

“YOU CAN’T EAT PRESTIGE”:¹ A CONSIDERATION OF UNIONIZATION IN THE MUSEUM SECTOR

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ABSTRACT

Today’s museum workers are rapidly unionizing—a major shift in pace in the fifty-year history of museum unionization efforts; moreover, contemporary efforts to unionize and bargaining goals differ in many ways from the first museum workers’ unionization movements of the 1970s. This Note argues that the narrowing scope of the “mandatory bargaining subjects” in the National Labor Relations Act creates difficulty for art museum unions to focus bargaining efforts on issues impacting the professional nature of museum work, which has distinctly shaped museum unionization goals today. Efforts to unionize museum workers are important to the labor community because they generate legal commentary on collective bargaining issues and provide transparency for the social and economic hardships of museum workers, especially those industry hardships stemming from the COVID-19 pandemic. Since the inception of the labor movement, the National Labor Relations Board and courts have narrowed their interpretation of the “mandatory bargaining subjects” for which employers and unionized workers are required to collectively bargain under the National Labor Relations Act. Narrow interpretations of “mandatory bargaining subjects” have impacted museum workers’ ability to bargain for a stronger voice in decision-making at the managerial level, and contribute to the grounding of these efforts instead in bargaining over wages, workplace safety, job security, and benefits. Contemporary unionization efforts by museum workers seek to highlight the value of

1. See Day, *infra*, note 135.

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museum work while exposing—and remedying—barriers to employment, inadequate compensation, lack of opportunity for advancement, and availability of employment.

INTRODUCTION

On September 26, 2022, approximately 180 union members of the Philadelphia Museum of Art (PMA) Union, the first wall-to-wall union in a major American art museum,² began a nineteen-day strike after filing eight unfair labor practice³ charges against the PMA.⁴ The charges alleged that management implemented multiple union-busting activities during previous contract negotiations.⁵ In addition to the unfair labor practice charges, they cited low and stagnant pay, inadequate health insurance, lack of paid parental leave, and lack of career opportunities as impetuses for the strike.⁶

2. Formed in May of 2020, District Council 47, Local 397 of the American Federation of State, County, and Municipal Employees (“AFSCME”), around 89% of 300 staff members voted in favor after a year of organizing in response to inequitable salaries and a mishandled sexual harassment case. *Workers at the Philadelphia Museum of Art vote to unionize in historic landslide win. 89% vote yes!*, PHILA. MUSEUM OF ART UNION, (Aug. 6, 2020), <https://www.philadelphiamuseumofartunion.com/press-release-august-6-2020> [<https://perma.cc/J2BD-GLX3>]; see also Robin Pogrebin & Zachary Small, *He Left a Museum After Women Complained; His Next Job Was Bigger*, N.Y. TIMES (Jan. 10, 2020), <https://www.nytimes.com/2020/01/10/arts/design/joshua-helmer-philadelphia-museum-art-erie-art-museum.html> [<https://perma.cc/MFZ5-732D>].

3. The National Labor Relations Act (“NLRA”) makes it an unfair labor practice for an employer to “(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157; (2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. . . (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . (4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act; (5) to refuse to bargain collectively with the representatives of his employees. . .” 29 U.S.C. §§ 158(a)(1)–(5).

4. Elaine Velie, *Philadelphia Museum of Art Workers Celebrate Victory After 19-Day Strike*, HYPERALLERGIC (Oct. 14, 2022), <https://hyperallergic.com/770011/philadelphia-museum-of-art-workers-celebrate-victory-after-19-day-strike/> [<https://perma.cc/MG4W-9JDY>]; *September 16 Warning Strike*, PHILA. MUSEUM OF ART UNION, (Sept. 15, 2022), <https://www.philadelphiamuseumofartunion.com/warning-strike> [<https://perma.cc/74JH-RAKV>].

5. *September 16 Warning Strike*, *supra* note 4.

6. Jasmine Liu, *Philadelphia Museum Workers Vote for Strike as Union Talks Stall*, HYPERALLERGIC (Aug. 31, 2022), <https://hyperallergic.com/757239/philadelphia-museum-workers-vote-for-strike-as-union-talks-stall/> [<https://perma.cc/7NS2-ZAJA>].

Emily Rice, a PMA Union member, wrote of the strikers' motivations:

The board [of trustees] has no idea what most of us do. .
.they have no idea what museum work actually entails. .
.We are bleeding talented colleagues because of the
museum’s low pay, poor benefits, and lack of professional
development and advancement opportunities. . Each
remaining staff person is covering the work of two or three
people. Previously permanent roles, like administrative
assistants, are being termed into temporary [] positions,
making previously stable jobs unstable, and forcing the
institution into a constant unnecessary cycle of rehiring
positions.⁷

After nearly three weeks of striking, the PMA Union and management finally reached a three-year agreement, which granted 14% raises over the following three years, increased the minimum wage from \$15 to \$16.75, lowered health care costs, and granted four weeks of paid parental leave.⁸

7. Emily Rice, *I’m a Philadelphia Museum of Art Worker and This Is Why We’re Striking*, HYPERALLERGIC (Oct. 7, 2022), <https://hyperallergic.com/767711/philadelphia-museum-of-art-worker-and-why-were-striking/> [https://perma.cc/GL4K-PALZ].

8. Harrison Jacobs, *Philadelphia Museum of Art and Union Agree To Three-Year Contract After 19-Day Strike*, ARTNEWS (Oct. 17, 2022), <https://www.artnews.com/art-news/news/philadelphia-museum-of-art-museum-and-union-agreement-1234643294/> [https://perma.cc/XV73-VTET]. Recently, the PMA Union accused the PMA of renegeing on a “longevity pay increase,” which would have given full and part time employees incremental salary increases for every five years of employment up to twenty years, alleging that “effective July 1, the longevity clause would only be applicable to employees whose employment anniversaries fell within the three-year lifespan of the contract.” Rhea Nayyar, *Philadelphia Museum accused of Renegeing on Union Contract*, HYPERALLERGIC (June 29, 2023), <https://hyperallergic.com/830947/philadelphia-museum-accused-of-renegeing-on-union-contract/> [https://perma.cc/4PL9-GLEL].

The PMA Union's hard-won contract is just one result of many unionization efforts by museum workers in recent years.⁹ And like the PMA Union, other museum unions cite similar concerns:

Organizers say their efforts to convince white-collar arts workers to unionize have been fueled by increasing frustration over the pay gap between museum employees and executives, and that pandemic layoffs only heightened the concerns of some employees looking for better wages and job security.¹⁰

Though unionization efforts in the museum sector have recently experienced an upsurge,¹¹ museum workers have protested poor working conditions and campaigned to unionize their workplaces for more than fifty years, beginning with the formation of the Museum of Modern Art (“MoMA”) Union in 1971, originally the Professional and Administrative Staff Association of the Museum of Modern Art (“PASTA”).¹² While many

