



## March with Labor and One Nation For Jobs, Justice and Education for All October 2 in Washington DC

*Editors's Note: The AFL-CIO Executive Council recently issued this statement, joined the ONE NATION coalition, and pledged to work collectively to add labor's support to this effort because working people can make a difference together.*

Our nation stands at a critical crossroads. The 30-year drive for a low-wage, high-consumption society that imports more and more of what it consumes has hit the wall. Millions are unemployed, with little recovery in sight. A record number of Americans who want desperately to work have been jobless for more than 6 months. At the same time, Wall Street continues to roll up big profits.

Banks and corporations have made off with trillions of public dollars, while small businesses can't get loans and cities are being forced to make cuts to public education and public safety, harming our children and our communities.

Obstructionists in Congress are doing everything they can to stop anything that helps working people, and they are scapegoating workers for the demise of the economy. Public sector workers are being cast as selfish, auto workers are being blamed for the troubles of the auto industry, and teachers are being blamed for an education system in need of support.

Working people are frustrated and angry — incensed by the government's inability to halt massive job loss and declining living standards on the one hand, and the comparative ease with which Republicans in Congress, with help from some Democrats, have done their best to make the world safe again for JP Morgan, Goldman Sachs and CitiGroup, on the other. Just as we have seen through history, fear mongers in our country have seized on that anger and are working hard — unfortunately with some success — to use justifiable anger about a failing economy to divide us.

We have to fight this hateful demagoguery that only benefits our foes, and we can't do it alone. History has taught us that the best way to fight the forces of hatred is to address the economic policies that led to our economic suffering, and that our fight must draw its strength from an alliance of the poor and the middle class—everyone who works for a living.

It is against this backdrop that we join **ONE NATION**.

**ONE NATION** is a multi-racial, civil and human rights movement whose mission is to reorder our nation's priorities to invest in our nation's most valuable resource - our people. The organizations that have come together to form **ONE NATION** believe that our goal should be a future of shared prosperity, not stubborn unemployment and a lost generation. Workers should be able to share in the wealth they create, and everyone deserves the opportunity to achieve the American Dream - a secure job; the chance for our children to get a great public education and the opportunity to make their own way in the world; and laws that protect us, not oppress us.

**ONE NATION** is a long-term effort to reverse the dangerous economic course of our country over the past four decades. It brings together organizations from across the progressive spectrum—labor, civil rights, environmental, faith and many others—recognizing that none of us alone have been able to achieve our priorities, whether they are large-scale job creation, labor law reform, immigration reform, investing in public education or other concerns, and that we will not realize change until these priorities belong to all of us.

**ONE NATION** shares the labor movement's policy agenda: An economy that works for all; good jobs, fair jobs, safe jobs, and more jobs; reforming Wall Street; repairing our immigration system; quality education for every child; and ensuring that everyone in America has the opportunity to contribute to and strengthen our country. Restoring workers' rights to organize and bargain collectively is at the heart of the policy agenda.

The **ONE NATION** march on Washington on October 2, 2010 will charge up an army of tens of thousands of activists who will return to their neighborhoods, churches, schools and, especially, voting booths, with new energy to enact our common agenda. And on the same day, the labor movement will walk door-to-door in targeted states around the country, bringing the same message to union members exactly one month before the fall elections.

The march aims to bring working people, young people, retirees, civil rights activists and many others together on the Mall to show the obstructionists in Congress that we are many and diverse, strong and that united — and we will fight together for the American Dream.

# Defending Free Speech Rights in Public Places

by Henry Willis, Schwartz Steinsapir Dohrmann & Sommers

California adopted its own *Little Norris-LaGuardia Act*, Labor Code § 1138.1 *et seq.*, in 2000; employers have been attacking it ever since. One theory that has never gone away entirely is their claim that the statute discriminates in favor of labor speech in violation of *Police Department v. Mosley*, 408 U.S. 92 (1972) and *Carey v. Brown*, 447 U.S. 455 (1980) by virtue of the fact that it imposes higher procedural standards for issuance of injunctions in labor disputes.

