

The National Lawyers Guild NEWSLETTER of the Labor & Employment Committee



October 2004

State of the Union: Labor Issues and the 2004 Election

Whatever your political bent, the events of the November 2000 Presidential Election turned *every vote counts* from cliché to rallying cry. While in 2000 many voters lamented they saw no difference between the candidates, the 2004 Election finds candidates distinctly divided on the core labor concerns of jobs and wages, health care, strong communities, retirement, and security.

With the 64 member unions of the AFL-CIO representing more than 13 million eligible voters, a strong labor turnout could easily be the deciding factor in this year's election. More so than in any recent election, the next President will be determined by numbers so close that both the Democratic and Republican campaigns have focused nearly all their efforts on a mere handful of *swing states* still up for grabs. We have the numbers to win this election for working people. But each of us needs to play a role - by turning out the labor vote with Labor 2004 and by volunteering to do election protection work with the AFL-CIO VRPP or similar groups (partisan or non-partisan). Working families on election day can make the difference by making themselves heard at the polls.

AFL-CIO Endorses John Kerry for President

The AFL-CIO endorsed the Kerry-Edwards ticket for President, noting Senator Kerry's 91% lifetime voting record on core labor issues. AFL-CIO President John Sweeny said in February, "We've had three years of national priorities that placed the special interests of corporations and the wealthy over those of regular workers and their families. John Kerry will lead us in our fight to make creating good jobs America's number one priority—to make affordable health care a right and not a privilege."

The Kerry-Edwards Campaign summarized its priorities as "good-paying jobs, a health care plan that reduces costs, an energy plan that frees us from Mideast oil," strengthening the military and leading "strong alliances that keep America safe and secure." Senator Kerry proposed changes to existing tax laws that just encourage the outsourcing of American jobs, providing insurance premium relief and tax credits for affordable health care, and protecting overtime pay. Tax cuts represent a significant difference between the two candidates. Although Senator Kerry proposes maintaining current tax cuts for the middle class, he has pledged to roll back recent Bush administration tax cuts for the wealthiest Americans. In support of the AFL-CIO endorsement of Senator Kerry, AFL-CIO General Counsel Jon Hiatt said to labor attorneys in March, "the labor movement, itself, has embarked on a major coordinated political and member mobilization campaign to ensure that George W. Bush is denied reelection."

Working Women Vote 2004

The Coalition of Labor Union Women (CLUW), the only national organization for union women, says "working women have a big stake in the 2004 elections and progressives have a big stake in making sure that women have enough information to vote wisely."

According to the AFL-CIO 2004 *Ask a Working Woman* Survey, jobs and health care are still top issues for union women. And women have good reason to be concerned. The 2004 survey finds that one-quarter to one-third of working women still lack the basic benefits that unions strive for, such as affordable health insurance, prescription drug coverage, secure retirement, equal pay, and paid sick leave. Among working women earning less than \$40,000 a year, one-quarter to one-half are still without basic benefits. In ranking the leading worries of working women, the Survey finds that the top three "very worried" concerns are rising health care costs, losing overtime pay, and losing professional jobs to international outsourcing.

The Bush Years - How Labor Fared

In contrast to Senator Kerry's strong economic program for working people, the Bush Administration simply stands by its "record" on the economy, declaring an end to recession and a healthy economic recovery. Pointing to rising corporate earnings and the administration's handling of jobs, the Bush-Cheney Campaign asserts the nation is in the midst of a healthy recovery, "an economic recovery unleashed."

As the Bush Campaign declares its economic mission accomplished, national surveys find the recovery is not benefitting working families. The Labor Research Association found a "jobless, payless recovery," noting that new job creation has not managed to replace the millions of jobs lost during President Bush's four years in office. The new jobs that were created in the last year pay below the median hourly wage of all jobs in the economy, and average real wages have fallen over the past four years.

With the economy in a job deficit and average real wages falling, there is more bad news for workers. The LRA finds the net effect of the last four years has been an overall weakening of the bargaining position of organized labor. Since 2000, the combined impact of falling wages and rising benefit costs are making it "more difficult for unions to negotiate meaningful wage increases," reports the LRA. "The consequences of President Bush's economic policies can be seen in the budget of every American family."