9. In recent years, many museum workers have successfully run unionization election campaigns. See, e.g., Ben Brachfeld, *Brooklyn Museum staff vote to unionize*, BROOKLYN PAPER (Aug. 20, 2021), <https://www.brooklynpaper.com/brooklyn-museum-staff-win-unionization-vote/> [https://perma.cc/J4GB-EP99] (electing a union on Aug. 20, 2021); AICWU Direct, *Art Institute employees have won their union*, ART INST. CHI. WORKERS UNITED, <https://www.aicwu.org/updates/art-institute-employees-have-won-their-union> [https://perma.cc/BE4C-9FRU] (electing a union on Jan. 11, 2022); Max Hall, *Walker Art Center Workers Unionize with AFSCME Council 5!*, AFSCME COUNCIL 5, <https://www.afscmemn.org/news/walker-art-center-workers-unionize-afscme-council-5-0> [https://perma.cc/7JW9-U8A5] (electing a union on Dec. 1, 2020); *LA MoCA Will Voluntarily Recognize New Union*, ARTFORUM (Dec. 9, 2019), <https://www.artforum.com/news/la-moca-will-voluntarily-recognize-new-union-81553> [https://perma.cc/2ES9-VVKH] (voluntarily recognizing union on Dec. 9, 2019); *Whitney Workers Vote 96-1 to Unionize*, ARTFORUM (Aug. 2, 2021), <https://www.artforum.com/news/whitney-workers-vote-96-1-to-unionize-86284> [https://perma.cc/G5DM-CABY] (electing a union on Aug. 3, 2021); Ben Davis, *Art Installers and Maintenance Workers at the Guggenheim Have Voted ‘Yes’ to Joining a Union*, ARTNET NEWS (June 27, 2019), <https://news.artnet.com/art-world/guggenheim-union-1588120> [https://perma.cc/U6YA-RYBW] (electing a union on June 27, 2019); Bob Keyes, *Portland Museum of Art and new employee union reach first contract agreement*, PORTLAND PRESS HERALD (Nov. 23, 2021), <https://www.pressherald.com/2021/11/23/portland-museum-of-art-and-new-employee-union-reach-first-contract-agreement/> [https://perma.cc/X8H3-WXNX] (electing a union in 2020); Alex Greenberger, *New Museum Union Votes to Join Local 2110*, ARTNEWS (Jan. 24, 2019), <https://www.artnews.com/art-news/news/new-museum-union-votes-join-local-2110-11762/> [https://perma.cc/RX4G-P9P9] (electing a union on Jan. 24, 2019).

10. Zachary Small, *U.S. Museums See Rise in Unions Even as Labor Movements Slump*, N.Y. TIMES (Feb. 22, 2022), <https://www.nytimes.com/2022/02/21/arts/design/museums-unions-labor.html> [https://perma.cc/TTLT-K6MS].

11. *Id.*

12. Greenberger, *infra* note 85.

of PASTA’s concerns in the early 1970s have changed little, the starkest difference between PASTA’s organization efforts and more recent organization efforts are the bargaining goals. While PASTA sought concessions from MoMA regarding professional decision-making responsibilities, recent unionization efforts tend to focus on wages, workplace safety, job security, and benefits.¹³

Once a union is formed, union representatives must engage in collective bargaining with employers about these concerns.¹⁴ The National Labor Relations Act (“NLRA”) defines collective bargaining as “the performance of mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment.”¹⁵ Thus, wages, hours, and other terms and conditions of employment have been designated “mandatory” bargaining subjects.¹⁶ Following the holding in *NLRB v. Wooster Division of Borg-Warner Corporation* and *First National Maintenance Corp. v. NLRB*, the courts and the National Labor Relations Board (“NLRB”) interpret mandatory bargaining subjects more narrowly.¹⁷ I assert that the narrow scope of mandatory bargaining subjects has made it more difficult for art museum unions to focus bargaining efforts on issues impacting the professional nature of museum work, which has at least partially shaped museum unionization efforts and goals today.

Part IA of this essay offers a brief history of the formation of the NLRA and considers in depth its provisions under Section 7 and Section 8(a)(5). Additionally, it follows the development of interpretations of mandatory bargaining subjects pursuant to Section 8(a)(5). Part IB provides an overview of the labor movement in the museum sector, beginning in the late 1960s and early 1970s. It also discusses how various social and economic

13. See *Strike at the Modern*, *infra* note 75; see also Kopel, *infra* note 134.

14. 29 U.S.C. § 159(b).

15. 29 U.S.C. § 158(d).

16. Rabban, *infra* note 45, at 702–703.

17. *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 349 (1958) (“Read together, these provisions establish the obligation of the employer and the representative of its employees to bargain with each other in good faith with respect to ‘wages, hours, and other terms and conditions of employment.’ The duty is limited to those subjects, and within that area neither party is legally obligated to yield.”); *First Nat. Maint. Corp. v. NLRB*, 452 U.S. 666, 686 (1981) (“We conclude that the harm likely to be done to an employer’s need to operate freely in deciding whether to shut down part of its business purely for economic reasons outweighs the incremental benefit that might be gained through the union’s participation in making the decision, and we hold that the decision itself is *not* part of § 8(d)’s ‘terms and conditions’ (citation omitted) over which Congress has mandated bargaining.”).

factors laid the groundwork for an upsurge in museum unionization efforts in recent years.

Part II of this essay compares the early labor movement in the museum sector with the current labor movement, considering how economic and social factors have changed the direction of museum unionization efforts over time and how this has generally impacted museum workers' self-conception. Finally, Part II considers how narrow interpretations of the mandatory bargaining subject doctrine may have impacted what art museum unions are able to accomplish at the bargaining table.

I. BACKGROUND

A. The National Labor Relations Act

During the first half of the twentieth century, Congress enacted the Railway Labor Act, the Norris-LaGuardia Act, and the National Industrial Recovery Act ("NIRA"), legislation that expanded the scope of employee rights and served as precursors to the NLRA.¹⁸ The 1926 Railway Labor Act granted railway workers the right to organize and conduct collective bargaining in the railway industry.¹⁹ The 1932 Norris-LaGuardia Act prohibited district courts from issuing injunctions in all labor disputes.²⁰ Following the overturn of the NIRA in *Schechter Poultry Corp. v. United States*, a piece of New Deal legislation that would have guaranteed, among other things, the right of workers to form unions and bargain collectively,²¹ Senator Robert F. Wagner introduced a bill, The Wagner Act, which was ultimately passed in 1935 and became the earliest form of the NLRA.²²

18. *Pre-Wagner Act labor relations*, NAT'L LAB. RELS. BD., <https://www.nlr.gov/about-nlr/who-we-are/our-history/pre-wagner-act-labor-relations> [<https://perma.cc/L6E6-7M2T>]; CHARLES B. CRAVER ET AL., LABOR RELATIONS LAW: CASES AND MATERIALS 14 (14th ed. 2021).

19. The Railway Labor Act, 45 U.S.C. §§ 151(a)–152.

20. Norris-La Guardia Act, 29 U.S.C. § 101.

21. See *Schechter Poultry Corp. v. U.S.*, 295 U.S. 495, 542 (1935).

22. *1935 passage of the Wagner Act*, NAT'L LAB. RELS. BD., <https://www.nlr.gov/about-nlr/who-we-are/our-history/1935-passage-of-the-wagner-act> [<https://perma.cc/A5MD-DNBA>] (last visited Feb. 25, 2023).

The Wagner Act, was pro-union.²³ It established the NLRB,²⁴ gave employees the right to form and join unions, obligated employers to “bargain collectively with unions selected by a majority of the employees in an appropriate bargaining unit,” provided enforcement of the Act, and covered most workers in industries that affected interstate commerce.²⁵

However, the pro-employer 1947 Taft-Hartley Act ultimately limited the worker-friendly provisions of the Wagner Act: where the Wagner Act gave employees the right to form and join unions, the Taft-Hartley Act gave employees the right to refrain from joining a union.²⁶ It also created union-side unfair labor practices.²⁷ Supervisors were excluded from bargaining units, and the Board “had to give special treatment to professional employees, craftsmen, and plant guards in determining bargaining units.”²⁸ The Taft-Hartley Act also made changes to union elections.²⁹

Congress amended the NLRA again with the enactment of the 1959 Landrum-Griffin Act, which developed out of a congressional inquiry into union corruption, racketeering, and other misconduct.³⁰ The Landrum-Griffin Act tightened secondary boycott prohibitions, outlawed hot cargo agreements,³¹ gave economic strikers the right to vote in representation

23. Theodore J. St. Antoine, *Legal Barriers to Worker Participation in Management Decision Making*, 58 TUL. L. REV. 1301, 1304 (1984).