The Employers lost the first round in this battle in *Walmart Foods v. United Food & Commercial Workers*, 87 Cal.App.4th 145 (2001), which held that the law did not regulate speech per se or discriminate on the basis of content. They have now won the second round in *Ralphs Grocery Co. v. United Food and Commercial Workers Union Local 8*, 186 Cal.App.4th 1078 (2010). The Union has petitioned for review in the California Supreme Court—a discretionary form of review, akin to *certiorari* in the United States Supreme Court.<sup>1</sup> The Court will rule sometime this fall.

That is not the only issue before the Supreme Court. The Court of Appeal also relied on *Mosley* and *Carey* to attack the California Supreme Court's holding in *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 25 Cal.3d 317 (1979) that an earlier enactment, the Moscone Act, Code of Civil Procedure § 527.3, prohibits injunctions against peaceful picketing by labor unions on the sidewalks outside of retail stores.

This ruling depended in turn on the Court of Appeal's marginalizing of the access rights that all individuals and groups have in shopping malls, based on the California Supreme Court's 1979 decision in *Robins v. Pruneyard Shopping Center*, 23 Cal.3d 899 (1979). The Court of Appeal took a very narrow view of the scope of *Pruneyard*, holding that the store in the case before it should be treated as if it were a stand-alone store, even though it was located in a mall much like the one in *Pruneyard*, and that only those areas in the mall that are set aside for public activities — the courtyards, plazas, outdoor restaurants, and other *common areas* — are free speech zones, but that the areas where it is easiest to reach customers—the parking areas and sidewalks around the store — are not.

Finally, the Court of Appeal rejected the California Supreme Court's earlier decisions in *Schwartz-Torrance Investment Corp. v. Bakery & Confectionery Workers Union*, 61 Cal.2d 766 (1964) and *In re Lane*, 71 Cal.2d 872 (1969), which had held that unions had the right to picket and distribute handbills in the otherwise private sidewalks of a shopping center where a targeted employer was located. The Court of Appeal in *Ralphs* held that both *Schwartz-Torrance* and *Lane* were no longer good law, even though the Supreme Court had endorsed them both just three years ago in *Fashion Valley Mall, LLC v. NLRB*, 42 Cal.4th 850 (2007).

**This case is of critical importance to unions and their allies in California.** It could also have an impact beyond California's borders if the Court of Appeal's reading of *Mosley* and *Carey* were adopted, since that could undermine even the

limited access rights that workers and unions have under the NLRA. We offer a short analysis of each of the issues that the Union is asking the Supreme Court to review; while we give our opinion as to how each issue ought to be resolved, we do not offer any predictions as to how the California Supreme Court actually will rule or whether it will rule at all.

**1. Does California's "Little Norris-LaGuardia Act" violate the employer's free speech rights?** The Court of Appeal relied on two distinct First Amendment arguments to find that California's *Little Norris-LaGuardia Act* was unconstitutional:

— **the law forced it to host speech with which it disagrees**, in violation of its free speech rights under cases such as *Hurley v. Irish-American Gay Group*, 515 U.S. 557 (1995) and *Pacific Gas & Electric Co. v. Public Utilities Commission*, 475 U.S. 1 (1986), and

— **the law discriminates in favor of union speech.**

Both arguments start from two dubious premises: (1) that California's *Little Norris-LaGuardia Act* regulates unions' and employers' substantive rights, rather than the procedure for obtaining injunctive relief, and (2) failing to curb the Union's free speech rights somehow interferes with Ralphs' First Amendment rights.

The Court of Appeal's first argument — that *Norris-LaGuardia* forces an employer to adopt the message of the union's picket signs and leaflets by making it harder to expel it — is preposterous. No reasonably intelligent person would think a grocery chain endorses the message that it is unfair or underpays its workers simply because it has not expelled the Union picketers and leafletters from its property. Yet that is the argument the Court of Appeal put forward.

That argument is intellectually dishonest as well as preposterous as the United States Supreme Court rejected this same argument in both *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 87 (1980), in which it found that California had the right to accommodate free speech rights when enforcing a landowner's right to expel leafletters as "trespassers," and more recently in *Rumsfeld v. Forum for Academic & Institutional Rights*, 547 U.S. 47, 63 (2006), in which it upheld the Solomon Amendment against the challenge from universities that claimed the Amendment interfered with their free speech rights. The Court brushed that claim aside by noting that the Act did not affect the universities' ability to speak for themselves or force them to affirm a position or view prescribed by the government.

