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NAVIGATING JOB SECURITY IN TURBULENT TIMES: CHALLENGES IN THE ENTERTAINMENT, AIRLINE, AND AUTO INDUSTRIES

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INTRODUCTION

This Article explores how three unionized industries—entertainment, airlines, and automobiles—have responded to threats to job security while simultaneously facilitating corporate growth.¹ It demonstrates how unions and management, working together with transparency for plans, finances, and priorities, can coordinate employee interests in job security and company interests in productive operations to benefit both parties.²

Successful industries are invaluable to the nation.³ The decimation of the U.S. manufacturing sector over the last fifty years has economic, political, and cultural consequences that extend well beyond individual job losses.⁴ This Article demonstrates different approaches to job security and what may be done about it. As Abraham Lincoln aptly put it, “the best way to predict the future is to create it.”⁵

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1. *See infra* Part I.
2. *See infra* Parts III-V.
3. *See* Martin Baily & Barry Bosworth, *US Manufacturing: Understanding Its Past and Its Potential Future*, 28 J. ECON. PERSP. 3, 18-19 (2014).
4. *See id.*
5. *See* Hudson H., *American Economy*, VOCAL MEDIA, <https://vocal.media/history/american-economy> (last visited Mar. 12, 2025).

I. JOB SECURITY EFFORTS AND CHALLENGES

A year after the actors and writers strikes, the entertainment industry is in decline, and many workers are jobless.⁶ The production of television and film content is down forty percent by some estimates.⁷ Although the unions achieved significant gains in compensation and work rules, the negotiations did not address protections for workers against the downsides of industry retrenchment.⁸ The lack of attention to job security has turned out to be a steep price to pay for the sacrifice of four months without paid work during the strike period and may have opened the door to an industry pivot toward less production.⁹

Some industries, such as the airline and automotive industries, have been able to establish job security arrangements during downturns, including no-layoff provisions, work sharing, overtime restrictions, maintenance of health benefits, and pension contributions.¹⁰ Job protection is a response to the business cycle, but also a deeper challenge, namely the lack of a free market for labor resulting from geographic immobility, uneven educational opportunities, and skills rigidity.¹¹

As artificial intelligence (hereinafter “AI”), robotics, and genomics accelerate the nation’s movement toward a service and “knowledge” economy, less educated demographics suffer.¹² Education and retraining have become the central “infrastructure” requirements for a vibrant,

6. See Katie Kilkenny, *Would You Do It Again? A Year After Strikes, Hollywood Reckons with the Aftermath*, HOLLYWOOD REP. (July 19, 2024), <https://www.hollywoodreporter.com/business-news/actors-writers-strikes-one-year-later-1235950418/>.

7. See Christi Carras, *U.S. Film and TV Production Down 40% from Peak TV Levels, Report Says*, L.A. TIMES (July 11, 2024), <https://www.latimes.com/entertainment-arts/business/story/2024-07-11/production-activity-report-hollywood>.

8. See *id.*

9. See Max Knoblauch, *LA’s Streaming Gold Rush Is Over. Film and TV Workers Have Been Left in the Dust*, SHERWOOD (Sept. 18, 2024), <https://sherwood.news/business/hollywood-worker-strikes-media-streaming-impacts/>.

10. See, e.g., *PAL Airlines Pilot Negotiation Priorities*, AIR LINE PILOTS ASS’N, INT’L, <https://palarchive.alpa.org/Portals/36/Documents/pal-pilots-priorities-scope-job-security.pdf> (last visited Mar. 30, 2025) (highlighting the terms of job security arrangements in the airline industry).

11. See generally David Howell & Arne Kalleberg, *Declining Job Quality in the United States: Explanations and Evidence*, 5 RUSSELL SAGE FOUND. J. SOC. SCI. 1 (2019) (explaining how and why job quality in the United States has deteriorated since the late 1970s).

12. See Adib Rashid & Ashfakul Kausik, *AI Revolutionizing Industries Worldwide: A Comprehensive Overview of Its Diverse Applications*, SCI. DIRECT (Aug. 23, 2024), <https://www.sciencedirect.com/science/article/pii/S2773207X24001386>.

future-looking economy; one that does not favor the “elites” with its divisive social consequences.¹³

In addition to training and nimbleness, which are essential to compete effectively in this new economy, strengthening the industries that continue to be the bulwark of the U.S. economy is essential.¹⁴ The United States has a comparative advantage in these industries and surrendering them would repeat the failures of the last fifty years, when so much of the manufacturing economy was given up without adequate industry or government pushback.¹⁵

A longtime union goal, job security is rooted in the interests of employees in retaining employment and accruing the benefits of their dedication and labor, which may come only after long service and company success.¹⁶ Labor is similar to the contributions from the other factors of production—natural resources and capital investment. While these other factors are readily moved to other investments, human labor is relatively immobile as it is dependent on locality, skills, and other obstacles to moving jobs.¹⁷ Human labor is also the foundation for our consumer economy and America’s aspirational middle-class lifestyle.¹⁸

13. See Pablo Illanes et al., *Retraining and Reskilling Workers in the Age of Automation*, MCKINSEY & CO. (Jan. 22, 2018), <https://www.mckinsey.com/featured-insights/future-of-work/retraining-and-reskilling-workers-in-the-age-of-automation>.

14. See Laurie Harbour & Scott Walton, *The Importance of Manufacturing to the U.S. Economy*, FORBES (Jan. 16, 2025, 8:00 AM), <https://www.forbes.com/sites/forbesbooksauthors/2025/01/16/the-importance-of-manufacturing-to-the-us-economy/>.

15. See, e.g., David B. Audretsch, *Insight into Manufacturing Policy: Why Is Germany so Strong in Manufacturing*, PUB. POL’Y INST., <https://policyinstitute.iu.edu/centers/mp/news-publications/insight/2018/insight-032018.html> (last visited May 7, 2025). The devolution of these industries and jobs was not inevitable. One must only look at the German model, which retained and even acquired greater strength in engineering and manufacturing through apprenticeships, retaining, export-oriented policies, and other methodologies. See *id.* Moreover, as Harvard Business School Professor Michael Porter posits, existing geographic concentrations of interconnected industries, like Silicon Valley, Wall Street, and Hollywood, are “industrial clusters” that create national competitive advantages. See Michael E. Porter, *The Competitive Advantage of Nations*, HARV. BUS. REV., <https://hbr.org/1990/03/the-competitive-advantage-of-nations> (last visited May 7, 2025); see *The Five Forces*, HARV. BUS. SCH., <https://www.isc.hbs.edu/strategy/business-strategy/Pages/the-five-forces.aspx> (last visited Apr. 2, 2025).

16. See *Job Security: Job Security and Labor Unions: A Match Made in the Workplace*, FASTER CAPITAL, <https://fastercapital.com/content/Job-Security--Job-Security-and-Labor-Unions--A-Match-Made-in-the-Workplace.html> (Apr. 9, 2025).

17. See Tejvan Pettinger, *Mobility of Labour*, ECON. HELP (Dec. 3, 2016), <https://www.economicshelp.org/blog/24414/labour-markets/mobility-of-labour/>.

18. See Jackie St. Louis, *Labor, Life and Legacy: The American Work Ethic Unraveled*, SUBSTACK (Dec. 10, 2024), <https://jackiestlouis.substack.com/p/labor-life-and-legacy-the-american>.

Job security is often seen as an obstacle to change, but historically it has been a spur to greater productivity.¹⁹ Companies introduce new processes, machinery, and products to enable them to become more productive and innovative while retaining a core cohort of dedicated and experienced employees, sometimes through retraining.²⁰ The approach is especially valuable in a tight labor market and has proven to be good for businesses, employees, and the economy.²¹ Business strategic changes, whether they result from international competition, disruptive technology, or changes in customer preference, warrant the treatment of job security in a more prominent fashion in collective bargaining.²² Communities depend on an economic base, and employees are vulnerable to its loss.²³

The hollowing out of America's manufacturing base in the 1970s and 1980s has been attributed to the accelerated growth in manufacturing exports from low wage developing countries like China, Korea, and the Southeast Asia region.²⁴ During this time, real wages of American workers declined, driving them below the middle-class economic status they came to expect for themselves and their children.²⁵ In turn, this has led to increasing income disparity as well as economic and political polarization.²⁶ The bargaining process can facilitate avenues of mutual benefit to incentivize innovation and stability to protect jobs and expand job opportunities.²⁷

19. See *Job Security: Job Security and Labor Unions: A Match Made in the Workplace*, supra note 16.

20. See *id.*

21. See *id.*

22. See *id.*

23. See *id.*

24. See Ruth Strachan & Sebastian Shehadi, *Who Killed US Manufacturing?*, INV. MONITOR (May 12, 2021), <https://www.investmentmonitor.ai/manufacturing/who-killed-us-manufacturing/?cf-view>.

25. See Kevin Drum, *Did Workers' Wages Skyrocket During the '70s? Not When You Figure in Inflation.*, MOTHER JONES (Dec. 10, 2019), <https://www.motherjones.com/kevin-drum/2019/12/did-workers-wages-skyrocket-during-the-70s-not-when-you-figure-in-inflation/>.

26. See David H. Autor, *Why Are There Still So Many Jobs? The History and Future of Workplace Automation*, 29 J. ECON. PERSP. 5 (2015) (arguing that the uneven distribution of wage gains is driving the polarization of the labor market and alters the kinds of jobs which are available to workers); see David H. Autor & David Dorn, *The Growth of Low-Skill Service Jobs and the Polarization of the U.S. Labor Market*, 103 AM. ECON. REV. 1553, 1553 (2013).

27. See Julimar da Silva Bichara et al., *Collective Bargaining and Technological Innovation in the EU15: An Analysis at Establishment Level*, 46 WORLD ECON. 2891, 2894 (2023).

This is not to say that it is in society's best interest to protect all jobs.²⁸ Lifetime employment is a thing of the past, if ever it was a reality.²⁹ Nor is it in society's best interest.³⁰ The jobs of elevator operators and railroad caboose clerks no longer exist, nor should they.³¹ When photography and then motion pictures were invented in the early nineteenth century, artists bemoaned the demise of their craft, yet Hollywood was created as a result.³² In a world of rapidly changing technology, global logistics, and evolving production processes, job changes and skill development are essential to economic health.³³ In the same vein, cooperative, sustained, and skilled labor are key ingredients to the survival and growth of any business as well as whole industries.³⁴

II. THREE MODELS OF JOB SECURITY

While the entertainment, airline, and automotive industries are very different from one another, their employees and managements share common interests in job security, corporate growth, and the capacity for change.³⁵ Moreover, each industry can be said to be a core mainstay of

28. See Those Wonder Years, *20 Forgotten Jobs That No Longer Exist*, YOUTUBE (Dec. 2, 2024), <https://www.youtube.com/watch?v=ijqOOmSpSCM> (implying that many jobs become largely defunct as technology advances and demand for certain skills and roles decreases).

29. See Caroline Castrillon, *Why Non-Linear Career Paths Are the Future*, FORBES (Feb. 26, 2023, 4:00 PM), <https://www.forbes.com/sites/carolinecastrillon/2023/02/26/why-non-linear-career-paths-are-the-future/?sh=71dde81613a9> (noting traditional lifetime employment is largely a thing of the past, and non-linear job paths are becoming increasingly more common due to their flexibility and a notable shift in attitude and priorities of the worker); see Douglas Broom, *Having Many Careers Will Be the Norm, Experts Say*, WORLD ECON. F. (May 2, 2023), <https://www.weforum.org/stories/2023/05/workers-multiple-careers-jobs-skills/>.

30. See Castrillon, *supra* note 29 (highlighting the benefits of skills-based hiring, which expands the talent pool, reduces hiring costs, and increases workplace diversity).

31. See generally Judy Noelle, *11 Occupations That Are Obsolete from History*, WORLD ATLAS (June 24, 2024), <https://www.worldatlas.com/history/11-occupations-that-from-history.html> (describing several occupations that no longer exist as a result of developing technology or lack of demand).

32. See Jordan G. Teicher, *When Photography Wasn't Art*, JSTOR DAILY (Feb. 6, 2016), <https://daily.jstor.org/when-photography-was-not-art/>; see ELIZABETH BILYEU ET AL., UNDERSTANDING NEW MEDIA ART 147 (2022), <https://openoregon.pressbooks.pub/understanding-newmediaarts/chapter/early-film-and-animation/>.

33. See Castrillon, *supra* note 29.

34. See *Importance of Skilled Manpower in Driving Business Success*, TALBOT FORCE, <https://talbotforce.com/blog/importance-of-skilled-manpower-in-driving-business-success/> (last visited Apr. 7, 2025).

35. See Mindy Shoss et al., *Job Insecurity Harms Both Employees and Employers*, HARV. BUS. REV. (Sept. 26, 2022), <https://hbr.org/2022/09/job-insecurity-harms-both-employees-and-employers> (explaining that job insecurity is often intentionally perpetuated in order to motivate workers and reduce costs); see also Cameron Nouri, *How Strong Employee Management Leads to*

the national economy because of their size and special national economic advantages: airlines, the vast geography of the United States; entertainment, the concentrated creativity and skills of Hollywood; and auto, also geography as well our “car culture.”³⁶

The three industries have been able to adopt differing job protections based on the competitive pressures and employment requirements in each industry.³⁷ They have accorded job security with various levels of attention and found differing levels of success even when prioritized.³⁸ Each industry has had to address it, especially in the face of economic, competitive, or technological change.³⁹

The airlines have incorporated an expansive approach to job security based on the establishment of broad protective scope-of-work requirements.⁴⁰ The automotive industry manifests a more traditional manufacturing industry model that provides for seniority-based furlough and recall rights and, to a limited degree, maintenance of production at identified plants.⁴¹ The entertainment industry has developed an

Continued Growth, PINGBOARD (Oct. 10, 2018), <https://pingboard.com/blog/how-strong-employee-management-leads-to-continued-growth/> (noting that all companies struggle with similar challenges, such as changes in business structure, decision-making, and accountability); *see generally* Linda Ackerman Anderson, *How to Free Up Capacity for Change to Ensure Successful Outcomes*, BEING FIRST (May 19, 2016), <https://blog.beingfirst.com/free-up-change-capacity-change-ensure-successful-outcomes> (addressing an organization’s total workload and how to allocate time, attention, and resources in order to maximize the organization’s capacity).