24. See 29 U.S.C. §§ 153(a)-(b). The Board is comprised of five members who are appointed by the President with advice and consent of the Senate to review decisions by regional directors and hearing officers of the NLRB. *Id.*

25. *1935 passage of the Wagner Act*, *supra* note 22.

26. 29 U.S.C. § 169. While this allows employees from refraining to join a union, it does not allow them from refraining to join a union if it is the condition of employment. For instance, if an employer and union have an open shop agreement, then the employer hires “nonunion workers on the understanding that they will become union members within a specified period.” *Open Shop*, BLACK’S LAW DICTIONARY (11th ed. 2019).

27. *1947 Taft-Hartley Substantive Provisions*, NAT’L LAB. RELS. BD., <https://www.nlr.gov/about-nlr/who-we-are/our-history/1947-taft-hartley-substantive-provisions> [<https://perma.cc/NBZ2-RJGR>] (last visited Feb. 25, 2023).

28. *Id.*

29. *Id.*

30. *1959 Landrum-Griffin Act*, NAT’L LAB. RELS. BD., <https://www.nlr.gov/about-nlr/who-we-are/our-history/1959-landrum-griffin-act> [<https://perma.cc/E7UB-9Q77>] (last visited Feb. 25, 2023).

31. “A provision in a union contract allowing employees to refuse to handle or work on goods from a plant where workers are on strike or to provide services to a company that the union has designated as an unfair employer.” *Hot-Cargo Clause*, BLACK’S LAW DICTIONARY (11th ed. 2019).

elections within a year of beginning a strike, and protected employee's union membership rights from unfair labor practices by unions, among other provisions.³²

Today, the purpose of the NLRA is to:

[E]liminate the causes of certain substantial obstructions to the free flow of commerce. . . by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.³³

The NLRB's jurisdiction to oversee labor cases covers the majority of "non-government employers with a workplace in the United States, including non-profits, employee-owned businesses, labor organizations, non-union business, and businesses in states with "Right to Work" laws.³⁴ Cultural and educational centers, including art museums, must have a gross annual volume of business of one million dollars to fall within the NLRB's jurisdiction.³⁵

Section 7 of the Act articulates employee rights under the NLRA, providing employees with "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."³⁶ Section 7 is implemented by Section 8, which makes it an unfair labor practice for an employer to "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7."³⁷ Section 9 of the Act

32. 1959 *Landrum-Griffin Act*, *supra* note 30.

33. 29 U.S.C. § 151.

34. See *NLRB v. Jones & Laughlin Steel Corp.*, 31 U.S. 1, 31-32 (1937) (upholding the Board's interpretation that Congress granted NLRB jurisdiction over unfair labor practices "affecting commerce," within the constitutional bounds of the Commerce Clause); see also *Jurisdictional Standards*, NAT'L LAB. RELS. BD., <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/jurisdictional-standards> [<https://perma.cc/G5Z8-JN2D>] (last visited Jan. 27, 2023).

35. *Id.*

36. 29 U.S.C. § 157.

37. 29 U.S.C. § 158(a)(1).

oversees representatives and elections.³⁸ To successfully file with the Board, at least 30 percent of employees must sign union cards or a petition to create a “bargaining unit covered by an agreement between their employer and labor organization made pursuant to § 158(a)(3),”³⁹ after which “the Board shall take a secret ballot of the employees in such unit and certify the results thereof.”⁴⁰ If a majority of voting employees vote in favor of a union, the Board will certify the union.⁴¹

Once an election is conducted and a majority of employees vote in favor of the union, Section 8(a)(5) makes it an unfair labor practice for an employer to “refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a).”⁴² The act of collective bargaining is “the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement arising thereunder.”⁴³ The union and employer have an obligation to discuss these issues and can insist on them to impasse.⁴⁴ According to David Rabban, scholars and commentators, “urged the NLRB and the courts to refrain from construing the statutory phrase ‘terms and conditions of employment,’ as a license to define the scope of bargaining for the parties,” but the Board and courts did so anyway, interpreting the Taft-Hartley provision to create a distinction between mandatory and permissive bargaining subjects.⁴⁵ The Supreme Court affirmed the Board’s interpretation⁴⁶ in the 1958 case *NLRB v. Wooster Division of Borg-Warner Corporation*, finding that Section 8(a)(5)’s bargaining requirements limited the duty of collective bargaining to the “subjects of wages, hours, and other terms and conditions of employment;” beyond that, the bargaining subjects are permissive.⁴⁷ Moreover, the Court

38. 29 U.S.C. § 159.

39. 29 U.S.C. § 159(5)(e).

40. *Id.*

41. 29 U.S.C. § 159(c)(1).

42. 29 U.S.C. § 158(a)(5).

43. 29 U.S.C. § 158(d).

44. *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 349 (1958).

45. David M. Rabban, *Can American Labor Law Accommodate Collective Bargaining by Professional Employees*, 99 *YALE L.J.* 689, 702–703 (1990).

46. *Id.* at 703.

47. *Wooster Div. of Borg-Warner Corp.*, 356 U.S. at 349 (citing *NLRB v. American Nat. Ins. Co.*, 343 U.S. 395 (1952)); see also *Silverman v. Major League Baseball Player Rel. Comm., Inc.*, 880 F.3d 1054, 1059 (2d Cir. 1995) (finding that “under caselaw, the parties may propose and bargain over,

found that “when a collective agreement expires, the employer may not alter terms and conditions of employment involving mandatory subjects until it has bargained to an impasse over new terms.”⁴⁸ This does not apply to permissive subjects; rather, employers “may alter [permissive subjects] upon expiration” without bargaining to an impasse.⁴⁹ According to Rabban, the Board and courts have determined that “only the narrowest working conditions seem clearly mandatory, such as salary, supplementary employment, and rules governing travel out of state. With respect to other issues, holdings vary among jurisdictions.”⁵⁰ Thus, bargaining about topics regarding management decisions are less likely to be considered mandatory bargaining subjects.⁵¹

When it comes to bargaining about issues that give employees greater involvement in the managerial aspects of their organization, the Court in *First National Maintenance Corp. v. NLRB* stated that “the elected union representative would become an equal partner in the running of the business enterprise in which the union’s members are employed.”⁵² While this would appear to be a broad pronouncement, the Court noted that “[i]n general terms, the limitation includes only issues that settle an aspect of the relationship between the employer and employees.”⁵³ Thus, the Court in *First National Maintenance Corp.* divided management decisions into three categories: those that “only have an indirect and attenuated impact on the employment relationship,” those that are “almost exclusively ‘an aspect of the relationship’ between the employer and employee,” and those that have “a direct impact on employment. . .but had as its focus only economic profitability.”⁵⁴ According to Rabban, “the first category is permissive, the second is mandatory, and the third depends on a balancing test,”⁵⁵ which the

but may not insist upon, permissive subjects of bargaining”).

48. Silverman, 880 F.3d. at 1059.

49. *Id.*

50. Rabban, *supra* note 45, at 705–706.

51. *Id.* at 705.

52. *First Nat’l Maint. Corp. v. NLRB*, 452 U.S. 666, 676 (1981).

53. *Id.* (quoting *Chem. & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 178 (1971)).

54. *Id.* (quoting *Chem. & Akali Workers*, 404 U.S. at 397).

