

The National Lawyers Guild NEWSLETTER of the Labor & Employment Committee



April 2011

The Attack on Public Sector Workers: Ground Zero for Democracy and Human Rights

by Dean Hubbard, Co-chair NLG L&E Committee, Senior Counsel, Transport Workers Union of America, AFL-CIO

In February, Wisconsin's newly elected Republican Governor Scott Walker, without warning, introduced a bill that stripped collective bargaining rights from public employees. Democratic Senators left the state rather than allow it to become law. On March 9, Walker's legislative cronies, the Fitzgerald brothers, snuck his "Budget Repair" through the Wisconsin Senate in a vote with no Democrats present, in violation of the Wisconsin open meetings law. They slithered around the quorum requirement in the Wisconsin Constitution by claiming to strip all the budget-related language from a bill they insisted from the beginning was all about the budget. On March 17, Wisconsin Judge Maryann Sumi (an appointee of former Republican Governor Tommy Thompson) temporarily enjoined implementation of the law as a violation of the state's open meetings law. On March 29, the Judge slammed the door on the Governor's attempt to sneak past the court's injunction against publication. As this newsletter goes to press, hearings continue on the open meetings law violation. Meanwhile, activists are mounting full-scale recall campaigns of the Governor and 8 Senate Republicans.

But that's just the tip of the proverbial iceberg. On the heels of *Citizens United* and last November's Tea Party-led takeovers of statehouses and Governors' mansions nationwide, anti-union legislation has been introduced in at least twenty other states and passed in Ohio. Governors of still more states, including Democratic strongholds like New York, are seeking major concessions from their public employee unions. But this time, workers and their allies all over the country, not just the union activists, are fighting back in a big way, from Wisconsin to Indiana to Ohio to Tennessee.

These attempts to strip collective bargaining rights from public employees are *ground zero* for democracy and human rights in the US. They are part of a global attack on workers under the guise of austerity. Getting rid of collective bargaining and permanently weakening unions would leave all working people, not just union workers, completely defenseless and at the mercy of the rich. Just as the attacks on teachers and public education were only the opening salvo for a broader attack on public sector workers, what's happening in Wisconsin, Ohio and elsewhere is just the beginning of a wider assault on all working people.

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NLG L&EC Breakfast at the LCC Crimes Against Labor: Attacks on Workers' Rights in Mexico & US

by Henry Willis

Schwartz Steinsapir Dohrmann & Sommers

In the last three months public sector workers here in the US have gotten a taste of what Mexican workers have been facing for years: an all-out assault by right wing politicians and corporations seeking to destroy their unions and strip them of basic economic rights. President Felipe Calderón fired more than 40,000 electrical workers in October 2009, Grupo Mexico has waged war on the Mexican Mine Workers Union, and the Mexican Congress appears to be on the verge of approving highly regressive labor law *reforms* that make it easier to fire workers and outsource their work, while weakening existing protections for union activists even further.

JOIN US for the L&EC breakfast
Thursday, April 28 - 7:00 am - Hilton San Diego Bayfront
RSVP to fcs@kazanlaw.com

The situation for Mexican and other immigrant workers on this side of the border is just as bad, if not worse: regressive immigration laws, decisions such as *Hoffman Plastic*, and anti-immigrant hysteria have created a class of millions of undocumented workers with no more rights than black workers had in the Jim Crow South. Moreover, their situation is getting worse, as the Obama Administration pushes for broader implementation of the e-verify program and ratchets up deportations and while Tea Party activists in states such as Arizona and Utah have adopted more punitive state laws against immigrants. The result is as devastating for organizing in the private sector as the anti-union laws coming out of Wisconsin, Ohio, Florida and elsewhere are for public sector workers.

The **National Lawyers Guild Labor & Employment Committee** will focus on these issues at its annual breakfast at the LCC Conference. We will be presenting two speakers who are uniquely qualified to address these issues: **Alejandra Ancheita**, Founder and Advisor of **Proyecto de Derechos Economicos, Sociales, y Culturales (ProDESC)**, which has fought the proposals to roll back Mexican workers' rights, and **David Bacon**, journalist and labor activist, who has campaigned for years for immigrants' rights. David is the author of *Illegal People — How Globalization Creates Migration and Criminalizes Immigrants* (Beacon, 2008) and other books on migration and globalization.

