, Georgia, Tennessee, and Virginia each ban collective bargaining rights for some combination of teachers, police, and firefighters.<sup>9</sup> Furthermore, other states such as Wisconsin and Idaho have recently limited collective bargaining rights of certain public employees.<sup>10</sup> However, in Texas, the same set of 1947 laws that limited collective bargaining also included two provisions

that inadvertently provided a path for some form of public-sector organization and collective bargaining.<sup>11</sup> The first “intended as merely a reiteration for public employees of the state’s ‘right-to-work’ law, was couched in language which protected both the right of nonmembership as well as membership in a labor organization—language which was later to be used to protect the right of public employees to organize.”<sup>12</sup> And the second protected public employees’ rights to “present grievances concerning their wages, hours of work, or conditions of work individually or through a representative that does not claim the right to strike.”<sup>13</sup> The Texas Workers Alliance has utilized this peculiar legal situation in Texas to build a functioning members-only union and gain certain concessions in the workplace through the right to grieve.

The Texas Workers Alliance was formed in 2011 by Guillermo Vazquez with the hopes of eventually building a union that had majority support and served as the exclusive representative of all workers in the bargaining unit.<sup>14</sup> The TWA began without charging any dues, and only began collecting dues in April of 2012. Within the first few months of its formation, it had 493 members, which represents slightly more than 10 percent of the target bargaining unit. At its peak, it organized 14 percent of the workforce. However, with membership numbers fluctuating quickly and few legal protections, Vazquez has described the union as “constantly fighting for our lives.”

At first the employer (the Northside Independent School District) did not interfere with the union, because it did not know what to make of it. But approximately fourteen months after its formation, the employer began to get hostile toward the TWA. It stifled communication between the union and its membership by no longer allowing TWA to meet at the workplace, forcing the union to organize during off-work hours in off-site locations. Members now

engage by regularly attending issue meetings, but attendance at general membership meetings is less robust. In order to foster such engagements, the Texas Workers Alliance provides continuous leadership training seminars and devotes resources to education and a monthly newsletter. The TWA has established itself as an important source of information for many of the workers concerning workplace issues.

Because it is a members-only union, the TWA cannot collectively bargain for wages and other terms of employment, and the employer has taken the position that it is not legally required to bargain with it about any issues. In response, the union has utilized the group grievance process as a proxy for bargaining. Group grievances typically involve at least five employees, and often many more. They are filed with the school district, and have proven more successful than individual grievances because the group nature illustrates that they involve issues important to many employees. The filers of group grievances often make presentations to the public, elected officials, and the media, highlighting how the issues involved are of concern to a large segment of the workforce. Also, as a practical matter, Vazquez has found that “individually, it’s much harder for them to stand up on an issue.”

The Texas Workers Alliance has successfully filed group grievances on issues as diverse as shift scheduling, air conditioning in the workplace, mileage pay, bidding procedures for scheduling based on a point system, promotion procedures based on a point system, and payroll issues. Though these group grievances provide members of the Texas Workers Alliance some voice in the workplace, it is limited by the lack of any legal requirements that the school district process the grievances expeditiously. According to Vazquez’s count, most grievances sit for two to five months before the school district even responds. Many of these grievances have taken years to win.

Though the Texas Workers Alliance has been able to organize a significant percentage of the workforce and has won some tangible gains, the membership figures can fluctuate quickly, and it has not been able to raise enough in dues to be sustainable. Furthermore, a bill banning dues checkoff for public employees has recently been introduced in the state legislature. Such a bill would ban contracts between employers and unions that automatically deduct union dues from employee paychecks, and if passed would make the running of the Texas Workers Alliance too costly.<sup>15</sup> Therefore, the Texas Workers Alliance is currently in a process of reorganization, with a steering committee of members taking over the union’s leadership.

### Carolina Auto, Aerospace and Machine Workers Union

In North Carolina, the state laws, the political class, and the business community are often openly hostile toward unions. The result is that the state boasts the lowest union membership rate in the nation, at 1.9 percent.<sup>16</sup> Indeed, eastern North Carolina, which is known as the “Black Belt” for its majority African-American workforce, is pockmarked with major failed union campaigns from the 1980s and 1990s. In 1984, 1988, 1993, and 1995, the UAW, ACTWU, and UNITE lost close elections at manufacturing plants at Genbearco, Standard Products, and Safelite Auto Glass.<sup>17</sup> Very few unions have been able to establish a real presence in North Carolina.

