



## Workers' Rights after 9-11: Who's Paying for Patriotism?

by Fran Schreiber

This year's breakfast program at the AFL-CIO Lawyers' Coordinating Committee meeting will feature speakers on post September 11 labor issues. **James Fennerty**, President of the Chicago Chapter of the NLG, will discuss the USA Patriot Act and the Bush Administration's *war at home*: their potential impact on unions and their devastating impact on our civil liberties, particularly for immigrants of color. **Michael Letwin**, founder of Labor Against the War, and President of UAW Local 2325, will argue why it is in labor's interest to question the Bush Administration's rapidly-widening war from a foreign policy and international human rights perspective. And **Gordon Lafer**, Professor of Labor Studies at the University of Oregon and on the National Coordinating Committee of Scholars, Artists and Writers for Social Justice, will address how the *right* is using patriotism generated by the September 11 attacks to advance its domestic agenda and to derail labor's; particularly how labor is being branded unpatriotic for striking or planning to strike, for insisting on decent wage and benefit packages, etc., and how Bush Administration policies are used to argue there is no money for labor issues, but only money for the war on terrorism effort.

**The USA Patriot Act - passed in October, 2001, may significantly impact our unions' abilities to organize and collectively bargain.** Questions raised for trade unionists by the USA Patriot Act include, among others:

- 1) Will militant workplace or community actions in support of organizing and collective bargaining demands trigger the low-threshold guy wire now termed *domestic terrorism*?
- 2) Will labor-related federal grand jury representation work become more complex with increasing exposure to our union officials?
- 3) How will unions continue to organize industries with sizeable numbers of undocumented workers in an overall government-promoted discriminatory atmosphere? The decision in *Hoffman Plastic Compounds Inc v NLRB* (March 27, 2002) 535 U.S. \_\_\_\_ adds significantly to this issue.
- 4) How will trade union international solidarity work be affected by the Act's political restrictions on a non-citizen's entry into the U.S.? For example, will the law be applied so broadly as to interfere with entry by a person involved with legitimate trade

union activity? Will the law view a speech containing any criticism of the government as something that "undermines" its efforts to "reduce or eliminate terrorist activities"?

**Lee Adler, at Cornell's Industrial Relations School, is researching similar questions and seeking concrete examples.** He wants to collect information related to problems faced by unions in the aftermath of September 11. Contact Lee at 607-255-7992 or lha1@cornell.edu (*begins with the letter L and ends with the number 1*).

**The USA Patriot Act may pose serious criminal law problems, but equally important are the economic problems flowing from September 11.**

Both before and after passage of the USA Patriot Act, the tendrils of September 11 impacted the US trade union movement. Union members in industries significantly impacted by September 11 - travel and entertainment - lost their jobs, and unions such as HERE laid off staff due to membership loss. In January, 2002, President Bush issued a directive that essentially disallowed union representation in certain governmental departments, including the Justice Department, asserting that "dual loyalty" of workers to their government and their unions was not tenable in times of national emergency.

**The image of the US labor movement is also under attack.** Public employees were attacked in Minnesota and New Jersey as being "unpatriotic" and "greedy" following job actions in the early and late fall of 2001. And continuing to this day, when the brave actions of the police and firefighters are applauded by former NY Mayor Guiliani and others, the sacrifices of rank-and-file construction union members, who volunteered in the rescue and clean-up at the World Trade Centers and elsewhere, are rarely mentioned. The expertise and financial support of numerous construction and other trade unions - aiding in those activities - is also ignored. **Labor is attacked or ignored; our contributions are marginalized.**

**These attacks on labor are significant as we move towards the November elections. The impact of Bush's domestic and foreign policies on American workers must be clear to our members in order for them to understand the distinction between patriotism and politics.**

Join us for breakfast

**Tuesday - April 30, 2002 - 7 a.m. - 8:30 a.m.**

Sheraton Chicago - Chicago 10 Room (ballroom level)

## Chapter Reports

### New York - submitted by Ursula Levett

It should come as no surprise that the NYC L&EC has focused on the impact of the WTC disaster. In the fall we organized a community education event to get the word out about the range of benefits available to displaced workers. Since 9-11 New York has lost close to 100,000 jobs; that's a lot even for a big city like ours. Although charities collected millions of dollars to aid the victims, many workers displaced through ripple effects of the crisis (e.g. working in tourism) face a hard time accessing any of this assistance.

**Our April 22 event at NY Law School** addresses another alarming issue: the health of those working in the WTC area. In spite of earlier reports by the EPA to the contrary, it is now widely recognized that the air is not safe at the site, that a simple wet cleaning job is not enough to eliminate dust that contains asbestos, fiberglass, pcbs and dioxins, and that the area should be designated a Superfund site. We are sponsoring a forum challenging OSHA's failure to enforce the law and to help unions do more to protect union members at the site. Speakers include:

**Kevin and Heidi Mount**, Kevin is an employee of NYC Dept of Sanitation in WTC area: *How I lost my health and my paycheck after 9-11*

**Joel Kupferman**, Executive Director of NY Environmental Law and Justice Project (NYELJP): *Getting the truth and protections to workers in the WTC area*

**Monona Rossol**, Industrial Hygienist, NYELJP, and former safety director for IATSE Local 928: *What can be done to protect the health of workers*

**Jonathan Bennett**, Public Affairs Director of NY Committee for Occupational Safety & Health (NY COSH): *Holding government agencies accountable*

**Louie Nikolaidis**, attorney for NY Metro Area Postal Union: *Creative legal strategies for unions when confronted with a health and safety crisis like anthrax*

Finally, as part of NYC Labor Against the War, the NY L&EC endorsed the Labor Rally in Solidarity with Immigrant Detainees at the Detention Center in Brooklyn on March 23 and are spreading the word about the Anti-War march in Washington DC on April 20.