Worker Advocates Fight for Expanded Use of Crime Victim's Visa

by Jessie Hahn, Legal Fellow at National Day Laborer Organizing Network & national co-chair of the NLG Anti-Racism Committee

U visas may be granted to undocumented immigrants who are victims of certain specific crimes, some of which may be work-related. Congress created the **U visa** in 2000 with the specific purpose of strengthening law enforcement agencies ability to detect, investigate and prosecute crimes against non-citizen victims. While the **U visa** encompasses violent crimes such as felonious assault and rape, in recent years, low-wage immigrant workers have also been able to obtain **U visas** as a result of workplace retaliation, sexual harassment and abuse, extortion, obstruction of justice, and witness tampering.

The U visa can be a powerful tool for protecting workers fighting exploitative working conditions because it provides work authorization and eventually a path to citizenship.

The stories of workers seeking **U visas** also highlights the need for the **POWER Act** which would create new protections against deportation for workers involved in labor disputes.

To be eligible for the **U visa**, a non-citizen must establish to the satisfaction of the United States Citizenship and Immigration Services (USCIS) that s/he: (1) has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity; (2) possesses credible and reliable information concerning that qualifying criminal activity;¹ and (3) has been, is being, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity. An eligible petitioner may include his or her spouse and children in the petition, and if the petitioner is under 21 years of age, he or she may include parents and siblings.²

USCIS requires **U visa** petitioners to submit a completed **law enforcement certification** affirming that the applicant has been, is being, or is likely to be helpful to that agency in the investigation or prosecution of the predicate criminal activity.³ The decision to sign this certification is wholly within the discretion of each law enforcement agency.⁴ Thus, even if the individual meets all other eligibility requirements – including cooperation with law enforcement agencies – he or she will not be eligible for a **U visa** if there is no appropriate agency willing to sign a law enforcement certification on his or her behalf.

Labor agencies have only recently begun utilizing the U visa in workplace investigations. The EEOC has certified a series of **U visa** petitions, issuing internal guidelines for the certification process in July 2008.⁵ Many of these cases involved egregious forms of sexual harassment and sexual assault occurring in the workplace. On March 12, 2010 the USDOL announced it would begin exercising its authority to certify **U visas**, noting the authority would be delegated to the Wage and Hour Division, which would identify potential **U visa** applicants in appropriate circumstances during the course of wage and hour investigations.⁶ The USDOL's protocol regarding the certification process was to be available by mid-summer 2010 and no certifications were to be issued until the protocol had been finalized. At this time the protocol has yet to be released and USDOL does not appear to have issued any **U visa** certifications.

State level authorities in a handful of states have also begun exercising their authority to certify labor-related **U visa** petitions.

Advocates from across the country have been working with the USDOL and state agencies to issue certifications in a range of labor-related criminal offenses. These visas present an opportunity for advocates experienced in employment law, immigration law, and criminal law to collaborate with each other on these cases while strengthening workplace organizing efforts.

VOLUNTEERS ARE NEEDED. The **National Day Laborer Organizing Network (NDLON)** has prioritized **U visas** for labor-related offenses in its national work and seeks attorneys and law students interested in supporting worker center members when they petition for labor-related **U visas**.

NDLON also supports the **POWER Act**, a law that would fundamentally change the relationship between immigrant workers and employers by taking away an employer's ability to intimidate workers through immigration-related threats or retaliation. The **POWER Act** would extend **U visa** eligibility to workers with pending workplace claims who reasonably fear or have actually been threatened with force, physical restraint, serious harm, retaliation, or the abuse of the legal process. All workers who have filed workplace claims or who are material witnesses in a workplace claim could receive stays of removal and employment authorization until the workplace claim is resolved. Finally, the **POWER Act** would require the Department of Homeland Security, in certain situations, to ensure that workers arrested or detained in the course of worksite immigration enforcement actions are not removed from the US before the appropriate investigating agency is notified and has a chance to interview the workers. By creating new protections for workers who have been excluded from any meaningful exercise of many workplace rights, this **Act** would strengthen the broader labor movement in the US.

For further information regarding **NDLON's U visa** work, contact **Jessie Hahn** at jessie.hahn@gmail.com or **Nadia Marin** at nadia@ndlon.org.