55. Rabban, *supra* note 45, at 704.

Court states is only mandatory “if the benefit for labor-management relations and the collective-bargaining process outweighs the burden placed on the conduct of business.”⁵⁶

While these distinctions affect collective bargaining agreements across workers, the limitations placed on permissive bargaining subjects have formed acute barriers to collective bargaining among professionals.⁵⁷ As Rabban points out, many unions representing professional employees “seek legal protection for traditional professional values. These values include participation in developing organizational policy, significant responsibility for personnel decisions about fellow professionals, the establishment of professional standards, and the commitment of organizational resources to professional goals.”⁵⁸ Thus, Rabban argues,

[T]he distinction [between mandatory and permissive bargaining] weakens the role of a union in dealing with employers about the very professional issues that may have led to its selection. . . even if bodies of professional employees are relatively successful, they operate only at the sufferance of the employer unless their existence is guaranteed by enforceable collective bargaining agreements.⁵⁹

As many museum workers identify as professionals,⁶⁰ collective bargaining can be particularly problematic in the museum sector if the organizers aspire to greater access to their institution’s board of trustees, representation on the board, or greater power in decision-making about museum policies or curatorial strategies.

56. First Nat’l Maint. Corp., 542 U.S. at 679.

57. See generally Rabban, *supra* note 45.

58. *Id.* at 691.

59. *Id.* at 694–95.

60. The American Alliance of Museum classifies museum workers as professionals. See *About AAM*, AM. ALL. OF MUSEUMS, <https://www.aam-us.org/programs/about-aam/> [<https://perma.cc/PK72-E3V8>] (last visited Feb. 28, 2023).

B. History of the Labor Movement in the Arts

On January 3, 1969, Vassilakis Takis walked into MoMA, where one of his art works, owned by the museum, was installed in an exhibition without his consent, and he removed it from the premises.⁶¹ As a part of the action, he issued a flyer stating this was the “first in a series of acts against the stagnant policies of art museums all over the world.”⁶² As other artists and art critics learned about the action, they came together to support Takis, and as a result formed the Art Workers Coalition (“AWC”).⁶³ The AWC challenged museums and galleries to take political responsibility for their institutional ties to the military industrial complex⁶⁴ and advocated for artist rights, including reforms to museum policies regarding copyrights, reproduction rights, exhibition rights, and institutional inclusion and accessibility.⁶⁵ Their platform centered ten demands, including providing artists with percentages of the resale price of their work after it was acquired by galleries and opening MoMA to the general public free of charge at least once a week.⁶⁶

In addition to their anti-war and artist rights actions, the AWC voted to form a union on September 23, 1970.⁶⁷ However, AWC members felt tension regarding whether a union that relied on state or federal funding would be in keeping with their mission to divest from capitalist systems and organizations supporting the ongoing Vietnam War.⁶⁸ Other factions were more interested in moving away from the art world all together and focusing on labor politics.⁶⁹ Although the AWC dissolved around three years later, it introduced the notion that museum curators fell under the umbrella of “worker” and inspired MoMA staff to unionize.⁷⁰

61. JULIA BRYAN WILSON, *ART WORKERS: RADICAL PRACTICE IN THE VIETNAM WAR ERA* 13 (2011).

62. *Id.* (quoting Vassilakis Takis).

63. *Id.* at 13-14.

64. Beth Ann Handler, *The Art of Activism: Artists and Writers Protest, the Art Workers' Coalition, and the New York Art Strike Protest the Vietnam War 2* (May 2001) (Ph.D. dissertation, Yale University) (on file with author).

65. WILSON, *supra* note 61, at 15-16 (quoting Statement, Art Workers' Coalition (Jan. 5, 1969)).

66. Handler, *supra* note 64, at 142-43.

67. WILSON, *supra* note 61, at 23.

68. *Id.* at 23-24.

69. *Id.*

70. *Id.* at 25-26.

As the AWC protested external museum practices and affiliations, museum workers became dissatisfied with MoMA’s external and internal policies.⁷¹ Employees at MoMA were the first group of museum workers to organize a union.⁷² Calling themselves the Professional and Administrative Staff Association of the Museum of Modern Art (“PASTA”), the employee organizers first met in January 1970 and identified three leading criticisms against MoMA: “1. Lack of Information about Museum policies; 2. Lack of Personnel Manual; 3. Suppression of Curatorial Council Committees reports by Museum.”⁷³ The group also became more vocal regarding museum policies, objecting to an increase in admission rates.⁷⁴ By June 1970, criticism of MoMA management was so great that they formed PASTA, and a year later, they affiliated with District 65-UAW (United Auto Works) and won an NLRB election.⁷⁵ Originally hoping to form an association of museum professionals, a member of PASTA’s strike committee stated that “there was no one else to join us, and we were forced into a strike almost immediately after forming. We were compelled by the Museum to pursue legal procedures and become a certified bargaining agent.”⁷⁶

PASTA became “the first self-organized union of professional employees at a privately financed museum,”⁷⁷ and comprised 70% of staff not otherwise represented by unions, which totaled around 170 staff members.⁷⁸ MoMA fought back, claiming that more than 60 staff members were “ineligible for inclusion in the bargaining unit” and dismissing 53 people during negotiations, 36 of whom were PASTA members.⁷⁹ This

71. Lawrence Alloway, *Museums and Unionization*, ARTFORUM, Feb. 1975, at 46, <https://www.artforum.com/print/197502/museums-and-unionization-37308> [<https://perma.cc/4XKX-PBUS>].

72. Small, *supra* note 10.

73. Alloway, *supra* note 71 (quoting Press Release, Pro. & Admin. Staff Ass’n of the Museum of Mod. Art).

74. *Id.*

75. *Id.*; see also Kitty Weiss Krupat, *Modern Art/Ancient Wages*, NEW LAB. FORUM (Jan. 14, 2022), <https://newlaborforum.cuny.edu/2022/01/14/modern-art-ancient-wages/> [<https://perma.cc/9JQ5-H6S4>].

76. Lawrence Alloway & John Coplans, *Strike at the Modern*, ARTFORUM, Dec. 1973, at 44, <https://www.artforum.com/print/197310/strike-at-the-modern-36255> [<https://perma.cc/4AAC-62KM>] [hereinafter *Strike at the Modern*].

77. Small, *supra* note 10.

78. *Strike at the Modern*, *supra* note 76.

79. *Id.* Members of the collective bargaining unit included “full curators and associate registrars, conservators, and librarians. Many of these people are out on strike. Some have been on the

triggered PASTA's first strike, which also sought to remedy MoMA's notoriously low wages, mismanagement, staffing cuts in curatorial departments, and employee representation on the board of trustees.⁸⁰ The result of the strike was a two-year contract, which gave MoMA staff the right to participate in policy decisions and the search and selection of museum officials, and gave them greater access to the trustees.⁸¹ It also provided a formal structure for promotions and new appointments, for-cause discharges, a 7.5% increase in wages, paid sabbaticals, research leaves, systemic severance pay, and grievance procedures.⁸² The organizers' goal was to broaden the types of concerns beyond mere bread-and-butter labor issues; however, management pushed back on many of these policy reforms.⁸³ As one strike organizer stated, "we hope to set a precedent for the organization of museum professionals. We don't want to adhere to established guidelines because our concerns are broader than that."⁸⁴

More recently, in 2000, around 250 MoMA union members⁸⁵ led a 134 day walkout after the museum prioritized a \$650 million expansion over employee demands for higher pay.⁸⁶ The union pressured MoMA by securing support from prominent artists, entreating city council members to delay or block zoning variances the museum needed to expand, and timing

Association's program committee and negotiating team. Most have worked for donkey's years at the Museum, know it inside out, participated in the founding of the Association, and are among its staunchest supporters. After years of service and now in senior positions, they have the clearest view of the need for the union. . . . By removing them from full membership, management hopes to diminish the union's authority and effectiveness. What it boils down to is job security. They don't want these people covered by a union contract which requires them to show cause if they want to terminate their employment. . . . The Museum can't openly state their real position. So they've adopted this odd argument that they can't operate the Museum with a handful of department heads. But it's exactly the handful of department heads that runs the Museum, and these disputed titles have no decision-making power." *Id.*

80. Grace Glueck, *MOMA Gets a Taste of PASTA*, N.Y. TIMES (Sept. 26, 1971), <https://timesmachine.nytimes.com/timesmachine/1971/09/26/91307043.html?pageNumber=220> [https://perma.cc/H53A-PNAW].