### SF - Bay Area - submitted by Riva Enteen

The Bay Area L&EC continues its work with Asian Immigrant Womens' Advocates. We helped draft legislation to address discrimination related to involvement in occupational safety and health matters and workers' compensation cases (the latter has been deleted from the bill). We are continuing to try to get funding for staff to address low wage worker issues related to safety and health and workers' comp - in particular to focus on providing seamless health care for injured workers who do not file workers' comp claims - and to assure that the health clinics treating these workers attend to the causes of their injuries and work with the employer community to figure out how to abate these hazards and reduce future injuries.

At our last meeting in March, we hosted a representative of Filipinos for Affirmative Action, which is working with the airport security workers who will lose their jobs because of their lack of citizenship. She asked for help with potential wrongful discharge cases stemming from the racism unleashed by September 11, and we are looking for labor and employment attorneys who can help.

## Bush Besieges Colombian Trade Unionists

by Fred Hirsch

President Bush proposes expanding military aid to Colombia. He wants another \$93 million to protect a 500 mile Occidental Oil Company pipeline. This is in addition to \$1.3 billion already approved for *Plan Colombia* supposedly for anti-drug, but mostly military action. The new money would do two things: 1) openly inject the U.S. into a counterinsurgency war that has taken hundreds of thousands of lives over 38 years, and 2) subsidize Occidental Oil to the tune of \$93 million. Not a bad return on the over \$1.5 million the company spent on federal election campaigns from 1995 to 2000. The potential scandal may not match Enron, but this one puts the lives of Colombians and Americans at risk down a slippery slope toward a no-win Vietnam-like quagmire.

With all the Bush rhetoric about the virtues of the *free market*, you would think he would want Occidental to work out its own corporate problems. We taxpayers ought not guarantee their profits by war. We should never finance any army such as Colombia's with its horrific human rights record, tied directly to rightwing paramilitary groups with a well-documented terrorist history of unconscionable assassinations and massacres of civilians.

I was recently in Colombia with a trade union group looking into the conditions faced by the unions. We met with a wide cross-section of society: unionists, intellectuals, human rights workers, organized women, development specialists, a top general, a Catholic Bishop, people in the Labor Ministry, the Chamber of Commerce and the U.S. Embassy. No one denied the connection between the army and the paramilitaries who assassinated 169 trade unionists last year, 3500 since 1985 - 60% of all unionists killed in the world. We saw proof of that connection in Barrancabermeja, an industrial oil port where paramilitaries wield total political control. The atrocities there occur at a rate almost double that of the entire nation - in the most militarized area in all of Colombia. As U.S. aid increased, so too have the paramilitaries' atrocities, carried out with almost total impunity. Not a single one has been brought to justice in all these years.

**We should not spend one more taxpayer dollar to fund human rights abuses in Colombia.** When U.S. *Advisors* and cash support an army linked to death squads, we pour gasoline on the fire of war. We can take the moral high ground if Congress would cut the cash flow and fully support a negotiated end to the conflict that has wracked the Colombian people for almost two generations.

*Fred Hirsch is a member of Plumbers & Fitters 393 and a long-time trade union and community activist in the South Bay (that's in California). He visited Colombia in January 2002 with a labor delegation with Witness for Peace / Global Exchange, and saw first-hand the effects of the U.S. \$1.3 billion Plan Colombia aid program on Colombian trade unionists. He can be reached at fredsam@cruzio.com.*

# Holes In The Stone-Washed Safety Net – The Continuing Aftermath of NAFTA

by David Kern

**VF Jeanswear's recent layoff of more than 1,200 employees at three factories in El Paso County is the latest in a long and continuing series of layoffs in the garment industry.** These jobs will be difficult to replace - they paid over \$9 per hour on average to workers with little or no English, formal education or job training beyond their sewing skills. The workers received a 60-day notice as required under the 1988 Worker Adjustment and Retraining (WARN) Act and severance pay of about \$100 for every year they worked with VF Jeanswear. This wasn't enough time or money, however, for the affected workers to escape without major financial hardship.

**Ten years ago the garment industry in El Paso thrived.** Between 1962 and 1989, employment more than doubled in El Paso's garment industry due to El Paso's reputation as the most inexpensive place to sew clothes with a bona fide *made-in-USA* label. By 1989, El Paso was the largest producer of jeans and the third largest employer of garment workers in the U.S. (after New York and Los Angeles). In 1991, Levi Strauss, Lee, Wrangler and Sun Apparel invested in major plant expansions in El Paso. Not long after that, an economic analysis of El Paso published by DRI/McGraw Hill stated El Paso's burgeoning apparel industry was "capable of competing in the world market." And then along came the North American Free Trade Agreement of 1993 that took effect on January 1, 1994.

**The border area of Texas lost jobs post-NAFTA.** Within a few years it was clear that NAFTA unfavorably impacted the El Paso economy. In November 1997, the Texas Senate's Interim Committee on NAFTA noted that even though trade with Mexico doubled since NAFTA, and although 80% of all overland trade between Mexico and the United States flowed through Texas, **the border areas of Texas had continued to lose jobs.** Committee Chair Carlos F. Truan of Corpus Christi noted:

It has become obvious that the Texas border has been hit the hardest by NAFTA. El Paso has lost nearly 7,000 jobs due to NAFTA-related layoffs. Although NAFTA has been a boon to the rest of Texas, the border has suffered, and it is only fair . . . to attempt to resolve these problems.

**Putting a human face on the tragedy,** Maria Fernandez, who lost her job of 23 years, told the Senators:

There are many workers, the majority of whom are women, who have lost their jobs because of NAFTA. When they laid us off, they told us that they were going to teach us English and help us get a GED (high school graduate equivalency degree) as well as give us training for another job. Now [these laid off workers] are exhausting their benefits, but they can't find a job because they didn't receive adequate training. Many of these workers are about to lose their homes or are having their utilities cut because they don't have any income. This isn't what we were told would happen with the program.

Her sentiments were echoed and amplified by Emma Duarte, another laid off worker, who explained the retraining program she and Fernandez received was totally ineffective to prepare unemployed garment workers for jobs as childcare workers:

We have had to constantly demand that it be redesigned to meet the demands of childcare employers who don't want to hire us -- older, Spanish-speaking displaced women workers -- unless we have much more training than the younger native English-speaking workers.