The *Rumsfeld* decision is notable for another detail as well: the Court specifically distinguished the *Hurley* and *PG&E* cases on which the Court of Appeal relied. Remarkably, the Court of Appeal did not cite, much less discuss, either of these two controlling Supreme Court precedents — a strong ground for review or depublication.

The second argument — that California's *Little Norris-LaGuardia Act* amounts to content-based discrimination because

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it gives workers and unions practical advantages that others using their First Amendment rights do not have — is just as wrongheaded. There is a fundamental problem with this argument: even if the *Little Norris-LaGuardia Act* works in favor of workers and their unions, it does not, unlike the laws at issue in *Mosley* and *Carey*, limit Ralphs' free speech rights in any way.

Ralphs' *Mosley/Carey* argument thus rests on the same premise that underlies the Court of Appeal's *Hurley/PG&E* analysis: namely, that Ralphs' free speech rights are somehow diminished by statutes and common law doctrines that protect others' right to speak and that unions must be denied the right to speak in order to preserve Ralphs'. There is no authority for that proposition.

That is not to say, however, that we will not hear more of it in the future. The Burger Court held a third of a century ago in *Buckley v. Valeo*, 424 U.S. 1 (1976) that money is a form of speech. The Roberts Court instructed us just this year in *Citizens United v. Federal Election Commission*, 558 U.S. 50 (2010) that corporations cannot be barred from participating directly in political campaigns. The next step — that free speech is a property right, which some can hold to the exclusion of others and which neither Congress nor the states can take away from the property owners who hold it — may seem inconceivable, but not so inconceivable that someone on the right will not argue it. Indeed, in a sense Ralphs already has.

**2. Does *Pruneyard* allow mall owners and employers to establish “free speech zones”?** Anyone who has tried to join with others to exercise their free speech rights at a national political convention or on a University of California campus, to take just two examples, knows what the authorities think of free speech: it is a right that every person within the U.S. enjoys, but to be permitted only behind a chain link fence or in some other form of *free speech zoo* far from the persons at whom the speech is aimed. The Court of Appeal's decision in *Ralphs* seeks to impose the same noxious limits on free speech under *Pruneyard*.

*Ralphs* is not the first case, however, to make the effort: in the years since *Pruneyard*, any number of appellate courts have drawn distinctions between shopping malls and shopping centers and between shopping centers and stand-alone stores. Courts have approved time, place and manner rules that allow mall owners and employers to bar the most effective forms of speech or limit it to so few hours as to make it merely symbolic. Ralphs followed their lead in this case, demanding that the Union limit its activities drastically for Ralphs' convenience.

The trial court rejected Ralphs' conditions, finding them unreasonable for a *Pruneyard* setting. The Court of Appeal reversed, holding that, even though the mall in this case met all the conditions for coverage under *Pruneyard*, it should be viewed as separate regions, with public areas limited to those areas in the mall that had been set aside for public activities, such as the courtyards, plazas, outdoor restaurants, and other “common areas,” while the sidewalks and other areas around individual stores are “no go” areas that the store owner can control as it sees fit. That area in front of the store is, of course, the area

where leafletters and picketers are most likely to be seen and to be able to communicate their message.

This is contrary to the basic premise of *Pruneyard*: that the pathways and sidewalks in a mall are the functional equivalent of streets and sidewalks of a downtown business district. It is also inconsistent with the Supreme Court's decision in *Fashion Valley*, which endorsed the Court's earlier decisions in *Schwartz-Torrance* and *Lane*.

*Schwartz-Torrance* and *Lane* are still good law, despite the Court of Appeal's attempt to bury them. As they and cases following them hold, it makes a difference when speakers or leafletters not only want to use the public space to broadcast their message to the public, but are targeting one of the businesses located in the mall, since in that case the sidewalk in front of the store may be the only available forum for effective expression of that message. *Costco Co. v. Gallant*, 96 Cal.App.4th 740, 755 (2002); *Slauson Partnership v. Ochoa*, 112 Cal.App.4th 1005, 1028-29 (2003).

The *Fashion Valley* decision was a victory, but a cautious decision that did not address all of the challenges to *Pruneyard* from lower appellate courts. The *Ralphs* case may force it to do so. We'll know in a few months if the Court is willing to take up the challenge; if it does, we may have to wait a year or more to see how it responds.