FOOTNOTES

1 8 U.S.C. § 1101(a)(15)(U)(I) (2011); 8 C.F.R. § 214.14(b) (2011)

2 8 C.F.R. § 214.1(f)(1) (2011)

3 8 C.F.R. § 214.14(c)(1), (c)(2)(i) (2011)

4 USCIS, Certifying U Nonimmigrant Status Fact Sheet (Sept. 5, 2007), http://www.uscis.gov/files/pressrelease/U-visaFS2_05Sept078.pdf

5 EEOC, EEOC Procedures for U Nonimmigrant Classification Certification (Jul. 3, 2008), http://iwp.legalmomentum.org/immigration/u-visa/government-memoranda-and-factsheets/U%20VISA_EEOC%20Certification%20Memo_7.3.08.pdf

6 USDOL, US Labor Department to Exercise Authority to Certify Applications for U Visas; Action Will Help Victims Who Aid Law Enforcement (Mar. 15, 2010), <http://www.dol.gov/opa/media/press/opa/OPA20100312.htm>

Mexican Mineworkers Union's Carlos Esquer Speaks in NYC

by Ursula Levett, In-house Counsel TWU Local 100

New York was graced in March by a visit from **Carlos Esquer** of the **National Executive Committee of the Mexican Mineworkers Union, el Sindicato Nacional de Trabajadores Mineros, Metalurgicos, Siderurgicos y Similares**.

Esquer had two stories to tell: one familiar and one not so. The familiar story is the story of the repression of unions by government forces in alliance with big capital. The other story is of a very powerful and successful union.

Repression is the first story. We have David Koch and Governor Walker; they have German Larrea of mining giant Grupo Mexico and Javier Lozano Alarcon, the Secretary of Labor. But the Mexican story is ten times more appalling than Wisconsin: the Mexican Secretary of Labor refused to recognize **Napoleon Gomez Urrutia**, the President of the **Mineros**, and replaced him with someone more friendly. When the mineworkers remained loyal to **Gomez Urrutia**, groundless criminal charges were leveled against him and he received threats on his life. The situation became so dire five years ago, that **Gomez Urrutia** had to flee to Canada where he received asylum. That was five years ago and the struggle continues. Four activists have been killed, union leaders have been detained for years, the union's bank accounts frozen, and the federal troops called in to break strikes.



Photo by **Maria Rosa Guayante** of the **Mineros' Women's Front**

That leads to the second story: in spite of all this repression, the **Mineros** are a very powerful and successful union. They have been able to conduct many successful strikes and are currently able to hold the line on three strikes going on for more than three years at mines owned by Grupo Mexico and its allies. At one location where the union continues to hold the line, federal troops enabled scabs to cross the picket line. "It was like a concentration camp there," said **Esquer**.

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The union is not only powerful in its efforts to hold the line on strikes, but also has negotiated successfully with other mine owners. Those mine owners are not invoking the protection of the Mexican government and possible financial support from Grupo Mexico. Instead they fly to Vancouver to negotiate contracts with **Gomez Urrutia**. He has gotten owners to agree to an 8% wage raise and a 6% increase for benefits, despite the Mexican government advocating for only a 4% cost of living increase. This is a good example of a profitable industry choosing labor peace over conflict because the union is strong.

After **Esquer** spoke at the **Left Forum**, **Stanley Aronowitz** remarked how important it was for US workers to support the miners, not only out of solidarity but also out of self-interest. "Every time Mexican workers succeed in raising their wages we all take a step away from the race to the bottom in a global economy," Aronowitz added.

Carlos Esquer's visit was sponsored in part by the **NLG Labor and Employment Committee**.

NLG L&EC Successfully Concludes 12th Delegation to Cuba

by **Joan Hill**, Attorney and Labor Educator, **United Steelworkers**

Discussions regarding reform and reordering of work in Cuba highlighted the annual **National Lawyers Guild Labor & Employment Committee (NLG L&EC)** delegation to Cuba in March. The 7-day program was held in Havana Cuba and the province of Matanzas. This was the 12th delegation and the 5th International conference attended by Guild members where presentations were made on issues affecting the social security and labor rights of workers in Central and South America, Europe, Canada and the Caribbean. Two delegates from the US presented on the attack on public sector workers in Wisconsin as well as other states and brought messages of solidarity from the US. The small but diverse delegation carried back with them reciprocal messages of solidarity to the workers in the US.