Duarte noted the workers needed at least 16 months of retraining to have a realistic chance of getting a childcare job, but the program was funded for only 3 1/2 months.

**A Latino Review of President Clinton's NAFTA Package, a study that verifies these stories, contains three significant conclusions:** "1) NAFTA preys disproportionately on low-skilled, minority workers who cannot qualify for new jobs without substantial investments in training; 2) Language barriers and poorly designed TAA training programs have failed to prepare Latinos for new job markets; and 3) at most 20 percent of certified NAFTA victims return to work within 60 days of being laid off." fn 1

**Joel Kotkin explains why El Paso was hit so hard in Tough Times Hit Texas Amid Broad Slowdown.** fn 2 Kotkin notes that although El Paso is the largest Texas border city and might be expected to benefit from NAFTA, it instead suffered from the increase in Mexico trade due to NAFTA. Why? Because unlike smaller towns along the border, El Paso had a pre-existing industrial base when NAFTA took effect. As a result, the movement of industrial activity to Mexico damaged and undermined El Paso's industrial base.

**The job loss has been tremendous.** Bill Medaille and Andrew Wheat note in *Faded Denim NAFTA Blues* in the December, 1997, issue of *Labor* magazine these stunning raw numbers as of that time.

By the end of year four of the NAFTA calendar, some 6,472 laid off workers in El Paso, Texas had been officially certified [by the U.S. Labor Department's Transitional Adjustment Assistance (TAA) program] as North American Free Trade Agreement victims. Bienvenidos to ground zero of NAFTA. . . . At 6,472 [TAA] certified NAFTA job losses and counting, El Paso is NAFTA's undisputed job-loss capitol, leaving #2 ranked Syracuse, New York (with 2,619 casualties) in a cloud of Southwestern dust.

Public Citizen's web site has a searchable data base updating job loss through December 4, 2001. fn 3 By that date more than 13,600 El Paso workers were certified under NAFTA as having been laid off due to NAFTA. That number does not include the 1,200 VF Jeanswear workers officially certified as NAFTA victims on January 22, 2002, in TAA decision #5632 due to that

[continued on page 4]

company's "shift in production to Mexico." The decision brings to almost 15,000 the total number of workers officially laid off in El Paso due to NAFTA. fn 4

**Many experts believe the nearly 15,000 El Paso jobs certified by TAA as lost are only the tip of the iceberg.** Public Citizen states the NAFTA TAA program systematically undercounts job losses in several ways. For example, due to strict TAA certification requirements, two out of five applications are denied. In addition, language and literacy barriers make it difficult for many low-skilled workers to file claims. Moreover, TAA only covers workers who produce certain types of manufactured goods. And finally, there is inadequate consideration given to the indirect job losses that occur on the part of suppliers and support services after a plant relocates to Mexico. As a result of all these factors, NAFTA critics such as Public Citizen's Bob Naiman believe that government bean-counters undercount at least two lost jobs for every one that they certify. If Naiman is correct, the real economic impact of NAFTA on El Paso may be 45,000 jobs lost over 8 years since NAFTA took effect.

**That sounds like an astonishing number of jobs lost, but consider these statistics.** According to the U.S. Census Bureau Foreign Trade Division, Data Dissemination Branch, in 1993, the year prior to NAFTA taking effect, the U.S. had a trade **surplus** with Mexico of nearly \$1.7 billion. By the end of year 2001, 8 years into the economic impacts of NAFTA, the U.S. had a trade **deficit** with Mexico of nearly \$30 billion. Similarly, the U.S. has nearly quintupled its trade deficit with Canada during the same period. In 1993 the U.S. had a \$10.8 billion trade deficit with Canada. Since 1994, that figure steadily rose to a trade deficit of \$53 billion for the year 2001. These numbers can be verified on line. fn5 A 2001 Study prepared by the Economic Policy Institute, **NAFTA At Seven, Its impact on workers in all three nations** explains the direct relationship between growing trade deficits and job losses:

If the United States exports 1,000 cars to Mexico many American workers are employed in their production. If, however, the U.S. imports 1000 foreign made cars rather than building them domestically, then a similar number of Americans who would have otherwise been employed in the auto industry will have to find other work.

The same, of course, applies to the garment industry and other low-skilled manufacturing jobs. With the U.S. combined trade deficit with Mexico and Canada approaching \$90 billion a year and rising, is it really that difficult to conclude that NAFTA is literally exporting tens of thousands of El Paso's jobs abroad?

**Now fast-forward to the good working folks at VF Jeanswear.** On January 16, 2002, in response to a petition from 50 laid-off workers, the El Paso County Commissioners Court created the **Industrial Retention And Development Committee**. "Training is only one response to the problem," Commissioner Charles Scruggs said. "What we also need to do is identify the companies that are having problems and try to help them prevent those layoffs. Perhaps we can come up with some incentives." County Commissioner Miguel Teran voiced the same concerns about identifying in advance those companies

on the verge of leaving El Paso County or laying-off workers. "There should be as much interest in getting companies not to close as in getting them to move here." Nat Campos, the County's Planning Director and the Committee contact person, explained the immediate goal is development of a bilingual training program for displaced workers. **He acknowledged, however, that over the long haul what is needed is the creation of an industrial base to provide jobs.** "We can't just train the people and say the problem is solved," Campos said. "The jobs have to be there for these trained workers. At this point the jobs just aren't there."

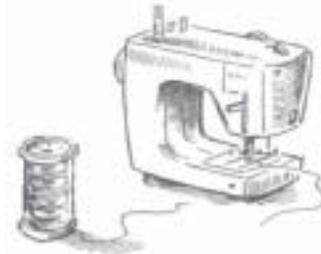
**Are jobs for garment workers and others in low-skilled manufacturing ever going to exist given NAFTA's incentives? Not likely!** Given that reality, tax abatements may not create an incentive for a company to operate at \$9 per hour here when it can operate in Mexico paying workers \$6 a day.