In health care, for example, the numbers of uninsured Americans rose over the last four years with health costs rising almost three times faster than incomes. Labor leaders are especially concerned with notable White House missteps over the past few months, including

continued on page 2 at the bottom of the page

Civil Rights Attorneys Concerned By Justice Department Role in 2004 Election For Bush's DOJ 'Voting Integrity' Trumps Voters' Rights

CNN legal analyst Jeffrey Toobin, writing for this month's *New Yorker*, reveals concern over the increasingly political roll of the Bush administration's Justice Department in the November 2004 Presidential Race. In September, the *Las Vegas Sun* reported that presidential adviser and Republican campaign guru Karl Rove is taking a personal interest in *potential fraud* in key swing states such as Nevada. The Department of Justice is pushing ahead with its *Voting Access and Integrity Initiative*, launched in October of 2002, which Attorney General John Ashcroft says will commit a stronger federal presence to policing elections.

Civil rights attorneys are concerned that a large, visible federal presence will discourage minority voters and bias elections.

The DOJ is pursuing *voting integrity* by diverting resources from its other voting rights programs. Although there was national confusion surrounding the events of the 2000 election, that was clearly not the result of voter misconduct. Toobin reports that the DOJ is edging out trained civil rights attorneys and replacing them with federal prosecutors tasked to ensure *voting integrity*, a move that raises concerns among civil rights scholars.

"*Voting integrity* is one of those great euphemisms," says Stanford Law Professor Pamela S. Karlan, "by and large, it's been targeted at minority voters." Toobin notes, "An emphasis on voting integrity, whatever the motivations behind it, often helps Republicans at the polls." According to the *New Yorker*, civil rights lawyers are concerned that a heavy-handed, highly visible federal presence will discourage vulnerable populations from voting and that emphasizing the prosecution of voting fraud at the expense of a more balanced policy may risk "potentially greater harm to voters." Lawyers' Committee for Civil Rights Under Law member Jon Greenbaum asks, "How many people are scared off from voting because you ask them a question at a polling place?"

Toobin points out that Attorney General Ashcroft is placing U.S. federal prosecutors at the forefront of election day activities, a position traditionally held by lawyers in the Voting Section of the Justice Department's Civil Rights Division. Pushing aside civil rights attorneys who are specially trained in voting rights issues and replacing them with federal prosecutors is troubling evidence that the Bush administration's Justice Department has prioritized "voting integrity" over voter access. Civil rights leaders fear that by weakening the Voting Section, Attorney General Ashcroft is leaving serious voter discrimination issues unaddressed. The *New Yorker* notes that since President Bush took office, "the Voting Section has filed just one contested racial vote-discrimination case, in rural Colorado, which it lost."

Not only is the Bush administration displacing civil-rights attorneys for prosecutors, but Attorney General Ashcroft has taken a personal interest in ensuring the political loyalty of new hires. In the past, notes Toobin, DOJ Voting Section attorneys were hired by a committee of mid-career professionals who sought to keep attorneys *apolitical*. Now, the Attorney General's *front office* has taken over the hiring process of everyone from top officials down to summer law clerks. Toobin was told by a current employee, "Soon, there won't be any difference between the career people and the political people."

When the Chips Are Down – We'll Be There Labor and Allies Protect the Right to Vote

No one loves a courtroom like we do, but progressive lawyers everywhere are hoping that this Election is decided fairly at the polls and not at the bench or in the House of Representatives. Unprecedented voter protection efforts are underway, with major initiative such as the AFL-CIO's Voting Rights Protection Program (VRPP) and People for the American Way's Election Protection recruiting volunteers to make sure these elections are fair -- to make sure that every vote counts.

The AFL-CIO's Voting Rights Protection Program is in 32 communities in 12 states throughout the country: Arizona, Florida, Michigan, Minnesota, Missouri, Nevada, New Mexico, Ohio, Oregon, Pennsylvania, Washington and Wisconsin to protect the right to vote.

Lora Jo Foo, a long time civil rights and labor attorney noted, "The Voting Rights Protection Program is proceeding in three phases. Our goal is to minimize problems that might arise on election day by identifying and solving problems as early as possible. In Phase 1, we engage in pre-election day policy advocacy with Election Officials. In order to do this, we work with existing coalitions in the areas where we want to focus or we help pull together a coalition if none already exists. Because our work is non-partisan and focuses on legal issues concerning the right to vote, the coalitions can include all groups - whether they are 501(c)(3)s or 527s or others who are engaged in voter registration and GOTV efforts: unions, community groups, etc. We do not, however, work with parties or candidates. In Phase 2, we recruit and train poll workers and poll monitors for Election Day. We will encourage retirees, lawyers, law students and others interested in protecting the right to vote to become involved as official poll workers and/or unofficial poll monitors with our program. And in Phase 3, we plan and implement Election Day field operations to provide assistance to voters who need such in order to have their vote counted.