After the international conference, Guild lawyers conducted field research at three separate work sites, interviewing workers about the nature of their work and the role of the trade union. Delegates had the special opportunity to meet with cultural workers in two museums as well as restaurant workers. Delegates also met with educators at the **Congreso de Trabajadores de Cuba** labor school in the province. Following the work site visits, delegates concluded their research by meeting with union officers, labor lawyers and jurists in the City of Matanzas.

The work of the **NLG L&EC** with the **Union de Juristas de Cuba** has become a major international event, with several hundred participants. The **L&EC** delegation will continue its study of the realities of workers in Cuba in March of 2012. A copy of the 2011 report will be posted to the L&EC website in the next several months.

100 Years After Triangle Fire, the Slaughter Continues

by Anthony Prince, labor attorney, health and safety activist, and former Union S&H chair for Steelworkers Local 65 in Chicago

Stockton, California - Three years after 17-year old **Maria Isavel Vasquez Jimenez** collapsed and died March 17, 2008 in a blistering Central Valley grape field, the nation's first farmworker heat related death criminal prosecution has ended in a shocking miscarriage of justice. Originally charged with involuntary manslaughter, the former owner of Merced Farm Labor plead guilty last month to a single misdemeanor count of failure to provide shade and was sentenced to 40 hours of community service, three years of probation and a \$750 fine. The company's **safety director** plead guilty to a felony count of failing to follow safety regulations that resulted in death. He received 480 hours of community service, five years probation and a fine of \$1000.

"Justice has failed us," said **Jose Luis Vasquez Jimenez**, the victim's brother, as he joined furious protesters outside the courtroom.

Maria Jimenez was the 23rd California farmworker to suffer a heat-related death in as many months. She became one of 5,214 US workers to be killed on the job in 2008, a number that has remained constant for almost three decades, a number that doesn't even include workers who die from chronic illnesses due to exposure to toxic substances. Since the establishment of the Occupational Safety and Health Administration (OSHA) in 1972, only 151 work-related fatalities have even been referred to the Justice Department for criminal prosecution. States too can bring their own criminal prosecutions for workplace injuries and fatalities, as confirmed in *People v. Chicago Magnet Wire Corp.*, 534 NE 2d 962, cert. denied, 493 US 809 (1989) and *People v. O'Neill*, 550 NE 2d 1090 (Ill. App. Ct. 1990) which rejected an OSHA federal preemption defense. But states too have not pursued many criminal OSH cases in the 21 years that have elapsed, California having pursued the most.

Clearly little has changed in the one hundred years that followed the March 25, 1911 **Triangle Shirtwaist Fire** in which 146 mostly female Jewish and Italian immigrant garment workers were trapped behind illegally locked exit doors and burned to death or killed as they jumped from the windows of the burning building. There, too, justice was denied as the owners of the New York sweatshop were acquitted of all criminal charges. Two years later owner Max Blanck was arrested again for locking the door of his factory during working hours; he was fined \$20.

Before the disaster, as now, the propertied class had resisted any attempt to regulate their operations. The Protective League of Property Owners and the Associated Industries of New York had defied the Fire Commissioner's order to install sprinkler systems in warehouses, insisting that code changes would **wipe out industry**.

Across a century, this deadly pretext echoes as government retreats from its obligation to protect workers, cowed by Chambers of Commerce and other industry representatives, and clamor of the corporate class for a **more favorable business climate**.

In the early 1900s, a spokesman for the Associated Industries of New York insisted that the Wagner-Smith acts would mean "the wiping out of industry in this state." Laurence M. D. McGuire president of the Real Estate Board of NYC and an industry voice on Al Smith and Robert Wagner's Factory Investigating Commission said, "To my mind this is all wrong.... The experience of the past proves conclusively that the best government is the least possible government, that the unfettered initiative of the individual is the force that makes a country great...." Mabel A. Clark, of the W.N. Clark Company, vice president and stockholder testified, "I have seen children working in factories, and I have seen them working at home and they were perfectly happy."

Then as now, regulations are called job killers.

Once upon a time in America, there were defenders of another system for the production of vital goods and the cultivation of cash crops. They also claimed that without that specific system in existence at that time – four million men, women and children in chains – ships would remain idle for lack of canvas sails and the world would go naked for lack of cotton cloth. But they were wrong. And those repeating the mantra against regulation are wrong today.