81. *Id.*

82. *Id.*

83. *Strike at the Modern*, *supra* note 76.

84. *Id.*

85. The MoMA union did not keep the organization name "PASTA." Therefore, for the purposes of this Note, references to PASTA are explicitly referring to the 1970s MoMA union organizers, and all other references to the MoMA union will refer to union activities after 2000.

86. Alex Greenberger, *'Art Workers Don't Kiss Ass': Looking Back on the Formation of MoMA's Pioneering Union in the 1970s*, ARTNEWS (Oct. 6, 2019, 2:04pm), <https://www.artnews.com/art-news/news/moma-pasta-union-impact-13401/> [https://perma.cc/B4GR-54BD]

the walkout to occur during preparations for several major exhibitions.⁸⁷ While the union ultimately conceded to the museum’s right to unilaterally impose changes in health care coverage if it was unable to reach an agreement, the union gained a wage increase of over 18 percent over a five-year period, and the museum promised to give jobs back to all union members who were furloughed while the museum was closed for the expansion.⁸⁸ The agreement also required all new administrative and professional workers to join the union or pay union dues.⁸⁹ Until the last decade, this was one of the last major strikes by museum union workers.⁹⁰

MoMA is not the only art museum to have unionized in the past;⁹¹ however, recent years have seen remarkable growth in art museum unionization efforts.⁹² Two frequently-cited factors that have contributed to the uptick include efforts to promote salary transparency and the COVID-19 pandemic, which made stark the financial inequalities between museum workers and management.⁹³ This tension was only heightened by several museums’ campaigns to undertake expensive expansions and building projects as well as employees’ general disillusionment regarding museums’ roles in supporting and upholding systems of oppression.⁹⁴

In 2019, a self-described, “nonhierarchical group of arts and museum workers who are friends and colleagues,”⁹⁵ published an Arts + All Museums Salary Transparency 2019, a public Google Sheets spreadsheet

87. Steven Greenhouse, *Strike Ends at the Modern In a Spirit of Compromise*, N.Y. TIMES (Sept. 10, 2000), <https://www.nytimes.com/2000/09/10/nyregion/strike-ends-at-the-modern-in-a-spirit-of-compromise.html> [<https://perma.cc/NK5X-YE5X>].

88. *Id.*

89. *Id.*

90. Greenberger, *supra* note 86.

91. For example, the Minneapolis Institute of Art unionized in 1971 and the San Francisco Museum of Modern Art unionized in 1972. See Alloway, *supra* note 71.

92. Small, *supra* note 10.

93. *Id.*

94. *Id.* Art Museums’ roles in supporting and upholding systemic oppression falls outside the scope of this article. For a comprehensive discussion of this important issue, see LAURA RAICOVICH, *CULTURE STRIKE: ART AND MUSEUMS IN AN AGE OF PROTEST* (2021).

95. *About*, ART + MUSEUM TRANSPARENCY, <https://www.artandmuseumtransparency.org/about> [<https://perma.cc/Y5XK-6XGC>] (last visited Jan. 26, 2023). While Art + Museum Transparency does not identify themselves and all submissions are anonymous, Michelle Millar Fisher, the Ronald C. and Anita L. Wornick Curator of Contemporary Decorative Arts within the Contemporary Art Department at the Museum of Fine Arts, Boston, is responsible for publishing the spreadsheet. This project was inspired by Joshua Boldt’s 2012 Adjunct Project, the POWArts Salary Survey, started in 2017, and Kimberly Drew’s 2019 salary share at the 2019 American Alliance of Museum’s Annual Meeting. *Id.*

wherein museum and other cultural workers anonymously published the name or description of their employer, job title, starting salary, current salary and years of experience and degrees required for their position.⁹⁶ By the end of 2019, when the spreadsheet was archived, there were 3,323 entries⁹⁷ from workers across museums, art galleries, and tech company cultural initiatives.⁹⁸ The salary spreadsheet also disclosed institutional salaries on 990s for the most recent tax return (2017 return for tax year 2016), including the highest salary and the tenth highest salary, highlighting the stark differences between management and staff.⁹⁹ For example, one spreadsheet entry indicates that a collection’s assistant at the PMA with 10 years of experience made \$45,000 per year, a position which requires a master’s degree.¹⁰⁰ Meanwhile, the director of the PMA was reported to have made \$700,000 that same year.¹⁰¹

96. *Arts + All Museums Salary Transparency 2019_View Only*, GOOGLE SHEETS (Dec. 31, 2019),

https://docs.google.com/spreadsheets/d/14_cn3afoas7NhKvHWaFKqQGkaZS5rvL6DFxzGqXQa6o/edit#gid=0 [<https://perma.cc/SYR7-Y9FJ>] [hereinafter *Salary Transparency 2019*]. The authors of the spreadsheet provide the following caveat: “The data captured on this survey is never going to be a perfect, holistic overview—we are not data scientists. The point of the survey is proactively coming together in a spirit of transparency and collegiality, and offering some (but not complete, perfect) insights into our field. . . .” *Id.*

97. *Id.*

98. *Id.* *Arts + All Museums Salary Transparency* also crowdsourced data on internships in art museums and art museum organizations, which pointed to the proliferation of unpaid internships, often in expensive cities and which was often required to get a foot in the door. *Art + Museum Transparency End Unpaid Internships Spreadsheet*, GOOGLE SHEETS (Dec. 31, 2019), <https://docs.google.com/spreadsheets/d/1VY3GzxL59xJ6Iv67m2Qlg0xZdq-FBiKJapCU6INqrMY/edit#gid=654169754> [<https://perma.cc/6SHD-TXR6>] [hereinafter “*End Unpaid Internships*”]. Like the *Arts + All Museums Salary Transparency Spreadsheet*, the entries in this spreadsheet are self-reported and the authors “are not data specialists.” Michelle Millar Fisher, *Culture Workers, Just Say No to All Unpaid Internships*, ARTNEWS (July 16, 2019, 10:55 AM), <https://www.artnews.com/art-news/news/unpaid-interhips-art-museums-transparency-oped-12974/> [<https://perma.cc/VZW4-UNGU>].

99. *End Unpaid Internships*, *supra* note 98.

100. Elizabeth A. Harris & Robin Pogrebin, *Inside Hushed Museum Hallways, a Rumble Over Pay Grows Louder*, N.Y. TIMES (July 22, 2019), <https://www.nytimes.com/2019/07/22/arts/museum-pay-unions.html> [<https://perma.cc/Y9R8-JCRE>]. According to the Bureau of Labor Statistics, *Archivists, Curators, and Museum Workers’ 2022 median pay was \$53,420 dollars per year. Occupational Outlook Handbook: Archivists, Curators, and Museum Workers*, U.S. BUREAU OF LAB. STATS., <https://www.bls.gov/ooh/education-training-and-library/curators-museum-technicians-and-conservators.htm#tab-5> [<https://perma.cc/7W2Q-ZCBB>] (last visited Nov. 9, 2023) (providing a breakdown of median annual income by profession and by area of employment, including educational services, government, museums, historical sites, and similar institutions) [hereinafter *Occupational Outlook Handbook*].