However, the UE Local 150 affiliate, the Carolina Auto, Aerospace and Machine Workers Union (CAAMWU)—located in Nash County, North Carolina, and consisting of workers at the Cummins Rocky Mountain Engine Plant—has been a strong members-only union for over twenty-five years.

The CAAMWU was in essence started in 1981, just about ten years prior to their official founding, when a

group called Black Workers for Justice (BWJ) began forming organizing committees in the region.<sup>18</sup> The BWJ had a joint commitment to civil rights and union power, which was rooted in North Carolina's long history of "civil rights unionism."<sup>19</sup> It worked closely with community groups, and placed labor issues in a broader context of civil and political rights. The CAAMWU grew out of a BWJ organizing committee in 1990.<sup>20</sup> Its first major campaign was an effort to establish a paid holiday at the plant for Martin Luther King Jr. Day. After eight months of petitioning and organizing, successfully won a paid vacation day on Martin Luther King Day for the workers, who are a majority African American. After the presentation of the petition to establish a paid holiday on Martin Luther King day, the plant's director of human resources called a meeting of all managers to ask how it occurred that so many workers had signed. In a 2012 interview, CAAMWU president Jim Wrenn explained why the company was so concerned: "His point was that any worker that would sign a petition for a Martin Luther King holiday would sign a union card."<sup>21</sup> In 1994, after the UAW declined to represent a members-only union, CAAMWU affiliated with the United Electrical Workers (UE). It received its charter as part of UE Local 150 in 2003.

The CAAMWU works closely with community groups and gets involved in local political issues that affect its membership. In 1993, the CAAMWU collaborated with community groups to support a slate of candidates for the town council, ran voter registration drives, and helped elect the first ever majority African-American town council in Whatakers, North Carolina.<sup>22</sup> More recently, in 2013, CAAMWU helped push a bill in Charlotte that allowed city workers to choose automatic union dues deductions<sup>23</sup>—part of their ongoing larger effort to have the city pass a City Workers Bill of Rights.<sup>24</sup> Mariya Strauss, an authority on workplace issues, observed that that "with no contract, no majority, no ability to require workers to join the union, and a reserve labor force of

temps, the workers of CAAMWU/UE Local 150 have achieved a degree of solidarity, activism, and community alliances that would be the envy of unions in more union-friendly regions of the country."<sup>25</sup>

Over the past twenty-five years, this members-only union has won a number of significant victories, including worker reinstatement, union newsletter distribution, better inclement weather policies, unemployment benefits, and wage raises.<sup>26</sup> In 2009, they suffered a blow when 179 workers—many of whom were union members—were terminated, but they have since rebounded.<sup>27</sup> Recently, in July 2014, CAAMWU won a major, across-the-board pay raise for technicians and skilled workers after fighting an unfair pay scale policy that provided raises to skilled workers but not technicians.<sup>28</sup>

The number of workers who are part of CAAMWU is unclear, but the support in the plant for the union is greater than the number of dues-paying members. Union petitions concerning workplace issues have received anywhere from 200 to 500 signatures, which is a large percentage of the workers at the plant and a significantly higher number than the dues-paying members. The number of workers is sufficient to keep the union functioning and alive, and Jim Wrenn, president of CAAMWU, has said that significant growth often follows major campaigns, such as a 2004 lawsuit over bonuses.<sup>29</sup> Workers have expressed fear about becoming union members because they worry about getting fired, but they see the positive effect of CAAMWU has had in their workplace and find petition-signing less threatening to their employment than formally joining the union.

Petitions are a principle way for CAAMWU to raise awareness in the workplace, increase membership, and demonstrate their strength to the company. Following the 1990 Martin Luther King Day win, the CAAMWU began what it has referred to as a "petition tradition."<sup>30</sup> (Concerted activities such as organizing and presenting

petitions over workplace issues are protected under the NLRA without regard to whether the workers are members of a majority union.) Petitions are supported by wearing stickers which help increase visibility in the workplace, and in many cases community groups have aided the union by providing additional outside pressure on Cummins, the plant's owner. Successful petition actions by the CAAMWU have included holiday hour issues and worker reinstatements, sometimes on behalf of non-members.<sup>31</sup> In these cases, non-members have witnessed the value of the union first-hand and often later joined as dues paying members. Therefore, even though the workers do not have bargaining rights with the employer, the petitions allow them to present issues important to them en masse, while still retaining the protections of the NLRA.