British historian Arnold Toynbee said, "About the only thing we ever learn from history is that we never learn from history!" And American futurist Alvin Toffler later responded, "If we do not learn from history, we shall be compelled to relive it. True. But if we do not change the future, we shall be compelled to endure it. And that could be worse."

The Commissioners Court deserves praise for well-intentioned plans to help laid-off garment workers. But we must carefully study NAFTA retraining programs' past mistakes and not repeat them.

**We need true bilingual education and meaningful job training of sufficient duration** to ensure displaced workers find good paying jobs not vulnerable to heading South (again) due to NAFTA. That's challenging, but vital if we are to prosper as a community.

*David L. Kern, a labor lawyer, represents workers and unions in El Paso and elsewhere. He is a partner with the law firm of Peticolas, Shapleigh, Brandys & Kern, P.L.L.C., in El Paso, Texas, and is Board Certified in Labor and Employment Law by the Texas State Bar. He can be reached at [dkern@psbk.com](mailto:dkern@psbk.com).*



fn1 Study conducted by National Council of La Raza (NCLR), the San Antonio-based Velasquez Institute (formerly the Southwest Voter Research Institute), and North American Integration and Development Center at the University of California at Los Angeles.  
fn2 October 17, 2001, issue of the **Wall Street Journal's Real Estate Journal**

fn3 See [www.citizen.org/trade/nafta/index.cfm](http://www.citizen.org/trade/nafta/index.cfm)

fn4 See [www.doleta.gov/trade\\_act/taa/ntaa/naftadecisions/5632.tx](http://www.doleta.gov/trade_act/taa/ntaa/naftadecisions/5632.tx)

fn5 See [www.census.gov/foreign-trade/balance/c2010.html](http://www.census.gov/foreign-trade/balance/c2010.html) (Mexico) and [c1220.html](http://www.census.gov/foreign-trade/balance/c1220.html) (Canada)

# University Unionism and the Decline of Academic Freedom: NYU Charged with Illegal Denial of Tenure against Pro-Union Professor

by Nathan Newman

*Nathan Newman is a labor lawyer and longtime community activist, a national vice president of the National Lawyers Guild and author of the forthcoming book **Net Loss** on internet policy and economic inequality. E-mail [nathan@newman.org](mailto:nathan@newman.org).*

**New York University is rapidly becoming the Detroit of post-industrial university unionism**, the place where labor precedents are being set for campuses across the country.

In 2000, graduate students at New York University made history when the National Labor Relations Board ordered the school to end its refusal to recognize the union; NYU grad students became the first graduate teachers' union to win a federally-supervised election at a private university.

In January, NYU was forced by union mobilization to agree to its first graduate employee union contract, improving benefits and raising salaries by as much as 40% for many teaching assistants.

And on February 28, the National Labor Relations Board formally charged the university with illegal retaliation against Professor of Education Joel Westheimer, the only untenured professor who had testified on behalf of the graduate students before the Labor Board back in 1999. His denial of tenure last summer sparked a nationwide protest by unionists and fellow academics, including five past presidents of the American Educational Research Association, who praised his scholarship and noted that he had been unanimously recommended for tenure by both his department and seven outside scholars brought in to review his work.

Responding to this protest, Celeste Mattina, director of the Labor Board's New York region, stated that after a four-month investigation, the agency had concluded that NYU violated the National Labor Relations Act. "After balancing the information, we concluded that the real reason for his denial of tenure was because of his union activities," said Ms. Mattina.

This vindication of Dr. Westheimer just highlights the assault on academic freedom embodied in the union-busting that is a pervasive element of modern university life. NYU's actions show that even the supposed integrity of tenure processes will be undermined to prevent university workers from having a democratic voice on campuses.

During the original university campaign against graduate student unionism, administrators sent out legal memos telling faculty how to use their position of authority over graduate students to pressure them to oppose the union.

Among those who voiced public disagreement with the administration was Dr. Westheimer. Beyond his sympathy with the union drive, Dr. Westheimer felt a particular responsibility as an Education professor to speak out on this issue. With administrators arguing that unionization would be harmful to teacher-student relations, Dr. Westheimer felt he had an alternative viewpoint as a nationally recognized scholar on issues of teacher community and service learning.

**At a forum organized last October by Jobs with Justice to highlight NYU's abuses of union rights, witness after witness testified to how the retaliation against Dr. Westheimer had put a chill into academic freedom at NYU.** They noted that when the administration feels free to punish an academic superstar like Joel Westheimer, all teachers at the university have to fear whether saying

or doing anything controversial will lead to retaliation by the University.

**The anti-union intimidation by NYU follows a similar pattern of schools like Yale.** During a 1996 graduate teachers' strike, some Yale faculty and administrators threatened strike participants with being banned from future teaching assignments, suggested that participants could be kicked out of graduate school, and adopted a policy allowing faculty advisers to write negative letters of recommendation on the basis of strike participation. These reprisals led the federal government to file charges against Yale administrators and faculty and led to resolutions of censure against the school from the Modern Language Association, the American History Association, and the American Association of University Professors [AAUP].

One reason Dr. Westheimer has been forced to seek redress through the NLRB is that there is no longer a legitimate grievance process at NYU through which a professor can appeal. Back in 1990, the NYU administration was censured by the AAUP for violations of principles of academic freedom, tenure, and due process. As Dr. Westheimer noted, "NYU is censured by the AAUP for ... ; the review committee is essentially a dean's advisory committee. The judge is the person your complaint is against."

**Increasingly, courts have recognized that the secrecy of tenure decisions is not a protector of academic freedom, but often its enemy.** No less an authority than the Supreme Court has forced universities to open up their tenure records in tenure disputes, noting that Congress intended to "expose tenure determinations to the same enforcement procedures applicable to other employment decisions." *University of Pennsylvania v. EEOC* (1990).

One reason the graduate employee union campaigns nationwide are so important is that graduate students teach an increasing percentage of all classroom hours. And nationwide, graduate students are responsible for 90 percent of all grading of undergraduate papers and exams.