**FN1** In addition, a number of unions and community organizations asked the Court to *depublish* its decision, although that may provide only limited relief as Ralphs has another case pending in a different appellate district which decision is expected shortly.

**Join the AFL-CIO and ONE NATION  
October 2, 2010  
Washington, DC**

for transportation within a 12-hour radius of DC  
contact Bob Moses (202) 637-5128 or [BMoses@afcio.org](mailto:BMoses@afcio.org)  
<http://onenationworkingtogether.org/>

## **ILO Takes Steps Toward Establishing Domestic Workers Rights**

In June, the International Labor Organization [ILO] began the process to establish a first-ever international standard (convention) to protect domestic workers' rights. If passed at the ILO meeting in 2011, it would require ratifying governments to ensure domestic workers are covered by the fundamental rights and principles of the ILO, which include the freedom to form unions, elimination of forced labor, abolition of child labor and the elimination of discrimination. Employers would be responsible for making sure workers are informed of the agreed terms and conditions of work, preferably through a written contract. The terms would include the work to be performed, pay, normal hours of work, provision of food and accommodation.

*Editor's Note: In August, 2010, NY became the first in the nation to pass a Domestic Workers' Rights bill. It's a first step in winning recognition. It sets a floor for various employment guarantees including overtime pay.*

# ICLR Assists Mexico's Independent Labor Movement

by Jeanne Mirer, Eisner & Mirer

For many years the **National Lawyers Guild**, through the **International Labor Justice Working Group** (a working group composed of members of the **Labor & Employment Committee** and the **International Committee**) has been building international solidarity with workers in the Western Hemisphere. In particular, the **NLG** has developed strong ties with both the workers seeking to build independent unions in Mexico and their lawyers. The attacks on independent unions have been building over the years, but in the last year there has been a major escalation in the assault on workers in these unions which has required a strong response.

For example, on October 11, 2009, as a result of Mexican President Calderon's decree, liquidating *Compañía de Luz y Fuerza del Centro S.A.* (Central Light and Power) [LyFC] 44,000 workers were instantly terminated from their jobs and 22,000 retirees had their retirement benefits substantially reduced. These workers had been represented by an independent union, *Sindicato Mexicano de Electricistas* [SME]. The decree also transferred the assets of LyFC to the other state-owned power and light company in Mexico, *Comisión Federal de Electricidad* (Federal Electricity Commission). That company is unionized by a government controlled union.

Similarly, the *Sindicato Nacional de Trabajadores Mineros, Metalúrgicos y Similares de la República Mexicana* (National Union of Miners, Metalworkers and Allied Workers of the Republic of Mexico) [Mineworkers or Los Mineros] has been under attack. The government has refused to recognize its duly elected leadership and frozen its bank accounts. It has tried to prosecute the president of the union forcing him into exile in Canada, and has violently suppressed strikes. One strike suppressed in June, 2010, was at the Cananea mine, which the miners had occupied for over three years due to allegedly significant health and safety issues. This mine and others where smaller strikes are occurring are currently operated by *Grupo Mexico*.

The workers have used many methods of struggle against these attacks including having their lawyers challenge them in Mexican courts. As cases arising out of these issues made their way to the Mexican Supreme Court, various labor lawyers in Mexico requested the **International Commission for Labor Rights (ICLR)** to investigate the adverse conditions facing these and other Mexican workers. The ICLR is a non-profit, non-governmental organization which coordinates the *pro bono* work of a global network of lawyers and jurists who specialize in labor and human rights law.<sup>1</sup>

From May 18 to 24, 2010, the ICLR delegation visited Mexico. The delegation was composed of **Justice Yogesh Sabharwal**, retired Chief Justice of the Supreme Court of India; **Judge Juan Guzmán Tapia**, retired Judge of the Appellate Court in Santiago, Chile<sup>2</sup>; **Judge Gustin Reichbach** of the New York Supreme Court<sup>3</sup>; labor attorney **Jeffrey Sack** from Toronto Canada<sup>4</sup>; labor attorney **Teodoro Sánchez de Bustamante** from Buenos Aires, Argentina<sup>5</sup>; **Professor Sarah Paoletti** from the Faculty of Law at the University of Pennsylvania<sup>6</sup>; and labor

attorney **Jeanne Mirer** from New York City, President of the Board of ICLR.