In addition to petitions, the CAAMWU publishes a union newsletter that Wrenn described as their "most important asset" because it informs workers about new company policies, calls out the company when it misrepresents facts and issues to workers, publishes pay scales, advertises actions that the union is taking, and supports legislation and political movements in the greater world of labor issues. As Steve Bader, a UE International representative who works with UE Local 150, stated, "education is a tactic in itself. . . . without it people don't know that workers at Cummins plants . . . who have a union contract are getting better pay, and not just better pay, better conditions."<sup>32</sup> A system of shop stewards, who are workers trained to watch for problems in the workplace, helps the union identify and address issues as they arise.

CAAMWU also helps individual workers go through the grievance process and has, in some cases, won reinstatement for workers who have been fired. The union files unfair labor practice charges with the NLRB and has gone to court to win promised bonuses. In one such case, the union extended its members-only policy,

which encourages active participation, to an employment lawsuit. Rather than file a class action on behalf of all the workers, they opened up the suit to any worker who paid a nominal fee of \$25 for legal representation. This members-only approach increases participation and solidarity, which are essential for running a members-only union. Bader points out that despite the significant disadvantages of the members-only approach, "one of the few advantages we have about not having any laws [concerning members-only unions]. . . . we're not forced to represent everybody if they're not members."<sup>33</sup> In this right-to-work state, the members-only union model mitigates the free-rider problem that a majority union would likely face and creates internal incentives to keep the membership active in the union.

CAAMWU has made the members-only model look like a successful tactic many times in their long duration. They have created long-term, dedicated leadership that has helped keep the union on course, even in difficult times, such as the mass-layoff in 2009. This creates continuity and consistently improves application of the model, allowing for the union to improve and build upon successes. They have also consistently raised issues that mattered to workers. From a just pay scale to a vacation day that had particular community significance, there are always problems at the plant, and the union focuses on those flaws to draw attention to the importance of the union, and as Wrenn says, they "win often enough that workers know there is value in this union."<sup>34</sup> Wrenn also emphasized that even when the employer does not meet with the union, there is always a conversation of sorts at play: "Cummins is always trying to counter what we're doing, they take us very seriously."<sup>35</sup> The presence of a strong members-only union contains an implicit threat to the employer: any misstep can lead to increased membership and eventual majority status. Therefore, the employer must always react when the union makes public demands, even if those demands are not in the context of formal bargaining.

The CAAMWU relationship with UE demonstrates how valuable and important an affiliation can be. UE has strongly embraced the members-only union model as an organizing strategy, and has even given these unions full membership, meaning they can vote and participate in the national conventions. This has made unions like CAAMWU feel like an equal partner in a larger movement and not like a temporary and insignificant part of the organization.

It is important to recognize, however, that CAAMWU is clear proof that members-only unions can take a long time to become majority unions, even though that is usually their end goal. CAAMWU has won battles and brought important issues to workers for twenty-five years, and still does not have a majority. That does not mean the members-only method is not valuable, it just means that it can be an extraordinarily long-term commitment, which requires preparation and experience on the part of the affiliated union. After this many years, it seems clear that CAAMWU can claim to be one of the oldest and most successful members-only unions in the country.

### UE Local 601: Grove City, Pennsylvania

UE has built on its success with CAAMWU by using the members-only model in several other places. One recent example that has the distinction of being a private-sector, members-only union in a northern, non-right-to-work state, was chartered in August 2013 in Grove City, Pennsylvania at a General Electric (GE) plant.

GE has one of the most successful union avoidance strategies, and UE has been trying to organize at Grove City for a long time. For this reason, the members-only model seemed like an ideal means to get their foot in the door when the traditional NLRB election route did not seem feasible. The interest in having a union partially stemmed from the institution of a two-

tier wage system, which paid new hires a dramatically lower wage than current employees. This has proved to be a long-term issue that has resonance with a large portion of the workers, both those who are paid the lower wage and those who see it as a discriminatory practice.<sup>36</sup> UE has also included Local 601 at the table for national negotiations with GE, even though GE has refused to recognize them, and this has reaffirmed UE's commitment to members-only unions and Grove City in particular.