36. *See* Martin Placek, *Passenger Airlines in the U.S. – Statistics and Facts*, STATISTA (Feb. 27, 2024), <https://www.statista.com/topics/5575/passenger-airlines-in-the-us> (establishing that the United States has the world’s second-largest air travel market largely due to the demand for domestic flights); *see also* Dr. Lata Sharma, *Art and Culture Centre of Hollywood: Historical Evolution and Impact*, INDI BLOGGERS (Aug. 9, 2023), <https://indibloggers.com/art-and-culture-centre-of-hollywood-historical-evolution-and-impact/> (addressing the cultural impact of Hollywood on the entertainment industry on a global level); *see* Owen Rogers, *The Unique U.S. Car Culture*, ALL FOR INNOVATION & INFRASTRUCTURE (Nov. 10, 2023), <https://www.aii.org/the-unique-u-s-car-culture/> (reporting that American “car culture” largely has to do with the geographical characteristics of the United States).

37. *See* WORLD ECON. F., *FUTURE OF JOBS REP.* 81 (2025).

38. *See* Press Release, Labor Backed FAA Bill Is Victory for Workers Across Aviation Industry (May 8, 2024), <https://www.commerce.senate.gov/2024/5/labor-backed-faa-bill-is-victory-for-workers-across-aviation-industry>; *see* Tara Copp, *Some of the 400 Jobs That Were Cut at the FAA Helped Support Air Safety, a Union Says*, THE ASSOCIATED PRESS (Feb. 19, 2025, 2:18 PM), <https://apnews.com/article/faa-firings-trump-doge-safety-airlines-27390c6a7aac58063652302df5a243d3>.

39. *See* Ferhan K. Sengur, *Competitive Strategies in the Airline Industry*, IGI GLOB. (May 2022), https://www.researchgate.net/publication/361433424_Competitive_Strategies_in_the_Airline_Industry.

40. *See* PAL Airlines Pilot Negotiating Priorities Scope and Job Security, AIR LINE PILOTS ASS’N, INT’L, <https://palarchive.alpa.org/Priorities/Scope-Job-Security> (last visited Mar. 29, 2025).

41. *See* Agreement Between the UAW and General Motors LLC, UAW (Oct. 16, 2019), <https://uaw.org/wp-content/uploads/2023/11/UAW-GM-National-Agreement.pdf>.

innovative approach to job protection involving staffing requirements and limitations on the use of AI.⁴²

The degree of national protection is also an important determinant of how much job protection is feasible in each industry. Notably, the three industries are subject to differing levels of foreign competition. On one end is the airline industry, which is wrapped in the protective clothing of international treaties and safety regulations that limit competition from new domestic and foreign airlines.⁴³

On the other end, and in sharp contrast, is the automotive industry, which is subject to virtually unrestrained competition from large foreign manufacturers.⁴⁴ The entertainment industry is somewhere in the middle.⁴⁵ It has a powerful center of gravity in the United States, particularly Hollywood, due to a strong domestic market and its legacy, skills, and innovation, but it is also subject to worldwide competition because of low barriers to entry.⁴⁶ Language barriers may also reduce international competition—dubbing and subtitles have a mixed impact on viewership.⁴⁷

42. See *The Ongoing Fight for A.I. Protections Makes Waves on Capitol Hill and Beyond*, SAG-AFTRA (Aug. 16, 2024), <https://www.sagaftra.org/ongoing-fight-ai-protections-makes-waves-capitol-hill-and-beyond>.

43. See Keith Evans, *Barriers to Entry in the Airline Industry*, BIZFLUENT (Sept. 26, 2017), <https://bizfluent.com/list-7576197-barriers-entry-airline-industry.html>. Of course, the “Big 4” U.S. airlines—United, American, Delta, and Southwest—and some smaller competitors, such as JetBlue and Alaska, face international flying competition from foreign airlines in supplying gateway service between the United States and foreign destinations. These foreign airlines are often national monopolies that are government-owned or heavily subsidized by the government. The airlines are also protected against strikes and their employees against lockouts and unilateral changes under provisions of the Railway Labor Act of 1926, which is designed to avoid interruptions to interstate commerce in the public interest through an intensive and often prolonged mediation process administered by the National Mediation Board. See *Detroit & Toledo Shore Line R.R. Co. v. United Transp. Union*, 396 U.S. 142, 143, 145 (1969).

44. See Alexa St. John, *Trump’s Latest Auto Tariffs Explained: What Car Buyers Should Know This Year*, THE ASSOCIATED PRESS (Mar. 27, 2025), <https://apnews.com/article/trump-auto-industry-tariffs-imports-prices-car-buyers-2315fed0a166d37b1a88c2d375d5553a>.

45. See Stephen Wilmot, *Trump Is Scrambling Global Automakers’ Reliance on America*, WALL ST. J. (Feb. 19, 2025), <https://www.wsj.com/business/autos/trump-tariff-auto-industry-impact-2ec3bdb6>; see Gary Leff, *Why Airlines Don’t Need to Compete: The Hidden Policy Fueling Global Collusion*, VIEW FROM THE WING (Feb. 2, 2025), <https://viewfromthewing.com/why-airlines-dont-need-to-compete-the-hidden-policy-fueling-global-collusion/>.

46. See Britney Jones, *Globalization’s Impact on Hollywood: Challenges and Changes Ahead*, INDIGOMUSIC.COM (July 16, 2024), <https://indigomusic.com/feature/globalizations-impact-on-hollywood-challenges-and-changes-ahead>.

47. See Dine Racoma, *Translation Challenges in the Global Film Industry: Overcoming Language Barriers in Cinema*, ETRANSLATION SERV. (Feb. 26, 2025), <https://etranslation-services.com/translations/translation-challenges-in-the-global-film-industry-overcoming-language-barriers-in-cinema/>.

All three industries are foundational to the United States economy.⁴⁸ The auto industry supports about ten million jobs, including manufacturing, suppliers, raw materials, and indirect employment such as repairs and parts.⁴⁹ The airline industry employs several hundred thousand jobs directly but indirectly supports millions of jobs at airports, in tourism, business travel, regional business, and aerospace manufacturing.⁵⁰ The entertainment industry, including movies, television, streaming, music, live events, and gaming are central to the life of the nation and to U.S. international influence.⁵¹ These three industries each contribute to three to five percent of the national economy annually and can be seen as being examples of engines for tomorrow's economy.⁵²

III. THE ENTERTAINMENT INDUSTRY

Most observers in the entertainment industry expected that the remarkable growth of content production, especially by streaming services such as Hulu, Netflix, and Amazon Prime, would continue at a torrid pace after negotiations with the actors and writers reached agreements.⁵³ Consequently, in the recent round of collective bargaining,⁵⁴ the writers

48. See Laura Carollo, *Film Industry in the United States and Canada - Statistics & Facts*, STATISTA (June 19, 2024), <https://www.statista.com/topics/964/film/#topicOverview>; see *Automotive Ecosystem Drives \$1 Trillion into U.S. Economy Each Year, Nearly 5% of GDP*, COLLISIONWEEK (Dec. 1, 2022), <https://collisionweek.com/2022/12/01/automotive-ecosystem-drives-1-trillion-u-s-economy-year-nearly-5-gdp/>; see *Economic Impact of Commercial Aviation*, AIRLINES FOR AM., <https://www.airlines.org/impact/> (last visited Mar. 29, 2025).

49. See Press Release, Alliance for Automotive Innovation, *Auto Innovators: New Data on Auto Industry's Economic Impact* (Nov. 30, 2022), <https://www.autosinnovate.org/posts/press-release/new-data-on-economic-impact>.

50. See *Facts and Figures*, AIR TRANSP. ACTION GRP., <https://atag.org/facts-figures> (last visited Mar. 29, 2025).

51. See *Arts & Cultural Sector Hit All-Time High in 2022 Value Added to U.S. Economy*, NAT'L ENDOWMENT ARTS (Mar. 25, 2024), <https://www.arts.gov/news/press-releases/2024/arts-cultural-sector-hit-all-time-high-2022-value-added-us-economy>.

52. See Press Release, Alliance for Automotive Innovation, *supra* note 49.

53. See Rachel Selsky, *We Now Return You to Your Regularly Scheduled Programming: The Economic Impact of the Hollywood Writers and Actors Strikes*, CAMOIN ASSOC. (Nov. 9, 2023), <https://camoinassociates.com/resources/economic-impact-of-the-hollywood-writers-and-actors-strikes/>.

54. See Cato Hernández, *AMPTP: A Dive into the Hollywood Execs' Powerful Negotiations Group*, LAIST (Aug. 14, 2023, 5:00 AM), <https://laist.com/news/arts-and-entertainment/los-angeles-hollywood-amtp-studios-streamers-history>. The producers represented by the Alliance of Motion Picture and Television Producers (composed of the leading movie studios, TV networks, and streaming services) negotiate on a multi-employer basis with each of the unions and guilds that represent different segments of the workforce, such as actors, writers, directors, and crew. The agreements reached set pay rates, benefits, working conditions, and residuals (ongoing payments for content re-use). See *id.*

and actors unions were not focusing their bargaining capital on downside protections.⁵⁵

As it turned out, the industry was turning toward profitability measures and turning away from its profligate rush toward content production at any cost.⁵⁶ The unions took a share-the-wealth approach, seeking increased pay and benefits and tighter work rules (e.g., restrictions on the use of AI and increased minimum numbers of writers for productions) without concomitant defensive efforts to secure jobs and protect workers while the industry adjusts to short-term or long-term downturns.⁵⁷

The industry's reduced volume of production was not fully anticipated during negotiations.⁵⁸ Although the nearly five-month strike, lasting from May of 2023 until September of 2023,⁵⁹ and contract resolutions may not have directly caused the conditions the parties subsequently found themselves in—slower growth and job loss—both sides substantially missed the developing trends and did not address what came next, namely, a significant shrinkage in production and consequent major reduction in employment.⁶⁰

55. See Danielle Yurkew & Ellie Sanders, *Post-Strike Insights: Comparing the WGA and SAG-AFTRA Agreements*, ROMANO L. (Feb. 13, 2024), <https://www.romanolaw.com/post-strike-insights-comparing-the-wga-and-sag-aftra-agreements/>.

56. See Joseph Chianese, *The State of Film & Television Production: 2024 in Review and Outlook for 2025*, ENT. PARTNERS (Dec. 20, 2024), <https://www.ep.com/blog/film-incentives-north-america-entertainment-industry-2024-review-look-ahead-2025/>.

57. See Hailey Hourigan, *Writers Guild of America (WGA) Strike Resolution: AI Restrictions and Implications*, FORDHAM J. CORP. & FIN. L. (Oct. 25, 2023), <https://news.law.fordham.edu/jcfl/2023/10/25/writers-guild-of-america-wga-strike-resolution-ai-restrictions-and-implications/>.

58. See Susan Carpenter, *Hollywood Production Slow to Rebound Following Strikes*, REPORT SAYS, SPECTRUM NEWS (Apr. 18, 2024, 1:13 PM), <https://spectrumnews1.com/ca/southern-california/entertainment/2024/04/18/hollywood-productions-slow-to-rebound-following-strikes-report-says>.

59. See Laura Zornosa, *Screenwriters Reached a Deal to End the Strike. Here's What Happens Next*, TIME (Sept. 27, 2023, 12:21 PM), <https://time.com/6317199/wga-strike-tentative-agreement/>. The Writers Guild of America began negotiations in early 2023 and finally reached a three year agreement on September 24, 2023, after its 146 day strike. The actors, represented by SAG-AFTRA, began negotiations on June 7, 2023 and reached a three year agreement on November 8, following a 118 day strike. See *Tentative Agreement Reached*, SAG-AFTRA (Nov. 8, 2023), <https://www.sagaftra.org/tentative-agreement-reached>.

60. See Noam Scheiber, *Will A.I. Upend White-Collar Work? Consider the Hollywood Editor*, N. Y. TIMES (July 30, 2024), <https://www.nytimes.com/2024/07/30/business/economy/artificial-intelligence-hollywood-unions.html>. Notably, the International Alliance of Theatrical and Stage Employees (hereinafter the "IATSE"), which represents below-the-line entertainment workers (e.g., editors, makeup artists, prop makers, set designers, lighting technicians, and camera operators), recently concluded agreements with the producers. The union did so without a strike but also without minimum staffing numbers and the restrictions on the use of AI and CGI. The agreement

Entertainment industry production is not disappearing; it is just moving elsewhere.⁶¹ It is moving toward high-technology platforms such as YouTube, Instagram, and TikTok; production abroad; and cheaper formats like reality television, automation, computer-generated imagery (hereinafter “CGI”), and AI-generated images and scripts.⁶² These changes, taken together and occurring at a pace more rapidly than anticipated, were not fully appreciated or addressed in the recent negotiations.⁶³ Dealing with these trends through transparency and joint action in collective bargaining could have and still can address these industry challenges.⁶⁴

This is not to say the parties must wait for the duration of their multi-year contract to toll before coming together to address these issues.⁶⁵ Labor and management engaged collective bargaining can and do make mid-term corrections to collective bargaining agreements as needs and circumstances change.⁶⁶ The parties can make efforts to reconcile workers’ interests in job security and a company’s changing productivity concerns.⁶⁷

A. Use of Independent Contractors

The entertainment industry is a blend of what is essentially independent contractors and freelancers—directors, writers, and actors, who

provided for increases in pay and pension contributions, with eighty-five percent of union members ratifying the agreement. IATSE had the advantage of hindsight, because it was able to observe how the writers agreement and actors agreement fared in the face of the industry downturn in the volume of content production. Negotiations with the Teamsters Hollywood Basic Crafts unions are ongoing. The Animation Guild, an IATSE craft that negotiates independently, can be expected to take a greater interest in the impact of AI. IATSE’s approach reflected the traditional union view that it should not squander bargaining capital on trying to prevent automation but rather use it to share in the profits generated by the efficiency advantages. That approach is the more traditional path, which recognizes that union competitors will certainly adopt the technology and the competitive advantages it provides. *See id.*

61. *See* Matthew Lee, *How YouTube and TikTok Have Democratized Entertainment for Emerging Creators*, STUDENT VANGUARD (Sept. 16, 2024), <https://studentvanguardintl.org/how-youtube-and-tiktok-have-democratized-entertainment-for-emerging-creators/>.

62. *See id.*

63. *See* *The Impact of Streaming Services on Actor Pay*, JUST ADD MILK (Jan. 3, 2025), <https://www.justaddmilkjam.com/news/the-impact-of-streaming-services-on-actor-pay>.

64. *See id.*

65. *See id.*

66. *See* Note, *Mid-Term Modification of Terms and Conditions of Employment*, 1972 DUKE L.J. 813, 813 (1972).

