Dēmos

Building Worker Power With Public Funding at the State and Local Levels

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Acknowledgments

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About Dēmos

Dēmos is a non-profit public policy organization working to build a just, inclusive, multiracial democracy and economy. We work hand in hand to build power with and for Black and brown communities, forging strategic alliances with grassroots and state-based organizations.

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Introduction

Income and wealth inequalities have reached historic highs just as union membership has dropped to new lows, despite overwhelming worker interest in unionization.[1] Weak federal labor laws, combined with changes in employment structure and intense employer opposition, have undermined workers' ability to join unions and win collective bargaining agreements, a widely recognized answer to economic inequality, particularly for Black and brown workers.[2] At the same time, court doctrines have sidelined state and local governments by curtailing their abilities to develop their own solutions for protecting worker organizing.

Notwithstanding **federal labor law's preemption** of certain state and local policies, there are still opportunities for workers and communities to win the protections they deserve. Public spending at all levels of government – and particularly at the state and local levels – provides an opportunity for workers to secure dignified working conditions and a free and fair chance to join a union. Workers and communities cannot afford to wait for Congress or the courts to cure labor law's failings. By taking bold action at the state and local levels, communities and workers can lead the way toward a fairer and more just economy that advances racial justice and economic security for all.

This brief will 1) provide an overview of the legal and policy challenges to using state and local policy to protect organizing and collective bargaining, 2) propose a strategy for overcoming those challenges, 3) examine how the current wave of federal government funding can be leveraged to protect workers in particular industries and sectors, and 4) highlight examples of workers and communities using this policy strategy in the field.

Federal labor law overrides, or "preempts," state and local labor laws. This has generally prohibited state and local governments from passing laws to promote unionization and collective bargaining. However, workers and communities can still win stronger protections in other ways. One key approach: requiring dignified working conditions and organizing protections on publicly funded projects.

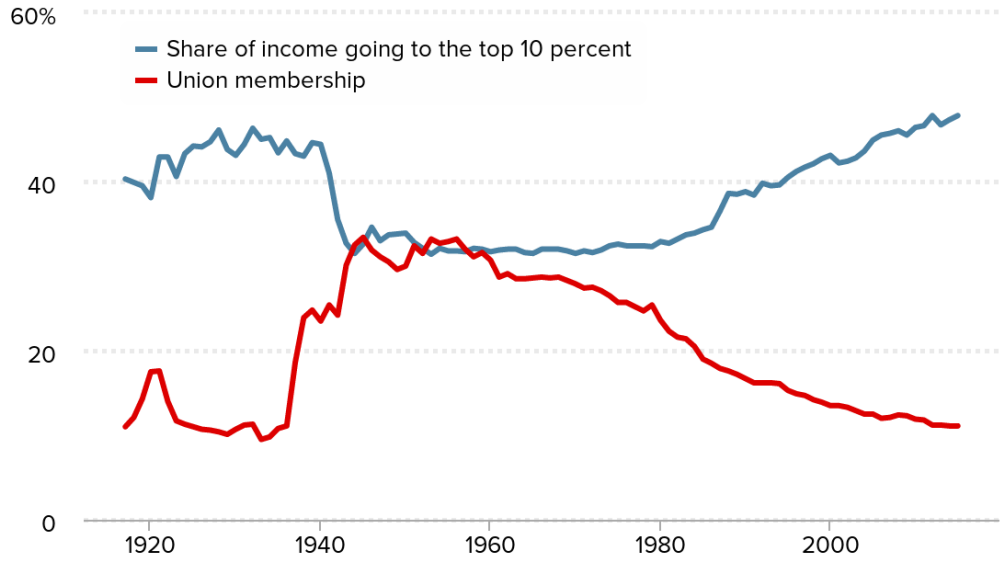
I. Weak Federal Labor Law and Preemption of State Innovation

The basic statutory framework for labor law is nearly a century old, and its legal restrictions on state and local policy innovations have shielded labor law from democratic reform and local innovation.