Between 1975 and 1995 - a period when overall enrollment was expanding significantly - the number of tenure track faculty actually fell by 10 percent nationwide, even as the number of graduate teaching assistants increased by nearly 40 percent. Moreover, the number of short-term adjunct professors, each teaching a handful of courses each term for low pay, has vastly increased on campuses. It is estimated that 50 to 70 percent of all teaching hours are now performed by graduate students or adjuncts.

**In a university world where tenure is increasingly a thing of the past, unionization is the only guarantee of both decent working conditions, free speech and academic freedom.** Graduate students have had unions on a number of public universities for years, and now, in the wake of the NYU and other NLRB decisions, graduate students, adjuncts and other academic workers at Yale, Tufts, Brown, Temple, Columbia and other campuses have seen an explosion of new union organizing.

**EDITOR'S NOTE:** Jonathan Ritter, NYU graduate student and teaching assistant, reports the union has been busy organizing an election at Columbia and recently filed a petition for another election at NYU, this time involving adjunct faculty, as well as continuing its efforts to sign up other NYU graduate students.

# U.S./ Cuban Labor Solidarity: What's in it for us? What's the Guild's role?

by Dean Hubbard

*[The following article reflects the views of its author, and not necessarily those of the other participants in the 2002 National Lawyers Guild Labor and Employment delegation to Cuba. The delegation's official report will be available on the NLG web site, [www.nlg.org](http://www.nlg.org) this May.]*

The integration of the global economy means that any labor movement of any country which takes a completely local or national approach is doomed to extinction. One has only to look at the power of the World Trade Organization to eliminate national barriers to so-called free trade, including national laws protecting workers and the environment, and compare this to the complete powerlessness of the International Labor Organization to enforce international labor norms, to realize what we are up against. This dynamic is reflected regionally in NAFTA and its toothless side accords and, currently, in the so-called Free Trade Area of the Americas [FTAA], which U.S.-based multinationals are pushing as a means to convert all of North, South and Central America and the Caribbean into a single market for their products and a source of cheap labor; essentially annexing the weaker economies of the south. We must acknowledge, too, the success of the IMF in pushing the nations of the developing world to adopt the neo-liberal philosophy of deregulation, privatization and austerity, which has worked such wonders for the economies of countries such as Argentina, and has pitted the workers of the world against each other in a race to the bottom.

Clearly, under the Sweeney administration, the U.S. labor movement has belatedly recognized the significance of this structural change in the world economy. However, it faces huge challenges in effectively opposing the global triumph of multinational capital and in effectively advocating its alternative—the globalization of social justice. The reality is our labor movement is on the ropes. We have suffered a long term precipitous decline in Union density, so that we now represent only 13.5% of the workers in the U.S.. Although the AFL-CIO made organizing its top national priority over six years ago, so far we have done no better than stay even. Many pundits, even supporters of labor's goals, believe the U.S. and international labor movements are doomed for extinction.

From the 60s through the early 90s, while the U.S. labor movement was declining in power and influence domestically, it was allied with the U.S. government and multinational capital internationally in actively undermining and seeking to destroy trade union movements built on a socialist model, such as Cuba's. The U.S. labor movement plainly played a significant role, through its support of so-called independent trade unions and other more nefarious activities, in the eventual collapse of the socialist bloc of states in Europe. Certainly, there were many ways in which government affiliated trade unions organized on a top-down bureaucratic model in many of the formerly socialist states played a bitter role in quenching the legitimate aspirations of the workers that they represented. But it cannot be seriously argued that the situation of workers in those countries today is materially better than it was before the collapse of the socialist states. It is objectively far worse. Part of the problem is that by positioning itself as an unquestioning arm of U.S. foreign policy, the U.S. labor movement effectively worked as an ally with its domestic adversaries, and did not effectively advocate for preserving the material gains of socialism for workers in those countries.

I am aware of only one trade union movement functioning on socialist principles which has managed to survive the destruction of the socialist states of Europe with the best aspects of those principles

intact. That is Cuba's. (Although I know much less about China, its weak trade unions have, by all appearances, completely capitulated and play little to no effective role in opposing the adverse effects on workers of the implementation of the market model in China.)

## ***What does the U.S. labor movement have to learn from Cuba?***

For the last three years, I have organized bilateral exchanges in Cuba between U.S. and Cuban labor and employment lawyers, trade unionists and rank and file workers, co-sponsored by the NLG Labor and Employment Committee and the Cuban Workers' Federation [CTC]. Since 1998, I have visited Cuba a total of six times to meet with and learn from Cuban working people. I have been very surprised by what I have learned. Far from continuing to operate as a top-down, command and control arm of the state, the Cuban Workers' Federation has responded to the crisis of the so-called "special period" in a very different and highly effective manner. This response, I submit, has important survival lessons for the U.S. trade union movement, which as I already mentioned, confronts serious threats to its own survival.

Faced with the overnight disappearance of 85% of their source of foreign trade following the collapse of the socialist bloc, and the subsequent tightening by the U.S. of the already near total economic blockade of their country, the CTC, the federation of Cuba's nineteen national unions (which predates the Cuban revolution by nearly 30 years) responded with a broad range of initiatives. These efforts incorporate:

- bottom-up organizing
- decentralization of and worker participation in key workplace and national policy decisions
- a heightened emphasis on enterprise level collective bargaining
- the development of a talented group of committed young labor lawyers
- social benefits (such as free medical care and education, food subsidies, 1 years' paid child care leave, and housing costs not to exceed a maximum of 10% of salary)
- idealism
- labor-management cooperation
- material incentives for production
- voluntary union membership and dues payment
- democratic accountability of union leaders to rank and file

The result is a 98% unionization rate, workers deeply involved in all aspects of enterprise decision-making, great mutual respect between labor and management, and a trade union movement that is a key player in national policy-making.

Of course there are serious problems which should not be minimized (all related in varying degrees to the continuation of the U.S. blockade), such as the relative paucity of material incentives to increase productivity, low salaries, poor housing, inadequate transportation, lingering vestiges of an over-reliance on central authority for decision-making, and the narrower spectrum of information than that generally available here—to those who look beyond the corporate media to find it.

