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Fed up, desperate and daring enough to unionize

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Head: Fed up, desperate and daring enough to unionize.

Deck: Restaurant workers forfeited safety and security to work through 2020. Now, growing numbers are turning to unions as the sole solution to a hazardous job turned intractable.

1

I Don't Feel Safe

When the pandemic's first wave breached Southern California, Augie's Coffee appeared to have everything under control—on Instagram.

Posts from mid-March showed the family roastery cautiously altering their business model. They slashed hours and stowed indoor seating. When the governor mandated a stay-at-home order, Augie's went fully to-go. By April, swag masks populated their site's "merch" page.

Meanwhile, barista Kelley Bader woke up each morning dreading his 8-hour shift in a cafe with no mask mandate. While his managers fussed over customer satisfaction, Bader said employees were left to enforce social distancing with neither top-down support nor personal protective equipment provided.

Employees with underlying conditions didn't feel comfortable coming into work anymore. They asked for unpaid time off until case numbers receded and management signed off on the temporary leave.

But when workers tried to return in April, they found they'd been replaced.

For Bader, the transgression was a tipping point.

"I did feel like they were a good employer before this, but I think I was wrong to feel that.," Bader said.

In his six years at Augie's, Bader had never once received a raise. Company policy discouraged them. He'd never used a sick day, let alone a paid one. He hadn't known he was allotted a daily 10-minute break under California labor laws because his employer had never suggested he take one.

Before the pandemic, the perks and pitfalls of restaurant work hung in a delicate balance. Employees weighed gainful, flexible work against the potential for abuse—wage theft, racism, sexual harassment, and censure. But under the threat of Covid-19, instability has replaced good money and shrinking profits have pushed employers to sideline safety, creating an environment that growing numbers are refusing to work in.

In cities across the U.S., service workers are unionizing. Their demands are simple. The majority are protections white- and blue-collar employees wouldn't work without—a transparent pay structure, an adherence to the legal minimum wage, sick leave, breaks and a work culture that checks racism, sexism and verbal abuse.

Collective bargaining in 2020 remains a longshot, but for some of the industry's 15.6 million employees, it feels like the only path forward.

2

"So many things we thought were okay were just not okay"

Tiffany Ramsey drew the line at wage theft.

Ramsey started serving at 18. She was drawn to the fast cash and formidable wages—she could earn thousands in a week without a college degree. The flexible schedule didn't hurt either. Ramsey had never imagined herself chained to a nine to five.

But service work left her vulnerable. Ramsey alleges her tips were skimmed by management at multiple restaurants in Pennsylvania, a state where the \$2.83 tipped hourly wage doesn't cover the taxes she owes and tips account for her total take-home pay.

Ramsey said her worst experience was at a winery in Harrisburg,

"The Department of Labor was called because they were taking our tips, not telling us what they were doing with them, putting just a random number on your paycheck. If you asked questions you would be fired," Ramsey said.

Wage theft among restaurant workers is rampant, the [Economic Policy Institute](#) found. It can manifest as tip skimming, when a manager, pooling worker tips, pockets a cut, or, more benign, gets the math wrong. There's also the complication of side work. Managers may assign hours of untipped labor like rolling silverware or wiping glasses, while workers are clocked in at a tipped minimum wage, federally \$2.13 an hour.

If it's a slow night—most nights, lately—servers are expected to fill their down time with side work. But because the majority of their income comes from the tips their tables provides, the extra work can quickly turn into unpaid labor.

Servers, bartenders and bussers were formerly protected by the U.S. Department of Labor's 80/20 rule which mandated non-tipped labor could only take up 20% of a tipped workers' duties. The DOL [abolished](#) the rule in late 2018 to ease the employer burden of tracking time spent away from customer interactions. But the roll back leaves staff vulnerable, [the EPI reported](#), allowing employers to capture more than \$700 million annually from workers.

Back-of-house workers are likewise affected. For line cooks and dishwashers, theft can crop up via a flat pay rate, \$300 per week, for example, despite fluctuating hours.

In Los Angeles, which the Wage and Justice Center calls the wage theft capital of the U.S., [8 out of 10 city workers](#) have had pay stolen. The Center found employers had popularized misclassifying employees as independent contractors to [avoid](#) paying for protections like

workers' compensation and overtime. The practice left workers with no social safety net in the event of a layoff.

German Lara, a cook at Ramen Hood, a vegan ramen restaurant in Los Angeles' Grand Central Market from 2015 to 2018, says the classification robbed him of thousands of dollars.

When Lara got the job at Ramen Hood, he wasn't required to complete an I-9 or any tax form. The company cut him a weekly check, with no tax withheld and no hours listed. He later learned the restaurant considered him an independent contractor.