The delegation met with labor law experts, leaders of the SME and the **Mineworkers**, Chief Justice Guillermo I. Ortiz Mayagoitia of the Mexican Supreme Court, and with Ramón Jiménez, Member of the House of Representative for the Democratic Revolution Party. The delegation compiled a report based upon these first-hand accounts and extensive research which is posted on the ICLR website [www.laborcommission.org](http://www.laborcommission.org).

Since the report was issued, the Supreme Court of Mexico decided that as a matter of *separation of powers* the president had the right to dissolve the LyFC even though the legislature had created it. Many of the labor issues regarding the SME case have yet to come to the Court<sup>7</sup>.

The issue in the **Mineworkers'** case which is still pending directly implicates ILO Convention 87, which specifically prohibits governments from interfering with the right of unions to elect their own leadership and operate according to the union's own constitution. Mexico, unlike the United States, has ratified Convention 87. The Mexican Constitution also places international instruments as binding law superior to obligations of federal and local law. Despite this, there is significant government pressure on the Supreme Court to ignore these obligations. In mid-July, the Supreme Court's five member Second Chamber, which rules on labor cases, was not able to reach a decision. It is believed that the ICLR report and letters generated in support of the position in the report forced the Second Chamber Justices to transfer the case to the full 11 member court. The full Court is expected to decide the case in late September or early October. The ICLR has been requested to file an *amicus* brief on this issue with the Court and is in the process of gaining statements of interest from relevant legal organizations and scholars from around the world. The *amicus* brief, which will be filed right before the NLG Convention, is also posted on the ICLR website at [www.laborcommission.org](http://www.laborcommission.org).

## FOOTNOTES

1 ICLR's legal network also responds to urgent appeals for independent reporting on alleged labor rights violations. The primary purpose of ICLR is to ensure that the fundamental rights and freedoms of working people are effectively realized.

2 **Judge Guzman** is known for his prosecution of Chilean dictator Pinochet.

3 **Judge Reichbach** has had international experience serving at the **International Criminal Tribunal on Yugoslavia**.

4 **Jeffrey Sack** is one of the founders of the **Canadian Association of Labor Lawyers**.

5 **Teodoro Sanchez de Bustamante** lead the ICLR delegation to Colombia in 2004 and is a former president of the **Association of Labor Lawyers of Latin America**.

6 **Professor Paoletti** runs the Transnational Legal Clinic at the University of Pennsylvania Law School.

7 For example, the court did not address the issue whether SME had the right to represent the workers at the successor entity who were doing the work previously done by the workers in LyFC.

# Information is Key to Ending Abusive Low-Wage Labor Migration Schemes

by Zafar Shah, Program Associate at Baltimore office of Centro de los Derechos del Migrante (CDM)  
Zafar served as co-chair of The United People of Color Caucus (TUPOCC) of the NLG from 2007 to 2009.

Despite deteriorating economic conditions, growing drug violence, family separation and other negative factors, Mexicans continue to seek employment opportunities in the US. For these workers who face heightened border security, the path to temporary employment in low-wage, high-risk seasonal work leads to increased H-2A and H-2B visas.

Ineffective regulation of recruitment is exacting painful costs on both migrants and US workers. While the H-2 programs are popularly viewed as the *law-abiding* path to working in the US, the recruitment process is abusive and corrupt. Labor recruiters occupy a dominant role in the US-Mexico labor migration system, but have evaded the sight lines of regulators and are exploitative.

Advocates and organizers on both sides of the border have forged a partnership to respond to failures in the system. These groups are documenting the complex recruitment system so as to help migrants, advocates and government agencies identify abusive law-violating recruiters and bring them to justice.

Zacatecas-based **Centro de los Derechos del Migrante (CDM)** is a leader in this effort. It launched the *Justice in Recruitment Documentation Project* in 2007.

**Perils of migrant labor recruitment.** The labor recruiter, also called a job contractor, is much more than an intermediary. Recruiters possess nearly unfettered control over hiring migrants for H-2 work in the US. Usually native to a migrant community and knowledgeable of workers' family ties and financial circumstances, the recruiter wields significant social and economic power over migrants and has the personal discretion to decide who will work in a particular season, in which industry and at which work site. The imbalance between the parties results in rampant fraud and overreaching. Whether strong-armed or induced by false promises about wages and working conditions, migrant workers pay the recruiter exorbitant fees for contracting services, visas, travel costs and related expenses, each levied in violation of US law governing the H-2 program. Migrants often mortgage their property or shoulder enormous debt to loan sharks just to enter the recruitment process.

