



Workers are winning union elections, but it can take years to get their first contract

Fact Sheet • By Celine McNicholas, Margaret Poydock, and John Schmitt • May 1, 2023

Today is International Workers' Day, also known as May Day, a day to commemorate the struggles and achievements of workers and the labor movement around the globe. The year that just ended was remarkable for the U.S. labor movement: Gallup found that **71% of polling respondents** “approve of” labor unions, the highest share since 1965.

Despite **substantial obstacles to union organizing posed by U.S. labor law**, these pro-union sentiments helped to power an extension of union representation to **200,000 additional workers in 2022**. The National Labor Relations Board reported a **53% increase in petitions** for union representation elections relative to just a year earlier, a trend that **has continued into the first six months of fiscal year 2023**. And since December 2021, workers at an **Amazon warehouse** in New York and at **more than 300 Starbucks stores** across the country have led high-profile—and successful—campaigns to organize their workplaces.

But winning a union election is only the first step. To realize their goals for pay, benefits, job security, scheduling, safety, and other working terms and conditions, newly formed unions need to successfully negotiate a first contract. All the available data, however, show that reaching a first contract generally takes a long time—often a year or more after union recognition. And, in some cases, no contract is ever signed.

It takes a long time to get a first contract

Unfortunately, government statistical agencies do not collect data on how much time elapses between the legal recognition of a union and the signing of a first contract. Four analyses published in the last two decades, however, show a consistent pattern of long delays, resulting in an increased likelihood that unions will fail to reach a first contract.

In a **study published in 2008**, John-Paul Ferguson analyzed more than 8,000 successful union elections conducted between 1999 and 2004. Ferguson found that in 44% of those cases, unions did not manage to reach a contract within one year of certification.

Ferguson focused on the one-year mark because, “for the purposes of the law...the important question is whether the two parties negotiated a contract within one year of certification—the ‘contract bar’ period during which neither the employer nor other unions may challenge the certified union’s status as the employees’ representative.” In practical terms, this means that if negotiations take more than a year, the employer can challenge the union’s legal right to continue to represent employees at the workplace.

In a **2009 study**, Kate Bronfenbrenner analyzed separate NLRB data from 1,004 randomly selected NLRB certification elections that took place between 1998 and 2003. Bronfenbrenner and colleagues then interviewed 56% of the union organizers involved in those elections, asking a series of questions including how long it took to reach a first contract after winning an election. Bronfenbrenner reported that more than half (52%) of cases did not reach a first contract within one year. More than one-third (37%) had no contract after two years. And just under one-third (30%) still had no contract after three years.

A **more recent study** by John Kallas, Dongwoo Park, and Rachel Aleks reviewed 226 NLRB representation elections that occurred in 2018 and found that 63% of unions failed to reach a first contract within one year of winning their election. After two years, 43% were still working without a first contract. The study also found that employer use of legally prohibited “unfair labor practices” was “associated with a significant delay” in first contracts, leading the researchers to conclude that “employers can—and do—actively undermine bargaining.”

Analysis published in 2021 by Robert Combs at *Bloomberg Law* confirms that long delays to first contracts are still the norm—and, to make matters worse, these delays have been steadily increasing since the early 2010s. Combs used **2005–2022 data** from 391 contracts covered by *Bloomberg Law*’s proprietary union contracts database, which he matched to publicly available NLRB data on certification elections. He found that the average time-to-contract was well over a year (465 days). In the most recent period covered in the Bloomberg data—2020–2022—the mean time to contract ratification was over 500 days.

None of these studies are able to provide an estimate of the share of newly formed bargaining units that ultimately fail to secure a contract. By its design, the *Bloomberg Law* data could not do so: Combs started by searching Bloomberg’s own database of *signed* contracts and only then matched those cases to NLRB election records. Because Bloomberg’s contract database can’t match contracts to elections in cases where a contract was never reached, their analysis can’t identify the elections that never yielded a contract. A similar logic applies to the other three studies. For very practical reasons, those studies had cutoff dates, at which time the researchers stopped following the progress of contract negotiations in order to write up their findings. Some portion of the union representation wins that still had not secured a contract after their cutoff dates *never* went on to reach a first contract.

Why does it take so long to reach a first contract?

Collective bargaining agreements covering employment relationships are, of course, complicated, and the two sides have different objective interests regarding many of the issues covered, all of which can take time to negotiate. But the most salient reason for the long lags is that delays overwhelmingly benefit employers and current labor law tilts strongly in their favor.

Employers have many reasons to drag their feet when negotiating a first contract. The union has just won legal recognition, usually in the face of significant employer opposition. A swift move from a recognition victory to a contract sends a signal to workers that the union is powerful and able to quickly press employers to improve wages, benefits, and working conditions. Long delays, on the other hand, suggest that the union is less powerful than the initial win suggested. Delays can sap solidarity, eroding some of the cohesion of the newly formed bargaining unit.

The main leverage workers have when management drags its feet is that drawn-out negotiations generally hurt morale, which can translate into lower productivity, higher turnover, and—in the short run, at least—lower profits. But in many industries, especially those that typically have high turnover (Amazon warehouses and Starbucks stores, for example), a drop in morale and increase in turnover may be exactly the outcome management is seeking. High turnover means the employer can recruit new workers who did not participate in the successful organizing campaign. In human terms, absent the shared experience that led to union recognition, the new workers may not identify as strongly with the new union, directly reducing the union's bargaining power. In legal terms, the increased turnover may open up opportunities for employers to ask the NLRB to conduct a union decertification election by arguing that the union no longer represents the current workforce.

Anti-union employers who have lost a union recognition election may see contract negotiations as a second chance to defeat the union—by never reaching a collective bargaining agreement. The National Labor Relations Act (NLRA) requires unions and management to bargain in good faith but does not require that the two sides reach an agreement, for example, by imposing binding arbitration in the absence of a negotiated agreement.

Since a failure to reach an agreement essentially leaves labor relations in the state they were in before the union organizing campaign, this purportedly even-handed treatment of union and management is in fact biased against the new union and heavily in favor of management. Management has a strong incentive to play out the clock in the hope of never reaching an agreement. Even if management ultimately signs a contract, management can use its ability to outwait the union to squeeze concessions that it would not have been able to on a more equal playing field.

What can we do to ensure first contracts are reached in a timely manner?

The biggest barrier to a quick contract is the lack of a legal requirement that both parties come to an agreement in a timely fashion. As mentioned above, the NLRA requires management and the union to bargain in good faith but does not oblige the parties to reach an agreement.

A much more effective way to reach a fair contract would be to require labor and management to begin contract negotiations shortly after union recognition, use professional mediation in the event of slow progress or an impasse, and submit to binding arbitration if mediation fails to produce a first contract.

The **Protecting the Right to Organize (PRO) Act** includes all three of these elements. The PRO Act would require management to start negotiations in good faith within 10 days of the new union's request. If an agreement is not reached within 90 days, either the union or management could request that the

Federal Mediation and Conciliation Service (FMCS) step in to mediate. If the mediation fails to produce a contract within 30 days, the FMCS would require the parties to submit to binding arbitration that would review arguments from both sides and impose a two-year contract.