Though Lara suspected the owners were misreporting his hours, he had no way of knowing whether he was being paid fairly until his girlfriend, promoted to manager, poked around in the logs. The owners' records didn't match Lara's.

When he confronted management about the discrepancy, Lara was promptly let go, three days after Christmas, after he'd spent hours prepping for service—time he says wasn't paid for. The owners asked him to sign a severance agreement. Lara contends when he tried to take the agreement home to look it over, an owner slapped his hand. He says he signed under duress.

"To this day, I still don't know what it says. It's still like a foreign language to me," Lara said.

Without hours on the books, Lara couldn't fall back on unemployment.

California's Assembly Bill 5, which took effect in January 2020, has since placed a check on misclassification. Federally, however, the [DOL](#) under the Trump Administration has pushed legislation that would allow employers to more easily classify their employees as contractors.

In a study of city pay practices, wage theft and discrimination generally go hand in hand, the UCLA Labor Center found. A 2015 survey of San Diego county restaurant workers reported that Latinos, back-of-the-house staff and women, were more vulnerable to wage theft as a result of discrimination.

Lara said the abuse at Ramen Hood stemmed from the owners. His English proficiency was repeatedly questioned. Bosses called Spanish-speaking cooks slow and worse.

"They've called us 'lackeys.' They've called us 'retards,' 'dumb.' 'I don't think they really know English,'" Lara said.

Ramen Hood's owners did not respond to multiple requests for comment.

Sexism in restaurants is just as pervasive. [More sexual harassment](#) claims in the U.S are filed in the restaurant industry than any other. In a 2014 Restaurant Opportunities Center [study](#), 90% of women reported sexual harassment, as did 70% of men, findings corroborated by a subsequent [BuzzFeed](#) investigation.

The owner of Harrisburg Winery, who'd stolen Ramsey's tips, had also barred the female servers from wearing pants. He ranked servers according to a subjective proficiency level—calling them "a, b, and c servers." The "c servers" made less money. There are so many things as a food server you put up with because you think it's the nature of the industry.

3

A False Family

Despite the chronic problems, restaurant work has remained tenable because of the incomparable combination of low regulation and decent pay. Back-of-house can avoid residency requirements and tax forms; front-of-house can leave a dinner shift with a solid wad of cash.

But when Covid-19 hit, the drawbacks intensified and the cash flow dwindled.

Augie's ran on the philosophy that workers were family. The restaurant, opened by a father-son team, still has the ideology emblazoned on their "About" page: "We really love our staff. Our staff loves our customers. ... We're in a relationship, it's complicated."

Complicated is an understatement. Owner Austin Amento had hired a battalion of close friends for management and human resources roles, what Bader said resulted in a powerful clique, prone to retaliation. If a worker pushed back against a manager, they'd be punished. Their hours would be cut or they'd be relegated to low-tip shifts.

The idea of a family work environment manifested in the expectation that baristas work harder for the same compensation.

So in mid-June, when management openly disregarded a promise to hold jobs for immunocompromised workers and failed to provide protective equipment for workers on the floor, Bader said the illusion of a mutually beneficial partnership broke down.

"After that we realized no one's really taking care of us right now. And then we started talking about a union," Bader said.

Augie's management has not responded to requests for comment.

Ramsey similarly thought she'd found a fair employer at Cork & Fork, an Italian restaurant in Harrisburg.

When Covid-19 cases surged in March, Cork & Fork closed shop but managed to secure a Paycheck Protection Program loan to sustain take-out service. The restaurant called back workers and raised their wages to meet loan terms. Ramsey's \$2.83 an hour turned into \$15 plus tips.

"It actually ended up being good money," Ramsey said.

Until it wasn't. Cork & Fork's management failed to let workers know that the loan money had run out sometime in June. Ramsey realized when she received a paycheck for \$0. She checked the hourly rate—they were back where they'd started and their employer owed them back pay that he didn't want to dish out.

Ramsey was fed up. She called the National Labor Relations Board to learn the steps to unionize.

4

Not All Restaurants

The thinness of restaurant margins is so notorious it's cliché. Any period of closure or slowed business poses an existential threat.

For every new safety hurdle or disappointing sales read-out workers have stared down, restaurant owners have stood beside them.

State-mandated shutdowns in March brought many restaurateurs to their knees. Reduced capacity requirements, forced owners to invest in outdoor structures instead of paying down back rent. Most eateries have accrued losses just to keep the doors open and come this winter, many more will shutter for good.

"It's really been a story of lurching from crisis to crisis for ownership and the workers themselves," Eli Wilson, professor of sociology at the University of New Mexico and author of the forthcoming book "Front of the House, Back of the House: Race and Inequality in the Lives of Restaurant Workers."