Overwhelmingly indebted before even receiving a first paycheck, workers hope to recoup recruitment expenses over the duration of their US employment. The reality of recruitment fraud hits them all too late — when they have already worked considerable hours without the promised compensation, hours, and conditions, and with virtually no way of seeking recourse against either the employer or recruiter.

The economic ramifications of the labor recruiting scheme extend far beyond the individual worker: migrant communities report losing tens of thousands of dollars each season due to recruitment fraud. While temporary worker programs increasingly lean on recruiters' services, the recruitment process robs local economies and erodes the welfare of Mexican families.

**Building accountability through information.** Despite the prevalence of H-2 recruiter fraud, discrimination, and even human trafficking, recruiters have been given a free pass. Their activities in Mexico are essentially unregulated by US agencies and neither the US nor Mexican governments have focused on reforming the recruitment process.

Advocates and organizers are seeking systemic change — starting with access to information. Building on the Binational Labor Justice Convening in 2007, **CDM, Proyecto de Derechos, Económicos, Sociales y Culturales**, and other allies recognized that the binational advancement of migrant worker justice depended, in part, on solving the need for information about recruitment. Knowledge about the recruitment process has been dispersed among varied sources - local communities, government agencies, and worker advocates in both the US and Mexico, and the lack of information has stymied capacity to confront recruitment abuses.

**CDM's Justice in Recruitment Documentation Project** aims to gather, centralize, organize and disseminate vital data about recruiters, their networks, and the range of fraudulent activities perpetuated against migrant worker communities so that advocates and policymakers have the information needed to formulate and implement strategic interventions. **CDM** is utilizing numerous sources including migrant workers, civil sector organizations, governmental agencies, and media outlets. The project targets recruiters and smugglers alike.

To date, the project has conducted over 160 in-depth interviews with migrant workers, yielding first-hand information reflecting the experiences of hundreds more. Additionally, over 40 US and Mexican civil society organization are being surveyed. **CDM** filed FOIA requests with the DOL, State Department and Homeland Security regarding US employers and their agents. It is partnering with American University's Immigrant Justice Clinic to follow up on denied requests. Information is maintained in a robust database to enable **CDM** to report data efficiently to allies and policy-makers. The next phase of the project will expand on-the-ground data collection, develop an interactive recruitment network mapping tool, and support analytical work to improve the advocacy and policy communities' understanding of new trends in low-wage labor migration.

**Informing the future.** The *Justice in Recruitment Documentation Project's* access to new, detailed information will revitalize the movement for migrant justice and mark the denouement of recruiters' impunity. **CDM** will assist stakeholders to use this information effectively — training legal advocates to identify and respond to recruitment abuse; producing educational materials for unions, faith-based groups, and other organizations to increase understanding of guestworker programs; and

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# L&EC related programs at 2010 NLG CONVENTION

## THURSDAY, SEPTEMBER 23

12:00 to 2:00 pm International Labor Justice Working Group meeting - will meet over lunch - location to be announce

2:00 to 4:00 pm **Labor & Employment Committee meeting** - for location call (510) 333-9907

## FRIDAY, SEPTEMBER 24

8:30 to 9:45 am Workshop: **Worker Centers and the Union Movement: The Face of Labor in the 21st Century**

10:00 to 11:30 am Panel: **Defending the Right to Organize: Lawyers and the Grassroot Labor Organizers Discuss Victories and Lessons from the Response to Hurricane Katrina**

1:30 to 2:45 pm Workshop: **Creative Strategies for Protecting Immigrant Workers**

1:30 to 2:45 pm Workshop: **Labor Crisis in Mexico and a Progressive Legal Response**

3:00 to 5:00 pm **PLENARY #1 - What Happened to Working Class Consciousness? Reminding Us of the Relevance of Labor Unions in the 21st Century**

## SATURDAY, SEPTEMBER 25

3:00 to 5:00 pm **PLENARY #2 - Elections & Resolutions - L&EC is sponsoring a resolution and accompanying By Law change on Respecting Class Values - Honoring Union Labor - Union-Made Products and Services**

5:00 to 6:15 pm Workshop: **Towards a Just Green Economy: Lessons for Lawyers, Workers and Environmentalists from theBP Gulf Oil Disaster**

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empowering migrant communities by educating them regarding legal recruitment practices, common forms of exploitation, and how to avoid fraudulent recruiters.