67. *See* Michael L. Wachter & George M. Cohen, *The Law and Economics of Collective Bargaining: An Introduction and Application to the Problems of Subcontracting, Partial Closure, and Relocation*, 136 U. PENN. L. REV. 1349, 1375 (1988).

are episodically looking for work—and other, mostly hourly, employees in below-the-line crafts.⁶⁸ The directors, writers, and actors work project to project like construction industry workers.⁶⁹ They become employees when a company hires them to work on the production of shows.⁷⁰ Once hired, these categories of workers are fully covered by the terms of mutually agreed-upon labor-management contracts.⁷¹ When not employed, they may only have certain limited rights and benefits, such as hiring preferences and health and retirement contributions.⁷²

The independent contractor-employer relationship in the gig economy is fast overtaking the traditional employer-employee relationship in the United States economy.⁷³ The gig model gives management the leverage of hiring for each time-limited job needed; the employee is separated from employment when the job is over and resumes the status of an independent contractor or available freelance worker with no right to further employment.⁷⁴

In contrast, the traditional employer-employee relationship is a long-term interdependent relationship, which includes a panoply of mandated federal and state employee rights, whether or not employees are represented by a union.⁷⁵ Independent contractor and freelance hourly workers have the benefit of flexibility but at the cost of job security and the absence of the federal and state safety nets developed to protect employees during the past one hundred years.⁷⁶

68. See Catherine L. Fisk, *Hollywood Writers and the Gig Economy*, 2017 U. CHI. LEGAL F. 177, 178 (2017).

69. See *id.* at 186; see Peter Calabrese, *Federal and State Laws When Classifying Construction Workers*, CALABRESE L. ASSOCS. (Oct. 6, 2022), <https://www.calalaw.com/blog/are-your-construction-laborers-employees-or-independent-contractors/>.

70. See Fisk, *supra* note 68, at 193.

71. See *id.* at 201.

72. See *id.* at 194.

73. See Yuki Noguchi, *Gig Economy Renews Debate over Whether Contractors Are Really Employees*, NPR (Mar. 7, 2018, 3:00 PM), <https://www.npr.org/2018/03/07/589840595/gig-economy-renews-debate-over-whether-contractors-are-really-workers>.

74. See, e.g., Adam Chandler, *Recent Strikes Show the Crisis in Americans' Working Lives*, L.A. TIMES (Jan. 3, 2025, 3:00 AM), <https://www.latimes.com/opinion/story/2025-01-03/amazon-starbucks-strikes-work-schedules-pay> (“Set off in part by the rise of gig work, ‘perma-lancing’ and jobs without a set number of hours, the unreliable nature of wages has all kinds of consequences . . .”).

75. See *About NLRB: Your Rights*, NAT'L LAB. RELS. BD., <https://www.nlr.gov/about-nlr/rights-we-protect/your-rights> (last visited Apr. 2, 2025).

76. See Joshua M. Javits & Matthew L. Luby, *Gig Workers: Walking a Tightrope Without a Safety Net*, 2022 J. DISP. RESOL. 27, 27-28 (2022); see also Julia Jacobs, *Labor Board Classifies 'Love Is Blind' Contestants as Employees*, N.Y. TIMES (Dec. 11, 2024), <https://www.nytimes.com/2024/12/11/arts/television/love-is-blind-nlr-employees-union.html>. The NLRB has

B. Minimum Staffing Requirements and Regulation of AI Use

Hollywood has protected writers' jobs to some extent by agreeing to minimum staffing requirements for writers working together in writers' rooms on certain kinds of shows and by regulating the use of AI for writing shows.⁷⁷ Actors achieved protection on the use of their likenesses.⁷⁸ These are very specific restrictions on managerial authority in the production of shows.⁷⁹

The provisions go beyond the traditional union model for protecting jobs, such as establishing certain layoff and recall rights based on seniority.⁸⁰ While these additional job protections restrict management's otherwise free hand to determine the number of employees required in certain work and the use of specific tools to do the job (for instance, AI), they do not guarantee employees' jobs, which in most unionized industries is governed by seniority.⁸¹ Collective bargaining agreements rarely restrict management's ultimate right to lay-off employees based on economic circumstances.⁸²

The entertainment industry depends on the creative talents of directors, writers, and actors among others to work on specific shows.⁸³ Hiring in other industries, such as the airline and automotive, is strictly at

recently found that contestants on the reality TV program *Love Is Blind* are employees rather than independent contractors and thus protected by a variety of union and employment laws. *See id.*

77. See Barry Eidlin, *With Their Five-Month Strike, Hollywood Writers Scored a Historic Victory*, JACOBIN (Nov. 21, 2023), <https://jacobin.com/2023/11/five-month-strike-hollywood-writers-wga-historic-victory>.

78. See *Writers Guild of America 2020 Theatrical and Television Basic Agreement*, WRITERS GUILD OF AM. (May 2, 2020), <https://www.wga.org/uploadedfiles/contracts/mba20.pdf>.

79. See Eidlin, *supra* note 77.

80. See *Writers Guild of America 2020 Theatrical and Television Basic Agreement*, *supra* note 78, at 194-95.

81. See generally Indeed Editorial Team, *What Does Seniority Mean at Work? Structures and Advantages*, INDEED (Aug. 17, 2024), <https://ca.indeed.com/career-advice/career-development/seniority-definition-at-work> (stating that more seniority may lead to better job security in the case of downsizing or layoffs).

82. See *Management's Rights and Their Role in Labor Relations*, NAT'L ELEC. CONTRACTORS ASS'N (Oct. 31, 2024), https://www.necanet.org/docs/default-source/labor-relations-conference/labor-relations-bulletins/lr-bulletin---managements-rights---10-2024.pdf?sfvrsn=2b47ef27_3 ("Management's rights give employers the right to hire and lay off employees at their discretion, as well as transfer employees across jobsites within the local union's jurisdiction.")

83. See George Vinovich, *TV Industry Personnel*, <https://www.csudh.edu/Assets/csudh-sites/tv-arts/docs/dma320-tv-industry-personnel.pdf> (last visited Apr. 1, 2025) (describing the roles and responsibilities of directors, writers, and actors).

management's discretion.⁸⁴ However, the entertainment industry and its unions have agreed to a myriad of contractual provisions that limit this discretion to some extent.⁸⁵ There is no doubt that these provisions were paid for in exchange for lesser pay and benefit increases.⁸⁶ This approach recognizes the difficulty of workers' "on and off" employment status while allowing producers some discretion in the choice of workers to staff productions.⁸⁷

An important and unfortunately disappointing result of the reduction in production after the Hollywood strikes is that the increases in wages and benefits, as well as work rules regarding the staffing of writers' rooms and use of AI, will be enjoyed by fewer workers because of the drop in productions.⁸⁸ This is the result of the studio producers' focus on costs and lack of profitability, while potentially sacrificing market share and future content demand.⁸⁹

The streaming services, such as Netflix, Amazon Prime Video, Disney+, Hulu, and ESPN+, seem to be taking advantage of the decline in studio productions by maintaining their relatively high volume of

84. See *Automotive Service Manager: Who Is He and What Is His Role?*, KILPATRICK EXEC. (Mar. 25, 2024), <https://www.kilpatrickexecutive.com/automotive-service-manager-who-is-he-and-what-is-his-role/>.

85. See *Illustrators and Matte Artists*, ADG, <https://adg.org/join/illustrators-and-matte-artists> (last visited Apr. 2, 2025). Depending on the worker category, there are industry experience rosters and qualification lists that employers must hire from if individuals are available for assignments, unless they lack some unique skill required for a particular assignment. The employers can pick whoever they want on these lists, but it is not that easy for the producers to hire off-list. Employees can qualify and remain on these lists generally by meeting a number of workdays minimum. See *id.*

86. See *Writers Guild of America 2020 Theatrical and Television Basic Agreement*, *supra* note 78, at 249-58 (listing the benefits provided to employees, including a pension plan and health fund).

87. See generally Oliver E. Williams et. al., *Quantifying and Predicting Success in Show Business*, NAT'L LIBR. OF MED. (June 4, 2019), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6548779/> [A]ctors whose career spans only a single year, are the norm rather than the exception. Long career lengths and high activity are found to be exponentially rare, suggesting a scarcity of resources in the acting world. These results are in agreement with previously collected evidence, pointing to the fact that unemployment rates in actors hover around ninety percent, and that as low as two percent of actors are able to make a living out of acting.

See *id.*

88. See Susan Carpenter, *Hollywood Productions Slow to Rebound Following Strikes*, *Report Says*, SPECTRUM NEWS 1 (Apr. 18, 2024), <https://spectrumnews1.com/ca/southern-california/entertainment/2024/04/18/hollywood-productions-slow-to-rebound-following-strikes—report-says>.

89. See George Szalai, *Studio Profit Report: A Year of Major Transitions*, THE HOLLYWOOD REP. (Apr. 24, 2024, 9:42 AM), <https://www.hollywoodreporter.com/business/business-news/studio-profit-report-nbcu-sony-disney-warner-1235880212/>.

content production.⁹⁰ The streaming services originally arose to meet the rapidly increasing demand for content, as streaming became the dominant platform for viewing over movie theatres and traditional cable outlets.⁹¹

However, even their profitability has been a challenge.⁹² Rapid technological and consumer shifts in video entertainment in the forms of TikTok, YouTube, and Instagram appear to be dominating the screen viewing preferences of the public, overtaking even the streaming services in volume.⁹³ For instance, TikTok has 1.7 billion users, up to half of whom are also video creators in the streaming business.⁹⁴ More people watch TikTok than all other media combined, including television and movie screens.⁹⁵ Radio is a declining entertainment medium, but it is noteworthy that podcasts and music streaming services are growing audiences, showing a clear example of a shift attributable to technological change.⁹⁶

All of this is an existential threat to the production of films and shows as the core strength of the entertainment industry.⁹⁷ The workers who support the industry may be in oversupply in the long-term.⁹⁸

C. Fewer Productions

The new labor contracts for writers and actors only advanced worker interests based on the assumption that the volume of show production would continue at a heated pace, but the reality has been a drop

90. See *Streamer Strategies for Audience Retention Without Prestige Linear Series*, PARROT ANALYTICS, <https://www.parrotanalytics.com/academy/streamer-strategies-for-audience-retention-without-prestige-linear-series> (last visited Mar. 27, 2025).

91. See *id.*

92. See *id.*

93. See *Omdia: TikTok and YouTube Dominate Video Platforms for Millennials and Gen Z in the USA*, OMDIA (Jan. 21, 2025), <https://omdia.tech.informa.com/pr/2025/jan/tiktok-and-youtube-dominate-video-platforms-for-millennials-and-gen-z-in-the-usa>.

94. See *id.*

95. See *id.*

96. See Travis Clark, *Spotify's Huge Growth Proves the Promise of Audio – Again*, THE CURRENT (Feb. 4, 2025), <https://www.thecurrent.com/spotify-growth-audio-streaming-advertising>.

97. See Matthew Bellini, *Hollywood's Big Tech Problem*, THE TOWN (June 20, 2024), <https://www.iheart.com/podcast/867-the-town-with-matthew-bell-94183140/episode/hollywoods-big-big-tech-problem-187430661/>.

98. See *id.* (arguing that big tech is “crawling,” or stealing, content from the producers and recommends an intellectual property-based litigation attack on this activity to at least gain s from the video creators’ use of the Hollywood producers’ content).

in productions.⁹⁹ Putting aside the early COVID-19 time frame (early 2020 through May 2023) and the five-month strikes, employment was at a thirty-year low through April 2024 in L.A. County's motion picture and sound recording industries, according to the United States Bureau of Labor Statistics.¹⁰⁰

This is obviously more than a reaction to the strike and the new contracts.¹⁰¹ The L.A. Times stated, “[g]lobal film and TV production in the first quarter of 2024 lagged seven percent behind the same period in 2023, according to ProdPro.”¹⁰² A disconnect between bargaining table proposals and ongoing industry developments led to the contraction only a few months after the major agreements were reached.¹⁰³ The disconnect can be attributed to a lack of candor and a misunderstanding of industry trends during the negotiations.¹⁰⁴

The significant drop in production occurred shortly after the contracts were signed and greatly diminished employment opportunities for both actors and writers.¹⁰⁵ During the bargaining and strikes, the unions believed the producers' high volume of content production would continue indefinitely.¹⁰⁶ Only months later, a massive decrease in the number of shows in production occurred, adversely affecting those same actors and writers.¹⁰⁷

Those still working garner the better pay and benefits won through the strike and bargaining.¹⁰⁸ However, those not working got little or no benefit from the hard-won bargains made, at least thus far.¹⁰⁹ When and if production picks up, the writers and actors will enjoy the benefits won

99. See Ryan Faughnder, *Workers Feel the Pain as a Post-Streaming-Wars Hollywood Restructures*, N.Y. TIMES (June 11, 2024), <https://www.nytimes.com/2024/12/26/business/economy/hollywood-southern-california-economy.html>.

100. See *id.*

101. See *id.*

102. *Id.*

103. See generally *Q1 2024 Global Production Report*, PRODPRO (May 1, 2024), <https://prodpro.com/blog/q1-2024-global-production-report/> (expanding on the economics behind the production delays).

104. See Joshua M. Javits, *Writers & Actors Strike: Sharing in the Benefits of the Marketplace*, MEDIUM (Aug. 4, 2023), <https://joshuamjavits.substack.com/p/writers-and-actors-strike-sharing>.

105. See *Q1 2024 Global Production Report*, *supra* note 103.

106. See Christi Carras, *Hollywood's Crew Union Negotiations Have Gone Well So Far. Now the Hard Part Begins*, L.A. TIMES (Apr. 29, 2024, 6:00 AM), <https://www.latimes.com/entertainment-arts/business/story/2024-04-29/iatse-general-negotiations-strike-hollywood-studios>.

107. See *Q1 2024 Global Production Report*, *supra* note 103.

108. See Javits, *supra* note 104.

109. See *id.*

at the bargaining table, but how many will benefit is uncertain.¹¹⁰ Whether this is a cyclical or permanent contraction is an open question.