In 1935, President Franklin D. Roosevelt signed the National Labor Relations Act (NLRA), the landmark federal law providing workers with the right to join a union and collectively bargain.[3] Unions rapidly expanded over the early- to mid-20th century; by 1945, an estimated 35 percent of all nonagricultural workers belonged to a union.[4] But anti-union backlash led to the 1947 Taft-Hartley amendments, which significantly scaled back union protections.[5] During the 1970s, corporations fully seized upon the weakened NLRA to undermine unions significantly, including by relying on court decisions limiting unions' power.[6]

As employers shifted their business practices to avoid regulation and the courts and Congress weakened the protective power of labor law, unionization rates steadily declined over the last half century.[7] Employers adopted a wide range of union-busting tactics to stop union drives – requiring attendance at meetings where the employer discouraged unionization, threats to shut down the jobsite, and delaying union representation elections. Employer coercion and retaliation against workers trying to organize their workplace have become commonplace.[8] A 2019 study found that employers were charged with retaliating against workers organizing for a union in more than 40 percent of NLRB-supervised union elections. Even when workers manage to win an election for union representation, they often lack the leverage to win a first contract, and employers rarely face meaningful consequences for dodging their obligation to bargain in good faith. A study of contracts from 2005 to 2022 found that the average time-to-contract after a union election was 465 days. More recent data focusing on contracts from 2020 to 2022 indicates that this average has gone up to more than 500 days. Today, union membership rates are at 10 percent overall and only 6 percent of the private sector.[9]

Union membership and share of income going to the top 10 percent, 1917–2015



Sources: Data on union density follows the composite series found in Historical Statistics of the United States; updated to 2015 from unionstats.com. Income inequality (share of income to top 10 percent) data are from Thomas Piketty and Emmanuel Saez, "Income Inequality in the United States, 1913–1998," *Quarterly Journal of Economics* vol. 118, no. 1 (2003) and updated data from the Top Income Database, updated June 2016.

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Modern attempts to strengthen federal labor law have repeatedly fallen short. The *Protecting the Right to Organize (PRO) Act* – the legislative effort that came closest to passing in recent years and which would have provided stronger protection for organizing workers, covered more workers, and removed obstacles to collective bargaining once workers formed a union – died in the Senate in 2021.[10] This inaction comes as support for and interest in joining unions is at its highest point in decades. In 2024, unions had a 70 percent approval rating.[11] Recent elections ushering in a conservative trifecta at the federal level make any improvements to federal labor law even less likely. If anything, these new conservative majorities may further weaken federal labor law protections.

While federal legislative improvements have stalled out, state and local governments have been restricted by Supreme Court legal doctrines specific to labor law. Two Supreme Court cases in particular severely limited the ability of state and local government to regulate any area of labor law: *San Diego Building Trades Council v. Garmon* in 1959 and *Machinists v. Wisconsin Employment Relations Commission* in 1976.[12] Under *Garmon*, the Court held that state and local governments are barred from regulating or interfering with any activities related to employee rights to collectively organize.[13] Later, under *Machinists*, the Court held that federal labor law preemption bars state and

local regulation of areas that must be left "to be controlled by the free play of economic forces."[14] In both cases, the Court reasoned that there was a need to create and preserve a uniform labor policy across the country and to avoid potential conflicts posed by differences at the state and local levels. Taken together, *Garmon* and *Machinists* erect formidable obstacles to the use of state or local policy to address the steadily worsening ability of federal labor law to protect workers who wish to unionize.

This has led to "ossified" labor law that is "insulat[ed] from democratic renewal and local innovation," even as legal doctrines for related areas of law have allowed for innovation at the state and local levels.[15] For example, a majority of states have raised their state minimum wages above the federal minimum wage, which has languished at $7.25 for more than 15 years.[16] But courts have relied on federal preemption grounds to strike down state policies that would have improved labor protections, such as prohibiting the hiring of permanent replacement workers, which in turn has likely prevented other attempts at the state and local levels to better protect workers attempting to organize.[17]

Some legal scholars have advanced viable alternative interpretations of the NLRA, arguing Congress did not intend to wholly preempt state and local policymaking on labor issues.[18] Other scholars and advocates have proposed legislation modifying labor law to explicitly remove preemption limitations on state and local policymaking.[19] But, even without a revised preemption legal doctrine or an updated federal statute, there are opportunities for workers and communities to strengthen protections for organizing and collective bargaining at the state and local levels.

II. A Strategy for the State and Local Levels

Despite NLRA preemption restricting how states can strengthen worker protection, public funding provides a crucial opportunity for progress: State and local governments can require higher labor standards and stronger enforcement mechanisms when spending public money.

This avenue is all the more relevant given the scale and scope of public investments under the Biden administration that generated a massive wave of new projects and will continue funding projects for the better part of a decade. These projects are sometimes funded directly by the federal government or by state and local governments that have been allocated federal dollars. State and local governments can add labor protections to public spending and investments that fall within this exemption to the federal preemption doctrine using several key policy mechanisms.

In what is known as the *Boston Harbor* case, the Supreme Court created a significant exception to its preemption doctrine for labor law and clarified where government can still set labor standards. When government acts as a "market participant" or "proprietor" (rather than a "regulator"), it has greater leeway to impose specific labor conditions on recipients of public funding.[20] In other words, the government has a greater say over working conditions on a project when the government is paying for that project.

