The National Lawyers Guild
NEWSLETTER of the
Labor and Employment Committee

May 1999

By What Authority? Curbing Corporate Abuse

By what authority does a corporation abuse its workers and the community? Can it spew out toxic substances? Can it continue to ignore worker safety by thwarting the regulatory system? When corporations harm us, can a court declare them ***ultra vires***, beyond their authority, threaten to revoke their charters, put them into *trusteeship*?

Blue Room - Fairmont Hotel - New Orleans

MAY 12, 1999 - 6:45 am

Join the NLG L&EC for breakfast

with

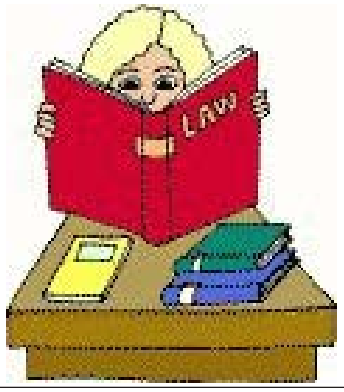
Carl Mayer, Special Counsel to NY AG

and

Judge William Wynn of Birmingham

In New York, the Attorney General sought the corporate ***death penalty*** against the Tobacco Institute, a not-for-profit front group for ***big tobacco***. In Alabama, a judge acting as a private citizen, filed to revoke the charters of Philip Morris Corp., R. J. Reynolds Tobacco Inc., and three other tobacco corporations for violating child abuse laws in Alabama. In California, crime in the corporate suite is being attacked in an action against Unocal citing environmental and labor violations as well as human rights abuses.

These actions are all based upon an ancient, powerful tool known as ***Quo Warranto***: A writ enacted into law in England shortly after France's William of Orange came to power in England. The action, then and now, asks, "By what authority" does an entity engage in some specified enterprise?



Judge William Wynn of Birmingham filed a ***Quo Warranto*** action, having searched for "a legal way to establish health entitlement, for the good of the citizens of Alabama, when neither the governor nor the attorney general would authorize the state to proceed."

Wynn writes: "After failing to find an

"I faintly remembered a law school case where under the topic of 'insurance,' an Ohio attorney general had sued Goodyear Tire for making a warranty that sounded too much like an insurance policy, and Goodyear was not licensed as an insurer. The Ohio attorney general had filed a *Quo Warranto*.

"After a quick perusal of the Law Reporter cites [of the Alabama Code] ..., I came to see that this ***Quo Warranto***, so 'new' to me had once been America's common law, based on the English Statute of 9 Anne, a criminal prosecution used exclusively by English kings to remove those individuals who had abused or misappropriated their office. See Statute of Anne, 9 Ch. 20; Statute of William & Mary, 5 W. & M. Ch. 18.

"The common law ***Quo Warranto*** was adopted by Alabama in 1852, and has been in our Code ever since. So, almost nine hundred years of refinement has amply precedented ***Quo Warranto's*** application to the

"By what authority" is the demand legally sounded and framed in the case of the attorney general, or anybody who protects or benefits the state, if the respondent is found to have by what authority he holds office, engages in a profession or holds a corporate charter to do business. ....

"Examples of the use of ***Quo Warranto*** might include:

"An action against a charitable corporation for selling its assets and facilities to a 'for profit' enterprise, in derogation of a corporate charter 'to serve the general public as a charitable institution.'

"An action against a foreign corporation, licensed (or chartered) to do business in Alabama, where the 'business' done – in any aspect – is violative of an Alabama law; such as, the sale of chewing tobacco, known now to contain carcinogenic and additive nicotine which is [under the Alabama Code] an Assault in the Second Degree: '(6) For a purpose other than lawful medical or therapeutic treatment, he or she intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury to another person by administering to him or her, without his or her consent, a drug, substance or preparation capable of producing the intended harm. ....'

Wynn is invoking section 6-6-590 (a) of the Alabama state corporation code which provides that, "An action may be commenced under this article, in the name of the state, against the offending corporation, on the information of any person for the purpose of vacating the charter or annulling the existence of any corporation" whenever such corporation "violates the provisions of any law, by which such corporation forfeits its charter, by abuse of powers."

c/o Tim Belcher, 31 Carding Machine Road, Bowdoinham, ME 04008 * 207-622-3151 (W) * 207-623-

This may seem an obscure section of Alabama law, but almost every state reserved the power to revoke corporate charters when corporations exceed their authority. From the earliest days of this nation, corporations were regarded as impediments to democracy. Indeed, settlers suffered under the yokes of dictatorial authoritarian royal business corporations such as the Virginia, Massachusetts, and Carolina Colonies and experienced tyrannical global crown corporations such as the East India and Hudson's Bay Co.

One pamphleteer wrote in ***The Alarm*** on October 9, 1763: "It was fully proved ... that the East India Company obtained their exclusive Privilege of Trade ... by Bribery and Corruption. Wonder not then, that Power thus attained, at the Expense of the national commerce should be used to the most tyrannical and cruel Purposes."

According to Richard Grossman, Program on Corporations, Law & Democracy: "For several generations after our nation's creation, voters instructed legislators, judges, attorneys general and governors to limit corporate privilege and keep corporations on a short leash. State officials were delegated no authority to permit – much less assist – corporate harms against life, liberty or property.

"States granted corporate charters sparingly, and defined corporate purposes. The 1901 Alabama Constitution, for example, declared: 'No corporation shall engage in any business other than that expressly authorized in its charter or articles of incorporation.'

"Throughout most of the 19th century, the people's representatives implanted defining language into corporate charters, state corporation laws and state constitutions. They limited corporate capital, property and duration, while holding shareholders liable for corporate debts and harms. Our states ... reserved the right to revoke charters.

"States allowed corporations to buy and sell property, to sue and be sued. But they did not grant corporations fundamental or constitution rights of people, or powers greater than the sovereign people's. The U.S. Supreme Court approved. In an 1839 case affirming Alabama's right to limit the privileges of out-of-state banking corporations doing business in Alabama, the court said, 'It may be safely assumed that a corporation can make no contracts, and do no acts either within or without the state which creates it, except such as are authorized by its charter ....'

"So incorporation was regarded as a privilege, and corporations were chartered to serve the public trust. Incorporators and directors could not use their corporations to assault people's property or violate the law. Corporations could not claim the rights of flesh-and-blood people – such as due process, free speech or the right to participate in electing public officials, writing laws, educating our children and fashioning public policy. ... [O]nly ***people*** had such inalienable rights.

