



## Car Wash Workers Campaign Wins Victories

by Ana Avendano, AFL-CIO Office of General Counsel  
and NLG L&EC member

The Los Angeles area CLEAN (Community Labor Environmental Action Network) Campaign has recently achieved several significant victories. Most recently, the National Labor Relations Board issued a broad cease and desist order for workers unjustly fired with over \$50,000 in back pay. A Cal/OSHA matter settled with a \$20,000 penalty and an innovative requirement for worker training. The Los Angeles City Attorney filed a 220 count criminal case for wage and hour violations. A class action wage and hour case was filed on behalf of 250 workers. Finally, the Coalition for Clean Air, with which the campaign partnered, was successful in regulating volatile organic compounds (VOCs).

More than 10,000 carwash workers labor in Los Angeles carwashes. The vast majority are Latino and monolingual in Spanish. A high percentage are undocumented.

As reported in the May 2008 newsletter, the CLEAN Campaign is an innovative effort to create safe workplaces and raise the standard of living for the over 10,000 carwash workers in Los Angeles, through a comprehensive strategy. The Campaign is a unique model. It is a labor-community partnership bringing together as equal partners the labor movement and the community.

**Worker concerns: wages, benefits and working conditions.** Car wash workers are often exposed to a variety of harsh and dangerous chemicals without adequate protective clothing or gear or eye wash facilities, are exposed to dangerous unguarded machinery, may work for extended periods in poorly ventilated and damp areas, or may work without shade or adequate water in the heat. Employees in carwashes routinely work 50-60 hours per weeks. Few if any employers comply with minimum wage, overtime, or requirements for rest and meal periods. The average wage is \$35 for a 10-hour work day, and many work for tips only. It is estimated that the average car wash worker earns \$12,500 annually with no healthcare, vacation, pension or other benefits of any kind.

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## Worker Center Activities Help Wanted

by Jessica Hahn & Charlotte Noss, Northeastern law students  
and NLG L&EC members

**Legal leads wanted.** Have you done legal work to support organizing for low-wage immigrant worker rights? We are looking for leads to attorneys who have addressed issues such as wage theft, occupational safety and health, workers compensation, sexual harassment, discrimination, employment authorization for immigrants, retaliation, misclassification of employees as independent contractors, or unemployment.

Have you helped workers' organizations or community groups defend legal attacks using claims under tortious interference, defamation, libel, trademark, anti-SLAPP, or First Amendment law in the course of organizing campaigns?

**Campaign leads sought.** Do you know of innovative approaches being implemented to fight the widespread abuse of vulnerable low-wage immigrant workers, such as integrating organizing campaigns and legal services, leadership development and membership building, administrative advocacy and coalition building, or strategic litigation and enforceable settlement agreements?

**Our project needs you.** Help us document and bring attention to creative lawyering and organizing strategies and build upon existing forums for sharing such information among the many organizations defending the rights of low-wage and immigrant workers.

**Please contact Jessie Hahn & Charlie Noss**, law students at Northeastern University working on a national survey of innovative strategies combining worker organizing and legal advocacy to defend the rights of low-wage and immigrant workers. Email [jessie.hahn@gmail.com](mailto:jessie.hahn@gmail.com) or [charlotte.noss@gmail.com](mailto:charlotte.noss@gmail.com) or call (617) 373-8288.

**Editor's note:** We will post the results of Jessie & Charlie's research on our website. Our Worker Center project page was created with the assistance of a Cornell undergraduate Dan Honchariw (now graduated) several years ago, and we look forward to Jessie & Charlie's material to update it. The page includes a database of Worker Center related material (at bottom). If you have material that we should post, simply forward to [fcs@kazanlaw.com](mailto:fcs@kazanlaw.com). The database is still being tweaked to obtain a better presentation so bear with us. See [http://www.nlg-laboremploy-comm.org/index.php?pr=Worker\\_Centers](http://www.nlg-laboremploy-comm.org/index.php?pr=Worker_Centers).

## Car Wash Campaign Successes Mount

**Goals and strategies.** The CLEAN Campaign has a two-pronged approach to raise labor standards in the industry. Because the entire carwash industry in Los Angeles is operating below minimum standards, the first step is to convince employers to comply with minimum standards. Employers are asked to enter into an agreement (the CLEAN Agreement) with the Campaign in which they pledge to respect minimum standards and permit third-party monitoring of their compliance with the pledge. The CLEAN Agreement also requires that employers agree to respect workers' rights to organize a union and bargain collectively by agreeing to a non-contentious expedited procedure through which workers can show that they wish to be represented. The second step is to secure for workers the ability to bargain collectively. The Campaign uses a variety of advocacy tools, including targeted litigation, regulatory action, community boycotts and pickets, worker education and leadership development, civic engagement and public education.