The "market participant" exception comes with its own limitations. The Supreme Court has established that state and local government can intervene in labor relations when it has a proprietary interest and the intervention is "specifically tailored to one particular job."[21] Subsequent lower court decisions have differing interpretations of how narrowly the intervention must be tailored. The 9th Circuit has allowed state interventions that are not project-specific but affect a narrow subset of government projects, while the 3rd Circuit has upheld labor terms required on all projects across a specific industry.[22] This has created a wide range of opportunities for state and local governments – and the workers and communities that hold those government decisionmakers accountable – to leverage their public spending power to better protect workers' fundamental rights.

Within the "market participant" exception, three main labor interventions are protected to varying degrees: a) project labor agreements, b) other labor requirements for non-construction industries, and c) community benefits agreements.

A. Project Labor Agreements in the Construction Industry

Project labor agreements (PLAs), also known as "pre-hire collective bargaining agreements," are allowed under federal labor statute and approved by the Supreme Court.[23] PLAs are negotiated between one or more construction union and construction employer to establish the terms and conditions of employment for a specific construction project before the project begins, and they create enforcement mechanisms for workers to hold their employers to their commitments.[24] PLAs can also include a community workforce agreement (CWA), a type of PLA that includes additional commitments to the community, such as equitable hiring practices or support for local businesses.[25]

In *Boston Harbor*, the Court recognized that state and local governments exercising their proprietary interests could require PLAs on publicly funded construction projects. Given the need for a steady supply of skilled labor, and the "short-term nature" of construction projects, the Court held that PLAs were an acceptable way for state and local governments to advance their proprietary interest in the avoidance of labor disputes and the uninterrupted delivery of services.[26]

Current federal policy encourages, or in some cases requires, PLAs. President Biden issued an executive order in 2022 requiring PLAs on federal construction projects that cost $35 million or more, though this order will likely be rescinded under a conservative presidential administration.[27] Three agencies with significant construction spending – the Department of Defense, General Services Administration, and National Aeronautics and Space Administration (NASA) – issued a new regulatory rule in December 2023 that formally adopted the PLA requirement on construction projects over $35 million.[28] A conservative presidential administration may attempt to repeal this regulation as well, though it will require a lengthier process than simply issuing a new executive order.

The Office of Management and Budget's Uniform Grant Guidance has made recent updates that reinforce the ability of federal grant recipients to require PLAs on appropriate projects, and they have even expanded the opportunities for improving other labor standards. State and local governments may now include additional protections for workers and benefits for communities as part of federal grant funding, such as rewarding bidders for the quality of jobs they would create and allowing for hiring efforts targeted to disadvantaged communities.[29] These changes to the guidance provoked widespread support and no opposition, and the updates are largely viewed by the OMB as clarifying already-existing rights that grant recipients were unaware of.

B. Other Protections of Labor Rights in Non-Construction Industries

The NLRA does not allow government entities to require pre-hire collective bargaining agreements outside of the construction industry, but there are other policy mechanisms that can result in more robust labor protections.

One way for a government entity to avoid triggering NLRA preemption concerns is to condition public funding on what is known as a "labor peace agreement" (LPA). Labor peace agreements can have many variations, but their core purpose is to avoid disputes that might interrupt the delivery of services (e.g., workers going on strike to pressure an employer to recognize their union might delay or shut down the operation of a manufacturing facility receiving public funding). Non-governmental actors may adopt more expansive forms of LPAs, but state and local governments may use their authority only to advance their "proprietary" interests. To justify its actions as market participant, the government entity must show that it is imposing a labor peace requirement to protect its business interests in "efficient procurement of goods and services."[30] This can be accomplished by obtaining assurances (in the form of an LPA) that secure high-quality services while avoiding strikes, boycotts, or other economic activity that would disrupt the delivery of public developments or services.[31]

The contractor receiving public funding can satisfy a requirement of labor peace on a project or contract by entering an LPA with a union and presenting that to the government entity. When there is a proper LPA requirement on public funding, a union may take the opportunity to negotiate for organizing protections with the employer as part of the LPA. Unions often negotiate for employers to remain neutral toward organizing drives or agree to the method for workers to secure union recognition, such as a card-check recognition process (where a majority of employees in a bargaining unit sign authorization forms, or "cards," stating they wish to be represented by the union).[32]

One key difference from PLAs is that LPAs typically address only the conditions of forming or joining a union. They do not address the terms and conditions of employment, because workers have not yet authorized the union to negotiate a collective bargaining agreement that would cover these topics.[33] So, while LPAs can better enable government entities to secure uninterrupted services and unions may then negotiate the terms of the LPA with the employer receiving public funds, these agreements cannot skip steps in the process. Employees must unionize first before negotiating improvements to their working conditions as a group.