Find out more about Election Day volunteer opportunities at <http://www.worksafe.org/about/extra.cfm> or by contacting Fran Schreiber at (510) 302-1071 or fcs@kazanlaw.com.

NY - First Annual Summer Intern Reception

On July 14, the NYC Labor & Employment Committee held its **First Annual Summer Intern Reception** which drew a big crowd. About 50 interns from government agencies, workers' centers, unions and employment law firms shared experiences and thoughts about the fight for workers' rights. As well, the NYC NLG chapter recruited legal observers for the Republican National Convention.

A **forum** on whether Walmart is good for working people is in the works for the Fall. **For more information**, contact Ursula Levelt ursulalevelt@yahoo.com and visit the NYC NLG Chapter online at www.nlgnyc.org

continued from page 1

The Bush Years

the Bush administration's proposal to change the Fair Labor Standards Act to deny overtime pay to more than 6 million workers, and President Bush's Chief Economic Advisor Greg Mankiw coming out in favor of outsourcing American jobs, calling outsourcing "a plus for the economy."

CBTU Says Black Workers Hit First and Hardest by Unemployment

The **Coalition of Black Trade Unionists**, the nation's oldest and largest independent black labor organization, finds that bad news is worse news for African American workers. Often the first to feel a recession and the last to benefit from a recovery, black workers are affected disproportionately by a bad economy. Adding insult to injury, that disproportionate impact is rarely discussed by the media or policy makers.

The Unemployment Story You Haven't Heard, a report for CBTU by Dwight Kirk, examined employment figures and found that in the last four years black workers suffered more job loss than the general population. Based on data released by the U.S. Department of Labor, black workers are faring the worst among American workers in an already dismal labor market.

Kirk cites for example that nearly half of the 360,000 people who lost their jobs in June 2004 were African American, although they are just 11% of the workforce. Kirk notes that when the unemployment level *inches* up for the general population, it *soars* for black workers. When general unemployment rose from 5.4% to 5.5% in June 2004, African American workers experienced a jump from 10.8% to 11.8%, ten times the increase of the general unemployment rate. CBTU calls black unemployment a national scandal.

Kirk lays blame for the past four years with the Bush administration and "failed economic policies based on tax cuts that benefit the wealthy, trade laws that reward companies that move jobs overseas, and the fiscal abandonment of state and local governments." "Those who seek black votes," says Kirk, "must not shy away from acknowledging the growing disparity of hardship among the unemployed."

Low-Wage Workers File Class Action Suit Against Guardian Security

Testing Living Wage Laws in Michigan

by Tom Stevens, Guild/Sugar Law Center

Detroit, Mich. - More than 40 COBO Hall security guards who are being denied a living wage, in violation of the Detroit Living Wage Ordinance and federal law, will file suit Thursday, October 14, 2004 in the United States Court for the Eastern District of Michigan.

The security guards will hold a press conference in front of COBO Hall and will be joined by Julie H. Hurwitz, Executive Director of the Guild Law Center, Ron Reosti of Reosti James & Sirlin, Donald Boggs of the Metro Detroit AFL-CIO, and representatives of the Southeast Michigan Chapter of Jobs With Justice.

In 1998 over 80% of Detroiters voted for the Detroit Living Wage Ordinance (DLWO). This ordinance requires all private employers who either have contracts with the City in excess of \$50,000, or who receive in excess of \$50,000 in financial assistance from the City, to pay their employees a *living wage* which means a wage of either a) 125% of the federal poverty level; or b) 100% of the federal poverty level, if health benefits are provided to the employee. Health benefits, for purposes of the ordinance means fully paid, comprehensive family medical coverage. This equates to a wage of \$11.77 per hour for Guardian security guards, who were not provided with such medical benefits.

Guardian Bonded Security currently employs approximately 34 guards at COBO Hall. Security guards are currently paid \$9.05 per hour without benefits. If the guards want medical benefits through

Guardian, they are required to pay premiums ranging from approximately \$27 to \$70 per week. Guardian contends the Living Wage Ordinance does not apply in this instance because the security guards belong to a union with a collective bargaining agreement that provides for an hourly wage that is less than what the ordinance requires.