The Carwash Organizing Committee (CWOC), an integral part of the Campaign, is an affiliate of the United Steelworkers of America (USWA). CWOC provides a space for carwash workers around the City to come together to share common experiences, build collective power and develop worker leaders.

**Working conditions.** Worker health and safety has been a major focus of the Campaign. CLEAN and its partners SoCalCOSH and Worksafe assisted carwash workers in filing Cal/OSHA complaints alerting the agency to dangerous working conditions at three carwashes. All resulted in numerous citations, including serious citations. The Campaign helped workers actively participate in the appeals process for two of the carwashes. As a result of worker and organizing staff involvement, the employer admitted all the citations and agreed to pay \$20,000 in fines. A significant and unique additional requirement for abatement of the unsafe conditions involved the employer paying for independent and professional health and safety training for the workers.

Through the myriad of complaints that have been filed, CLEAN is also educating and raising the consciousness of state enforcement agents, including inspectors with Cal/OSHA and the Division of Labor Standards Enforcement, about working conditions for carwash workers.

**Workers in the CWOC have formed a Health and Safety Committee.** The members of the Committee are working with the UCLA Labor Occupational Safety & Health [LOSH] program and IDEPSCA, a Los Angeles area worker center, to develop educational materials on health and safety and to organize a health fair, both specifically targeting carwash workers. CLEAN has already held several trainings for dozens of workers at carwashes across Los Angeles in partnership with UCLA LOSH, SoCalCOSH and Worksafe. Workers learned how to identify hazards and what California health and safety regulations they might raise that would protect them. Because health and safety is so often ignored by the employer, the workers learn not only about their

rights and how to assert them, but also how to protect themselves in the meantime when an employer does not do so with an emphasis on keeping safe in the heat, avoiding electrical and mechanical hazards that can be deadly, among other things.

**Wage and hour - civil and criminal proceedings.** Targeted wage and hour litigation is another key strategy. CLEAN uncovered massive non-compliance with wage and hour laws at one of the largest carwashes in the area, which resulted in the filing of a class action lawsuit on behalf of more than 250 workers in May 2008. The Campaign brought violations at these carwashes to the attention of the Office of the Los Angeles City Attorney which conducted an independent investigation. More than 50 carwash workers came forward to speak with investigators. The City Attorney subsequently filed 220 counts of criminal misconduct against the carwashes, the carwash owners and a manager. Carwash owners, Benny and Nissan Pirian, will be arraigned in late October.

**Right to organize and form a union.** An exciting recent development comes from charges that the Campaign filed with the National Labor Relations Board. After fighting the charges for more than a year, the carwash entered into a formal settlement agreement with the NLRB. The settlement includes over \$50,000 in back pay for workers who were unjustly fired and a broad cease and desist order. It also requires the carwash owner to read the notice - in English and Spanish - aloud to employees during a paid-time meeting at the facility with a Board agent and two representatives of the campaign present. Because this is a formal settlement, it requires Court approval, and any subsequent violations may be remedied through contempt proceedings rather than through the regular administrative process. The NLRB entered an Order approving the settlement and has petitioned the 9th Circuit Court of Appeal for entry of a judgment on this order.

**Partners in community campaigns.** The community continues to play a key role in the Campaign and the Campaign is giving back to the community. A Community Advisory Board, which consists of leaders of more than ten community-based organizations in Los Angeles meets monthly to plan strategic actions. CLEAN has also built a network of more than 130 labor, community, and environmental groups. Through CLEAN, carwash workers have participated in community events including solidarity actions with unions and worker centers, immigrant rights marches, UCLA forums and classes, and presentations to congregations and other faith-based events.

CLEAN has also partnered with the Coalition for Clean Air in their successful effort to regulate toxic chemical products, such as multi-purpose solvents and paint thinners used by carwash workers. **The regulation by the South Coast Air Quality Management District is the first in the nation to reduce Volatile Organic Compounds (VOCs) from consumer products.**

For more information about this campaign, contact Ana Avendano at (202) 637-3949 or [AAvendano@aflicio.org](mailto:AAvendano@aflicio.org).