Separate from the example of LPAs, some federal laws have already established a requirement of union neutrality for the use of those federal

funds by grant recipients, such as the Infrastructure Investment and Jobs Act. If those federal funds are granted to state and local governments, then those state and local governments must also honor those requirements when allocating that money. Thus, even if the state or local government has not imposed any additional conditions, the state or local government may still have a role in ensuring that their contractors comply with the conditions on those federal funds.

C. Community Benefits Agreements

While labor neutrality agreements can exist on their own between companies and unions, they have also been implemented to even greater effect as part of larger community benefits agreements.

Community benefits agreements (CBAs) are an important tool for ensuring community needs are met by publicly funded projects. CBAs are legally enforceable agreements that set out commitments to communities and workers, such as higher minimum wages, stronger safety standards, and equitable hiring practices to prevent racial discrimination.[34] CBAs can take a more expansive form than PLAs or CWAs because they are not limited to just the construction sector. Also, CBAs are typically signed by companies, coalitions of labor and community groups, and sometimes a government body, whereas PLAs and CWAs are signed between unions and construction employers.[35]

CBAs can be used on public construction projects as well as public investments in other industries and sectors, such as clean energy or manufacturing.[36] To avoid federal labor law preemption challenges, CBAs outside of the construction sector can include labor peace agreements, which play a critical role in balancing the power dynamic in workplaces so that workers can make use of their rights under federal labor law.[37]

III. The Current Opportunity and Potential Obstacles

Generally, state and local governments can already use PLAs, other protections, and CBAs to enhance worker protections on projects funded with state and local funding. But trillions of dollars in new federal spending authorized by several major spending bills under the Biden administration has created a unique, large-scale opportunity for this approach. Federal agencies have already allocated billions of dollars, and funding commitments will continue for the better part of a decade.[38]

Even with this expanded opportunity, labor and community groups will face significant challenges to winning the broader use of these methods at the state and local levels.

Opportunity Created by Federal Investments

The federal investments under the Biden administration include the following:

- **2021 American Rescue Plan Act (ARPA):** Provided $350 billion in emergency funding to state, local, territorial, and tribal governments.[39]
- **2022 Infrastructure Investment and Jobs Act (IIJA) (also referred to as the Bipartisan Infrastructure Law or BIL):** Directs $1.2 trillion of federal funds toward transportation, energy, and climate infrastructure projects, most of which is distributed via state and local governments. It is estimated to create on average 1.5 million jobs per year for the next 10 years, and it represents one of the largest investments in clean energy production in history.[40]
- **2022 CHIPS and Science Act:** Invests $280 billion in the semiconductor industry, with $52 billion allocated specifically for domestic semiconductor manufacturing.[41]
- **2022 Inflation Reduction Act (IRA):** Invests more than $1 trillion over 10 years in clean energy generation, energy efficiency, and manufacturing. One study of the IRA's economic impact found that it would result in a net increase of 1.5 million jobs by 2030, with 70% of those jobs concentrated in construction, electric utilities, and manufacturing.[42]

These four bills account for more than $2.8 trillion in federal spending, much of it in the form of grants to state and local governments and tax incentives. Georgia alone has 40 new clean energy projects announced since August 2022, representing more than $23 billion in investment that will create nearly 30,000 jobs.[43] Texas has 38 newly announced projects over that same period, with more than $16 billion in investment, particularly in solar and wind manufacturing.[44]

However, even with major investments already announced, a majority of the approved funding will still need to be spent in the coming years. One analysis found that less than 17 percent of the $1.1 trillion provided by these four laws for direct investments on climate, energy, and infrastructure had been spent as of April 2024.[45] The Biden administration had announced just under half of the $1.2 trillion of IIJA funding as of November 2024.[46]

The Biden administration directed federal agencies to fund projects that create "good jobs" that provide workers with a "free and fair chance to join a union."[47] The Department of Commerce and Department of Labor jointly developed a set of eight "Good Jobs Principles" that provide a framework for assessing job quality, including explicit recognition of the right of workers to form and join unions.[48] Agencies tasked with providing grants have already incorporated key provisions into their notices of funding availability and developed their own toolkits to help grant applicants meet these good jobs requirements.