"Why don't more people today know this history? Simply enough, because over the past 120 years giant corporations have used their wealth and power to change the law and rewrite history. ....

"For most of this century, state attorneys general have not used chartering mechanisms and constitutional authority to prevent corporations from causing harms and otherwise exceeding their authority. Instead, they have sought remedies through regulatory laws and agencies. But regulatory laws concede great privilege to today's corporations. And they treat most corporate assaults upon life, liberty and property as legal – and as inevitable.

"Some big business leaders act as if their corporate entities are chartered forever as equals to sovereign nations, having contributed big money to both parties to assure such an outcome. They use their wealth to vie with ordinary citizens for authority to govern. So Judge Wynn is on solid legal ground in demanding that Alabama provide its sovereign people a proper remedy to end corporate usurpation of the people's authority."

Grossman concludes: "As the [Wynn] case moves forward, lawyers for [big tobacco] will holler about their corporations' alleged free speech and other constitutional protections. They will accuse Wynn of jeopardizing the liberty of the American people. They will warn about the economy going down the drain.

"But corporate public relations operatives have always couched their mischief in the language of freedom and liberty for ***people***. They have always threatened economic chaos if they didn't get their way. So we need to remember what our forebears knew well: Corporations are not people. They are our creations – mere concoctions of law and easily replaceable. They have no rights – only the privileges which 'We the people' bestow."

Robert Benson, a Loyola Law School professor in LA, is lead attorney on the National Lawyers Guild's petition to revoke the corporate charter of Unocal. The petition was submitted to former Attorney General Dan Lungren in 1998 and just resubmitted to Attorney General Bill Lockyer.

Benson writes: "'The greatest evil is not done now in sordid dens of crime,' C. S. Lewis wrote in ***The Screwtape Letters***. '[I]t is conceived and ordered (moved, seconded, carried and minuted) in clean, carpeted, warmed and well-lighted offices, by quiet men with white collars and cut fingernails and smooth-shaven cheeks who do not need to raise their voice.'

"Indeed, by all measures crime emanating from corporate suites is much greater than crime in the streets. More than twice as many people die in the United States every year from preventable workplace diseases and injuries than from murder. Ten times greater property losses are inflicted by white collar crime than by theft, robbery and vehicle theft. The health consequences of the industrial poisoning of our air, land and water are incalculable. ...."

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Tosco Explosion: Who's to Blame?

by Fran Schreiberg

"Tosco Report on Fire Blames Human Error - Company says crew didn't seal pipe." So reads the headline a month after a fire killed four workers and seriously injured a fifth at the Tosco Refinery in Martinez, California. Surprised by the company report? Of course not! Most companies blame the worker when so called accidents happen.

As a former Cal/OSHA attorney, I reviewed fatality reports in California for several years in the early 1980's. As I testified at a legislative hearing in April, "I read every fatality report, some 220 to 240 each year, and one thing I noticed was that someone at the site knew, ***ahead of time***, that the so-called accident was going to happen. Either they spoke up and were told to shut up because the company had to get the job done without delay, or they simply said nothing because they knew nothing would come of it. There aren't really any ***accidents*** when you look at it that way."

A recent article in the United Auto Workers On-the-Job Worker Health & Safety (February-March 1999) entitled ***Debunking Behavior Based Safety***, looks at how companies blame workers using an interesting approach to safety and health.

Where Do Injuries and Illnesses Come From? Reputable safety and health theories acknowledge that injuries and illnesses are caused by exposure to hazards. Hazards include any aspect of technology or activity that produces risk.

Eliminating and Controlling Hazards. Reputable safety and health theories also acknowledge that exposure is most effectively reduced through the use of engineering controls such as guards, safety devices, enclosures and ventilation systems. The way to control hazards is to use a ***hierarchy of controls***. The hierarchy sets an order of preference for selecting controls to minimize risk associated with a hazard. In 1950 the National Safety Council began describing a hierarchy of controls and recognized that design, elimination, and engineering controls were more effective in reducing risk than controls such as warnings, training, procedures and personal protective gear. The current standard of care is to control hazards using engineering controls first, and only when that doesn't work, isn't feasible, or does not adequately reduce risk, are lower level controls implemented such as warnings, training, procedures and personal protective equipment. The hierarchy is found in almost every competent manual on health and safety. **But you won't find it in behavior based safety programs!**

The UAW article states, "Such programs [behavior based safety programs] undermine health and safety by excusing management's past shortcomings and directing attention to the workers who in most cases had little or nothing to do with the selection of machinery or processes, methods of safeguarding, or the establishment of procedures.... In such an environment workers know if an injury or illness occurs they will be blamed."

"Behavior based safety programs appeal to many companies because they make health and safety seem simple, do not require management change, focus on workers, and seem cheaper than correcting hazards."

Turning the Hierarchy Upside Down. Behavior based safety programs turn the hierarchy upside down. These programs begin with the identification of "critical worker behaviors" such as whether workers are wearing personal protective equipment and following safety procedures, methods at the bottom of the hierarchy. Next the behavior based programs set up elaborate mechanisms to check, inspect, observe, coach, reward and discipline workers.

"Staying out of the line of fire" replaces effective safeguarding and design. "Proper body position" becomes a replacement for a good ergonomics program and well-designed workstations. Finally, personal protective equipment becomes a substitute for noise control, chemical enclosures and ventilation.

Generating Fear and Driving Problems Underground. A representative of the UAW Health and Safety Department recently met with about 150 workers during after work meetings at a company that uses a well known behavior based safety program as well as safety incentives. Workers were asked, "What can the company do to improve health and safety?" They said, "Stop emphasizing production over health and safety," "Listen to workers," and "When workers raise a health and safety problem – correct it." Sound familiar?

Workers were asked if they were afraid to report injuries? Many said yes. Fifty percent raised their hands saying they would not report injuries. The UAW discovered fear was so widespread that some workers were even afraid to raise their hands as seen in an anonymous survey of the same workers: 70% said: "Yes, They were afraid to report injuries." When asked why, they said, "we know that we will face an inquisition, we would be humiliated, and we might be blamed for the injury."

Health and safety problems that we know about can be difficult to correct. Those that are underground will never be addressed and will certainly result in future injuries and illnesses. That's what I saw when reading the fatality reports across every industry in California over a period of 3 years.

Conclusion. Behavior based safety initiatives drive problems underground, create conflict among workers, generate fear and discourage the reporting of injuries and illnesses. They don't address the causes of injuries and illnesses. By continuing to blame the worker, they produce more injuries and deaths. Help your union fight for safety, stand up and speak out for your rights.