# Opinion - Capitalism is Bad for Your Health?

by Ian Ruskin, NLG L&EC member

The World Health Organization, a part of the United Nations and likely just a front for spreading socialism, recently issued *The World Health Organization's Ranking of the World's Health Systems* with some interesting information.

But before we peruse the rankings, which will no doubt put the United States right up there, let's look at what some of the countries of the world pay for their health care.

According to National Public Radio, no doubt another socialist front, dollars spent *per capita* in 2008 (objectively alphabetical):

France - \$3,374	Germany - \$3,673
Great Britain - \$2,723	Italy - \$2,655
Japan - \$2,358	Netherlands - \$3,580
Switzerland - \$4,177	United States - \$6,402

That's quite a bit more paid by Americans than anybody else, but then you get what you pay for, that's one of the fundamentals of capitalism, right? Or should I say that you get what you get and you pay as much as they can get you to pay.

So now let's take a look at those rankings. First, the not so good (try not to be offended by my educated analysis):

- #25 Germany (must be all that beer and wiener schnitzel)
- #20 Switzerland (I blame it on the altitude)
- #18 Great Britain (must be why the right-wing pundits attack the Brit's National Health System as more ineffective socialism)
- #17 Netherlands (maybe living so close to sea level)

And now we're in the **Top Ten**, the healthy ones, and, just like with the pop charts, an interesting mix:

- #10 Japan (it's all the raw fish - sarcasm aside, maybe it is)
- #9 Austria (no idea, maybe just centuries of history)
- #8 Oman (oil)
- #7 Spain (good wine and tapas)
- #6 Singapore (more raw fish?)

Now the next three don't really count. They are too small. Chalk it up to not enough people to get sick very often. But to keep this countdown on a roll, here they are: #5 - Malta, #4 - Andorra, AND #3 - Sam Marion (wherever the hell that is)

## Drum roll...

- #2 Italy
- #1 France

Wait a minute, two capitalist countries took the top honors? Could it be they both have socialized medicine programs? But wait, they aren't even paying that much for their excellent health care programs. How could this be?

Could it possible be that they see health care for all not only as a right, but also as the most economical way to serve the citizens of their country?

Oh well..

And I nearly forgot, where is the United States in this rating? The US spends about twice as much as the winners. The land of the free to make as much as you can, ranks 37th.

Ian Ruskin is the Director of *The Harry Bridges Project*, dedicated to telling the story of 20th century American workers through the eyes of a visionary and radical labor leader. Visit [www.TheHarryBridgesProject.org](http://www.TheHarryBridgesProject.org) or contact Ian at [ianruskin@theharrybridgesproject.org](mailto:ianruskin@theharrybridgesproject.org).

## Comparative Law and Policy

on

## Strikes in the Public Sector

Thursday November 19

4 - 7 pm

Columbia Law School - Room 102

On Thursday November 19, 2009 from 4-7 pm, join us for a discussion at Columbia Law School in Room 102 on the *Taylor Law*. The **International Commission for Labor Rights** is collaborating with the **Human Rights Institute** at Columbia Law School to organize a discussion on *Comparative Law and Policy on Strikes in the Public Sector*, bringing a range of perspectives to bear on New York State's *Taylor Law* which prohibits such strikes. The event will convene an international panel of experts on public sector unionism to discuss the 2005 strike of the **Transit Workers' Union Local 100** in New York City. Following the strike, which took place after a deadlock in contract negotiations, the union was heavily penalized under the *Taylor Law*: its leader **Roger Toussaint** was imprisoned for 12 days, the union was fined \$2.5 million and lost automatic dues deduction, and individual members were fined two days' pay for every day of the strike.

**TWU Local 100** is submitting a complaint to the ILO's Committee on Freedom of Association, asserting that the *Taylor Law* violates internationally-recognized norms protecting the right to strike. This panel will look at a different angle of the issue, addressing *comparative* norms. It will examine how other jurisdictions - India, Canada, European systems, and other US states - have balanced the right to strike in the public sector with the state's commitment to providing reliable public services and maintaining public order. The panel discussion will also feature the opinions of **Roger Toussaint** and other **TWU** union leaders and members, business owners, and local politicians on the issue of the strike.

The **International Commission for Labor Rights** will coordinate a report based on the panel discussion to contribute to the debate on the questionable fairness, legality and efficacy of the *Taylor Law* - and the steps necessary to bring it in line with accepted practice around the world.