Yet at the bloodiest price ever paid in American history, the manufacture of those goods has outlived chattel slavery and outlived the masters' insistence that human misery was an indispensable cost of production.

Is it necessary to kill people in order to produce the necessities of life? Must we continue to countenance industrial slaughter to insure the maximum profit for energy industry capitalists, for agri-business, for multi-national sweatshop operators? **It doesn't have to be this way.**

Where do we start? We start at the scene of the crime. We start in the fields where **Maria Jimenez** gave her life to put food on America's tables. We start with the proposition that she shouldn't have died in the first place. If regulations had been stronger (California is the only state in the nation with heat regulations – yet they too are inadequate), enforcement more effective, the threat of meaningful penalties a reality (average OSH penalties are a pittance compared to penalties for environmental crimes), perhaps Maria would not have died. Had those fields been policed, not just by government but also by an employer who put the lives of his workers over profits, then there would have been water and mandatory breaks to ensure that water was drunk and that workers didn't mistakenly keep working to meet the financial pressure of their piece-rate jobs, sufficient shade for all workers to be sheltered, and emergency medical attention coupled with training to assure that both workers and their supervisors knew the signs and symptoms of heat-related illness and how to respond, she would be with us today. Less than 200, that is the number of OSHA compliance officers in California. Upwards of 17 million, that is the number of workers they are charged with protecting.

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The Attack on Public Sector Workers: Ground Zero for Democracy and Human Rights

The following is an attempt to lay out the impact and ramifications of this struggle and to debunk some of the lies about public workers and state budgets.

Can they do this?

These attacks on workers' rights are illegal. Collective bargaining is considered to be "fundamental to the rights of human beings at work" by the International Labor Organization (ILO), the oldest international human rights agency in existence.¹

1 It is a fundamental human right for all workers, whether they work in the public or private sector. The ILO, of which the US is a charter member, has specifically ruled that government must "refrain from any interference which would restrict this right or impede the lawful exercise thereof."² No executive, judicial or legislative authority, not even the President, let alone the Governor of Wisconsin, has the legal authority to restrict workers' exercise of this human right.

Myth buster #1:

It's not about deficits, it's about democracy

These attacks on collective bargaining, which provides workers their only voice on the job, is not really about cutting deficits. For example, if Wisconsin Governor Walker was that concerned about Wisconsin's budget deficit, he would not have called a special session of the legislature to sign two business tax breaks and a conservative health-care policy experiment that added \$120 million to the state's budget deficit.³ He wouldn't have returned \$810 million the federal government awarded Wisconsin to build high speed rail, and thrown away the thousands of tax revenue-producing jobs that came with it.⁴ If this was really about deficits, when *public sector workers in Wisconsin agreed to every economic demand he made*,⁵ Walker would have compromised on collective bargaining. If it was really about deficits, his legislative henchmen wouldn't have stripped all the budget-related provisions from the bill in order to avoid the quorum requirement in the Wisconsin Constitution. For Walker and his cronies in Wisconsin and elsewhere, this is about power, not deficits.

In reality, enemies of the working class are using a cyclical economic crisis caused by reckless speculation by billionaires as a smokescreen for the real agenda: to permanently strip American workers of their human right to freedom of association and collective bargaining. Why? As Walker admitted in his phone call with a blogger he thought was billionaire Tea Party supporter David Koch,⁶ he and other far-right conservatives see Wisconsin as the first step in a long-term, nationwide power grab, a shift that will take us away from democracy and towards oligarchy.

Unions are still the strongest voice for working people, for progressive government that represents the interests of ordinary Americans. With unions out of the way, corporate interests will have nearly unobstructed use of government as their personal plaything.

This is not only a morally reprehensible strategy; it is a recipe for economic catastrophe.

Myth buster #2:

Spending on vital programs will grow the economy

No Guild member needs to be reminded of Keynesian orthodoxy: the key to recovery from a deep economic slump like the one we are in now is for governments to stimulate demand. The best way to stimulate demand is to give people productive work that puts money in their pockets. Taking money out of workers' pockets by laying them off or cutting their benefits and wages, whether they work in the public or private sector, slows or stops economic recovery.