Farmworkers Organize in North Carolina!

by Robert Willis

A boycott of Mt. Olive Company pickles that started in 1998 ended with the signing of a 41-page collective bargaining agreement in Raleigh, North Carolina on 16 September 2004, Mexican Independence Day. NLG L&EC member Robert Willis acted as the Farm Labor Organizing Committee [FLOC], AFL-CIO, *pro bono* counsel for all NC actions since 1997. With the support of boycott committees and boycott demonstrations across the country as well as litigation pressure from various sources, FLOC was able to obtain a collective bargaining agreement for more than 8,000 H2A agricultural workers from Mexico who work in NC on seasonal visas. These workers work primarily in cucumbers, tobacco and sweet potatoes, but also perform work in agriculture products that vary from Christmas trees to strawberries.

Negotiations for the agreement proceeded with the participation of FLOC's President, Baldemar Velazquez, its Director of Organizing, Leticia Zavala, its attorney, Robert Willis, and the members of the workers' negotiating committee, all participating in various ways in the contract talks with the growers' association, the North Carolina Grower's Association, Inc., from 2 July 2004 through 13 September 2004. Those negotiations involved the circulation and discussion of more than 23 drafts of the Agreement before finalization. The Agreement provides, among other things, that no worker may be discharged without just cause, abolishes the possibility of a long-feared blacklist, establishes a recruiting system that favors union members, overrules by contract an anti-worker Fourth Circuit decision which allowed discrimination in recruitment of workers in Mexico on the basis of age and other factors prohibited by U.S. law, limits the grounds for which covered workers may be disciplined, and provides all workers covered by the Agreement with a grievance procedure to enforce their rights.

With this breakthrough in a *right-to-work* anti-union state, FLOC intends to continue with its efforts to organize the thousands of undocumented agricultural workers in NC whose living and working conditions are generally far worse than those workers who work legally.

Supporting U.S. Troops and Opposing War SEIU Leads Labor Speaking Out for Peace

On September 25, the Vermont State Labor Council voted to speak out in support of U.S. troops but against the war in Iraq. Vermont workers joined a growing number of labor organizations affiliating with **U.S. Labor Against the War (LAW)**, a group formed nearly a year ago by representatives of the Service Employees International Union. SEIU Locals alone represent LAW members topping 400,000 and the group has already expanded to represent over 100 labor organizations.

Declaring *Make Jobs Not War*, LAW speaks out on behalf of its members against the current U.S. policy in Iraq, citing the disproportionate impact of the war on working families and the need

continued on page 7 at the bottom of the page

NLG Protects Students' Right to Vote NLG Students Face Down Fox News in Arizona

by Sara Ransom

The National Lawyers Guild student chapter at the University of Arizona (UA) School of Law proudly announces it has registered over 150 students and community members in the Tucson area! This activity would appear to be a simple public service—a mere drop in the bucket amongst the hundreds of thousands registered across the country. Unfortunately, this was a public service that UA students had to fight to provide this election year.

On August 31, 2004, undergraduate students at UA were registering students to vote when a Fox-11 News van pulled up. The news team accused the students of encouraging felony voter fraud on the grounds that Arizona law prohibits out-of-state students from registering to vote. Having received extensive voter registration training, the students knew that federal law clearly secures the fundamental right of persons to register to vote in presidential elections in any state without regard to durational residency requirements. They immediately telephoned the Arizona Secretary of State's office and the Pima County Registrar's office to explain that a misinformed Fox News team was attempting to suppress efforts to register voters. To the students' dismay, the Pima County Recorder's office stated, incorrectly, that out-of-state students must meet durational residency requirements before registering to vote!

The NLG quickly drafted a legal memorandum in support of out-of-state students' rights to register to vote in the state in which they attended school, assisted in drafting press releases and spoke out at press conferences. After weeks of standing in the way of out-of-state students' right to vote, the Pima County Recorder's office issued a retraction clarifying that the only residency requirement to vote in Arizona is physical presence in the state with the intent to remain during the 29 days before the election.

Finally, after a student demonstration and press conference targeting the Fox affiliate's unprofessional journalism, the station that had previously portrayed students as *defiantly* registering to vote and telling authorities to *come and get us* was forced to air its own retraction. This victory was further celebrated on September 27, 2004, when NLG member Sara Ransom recounted the failed voter intimidation efforts of the Fox affiliate and the Pima County Recorder's office on Democracy Now.

L&EC Represented at NELA Convention

by Rick Griffin

The National Employment Lawyers Association [NELA] met in San Antonio June 23 - 26, 2004, for its annual convention, and the L&EC was there. NELA is an outstanding organization of plaintiff's employment attorneys. It publishes high quality legal materials, produces excellent legal seminars, lobbies Congress, and runs Work Place Fairness, an advocacy and information organization with a strong presence on the web.