The panelists at this forum will be:

- Tonia Novitz**, Bristol University School of Law (UK)
- Claude Melançon**, Labor Lawyer (Canada)
- Ramapriya Gopalakrishnan**, counsel for the Tamil Nadu Government Officials' Union (India)
- Henry-Jose Legrand**, labor lawyer (France)
- Cruz Reynoso**, UC Davis and former Justice of the California Supreme Court (US)
- James Pope**, Rutgers Law School (US)

# Update from the Sugar Law Center

by John Philo, Maurice and Jane Sugar Law Center and L&EC member

Over the past months, the **Sugar Law Center's** work provided support to persons facing the harshest realities of the failed economic policies of past decades. Through informal education, legal counseling, direct representation, and public advocacy, our work provides support to individuals, community groups, labor unions, government officials, and other like-minded organizations towards a more meaningful realization of the full spectrum of the economic and social rights necessary to a just society and sustainable economy. Most notably, recent work has sought to strengthen workers' rights to economic and social security when faced with job loss, to receive fair wages, and to be paid wages earned.

All persons have a right to economic and social security when faced with job loss occurring through no fault of their own. The **Sugar Law Center's** work in support of this right occurs through projects that seek to uphold and expand workers' rights to notice and compensation in advance of job loss and to ensure that workers are paid unemployment benefits due.

In the past two economic quarters, our country has seen nearly 7,000 extended mass layoff actions resulting in job loss to more than 1.2 million workers. In August alone, there were over 2,500 mass layoff actions affecting over one-half million workers. As a result, the **Law Center** continues to see nearly triple the number of workers' inquiries than we did during the same months in previous years. In support of these workers' rights, we have recently filed lawsuits on behalf of hundreds of displaced airline, furniture, apparel, steel, hospital, automotive supply, and other workers who lost their livelihoods as the consequence of the unbridled corporate greed that has caused the collapse of our national economy.

The **Sugar Law Center** remains the preeminent national authority on litigation under the **Worker Adjustment and Retraining Notification (WARN) Act**. This year the **Center's** issue briefs and model bills have been distributed to over two thousand community advocates, union members, government workers and federal and state elected officials for use in advocating **WARN Act** reform. Over the summer, advance notice protection became law in New Hampshire and reform legislation has been reintroduced before the United States Congress. Proposed legislation is also now pending in Indiana, Minnesota, Rhode Island, and other states. During the summer, our office strongly advocated for state-law reform and acted as a resource for legislators and their staff in four states regarding the language of proposed legislation and strategies for passage.

As noted in prior updates, the **Sugar Law Center** embarked on a project representing workers who have been denied unemployment compensation. Through this project, our staff has undertaken representation of workers who have been denied unemployment benefits and who are not entitled to further representation under Michigan's UIA advocate's program. Representation of workers has begun in earnest in recent months. While only representing workers whose applications for UIA benefits were denied and who did not prevail in their first appeal

before a state administrative law judge, our office has successfully obtained compensation for over 60% of workers we represented. Through our national project fielding all manner of employment law concerns from Wal-Mart workers, we are also providing advice and counseling to former employees in states across the nation whose claims for unemployment compensation have been contested by that company.

All persons have a right to a fair wage and to receive wages for work performed. In support of these rights, the **Sugar Law Center** now represents workers in wage disputes brought before the Michigan Department of Labor and Economic Growth and is evaluating court filings on behalf of dozens of workers in other matters. Similar to our work with Wal-Mart workers on other employment law issues, we are also providing information and advice to employees with wage claim issues in multiple states. Our office also provides nontraditional advocacy in support of workers' wage claims, including acting as legal observers at workers' picketing and leafleting actions, drafting and distributing information on the filing of workers' liens against real property for unpaid wages, and drafting and providing legal analysis and support to restaurant workers undertaking grass-roots initiatives to reform state licensing law to protect their right to fair wages.

We thank each of you who has supported our work through your encouragement, advice, and time on our projects and we look forward to working with past and new friends in the months ahead. Those who would like to contribute in any capacity or make a donation in support of our work are encouraged to contact us at: **Maurice and Jane Sugar Law Center for Economic and Social Justice**, 4605 Cass Avenue, 2nd Floor, Detroit MI 48201, phone (313) 993-4505 or [www.sugarlaw.org](http://www.sugarlaw.org).