What is different about this crisis is that what used to be economic orthodoxy is now radical heresy.

You don't need to be a Marxist economist to realize that now is the time for the federal and state governments to create a *Green New Deal* that re-engineers our crumbling national transportation infrastructure, provides more transportation choices, including public transit and high speed rail, creates millions of good jobs at a time of persistently high unemployment, and helps end the climate crisis by reducing deadly greenhouse gas emissions.

Instead, politicians blame public sector workers for the economic crisis, a crisis brought about by the excesses of Wall Street. Politicians all over the country, including Democrats, are cutting essential services like education, health care and transportation, and repealing or scaling back collective bargaining rights, pensions and health care for public employees in order to balance budgets without raising taxes on the corporations and wealthy speculators who got us into this mess in the first place. Ironically, the more the politicians succeed in their attack on the public sector, the weaker the economy will become.

Reducing the ability of public workers to spend will further reduce demand, as will eliminating the vital services they provide, further slowing the economy. That's what politicians miss when they call for *shared sacrifice*.

The federal and state governments can pay for the investments we need to save essential services, rebuild a green 21st century economy and reduce deficits long-term by cutting corporate welfare and by taxing millionaires speculative financial transactions and hefty bonuses.⁷ Not only can they, it makes plain economic common sense to do so. The same people who caused the economic meltdown are now making record profits, while millions of people who had nothing to do with it remain unemployed. Government doesn't have to ask the people who drive our buses and trains, plow our roads, teach our kids, take care of our sick and elderly, and protect us from fire and crime to pay for a crisis they didn't cause.

Myth buster # 3:

The attack on collective bargaining is not just about unions, it's about whether we will have a just society

Union wages bring up all wages, especially where there is high union density because unionized workers earn significantly more per hour than their nonunion counterparts.⁸

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The Attack on Public Sector Workers: Ground Zero for Democracy and Human Rights

Unions are the reason we have any health care system (such as it is),⁹ any retirement benefits or social security, any sick time, vacations, workers' compensation, workplace safety, even universal suffrage, child labor laws and unemployment insurance.¹⁰

None of these benefits came about because of good will on the part of the ruling class. Organized workers fought for these rights which benefitted **all** working families.

While many of us still hold out hope for a classless society in the future, in the meantime we have to be clear that unions are the only hope of a middle class life and a voice at work for millions of people. Getting rid of collective bargaining and permanently crippling unions would leave all working people, not just union workers, completely defenseless. These attacks are an effort to make all working people voiceless.

At its heart, the battle in Wisconsin is not just about solidarity with union workers, it is a struggle for the soul of our country. It is about defending our future. It is about all of our human rights, in the same way that the civil rights and voting rights movements were not just about the rights of African-Americans, they were about whether we as a country were capable of taking a small step towards making the promises of democracy a reality for all of us.

Once again, we are at a defining moment in our history where we are being shown that none of us can be free if any of us are not free.

Myth buster # 4: Unions aren't too powerful

Unions are simply ordinary people standing together for justice against powerful, entrenched financial and political interests. Every day this nationwide attack continues, that basic fact becomes clearer to more and more people.

There's a joke floating around the internet that tells the story pretty well:

A CEO, a Tea Partier and a union member go out for a dozen cookies. When the three of them sit down, the CEO immediately *snarfs* 11 of the cookies. Then he leans over to the Tea Partier and whispers conspiratorially, **Watch out.**

That guy's after your cookie.

Unionized workers in the private sector have been under sustained attack since at least the 1980s, when private sector union density (the percentage of workers in unions) began to decline dramatically. During that same period, workers' wages have stagnated while their productivity has steadily increased. Meanwhile CEO pay has risen from 35 times higher to 262 times higher than the average worker's pay. As a result of those attacks, union density in the United States is now at its lowest levels in a century, with overall density at 11.9% and private sector density at 6.9%.¹¹ Some of these attacks include the anti-union offensive that began when President Reagan broke the PATCO strike in 1981, neoliberal economic policies that led to the outsourcing and off-shoring of highly unionized manufacturing jobs, undemocratic and anti-worker union organizing laws and policies, and the decline of an organizing and solidarity culture in many unions.

"Workers' rights to organize are routinely violated by employers throughout the country through both legal and illegal means,"¹² according to the UC Berkeley Labor Center.