We don't go to work to die. We go to work!

La Lucha Continua - East Coast Farm Workers & Mushroom Workers Successful in Organizing

by Arthur N. Read

The principal organization providing support to farm worker organizing in the northeastern United States for the past 20 years is ***Comite de Apoyo a los Trabajadores Agricolas*** (CATA) or Farmworkers Support Committee. CATA is a farm worker membership organization founded in 1979 and structured as a non-profit.

CATA does not function as a union, but provides support and assistance to the grassroots organizations of workers and their families both in the areas where migrant workers are employed and in their home communities in Puerto Rico and Mexico. These farm worker organizations include work place committees functioning as unions seeking representation for collective bargaining purposes. CATA also works with other community organizations such as tenants committees.

Grassroots unions supported by CATA have been successful in organizing Mexican immigrant and migrant workers over the last several years in the mushroom industry in Pennsylvania.

Nearly half of the nation's mushroom production is in southeastern Pennsylvania. Pennsylvania's mushroom industry includes over 60 companies, has gross sales of $380 million a year, and a workforce of nearly 5,000 employees. See NATIONAL AGRICULTURAL STATISTICAL SERVICE, *Mushrooms*, USDA, Washington, D.C., August 18, 1998. These successful organizing campaigns can be models for other similar horticulture operations, in particular year round greenhouse operations, and even many nursery operations which employ significant sized workforces for at least 10-11 months a year.

The southeastern Pennsylvania mushroom unions, assisted by CATA, are at a critical juncture. The opportunities for victory are great, but their need for active support and assistance from organized labor is also very great.

The Kaolin Workers Union (*Union de Trabajadores de Kaolin*), after a six-year legal struggle, finally forced their employer to respect a Pennsylvania Labor Relations Board (PLRB) certification making them the collective bargaining representative of a unit of more than 250 workers under the Pennsylvania Labor Relations Act (PLRA). Bargaining began in February 1999 for a first contract.

The Workers Committee of Campbell Fresh (*Comite de Trabajadores de Campbell Fresh*) or Campbell Workers Union on March 25, 1999 overwhelmingly won a PLRB union certification election vote in an approximately 250 worker unit after a two and one-half year struggle at what is now Vlasic Foods, Inc. (formerly Campbell Fresh Mushrooms, Inc.). The Campbell Workers Union now faces an industry-wide sponsored challenge to PLRB jurisdiction over organizing of mushroom workers and a refusal by Vlasic to recognize the union, as well as new challenges to the election results.

Another mushroom union overwhelming won a May 1997 election which remains under court appeal, including a challenge to the PLRB's jurisdiction. At the same time, the members who voted for the union were removed from the country by a June 1998 Immigration and Naturalization Service workplace raid shortly after the INS was notified of the existence of a continuing labor dispute at the company.

Although the need for organized labor support for these unions is great, it is also particularly critical to members in those unions and for their long term effectiveness in organizing that their history of local worker control and autonomy not be destroyed in the course of seeking a stronger relationship with the organized labor movement. This is particularly true for the Kaolin Workers Union which received considerable local support from the trade union movement during a month long 1993 strike, but had a counter-productive relationship with an international union that walked away from the organizing campaign in June 1993, failing to keep promises made to the Kaolin Union.

The strength of each of these local unions primarily lies in the workers' relationship with and ownership of their own labor organization. The challenges facing these organizations as they turn to the AFL-CIO for assistance is to retain democratic traditions and active membership participation in decision making while obtaining resources to build upon and solidify their victories. Mushroom workers and other groups connected with CATA, with the support of the Pennsylvania AFL-CIO, are looking for the national AFL-CIO to create a directly chartered union for their organizing and to provide a sufficient level of resources to confront the challenges facing them in the months and years ahead.

Art Read has been a member of the National Lawyers Guild since 1973 and is a member of the NLG L&EC. He was admitted to practice law in 1976. From 1974-1979 he represented unions as well as rank and file workers with Eisner Levy Steel & Bellman PC. For the past 20 years, he has represented migrant and seasonal farmworkers, and from 1982 to the present has been General Counsel of Friends of Farmworkers, Inc. in Pennsylvania

Undocumented Workers are Employees under NLRA

by Wayson Chow, Honolulu, and Mika Spencer, San Diego

An employer who systematically employed "workers with questionable documentation" committed an unfair labor practice by refusing to bargain with its employees' exclusive collective bargaining agent according to the Ninth Circuit. The holding confirmed workers could vote in union elections despite law prohibiting their hiring. The Ninth Circuit affirmed 3-0 the NLRB's rejection of a furniture manufacturer's argument that undocumented workers were not employees within the meaning of the NLRA and the Immigration Reform and Control Act of 1986 (IRCA). See ***NLRB, Carpenters Local Union No. 2236 v. Kolkka***, No. 97-71132 (filed March 17, 1999), ___ Fed.3d (9th

Cir. 1999); 160 LRRM (BNA) 2810; 1999 WL 140735 granting the Board's petition to enforce its cease and desist order.

The Ninth Circuit wrote that undocumented alien workers are "employees within the meaning of the NLRA," as explained by the U.S. Supreme Court in ***Sure-Tan, Inc. v. NLRB***, 467 U.S. 883, 891 (1984). IRCA's enactment did not alter the employee status. The appellate court noted that "[t]he House Judiciary Committee report on IRCA specifically states that IRCA was 'not intended to limit in any way the scope of the term 'employee' under the NLRA, nor the 'rights and protections in Sections 7 and 8 of that Act [cites omitted] regarding the workers' rights to organize, vote and participate in union elections.'"

Thus the undocumented workers were eligible to vote in the representation election as a ruling to the contrary would allow employers to manipulate elections by deciding who could vote and by using threats of deportation to discourage union support. The unit covers 50 workers manufacturing saunas and furniture in Redwood City.

Farmworkers Face Serious Threat of New *Bracero* Program

by Bruce Goldstein

We are witnessing an effort by the agricultural industry to persuade Congress to create a massive indentured servitude program. Several hundred thousand foreign workers would be brought in on temporary work visas to work in seasonal agriculture at low wages, without housing, and under substandard conditions. This will have a devastating impact on labor union organizing. Growers almost passed their guestworker program during 1998 and are lobbying for it again.