101. Harris & Pogrebin, *supra* note 100.

While the movement for salary transparency already exposed major disparities between management and museum worker salaries and benefits, the COVID-19 pandemic brought them into sharper relief. In a similar gesture to the Arts + All Museums Salary Transparency Sheet, Michelle N. Moon, the then-Chief Programs Officer at New York’s Lower East Side Tenement Museum, created and circulated a public spreadsheet,¹⁰² which tracked museum layoffs and furloughs, impacted departments, and whether employees were paid while furloughed.¹⁰³ According to the American Alliance of Museums (“AAM”), between February and December 2020, the nonprofit arts, entertainment, and recreation sector lost 36% of its jobs.¹⁰⁴ In an AAM survey of museum workers (both working and furloughed), 39% percent of full time and 61% of part time respondents reported losing income as a result of the pandemic at an average of over 30% of their total income, which was calculated to be \$21,191 for full time employees and a 50% reduction (on average, \$12,564) for part-time employees.¹⁰⁵ Survey results further indicated that over one-third of the respondents stated it was only somewhat likely that they would remain in the museum profession three years from the date of the survey.¹⁰⁶ Respondents were asked what they considered potential barriers to remaining in the museum sector: 59% cited inadequate compensation; 57% cited burnout, 53% cited opportunities for advancement, 51% cited availability of employment, 14% in aggregate

. *Museum Staff Impact of COVID19-Week of 07/31/20*, GOOGLE SHEETS <https://docs.google.com/spreadsheets/d/1acEaRssONaAlFjThEFybfhBB1b3OluOne-NHsghOMxg/edit#gid=0> (last visited Feb. 13, 2023) [<https://perma.cc/VLX4-RLYB>]. [hereinafter *Museum Staff Impact of COVID19*].

103. *Id.*

104. MEASURING THE IMPACT OF COVID-19 ON PEOPLE IN THE MUSEUM FIELD, AM. ALL. OF MUSEUMS, (Apr. 13, 2021), <https://www.aam-us.org/wp-content/uploads/2021/04/Measuring-the-Impact-of-COVID-19-on-People-in-the-Museum-Field-Report.pdf> [<https://perma.cc/2AM6-XFAE>] [hereinafter AMERICAN ALLIANCE OF MUSEUMS SURVEY]; See also Lester M. Salamon & Chelsea L. Newhouse, *2020 Nonprofit Employment Report*, JOHN HOPKINS CTR. FOR CIV. SOC’Y STUD. (June 2020), http://ccss.jhu.edu/wp-content/uploads/downloads/2020/06/2020-Nonprofit-Employment-Report_FINAL_6.2020.pdf [<https://perma.cc/P9Y6-VQ78>].

105. *Id.* at 2, 5–6.

106. *Id.* at 8. Students who responded to the survey had similar outlooks on the future of the museum sector. Only 34% of students thought it was highly likely that they would be working in the museum sector in three years, while 45% thought this was only somewhat likely. Of the potential barriers to remaining in the museum sectors, students indicated availability of employment was a barrier (92%), compensation that meets needs and expectations (78%), opportunities for advancement (57%), disillusionment about the value of museum work (54%), among others. 42% of students said they were somewhat pessimistic about the future of the museum sector. *Id.* at 11.

and 35% of Black, indigenous, and other Respondents of color cited racism and discrimination, and 34% cited disillusionment about the value of museum work.¹⁰⁷ Only ten percent of respondents said they did not see any potential barriers to continued employment.¹⁰⁸

While many museum workers were laid off or saw salary decreases, reduction in hours, and more work responsibilities,¹⁰⁹ upper management and directors at museums and other cultural institutions saw little change in their salary, according to AFSCME-CWU research.¹¹⁰ According to AFSCME-CWU's report, "The average salary of a director at an institution with an operating budget of \$20 million and above was \$523,000."¹¹¹ Moreover, museums that received Paycheck Protection Program ("PPP") loans as a part of the CARES act still furloughed or dismissed employees at high numbers.¹¹² For instance, the Museum of Contemporary Art in Los Angeles received a PPP loan for \$1.57 million in June of 2020 and a second in February of 2021 for \$1.72 million.¹¹³ Despite the surplus in funding, additional PPP loans, and the ability to acquire \$1.1 million dollars' worth of new acquisitions in the 2020 fiscal year, they discharged 97 part-time workers.¹¹⁴

II. ANALYSIS

The history of unionization efforts in the museum sector indicates that the struggles facing union organizers today are not new, and the issues over which union members want to bargain have not changed dramatically. While low, stagnant wages were both historically and are currently an oft-cited worker's grievance, these particular concerns have frequently occurred in conjunction with an announcement of a museum expansion

107. *Id.* at 8.

108. *Id.*

109. *American Alliance of Museums Survey*, *supra* note 104.

110. *Cultural Institutions Cashed In, Workers Got Sold Out*, at 5, AFSCME CULTURAL WORKERS UNITED, <https://report.culturalworkersunited.org/> [<https://perma.cc/8UER-T2VY>] (last visited Mar. 3, 2023).

111. *Id.*

112. *Id.* at 1.

113. *Id.* at 5.

114. LAMOCA director received a total compensation of \$1.1 million dollars in the 2020 fiscal year. *Id.*

plan.¹¹⁵ For instance, efforts to organize the Minneapolis Institute of Art and the San Francisco Museum of Art in the 1970s began in partial response to major building projects, and as PASTA members stated in an interview, while “more than half of the San Francisco Museum of Art staff are maintaining themselves and families on considerably less than is required to meet the national standard of living. . . [museum directors] have dwelt on such matters as architectural extension, acquisition, and temporary exhibitions rather than on staff needs.”¹¹⁶ While PASTA organizers did not cite expansion as a catalyst for organizing in the 1970s, the MoMA union conducted a strike in 2000 in partial response to a \$650 million expansion project that would require the museum to close for two years and thus reduce their workforce substantially.¹¹⁷ Museum expansion has similarly compelled organizers to unionize more recently. For instance, PMA union organizers were angered by the PMA announcement of a \$233 million renovation and expansion by architect Frank Gehry.¹¹⁸ PMA union member Adam Rizzo said it was

. . . shameful that a museum with a \$60 million dollar annual budget has staff who are forced to work multiple jobs just to get by. . . Meanwhile, the institution prioritizes spending \$233 million on new spaces, while the employees who work in those spaces have not received a raise in years.¹¹⁹

When workers perceive that wages are too low in an environment where their employer is spending exorbitant amounts of money on flashy expansion projects, it fosters the idea that working in a museum is a privilege and that sacrificing better wages and benefits are just a part of the job.¹²⁰

115. Alloway, *supra* note 71.

116. *Id.*

117. Greenhouse, *supra* note 87.

118. Matt Hickman, *Philadelphia Museum of Art unveils \$233 million Frank Gehry Makeover*, ARCHITECT’S NEWSPAPER (May 6, 2021), <https://www.archpaper.com/2021/05/philadelphia-museum-of-art-unveils-233-million-frank-gehry-makeover/> [<https://perma.cc/8U3C-ZSXU>]; *see also* Kathleen Cancio, *Workers at Philadelphia Museum of Art ramp up pressure for fair contract*, AFSCME (Apr. 14, 2022), <https://www.afscme.org/blog/workers-at-philadelphia-museum-of-art-ramp-up-pressure-for-fair-contract> [<https://perma.cc/L9YP-R9XF>].