For example, the Department of Energy (DOE) requires applicants to submit "community benefit plans" as part of the grant or loan application for any opportunities funded through the IRA or IIJA. DOE's grant programs for battery processing and manufacturing, alone, total more than $7 billion.[49] Higher applicant scores are tied to the provision of meaningful labor protections and community engagement, and this accounts for 20 percent of the total evaluation score for grant applications.[50]

Community benefit plans – unlike PLAs, CWAs, and CBAs – are not necessarily legally binding on their own. But DOE "encourages the expansive use" of those types of binding legal agreements because "legal enforceability is a key tool for accountability," and DOE will accept such agreements from applicants as evidence of a viable "community benefit plan."[51] Similarly, most Department of Transportation (DOT) discretionary grants include selection criteria regarding the creation of good jobs and expanding workforce opportunities.[52] The core components of a strong grant application, according to DOT guidance, includes "[p]romoting and upholding workers' free and fair chance to join a union."[53]

Given the scale and scope of government investments and the market participant exception to federal preemption doctrine that allows for

consideration of how well a recipient of federal funding will respect workers' right to organize, there is a window of opportunity to establish stronger collective organizing and bargaining rights for an enormous number of workers across several major sectors of the economy.

These massive federal investments incentivize state and local governments to require PLAs on public construction projects.[54] With such a large portion of the recent public investments going toward construction work, such as the building of computer, electronic, and electrical manufacturing facilities, state and local governments can include PLAs for projects paid for with federal grant money.[55] The influx of federal funds has also generated new opportunities for state and local governments to use LPAs and CBAs on an even wider array of projects to ensure that tax dollars are used to create high-quality jobs and the efficient delivery of services.[56]

Obstacles to Using Public Funding to Strengthen Labor Protections

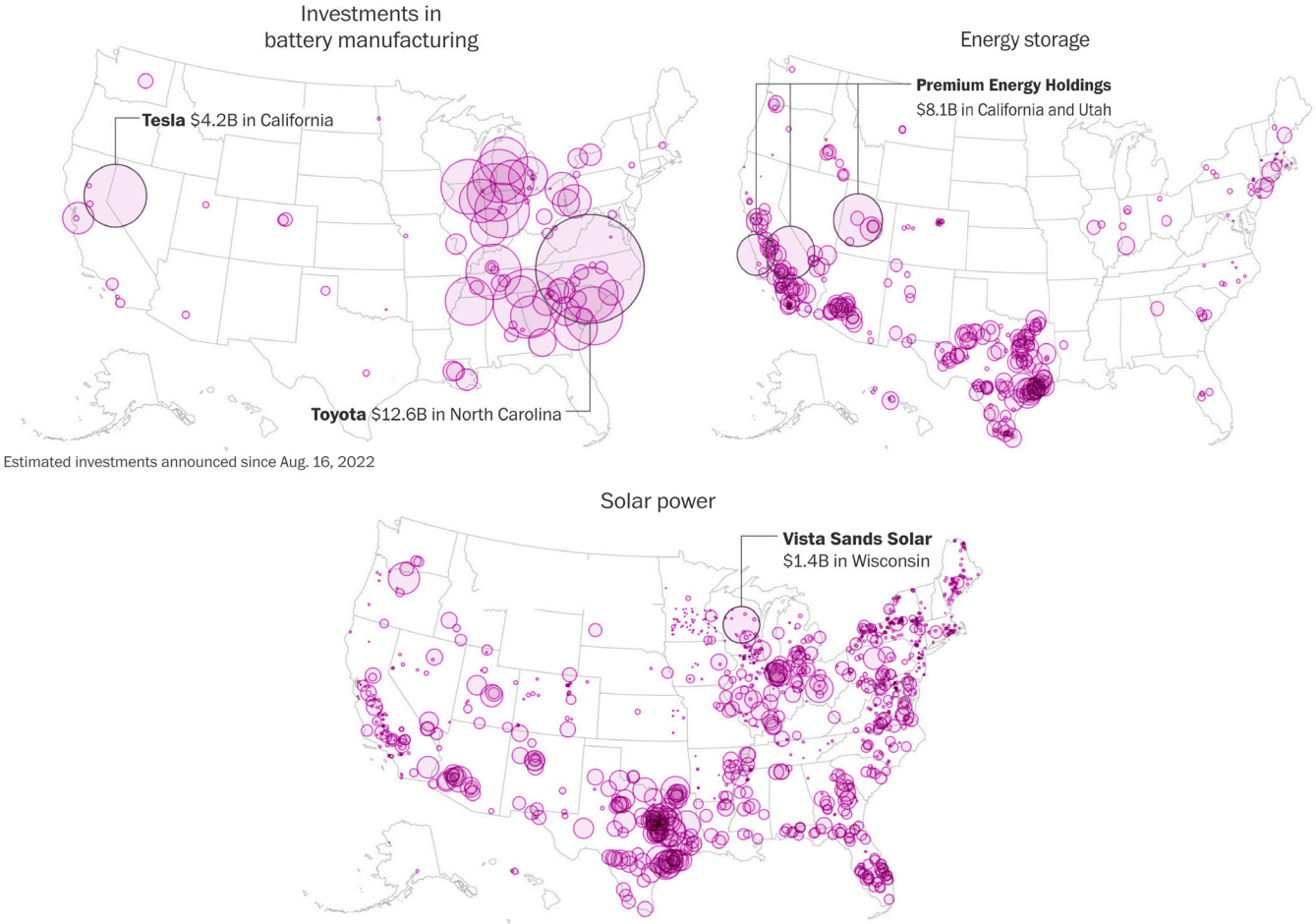
First, aside from the legal requirements covered above, conservative political opposition may create new obstacles for the use of federal funds. The recently established Republican federal trifecta may attempt to repeal or redirect these federal investment programs, particularly for clean energy and electric vehicle projects.[57] Conservatives pledged on the campaign trail to "rescind all unspent funds" directed toward climate investments; the conservative majority in both the Senate and House could enable this.[58] If Republicans cut off the flow of federal money to states and localities, it would hamper the ability of state and local governments to require higher labor protections on projects receiving those federal funds. Republican executive actions could also undermine the Biden administration's public investments, either by reversing executive orders that implement spending laws, such as the IRA, or by directing federal agencies to delay or revise rules that have not yet been finalized.[59]