On July 23, 1998, the U.S. Senate included in the appropriations bill for the Commerce, Justice, State Departments and the Judiciary a major new temporary foreign agricultural worker program. It would have allowed employers to import "guest workers" for farms, greenhouses, forestry, meat packing, and poultry processing, eventually replacing the *H-2A* guestworker program. Although the House had not voted, the Republican leadership sought to include the guestworker amendment in the budget deal negotiated with President Clinton. The Clinton Administration strongly opposed the guestworker amendment and it was excluded. This will be reintroduced in the 106th Congress at the request of agribusiness, probably by April. The arguments in favor of it contain many myths:

Myth 1: There is an actual/pending ag labor shortage.

Reality: The GAO's December 1997 report said "a farm labor shortage does not now exist and is unlikely in the foreseeable future." It found double-digit unemployment rates in the largest agricultural counties. Prof. David Heer of U.S.C. "expects the steady stream of new workers will cement a buyer's market for farm labor." Investor's Business Daily, *Is the U.S. Importing Poverty?* (9/3/98) p1. The GAO noted a decline in farmworkers' real wages which contradicts labor shortage claims. To attract and retain farmworkers, employers should improve wages and working conditions.

Myth 2: The H-2A guestworker program doesn't work. Few employers use it.

Reality: GAO says the H-2A program is approving 99% of temporary visa applications for agricultural guestworkers, despite a longstanding oversupply of labor. The H-2A (formerly *H-2*) program was streamlined for employers in 1986 and has operated to their advantage: DOL has not adequately implemented the law's modest worker protections and has rejected worker advocates' suggested administrative reforms. The program is spreading to new crops and new states, and is heavily used by tobacco growers.

Myth 3: Employers can't afford to pay workers more.

Reality: Employers in the booming fruit, vegetable and horticultural (*FVH*) sector claim empty pockets but what they really want is Congressionally-controlled wages and working conditions set below market. These FVH agricultural employers can afford to pay a living wage. The value of labor intensive fruit, vegetable and horticulture grew by 52% to $15.1 billion between 1986 and 1995. Fruit and vegetable exports doubled in value between 1989 and 1997, reaching $9 billion and are now at about $10.6 billion. USDA's economists expect the export value of these products to grow. Studies also show that even substantial wage increases for seasonal farmworkers would cause only minor price increases in fruits and vegetables, keeping American consumers happy and the nation internationally competitive.

Myth 4: Guest worker programs are a good solution: helping workers, reducing illegal migration, meeting labor needs.

Reality: For several reasons, the U.S. Commission on Immigration Reform (Sept. 1997) said a new guestworker program would be a "grievous mistake." 1) Guestworker programs are not compatible with America's democratic values because the temporary-visa workers lack the right to switch jobs or demand higher wages and better working conditions, and don't have political representation in this country. 2) Guestworker programs actually *increase* illegal migration due to visa over stays and establishment of new migration networks. 3) Such programs distort private markets by adding powerless workers to an already poverty-stricken migrant labor force. Even the Commission on Agricultural Workers (1992), chaired by the head of the California Farm Bureau, recommended against any new guestworker program, and urged modernization of labor practices to attract and retain productive workers.

Myth 5: The Senate's new guestworker proposal would improve American farmworkers' economic plight and prevent exploitation of foreign guestworkers.

Reality: Not true. The program and similar proposals made by the growers during the past few years would:

1) almost overnight allow hundreds of thousands of guestworkers into American agriculture, bypassing America's farmworkers, by eliminating employers' obligation to privately recruit U.S. workers or use the interstate Job Service and by establishing a new government recruiting agency called a "job registry";

2) authorize wage rates and working conditions that are *lower* than employment terms required by current H-2A law; *less*

continued in column 2 on page 11

Cuba 1999- Compelling Contradictions

by Dean Hubbard

Sunday January 10, 1999 -- 9:30 p.m. (Havana time). En route from Cancún to Havana. Much nicer plane than the last time I flew to Havana. A real jet with overhead compartments, air and a closed cockpit door. Sat next to an American who educated me about some of the major Mayan ruins in southern Mexico, including the huge city of Palenque in Chiapas. Supposedly Cortez came 5,000 yards from the place but never found it. I commented it's lucky for the inhabitants and for posterity that he didn't. *Es muy importante aprender la historia de una lugar cuando lo visita.* How many American tourists at Fat Tuesday's in Cancún have any inkling that the indigenous people of this area were continually at war with their colonial occupiers from the 1500s until the 1930s? How many know that not far away in Chiapas they still are?

Monday January 11. Met Nelson Cabrera, assigned driver for the Guild delegation from the *Central Trabajadores de Cuba* (CTC) the Cuban Workers' Federation, at Las Olas Motel in Havana. This hotel, run by the CTC, is just for foreign trade unionists. Spaniards and Argentineans arehere now. The sea is rough today. Cool and windy. Nelson said it's a cold front.

Tuesday January 12. Day 1 of conference. Over 400 delegates from all over the Americas and Spain. *PR!* is the reaction here to the U.S. news that it will slightly relax a few trade restrictions, instead of appointing a bipartisan commission to consider ending the blockade as was widely anticipated. It's seen as an effort to take international pressure off the U.S. without actually changing policy. Speakers point out that the principal change — allowing Americans to send money to Cubans not connected to the government — is just a continuation of the policy of undermining the Cuban revolution.

After the day's formal proceedings, a big international group goes to *La Bodeguita del Medio* (Hemingway's old haunt) for dinner. Great festive spirit. The walls are scrawled with years of messages and names of thousands of famous, infamous and anonymous visitors from all over the world. We are serenaded by musicians for most of the meal, dance, and enjoye big platters of *moros y cristianos* (black beans and white rice) and *platanos con mojo* (plantains with garlic). Oh yes. We try the *bodeguitas* (rum with sugar and crushed mint). *Muchas bodeguitas.*

Miercoles 13 Enero. Much warmer today. Beautiful blue sky and the sea is calm. During one morning session , a Cuban speaker explains the workings of the Cuban labor relations system (which is codified rather than collectively bargained): A tripartite panel reviews labor disputes at the plant level. The panel includes one union representative (every shop is union of course), one *administration* representative (management), and one representative elected bythe workers. If an aggrieved worker is unhappy with the plant level resolution, she can go directly to court represented by the CTC. If not satisfied with the court resolution, she can appeal directly to Cuba's highest court (Supreme Court) with CTC representation. The whole process supposedly takes several weeks, as opposed to years here.