In the coming months, CDM and the University of Maryland International and Comparative Law Clinic will file a NAFTA Labor Side Accord petition challenging US government inaction regarding recruited worker abuse. CDM will simultaneously

release a major study on recruitment abuse to highlight needed policy changes, some of which US agencies can implement immediately while others require new regulations. The report will also highlight creative efforts on behalf of low-wage migrant workers undertaken by proponents of recruitment reform in other sectors of labor migration, linking strategies to protect the rights and dignity of all migrants, whether low or high-skilled.

### **Centro de los Derechos del Migrante provides the following services:**

**Outreach and Education.** By reaching migrants in their home communities before they leave for the U.S. through outreach, education and leadership development, CDM educates low-wage Mexico-based migrant workers about their legal rights in connection with their employment in the United States.

**Intake, Evaluation and Referral.** By performing intake interviews with workers who come forward, often as a result of outreach, requesting assistance in addressing violations of their rights, and evaluation of their claims, CDM puts the workers in contact with services in the United States.

**Providing access to justice for Mexico-based workers through direct representation.** By providing litigation and campaign support to other law firms and advocacy groups, and providing direct legal services free of charge to Mexican nationals in employment and civil rights case means that employers can no longer rely on workers who have returned home having little or no access to the U.S. justice system.

**Connecting migrant workers to the policy making community in the U.S.** By developing expertise in guestworker issues in particular, and through its work with the **Committee for the Defense of Migrants** is enabling the voice of the migrant to be heard at the policy-making table.

For more information, contact CDM at (800) 401-5901 or at [info@cdmigrante.org](mailto:info@cdmigrante.org).

# NY Public Employees Fight Furloughs

by Miguel Ortiz, Senior Counsel, CSEA Legal Department

Public employee unions in New York State showed remarkable unity of action in moving to enjoin the Governor's unilateral attempt to furlough thousands of State employees in May. The **Civil Service Employees Assn. Local 1000 (CSEA/AFSCME)**; the **New York State United Teachers (AFT)**, the **Public Employees Federation (AFT/SEIU)** and **AFSCME District Council 37** filed separate actions in the U.S. District Court in Albany that were then consolidated.

The principal theory argued was that the Governor's action in forcing the Legislature to pass a budget bill requiring the imposition of furloughs constituted an impairment of the unions' collective bargaining agreements in violation of the Contract Clause of the U.S. Constitution. The Legislature was not on board with Governor Paterson's plan, and by placing the furloughs in a budget bill the Governor essentially coerced the Legislature into voting for the bill because failing to pass it would have shut down State government with severe consequences for many needy New York residents.

The court found the unions established irreparable harm with respect to the constitutional violation. Also, the court noted that because tens of thousands of employees would be affected by the loss of one day's pay for a two week pay period for five pay periods, the loss would be extraordinary. Further, because the employees are barred by the Eleventh Amendment from suing the State for damages, they had no remedy at law and the issuance of a preliminary injunction was appropriate. The appropriateness of the order was also bolstered by plaintiffs' high likelihood of success on the merits.

The court also found the State was unable to show that the imposition of the furlough was "reasonable and necessary" to meet a legitimate public purpose. In fact, it was evident that the Governor's purpose was solely political. It was simply a transparent effort to force the Legislature to implement his proposed 2009-2010 budget.

**CSEA President Danny Donohue**, throughout the past two years of the economic crisis, has reiterated the union's principled position that it will not reopen negotiated agreements to make concessions to public employers. The situation in State government was critical for **CSEA** because it also represents local government employees throughout the State in over 1,000 bargaining units. Obviously, if **CSEA** opened up its contract with the State, other employers would make the same demand. However, **Donohue** has always been clear that **CSEA** is willing to work with employers to alleviate the effects of the crisis by proposing ways to save money. For example, **CSEA** has proposed to employers that they change existing prescription drug plans to obtain cheaper drugs from Canada.