However, several factors will make it difficult to drastically alter or repeal this funding. Business lobbies may push for the preservation of tax credits and direct spending that has already been used to justify new private sector investments in major projects.[60] Republican control of the House will be tenuous with only a two-vote majority.[61] Defections or holdouts among Republicans in the House could easily undermine a vote to repeal funding or even an effort to seriously curtail it.

For example, Republicans have already gone on the record in support of keeping Inflation Reduction Act funding in place for projects in their states and districts. In August 2024 a group of 18 House Republicans petitioned

the House speaker to keep the IRA clean energy tax credits in place.[62] After the election, a Republican congressman from Georgia stated opposition to a full IRA repeal; there is a $7.6 billion electric vehicle manufacturing project in that congressman's district that has relied on IRA financial incentives to accelerate the project's construction.[63] Nationally, a majority of IRA funding is going to Republican-led states and is projected to create tens of thousands of jobs.[64] The overall future of major federal spending laws under the Biden administration remains uncertain, but there are significant reasons to expect that much of the funding will continue (to say nothing of the funding that has already been committed to specific projects or to the discretion of states).

IRA investments in electric vehicle battery manufacturing, energy storage, and solar power



Estimated investments announced since Aug. 16, 2022

Source: Niko Kommenda, Shannon Osaka, and John Muyskens, "See How the Inflation Reduction Act Is Affecting Your Community," *Washington Post*, October 28, 2024, https://www.washingtonpost.com/climate-environment/interactive/2024/climate-bill-biden-clean-energy/.

Second, political opposition at the state level may pose a similar but slightly different challenge. Recently, Republican-led states have imposed their own state-based preemption laws that limit what kinds of labor protections can be required on publicly funded projects. For example, Texas passed a sweeping state preemption law, dubbed the "Death Star" law, against labor and employment protections in 2023.[65] Legal challenges have so far prevented that bill from being enforced as it makes its way through state courts.[66] But the Texas Death Star law, like other states' preemption statutes, limits the ability of local governments to require worker protections across the entire jurisdiction of that locality. These state preemption laws generally do not limit the ability of local governments to include labor and employment protections when they act as market participants and use their contracting or procurement processes.[67]

Some states have taken this additional step of limiting labor and employment protections on publicly funded projects. For example, Georgia passed a law prohibiting cities and counties from requiring their contractors to abide by project labor agreements in 2013, and Florida passed a similar law in 2017.[68] But, even in states that prohibit the required use of PLAs on public projects, there are still opportunities for overcoming this barrier. For example, it is possible to incentivize the use of PLAs (or other labor and employment protections) through the procurement process, even if the government entity does not have the ability to require that all bidders must commit to those standards. In Florida, the Jacksonville Port Authority agreed to use PLAs for its contractors as part of receiving a $23.5 million federal grant.[69]

Third, and lastly, the conservative coalition that ushered in the next presidential administration has made clear its intention to both weaken labor unions and carry out mass deportations of immigrants.[70] Even if the next administration is unable to fulfill those policy goals, immigrant workers and their communities will be operating under the fear of swift retaliation. This is particularly true in certain industries, such as construction, which has a larger share of immigrant workers.[71] Organizing workers in the shadow of looming retaliation will be extraordinarily difficult.