One factor may be that higher wages and benefit cost in the new contracts resulted in the increased cost of productions.¹¹¹ But the rapidity of the decline in productions, in an industry where advance planning is essential, suggests this was not the major factor.¹¹² Something appears to have gone badly amiss both for the industry, which is markedly reduced in size, juxtaposed with a devastating impact for many actors and writers, who are jobless.¹¹³ More realistic bargaining would have afforded more protections to address the downside risks of industry contraction.¹¹⁴ The lead time to produce shows in the industry is considerable.¹¹⁵ Thus, it is likely that the producers were at least aware of the downward trajectory. Greater exchange of information about business expectations, planning, and concerns, as well as more transparency and trust during contract negotiations, might have resulted in better outcomes for both parties.¹¹⁶

The producers of content, especially the studios, have been focused on cost reduction, so they are not producing anywhere near as many series or movies as previously.¹¹⁷ The proliferation of content after the COVID-19 period, when the producers were riding a wave of content demand, has been offset by the recognition that a high number of their

110. *See id.*

111. *See Q1 2024 Global Production Report, supra note 103.*

112. *See Javits, supra note 104.*

113. *See Lydia DePillis, Impact of Hollywood Strikes on Jobs Goes Beyond the Strikers*, N.Y. TIMES (Sept. 1, 2023), <https://www.nytimes.com/2023/09/01/business/economy/hollywood-strikes-jobs-report.html>.

114. *See Can Collective Bargaining Create a Fairer Economy?*, INT'L LAB. ORG., <https://webapps.ilo.org/infostories/en-GB/Stories/Labour-Relations/Can-Collective-Bargaining-Create-a-Fairer-Economy#introduction> (June 2019).

115. *See How Long Does It Take to Make a Movie? Everything You Need to Know*, NASH. FILM INST., <https://www.nfi.edu/how-long-does-it-take-to-make-a-movie/> (last visited Apr. 1, 2025).

116. *See Jane McAlevey & Abby Lawlor, Turning the Tables: Participation & Power in Negotiations*, UC BERKELEY LAB. CTR. (May 2021), https://janemcalevey.com/wp-content/uploads/2021/06/Turning-the-Tables_-Participation-and-Power-in-Negotiations-1-UC-Berkeley-Labor-Center.pdf.

117. *See Winston Cho, Hollywood Aims to Trim Production Costs Amid Inflation Surge, Supply Chain Pain*, HOLLYWOOD REP. (June 27, 2022), <https://www.hollywoodreporter.com/business/business-news/inflation-costs-production-budgets-hollywood-1235170037/>; *see* Anousha Sakoui, *The Pandemic Transformed Television. A New Report Shows the Lasting Impact*, L.A. TIMES (Dec. 22, 2021), <https://www.latimes.com/entertainment-arts/business/story/2021-12-22/california-recovered-from-pandemic-to-lead-tv-production-nationwide>.

productions were money losers.¹¹⁸ No blockbusters came out of this period like *Friends* or *Seinfeld*, which have produced a steady stream of revenue and profits.¹¹⁹ With their increasingly pessimistic outlook, the producers became unwilling to take risks in an industry that is naturally high risk.¹²⁰

D. Industry Economics

Whether the current level of production is a business correction or a long-term reality is yet to be determined.¹²¹ The downturn was probably the result of industry economics rather than the impact of the provisions of the new actors' and writers' contracts.¹²² Although the union contracts increased production costs, including staffing requirements, the slowdown can mostly be attributed to long-term business trends rather than contract terms.¹²³

Nonetheless, the long strike and new contracts may have helped trigger the trend to reduce production in several ways.¹²⁴ First, the labor dispute gave the producers an incentive to focus on the high costs of production versus the profits they were earning for each production.¹²⁵ Profit-making on many full production projects is notoriously uncertain in Hollywood, and producers chase the rare high-flying successes.¹²⁶ During negotiations, the producers were preoccupied with calculating the costs of their own proposals and the union's proposals at the

118. See John Koblin, *Hollywood Made 14% Fewer Shows in 2023, Marking the End of Peak TV*, N.Y. TIMES (Feb. 9, 2024), <https://www.nytimes.com/2024/02/09/business/media/peak-tv-shows-2023-decline.html>.

119. See John Koblin, *Streaming's Golden Age Is Suddenly Dimming*, N.Y. TIMES (Dec. 18, 2022), <https://www.nytimes.com/2022/12/18/business/media/streaming-tv-shows-canceled.html>.

120. See *Is Hollywood Worth Saving? The Harsh Reality Facing L.A. in 2025*, FILMTAKE (Jan. 19, 2025), <https://www.filmtake.com/production/is-hollywood-worth-saving-the-harsh-reality-facing-l-a-in-2025/>.

121. See *id.*

122. See Gene Maddaus, *IATSE Reaches Deal on Area Standards Agreement*, VARIETY (June 27, 2024), <https://variety.com/2024/biz/news/iatse-area-standards-agreement-deal-1236050278/>.

123. See Scott Wilson, *A History of Hollywood Writers' Strikes*, L.A. TIMES (May 4, 2023), <https://www.latimes.com/entertainment-arts/business/story/2023-05-04/writers-strike-hollywood-history-wga-labor>; see Intelliminds, *Impact of Strikes in Hollywood: What's Changing the Industry?*, GREENLIGHT COVERAGE (Dec. 27, 2024), <https://glcoverage.com/2024/12/27/impact-of-strikes-in-hollywood/>.

124. See *infra* text accompanying notes 126-34.

125. See Winston Cho & Katie Kilkenny, *Studios Sold Wall Street on Cost-Cutting. But Unions Are a Tougher Task*, HOLLYWOOD REP. (Apr. 27, 2023, 6:35 AM), <https://www.hollywoodreporter.com/business/business-news/writers-guild-studios-deadline-1235402931/>.

126. See Schuyler Moore, *Film Economics 101*, FORBES (Nov. 7, 2024, 11:53 PM), <https://www.forbes.com/sites/schuylermoore/2024/11/07/film-economics-101/>.

bargaining table, which likely led to a re-evaluation of their headlong bias toward content production in the COVID and immediate post-COVID boom period, when the public was binging on series after series on their home televisions, computers, and smart phones.¹²⁷

Second, during the pre-strike anticipation period and the near five-months-long strike, production was suspended, thus saving production costs.¹²⁸ These cost savings provided the economic justification for an industry pullback and a strategy to produce a smaller number of projects going forward, with a hoped-for higher likelihood of success.¹²⁹

Third, an element of retribution for the disruptive strike may have played a part, with the producers asserting their leverage after the agreements were signed to send a message to the unions for future negotiations.¹³⁰ However, this factor should not be overestimated because ongoing restructuring and contraction in the industry have adversely impacted executives and managers to an equal and possibly greater degree than union writers and actors.¹³¹

This confluence of circumstances highlighted the differential costs between the production expenses of U.S. studios and streaming services and those of independent and foreign producers, which have been a threat to the optimistic Hollywood-centric way of thinking for at least thirty years.¹³² Moreover, the encroachment of inexpensive reality TV programming on traditional full production offerings has been a persistent and increasing phenomenon.¹³³

127. See Regan Morris, *Hollywood's Big Boom Has Gone Bust*, BBC (Sept. 28, 2024), <https://www.bbc.com/news/articles/cj6er83ene6o>.

128. See Katie Kilkenny, *Would You Do It Again? A Year After Strikes, Hollywood Reckons with the Aftermath*, HOLLYWOOD REP. (July 19, 2024), <https://www.hollywoodreporter.com/business/business-news/actors-writers-strikes-one-year-later-1235950418/>.

129. See Rebecca Keegan et al., *Now What? The Five Crises Confronting a Post-Strike Hollywood*, HOLLYWOOD REP. (Oct. 11, 2023), <https://www.hollywoodreporter.com/lists/writers-actors-strikes-end-hollywood-crises/>.

130. See Dominic Patten, *Hollywood Studios' WGA Strike Endgame Is to Let Writers Go Broke Before Resuming Talks in Fall*, DEADLINE (July 11, 2023, 7:12 PM), <https://deadline.com/2023/07/writers-strike-hollywood-studios-deal-fight-wga-actors-1235434335/>.

131. See Nellie Andreeva, *Hollywood Contraction Hits Entertainment Executive Jobs: "This Is a Full-Scale Depression"*, DEADLINE (Mar. 18, 2024, 7:30 AM), <https://deadline.com/2024/03/hollywood-job-losses-executives-full-scale-depression-1235841674/>.

132. See Julie Plec & Sarah Adina Smith, *How Can Hollywood Stop a Production Exodus?*, HOLLYWOOD REP. (Feb. 27, 2025, 9:28 AM), <https://www.hollywoodreporter.com/business/business-news/hollywood-film-tv-production-incentives-california-1236148276/>.

133. See Richard Crew, *The Economic and Business Realities of Reality Television*, in 3 BUS. ENT. 143, 158 (Robert C. Sickels ed., 2008).

E. Alternate Contract Goals

Had the parties, especially the unions, known during bargaining, at least after they returned to the bargaining table following the strike, that production volume was on a significant downward trajectory, they might have written different agreement terms.¹³⁴ Although the terms agreed to provided real pay, benefits, and work rule improvements for the actors and writers, far fewer covered workers would be enjoying those improvements because of the reduction in the volume of productions.¹³⁵ If the drop in production had been brought to the fore, higher priorities might have been given to provisions to address the needs of those out-of-work writers and actors as well as to induce greater production.¹³⁶

While the parties have a process for determining which out-of-work writer is next in line for an available hiring slot, they do not have terms incentivizing expanded production.¹³⁷ Flexibility in pay, benefits, work rules, and craft lines are some of the few areas that can have an impact on production volume.¹³⁸

Education and understanding of industry finances, projections, and planning were missing, or trust in assertions made about them was absent.¹³⁹ Such communications and trust are essential to enable unions to help set the goals and expectations of the bargaining unit.¹⁴⁰

Since the producers negotiate as a multi-employer group, they may be reluctant to share cost, profit data, and production planning with each

134. *See id.*

135. *See* Katie Kilkenny, *IATSE and Studios Reach Tentative Agreement on Area Standards Contract*, HOLLYWOOD REP. (June 27, 2024, 6:02 PM), <https://www.hollywoodreporter.com/business-news/iatse-area-standards-deal-tentative-agreement-reached-1235933379/>.

136. *See* Erik Hayden, *Another Sobering Snapshot of Hollywood's Production Decline*, HOLLYWOOD REP. (Jan. 22, 2025, 2:59 PM), <https://www.hollywoodreporter.com/business-news/hollywood-production-decline-1236114887/>.

137. *See* Chris Heckmann, *Film Production Agreement — A Primer on Film Prod. Contracts*, STUDIOBINDER (Feb. 27, 2022), <https://www.studiobinder.com/blog/film-production-agreement/>.

138. *See* Joseph Chianese, *The State of Film & Television Production: 2024 in Review and Outlook for 2025*, ENT. PARTNERS (Dec. 20, 2024), <https://www.ep.com/blog/film-incentives-north-america-entertainment-industry-2024-review-look-ahead-2025/>.

139. *See* *What's Really Inside the Hollywood Writers' Deal? Here's the Juicy Stuff*, L.A. TIMES (Oct. 7, 2023), <https://www.latimes.com/entertainment-arts/story/2023-10-07/wga-amtp-contract-annotation> (showing that the education and understanding of industry finances, projections, and planning were not included in the bargaining agreement between Hollywood writers and studios).

140. *See* *The Importance of Communication in Labor Contract Negotiations*, HUTCHISON GRP. (May 30, 2024), <https://www.hutchgrp.com/communication-in-labor-contract-negotiations>.

other since they are intense competitors.¹⁴¹ Thus, not all the producers may have shared their intentions with each other. Moreover, determining residual payments, a central issue in the actors and writers negotiations, is a complicated exercise since there are a wide variety of terms and fluctuations of such payments.¹⁴² So, sharing information within the Alliance of Motion Picture and Television Producers is challenging itself, even more so when sharing with the unions.¹⁴³ Of course, a low period for hit shows and the abrupt cancelation or nonrenewal of productions suggest that all the producers may not have been aware of this downward trajectory of production volume.¹⁴⁴

In addition, enormous media companies have come to dominate the industry, which has created obstacles to building relationships and establishing the trust that is essential for bargaining because they were essentially replaced with financial analytics.¹⁴⁵ Hollywood is by definition at least as much art and risk as it is finance and predictability.¹⁴⁶

Could the unions have incentivized the producers to stabilize or even increase production volume or disincentivize decreases in volume? Could the parties have cushioned the blow of fewer work opportunities? Priorities might have shifted and trade-offs might have been made if the answer were “yes” to both questions.

141. See *The Status of Multiemployer Bargaining Under the National Labor Relations Act*, 1967 DUKE L.J. 558, 559-60 (1967).

142. See Brian Contreras, *What Are Residuals and How Do They Work? A Hollywood Strike Battleground, Explained*, L.A. TIMES (Sept. 20, 2023), <https://www.latimes.com/entertainment-arts/business/story/2023-09-20/actors-and-writers-are-striking-over-residuals-so-what-are-residuals-anyway>.

143. See Ayesha Rascoe, *Differences Within Members of Striking Groups Are Complicating the Hollywood Strikes*, NPR (Sept. 10, 2023), <https://www.npr.org/2023/09/10/1198675583/differences-within-members-of-striking-groups-are-complicating-the-hollywood-str>.

144. See Brian Welk, *As Production Slows to a Crawl, Crew Members Say ‘Everyone Knows We’re All Looking for Work’*, INDIEWIRE (Feb. 23, 2024), <https://www.indiewire.com/news/business/film-tv-production-slowdown-jobs-impact-analysis-1234954777/>.

145. See *History*, UNIVERSAL, <https://www.universalpictures.com/about> (last visited Mar. 30, 2025); see Alison Durkee, *Amazon Closes MGM Deal — but Here’s Why You Still Won’t Find ‘Wizard of Oz’ or ‘Gone with the Wind’ on There*, FORBES (Mar. 17, 2022), <https://www.forbes.com/sites/alisondurkee/2022/03/17/amazon-closes-mgm-deal—but-heres-why-you-still-wont-find-wizard-of-oz-or-gone-with-the-wind-on-there/>; see *Divisions*, SONY PICTURES, <https://www.sonypictures.com/corp/divisions.html> (last visited Mar. 30, 2025); see *Disney Ends the Historic 20th Century Fox Brand*, BBC (Aug. 12, 2020), <https://www.bbc.com/news/business-53747270> (showing that Comcast owns Universal Pictures; Amazon owns MGM; Sony owns Columbia Pictures; and Disney owns 20th Century Fox).

146. See James McMahon, *Is Hollywood a Risky Business? A Political Economic Analysis of Risk and Creativity*, ECONSTOR (Apr. 13, 2018), https://www.econstor.eu/bitstream/10419/182476/1/20180400_mcmahon_is_hollywood_a_risky_business_preprint_v01.pdf.