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The recent economic crisis has raised the issue of re-funding plans with public money. But this is not the answer. Rather, the answer lies in the nationalization of all non-performing plans and their amalgamation into national social security schemes. Such schemes should then be given the authority now given to state public pension plans in the US. They should be able to seek compensation from the companies which squandered these assets, not in the form of lawsuits, but rather in the form of debt for equity swaps. Thus if for example Mittal Steel is found to have squandered the assets of its pension plan, then its capitalization and fixed capital will be used to pay the debt. If paying such debt could impact the ongoing funding of the plan, and thus its contribution to social security, then the assets of those making the decisions which led to the losses should be sought. And so on.

Older workers are not to be blamed nor should they pay for the crisis. Those who profited from the conditions they created should pay. Unions and workers' parties should establish commissions to begin the collection process.

Claude Piller may be reached at [romaintell@hotmail.com](mailto:romaintell@hotmail.com).

## Eleventh Annual Cuba Visit Promises Exciting Developments

by Joan Hill & Dean Hubbard, L&EC members

The L&EC annual Cuba program will take place March 13-21, 2010. From March 15-17, we will join labor and employment lawyers and trade unionists from South, Central and North America at a professional conference at the Hotel Nacional in Havana. The conference is sponsored by the Cuban Society for Labor Law, American Association of Jurists (AAJ), and the Association of Latin American Labor Lawyers (ALAL), the progressive inter-hemispheric bar associations with which the L&E Committee is affiliated.

We are seeking delegates and paper proposals for the following conference topics:

- Labor Law and the global economic crisis.
- Social Security: Experiences and Prospects of the Pension System
- Labor Law procedures and conflict-solving: jurisprudence and doctrine
- Professional and criminal responsibility of officials in cases of work-related accidents, occupational hazards and discrimination in the workplace.

From March 18-20 will be a program of professional research: we will visit Cuban workplaces and interview workers, union leaders, labor lawyers and judges in Havana and at least one of the surrounding provinces. The program also includes publishing a report of the research results.

To preregister, please contact **Bob Guild** of Marazul Charters, a licensed travel service provider, at [bguild@marazul.com](mailto:bguild@marazul.com). A brochure with further information is on the L&E Committee website at <http://nlg-laboremploy-comm.org>. L&E Committee Cuba coordinators **Dean Hubbard** and **Joan Hill** can be contacted at [deanhub@gmail.com](mailto:deanhub@gmail.com) and [johill@usw.org](mailto:johill@usw.org).

Join us as we continue our critically important work of building understanding between the trade union movements of the US, Cuba and the Americas through mutual education.

## Visa Approval Appears Likely for Cuban Labor Society VP to Make Historic Appearance at NLG Seattle Convention

**Guillermo Ferriol**, the co-founder of the NLG Cuba labor research exchanges, Vice-President of the Cuban Labor Law Society, and officer of the Association of Latin American Labor Lawyers, will likely be attending and speaking at the NLG Convention in Seattle, subject to approval of his visa. If granted, and the signs are positive, he will be the first Cuban labor movement representative granted a US visa since 2002. This will be a historic opportunity to exchange views with an important leader of the labor bar in Cuba and Latin America.

On Thursday, October 15 from 2-3 pm, he is scheduled to share his perspectives and respond to questions on the ramifications for workers' rights of the process of change that is taking place in Cuba - as part of a joint meeting of several committees. Later on Thursday, he will speak more broadly on

## CLE at NLG Seattle Convention *Fighting for Justice*

The CLE *Fighting for Justice* takes place Thursday, October 15, 2009 from 1-5:15 pm at the NLG Convention in Seattle.

**Learn how to litigate using UN treaties and how to assist clients using the Offices of the Inspector General [OIG].** These creative legal strategies have resulted in victories in a variety of cases including labor law matters. Lawyers can also apply these strategies in cases involving civil rights, election law, criminal law, juvenile law, military law, and the Alien Tort Claims Act.

The CLE will feature **Maria La Hood**, lead counsel at **Center for Constitutional Rights** who just won *Wiwsa v. Royal Dutch/Shell*, and Detroit trial lawyer **Bill Goodman** with the **Sugar Law Center**, describing cases against Bridgestone, Ford Motor, Dubai Petroleum, among 44 other victories relying on US treaty laws. They will discuss successful suits in Indiana against child labor and a wrongful death of a non-citizen worker in Texas.