**PEF** urged the Governor to eliminate the use of private subcontractors doing State work. Privatizing public jobs is a classic neoliberal ploy to reward campaign contributors and creates suspect, *for profit* public services. Remember the judges in Pennsylvania who sent juveniles to detention centers for minor offenses because they were receiving a kick back from the private run facility?

The support that the New York unions received in this effort from the public, in general, and other workers and unions, in particular, was inspiring. It was a splendid example of the organized working class taking a stand against efforts to remedy the crisis created by Wall Street and its political minions at the expense of workers and their hard won right to bargain collectively.

All across the country public employees are being scapegoated by right-wing pundits in an effort to have them pay for the economic crisis. In some cases, political officials are even making specious demands for contract concessions. And, as in New York, some try to isolate the public employees from the rest of the people. However, the New York case demonstrates unions can successfully resist unreasonable efforts to attack their members standard of living and can win important victories for the whole working class.

## Carwash Workers Win Another Victory Pirian brothers Sentenced to Year in Jail

The two owners of four Los Angeles car washes were each sentenced to a year in jail mid-August having entered a plea of no contest to six criminal counts, including conspiracy, grand theft and labor code violations. Benny and Nissan Pirian were charged by the city attorney's office in 2009 with 172 counts of violating criminal and labor laws for their treatment of workers.

"Carwash owners are on notice that this is a new day in Los Angeles. Abuse of workers will no longer go unchecked," said **Maria Elena Durazo**, **Los Angeles Federation of Labor** leader.

In addition to jail time, the defendants will be placed on four years' probation. To comply with the terms of probation, the brothers must keep payroll and health and safety-related records open for inspection at any time by the city attorney's Bureau of Investigation, the U.S. Department of Labor, the California Division of Labor Standards Enforcement and Cal/OSHA.

The defendants will also pay restitution, expected to be hundreds of thousands of dollars, to the victims in an amount to be decided at a future court hearing.

Witnesses in the case testified that a vast majority of the workers at the car washes were required to arrive at least 15 minutes before their shift, and to stay half an hour after closing. None of the workers were paid overtime and were discouraged from taking rest breaks or were denied breaks entirely, even during times of extreme heat.

The workers were paid a flat rate of \$35 to \$40 a day in violation of minimum-wage laws, according to the deputy city attorneys who tried the case, **Julia Figueira-McDonough**, **Andrew Wong** and **Akili Nickson**. Some worked for tips alone.

The court also issued a protective order prohibiting the Pirians from attempting to intimidate witnesses or victims involved in the investigation, and from unlawfully prohibiting the workers from engaging in union activities.

"The Pirian brothers were held accountable because workers collectively stood up for their rights and for better conditions on the Job. Their efforts to organize for a voice are finally bringing accountability to the car wash industry," said **Henry Huerta**, director of the **CLEAN Carwash Campaign**.

## National Lawyers Guild L&EC MEETING

at the 2010 NLG Convention in New Orleans

Thursday - September 23, 2010 - 2:00 - 4:00 pm

Call (510) 333-9907 for exact meeting location or check our website at  
[http://www.nlg-laboremploy-comm.org/LEC\\_Events\\_at\\_NLG\\_Conv.php](http://www.nlg-laboremploy-comm.org/LEC_Events_at_NLG_Conv.php)

## Brandworkers' Awards Dinner

Thursday - October 28, 2010 at 6:00 pm

Angel Orensanz Foundation  
172 Norfolk Street - New York City

<http://www.brownpapertickets.com/event/126090>  
[www.brandworkers.org](http://www.brandworkers.org)

Brandworkers, an innovative workers' rights non-profit protecting the rights of retail and food employees, is honoring the **NLG Labor & Employment Committee** with its *Champion of Economic Justice Award*. The L&EC is being recognized for its early and consistent support of **Brandworkers'** worker justice campaigns in addition to its support of other progressive labor causes. Delicious food and drink along with great music and committed individuals will ensure a memorable evening. Please save the date and support Brandworkers.

### National Lawyers Guild Labor & Employment Committee

c/o Kazan McClain Lyons Greenwood & Harley

Jack London Market  
55 Harrison Street #400  
Oakland, CA 94607

Save the date - AFL-CIO Lawyers Coordinating Committee annual conference - April 26 - 28, 2011  
Hilton San Diego Bayfront - San Diego, CA