119. Cancio, *supra* note 118.

120. As UAW Local 2110 President Maida Rosenstein has stated, “Workers saw tremendous, ever-widening wage inequalities in their workplaces: boards of trustees composed of billionaires, money pouring in from other billionaires, huge sums spent on massive construction projects, and museum

It is unsurprising that museum workers would feel lucky to work in the museum sector. In many ways, they are. According to the Bureau of Labor Statistics, there were 37,700 archivist, curators, and museum worker jobs in 2022, with a projected increase of 10% over the next ten years (or an increase by around 3,700 jobs).¹²¹ In AAM's Annual National Snapshot of United States Museums, fielded in March and April of 2023, 26% of responding museums have not recovered pre-pandemic staffing levels and have seen staff sizes decrease by 20% compared to pre-pandemic numbers, while 38% saw an increase in staff sizes by 20%.¹²² 36% of responding museums remain the same size as they did in 2019.¹²³

However, the AAM has also noted that 60% of museums recruiting for job openings, particularly for front-line positions, such as guest services and retail, have encountered hiring difficulties.¹²⁴ These statistics, when considering other challenging factors, such as pay, may have changed workers' thinking about the prestige of holding a museum job. As Professor Nelson Lichtenstein states, "the prestige of working for a cause, *being around art*. . . is of increasingly suspect value."¹²⁵

Organizing workers in the 1970s felt a similar disillusionment:

[O]ne was expected to sacrifice quotidian gain for the pleasure of serving culture. This pleasure is real and includes: collaboration with intelligent peers, the handling of art, original research, contact with artists. The fallacy was to assume that these satisfactions were forever linked to substandard salaries without job protection.¹²⁶

Whether in 1970 or 2023, the combination of low wages, expensive building

leadership salaries going up. . . and yet, at the same time, the word to the staff was: You're lucky to be working here." Tom Seymour, *State of the unions: why US museum workers are mobilising against their employers*, ART NEWSPAPER (Feb. 2, 2022), <https://www.theartnewspaper.com/2022/02/02/state-of-the-unions-a-new-renaissance-at-us-museums> [<https://perma.cc/66M5-3BQG>].

121. *Occupational Outlook Handbook*, *supra* note 100.

122. *2023 Annual National Snapshot of United States Museums*, AM. ALL. OF MUSEUMS 5 (Apr. 2023), https://www.aam-us.org/wp-content/uploads/2023/06/SnapshotReport_v3.pdf [<https://perma.cc/JQK4-XNCJ>].

123. *Id.*

124. *Id.* at 5–6.

125. Beige Luciano-Adams, *The Art of Organizing*, AM. PROSPECT (Jan. 31, 2020), <https://prospect.org/labor/the-art-of-organizing/> [<https://perma.cc/G7VY-FNHE>] (quoting Nelson Lichtenstein).

126. Alloway, *supra* note 71.

projects, and the underlying cultural attitude that individuals should feel lucky to work in the museum sector have contributed to a general sense of outrage that has sparked both union organization and union strikes over the decades.

A marked difference between the tenor of organizers’ messaging in the 1970s and current rallying cries is a shift in the bargaining issues around which museum workers are organizing. While museum workers in the 1970s were concerned with bread-and-butter issues, organizers, as was the case with the Minneapolis Art Institute workers, were ultimately “consigned to the economic concerns of a traditional union” by management.¹²⁷ PASTA initially totally focused their organizing efforts on augmenting their professional status in the context of the museum hierarchy.¹²⁸ In fact, PASTA organizers specifically stated, “We were finally forced to unionize for greater professional participation—that’s why we did it. The bread-and-butter issues only came up after the Association was formed. No one spoke about their salary. It was considered gauche to discuss your salary.”¹²⁹ Moreover, the PASTA organizers’ goal was, “to set a precedent for the organization of museum professionals. We [did not] want to adhere to established guidelines because our concerns are broader than that. Unfortunately management. . .has preferred to deal only with standard labor issues.”¹³⁰ PASTA members specifically cited the lack of transparency between the board and the staff, disappointment with regard to exhibitions, the use of the gallery space, publications, and a desire to contribute to the creation of policy as major reasons for unionizing,¹³¹ all of which address professional concerns. This identification with professionalism and “white collar” workers¹³² has waned in the intervening years. Dana Kopel has

127. *Id.*

128. *Id.*

129. *Strike at the Modern*, *supra* note 76.

130. *Id.*

131. *Id.*

132. Alloway, *supra* note 71. “The staff associations at museums do not include groups that are already unionized. . .This points up [sic] an important characteristic of the new labor groups we are discussing: though not curatorial they are definitely white collar, not blue. The absence of blue-collar workers from museum groups is linked to the preference for forming associations rather than unions.” *Id.*

articulated this shift from museum workers' attempts to distinguish themselves as professionals to embracing the identity of "worker:"

This museum union movement represents a major shift in the self-conception of workers in museums and the nonprofit sector more broadly, a refusal to accept unsustainable conditions as the trade-off for working in a creative or prestigious field. It's a powerful rejection of the toxic myth that "if you do what you love, you'll never work a day in your life"—and, to an extent, a rejection of the art world's exceptionalism, the all-too-common assumption that art workers are fundamentally different from workers in other industries and thus don't need or deserve the rights and benefits that a union provides.¹³³

This attitude marks a concerted shift from focusing on what employees need as "professionals"—for instance, more access to the board of trustees or control over the exhibition calendar—toward making the arts a more sustainable career. As a more recent MoMA union protest slogan states: "you can't eat prestige."¹³⁴ Former Cultural Commissioner of New York City Tom Finkelpearl noted that "Traditionally, museums have been staffed by people who didn't actually have to make that much money from their work."¹³⁵ However, as commentators have noted "this new strain of unionism is often peopled by a new demographic of museum worker, one more politicized, younger and more diverse than previous generations. Yet it is also one saddled with high levels of student debt and having to contend with astronomical living costs."¹³⁶

Bargaining can impact motives for forming a union, especially if the workers are unified around a bargaining subject that is merely permissive, and the employer can decide whether to engage in negotiations on a given subject.¹³⁷ Although PASTA organizers gained some contract terms that

133. Dana Kopel, *Against Artsploitation: Unionizing the New Museum*, BAFFLER (Sept. 2021), <https://thebaffler.com/salvos/against-artsploitation-kopel> [<https://perma.cc/3VN6-5EG9>].

134. Meagan Day, 'You Can't Eat Prestige: What the Art World Can Learn from Organized Labour', FRIEZE (June 6, 2019), <https://www.frieze.com/article/you-cant-eat-prestige-what-art-world-can-learn-organized-labour> [<https://perma.cc/5WCG-735M>].

135. Seymour, *supra* note 120.

136. *Id.*

137. See *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 349 (1958).

granted them greater professional latitude, such as the right to participate in policy decisions and the search and selection of museum officials, and greater access the trustees,¹³⁸ they also faced significant pushback from MoMA management.¹³⁹ This, too, has not changed over time, which has likely impacted the issues which museum unions feel they can successfully bring to the bargaining table.

For instance, the New Museum Union and museum management reached an agreement months into negotiations, but only after the union threatened to strike if their demands for wage increases, safe working conditions, and more comprehensive healthcare were not met.¹⁴⁰ Following the threat of strike, management and the bargaining unit were able to reach an agreement, but about issues almost totally limited to mandatory bargaining subjects.¹⁴¹ In the entire agreement, there is one clause that could be interpreted as a permissive bargaining subject, which creates a Labor-Management Committee and that meets quarterly to discuss issues of concern to the parties outside of any active grievances unless the grievance is related to health and safety.¹⁴² It also grants the union the right to make an “annual presentation to a special subcommittee of the Board of Trustees.”¹⁴³ However, even this clause seems concerned with addressing working conditions, rather than the curatorial direction of the museum, for example.