There is no simple solution to safeguarding the communities and workers who will be targeted by these policies. But the strategies movement organizations applied during the first Trump administration (and that were developed under the Obama administration and continued in many ways under the Biden administration)[72] offer some guidance on how it is possible to mitigate these threats. Many organizations raised legal challenges and pushed for sanctuary laws, but movement leaders have cautioned against "outsourc[ing] the resistance to lawyers."[73] Community organizing and broadening the coalitions that can support immigrants will remain critical to safeguarding our communities – and these strategies will be essential for any efforts that seek to leverage public investments for stronger labor protections.

IV. Examples of Building Worker Power

Some labor and community coalitions have already found ways to raise standards on publicly funded state and local projects, from requiring legally enforceable agreements that protect worker organizing (e.g., PLAs, LPAs, CBAs) to the adoption of specific protections or standards by contractors as a condition of receiving funding. Other federal investments demonstrate how these mechanisms have been applied in practice, to greater and lesser effect.

Several examples stand out for how these mechanisms can be used to better protect workers on future projects that receive federal funding and where state and local governments can set conditions on that funding.

A. PLAs and CBAs on Wind Projects (Maryland)

In 2013, the Maryland Climate Coalition (an advocacy coalition of environmental, faith, health, labor, and civic organizations) passed the Maryland Offshore Wind Energy Act, providing administrative and funding support for clean energy produced from offshore wind. The Public Service Commission would review and approve proposals for offshore wind projects; as part of that review process, the commission evaluated the labor standards on the project, including "the use of an agreement designed to ensure the use of skilled labor."[74] Project labor agreements are typically the type of agreement used to provide skilled labor on major projects, such as offshore wind construction, but the term "project labor agreement" was not directly referenced in the legislative documents.

Maryland's Republican governor vetoed a 2016 bill that did not include additional labor protections but would expand the state's investments in renewable energy. The state legislature overrode the governor's veto in 2017, again with heavy support from labor and community advocacy coalitions.[75] Two years later, Maryland passed its Clean Energy Jobs Act in 2019, extending its investment in offshore wind energy and doubling its wind energy production goals.[76]

Under the 2019 law, energy companies applying for funding under the state law must commit to a PLA with a labor organization as well as a CBA that covers equitable hiring requirements and additional safety standards for workers.[77] Maryland passed another state statute in 2023 expanding the state's commitment to investing in offshore wind energy production by setting a new goal that would quadruple wind energy production targets.[78]

In December 2024, the federal government gave final approval for the construction and operation of an offshore wind project in Maryland made possible by the Maryland statutes, as well as the federal Inflation Reduction Act.[79] The massive offshore wind project will produce enough energy to power more than 700,000 homes and create union jobs across multiple industries in Maryland, from manufacturing to construction.[80]

In the last decade, labor, community, and environmental groups created a well-coordinated coalition to advocate for both the state policies that would create stronger requirements for union jobs on clean energy projects and the approval of funding and permits for those projects at the state and federal levels.[81]

B. Union Neutrality Requirement on Use of Federal Funds for Manufacturing (Georgia)

Blue Bird, a manufacturer of electric school buses in Georgia, received $40 million from the Environmental Protection Agency (EPA) in 2022 under the Infrastructure Investment and Jobs Act.[82] As a condition of receiving that federal funding, Blue Bird committed to not using any of those funds "to support or oppose union organizing, whether directly or as an offset for other funds."[83] It is important to note that the IIJA included a specific federal requirement that the funding not be used to oppose union organizing efforts; state and local government entities cannot mandate an employer's neutrality toward unions, as this would trigger NLRA preemption issues. However, state and local entities can play an important role as part of the application for federal funds that include these requirements.[84] (Or, alternatively, they can ask for an assurance, such as an LPA, that secures the efficient procurement of goods and services, as discussed above.)