Much like CAAMWU, Grove City is not inclined to release information about the size of its membership because they say they do not want to give GE any information that might provide extra leverage. Part of the strength of a members-only union is the uncertainty among the employer about how much support the union has at any given moment. The employer must be careful in treating workers unfairly or instituting unpopular policies for fear that it will encourage workers to join the union. However, the union's ability to keep the employer in line through its mere presence can also bolster the union's credibility. Employers have become skilled at running anti-union campaigns during a union-organizing drive, but they cannot maintain a permanent union-avoidance strategy. Members-only unions take advantage of this reality, educating the workforce about any employer misstep and promoting any successes.<sup>37</sup>

Grove City emphasizes education as one of its most important tactics. Local president, Steve Gallagher, and recording secretary, Fred Harris, explained that many workers felt unions were simply an outside force invading the workplace that did not provide much benefit. Much of the efforts by Gallagher and Harris have been directed at convincing Grove City workers that a members-only union like theirs works from the ground up. They typically



demonstrate this through leafleting, education, and having designated days where all workers wear shirts of the same color to show solidarity. The union has also filed unfair labor practices with the NLRB and helps workers navigate the informal grievance process with GE.<sup>38</sup>

Grove City has seen some genuine success as a members-only union, even if it cannot point to a track record that is as long or as clear as the one for CAAMWU. They have shepherded workers through the claim-filing process and built up a membership that appears to be reliable. Harris acknowledged “we’re still in the learning process,”<sup>39</sup> but they do have UE on their side and that relationship is strong. As Gallagher put it, “I’ve been a member of different unions. . . . I just think that UE, the way they approach the business, is from the members up, and I just think we need to educate our people to understand that we run the union, and once they understand that they will have the confidence . . . to take the vote to the NLRB.”<sup>40</sup>

UE Local 601 will face significant challenges, though. GE has strong union avoidance strategies that have been extraordinarily effective throughout all their plants—whatever union concessions are granted in other plants, they also give to all non-union workers. This has the intended effect of trying to convince the workforce that joining a union has no benefits.<sup>41</sup> However, a strong union education program, one that shows how in fact it is the union’s actions that are benefiting all workers, can help counter such an approach.

## HURDLES FOR MEMBERS-ONLY UNIONS

There are some clear disadvantages to using a members-only organizing model. The largest of these issues is the fact that most employers are unlikely to ever recognize a union they are not legally required to, and though there

are strong arguments that the NLRA requires employers to bargain with members-only unions, the current NLRB interpretation runs contrary to these arguments. Avoiding collective bargaining is a prime motivation of many employers, and they will not voluntarily work with a members-only union to any significant degree. The employers in the above case studies, according to Steve Gallagher and Fred Harris, like to believe that these unions “don’t have a working relationship with the company”<sup>42</sup> and therefore employers can “pretend we don’t exist,”<sup>43</sup> denying any of their accomplishments, and refusing to meet with them. This makes any actions the unions take perennially combative and extends the time it takes to achieve results, if they are achieved at all. Members-only unions retain some legal protections—they can still file with the NLRB for unfair labor practices and are protected in taking concerted action—and they use these protections to full effect. However, the NLRA protections afforded them are insufficient to establish a relationship with the employer.

This problem is unlikely to change since there is a lack of legal support for the members-only model. The NLRB in recent years has ruled several times against the interests of members-only unions. In 2004, they reversed a previous decision about Weingarten rights, which allow union workers to have a co-worker present at any meeting with the employer that may form the basis for disciplinary action.<sup>44</sup> Additionally, in 2006, they refused to issue a complaint in favor of a members-only union at a Dick’s Sporting Goods.<sup>45</sup> With a complete lack of governmental support for this model, it seems unlikely that the NLRB will reinterpret the NLRA to require employers to recognize members-only unions.

In the off chance that members-only unions were granted bargaining rights, they would still find themselves at a disadvantage compared to exclusive bargaining representatives, because they would only speak for some portion of the bargaining unit.