In a similar agreement, LAMOCA union organizers were able to secure a contract that included “between a 15.25% and 20.35% raise over three years, vacation days for part-time and temporary employees, health insurance for part-time employees, and a \$250 stipend for uniforms,” as

138. Glueck, *supra* note 80.

139. Alloway, *supra* note 71.

140. Hakim Bishara, *New Museum Union Workers Threaten a Strike Over Contract Negotiations*, HYPERALLERGIC (Sept. 30, 2019), <https://hyperallergic.com/519951/new-museum-union-workers-threaten-a-strike-over-contract-negotiations/> [<https://perma.cc/47JL-A38J>].

141. New Museum and Local 2110, UAW (2019), *Collective Bargaining Agreement Between the New Museum and Local 2110, UAW: October 1, 2019 through June 30, 2024*, https://www.2110uaw.org/cbas/New_Museum_CBA_2019-2024.pdf [<https://perma.cc/4JV6-NDCN>] (agreement includes hiring preference for qualified internal applicants; health and safety measures; discharging only for just cause; a 3% increase in prior pay rates or a minimum salary rate defined in the agreement; part time hourly minimums for Visitor Services and Bookstore employees, Art Handlers, Contract Registrars, and Teaching Artists; and in an in-network only EPO plan for full-time bargaining unit members, with percentage of coverage based on a Grade Level determination).

142. *Id.* at 6.

143. *Id.* at 7.

well as “strong language on harassment, discrimination, health and safety, and performance evaluations.”¹⁴⁴ Though LAMOCA union members cite the pandemic as slowing down the negotiation, the contract took two years to reach an agreement.¹⁴⁵

While there is a clear thread of connection between what PASTA union organizers were fighting for in the 1970s and what union organizers are fighting for today, the motivations for organizing appears to have swayed in favor of the bread and butter issues primarily, rather than beginning with an interest in policy change and reverting to traditional union issues when management resisted.¹⁴⁶ Now, when the board of trustees is mentioned in the current union context, it seems to be in terms of the board’s lack of understanding of the struggles museum employees face and not so much a desire to have access to or influence on the board.¹⁴⁷ The MoMA union’s shift in bargaining priorities is an exceptional example of this change in attitude; for instance, the MoMA union conducted a walkout in 2000 for wage increases and a promise to reinstate employees who were furloughed during a building expansion.¹⁴⁸ In 2015, the MoMA union protested potential cuts to their healthcare plan.¹⁴⁹ Moreover, their publicized memorandum to their collective bargaining agreement since 1999 have solely amended bread-and-butter issues.¹⁵⁰ Of all the examples of current

144. District Council 36, *Local 126 Members Ratify First Contract with L.A.’s Museum of Contemporary Art*, AFSCME (May 20, 2022), <https://www.afscme.org/blog/local-126-members-ratify-first-contract-with-l-a-s-museum-of-contemporary-art> [<https://perma.cc/4EFA-U62Z>].

145. *Id.*

146. Alloway, *supra* note 71.

147. Rice, *supra* note 7.

148. Greenhouse, *supra* note 87.

149. Stacey Anderson, ‘Modern Art, Ancient Wages’: MoMA Workers Protest During Glitzy Benefit, *GUARDIAN* (June 3, 2015), <https://www.theguardian.com/artanddesign/2015/jun/03/moma-workers-healthcare-protest-benefit> [<https://perma.cc/2RQ9-68TN>].

150. See Memorandum of Agreement between Museum of Mod. Art and Loc. 2110, UAW (Sept. 9, 2000), https://www.2110uaw.org/cbas/MoMA_MOA_1999-2003.pdf [<https://perma.cc/E5R3-KDH4>]; see also Memorandum of Understanding between Museum of Mod. Art & Loc. 2110 UAW, (May 21, 2005) https://www.2110uaw.org/cbas/MoMA_MOA_2005-2010.pdf [<https://perma.cc/SV44-8WM5>]; see also Memorandum of Agreement between Museum of Mod. Art & Loc. 2110, UAW, AFL-CIO, (June 10, 2010) (extending to May 20, 2015), https://www.2110uaw.org/cbas/MoMA_MOA_2010-2015.pdf [<https://perma.cc/J7MV-QZLP>]; see also Memorandum of Agreement between Museum of Mod. Art & Loc. 2110, UAW, AFL-CIO (June 18, 2015) (extending to May 20, 2018) https://www.2110uaw.org/cbas/MoMA_MOA_2015-2018.pdf [<https://perma.cc/38JQ-4Y6T>]; see also Memorandum of Agreement between the Museum of Mod. Art & Loc. 2110, UAW, AFL-CIO (Aug. 14, 2018) (extending to May 20, 2023) https://www.2110uaw.org/cbas/MoMA_MOA_2018-2023.pdf [<https://perma.cc/UXW6-KASE>].

unionization efforts, the MoMA union offers insight into the major shift in attitude and policy interests from its founding by PASTA members.

Social and economic factors have played a significant role in the recent increase in museum unionization efforts across the United States. However, it is also possible that museum organizers are tailoring their issues to those that management must bargain about to impasse. The NLRB’s and courts’ narrowing of the scope of mandatory bargaining subjects has effectively further disincentivized current museum sector workers from considering workplace improvements beyond those of wages, hours, and working conditions.

CONCLUSION

While museum unionization has received significant coverage by arts journalists in particular, this phenomenon has not been subject to significant legal commentary. However, the rapid unionization of the museum sector would be useful for the labor community to consider closely. For instance, Amanda Joos recently argued that the PMA’s wall-to-wall union model is one which other artist organizations, specifically in the performing arts, should consider adopting because it “has a better chance of consistent implementation of employer policies and agreements.”¹⁵¹ Paying closer attention to union activities in the museum sector also provides a lens through which to consider how the narrowing of the definition of mandatory bargaining subjects has impacted topics over which a group of professionals, like museums workers, may successfully bargain.

The limited nature of mandatory bargaining subjects is certainly one possible explanation for the shift in museum union bargaining focus, but social and economic factors have also played a substantial role.¹⁵² Museum workers do not want to make sacrifices for their work just because of the prestige associated with their position.¹⁵³

151. Amanda Joos, *Wave Your Little Hand And Whisper So Long Dearie: Proffering An Overdue Goodbye to Microunits in the Performing Arts*, 85 L. & CONTEMP. PROBS. 299, 324 (2022).

152. Small, *supra* note 9.

153. Day, *supra* note 133.

Finally, transparency around financial hardship and the impact of the COVID-19 pandemic have also had major effects on museum unionization efforts.¹⁵⁴ The Arts + All Museums Salary Transparency Spreadsheet, and subsequent iterations of it, including the Unpaid Internship Spreadsheet and the Pandemic Spreadsheet, created transparency and solidarity around which museum workers could rally and exposed the gross disparities between management and employee incomes.¹⁵⁵ The pandemic further entrenched these issues, and as the 2020 AAM survey indicates, it made workers feel disillusioned about the value of museum work and exposing barriers to employment, including inadequate compensation, a lack of opportunity for advancement, and availability of employment, among other factors.¹⁵⁶

154. *See Salary Transparency 2019, supra* note 96.

155. *Id.*

156. AMERICAN ALLIANCE OF MUSEUMS SURVEY, *supra* note 104.