**Ann Fagan Ginger** of the **Meiklejohn Civil Liberties Institute** will open the program outlining the UN human rights treaties the US has ratified since 1992. She will focus on how to secure justice using specific provisions of numerous covenants and treaties. **Ginger** will also report on human rights ordinances and resolutions adopted by the City Council of Berkeley and how these are improving enforcement of human rights in the city.

Solidarity lawyer **Susan Scott** of Sacramento and a member of the NLG International Committee, will describe the UN Human Rights Committee's reporting system and how it affects some US government actions.

Professor **John Brittain** of the University of District Columbia College of Law and former NLG national president, will describe the process of filing complaints with the OIG. He will focus on how this approach, in addition to filing traditional lawsuits, can help a variety of clients. He will address OIG reports concerning the nine fired US Attorneys, several detained noncitizens, and Hurricane Katrina victims. **Brittain** will also report on seeking access to secret EPA, CIA and NSA documents.

As of September 1, California and Washington lawyers will earn 4 hours CLE credit. Credit may be available in other states as well. Participants will receive a course book of the cases, descriptions of successful OIG complaints, the text of all relevant treaties, and the oral presentations in searchable PDF format.

Lawyers, students and legal workers can pre-register before October 10 at [www.mcli.org/cle](http://www.mcli.org/cle). The lawyer fee is \$130 and \$25 for students / legal workers. Registration at the Convention will be \$150 for lawyers and \$35 for students / legal workers.

Call (510) 848-0599 or email [cle@mcli.org](mailto:cle@mcli.org) with questions or for a copy of materials after October 22 .

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developments in Cuba and US-Cuba relations at the Cuba subcommittee meeting from 5-7 pm.

On Friday, October 16 from 1:15-2:45 pm, he is scheduled to speak on novel ways the revolutionary governments of Latin America are responding to the global economic meltdown as part of the workshop entitled *What Difference Does a Revolution Make in a Global Economic Meltdown*.

# The Great Pension RipOff

by Claude Piller, NLG L&EC member

In past issues we discussed how the new national level accounting rules have changed the way government entities show on their financial statements the long term costs associated with retiree health care and other post-employment benefits such as: prescription coverage, vision, life insurance, disability insurance, long term care, and group legal plans. Now fully implemented, these rules have had a deep effect on the appearance of public sector budgets, compelling either cuts in pay for public sector workers, bonding issues, concessionary bargaining, or a combination of all three.

This articles addresses the other side on this ongoing rip-off -- the effect of the maladroitly named *Pension Protection Act* in the US and the recent changes in European Union pension law.

## THE NEEDS OF FINANCE CAPITAL

Since the 1970s, pension plans have been under attack by the ruling class for two main reasons: the immediate need to obtain double digit profits dictated by financial capital, and the long term need to deregulate access to pension funds by the same finance capital.

Further, the increasing hunger of capital has caused the near disappearance of savings, as such, and their replacement with *financial products*. Financial products are savings that can be used by the capitalists for largely any purpose they want. Even banks formerly called and regulated as *savings and loans* no longer focus on savings but rather focus on derivatives of saving products which allow unfettered access by the capitalists. Many of these became known as *bundles* – bundles which included the now well known *toxic* loans that would not be repaid. Other companies not known as banks subsequently became banks so that they could also sell these financial products at speculative rates while also qualifying for the benefits of the federal bail-out. This phenomena particularly affected department stores and retail distribution chains.

Where pension plans still exist, they have been compelled to provide *non-traditional* options for workers who may then risk their money in questionable investment pools. Money market funds, mutual funds, and more dangerous exchange trade funds are now, more and more, in control of the fate of workers' pensions. These funds, particularly exchange trade funds, hang perilously at the edge of the abyss, with many a worker's retirement saving in dangerous tow.

Demographic trends worry capital. In about ten years, the great market of the baby boomers retirement investments will become a net loser of capital under current retirement and retirement benefit patterns. Thus, either the patterns are reduced or another source of profits must be found.

In the old Keynesian capitalist approach, pay-as-you-go pensions were sustained by increasing rates of pay, the norm from 1946 until the mid seventies. Today such norm contradicts the needs of capital, both short term and long term. Salaries have been declining since the mid-seventies for all but the top fifth earners. For a while this decline was obscured by easy credit and inflated housing values which allowed for more credit. But as we know, this does not occur any longer.