The members-only union would have to have an engaged, educated, and committed membership in order to gain concessions through collective bargaining. The same issues that any majority union faces in the workplace are felt more acutely in a members-only context.

Under these conditions, membership is also hard to retain. Even in majority unions, in right-to-work states many workers opt not to pay dues even though they get benefits from negotiated contracts. In members-only unions, workers may be unsure if benefits are attainable at all without recognition, and this may further deter some from joining and paying dues. An additional struggle is that employers do not take dues out of workers' paychecks, so organizers must collect the dues by hand, which is difficult and time consuming.

In fact, the entire process of organizing members-only unions is very time consuming, and organizers are forced to use only their personal time to build the union.<sup>46</sup> These are often workers who have full-time-plus shifts, as well as personal obligations, who then must spend hours staring at spreadsheets, calling members to collect dues, and running the general administration of the union. It takes a special kind of leader to be able to dedicate that much time and energy, particularly for the kind of long-term commitment a members-only union requires. Building that leadership and level of dedication is one of the principal struggles of any members-only union built from the ground up.

The leadership among workers is not the only long-term commitment required. Affiliation with a national union for legal, organizing, and financial support can be essential—however, it must be a union that either has experience with this method or has the patience to learn. Unions that use this method and expect to quickly achieve a majority in an NLRB election may find themselves disappointed, and this mindset is something to avoid. As Jim Wrenn said after twenty-

five years in the leadership of CAAMWU, “what we don’t want to do is have an election prematurely and lose.”<sup>47</sup> It can undermine or destroy any progress that has been achieved. UE has done a good job of learning from experiences and spreading the model within its organization, and other unions would do well to follow their example.

## **BENEFITS OF THE MEMBERS-ONLY UNION MODEL**

Despite the significant hurdles and challenges that members-only unions face, there are major benefits to unions and workers utilizing this approach.

One benefit to the members-only approach is in order to survive, these unions must be built upon activism, involvement, and democratic governance. While weak members-only unions lose their membership and disappear, strong members-only unions have developed through the robust process of grass roots organizing and recruiting, tapping into already formed workplace and community networks. Further, in order to remain in existence, a members-only union must keep the membership engaged, educated, and active. The widespread use of these tactics would invariably make labor stronger, whether the members-only unions become majority unions or not. So, while the resources and time-intensive nature of members-only unions may initially seem as reasons why many workers forego this approach, they should actually serve as reasons for labor to pick up the challenge.

Even if a majority union is still far in the future, members-only unions often make workers' lives markedly better. Many workplace rules and protections—from the minimum wage to overtime rules to workplace safety laws—are ignored by too many American employers. Though federal and state governments have recently been waking up to this fact, and trying to monitor and enforce laws better, nothing is as effective as having informed and

organized workers address these issues themselves. Members-only unions may be unable to negotiate a contract, but they serve as a valuable resource to workers by establishing a system of shop stewards and education centers for workers. They are able to identify, draw attention to, and often remedy illegal or unfair conduct by employers.

The members-only approach can also serve as an important step—albeit usually a multiyear step—in forming an exclusive bargaining union in hostile jurisdictions. Over the past few decades, employers have developed extremely efficient and effective anti-union tactics that target NLRB elections by intimidating employees in a concentrated form during the election process. One of the largest benefits of a members-only union is that it does not have a process that is particularly easy to target. Once a members-only union becomes established in the workplace, it is much harder to undermine it or put consistent pressure on it for years at a time. Employers can ignore it and refuse to work with it, but will not be able to as successfully shut down their activities. But even in ignoring the union, employers have to be wary about taking actions that the union can seize upon to rally workers. Employers in these situations must always be wary that their actions will help the members-only union become a majority union. Therefore, by their very existence, these unions often better the workplace.

## CONCLUSION

As a result of anti-union laws and extreme employer and governmental opposition, organizing a union and collectively bargaining with an employer are virtually impossible tasks for many workers in many regions of the country. The members-only model that has existed in this country for over a century, and continues to exist in many of these labor deserts, may provide a way forward.