However, on balance, I submit that the U.S. labor movement has much to learn from the successful response of the Cuban labor movement to their own different but, if anything, more profound crisis.

There are other reasons the U.S. and Cuban labor movements should be communicating and coordinating rather than playing out a Cold war end game that ceased to have any relevance more than ten years ago (if it ever did). The most compelling of these is the need for interhemispheric trade union solidarity in response to specific manifestations of global economic integration such as the FTAA. The Cuban labor movement, like our own, has taken a leading role in opposing the FTAA. However, unlike labor movements in every other country in North, Central and South America, the Cuban trade union movement has succeeded in having the Cuban government join it in opposition to the FTAA. Coordination on this issue between labor movements viewed as ideological opposites would strike a resounding chord of trade union unity that would be felt throughout the Americas, if not the world.

Even looking through the lens of myopic self-interest, the U.S. labor movement has a stake in the maintenance of a strong Cuban labor movement and an end to the blockade. The island is part of our regional economy. Even indirectly, the path Cuba takes within the regional and global economy affects U.S. workers. The report of the 2001 NLG delegation asked, "Will Cuba replicate the maquiladora plants in Mexico?" The effectiveness of Cuba's labor movement is critical to that society's successful evolution as a regional and global economic player 90 miles from our coast. Moreover, the new European, Canadian and Japanese cars, construction equipment and other goods we have seen on every visit to Cuba could have been purchased from unionized U.S. manufacturers, creating jobs for U.S. workers.

Yet the official position of the U.S. labor movement continues to support the blockade of Cuba, with exceptions for food and medicine. There is no official contact whatsoever between our trade union movements. As someone who has traveled to Cuba repeatedly, the profound human suffering caused by the blockade is readily apparent. No one can witness this suffering and claim that it is consistent with trade union principles.

### ***Goals of NLG/CTC Exchanges Success of 2002 Delegation***

It is with these facts in mind that I have organized the NLG/Cuba bilateral exchanges. The purpose has been mutual education about the realities of life for workers in our two countries, and improving each others' understanding of the legal and policy foundations of our respective labor systems. It is my hope that this kind of communication is the first step towards ending AFL-CIO support for the blockade of Cuba, and towards eventual coordination between the U.S. and Cuban labor movements on vital issues of shared concern such as opposition to the globalization of unregulated transnational capitalism generally, as well as specific manifestations such as the FTAA.

The Guild delegation returned from this year's exchange in March. Our group met with Ricardo Alarcón, the Speaker of the Cuban National Assembly, Pedro Ross, the General Secretary of the CTC, and appeared several times on national television, radio and newspapers in Cuba. We had frank and freewheeling discussions with workers, labor lawyers, trade union leaders

and legislators in workplaces and municipal assemblies in Havana, Cienfuegos and Sancti Spiritus. We observed a Cuban collective bargaining session and Shop Steward training first hand. Our report should be coming out as you read this article.

### ***2003 Exchange Goes International***

As word of these annual meetings has spread, labor lawyers and trade unionists from other countries have expressed interest in participating. After extensive discussion, both the CTC Executive Board and the Steering Committee of the NLG Labor and Employment Committee have agreed that next year we will continue the bilateral exchange, but will also plan to add a separate international component, to which we will invite labor lawyers, trade unionists and students, not just from the U.S., but other countries as well. It is important to maintain a bilateral component, with an emphasis on informal and frank discussion, to continue working toward the goals I already described. However, adding an international aspect to the exchange will, I believe, exponentially expand the educational value of the exchange. Moreover, it contribute to much needed communication between labor movements around the world, especially within this hemisphere, and especially towards the goal of coordinating international trade union opposition to unchecked transnational corporate globalization. Given that the Cuban and U.S. labor movements are seen to represent polar ends of the political spectrum of the trade union movement internationally, the bilateral foundation for the international exchange seems a promising basis for balance and potential international trade union unity.

What's in it for us? How about the globalization of social justice? To paraphrase the immortal words of John Lennon . . . I hope you'll join us.

## **First International and Fourth Bilateral**

(U.S. / CUBA)

**Exchange of Labor and Employment Lawyers,  
Neutrals and Trade Unionists**

# **Havana, Cuba**

**March 15-23, 2003**

*co-sponsored by*

**National Lawyers Guild L&EC  
Cuban Workers' Federation (CTC)**

### **Preliminary Topics:**

The policy of *neoliberal* globalization, its effects on labor and workers' rights

Forms of conflict resolution, including alternative means

Collective bargaining

Rights of labor and of business

Workers' rights and criminal law

Current international situation

***For more information, contact Dean Hubbard,  
dean@eisner-hubbard.com***

# Health Care Unions Organize Inter-American - Conference on Privatization and Globalization

by Dean Hubbard, Jose Matta and Luis Matos

Trade unions and community organizations are collaborating in the effort to organize a conference on the **Impact of Globalization and Privatization on the Health Care Systems in the Americas and the Caribbean** that will take place in Santo Domingo, Dominican Republic during October 2002.

In New York City, the **World Organization for the Right of the People to Health Care** has been established to coordinate the work and to find the resources to bring together a broad, international coalition of organizations that will be meeting for the first time in the Dominican Republic. The Executive Council of 1199 SEIU, New York's health and human services union has approved the participation of the union in the conference, and authorized the establishment of the conference's NYC office in the 1199 SEIU Union Hall.

**An important consequence of the globalization of the neoliberal economic philosophy has been the trend towards privatization throughout the Americas of formerly public services such as health care.** Powerful international economic and political forces are at work in the Americas to produce a total transformation of the publicly funded health care delivery system into a largely privatized, for-profit structure, ruled exclusively by market laws. Some nations have already experienced deep changes in their health care systems to such an extent that the bulk of care is currently delivered by private health maintenance organizations. The so-called *American Model* is moving rapidly in the continent and in the Caribbean, modifying drastically the access to health services along market lines; those who can afford it get it, and those who can't are left without.