Of course, the remedy for a long-term downward trajectory of production volume is different from the response to a cyclical downturn.¹⁴⁷ The unions might have sought to beef up their members' right to work via industry experience rosters and qualification lists in cyclical downturns, whereas achieving such changes in a long-term production downturn would only dilute these benefits if the pool of available actors and writers remained large.¹⁴⁸

The writers' focus on increasing the staffing of writers' rooms did nothing to incent more production.¹⁴⁹ Minimum staffing requirements, despite their history in Hollywood, may benefit employees but are generally resisted by management.¹⁵⁰ Employers regard control of their employee headcount as an essential management responsibility, because dealing with downturns in the business through staffing levels enables their businesses to weather such downturns.¹⁵¹ Similarly, management's essential function of establishing operations and planning to compete effectively in the market disinclines it toward such limitations.¹⁵²

However, from the writers' perspective, Hollywood management has long sought to limit their ranks by lowering staffing numbers and, currently, by taking advantage of their creative effort without payroll impact through the use of AI.¹⁵³ Ironically, while the contract guaranteed

147. See *California's Film Industry Is in Crisis. Can It Be Saved?*, ENT. PARTNERS (Sept. 18, 2024), <https://www.ep.com/news/californias-film-industry-is-in-crisis-can-it-be-saved/>.

148. See Alex Ates, *Understanding Union Rules for Actors in 'Right-to-Work' States*, BACKSTAGE (Jan. 27, 2021), <https://www.backstage.com/magazine/article/actors-union-rules-in-right-to-work-states-70120/>.

149. See Gene Maddaus, *TV Staff Minimum Remains Key Sticking Point, but Some in WGA Privately Grumble: 'Nobody Asked for This'*, VARIETY (Aug. 16, 2023, 1:17 PM), <https://variety.com/2023/biz/news/writers-strike-screenwriters-oppose-staff-minimum-1235694323/>.

150. See generally Annabelle Timsit, *Hollywood Studios and Writers Have a Strike-Ending Deal. What's in It?*, WASH. POST (Sept. 27, 2023), <https://www.washingtonpost.com/style/2023/09/27/wga-contract-details-writers-strike-deal/> (stating the film unions "pushed hard" to increase minimum staffing, but management for the studios only increased it slightly, in turn guaranteeing "consecutive weeks of work").

151. See Ranjana Sing, *Why Staffing Firms Need Scalability in Economic Downturns*, QX GLOB. GRP. (Oct. 1, 2024), <https://qxglobalgroup.com/rs/us/blog/need-for-scalability-in-economic-downturns>.

152. See *The Four Functions of Management: How They Impact Business*, AM. PUB. UNIV. (Feb. 21, 2024), <https://www.apu.apus.edu/area-of-study/business-and-management/resources/the-four-functions-of-management/>.

153. See Molly Kinder, *Hollywood Writers Went on Strike to Protect Their Livelihoods from Generative AI. Their Remarkable Victory Matters for All Workers.*, BROOKINGS (Apr. 12, 2024), <https://www.brookings.edu/articles/hollywood-writers-went-on-strike-to-protect-their-livelihoods-from-generative-ai-their-remarkable-victory-matters-for-all-workers/>; see Karen Weise, *Video Game Union Reaches Deal on Industry-First Contract at Microsoft*, N.Y. TIMES (May 30, 2025), <https://www.nytimes.com/2025/05/30/business/microsoft-video-game-union.html> ("ZeniMax

greater numbers of writers in writers' rooms, the industry contraction reduced the network of the writers.¹⁵⁴

The unions could have offered approaches to address the volume of production.¹⁵⁵ The breakdown of craft lines is one approach that can lower staffing on a single production while incentivizing production volume through lower costs.¹⁵⁶ This has already happened, at least above the line, where multi-purpose writer-directors, actor-producers, and producer-director-actors are central to generating productions.¹⁵⁷

Creative ideas for enhancing and expanding market strength are legitimate goals for both labor and management and can produce win-wins.¹⁵⁸ The core issue, though, is whether the parties can fashion a plan for incentivizing production and avoiding furloughs that does not involve circumventing the employees who create the product.¹⁵⁹

Multi-employer bargaining, such as that engaged in by the film industry, may inhibit discussion and creativity, because only proposals supported by consensus are made.¹⁶⁰ However, it has the advantage of

committed to informing the union when its plans to use A.I. could affect workers, and 'to bargain those impacts upon request.'").

154. See *TV Staff Minimum Remains Key Sticking Point, but Some in WGA Privately Grumble: 'Nobody Asked for This'*, *supra* note 149.

155. See Gene Maddaus, *IATSE Has a Deal. Will It Spark a Rebound in TV and Film Production?*, *VARIETY* (June 26, 2024, 5:19 PM), <https://variety.com/2024/biz/news/iatse-amtp-deal-jobs-teamsters-1236049706/>.

156. See generally Aaron Pruner, *Above-the-Line vs. Below-the-Line Jobs in Film*, *BACKSTAGE* (May 10, 2022), <https://www.backstage.com/magazine/article/above-the-line-vs-below-the-line-crew-differences-74969/> (distinguishing craft lines means dividing crew members into two main budget categories: above the line, referring to creative crew members; and below the line, referring to day-to-day crew members).

157. See *id.* (being tasked with making "big decisions" and "guiding a project from idea to script to screen").

158. See, e.g., Devon Gordon, *What if A.I. Is Actually Good for Hollywood?*, *N.Y. TIMES* (Nov. 1, 2024), <https://www.nytimes.com/2024/11/01/magazine/ai-hollywood-movies-cgi.html>. It is not certain that the use of AI in the entertainment industry will inevitably result in less employment. As a tool, it will provide more efficient production, reducing time to accomplish currently imagined goals. As an agent, the use of AI to simply replace current labor will reduce the need for labor. But production goals may be reimagined, spurred on by the possibilities revealed by AI. By multiplying production potentials, AI may actually increase demand for labor, albeit a demand for different kinds of labor skills. See *id.*

159. See generally Kinder, *supra* note 153 (evidencing workers' concerns of AI essentially taking their jobs).

160. See generally Fisk, *supra* note 68 (explaining the boilerplate contracts utilized by the film industry give studios complete control of the bargaining power and in turn make the reclamation of creativity impossible).

quelling producers' fears that concessions to labor will enable their competitors to enjoy a labor cost advantage.¹⁶¹

IV. THE AIRLINE INDUSTRY

The airline industry is an oligopoly of four dominant carriers (United, American, Delta, and Southwest), accounting for nearly eighty percent of passenger and freight revenue, but these carriers are still competitors.¹⁶² They can expand and, as they do so, decrease their unit costs and incentivize even greater expansion.¹⁶³ Nonetheless, the industry's extraordinarily high capital and labor costs, its acute sensitivity to economic conditions, and its susceptibility to exogenous disruptions, as shown through events such as 9/11, COVID, SARS, and financial meltdowns, present formidable challenges.¹⁶⁴ Flexibility in compensation and work rules may be the only way they can overcome these structural encumbrances and existential threats.¹⁶⁵

The airline industry is the product of its own history.¹⁶⁶ That history is strewn with the carcasses of carriers that believed they could shrink to profitability.¹⁶⁷ The industry has gone through three sets of painful restructuring rounds over the last thirty years.¹⁶⁸ The first round

161. See Stan De Spiegelaere, *The Why and How of Multi-Employer Bargaining*, UNIONS 21 (Aug. 7, 2023), <https://unions21.org/ideas/the-why-and-how-of-multi-employer-bargaining>.

162. See Peter Gratton, *This Is the Worst Airline for Consumer Complaints*, INVESTOPEDIA (Oct. 3, 2024), <https://www.timeout.com/usa/news/this-is-the-worst-u-s-airline-for-customer-complaints-101024>; see Govind Bhutada, *Ranked: The Largest Airlines in the U.S. by Market Share*, VISUAL CAPITALIST (Mar. 7, 2025), <https://www.visualcapitalist.com/ranked-the-largest-airlines-in-the-u-s-by-market-share/>.

163. See Xiaoqian Sun et al., *Airline Competition: A Comprehensive Review of Recent Research*, 2 J. AIR TRANSP. RSCH. SOC'Y 1, 11 (2024).

164. See Jaap Bouwer et al., *Taking Stock of the Pandemic's Impact on Global Aviation*, MCKINSEY & CO. (Mar. 31, 2022), <https://www.mckinsey.com/industries/travel/our-insights/taking-stock-of-the-pandemics-impact-on-global-aviation>.

165. See Hannah Kugler & Matthais Rolfs, *Flexible Rightsizing of Airline Staff in Times of Uncertainty*, LUFTHANSA CONSULTING (Sept. 30, 2020), https://lhconsulting.com/wp-content/uploads/2023/11/200924_Article_Flexible_rightsizing_of_airline_staff.pdf.

166. See *Airline Deregulation*, in NEW PALGRAVE DICTIONARY OF ECONOMICS AND LAW, 41, 41 (Peter Newman ed., 1998); see *Airline Deregulation: When Everything Changed*, SMITHSONIAN (Dec. 17, 2021), <https://airandspace.si.edu/stories/editorial/airline-deregulation-when-everything-changed>.

167. See Sun, *supra* note 163, at 7.

168. See Victor Craig, *Air Transport Sector Restructuring*, ICAO, https://www.icao.int/meetings/amc/ma/1999/aps/13_pp_craig_e.pdf (last visited Mar. 15, 2025); see Hubert Horan, *The Airline Industry's Post-2004 Consolidation Reversed 30 Years of Successful Pro-Consumer Policies*, PROMARKET (May 5, 2020), <https://www.promarket.org/2020/05/05/post-2004-airline-industry-consolidation-reversed-30-years-of-successful-pro-consumer-policies/>.

occurred in the 1980s as an outgrowth of airline deregulation in 1978 and its subsequent fallout impacting the industry.¹⁶⁹ The second round of restructuring occurred in the 1990s, a product of an economic recession, high fuel prices resulting from the Gulf War, and lowered demand for travel.¹⁷⁰ The carriers sought concessions from their employees in exchange for stock ownership.¹⁷¹ The third round of restructuring was the result of 9/11 and the closure of U.S. airspace.¹⁷² The subsequent dramatic fall in demand led to multiple bankruptcies and mergers.¹⁷³

Each of these restructurings were precipitated by existential economic and terrorist threats. In each case, the employees and their unions were asked to make deep concessions.¹⁷⁴ The unions provided the concessions, but on each occasion obtained what became a panoply of job protections (no-layoffs, scope of work jurisdiction, stock or profit sharing, etc.), which have held airline employees in good stead through subsequent disruptions.¹⁷⁵

Industry consolidation has resulted, with four major legacy carriers remaining and a corporate graveyard composed of numerous other departed airlines.¹⁷⁶ As a result of bankruptcies, mergers, and acquisitions, the departed include household names like Continental, US Airways,

169. See Bettina M. Whyte et al., *Airline Industry Restructuring: From Stuck in the Mud to Flying High*, 16 AM. BANKR. INST. J. 24 (1997); see Gerald N. Cook, *A Review of History, Structure, and Competition in the U.S. Airline Industry*, 7 J. AVIATION/AEROSPACE EDUC. & RSCH. 1, 8 (1996).

170. See Jon Bonné, *War Would Magnify Airlines' Woes*, NBC NEWS (Nov. 17, 2003, 6:58 PM), <https://www.nbcnews.com/id/wbna3073561>.

171. See John D. Menke, *The Origin and History of the ESOP and Its Future Role as a Business Succession Tool*, MENKE (May 12, 2011), <https://www.menke.com/esop-archives/the-origin-and-history-of-the-esop-and-its-future-role-as-a-business-succession-tool/>; see DOT'S Role in the Airline Industry's Ongoing Restructuring: Hearing Before the Aviation Subcomm. of the Transp. and Infrastructure Comm. (2008) (statement of Michael W. Reynolds, Acting Assistant Sec'y Aviation & Int'l Affs.).

172. See Derekh Cornwell & Bryan Roberts, *The 9/11 Terrorist Attack and Overseas Travel to the United States: Initial Impacts and Longer-Run Recovery* (Mar. 2010) (unpublished working paper) (on file with Homeland Security Office of Immigration Statistics).

173. See Bob Kerlik, *20 Years After 9-11: A Stronger Airline Industry?*, BLUE SKY NEWS (Sept. 6, 2021), <https://blueskypit.com/20-years-after-9-11-a-stronger-airline-industry/>.

174. See Jesus Sanchez, *Fight or Flight?: Airlines and Unions Wage Cold War over Concession Demands*, L.A. TIMES (July 8, 1993), <https://www.latimes.com/archives/la-xpm-1993-07-08-fi-11079-story.html>.

175. See Laurie Schoder, *Flying the Unfriendly Skies: The Effect of Airline Deregulation on Labor Relations*, 22 TRANSP. L.J. 105, 109, 112-13, 118 (1994).

176. See Pete Syme, *Airlines Are Flying High with Record Earnings as They Bounce Back from the Pandemic*, BUS. INSIDER (Jan. 24, 2025, 7:22 AM), <https://www.businessinsider.com/airlines-record-earnings-american-united-delta-alaska-recover-pandemic-2025-1>.

Pan Am, TWA, Eastern Airlines, and Northwest Airlines.¹⁷⁷ The airlines and their employees have taken a historical beating, but they have learned to work together to the betterment of both.¹⁷⁸

A. Scope Clauses

The airline industry has negotiated sophisticated scope clauses over time, which have protected pilots and, to a lesser extent, other crafts from the outsourcing of carriers' core work and equipment.¹⁷⁹ The legal underpinnings for these rules derive from the certification that pilots, flight attendants, and other airline employees receive when they first elect a union to represent them.¹⁸⁰

Regional carriers feed the major airlines' passengers through code share agreements.¹⁸¹ Scope rules restrict the regional carriers from flying aircraft over a specified size. These rules also regulate other code share relationships, both internationally and domestically.¹⁸² The pilot unions negotiated for a "flow agreement" which allows regional pilots to flow up to major airlines in times of demand and enables major airline pilots to flow down to the smaller market regionals in times of weakness, which builds in staffing flexibility to the industry.¹⁸³

These protections and opportunities were fought for because of the disruptions to the industry and pilot careers, beginning with deregulation in 1978 and continuing with the industry shutdown after 9/11.¹⁸⁴ They have developed into a comprehensive bulwark of protection for the jobs

177. See Cynthia Drescher & Maureen O'Hara, *17 Airlines that No Longer Exist*, CNN (Mar. 5, 2020, 7:14 AM), <https://www.cnn.com/travel/article/former-airlines/index.html>.