Though few members-only unions have been able to get collective bargaining agreements (CBA) on

behalf of their members, they do provide appreciable benefits in the workplace. They provide a structure for worker solidarity and collective action; a means of accessing some of the protections of the NLRA; an inroad for labor in inhospitable territory; a framework for workers to advocate and organize local political change; and a means of disseminating information. Additionally, though members-only unions often appear as a hybrid between more traditional exclusive-bargaining unions and worker centers, they are unions. Their goals—even if not often reached—are to organize and negotiate on behalf of their memberships. For these reasons alone, major unions should employ the model as both a path to majority and as a beachhead in hostile parts of the country.

Furthermore, a simple change in the law, or legal interpretation of the NLRA could significantly change these unions ability to get CBAs. Though many legal scholars have debated the question of whether employers must bargain with members-only unions, neither the NLRB, nor the courts, nor Congress has fully considered the issue. If the law were changed or interpreted to require bargaining, members-only unions would have a clearer path to contracts and majority.

---

**Moshe Z. Marvit** is a fellow at The Century Foundation and an employment discrimination and labor attorney, worked at the National Labor Relations Board, and was an editor at the *Employee Rights and Employment Policy Journal*.

**Leigh Anne Schreiber** was a labor policy intern at The Century Foundation in the summer of 2015. Her past work has focused on employment law issues in the United States, including wage theft, maternity and paternity leave, and paid sick leave.

---

## Notes

1 A variety of names are used to classify such labor organizations, including “members-only unions,” “minority unions,” and “pre-majority unions.” Each name captures some element of the labor organization’s character, however for purposes of this report, the term “members-only unions” will be used.

2 Steven Greenhouse, “Volkswagen Vote Is Defeat for Labor in South,” *New York Times*, February 14, 2014, <http://www.nytimes.com/2014/02/15/business/volkswagen-workers-reject-forming-a-union.html?hp&r=0>.

3 29 U.S.C. §§151–169.

4 Charles Morris, *The Blue Eagle at Work: Reclaiming Democratic Rights in the American Workplace*, (Ithaca, N.Y.: ILR Press, 2004) 26–31. Others have also advocated the use of members-only unions. See, for example, Cynthia Estlund, “Rebuilding the Law of the Workplace in an Era of Self-Regulation,” *Columbia Law Review* 105 (2005): 319, 388.

5 Morris, *The Blue Eagle at Work*, 29.

6 Dick’s Sporting Goods, 6-CA-34821, Advice Memorandum, June 22, 2006.

7 See, for example, Joseph E. Slater, “Do Unions Representing a Minority of Employees Have the Right to Bargain Collectively? A Review of Charles Morris, *The Blue Eagle at Work*,” *Employee Rights and Employment Policy Journal* 9 (2005): 383; Catherine Fisk, Xenia Tashlitsky, “Imagine a World Where Employers Are Required to Bargain with Minority Unions,” *ABA Journal of Labor and Employment Law* 27 (2012): 1; Christine Neylon O’Brien, “When Union Members in a Members-Only Non-Majority Union (Monmu) Want Weingarten Rights: How High Will The Blue Eagle Fly?” *University of Pennsylvania Journal of Business and Employment Law* 10 (2008): 599; John M. True, III, “*The Blue Eagle at Work: Reclaiming Democratic Rights in the American Workplace*,” *Berkeley Journal of Employment and Labor Law* 26 (2005), 181, 182; Charles J. Morris, “Minority Union Collective Bargaining: A Commentary on John True’s Review Essay on *The Blue Eagle At Work*, and a Reply to Skeptics Regarding Members-Only Bargaining under the NLRA,” *Berkeley Journal of Employment and Labor Law* 27 (2006), 179.

8 Texas Code Title 6, Subtitle A, Sec. 617.002.

9 Milla Sanes and John Schmitt, “Regulation of Public Sector Collective Bargaining in the States,” Center for Economic and Policy Research, March 2014, Chart 1.

10 *Ibid.*, 6.

11 Charles J. Morris, “Everything You Always Wanted to Know about Public Employee Bargaining in Texas—But Were Afraid to Ask,” *Houston Law Review* 13 (1975), 291, 293–94.

12 *Ibid.*, 293, referring to Sec. 617.004.

13 Sec. 617.005.

14 Much of the information about the Texas Workers Alliance is from interviews with Guillermo Vazquez in the spring and summer of 2015.