Some owners have prioritized their employees, going to great lengths to keep them working, despite their own losses. They've set up GoFundMes or dedicated weekly allowances to [laid-off](#) workers. Some, upon reopening, asked staff to set the [guidelines](#)—What would make them feel safe coming back to work?

Others are doing the best they can with what they have. The thinness of restaurant margins is so notorious it's cliché. Any period of closure or slowed business poses an existential threat.

Bader recognized that Augie's, running on take-out, was struggling. They didn't have the funds, perhaps, to afford masks or hold jobs while staff stayed home. But he also knew Augie's had always put business interests ahead of staff. The pandemic just exacerbated the divide.

"They're not making as much money; I'm not making as much money and we need each other to make money," Bader said. "There's just a natural incentive for them to get the most they can out of me without compensating me for it."

5

Taking A Stand On Rocky Ground

For workers faced with uncooperative employers, unionization may seem a logical next step. In practice, it's a Herculean task.

The Labor Relations Act of 1935 granted workers the federal right to unionize. The process is fairly straightforward—if a majority of workers decide to form a union by first signing cards, then voting in favor of unionization, the employer must recognize the union and work out a contract.

But the process leaves multiple opportunities for derailment. Between card signing and election, employers can legally schedule employee meetings about the downsides of unions. They can single out employees to slowly chip away at interest.

Or they can fire the union leaders.

When Lara realized Ramen Hood wasn't paying him accurately, he started talking to colleagues to corroborate. Did their checks reflect their hours? He found his coworkers had also noticed missing hours. Not three months later, he was let go by management.

"That's illegal, but the penalties are pretty minor," Joshua Freeman, labor historian at Queens College said.

In the highest offense—an unlawful firing—the employer, if caught, is mandated to reinstate the worker and pay back pay. Nothing further.

Every attempt to strengthen labor protections for workers since 1935 has been struck down in Congress.

Most recently, the Employee Free Choice Act of 2009 would have penalized union-busting with fines of up to \$20,000 and recognized card signatures as proof of a successful union vote. But the bill died in the Senate for the fifth time in 2016.

For Ramsey, that bill would have made a difference.

After learning the steps to unionize, Ramsey and her coworkers set up a secret meeting to distribute union cards to all 44 employees. Thirteen workers signed on—enough to schedule a vote.

"We were like, 'We can't wait any longer, people are going to start talking,'" Ramsey said.

Despite management's insistence that staff vote in-person during the pandemic, the potential union earned the right to vote by mail. Days after they'd postmarked their ballots, the NLRB notified Ramsey there'd been a snag. Cork & Fork's owners had filed a "request for review," which questioned the validity of the mailed votes and delayed results until the Labor Board, inundated with similar requests, could get to them.

"So we are just twiddling our thumbs waiting," Ramsey said.

Ramsey's demands are minimal: a consistent schedule, the ability to call out sick without a doctor's note, a high-enough hourly rate to cover taxes and a raise for kitchen workers, the majority of whom are immigrants.

The longer she and her coworkers have to wait for their voting results, the less likely their success. Delayed votes allow time for employer intimidation. Prospective union members could also lose steam or get cold feet in the interim. And a second shutdown could terminate staff positions entirely.

Already financially-strapped from the pandemic, some restaurateurs have found closing down to be an easier, legal route than rising to meet employee demands.

Philadelphia's V Street closed in late July after a collection of laid-off workers sent a letter demanding their employer commit to antiracist practices and better pay. Dandelion Community Cafe in Orlando shuttered after in-house union The Seeds attempted to organize. Both restaurants blamed their closures on the pandemic.

At Augie's, organization came quickly. During a week in June, Bader contacted every employee and received verbal confirmation that they would sign union cards. Within two weeks, 80% of the staff had signed, allowing them to move to a vote. Out of respect, they brought their demands to management first and asked for voluntary recognition.

Management set up a town hall. Workers showed up to emphasize what they loved about the company and their jobs, and how they hoped the union would improve things.

"They fired us three days later," Bader said.

6

A Rebellious Workaround; A Blue Hope

The Achilles' heel of in-house union attempts like Augie's, is their size. Single shops, while simpler to organize, lack the worker power to motivate employers to change. It's simpler for owners to affect employee views on unions or cut their losses and close than restructure their work culture.

Corporate employer resistance is by far the greatest hurdle to unionization, said Steven Greenhouse, a 20-year labor reporter at the New York Times who recently published "Beaten Down, Worked Up: The Past, Present and Future of American Labor."

Bader saw Augie's resistance to worker suggestions as a point of pride.

"There's this ego," Bader said. "As a boss, it's like, 'Who are you to tell me what to do with the business that I've made?'"

To combat top-down resistance to unions, some organizers are choosing to forgo employer relations until the last possible moment.