178. See Schoder, *supra* note 175, at 106, 113.

179. See Omar Memon & Jack Herstam, *Scope Clause: The Regional Airlines' Capacity Cap Explained*, SIMPLE FLYING, <https://simpleflying.com/scope-clause-explained/> (Mar. 7, 2024).

180. See *id.*

181. See Jarrod Roberts, *What Are Regional Airlines?*, THRUST FLIGHT (Feb. 9, 2024), <https://www.thrustflight.com/regionalairlines/>.

182. See *id.* Code sharing involves a carrier granting the right to another carrier to sell tickets on its flights. See *id.*

183. See *What Are Airline Flow Agreements*, AEROGUARD, <https://www.flyaeroguard.com/learn/how-to-become-a-pilot/airline-flow-agreements/> (last visited Mar. 27, 2025).

184. See Memon & Herstam, *supra* note 179.

of pilots and flight attendants.¹⁸⁵ Scope rules protecting mechanics and fleet service jobs are also prevalent within the industry.¹⁸⁶

B. Pandemic and Other Challenges

The airline industry was able to work out arrangements with its unions to extensively cushion the downturn occasioned by the arrival of COVID-19 in early 2020.¹⁸⁷ During the massive downturn in travel occasioned by the pandemic between 2020 and 2023, the airlines and their unions, particularly pilot unions, reached agreements for voluntary buy-outs of higher paid senior pilots who were closer to retirement.¹⁸⁸

The carriers also reached agreements to offer full-time and part-time leave packages to virtually all classes of employees (pilots, mechanics, flight attendants, fleet service, and customer service) with the unions that represent them.¹⁸⁹ This enabled these workers to retain health coverage and seniority rights during periods in which they were not needed, while keeping them tethered to, and under the payroll of, the employer.¹⁹⁰

When the economy and travel began to recover in late 2021 and 2022, the carriers were in a position to take advantage of the sudden increased demand for flying by hiring newer pilots at lower wage levels.¹⁹¹ They also could recall employees from other crafts or classes from full- or part-time leaves, opening the door to a much greater volume of flying.¹⁹² The timing was not always perfect, and the capacity to

185. See *id.*; see *SCOPE – Protecting Our Career and Our Contract*, ASS'N FLIGHT ATTENDANTS (Dec. 7, 2023), <https://www.unitedafa.org/news/scope-protecting-our-career-and-our-contract>.

186. See *Safety in the Air Begins with Quality Maintenance on the Ground*, AIRCRAFT MECHS. FRATERNAL ASS'N, https://www.amfanational.org/?zone=/unionactive/view_page.cfm&page=About20AMFA (Oct. 29, 2014).

187. See Memon & Herstam, *supra* note 179.

188. See Curtis Tate, *Thousands of American Airlines Pilots, Flight Attendants Take Leave, Early Retirement*, USA TODAY, <https://www.usatoday.com/story/travel/airline-news/2020/04/13/american-airlines-crew-take-leave-buyouts-amid-coronavirus-crisis/2983289001/> (Apr. 13, 2020, 3:48 PM).

189. See Leslie Josephs, *Airline Employees' Dilemma: Take Severance or Gamble on Oct. 1 Layoffs*, CNBC, <https://www.cnbc.com/2020/06/09/airline-employees-wrestle-with-voluntary-separation-leave.html> (June 10, 2020, 9:27 AM).

190. See Edward Russell, *Airlines Walk a Fine Line with Staff Cuts After Taking Coronavirus Aid*, THE POINTS GUY (May 6, 2020), <https://thepointsguy.com/news/airlines-staff-cuts-coronavirus-aid/>.

191. See Niraj Chokshi, *Airline Pilots Seek Big Raises, and Broader Changes*, N.Y. TIMES (July 10, 2022), <https://www.nytimes.com/2022/07/10/business/airline-pilots-pay.html>.

192. See *id.*

meet the increased demand in the post-COVID transition was sometimes inadequate.¹⁹³ However, the carriers' ability to control costs because of their union agreements facilitated increased capacity.¹⁹⁴ In addition, many pilots were able to voluntarily retire early without economic sacrifice.¹⁹⁵ Other employees stayed employed in a dramatically reduced flying environment.¹⁹⁶ Clearly, this was a win-win for the employees, the carriers, and the public.¹⁹⁷

The airline industry's history of cyclical downturns and periodic calamitous adverse events has led pilot groups to hedge traditional wage and benefit improvements with contract provisions meant to soften the impact of these occurrences.¹⁹⁸ In addition to furlough and seniority protections, pilots have been able to win profit-sharing provisions, which have been quite lucrative for them, creating a substantial reserve to be used during downturn periods.¹⁹⁹

193. *See id.*

194. *See id.*

195. *See* Leslie Josephs, *A Severe Pilot Shortage in the U.S. Leaves Airlines Scrambling for Solutions*, CNBC, <https://www.cnbc.com/2022/05/15/us-pilot-shortage-forces-airlines-to-cut-flights-scramble-for-solutions.html> (May 16, 2022, 8:50 PM).

196. *See* Pamela Boykoff & Doyinsola Oladipo, *'We Were the Only Airplanes in the Sky' – the Surreal Lives of Covid-Era Pilots*, CNN TRAVEL (Mar. 8, 2021, 5:46 AM), <https://www.cnn.com/travel/article/pilots-life-covid/index.html>.

197. *See Breaking Down the \$48 Billion of Airline Industry Payroll Support in Coronavirus Relief Legislation*, PETER G. PETERSON FOUND., <https://www.pgpf.org/article/breaking-down-the-48-billion-of-airline-industry-payroll-support-in-coronavirus-relief-legislation/> (Feb. 3, 2021). To be sure, these arrangements were facilitated by massive government assistance provided through the initial Coronavirus Aid, Relief, and Economic Security Act (hereinafter "CARES") enacted in 2020, which supported the airline industry and other sectors of the economy. The funds made available covered approximately fifty percent of the airlines' wage burden for six months when first enacted. They covered somewhat lesser but still substantial amounts during the two CARES Act extensions later in 2020 and in early 2021. The historic levels of government assistance, along with collectively bargained arrangements to pare down seniority rosters and the number of active employees, enabled almost all carriers to survive the massive reductions in travel in 2020 and 2021 caused by the COVID-19 pandemic, as well as to come out on the other side healthy enough to take advantage of the pent-up demand for travel. Similarly, following the terrorist attacks on 9/11, when the industry faced a severe financial crisis due to the closure of U.S. air space and a collapse of air traffic demand, the federal government implemented a massive support program including \$15 billion in loans and grants. *See The Futility of the Government Airline Bailout*, FOUND. ECON. EDUC. (Dec. 1, 2005), <https://fee.org/articles/the-futility-of-the-government-airline-bailout/>.

198. *See* Niraj Chokshi, *Airline Pilots Seek Big Raises, and Broader Changes*, N.Y. TIMES (July 10, 2022), <https://www.nytimes.com/2022/07/10/business/airline-pilots-pay.html>.

199. *See* Micheline Maynard, *Mechanics for United Airlines Reject Proposal on Concessions*, N.Y. TIMES (Nov. 29, 2002), <https://www.nytimes.com/2002/11/29/business/mechanics-for-united-airlines-reject-proposal-on-concessions.html>. Pilots and mechanics engineered a buyout of United Airlines (fifty-five percent of its stock) in exchange for contract concessions. Although these efforts at control or influence through stock ownership were eventually undone by further economic headwinds, as well as the failure to change the intensely adversarial culture, it shows the extent to which

C. Bargaining Adjustments

The National Mediation Board (hereinafter the “NMB”) plays an important role in the interplay as well.²⁰⁰ Labor and management engage in a mandatory mediation process conducted by their experienced neutrals (many of whom are veterans of the industry), and the NMB determines if and when to release the parties to self-help (strikes by the unions or lockouts and unilateral changes by management).²⁰¹ Thus, the NMB and its mediators have considerable power (sometimes referred to as “mediation with teeth”) in guiding or inducing the parties to reach agreement.²⁰²

The heavily unionized airline industry has survived cyclical and topsy-turvy economic, terrorist, and pandemic existential threats because labor and management have worked together to overcome their differing interests and motivations.²⁰³ This is not to say that negotiations in the

airline employee groups are willing to go to avoid economic decline and ensure the survival of their carriers. *See, e.g.,* Laurie Schoder, *Flying the Unfriendly Skies: The Effect of Airline Deregulation on Labor Relations*, 22 *TRANSP. L.J.* 105, 112 (1994). Unions at Northwest Airlines—subsequently merged into Delta Airlines—at one point held thirty percent of its stock and seats on its board of directors. *See* Frank Swoboda & Don Phillips, *Northwest Territory: 14% of Continental Fourth-Largest Carrier Pays \$519 Million to Combine Operations with Competitor*, *WASH. POST* (Jan. 26, 1998), <https://www.washingtonpost.com/archive/business/1998/01/27/northwest-territory-14-of-continental/7f585d1f-7c1b-418c-8c6e-cb3d336433cc/>. The pilot and machinist unions hold two seats on the board of Hawaiian Airlines and retained their two seats despite going through two subsequent bankruptcies. *See Hirzel Steps Off Hawaiian Holdings, Inc. Board of Directors*, *NEWSROOM* (Mar. 1, 2016), <https://newsroom.hawaiianairlines.com/releases/hirzel-steps-off-hawaiian-holdings-inc-board-of-directors>. Southwest Airlines has, since its founding in 1967, had a lucrative employee profit-sharing plan, which last year added about twelve percent to employee compensation, including retirement contributions. *See Southwest Airlines Employees Earn \$667 Million in 2019 Profitsharing*, *SOUTHWEST* (Feb. 6, 2020), <https://www.southwestairlinesinvestorrelations.com/news-and-events/news-releases/2020/02-06-2020-115901586>. In the last fifteen years, the airline industry has consolidated into four mega-carriers, with more reliable flows of income than at any other time in its history. This has led to profit sharing becoming an important piece of employee income, especially for pilots. These financial interests have given the employees a more apparent connection between their income and carrier success. *See* Ryan Shank, *Delta Profit Sharing: How the Airline Rewards Its Employees*, *SHAREWILLOW* (Jan. 3, 2024), <https://www.sharewillow.com/blog/delta-airlines-profit-sharing>.

200. *See Mediation Overview & FAQ*, NAT’L MEDIATION BD., https://nmb.gov/NMB_Application/index.php/mediation-overview-faq/ (last visited Mar. 27, 2025).

201. *See id.*

202. *See id.*

203. *See* Ted Reed, *How Labor Unions Won Historic Pay Protection for Aviation Workers*, *FORBES* (Mar. 26, 2020, 12:45 PM), <https://www.forbes.com/sites/tedreed/2020/03/26/airline-workers-will-be-paid-until-sept-30-as-labor-unions-secure-historic-protections/>.

industry are no longer combative.²⁰⁴ Over the past year, no less than four major airline work groups have sought releases from the NMB to strike.²⁰⁵

Bargaining reflects the concern that employees must do what they can to avoid another lost decade of concessions and lack of advancement, which is how pilots describe the ten years after 9/11.²⁰⁶ To this end, management and airline unions typically share relevant facts, information, and analysis; adopt a practical problem-solving mentality; and take advantage of the trust and relationships built up over years of working through the turbulence together.

As a result of the severe decline in passenger flying in the early 1990s,²⁰⁷ the airline unions made compensation and work rule concessions to stop the free fall. In exchange, the unions obtained significant stock ownership and profit sharing.²⁰⁸ They also received membership on carriers' boards of directors.²⁰⁹ Unions currently have representation on boards of directors at United, Delta, and Hawaiian.²¹⁰ Profit sharing has been a part of the culture of partnership at Southwest Airlines since

204. See Michael Wayland & Leslie Josephs, *Labor Unions Are Pushing Hard for Double-Digit Raises and Better Hours. Many Are Winning*, CNBC (Aug. 27, 2023, 7:00 AM), <https://www.cnbc.com/2023/08/27/labor-unions-winning-better-pay-hours.html>.

205. See *generally Collective Bargaining Process Under the Railway Labor Act (RLA)*, NAT'L MEDIATION BD. (Mar. 17, 2010), https://nmb.gov/NMB_Application/wp-content/uploads/2019/04/med-flowchart.pdf (outlining the procedures for collective bargaining from the NMB).

206. See Ben Goldstein & Lori Ranson, *Then and Now: Mapping the Effects of 9/11, COVID-19 on U.S. Carriers*, AVIATION WK. NETWORK (Aug. 23, 2021), <https://aviationweek.com/air-transport/airlines-lessors/then-now-mapping-effects-911-covid-19-us-carriers>.

207. See Tatenda Karuwa, *Over the Years: 5 Major Crises That Have Defined Global Aviation*, SIMPLE FLYING (June 12, 2024), <https://simpleflying.com/defining-global-aviation-crises-list/>. The downturn resulted from a recession in 1990-1991, the Gulf War (which created a spike in jet fuel costs), overcapacity, fare wars, and carrier restructurings, including the bankruptcies of Eastern, Pan Am, and other airlines. See *id.*

208. See Laurie Schoder, *Flying the Unfriendly Skies: The Effect of Airline Deregulation on Labor Relations*, 22 TRANSP. L.J. 105, 112 (1994).

209. See *id.* at 110.

210. See Ahmed Abdulazez Abdulkadir, *United Airlines Appoints New Board Member*, INVESTING (Jan. 18, 2025, 4:00 PM), <https://www.investing.com/news/sec-filings/united-airlines-appoints-new-board-member-93CH-3820001>; see Press Release, Hawaiian Holdings, Inc., *Hirzel Steps off Hawaiian Holdings, Inc. Board of Directors* (Mar. 1, 2026) (on file with author); see *Governance Documents, Board of Directors*, DELTA, <https://ir.delta.com/governance/default.aspx#board-directors> (last visited Mar. 31, 2025); see *Board of Directors*, UNITED AIRLINES, <https://ir.united.com/corporate-governance/board-of-directors#richard-johnsen> (last visited Mar. 31, 2025).

its founding in 1974.²¹¹ Significant profit sharing also exists at United, Delta, and American Airlines.²¹² Union investments in their carriers, though different in kind and amount, continue to this day.²¹³ The strategy has enabled unions to procure and share vital information about the carrier and its plans.²¹⁴

Such relationships between labor and management discourage attempts to “hide the baby” during collective bargaining negotiations because any deception is easily found out.²¹⁵ At the start of negotiations, formal presentations on economics and planning are often openly shared with the unions, and the parties frequently work together on financial models so they can cost out proposals using the same model.²¹⁶ Sharing this information builds trust between the parties and provides a basis for realistic bargaining.²¹⁷

To achieve success, collective bargaining participants must be committed to the industry they work in and adopt the twin goals of enabling corporate survival and growth and protecting workers and jobs, despite adversity.²¹⁸ When the focus turns exclusively to ensuring quarterly profits, selling off all or part of the business, burdening the business with excess debt (e.g., stock buybacks), focusing solely on cost reduction, and other narrow economic considerations, this denigrates the culture, objectives, and core values of the business and its employees.²¹⁹

211. See *Paying It Forward: The Southwest Profit Sharing Plan*, SOUTHWEST, <https://southwest50.com/our-stories/paying-it-forward-the-southwest-profitsharing-plan/> (last visited Mar. 31, 2025).