15 S.B. 1968, introduced March 13, 2015.

16 Bureau of Labor Statistics, Union affiliation of employed wage and salary workers by state, <http://www.bls.gov/news.release/union2.t05.htm>.

17 Jim Wrenn, UE “Non-Majority” Union Organizes the Old-Fashioned Way, *Labor Notes*, July 31, 2002.

18 Essie Ablavsky, “This Is the Value of Our Labor: The Nonmajority Union Approach in U.S. Manufacturing,” unpublished B.A. thesis, New College of Florida, May, 2012 (on file with author), 54–55.

19 *Ibid.*, 56.

20 The CAAMWU and Cummins Rocky Mount Engine Plant each had different names and organizational structures when organizing began. The plant was a joint venture between Case Corporation and Cummins, and

was called the Consolidated Diesel Company. Originally, the CAAMWU began as the Consolidated Diesel Company Workers Unity Committee (CDC WUC). In 1994, the CDC WUC affiliated with the United Electrical Workers (UE). In 1997, the CDC WUC helped form the statewide UE Local 150, which officially got its charter in 1999. In 2001, CDC WUC-UE joined with the UE committee at the Vermont American machine tool plant in Greenville, North Carolina, to form the CAAMWU. In 2003, CAAMWU reached a threshold of fifty dues-paying members and received a charter as a private sector chapter of the statewide UE Local 150. In 2008, the Vermont American plant closed, leaving the Consolidated Diesel Company as the sole remaining branch of CAAMWU. Later in 2008, Cummins acquired Case Corporation’s interest in the plant and changed the name to Cummins Rocky Mount Engine Plant.

21 *Ibid.*, 59.

22 *Ibid.*, 57.

23 “Amid North Carolina Anti-Labor Campaign, Public Workers Score Union Win,” *Southern Studies*, January 17, 2013, <http://www.southernstudies.org/2013/01/amid-north-carolina-anti-labor-campaign-public-wor.html>.

24 “Local 150 Members Picket Charlotte City Government, Demanding Human Rights,” *UE News*, August 7, 2012, <http://www.ueunion.org/ue-news/2012/local-150-members-picket-charlotte-city-government-demanding-human-rights>.

25 Mariya Strauss, “Non-majority North Carolina: Cummins Diesel Engine Workers Breathe New Life into an Old Organizing Model,” *New Labor Forum* 24, no. 2 (2015): 106–07.

26 Jim Wrenn, Martin Luther King, Jr. Day speech, Whitakers, North Carolina, January 18, 2010 (on file with author).

27 *Ibid.*

28 “Union Campaign Wins Big Raise at Rocky Mount Engine Plant,” *UE News*, July 2014.

29 Interview with Jim Wrenn, July 28, 2015.

30 Jim Wrenn, “Non-Majority Union Organizes the Old-Fashioned Way,” *Labor Notes*, July 31, 2002.

31 Ablavsky, “This Is the Value of Our Labor,” 59–61.

32 Interview with Steve Bader, July 22, 2015.

33 *Ibid.*

34 Interview with Jim Wrenn.

35 *Ibid.*

36 Interview with Steve Gallagher and Fred Harris, July 8, 2015.

37 *Ibid.*

38 *Ibid.*

39 *Ibid.*

40 *Ibid.*

41 Paul Bouchard, “In for the Long Haul: The Nonmajority Union Strategy” *A Troublemaker’s Handbook 2: How to Fight Back Where You Work and Win!* (Detroit, Mich.: Labor Notes, 2005), 236–42.

42 Interview with Steve Gallagher and Fred Harris.

43 *Ibid.*

44 Richard S. Rosenberg, Matthew T. Wakefield, and Sabrina A. Beldner, “Courts Flip-Flop on ‘Weingarten’ Rights for Nonunion Employees,” *Los Angeles Daily Journal*, July 12, 2004.

45 Christine Neylon O’Brien, “When Union Members in a Members-Only Non-Majority Union (Monmu) Want Weingarten Rights: How High Will The Blue Eagle Fly?” *University of Pennsylvania Journal of Business and Employment Law* 10, vol. 3 (2008).

46 Interview with Steve Gallagher and Fred Harris.

47 Interview with Jim Wrenn.