Moreover, privatization affects not just patients, but health care workers as well. Health care providers are seeing their working conditions deteriorate, salaries and benefits decrease, and jobs disappear. For those who remain in their jobs, understaffing has had a profound effect on the quality of care they can provide and in the level of stress they experience on the job.

Most national governments have welcomed the arrival of the private health care delivery system as a new model that promises major savings in their deficit-prone fiscal budgets. But there are also multiple examples of current struggles to resist the makeover of health care by private corporations. In El Salvador, the union that represents 17 thousand workers in the social security and health care services has staged several national strikes, one of them lasting almost three months, effectively preventing the total takeover by Spanish-owned insurance companies, in defense of a system that has served people for decades.

Similar responses against privatization staged by coalitions of union and popular organizations are arising in the Dominican Republic, Colombia, Brazil, Argentina and, of course, the United States.

Possibly hundreds of millions of individuals and families have suffered either partial or total disruption in their health care access. For an historical process that is affecting the lives of so many, little has been studied and discussed about the consequences of

this trend that has transferred enormous resources and wealth to private corporations that today manage a sizable portion of the health care delivery system in the Americas.

How did the process come about in some of these nations? What is the size of the public health care system if compared with the privatized schemes? What is the role of health care unions in this transformation process? Which international corporations are already operating HMOs in the Americas? What may be the new role of non-governmental (NGOs) organizations in health care delivery and family planning in the Americas? Are progressive forces ready to roll back or modify the privatization wave?

**Those questions and many others will be discussed during the October/November 2002 conference by participating trade unions and community groups** from the Dominican Republic, Puerto Rico, Haiti, the United States, Canada, Cuba, Venezuela, Nicaragua, Honduras, Mexico, El Salvador, Jamaica, Guatemala, Costa Rica and Chile.

The conference in the Dominican Republic will be sponsored by the Central Workers' Union (CGT), the National Nurses' Union (SINATRAE), National Healthcare Institute (INSALUD), Dominican Medical Association (AMD) and other major health care union and health care professional associations which have taken the initiative to host the conference.

**This is the first time in memory that an international health care workers conference will take place to examine the global forces affecting the health care system in nations of the Americas.** Hopefully, and in the best tradition of trade unionism, it is expected that the discussion will lead to a plan of action.

**If you have trade union or community organization clients in the health care field who would be interested in participating, please contact the U.S. organizers:** Luis Matos 212-261-2223, mluis55@aol.com or Jose Matta 212-494-0534, jmatta@1199etjisp.org.



# Harvard's Trade Union Program: Labor Coalition Building

by Priscilla Winslow

Since 1942 Harvard University has sponsored an executive program for union leaders and staff members designed to give them training, education and a chance to prepare for the challenges the labor movement constantly faces. The Trade Union Program is the second oldest such executive program at Harvard and was founded by John Dunlop, former Secretary of Labor and member of the Roosevelt administration. He is still teaching classes in the Program at age 88.

**I had the privilege of attending this year and wanted a chance to spread the word about what a valuable resource the Program is for unions.** The six-week course runs from early January to mid-February each year, and although there is no final paper or grade issued, there is a large amount of reading required, all of it worthwhile. The curriculum is centered around five core courses: Lessons from Labor History, Leadership and Organizational Change, Strategic Planning for Unions, Dispute Resolution and Arbitration, and Union Governance and Administration.

There were 33 students this year – seven women and 26 men. Public and private sector unions were represented, including the Bricklayers, Painters, Laborers, AFSMCE, American Federation of Teachers, the California Teachers Association, Firefighters, International Union of Police, the National Staff Organization (a union of union staff members), and Operating Engineers. There was also an international presence from Australia, Canada and Japan.

It being Harvard, the primary, and very effective mode of instruction was the case method. We were given a several page description of an actual labor dispute and through a series of questions were asked to analyze what should happen next or what went wrong by considering such factors as external economic and political factors, internal union capacity to deal with the change or crisis, etc. The cases ranged from the PATCO strike to the more recent 1998 struggle of the Australian longshoremen to resist the union-busting strategies of the Thatcherite government there. In contrast to PATCO, the *wharfies* were moderately successful in resisting the lockout imposed by management, mostly because they had done a much better job of accurately analyzing the ability of the government and the companies to enforce their demands, but more importantly, because they had patiently and methodically made alliances with other segments of society who came to the union's assistance in mass demonstrations and on picket lines. The most unusual alliance the *wharfies* made was with the very conservative associations of farmers, who obviously in an island nation, depend heavily on shipping to get their goods to market. In an earlier strike, the longshoreman specifically exempted agricultural products and loaded them, perhaps anticipating that an alliance with farmers would be crucial in the future.

In another case that was personally fascinating to me, we learned of the history of the Harvard Union of Clerical and Technical Employees, an AFSCME local. This is a union of about

4,400 people, 92% of whom are women. Their organizing efforts began in the late 1970's in Harvard's hospitals. They lost two elections in the face of the university's campaign to convince them that if the union was voted in, working conditions would become much more rigid. In 1983 they suffered another setback when the NLRB ruled that the appropriate unit was not simply the hospitals, but a wall-to-wall unit of all clerical and technical employees. Suddenly, they had to convince a majority of 4,000 people to vote union, rather than 800. In the mid-1980's the union nearly ran out of money, which forced an interesting new tactic. Instead of putting out fliers and newsletters, organizers met with every single person in the potential unit, getting to know them as people but not necessarily doing a *hard sell* on unionism. The campaign emerged into a quest for worker participation and empowerment in their individual work place, rather than more traditional bread and butter demands. Because these employees worked closely with their supervisors and had good relations with them, the campaign slogan became, "You don't have to hate Harvard to want a union."

The HUCTE finally won the representation election by a very close margin in 1988. The contracts produced from negotiations emphasize methods of collaborative decision-making and dispute resolution. In the words of the current president, Adrienne Landau, a central value for both sides is to treat each other with kindness. This approach seems to be working with the bread and butter issues as well – salaries for the represented workers have risen by huge percentages since 1988.