Since 1974, the American capitalists have relied on the Pension Benefit Guarantee Corporation (PBGC) to bail them out when they fail to meet their pension obligations. This was last done during the *dot.com* bust in 2001. The current bust however, is too large for the PBGC to handle. And a special fund injection from the federal government - another bail out - is likely to be required in the future.

The risks to pensions are much greater now than they were in 1974 because of speculation. In 1974 in the US, at least the firewalls of the *Glass-Steagall Act*, designed to prevents bank panics such as occurred in 1929, still existed. These walls have come down. Real estate, including sub-prime loans, became not only the way to channel inflationary pressure but also the way to stimulate consumption. The phenomenon of relying on real estate speculation to control inflation and stimulate consumption was particularly enhanced in the US where the rate of return on stocks in the 1990s was the highest in history (or since 1901 when stock markets became a prevalent capitalist feature).

Elsewhere in the world, the rate of return was one third of the rate of return in the US during the same decade, and negative in Japan because of the early collapse of the real estate speculation bubble there. Thus Japanese capital fled to bonds and the US stock exchange and helped fund the US budget deficit.

The same thing is happening in the US and Britain now as capital now flees towards profitable specialty markets such as commodities, IT, and media, as well as non-dollar and non-sterling based equity and bond markets. This flight is the main cause in the decline of the dollar and sterling versus other currencies.

## PRIVATIZATION AND DESTRUCTION OF PENSIONS

Since 1988 people in Great Britain have been able to opt out of social security, only to lose it all in fraudulent schemes.

In the US, the *Pension Protection Act* new rules went into effect last year. Their avowed purpose is not to protect pensions but to encourage people to save money for retirement in 401(k) accounts. These accounts do not provide a defined life-time retirement; they are merely savings accounts which guarantee neither a defined pension nor guaranteed payments until death. And under the Act, employees who do not choose a particular *investing vehicle* (a 401(k) savings plan) are forced to do so simply by their employer establishing a 401(k) which places them into the *default* option of the plan. Previously this could not be done as the employers were liable for any losses the 401(k) or pension plan incurred. In the ENRON case, the employer was made constructively liable because it had lied about its stock value to its employees. Currently in the US, 50% of all employees participate in 401(k) plans. The bankers' ideal is to increase this percentage to 80%.

The *Pension Protection Act* does increase the premiums paid by companies to the PBGC and also mandates full funding of liquidated plans prior to liquidation. But this is mainly a way for finance capital to protect itself from other wings of capital's liabilities, such as those holding toxic loans.

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Public pensions are a great gain. Japan's Social Security non medical plan has one trillion dollars in assets. The Norwegian pension plan has close to \$600 billion, which makes its per capita funding outlandishly well off. The Dutch Pension Fund stands at \$200 billion, after great losses in bad investment decisions such as Icelandic stocks. CALPERS and the FERS are just below in assets, but insuring a lot less people so much better capitalized than Dutch or Japanese social security. However Dutch ideal funding assumptions assume everyone retiring at once, whereas the American standard is 80%. But even CALPERS is hurting; it lost 23% of its value last year, the worst performance ever, even worse than during the great depression.

The House bill on health care reform would benefit retirement plans, which could select the public option and save considerably. But the public option may not make it to the President's desk.

#### **THE EUROPEAN UNION ATTACKS PENSIONS**

In the European Union, the *Market in Financial Instruments Directive [MIFID]* came into the effect November 1, 2007. *MIFID* encourages the expansion of investment banks at the expense of traditional consumer and savings banks. In England, already 50% of all shares in the London Stock Exchange are controlled by hedge funds, secretive investment banks.

Much like the *Pension Protection Act* seeks to create a bigger market of 401(k)s, *MIFID* seeks to create a single European market aiming to *harmonize and improve investor's protection across the 27-member European Union*. There you have it, it aims not to protect pensions but rather protect investors. *MIFID* will allow investors from county X to invest in pensions funds in country Y, while also allowing for risky investments now forbidden. In Spain, Holland and Poland, *MIFID* will not be implemented at once because of some local resistance, but elsewhere it will be.

The biggest beneficiaries of *MIFID* will be the big investment funds from the US, Germany, England and France. Ultimately, the goal of *MIFID* is to *off-shore* investments away from the historically single digit profit rate markets in the US and Europe to the double digit markets in Hong Kong, Singapore, Kuala Lumpur, Taipei and Seoul. Yet local entities such as Korea's National Pension Fund have been reluctant to invest much in their local exchanges. Under the English model, 60% of investments must be in equities. According to their own banking sources, UK pension funds lost \$200 billion in the year 2006 alone due to losses in their stock market. Furthermore, under international accounting rules, no matter how much money a pension fund is making from speculation in the stock market, it can only be valued as though its assets were made of high grade corporate bonds. In other words, these funds invest in the stock exchange for the benefit of everyone else in the exchange but themselves, even in good times. Why do it then? Because this is dictated by the implacable logic of the financial market.