212. See Ted Reed, *American Airlines CEO Didn't Take the Bait from United*, FORBES (Jan. 24, 2025, 11:23 AM), <https://www.forbes.com/sites/tedreed/2025/01/24/american-airlines-ceo-didnt-take-the-bait-from-united>.

213. See *Paying It Forward: The Southwest Profit Sharing Plan*, *supra* note 211.

214. See *Codetermination in Germany*, WIKIPEDIA, https://en.wikipedia.org/wiki/Codetermination_in_Germany (last visited Mar. 31, 2025). Some European countries have legal requirements for board membership by workers. “Mitbestimmung” (co-management or co-decision-making) involves the right of workers to participate in management of the companies they work for; under German law, Mitbestimmung requires that half of supervisory boards of directors in large companies represent workers. See *id.*

215. See Ewan McGaughey, *The Codetermination Bargains: The History of German Corporate and Labor Law*, 23 COLUM. J. EUR. L. 135, 144 (2016).

216. See *id.* at 143, 155.

217. See *id.* at 155.

218. See Michael Sainato, *CEOs with Lowest-Paid US Workers 'Focused on Own Short-Term Windfall' – Report*, THE GUARDIAN (Aug. 29, 2024), <https://www.theguardian.com/us-news/article/2024/aug/29/ceos-with-lowest-paid-us-workers-focused-on-own-short-term-windfall-report>.

219. See William Lazonick et al., *Why Stock Buybacks Are Dangerous for the Economy*, HARV. BUS. REV. (Jan. 7, 2020), <https://hbr.org/2020/01/why-stock-buybacks-are-dangerous-for-the-economy>.

This is not to say that job protection issues do not exist in the airline industry.²²⁰ Aircraft mechanic technician work during the past thirty years has been diminished, especially in the most complete engine and fuselage overhauls.²²¹ These overhauls, called D-checks, are increasingly performed by much lower-cost overhaul companies in Third World countries or by lower cost domestic repair stations, several of which are nonetheless unionized.²²² Similarly, fueling and catering are often performed by outside contractors.²²³ This kind of offshoring and outsourcing may be the result of the high wages and benefits now earned by full-time carrier employees, making certain work an uneconomic proposition to the carriers.²²⁴

V. THE AUTOMOTIVE INDUSTRY

The automotive industry and the United Auto Workers (hereinafter the “UAW”) have been on the front lines of intense international competition and have fought to maintain manufacturing in the United States.²²⁵ They have sometimes worked cooperatively to maintain production and jobs, including joint efforts to obtain federal government protective policies to defend the industry from predatory competitors or adverse economic headwinds, although a lot of production, including the establishment of new US-based plants by foreign competitors have been established in so-called “right-to-work” states in the South, using non-unionized workers.²²⁶

220. See *Carlyle-Backed Aviation Service Provider StandardAero Files for US IPO*, REUTERS (Sept. 6, 2024, 6:39 PM), <https://www.reuters.com/markets/deals/carlyle-backed-aviation-service-provider-standardaero-files-us-ipo-2024-09-06>.

221. See *id.*

222. See *id.*

223. See Jack Herstam, *Dinner Is Served: A Brief Overview of How Aircraft Are Catered at the Gate*, SIMPLE FLYING (Jan. 7, 2024), <https://simpleflying.com/aircraft-gate-catering-guide/>; see Jack Herstam & Nicole Kylie, *How Does Aircraft Refueling Work*, SIMPLE FLYING, <https://simpleflying.com/how-does-aircraft-refueling-work/> (Sept. 14, 2024).

224. See RACHEL TANG, CONG. RSCH. SERV., R42876, OFFSHORING OF AIRLINE MAINTENANCE: IMPLICATIONS FOR DOMESTIC JOBS AND AVIATION SAFETY 19 (2012).

225. See Cameran Harrison, *UAW Forces Stellantis to Keep Promises, Wins Back Thousands of Jobs*, PEOPLE’S WORLD (Jan. 22, 2015), <https://www.peoplesworld.org/article/uaw-forces-stellantis-to-keep-promises-wins-back-thousands-of-jobs/>.

226. See David Koenig, *Autoworkers Union Celebrates Breakthrough Win in Tennessee and Takes Aim at More Plants in the South*, THE ASSOCIATED PRESS, <https://apnews.com/article/uaw-union-election-vw-chattanooga-tennessee-alabama-74ac19f72cd334050df96ffdccf7425f> (Apr. 20, 2024, 8:55 PM). While the UAW recently won a representation election at a VW plant in Chattanooga, Tennessee (seventy-three percent vote for representation), where management did not aggressively seek to avoid unionization, it lost an election at a Mercedes-Benz plant in Tuscaloosa,

The automotive industry has been living under concessionary agreements since the start of the three-year Great Recession of 2007 that hit automobile companies particularly hard.²²⁷ In 2023, the UAW made strong contract gains, including a twenty-five percent wage increase, the elimination of a two-tier compensation system, and the reopening of two automobile plants.²²⁸ Following a six-week strike in the fall of 2023, agreements were reached during a period of profitability for the industry.²²⁹

The highly organized domestic automotive industry has historically included certain contractual protections that are typical of mature union contracts in other sectors of the U.S. economy.²³⁰ These include seniority rules for layoffs, bumping, and recall rights.²³¹ The contracts also afford opportunities for skills training and apprenticeship programs.²³²

A. Plant Protection Agreements

The UAW has a long history of negotiating to protect jobs by effectively prohibiting the closure of identified automobile plants employing its members.²³³ The plant protection approach provides job security for a certain number of employees, while allowing management to

Alabama (fifty-six percent vote against union representation), where management was more aggressively resistant. *See id.*; see Tom Krisher & Kim Chandler, *After Decisive Loss at Alabama Mercedes Plants, Powerful Auto Union Vows To Return and Win*, THE ASSOCIATED PRESS, <https://apnews.com/article/united-auto-workers-mercedes-vote-union-organizing-bb5f6855474b0197b015d70273651a94> (May 17, 2024, 11:21 PM).

227. *See* Thomas Klier & James M. Rubenstein, *Restructuring of the U.S. Auto Industry in the 2008-2009 Recession*, 27 *ECON. DEV. Q.* 144, 144 (2013).

228. *See* Emma Woods, *UAW Wins Big Contract After Bold Strike Approach*, A.B.A. (Jan. 31, 2024), https://www.americanbar.org/groups/labor_law/publications/labor_employment_law_news/fall-issue-2023/uaw-wins-big-contract-after-bold-strike-approach/.

229. *See* Noam Scheiber, *Union Workers Back Contract Deals at 3 Big Automakers*, N.Y. TIMES (Nov. 16, 2023), <https://www.nytimes.com/2023/11/16/business/uaw-ratify-contract-general-motors.html>.

230. *See* Celine McNicholas et al., *Why Unions Are Good for Workers—Especially in a Crisis like COVID-19*, *ECON. POL'Y INST.* (Aug. 25, 2020), <https://www.epi.org/publication/why-unions-are-good-for-workers-especially-in-a-crisis-like-covid-19-12-policies-that-would-boost-worker-rights-safety-and-wages/>.

231. *See* Carl Gersuny & Gladis Kaufman, *Seniority and the Moral Economy of U.S. Automobile Workers, 1934-1946*, 18 *J. OF SOC. HIST.* 463, 466 (1985); *see* SUSAN HELPER ET AL., *THE BENEFITS AND COSTS OF APPRENTICESHIPS: A BUSINESS PERSPECTIVE 70* (Case W. Rsrv. Univ. & U.S. Dep't of Com. eds., 2016).

232. *See id.*

233. *See* *New UAW Video on Combating Plant Closures Features Footage of Donald Trump Falsely Promising Autoworkers He Would Save Their Jobs*, UNITED AUTO. WORKERS (Sept. 27, 2023), <https://uaw.org/new-uaw-video-on-combating-plant-closures-features-footage-of-donald-trump-falsely-promising-autoworkers-he-would-save-their-jobs/>.

determine total employment numbers.²³⁴ The union has fought for these kinds of guarantees since the Japanese automotive industry first became a strong threat in the 1970s and early 1980s and, because of global competition from other nations, most recently China.²³⁵

Generally, these plant retention guarantees have been ad hoc contract-by-contract approaches to job protection.²³⁶ Yet these guarantees have been the best the union could do in the face of intense international automobile manufacturing competition alongside a workforce that is paid wages higher than the wages of most foreign competitors and many other U.S. manufacturing sectors.²³⁷

B. The Automobile Market

Over the long-term, U.S. auto manufacturers have lost market share, and the number of vehicles produced has declined.²³⁸ The market share of the Big Three—General Motors, Ford, and Stellantis—decreased from sixty-eight percent in 1999 to forty-one percent in 2023.²³⁹ Their U.S. sales dropped from 11.5 million vehicles in 1999 to 5.7 million vehicles in 2023.²⁴⁰ Although U.S. auto manufacturers are still profitable despite this shrinkage, international competition and unit cost increases pressure on labor and management to maintain and even grow the domestic industry.²⁴¹

Several automobile plants were brought back to life after the industry was near death because of the 2007 Great Recession.²⁴² The federal government intervened with emergency loans and funding under the

234. See AGREEMENT BETWEEN THE UAW AND GENERAL MOTORS LLC (signed Oct. 16, 2019, effective Oct. 28, 2019), https://www.gm.com/content/dam/company/docs/us/en/gmcom/2019_UAW-GM_National_Agreement.pdf.

235. See STEPHEN COONEY & BRENT D. YACOBUCCI, CONG. RSCH. SERV., RL32883, U.S. AUTOMOTIVE INDUSTRY: RECENT HISTORY AND ISSUES (2005).

236. See Sarah Lazare, *UAW Strike Saved Shuttered Plant, Now Comes Enforcement*, LABORNOTES (Jan. 31, 2024), <https://labornotes.org/2024/01/uaw-strike-saved-shuttered-plant-now-comes-enforcement>.

237. See Emily McCrary-Ruiz-Esparza, *UAW Auto Strike: Why US Automotive CEOs Make More Than Global Competition*, BBC (Sept. 25, 2023), <https://www.bbc.com/worklife/article/20230925-uaw-auto-strike-why-us-automotive-ceos-make-more-than-global-competition>.

238. See STEPHEN COONEY & BRENT D. YACOBUCCI, *supra* note 235.

239. See Chris Isidore, *Job Security Provisions Could Be the Key to Ending the Auto Strike*, WSILTV (Sept. 24, 2023), https://www.wsiltv.com/news/consumer/job-security-provisions-could-be-the-key-to-ending-the-auto-strike/article_3e9736ae-09b4-5e9a-b206-831adce0b97f.html.

240. See *id.*

241. See STEPHEN COONEY & BRENT D. YACOBUCCI, *supra* note 235.

242. See BAIRD WEBEL, CONG. RSCH. SERV., R41427, TROUBLED ASSET RELIEF PROGRAM (TARP): IMPLEMENTATION AND STATUS (2011).

Troubled Asset Relief Program, saving hundreds of thousands of automotive industry jobs.²⁴³ The concern was that the recession could become a depression if the industry were allowed to collapse.²⁴⁴ The industry subsequently rebounded and has become profitable again.²⁴⁵

C. Electric Vehicles

Today, the U.S. automotive industry has retooled to make electric and other in-demand vehicles.²⁴⁶ Higher labor costs have historically incentivized manufacturers to automate processes to compensate for added labor costs.²⁴⁷ Automation may be a substitute for workers, but if it increases production, labor and profits can both come out ahead.²⁴⁸

Worker dislocation is inevitable in a constantly changing industry.²⁴⁹ Retraining and relocation of jobs have become industry norms.²⁵⁰ Some automobile manufacturing plants, such as General Motor's large assembly plant in Lordstown, Ohio, have closed permanently, as have

243. *See id.*

244. *See id.*

245. *See Kurzarbeit*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Kurzarbeit> (Oct. 29, 2024). The German response to the potentially devastating impact of the Great Recession was to trigger pre-planned labor stabilization policies. These policies (called *Kurzarbeit*) were first established in 2003 to address severe threats to German industry, including its automobile manufacturing sector, from economic and other crisis events. The goal of retaining a qualified workforce through crisis was met when the policies were effectuated in 2007 and 2008. The policies involved programs to move certain numbers of workers from full-time to part-time work, the use of work share programs, the reduction of overtime through work time accounts, and automatic filings for unemployment benefits at affected plants. These policies also were put into effect during the COVID-19 pandemic crisis, moderating its impact on labor as well as company survival. The great advantage of this scheme has been the ability of employers to retain their highly qualified workforce at lower costs to the employer. When economic conditions improved, it was thus very easy for the companies to ramp up production by simply increasing the working hours of their readily available, well-trained, and highly motivated workers. *See Kurzarbeit: Germany's Short-Time Work Benefit*, IMF (June 15, 2020), <https://www.imf.org/en/News/Articles/2020/06/11/na061120-kurzarbeit-germanys-short-time-work-benefit>.

246. *See Angeli Mehta, Auto Sector Scrambles to Retool Workforce for Electric and Automated Future*, REUTERS (Nov. 19, 2024, 5:16 AM), <https://www.reuters.com/sustainability/climate-energy/auto-sector-scrambles-retool-workforce-electric-automated-future-2024-11-19/>.

247. *See Steve Greenfield, Rising Labor Costs Propel Automakers Toward Robotics and Automation*, CBT NEWS (Jan. 19, 2024), <https://www.cbtnews.com/rising-labor-costs-propel-automakers-toward-robotics-and-automation/>.