Of course we also were inundated by the grim statistics about the fall in union density, and the seemingly Sisyphean task of needing to organize 1 million new workers every year to produce any increase in density. But looking on the bright side, as John Dunlop suggested, the labor movement has just about as many workers covered by collective agreements as it did in the 1950's in terms of absolute numbers. The outlook seems particularly depressing when even the most modest labor law reform is completely out of reach.

On the other hand, learning about various unions, such as the Painters and Allied Trades, which have really put a tremendous effort into old-fashioned door-to-door organizing, gives hope that the trend can be turned around.

**But it's not just organizing that is needed to revive the labor movement. The labor movement has the potential to lead reform, not just with its members, but within society as a whole.** We need to continue to be out in front on the issues raised by the Enron collapse, with a drive for national health care, with some reining in of corporate abuses and give-aways to the rich through the guise of tax reform. There is enough creativity, energy and dedication in the American labor movement to lead this change. It just needs to be tapped.

*Priscilla Winslow is a staff attorney with the California Teachers Association, and has been representing unions and employees for over 20 years.*

## Contingent Workers Share Solutions

by Bruce Goldstein

A new report issued by the National Employment Law Project (NELP) and the Farmworker Justice Fund (FJF) chronicles the rise of labor subcontracting in virtually every sector of the economy and highlights innovative solutions developed by labor unions and worker centers. The Report, *From Orchards to the Internet: Confronting Contingent Work Abuse*, was co-authored by Catherine Ruckelshaus of NELP and FJF's Co-Executive Director, Bruce Goldstein, who is a Guild member.

The report is a product of the Subcontracted Worker Initiative (SWI), co-directed by Cathy and Bruce. SWI was developed to address the problems faced by workers in *nonstandard* employment relationships, including when companies *outsource* their production, misclassify employees as *independent contractors*, and use temp agencies, labor leasing firms, labor contractors and other labor intermediaries.

The SWI has sponsored two strategy forums in which labor unions and worker centers (including low-wage immigrant worker groups, day laborer advocacy organizations, etc.) engaged in a working conference to share information about contingent-worker abuses in a variety of industries and the responses that workers have made. **The report discusses such strategies as organizing, collective bargaining agreements, legislation, regulation, research, media coverage, litigation, consumer pressure, hiring halls, and living wage ordinances.** These strategy forums highlighted the similarities in economic structures and employment practices by employers in their treatment of workers across occupational boundaries. Among the occupations discussed were agriculture, garment, janitorial, computer software, day labor, and public sector jobs.

The report is supplemented by a series of papers written by the conference participants about particular industries as well as some papers on cross-cutting issues. A version of a paper on the legal rights and obstacles of contingent workers has been published by Cathy and Bruce as *The Legal Landscape for Contingent Workers*, 2 Employee Rights Quarterly 12 (Summer 2001). They also co-wrote, with Laurence Norton and Professor Marc Linder, a law review article on the legal definition of employment relationships, *Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment*, 46 UCLA Law Review 983 (1999).

The SWI report *From Orchards to the Internet* is available online at <<http://nelp.org/swi/>>. It was made possible through grants from the Ford Foundation and the Rosenberg Foundation.

## NLG Guide to Labor Law Contributions Sought

The Guild began publishing its **Employee and Union Member Guide to Labor Law** more than 20 years ago. We launched it to offer a practical guide for workers and unions, to provide not only the black letter law but also concrete suggestions for new strategies and tactics.

Over the years we updated extensively: it now covers new topics such as the ADA, as well as recent developments in traditional labor law, FLSA, Title VII, ERISA, bankruptcy, etc. **We recommend it for every Guild member who practices employment or labor law of any sort.**

**We are looking for ways to improve the book.** In particular, we need Guild members willing to review and edit a chapter or major portion of a chapter. Revisions occur every six months. All the chapters have been regularly updated over the last five years. In most cases, there are separate chapter editors who substantially overhauled each chapter already. **We not only want to help lighten the load for our chapter editors, but would like fresh insights as well.** Further, we are also looking for volunteers to write a chapter on health and safety issues - a difficult, but very important subject. Let us know if you would be brave enough to take on all or part of that chapter.

*If you're interested in assisting, please contact either co-editor:*

*Elise Gautier at [gautier@teleport.com](mailto:gautier@teleport.com)*

*Henry Willis at [hmw@ssdslaw.com](mailto:hmw@ssdslaw.com)*

## Congratulations to Mary Dryovage!!!

Mary won a case in which the EEOC awarded 2.3 million to USPS special delivery messengers for unlawful retaliation. The messengers were long-time USPS employees, many of whom were disabled and needed reasonable accommodation. The USPS began to destroy their working unit, took away their accommodations and reassigned them to work in less desirable positions. The case can be found at *Abordo v. Potter*, EEOC No. 370-99-X2586-X2613 or [www.mdryovage.com](http://www.mdryovage.com).

# **Workers' Rights after 9/11: Who's Paying for Patriotism?**

**Is somebody cashing in on the flag waving — at the  
workers' expense?**

**TUESDAY - APRIL 30, 2002**

**7 a.m. - 8:30 a.m.**

**Sheraton Chicago**

**Chicago 10 room (Ballroom level)**

**JOIN the NLG L&EC for  
BREAKFAST at the LCC**

**SPEAKERS:**

**James Fennerty, President of the Chicago Chapter of the NLG, will discuss the USA Patriot Act and the Bush Administration's *war at home*: their potential impact on unions, and their devastating impact on our civil liberties, particularly for immigrants of color.**

**Michael Letwin, Founder of Labor Against the War and President of UAW Local 2325, will discuss why it is in labor's vital interest to question the Bush Administration's rapidly-widening war from a foreign policy/international human rights perspective.**

**Gordon Lafer, Professor of Labor Studies at the University of Oregon and on the National Coordinating Committee of Scholars, Artists and Writers for Social Justice, will address how the *right* is using the patriotism generated by the 9/11 attacks to advance its domestic agenda, and to derail labor's.**

*See page 1 for more information*