In New York, the Restaurant Workers' Council—Consejo de Trabajadores de Restaurantes, or RWC-CTR, is attempting an innovation in unionization. The group, formed during the March restaurant shutdown, has set out to establish a sectoral union—the mass organization of all the city's restaurant workers.

The union's founders foresee the economic fallout of the pandemic as a long-term hazard for workers. More layoffs will follow the recent ban on indoor dining and a surplus of workers come spring and summer 2021 will funnel more power to employers to set working conditions.

RWC-CTR is in it for the long haul. Their plan harnesses worker power over a several-year period. Once they've grown large enough, the union will target restaurants one-by-one, invoking whipsaw strikes, where employees walk out of each business on a block until employers cave to their demands.

Restaurants' precarious financials are working in RWC-CTR's favor. After months of reduced capacity and lackluster sales, even a week without labor could be devastating. The availability of laid-off workers to join a strike is another advantage, one the nation saw play out this summer during the record turnouts to Black Lives Matter protests amid mass unemployment.

The plan is ambitious. Diego, an initiator of RWC-CTR, who requested his last name be omitted for anonymity, admits there's no historical precedent for what they're trying to do.

"But we don't see there being any kind of shortcut that would achieve the durable results that the industry really desperately needs," he said.

Greenhouse has documented similar attempts that have failed.

In the mid-90s, tomato pickers in Florida organized an industry-wide strike demanding fair pay, clean drinking water and an end to the sexual assaults of female workers. Their employers refused to budge and the tomato pickers, operating on such low-wages, didn't have the savings to sustain the siege.

There's also the potential that restaurant workers, facing the renewed threat of furlough, will leave the industry altogether. For college students and front-of-house staff with their hearts in another profession, restaurant work is a way to make rent until they can start their career. Most lack the industry loyalty that defines successful union movements.

That transitory nature is likely why the sector has the lowest unionization rate of any industry at 1.8%, said Julius Getman, labor historian and law professor at the University of Texas.

And the 10% of the industry who are undocumented workers are unlikely to join any movement that jeopardizes their already-precarious position in the labor force.

Successful union movements this year have almost all been defined by employer support.

Minneapolis-St. Paul has seen an explosion of food and beverage unions this year. Fair State Brewing Cooperative became America's first unionized microbrewery earning their CEOs praise for the "self-determination" of his team. Tattersall Distilling achieved unionization after first-reluctant ownership agreed to good-faith bargaining.

Still, the hazards created by the current crisis could expedite progress, as employees feel intolerable labor conditions leave them with no other option than to make collective bargaining work.

When Burgerville workers in Portland, Or., managed the first successful unionization of three fast food restaurants last year, they attributed the progress to being up against a wall.

"It's been successful because fast-food workers can't take it anymore," Burgerville-worker Hadley McAnn told [ThinkProgress](#). "The urgency is there and people think that it's worth it to take risks and to fight for a better life."

Burgerville employees likewise benefitted from the support of a larger union, the International Workers of the World (IWW) who prioritize organizing all workers, harnessing the power of unification to stem change—much like RWC-CTR plans to do.

A sure catalyst of change, Greenhouse said, would be legislation. And the Biden administration provides hope.

The president-elect has championed the Protecting the Right to Organize or PRO Act, which would quash employers' ability to interfere in elections or run counter campaigns to organizing attempts and slap heavier fines on employers violating workers' rights.

The bill passed the House in February but would require a Democratic win in Georgia's run-off to make it through the Senate. The Republican filibuster has killed every attempt to strengthen unions since Lyndon Johnson was president.

Even without the Senate, Biden can still affect the NLRB and in doing so rebuild the employee rights Trump's appointees effectively decimated.

The board is currently controlled by four Republican appointees who, under Trump, overturned numerous precedents for workers' protections, constraining where workers can organize, undermining collective bargaining structures and truncating the right to strike, an [EPI](#) report found. Biden could gain control of the board next August, along with the ability to codify the labor-wins achieved under the Obama administration.

Moreover, Biden has committed to use his executive power to repeal "right to work" laws that starve unions of financial resources and to create a cabinet-level working group to increase union density, in part, by exploring the expansion of sectoral bargaining units.

And though grassroots union attempts this year have failed, they've still pushed the needle.

After Augie's closed, Bader and his co-workers kept up their advocacy work, raising awareness about the industry's labor practices and funds for the 60 Augie's workers left unemployed by the shutdown.

At the end of summer, the organizers discovered Augie's was getting ready to open a wine bar weeks after they'd pulled the plug on five cafes. Bader and company contacted the city planners in charge of the project armed with petitions and public letters denouncing the plans, and the city sided with labor. They denied Augie's permits.

"It was a really big win for us," Bader said.

The legacy of Augie's and the kindred unions that rose and fell in 2020 is not their individual success but rather the first glimmers of a sea change that employees have a rightful say in how they spend their lives at work.