It is certainly not the case that unions are too strong. But wealthy corporations and their political allies have not been as effective in stamping out public sector unions as they have in the private sector. Public sector union density is still 36%, and that is why the enemies of democracy and social justice have now started attacking unionized public servants.

Myth buster # 5:

Public sector workers aren't overpaid

Walker and his allies on the right are using misleading and fabricated figures to try divide public and private sector workers. According to the **Economic Policy Institute**, public workers typically see a compensation penalty relative to their counterparts in the private sector. Nationwide, comparisons controlling for education, experience, hours of work, organizational size, gender, race, ethnicity and disability, reveal that, on average, full-time state and local employees are under-compensated by 3.7%, in comparison to otherwise similar private-sector workers.¹⁴

But there definitely are people who are overpaid in our country. As Michael Moore put it:

Today just 400 Americans have the same wealth as half of all Americans combined. Let me say that again. 400 obscenely rich people, most of whom benefitted in some way from the multi-trillion dollar taxpayer *bailout* of 2008, now have as much loot, stock and property as the assets of 155 million Americans combined.¹⁵

What should we do?

Wisconsin, Ohio and the other states where collective bargaining is under attack are indeed ground zero, not only in the battle to protect the basic right of workers to have a union, but in the struggle over whether a more just society will ever exist in the US. All Guild members must join in mobilizing all people of good will in a united stand against billionaires and anti-worker politicians who would strip hard-earned collective bargaining and human rights from public workers and, eventually, all workers. We must educate and mobilize ourselves and the people we deal with every day, our clients, co-workers and families, for a more socially just society that respects workers' human rights.

Workers and their allies might not have the money that the billionaire supporters of the tea party movement have, but we do have people power and know how to mobilize for equality and justice. The voice of working people is starting to turn the tide. Hundreds of thousands of people have rallied in all 50 states and DC since the Wisconsin uprising began. In Indiana and Tennessee, workers and legislative allies forced Republican-dominated state legislatures to withdraw some of the most draconian anti-worker legislation. Activists in Wisconsin have already obtained enough signatures to recall two of the Senators responsible for passing Walkers' union-busting law.

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The Attack on Public Sector Workers: Ground Zero for Democracy and Human Rights

Organized labor, Working America, and its allies will continue to reach out to all working people to recall others and to repeal Ohio's anti-collective bargaining law.

History will record that the battle of Wisconsin was where the war for the future shifted in favor of America's working people. We have drawn the proverbial line in the sand. We will resist as long as it takes.

As Rev. Dr. Martin Luther King, Jr. once said, "the moral arc of the universe is long, but it bends towards justice."

FOOTNOTES

1 International Labor Organization, *The International Labour Organization's Fundamental Conventions*. International Labour Office (2003) at 7. Available online at http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—declaration/documents/publication/wcms_095895.pdf. The ILO was created by the Treaty of Versailles at the end of World War I in 1919. It is not a *labor organization* as we think of the term in the US. It is a tripartite international agency, with each country represented by government, employers and workers.

2 344th Report of the ILO Committee on Freedom of Association, Case No. 2460 ¶ 995 (2007).

3 Ezra Klein, *Unions aren't to blame for Wisconsin's budget*, Washington Post, February 18, 2011. Available online at http://voices.washingtonpost.com/ezra-klein/2011/02/unions_arent_to_blame_for_wisc.html#more.

4 *Walker rail decision robs state of future, Coggs says*, Milwaukee Courier, Dec. 12, 2010. Available online at <http://milwaukee.courieronline.com/index.php/2010/12/18/walker-rail-decision-robs-state-of-future-coggs-says>.

5 Don Walker, *Public employees agree to Walker financial demands, Erpenbach says*, Milwaukee-Wisconsin Journal Sentinel, Feb. 19, 2011. Available online at <http://www.jsonline.com/newswatch/116530348.html>.

6 Jason Linkins, *Scott Walker gets punked by journalist pretending to be David Koch*, Huffington Post, February 23, 2011. Available online at http://www.huffingtonpost.com/2011/02/23/scott-walker-buffalo-beast-phone-prank_n_827058.html.

7 See, e.g., Sarah Anderson, et al., *Taxing the Wall Street Casino*. Institute for Policy Studies (2010). Available on line at http://www.ipdc.org/reports/taxing_the_wall_street_casino.