With two other members of the Guild delegation, I played hooky before lunch. Took a taxi to the University, explored, and had a real Havana street experience on the walk to the Cuban Jurist's Society for lunch. Saw no other *Norteamericanos*, but a lot of beautiful old architecture, people dealing with mass transit, pre-revolutionary statue covered with graffiti, walked through a hospital grounds at lunch time, and talked to several people along the way. *Muy interesante*! At the University we saw notices for scientific conferences which included several North American scientists. A good sign.

That evening the CTC arranged for several of us to attend a *jugo de bésbol*. No tickets were sold at the *entrada*. Instead, we were led to an office in the bowels of the stadium where we paid $3 each for tickets that were carefully taken out of a little safe. Got the best seats in the house, in the 2nd and 3rd rows on the first base line. Cubans apparently pay 3 pesos, but, by North American standards, we still got an excellent deal. A portly gentleman with a big thermos served Cuban coffee in thimble-sized cups made of folded paper, and an old woman chanting *monias* sold peanuts wrapped in skinny paper cones. We got seven cones of peanuts for a dollar, and probably paid too much. A group of four sitting in front of us drank rum and little thimbles of coffee and argued passionately about baseball the whole game (including whether the Cubans would match up well with the Orioles in the upcoming series), meanwhile living and dying with each turn of fortune for the home team *Havana Industriale*. The game itself was great, a real cliffhanger!

Jueves 14 Enero. Heard an excellent talk today by a professor who was Cuba's negotiator on the International Labor Organization's recently adopted *social clause*. She did an excellent, balanced job of articulating nuances of Cuba's (and the developing world's) skepticism over whether U.S. (and the developed world's) leadership of the struggle to put teeth in the ILO social clause is really more about workers' rights in the developing world than about protectionism. From the perception of a people who have been in the stranglehold of the U.S. blockade for as long as most of them have been alive, the healthy skepticism seems justifiable.

I have to admit I felt some of the anti-North American rhetoric by other speakers (and not just Cubans) became a bit repetitive and overstated, particularly this final afternoon. For example, a speaker from Cuba's ministry of foreign affairs, in a nearly two hour speech completely unrelated to labor law, kept referring to the blockade as *genocide*. Economic warfare against a civilian population it is. Certainly a violation of international law and a crime against the Cuban people. The downright daily hardship our government's policy has caused is just unbelievable. How the revolution has survived over thirty years is in incredible testament to the Cuban people's resiliency and inventiveness. But the last I heard genocide involves the deliberate extermination of an entire race of people.

On the other hand, the position of the U.S. Interests Section that the *totalitarian police state* in Cuba has prevented the formation of a civil society and therefore, the U.S. must fund *opposition* (violent counterrevolutionary) groups in order to create one is even more absurd. Since when did it become the responsibility of the **U.S.** to create **Cuban civil society**, especially when the blockade and recurring terror attacks sponsored by the U.S. are the cause of what restrictions there are? If the shoe were on the other foot, we would no doubt consider even greater restrictions on civil liberties a matter of survival. (Remember the Japanese internment camps?) The self-righteous hypocrisy of our government is appalling and embarrassing. Ending the blockade would seem to be a far more direct path to ending the conditions that lead to a controlled society.

I walked over to the farewell dinner along the *Malecón* with a Cuban who is in public relations with the CTC. She spoke English well and expressed some sympathy for my frustration as one who opposes our country's policy but felt at times as if I was considered one of *them*. I asked if she worried about what would happen to the revolution after Fidel. She said she worried; that she didn't believe in God, but still hoped for good. I commented on the absence of *jinoteras*. (Fidel gave a speech a week before our conference proposing strict new penalties for prostitution. Even though the proposed legislation must be considered and passed by the National Assembly before becoming law, streets such as the *Malecón*, which had been teeming with young women plying the tourist trade on my visit last May, were now void of any visible signs of prostitution.) She said, "Yes, the people really listen to Fidel. He speaks for the country." I asked if she worries about what will happen to the revolution when the blockade ends: People's desire for dollars is great now under a dual economy in which tourist dollars get them things, such as dinners in restaurants and dancing to live music,that other Cubans, unless they succumb to *jinoterismo* (hustling tourists for dollars, whether through prostitution or good old-fashioned street scams) just can't afford. It seems an inevitable flood of post-blockade dollars would swamp the country with materialism — and not the dialectic sort. She acknowledged the challenge, but seemed confident the revolutionary state would survive. After 39 years, she said, people are accustomed to the benefits of socialism, like having the state provide their health care, and Cuba's pre-revolutionary experience with capitalism was not a positive one, to say the least.

Another Cuban approached me at the farewell dinner and told me in English he was worried that all the verbal attacks on the *Norteamericanos* could end up alienating those few of us who are sympathetic and supportive of the revolution. I told him I appreciated his sensitivity, but that, in my case, the experience of being one of a handful of people whose country is being attacked (verbally in my case) by a much larger group made me more aware of how much more difficult it must be to be a citizen of a small, impoverished country like Cuba under direct daily attack by the most powerful nation in the world for nearly forty years!

Viernes 15 Enero. Last full day in Cuba. Our delegation was taken on a visit to a cigar factory by a CTC representative for that industry. We were supposed to get a tour, but the workers were on a one month vacation after meeting their production goal for the year. We decided at least to go to the factory's store which was open.

On the way to the factory we experienced a small example of the practical perseverance of the Cuban people in the face of the daily hardships imposed by the *bloqueo*. One of the CTC cars in our little two car caravan broke down for want of a functioning fuel pump (as it had, I learned, after our dinner at *La Bodeguita* on Tuesday night and again Thursday night after the farewell dinner). We just piled as many people into the other car as we could, and one of the CTC staff and I walked back to the CTC and had a nice conversation while we waited for Nelson to drop the others off and return to pick us up. Meanwhile, the driver of the disabled car jury-rigged it to run yet another day without a fully-functioning fuel pump. Nobody panicked; this was just another in a series of daily obstacles met with good humor and aplomb.

The Cuban people are so full of contradictions. So tough but so friendly and *sentimental* when you scratch the surface. So obsessed with rules on the one hand and sensual and downright hedonistic on the other. You have to love it.

After the visit to the tobacco factory, we went to *José Martí* monument and museum in the *Plaza de la Revolución*. Took an elevator to the top of the several hundred foot tower, and enjoyed a birds-eye view of all Havana. Havana has a lot of air pollution. Right now they're concentrating on development, rebuilding the infrastructure after the disaster of the *special period* following the collapse of the Berlin Wall. The downside is that the environment becomes a lower priority and affects society in terms of health problems. Speaking of air pollution, for a society that does such a good job of providing health care, the ubiquity of cigarettes (and, of course, cigars) struck me as ironic. That seems to be one thing even Fidel can't change. He quit smoking, but nobody else seems to have followed suit.