Another goal of *MIFID* is to help prop up the under funded European private pension plans (under funded by \$370 billion because of the failure of the employers to keep up with their obligations) with new fresh capital to be extracted from the social security funds to be privatized in the future. In short, workers will help pay for the short falls of the mainly white collar workers and managers private pension funds.

#### **EQUALITY IN POVERTY?**

The European Union's new *Directive on Employment Equality* is also a tool to assault private sector contractually based benefit and pension policies. Potentially they constitute violations of the age discrimination provisos of the *Equality Directive*. Because the *Directive* mandates each one of the 27-member states to draft its own anti-age discrimination rules, the door is open for attacks on pensions and benefits in national master agreements.

Paradoxically, the *Directive* could be used to dismantle management's profit sharing schemes. The *Directive* could also stop accelerated vesting schemes designed to encourage early retirement in lieu of lay-offs. Germany and Belgium have local discrimination statutes exempting foreign but not domestic companies and the same could occur elsewhere in Europe, nationally or just in certain industries such as in France and Italy.

Plans that condition benefits solely on reaching a specified age are prime targets for phony claims of *age discrimination* in practically all EU states. In Holland, Spain and the UK, current law allows a safe harbor for private plans if the age triggering event is the same as the national retirement age per Recital 14 of the *Directive*. Elsewhere in the EU however, no such protection is available. Furthermore, the drive to increase the national retirement age before full pension vesting would result in such increases being passed on to the private sector, if private sector unions want to retain age-based pension plans, thus triggering concessionary bargaining. Worse yet, in countries with no national mandatory retirement age, there is no safe harbor at all.

Indeed, a 2007 decision by the European Court of Justice *Palacios de la Villa v. Cortefiel Servicios S.A.* (ECJ Case C-411 October 16, 2007) leaves the door open to challenges against not only private sector pension plans but even national plans. In that case, Spain's mandatory retirement age of 65 was challenged.

#### **DEFENDING WHAT WE WON**

Workers in Europe and the US won retirement benefits, retirement age, and social security after decades of struggle. Increased life expectancy in North America and parts of Western Europe in the last four decades should not be a reason to increase retirement age. Instead there should be earlier retirement to allow for increased employment of those just entering the work force or who lost their jobs due to the current recession. Private pension plans should never be funded by the public sector directly or indirectly. Shortfalls in funding should be made up by canceling any pension benefit above \$90,000 per annum and all such monies should be returned to the plan. If that is not sufficient, the company shareholders – whether public or private – should pay such shortfalls until it is eliminated. Defaulting companies should be nationalized under workers' and pensioners' control. All private sector workers should be allowed to opt-in to their social security systems and out of their private schemes.

**Hands off the national retirement systems!** All social security systems should be left alone and retirement age lowered to 55. Special regimes such as those won by railroad workers in the US and France, air transport workers in the US and Europe, and electrical workers in France, should be left alone and examples of a way to improve workers lives. They should not be destroyed to feed a race to the bottom.

*continued on page 4 at the bottom of column 2*

L&EC meeting during the 2009 NLG Convention in Seattle

## **Labor & Employment Committee MEETING**

**Thursday - October 15, 2009 - 3:00 - 5:00 pm**

We will post a meeting notice with the location in the registration area

L&EC presentation - a major panel during the 2009 NLG Convention in Seattle

## **Economic Crisis, Attacks on Workers' Wages & Growth of Protectionism and Anti-Immigrant Sentiment**

**Saturday - October 17, 2009 - 2:30 - 4:00 pm**

Marielena Hincapie, Director of Programs, National Immigration Law Center  
Ashwini Sukthankar, former Director of International Commission for Labor Rights  
Chip Berlet, Senior Analyst at Political Research Associates

## **Enhancing the Right of Workers to Organize in Tough Economic Times A Comparative Perspective from Canada, US and Mexico**

**Sunday - October 18, 2009 - 10:45 - 12 noon**

### **National Lawyers Guild**

#### **Labor & Employment Committee**

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