Workers at Blue Bird launched a union organizing campaign with the United Steelworkers soon after the company accepted federal money with labor protections attached.[85] Despite the requirement that the federal funding not be used to oppose union organizing, the union needed to file seven charges of unfair labor practices with the National Labor Relations Board against Blue Bird.[86] Union organizers and allies have highlighted the need for more effective enforcement of the requirement that IIJA funding not be used to oppose union organizing, either directly or as an offset. The EPA sent a questionnaire to Blue Bird, among other grant recipients, in the spring of 2023 asking if the company had committed to remaining neutral in any union election. Blue Bird's response did not directly commit to neutrality, though it did agree to recognize the results of a free and fair union election.[87]

While the EPA never directly intervened at the Georgia manufacturing plant, union organizers believe that the union neutrality requirement on the use

of federal funds and the EPA's questionnaire reduced the intensity of any anti-union efforts by Blue Bird.[88] In May 2023, Blue Bird workers voted in favor of a union by a vote of 697-435. The union election gained national attention as among the largest successful union elections in the South in recent decades. This was even more notable because Blue Bird's predominantly Black workforce successfully unionized in Georgia, a state with a long history of racial discrimination and known for the particularly aggressive union-busting tactics used by employers. This has made Georgia one of the states with the lowest unionization rates in the country.[89] Workers voted to ratify their first union contract at Blue Bird in May 2024.[90]

With the Blue Bird example, it is worth noting that the state and local governments (school districts, in this instance) did not impose the union neutrality or labor protections directly. The IIJA already required this for federal funds appropriated under the law, and the federal agency involved apparently did not directly intervene during the union election to enforce the union neutrality requirement on the use of IIJA funds. However, the possibility that violating labor protections could jeopardize millions of dollars of federal funding provided a unique point of leverage to the workers seeking to unionize at Blue Bird.

C. Community Benefits Agreement Covering Electric Vehicle Manufacturer (California and Alabama)

New Flyer is one of the nation's largest bus manufacturers and has supplied internal combustion engine and electric vehicles to LA Metro, the metropolitan transit authority for Los Angeles, CA, after winning the $500 million procurement contract in 2013.[91] As a condition of the 2013 contract, New Flyer committed to creating 50 full-time positions that paid between $11 and $50 per hour.[92] Jobs to Move America, a community and labor advocacy organization, filed public records requests with LA Metro to confirm whether New Flyer had, in fact, fulfilled its commitment to create those jobs.[93] In response, New Flyer filed suit in 2017 to block the release of the public records and lost.[94] Based on the publication of those records, Jobs to Move America then filed a whistleblower lawsuit under California's False Claims Act, alleging that New Flyer had not fulfilled its promises that earned it the $500 million LA Metro contract.[95]

After four years of litigation, New Flyer and Jobs to Move America reached a settlement in 2022 that resulted in a community benefits agreement covering New Flyer's manufacturing facilities in Alabama and California.[96] The CBA established hiring goals "of 45% of new hires and 20% of promotions at each facility of individuals from groups who have historically been

underrepresented or underserved and have had limited access to good jobs in American manufacturing," such as women, people of color, and veterans.[97] It also committed New Flyer to a stronger process for handling complaints about harassment and discrimination, additional safety training, higher wages, new training opportunities, and protections against retaliation.[98]

Most crucially for any organizing efforts, the CBA paved the way for a labor peace agreement that "required New Flyer to be neutral and voluntarily recognize unions with majority support."[99] New Flyer workers successfully formed their union in January 2024, and they ratified their first contract in May 2024.[100] The new contract was ratified with the support of more than 99 percent of union members, and it included raises between 15 and 38 percent, as well as cost-of-living increases and improvements to retirement benefits.[101] It was widely recognized that the workers at the New Flyer plant in Alabama were able to unionize and win a strong contract because of the CBA negotiated in 2022 by Jobs to Move America.[102]

Even though the public funding at the center of the community benefits agreement flowed from a large local government entity, LA Metro, and did not come directly from one of the major federal infrastructure laws under the Biden administration, the New Flyer example still highlights the innovative ways that public funding can support worker organizing. It is also worth noting that the IIJA committed $5 billion to go to state and local governments for electric transit buses, which has spurred significant investments in this sector.[103] Other states or cities spending federal funds could take a similar approach through their procurement requirements or incentives to support the creation of good jobs.

Conclusion

Working families often struggle to get by with inadequate pay, exploitative working conditions, and precarious employment. Black and brown workers suffer these consequences to an even greater extent.

A path to economic security requires that communities and workers build enough power to hold companies accountable – and this depends on their ability to organize collectively without fear of retaliation. Public spending provides a unique opportunity to realize this collective power and to wield it for the greater good.

Though federal labor law preempts certain state and local policies, significant openings remain for protecting and empowering workers at those levels. By leveraging public funds to ensure fair treatment, workers and communities can take immediate action. Building upon this policy approach to public funding, it is possible to pave the way for fairer workplaces, rebalance power more equitably between workers and employers, and catalyze broader national reforms.

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