After *Plaza de la Revolución*, we headed out to *Playas del Este*, the beach resort just east of Havana. Even though it was cloudy and rained a little, we soaked up the laid back socialist/hedonist ambience: thatched palm cabanas, strolling musicians, jugglers, a guy with his entire head covered with earrings, beautiful shells, turquoise water, *cervezas*, and laughing (with a little sadness) about a portly old East European gentleman giving us the *full Monty* as he struggled to change into his bathing suit. Somehow a fitting end to this week of immersion in the contradictions that are Cuba today.

Dean Hubbard is a member of the National Lawyers Guild, a labor and employment lawyer and partner with Eisner & Hubbard in New York City. In January, he led a Guild delegation to the Third Inter-American Conference on Labor Law and Social Security in Havana, Cuba. The conference focused on the impact of the globalization of the economy on labor law and workers' rights. These excerpts from Dean's journal are impressions of Cuba, the only remaining socialist state in the hemisphere, as it faces the new millennium. See also the Fall 1998 newsletter.

Whistleblower Protection Available in Environmental Laws

by Richard R. Renner

Seven federal environmental laws contain employee whistleblower protections. These laws offer a discharged worker a full array of remedies through an administrative process. However, six of these laws require the employee to file a written charge within 30 days of the unlawful discrimination! This article seeks to inform employment lawyers about the basics of the Department of Labor's complaint procedure.

Source Of The Law. The Code of Federal Regulations (CFR) contains a concise description of the federal procedure. See 29 CFR Part 24. The seven environmental laws are the Water Pollution Control Act (WPCA aka Clear Water Act) at 33 U.S.C. 1367; Safe Drinking Water Act (SDWA) at 42 U.S.C. 300j-9(i); Toxic Substances Control Act (TSCA) at 15 U.S.C. 2622; Solid Waste Disposal Act (SWDA aka RCRA) at 42 U.S.C. 6971; Clear Air Act at 42 U.S.C. 7622; Energy Reorganization Act of 1974 (ERA) which includes atomic energy at 42 U.S.C. 5851; and the Comprehensive Environ-mental Response, Compensation and Liability Act of 1980 (CERCLA aka Superfund Law) at 42 U.S.C. § 9610. The Surface Transportation Act (STA) at 49 USC 31105 provides a simplified and effective remedy for truck drivers fired for insisting on following safety regulations. It is enforced through separate regulations at 29 CFR Part 1978.

Congress passed the first employee protection, the WPCA, in 1972, because

> "the best source of information about what a company is actually doing or not doing is often its own employees, and this amendment would ensure that an employee could provide such information without losing his job or otherwise suffering economically from retribution from the polluter."

Sixth Circuit Justice George Edwards Jr. wrote that Congress' intent in passing 42 U.S.C. 5851, the Energy Reorganization Act, was to "encourage employees" to report "unsafe practices in one of the most dangerous technologies mankind has ever invented." ***Rose v. Secretary of Department of Labor*** (6th Cir. 1986) 800 F.2d 563, 565 (J. Edwards concurring). He explains:

> "If employees are coerced and intimidated into remaining silent when they should speak out, the result can be catastrophic. Recent events here and around the world underscore the realization that such complicated and dangerous technology can never be safe without consent human vigilance. The employee protection provision involved in this case thus serves the dual function of protecting both employees and the public from dangerous radioactive substances."

Because the federal whistleblower protection found in these environmental laws is modeled after the Nation Labor Relations Act (NLRA) 29 U.S.C. 158(a)(4) and the 1969 Federal Mine Safety Act (FMSA) 30 U.S.C. 820(b), the Secretary of Labor and the courts have used mine safety and NLRA precedent tointerpret these other federal laws. See, for example, ***DeFord v.Secretary of Labor*** (6th Cir. 1983) 700 F.2d 281, 286. The remedial purpose and resulting broad interpretation of employee protection provisions under the NLRA are described in ***NLRB v. Scrivener*** (1972) 405 US 117, 121-26.

The federal environmental laws protect workers who have begun or are about to begin a proceeding for enforcement of any requirement imposed under the law or under an applicable implementation plan. The WPCA also protects employees who have testified or are about to testify in a proceeding resulting from administration or enforcement of the law.

The Secretary of Labor and the courts, in giving broad scope to these remedial provisions, have not required that the workers specifically understand the nature of proceedings that might result from their whistleblowing.

The Secretary of Labor has recognized that protected activity may be associated with "impulsive behavior." Employees cannot be disciplined for protected activity so long as it "is lawful and the character of the conduct is not indefensible in its context." A key inquiry is whether the employee has upset the balance that must be maintained between protected activity and work place discipline. ***Kenneway v. Matlack, Inc.*** No. 88-STA-20, D&O of SOL, at 6-7 (6-15-89).

Protected activity includes reporting violations directly to a government agency, including state or local governments. Merely threatening to disclose violations to the government can create protection. Authority is split on whether reporting violations to the employer is protected. While the Secretary of Labor has held that such internal complaints are protected, the Fifth Circuit has rejected this position. This writer has found no Sixth Circuit decision on point.

One case found a report to a union safety committee created protection. ***Cotter v. Consolidated Edison Co. of NY*** (7-7-81), No 81-ERA-6, affirmed ***Consolidated Edison Co. of NY v. Donovan*** (2d Cir. 1982) 673 F.2d 61. Making reports to an environmental activist or the media may also be considered protected.

The broad scope of these environmental laws, and the judicial doctrines following the remedial purpose, make this area of protection an open field for creative pleading and advocacy. Indeed, practitioners upset with the lax enforcement of Section 11(C) of the Occupational Safety and Health Act may look to these federal environmental laws to protect workers who oppose unlawful handling of hazardous materials.

How To File A Complaint. The complaint must be filed in writing. 29 CFR 24.3(c) states the form of the complaint as follows: No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violation. Careful drafters will pay attention to identification of the responsible employer and the names of individuals who have participated in the retaliation.

An attorney or union representative may file the complaint on behalf of the employee, so long as it is with the employer's permission. 29 CFR 24.3(a).

The 30 day time limit may be met by the postmark of the complaint or by fax transmission.In counting the 30 day limit, we do not get the benefit of Civil Rule 6(A). Thus, if the 30th day falls on a Sunday, the complaint must be postmarked or filed by that Sunday. A complaint filed on Monday will be dismissed as untimely.