248. *See id.*

249. *See Devashree Saha et al., Navigating the EV Transition: 4 Emerging Impacts on Auto Manufacturing Jobs*, WORLD RES. INST. (June 13, 2024), <https://www.wri.org/insights/ev-transition-auto-manufacturing-jobs>.

250. *See id.*

some transmission plants.²⁵¹ Other plants slated for closure have remained open.²⁵² The picture is very fluid.

The potentially adverse impact of changing technology on industry jobs and workers was recognized in the last round of bargaining.²⁵³ A key issue was to ensure union workers are protected as the industry transitions to the production of electric vehicles, which require substantially less staffing of hourly workers.²⁵⁴ The ultimate deal facilitated securing union representation in new battery plants and provided transition assistance for workers facing plant closure.²⁵⁵

However, in an example of the volatility within the industry, the construction of the new battery plants has been delayed and limited, apparently because of lower-than-anticipated demand for electric vehicles.²⁵⁶ In October 2024, Stellantis idled its Belvidere plant with 1,350 employees, which had been a “lightning rod” issue during the 2023 negotiations and strike.²⁵⁷ Stellantis had been making the Jeep Cherokee at the plant, but according to the company, the costs of the transition to and production of electric vehicles were not expected to be covered by their potential sale price.²⁵⁸ Thus, while job protection in the automotive industry is an important element of the collective bargaining parties’ understanding, elevating this concern to a guarantee or even an expectation of securing staffing numbers is an elusive goal.²⁵⁹

251. See Dan O’Brien, *GM Closed the Lordstown Auto Plant. Now Ohio May Force a \$60 Million Repayment.*, PROPUBLICA (June 15, 2020, 5:15 PM), <https://www.propublica.org/article/gm-closed-the-lordstown-auto-plant-now-ohio-may-force-a-60-million-repayment>.

252. See GlobalData, *Car Plants in Europe and North America at Risk of Closure in 2025*, YAHOO! FIN. (Jan. 17, 2025), <https://finance.yahoo.com/news/car-plants-europe-north-america-174016941.html>.

253. See Saha, *supra* note 249.

254. See *id.*

255. See Heather Long, *The UAW Won Even More Than It Might Seem*, WASH. POST (Nov. 1, 2023, 10:26 AM), <https://www.washingtonpost.com/opinions/2023/11/01/uaw-auto-industry-strike-pay-job-security/>.

256. See J. Edward Moreno, *Ford Resumes Work on E.V. Battery Plant in Michigan, at Reduced Scale*, N.Y. TIMES (Nov. 21, 2023), <https://www.nytimes.com/2023/11/21/business/ford-ev-battery-plant-michigan.html>.

257. See Tom Krisher, *Stellantis Idles Illinois Plant, Takes Step Toward Closure*, THE ASSOCIATED PRESS (Feb. 28, 2023), <https://apnews.com/article/stellantis-belvidere-illinois-plant-closure-ft9165948b93af5c9ecae991b0883b3d>.

258. See *id.*

259. See *id.*

CONCLUSION

The entertainment, airline, and automotive industries vary in terms of their competition, history, leverage, membership, and goals.²⁶⁰ What they have in common is an interest in labor and management to retain core workers, grow their industries, and distribute the fruits of their industries' successes with their constituencies.²⁶¹

The three industries have approached job protection in very different ways.²⁶² In the film business, the producers, agents, actors, writers, directors, and technical employees are imbued with the core values of the industry and are devoted to their uniquely attractive industry.²⁶³ They believe in it and live in its ecosystem.²⁶⁴ However, the nature of the industry can no longer support a steadily working labor workforce of its traditional size.²⁶⁵ The rapid advancement of technology, the decline of the studio system, and the rise of independent and international production have all undermined the traditional Hollywood-centric nature of the business.²⁶⁶ Nonetheless, app-based platforms, gaming, and AI itself may provide an unpredictable surge in the demand for new content, with a concomitant demand for new labor skills.²⁶⁷

Creative and expert labor infrastructure is the essential ingredient in the entertainment industry.²⁶⁸ Hollywood itself, developed over the last hundred and thirty years, is an invaluable American resource and a global powerhouse, economically and culturally.²⁶⁹ Joint efforts to maintain a right-sized workforce and to deploy it most effectively are essential to its survival.²⁷⁰

The major airlines' current profit-sharing programs represent the parties' recognition of their interdependency; the success of the carriers

260. See *The Five Forces*, HARV. BUS. SCH., <https://www.isc.hbs.edu/strategy/business-strategy/Pages/the-five-forces.aspx> (last visited Apr. 2, 2025); see Michael E. Porter, *The Competitive Advantage of Nations*, HARV. BUS. REV., <https://hbr.org/1990/03/the-competitive-advantage-of-nations> (last visited Apr. 2, 2025).

261. See *The Five Forces*, *supra* note 260; see Porter, *supra* note 260.

262. See *supra* Parts III-V.

263. See Devin Gordon, *What if A.I. Is Actually Good for Hollywood?*, N.Y. TIMES (Dec. 16, 2024), <https://www.nytimes.com/2024/11/01/magazine/ai-hollywood-movies-cgi.html>.

264. See *id.*

265. See *id.*

266. See *id.*

267. See *id.*

268. See Michael E. Porter, *Clusters and the New Economics of Competition*, HARV. BUS. REV., Nov.-Dec. 1998, at 77, 78.

269. See *id.* (positing that industry clusters are central to driving innovation and economic growth in regions and countries).

270. See *id.*

will redound to the benefit of labor.²⁷¹ The airline industry has successfully established a protected space for its pilots and flight attendants by establishing the types of aircraft that can be flown by its regional airline feeders and by agreeing to certain joint venture and cooperative arrangements with other domestic and international airlines.²⁷² Scope-of-work rules have been a solid foundation for job security and job protection, particularly for pilots.²⁷³

However, while mechanics and fleet service employees are well paid and have good benefits, they have been unable to hold back the inroads of vendors in the higher paid mechanics category or lower paid fleet service category.²⁷⁴ In this regard, competition from nonunion companies and international firms has made it hard for these unions to negotiate job protections.²⁷⁵

The automotive industry is holding its own, even in the face of intense international competition.²⁷⁶ However, employment is always in jeopardy because of that competition.²⁷⁷ Vulnerabilities to business cycles, unexpected economic events (like fuel spikes), and rapid technological change are other factors impacting operations and the workforce.²⁷⁸

271. See Ryan Shank, *American Airlines Profit Sharing: How It Works*, SHAREWILLOW (Jan. 3, 2024), <https://www.sharewillow.com/blog/american-airlines-offers-profit-sharing-to-employees>. The willingness to discuss profit sharing, stock ownership, and variable employment terms, as has occurred in the airline industry, demonstrates employees' interest in investing in their industry to strengthen and expand its reach. See *id.*

272. See Memon & Herstam, *supra* note 179.

273. See *id.*

274. See Josh Rawlins, *How Much Is an Aircraft Mechanic Salary?*, EPIC FLIGHT ACAD., <https://epicflightacademy.com/aircraft-mechanic-salary/> (Mar. 17, 2025); see generally Linfeng Jin et al., *A Panel Study of Outsourced Maintenance Impact on Major U.S. Passenger Airlines' Profitability (1995-2019)*, 31 J. AVIATION/AEROSPACE EDUC. & RSCH. 1, 4 (2022) (explaining that maintenance activities are being outsourced to third parties willing to complete the task for less to reduce overall costs for the airline).

275. See Bret Oestreich, *An Unfortunate History of Sabotaging Workers to Further Their Own Self-Interests—A Review of the Northwest Airlines Strike of 2005*, AIRCRAFT MECHS. FRATERNAL ASS'N (Mar. 18, 2022), https://www.amfanational.org/index.cfm/docs/2021_AMFA_Constitution.pdf?zone=unionactive/view_article.cfm&HomeID=869291.

276. See *The Automotive Industry in 2024: Challenges and Transformations*, GLOB. MKT. INSIGHT (Feb. 3, 2025), <https://www.gminsights.com/blogs/top-challenges-in-the-automotive-industry-pre-COVID>.

277. See *id.*

278. See *id.*; see *Just Transition for Auto Workers: The Answer to Auto's Race to the Bottom*, LAB. NETWORK FOR SUSTAINABILITY, <https://www.labor4sustainability.org/strike/just-transition-for-auto-workers-the-answer-to-autos-race-to-the-bottom/> (last visited Mar. 18, 2025) [hereinafter "Just Transition for Auto Workers"].

In the automotive industry, labor and management have long recognized these intense threats to their interests and have made the necessary accommodations.²⁷⁹ When plants are threatened with downsizing or closure, the unions try to work with management to adjust work rules or compensation provisions to reduce costs so individual plants can be more productive and competitive.²⁸⁰ Such collaboration has increased job security and corporate success.²⁸¹ Flexibility and nimbleness are the key to both.²⁸²

Sharing information and developing trust and respect facilitates the open discussion needed to produce contract provisions that lead to consequences beneficial to both sides.²⁸³ Downside protections are not as easy for unions to achieve as traditional increases in compensation, but they are invaluable strengths when the industry outlook improves.²⁸⁴

The existential threats to so many industries and their employees are only getting more intense and pose challenges both for corporate success and job retention.²⁸⁵ But the flip side of their threatening nature is their promise to create new products and opportunities.²⁸⁶ These threats and promises stem from AI, robotics, autonomous vehicles (trucks/taxis/cars), and the globalization of finance, services, and manufacturing, to name just a few.²⁸⁷

279. See Just Transition for Auto Workers, *supra* note 278.

280. See *id.*; see, e.g., Alan Fisher, ... *And Nationalize Steel?*, WASH. POST (Apr. 21, 1981), <https://www.washingtonpost.com/archive/politics/1981/04/22/and-nationalize-steel/fc5d498e-0fc4-43d0-8c50-f7aa661a08b3/>. The U.S. steel industry's assault by Japanese manufacturers in the 1970s predated the industry becoming an international superpower in the 1980s and 1990s. See *id.* The U.S. Steel industry and the United Steelworkers Union (hereinafter the "USW") agreed to a set of protections, including paid layoffs, training, and interest arbitration, which enabled the industry to survive in the event of diminished production. See *id.*

281. See Just Transition for Auto Workers, *supra* note 278.

282. See *id.*

283. *Steps to Building Trust with Contracts*, ENTY (Feb. 19, 2025), <https://enty.io/blog/steps-to-building-trust-with-contracts>.

284. See Christopher C. Douglas, *The Advantages and Disadvantages of Unionization*, MACKINAC CTR. FOR PUB. POL'Y (Dec. 31, 2011), <https://www.mackinac.org/S2011-07>.

285. See Stephanie F. Melhorn & Makinzi Hoover, *Understanding America's Labor Shortage: The Most Impacted Industries*, U.S. CHAMBER OF COM. (Mar. 21, 2025), <https://www.uschamber.com/workforce/understanding-americas-labor-shortage-the-most-impacted-industries>.

286. See Scott Cook et al., *Turn Generative AI from an Existential Threat into a Competitive Advantage*, HARV. BUS. REV. (Jan.-Feb. 2024), <https://hbr.org/2024/01/turn-generative-ai-from-an-existential-threat-into-a-competitive-advantage>.

287. See Konrad Seifert et al., *Existential Threats Beyond the Bomb: Emerging Disruptive Technologies in the Age of AI*, EUR. LEADERSHIP NETWORK (Nov. 17, 2023), <https://europeanleadershipnetwork.org/commentary/existential-threats-beyond-the-bomb-emerging-disruptive-technologies-in-the-age-of-ai/>.

It must also be noted that the Trump Administration's ever-changing tariff policies have unsettled the three industries discussed here. The levies imposed on parts from Mexico and Canada have raised costs of production for the big three U.S. manufacturers, undermining competitiveness with significant potential for depressing sales. Moreover, the reciprocal tariffs implemented against the United States by China and Europe creates new incentive to manufacture automobiles intended for those foreign markets in Canada and Mexico.²⁸⁸ The entertainment industry continues to lose employment and production to foreign competitors, but has not endorsed Trump's statement about placing a tariff on foreign made films, in substantial part because it is not clear how such a policy would be implemented, particularly with respect to creative contributions which are the result of collaboration with foreign entities.²⁸⁹ The airline industry has also suffered from tariff-related uncertainty undermining consumer confidence in the economy. Further, the ever-changing tariff levels have impaired the industry's ability to generate long-term marketing plans and effectively allocate resources.²⁹⁰

The ways in which these three industries have survived and thrived over time are varied.²⁹¹ They recognize that their workers' needs for security and predictability are essential to their continued success but must accommodate new technology and processes.²⁹² Working together by building a culture of trust and long-term cooperative problem solving is vital.²⁹³ Only with that approach and a willingness to try new terms in their relationship can businesses, industries, and their workers survive

288. See Joshua P Meltzer, *The Impact of US Tariffs on North American Auto Manufacturing and Implications for USCMA*, BROOKINGS (May 13, 2025), <https://www.brookings.edu/articles/the-impact-of-us-tariffs-on-north-american-auto-manufacturing-and-implications-for-usmca/>.

289. See Kinga Jenetics, *Tariffs in the Entertainment Industry: How Trump's Film Industry Measures Could Impact Books and the Global Creator Economy*, PUBLISHDRIVE (May 7, 2025), <https://publishdrive.com/tariffs-in-the-entertainment-industry-how-trumps-film-industry-measures-could-impact-books-and-the-global-creator-economy.html>.

290. See CAPA Staff, *Tariff Turmoil Causes Issues for Carriers Amid Global Uncertainty*, AVIATION WK. (May 16, 2025), <https://aviationweek.com/air-transport/airlines-lessors/tariff-turmoil-causes-issues-carriers-amid-global-uncertainty>.

291. See generally Melhorn & Hoover, *supra* note 285 (outlining the most impacted industries by America's labor shortage).

292. See Araz Zirar et al., *Worker and Workplace Artificial Intelligence (AI) Coexistence: Emerging Themes and Research Agenda*, 124 TECHNOVATION 1, 9 (2023), <https://www.sciencedirect.com/science/article/pii/S0166497223000585>.

293. See *id.* at 12.

and flourish in the face of global competition, technological change, and market uncertainty.²⁹⁴

294. See Aurora Garrido-Moreno et al., *The Key Role of Innovation and Organizational Resilience in Improving Business Performance: A Mixed-Methods Approach*, 77 INT'L J. OF INFO. MGMT. 1, 1 (2024), <https://www.sciencedirect.com/science/article/pii/S0268401224000252#sec0005>.