8 According to the Bureau of Labor Statistics **National Compensation Survey**, in September 2010 average hourly earnings among private sector union workers were \$23.19, compared with \$19.28 for nonunion workers. Bureau of Labor Statistics, *Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by major occupational group and bargaining unit status, September 2010. Table 5*. Available online at <http://www.bls.gov/news.release/eccec.t05.htm>

9 Steven Attewell, *The Problem with Ending Employer-Based Health Care*, The Realignment Project, September 2009. Available online at <http://realignmentproject.wordpress.com/2009/09/07/the-problem-with-ending-employer-based-health-care/>.

10 See, e.g., Priscilla Murolo and A.B. Chitty, *From the Folks Who Brought You the Weekend: A Short, Illustrated History of Labor in the United State*. The New Press (2001); Richard O. Boyer and Herbert M. Morais, *Labor's Untold Story*. UE, 1971.

11 Bureau of Labor Statistics, *Union Members Summary*, January 21, 2011. Available on line at <http://www.bls.gov/news.release/union2.nr0.htm>.

12 UC Berkeley Labor Center, *Workers' Rights Overview*, <http://laborcenter.berkeley.edu/workersrights/overview.shtml>.

13 BLS, *Union Members Summary* 2011.

14 Jeffrey H. Keefe, *Debunking the Myth of the Overcompensated Public Employee*. Economic Policy Institute (2010). Available on line at http://www.epi.org/publications/entry/debunking_the_myth_of_the_overcompensated_public_employee.

15 Moore, *America is Not Broke*. Madison Speech, March 5, 2011. For Moore's sources for these figures, see <http://www.michaelmoore.com/words/must-read/forbes-400-vs-everybody-else>.

The **Labor and Employment Law Forum** at The American University, Washington College of Law, is currently accepting submissions for articles related to the collective bargaining rights of public sector employees. It is also seeking papers on *Wal-Mart v. Dukes*. **Submissions are due July 15, 2011** and, if accepted, will be published in late 2011. Submissions should be sent to aualaborlawforum.submissions@gmail.com.

Farmworker Death Results in Slap on Wrist Let our actions honor those who died at the Triangle Factory

We need a real commitment to worker safety. California has 2.5 million unemployed workers, and there are millions more across the US. If only a fraction of America's jobless were put to work as compliance officers, it would make a huge difference. The ranks of the unemployed are filled with industrial workers, technicians, experienced men and women ready to do the job.

We must fight for resources for OSHA. Today, the Transportation Security Administration employs 110,000 people. They were charged with the mission of preventing death in the skies after 3,000 perished in the terrorist attacks of 9/11. Compare that to the over 5,000 people killed, **every year**, on the job. We need a movement that calls for taxing the corporations, exposing the phony *budget crises*, and allocating the funds necessary to hire OSH staff – a program to both create jobs to save lives.

With a true commitment to occupational safety and health, Maria Jimenez would not have died. Buried in what was to be her wedding dress, she speaks, as do the Triangle fire victims, from the grave. From the ashes of the Triangle fire must arise a real phoenix, not a mythical bird, but a practical movement towards a new social order of which the battle for safety and health on the job is a necessary part.

National Lawyers Guild L&EC - 2 meetings

at the 2011 LCC in San Diego

Tuesday - April 26, 2011 - 3:30 - 4:00 pm

Thursday - April 28, 2011 - 3:45 - 4:45 pm

Call (510) 333-9907 for exact meeting location or check our website at

http://www.nlg-laboremploy-comm.org/LEC_Events_at_AFL-CIO.php

National Lawyers Guild - L&EC BREAKFAST

Thursday - April 28, 2011 - 7:00 - 8:00 am

Hilton San Diego Bayfront - San Diego - room will be posted at hotel

Crimes Against Labor: Attacks on Workers' Rights in Mexico & US

with

Alejandra Ancheita

Founder & Advisor, Proyecto de Derechos Economicos, Sociales y Culturales (ProDESC)

David Bacon

journalist, labor activist and author of *Illegal People - How Globalization Creates Migration and Criminalizes Immigrants*

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 - NLG Convention - October 12 - 16, 2011

Crowne Plaza Hotel - Philadelphia, PA

<http://www.nlg.org/members/convention/>