Under the Energy Reorganization Act and the Surface Transportation Act, nuclear whistleblowers and truck drivers may file complaints within 180 days. Some equitable doctrines of tolling may also apply.

The complaint may be filed with any office of the Occupational Safety and Health Administration of the U.S. Department of Labor. My impression is that they prefer to receive complaints at the local office. You can find the address and fax number for the local OSHA office at http://www.osha.gov/oshdir/. The main office is at 200 Constitution Ave NW, Room N3647, Washington, DC 20210.

Proceedings. DOL whistleblower proceedings are like a combination of unemployment and EEOC proceedings in which discovery is available before the hearing. OSHA makes the initial investigation and decision. They interview witnesses on both sides and prompt the parties to discuss settlement similar to EEOC or NLRB proceedings. I expect that the claimant will normally lose credibility disputes at this level, just like unemployment hearings. The initial decision is made in a couple of months, but can stretch to the better part of a year or more.

Once OSHA issues a decision, the loser must file a telegram request for a hearing within five (5) days of receiving the decision. 29 CFR 24.4(d)(2). Copies must be telegrammed or faxed to the Chief Administrative Law Judge and the Administrator and must be sent (U.S. mail is okay) to the respondent. Upon filing the request for a hearing, discovery commences. See 29 CFR 18.06 to 18.24.

Complainants have a right to a speedy hearing, meaning ninety (90) days from filing the complaint. 29 CFR 24.6(b)(1). They can waive this right in order to complete discovery, for example. The respondent does not have standing to object to or insist upon a continuance. ***Holub v. H. Nash Babcock, Babcock & King, Inc.*** 93-ERA-25, ALJ Order Denying Respondent's Motion for an Immediate Hearing (June 24, 1993).

After the hearing, parties may appeal to an Administrative Review Board (ARB), a new three member panel appointed by the Secretary of Labor (SOL). This new panel replaces the SOL's role under the regulations.

Either party may appeal to the U.S. Court of Appeals from the final administrative decision.

Remedies include reinstatement, back pay and benefits, lost overtime, and other actual damages to make the victim whole. "Front pay" may be negotiated in place of reinstatement, but reinstatement must be ordered upon a finding of wrongful discharge. Additionally, compensatory damages are available for mental anguish, pain and suffering, harassment, and lost future earnings. ***English v. Whitfield*** 868 F.2d 957 (4th Cir. 1988) (compensation for harassment). Exemplary damages are available under the Safe Drinking Water Act (SDWA), 42 U.S.C. 300j-9(i)(2)(B)(ii), and the Toxic Substances Control Act (TSCA), 15 U.S.C. 2622(b)(2)(B). Complainants have a duty to mitigate damages by looking for substitute employment, for example.

Getting More Information. The best source of information is The Whistleblower Litigation Handbook by Stephen M. Kohn, available from the National Whistleblower Center for $125, 3238 P Street NW, Washington, DC 20007. Voicemail is 202-342-1902 and you can reach Kohn at 202-342-6980 or fax 202-342-6984. The National Whistleblower Center also maintains a website at www.whistleblowers.org and has a referral service. Researchers can access OALJ decisions in an excellent database at http://204.245.136.2/library.htm.

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NLG L&EC Local Action

Bay Area. Fran Schreiberg reports that members of the Bay Area L&EC are involved in developing a San Francisco Living Wage ordinance through the Drafting Committee and Outreach Committee. A Guild labor lawyer wrote an 18 page analysis of the draft legislation which helped broaden the perspective of the City Attorney working on the ordinance. **Riva Enteen,** L&EC member and chapter Program Director, has been integrally involved in organizing and lobbying. Legislation sponsor, Tom Ammiano, President of the SF Board of Supervisors, delayed introduction of the ordinance in order to guarantee that the new legal analysis be fully considered. For a copy of the analysis or more information on the status of the ordinance, call Riva at 415-285-1055.

The Bay Area L&EC also supported the Asian Law Caucus in their lawsuit against SF restaurant Ton Kiang for failing to pay minimum wage, overtime and for retaliation by discharging workers who filed complaints with the Labor Commissioner in California. We staffed lively informational pickets on two evenings. Thanks to **Tho Vinh Banh, Riva Enteen, Virginia Jones, Joyce Jordan, Terry Koch, Karl Kramer, Fran Schreiberg, Marci Seville, and Steve Weiss.**

New York. Brent Garren reports in December the NY L&EC sponsored a talk on *The Global Economic Crisis and Labor's Response* with nearly 40 people in attendance. Practitioners and students from Rutgers, CUNY and NYU attended. Mark Levinson, UNITE chief economist, presented an overview of the current economic situation focusing on Asia. He noted the root of the problem is overproduction promoted by IMF / World Bank policies which emphasize export-led growth and which undermine domestic labor and social protections. Mark Barenberg, Columbia law professor, outlined various legal tactics to assert labor rights, including traditional labor law, immigration law, and patriarchal property law. He also noted contexts in which labor issues may be addressed, including national courts, multi-lateral trade agreements such as NAFTA, and the WTO and other international bodies such as the International Labor Organization of the UN and the EU. Both speakers emphasized the need to improve legal protection for workers both in the United States and in our trading partners' countries. After the talk students had an opportunity to schmooze with lawyers from the NLRB, DC 37, NELP, Eisner & Hubbard, Vladeck Waldman Elias & Engelhardt, and the Court of International Trade. Special thanks to **Philip and Michelle** from NYU, **Steve and Eliot** from Rutgers, and **Ursula** from CUNY for their support and to **Judith** for coming despite her four memos due!

Sacramento. Jason Rabinowitz reports Sacramento is working on two projects. First, we are working with labor and community organizations to begin a campaign for a living wage ordinance in Sacramento. Second, we are organizing legal support for the Sacramentans for International Labor Rights, a group that does action and education around the sale of clothes and shoes produced with sweatshop labor. The group has been repeatedly thrown out of area malls for handing out leaflets, and on at least one occasion merely for walking around the mall wearing t-shirts with anti-Nike and anti-Gap messages. We formed a task force to defend the group's right to free speech and plan an action on May Day.

San Diego. Mika Spencer reports that plans for the San Diego Workers Clinic are moving ahead quickly. The project is a joint effort of NLG L&EC, the NLG San Diego chapter, the San Diego-Imperial Central Labor Council and NELP, and is being led by the NLG and the Labor Council. The clinic is the first formal program between the NLG and the Council, and marks a solidification of our relationships over past several years. NLG members participated in various Council events, as legal observers at various strikes and in training programs. This will be a drop-in employment law clinic, focusing initially on unemployment insurance appeals and simple wage and hour claims. At least one supervising attorney will be present to cover volunteer law students and legal workers who will conduct initial intake. Students and legal workers will also represent workers in administrative hearings with supervision. Students will be trained (minimum of 4 hours) on substantive law, client representation and ethics, and administrative procedure. Two ALJs and a Labor Commissioner attorney have volunteered their time to assist in educational presentations. One grant proposal has already passed a first hurdle and two others are in the works. Funds will be used for malpractice insurance as well as miscellaneous overhead.

Students Nationwide Rise in Protest against Sweatshops

by Derek B. Dorn

A burst of campus activism is sweeping the nation, and college students are reminding Americans that abuses of workers in sweatshops didn't end with the corporate window dressing that followed the 1996 expose of Kathie Lee Gifford's apparel line.

Students involved in the campaign, which is dubbed the ***Campaign for a Sweatfree Campus***, are demanding their universities adopt codes of conduct that require safe and fair conditions for workers who manufacture college apparel. The college apparel industry takes in $2.4 billion each year, and royalties pump millions of dollars into university coffers. For instance, in 1998 the University of Michigan received $5.7 million from royalties on baseball caps, sweatshirts, and other garments that bear the school's name.

But the apparel companies' and universities' profit comes at the expense of workers. Sweatshop abuses have been documented at numerous plants in which this apparel is made. A report on one such factory by UNITE! (Union of Needletrades, Industrial, and Textile Employees) is instructive. At BJ&B, a plant outside of Santo Domingo in the Dominican town of Villa Altagracia, 2,050 workers make baseball caps bearing the names of American universities. The hats retail for $19.95 in college bookstores and earn universities an average royalty of $1.50 each. But the workers, who are predominately teenage girls and young women, are paid only eight cents for each hat they produce. They are illegally forced to work overtime, and are subject to

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mass terminations used to evade seniority benefits mandated by Dominican law. Women at BJ&B are paid lower wages than their male counterparts. Employees report rampant physical and verbal abuse, and they have no right to organize and bargain collectively.

In May 1998, two former employees of BJ&B came to America to tell their stories. At Brown, Cornell, Duke, Georgetown, Harvard and Rutgers, they testified about the abuse. For many students who knew nothing of the anti-sweatshop movement, or who thought there was no way they could do something about it, this presented a real opportunity to fight for social and economic justice.

The issue resonated well with students. Campus labor groups that had been dormant for years were revived. New ones formed. And the groups didn't organize just to agitate. They proposed a solution -- a code of conduct that would enumerate certain working conditions as a prerequisite to gaining the university's license.

As stakeholders in their universities, students are in a unique position to make such demands. Laura McSpeddon, a junior at Georgetown University explains, "The idea behind this campaign is simple: our universities' logos are featured on clothing. Our universities often earn a significant amount of money by licensing ... and selling these clothes in our college bookstores. Thus, our universities are morally responsible for ensuring that clothes with our logo are not made under abusive and exploitative conditions."

Within a few months, the movement reached all types of campuses nationwide -- large state universities with long traditions of campus activism like Wisconsin and Berkeley, as well as more conservative schools that haven't been in the spotlight for activism like Georgia State and Purdue. Elite private colleges like Brown and Princeton are onboard, as are small liberal arts schools like Wartberg and Earlham. By April 1999, there were groups at over 90 universities, including all schools in the Big Ten Conference, the Ivy League, and the University of California system. Students coordinate efforts under an umbrella organization called ***United Students Against Sweatshops***.

When USAS chapters at Georgetown, Duke, Wisconsin and Michigan staged sit-in's in the offices of their university president, the mainstream media began to catch on. In a two week period in March, the movement was covered in Time, Newsweek, and U.S. News and World Report. Two dozen members of Congress signed a letter of support for strong and effective codes of conduct. Charles Kernaghan of the National Labor Committee, who was central in exposing the conditions at the Kathie Lee Gifford line, calls the sweatfree movement "one of the most exciting developments in many years in the struggle to defend human and worker rights."

For more information on the ***Campaign for a Sweatfree Campus***, contact gcough@uniteunion.org .

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than what competition among law-abiding employers in the private marketplace would set; **and *even less than required by state and federal minimum wage laws, which would be superseded by this bill***; astonishingly, no individual worker would be guaranteed any minimum rate of pay per hour. In the rare case where a minimum hourly wage existed, employers could offer any piece-rate wage as long as the workforce *taken as a group* on average earns that minimum. Some workers could be paid $2.00 per hour!

3) legalize a series of abusive employment practices -- some of which are currently illegal -- such as *group wage rates*, *task rates*, and unfair productivity standards;

4) remove several longstanding obligations in the H-2A guestworker program, some of which existed even under the notoriously abusive *bracero* program (1942-1964). Under the H-2A program, an agricultural employer anticipating a labor shortage may apply to the Department of Labor for a certification that (1) there will be a shortage of qualified workers at the place and time needed, and (2) the wages and working conditions offered would not *adversely affect* the labor standards of similarly employed U.S. workers. After a period of recruitment in the U.S., a shortage of workers may be filled by temporary foreign workers on temporary H-2A visas. The Senate legislation, if enacted, would

a) end the H-2A employers' obligation to meet prevailing (non-wage) practices;

b) end the obligation to provide housing to workers, and substitute a housing *allowance* which is inadequate due to a severe shortage of farmworker housing;

c) substantially reduce the Secretary of Labor's labor law enforcement authority;

d) end the 55-year old minimum-work guarantee (known as the *three-fourths guarantee*, which will (i) deny workers during recruitment basic information about the season's length and their earnings potential, and (ii) encourage over-recruitment, which in turn will enable employers to drive down wages and deter workers' assertion of rights;

e) end the obligation to reimburse workers for costs of transportation to and from the place of employment from their homelands; and

f) force U.S. taxpayers to pay the entire cost of this program (without user fees), while exempting employers from employment taxes on guestworkers' wages.

Congress should 1) reject the selfish demands of the fruit and vegetable industry for an exploitative guestworker program, 2) promote improvements in wages and working conditions for farmworkers, most of whom live below the poverty line, 3) end discrimination against agricultural workers in various labor laws, and 4) support greater labor law enforcement to protect farmworkers from abuse and employers from unfair competition by unscrupulous companies.

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