The L&EC was represented at the convention not only by the presence of some of its members on major panels, but also by the L&EC information table. The red banner was an eye catcher and many conventioners stopped at the table to talk about the L&EC and the Guild. Some were Guild members, and some of those of long standing. Many were not members, but were interested in the L&EC and its work and publications. Importantly, and unfortunately, a good number of passers by had never even heard of the Guild! There is work to be done.

NELA does not try to emphasize differences between employment and labor law, although it naturally focuses on the employment law side. The entire morning of the first day was devoted to *Winning the War on Workers: Success Stories From the Battlefield*. The program highlighted worker victories in struggles by women workers made jobless by globalization and struggles by Tejano musicians, through the American Federation of Musicians, to get parity from Latin recording companies which denied Tejano musicians the same pay and benefits provided to *mainstream* musicians. If you practice in employment, join up. It's good for your practice and will help build good ties between NELA and the Guild L&EC. See the NELA online at: www.nela.org.

Global Solidarity – L&EC Donates to Botswana Mining Workers

by Joan Hill

On August 23, 2004, 3,000 members of the Botswana Mining Workers' Union launched a strike against Debswana, a diamond-mining joint venture between DeBeers and the Botswana government. The Debswana mines account for nearly 75% of Botswana's export earnings, or nearly one-third of the country's gross domestic product.

In Botswana, management provoked the strike by insisting in wage negotiations that BMWU members accept a pay and bonus proposal that was a mere fraction of increases granted to salaried employees, and then abruptly withdrew the offer when the union's leadership rejected it. Management had also secured an order from the country's industrial court preemptively declaring any strike to be illegal.

Although the BMWU did not consent to the strike, management has seized the opportunity to try to bankrupt the union and possibly to jail its leaders. Debswana has invoked contempt of court proceedings against 33 local branch officers, terminated 444 striking miners and evicted some striking workers from company-subsidized housing.

As it became clear that DeBeers and the government were on a course to break the union, legal fees were mounting up, threatening to bankrupt the union. The Labor and Employment Committee was asked to donate, as a matter of solidarity, to the legal defense fund, as were members of the AFL-CIO lawyers coordinating committee.

For over 20 years, the trade union movement in Botswana has been lobbying Government to ratify the International Labor Organization (ILO) Conventions on Freedom of Association and Collective Bargaining in order to strengthen the role of unions in the work place. Although embarrassed, the Botswana delegates are not alone: the AFL-CIO has a campaign for the core ILO conventions because the U.S. has not ratified six of the eight core labor conventions, including the right to organize and bargain collectively. Recently, the United States earned low marks for workforce economic security in a new global survey, published by the (ILO). The rankings of 90 countries are based on income security, labor market security, employment security, workplace security, job security and collective bargaining/trade union representation. The ILO said the low U.S. ranking mainly is due to the poor score it received for domestic labor policy because this country has not ratified key ILO conventions and has no legal notice periods prior to termination of employment.

continued on page 7 at the bottom of the page

Smith v. City of Jackson, MS

by Michael Evan Gold

Does the Age Discrimination in Employment Act of 1967 (the Age Act) prohibit disparate impact? The Supreme Court will decide the issue this term in *Smith v. City of Jackson, MS*, docket No. 03-1160. The Guild and the Cornell Chapter of the American Association of University Professors have filed a brief as amici curiae, arguing that the answer is yes.

Two methods of proving employment discrimination have evolved under Title VII of the Civil Rights Act of 1964. In the disparate *treatment* method, the plaintiff proves that the defendant intentionally denied an employment opportunity to the plaintiff because of one's race, sex, etc.; for example, the plaintiff proves that the employer hired only men for a job due to the belief that the work was too strenuous for women. Disparate treatment was the model of discrimination in the mind of Congress when Title VII was enacted.

In the disparate *impact* method, the plaintiff proves that a particular employment practice of the defendant adversely affected the plaintiff's protected class and the defendant fails to prove that the practice was job related and consistent with business necessity; for example, the plaintiff proves that the employer hired applicants based on their scores on an aptitude test, but the employer is unable to prove that the success on the test correlates with success on the job. Disparate impact sprang more or less full blown from the Supreme Court's 1971 decision in *Griggs v. Duke Power Company*.

The first U.S. Courts of Appeals to hear the issue ruled that disparate impact may be proved under the Age Act. The tide turned in the 1980s when the judges appointed by Ronald Reagan took the bench, and most decisions in the last twenty years have ruled against allowing disparate impact under the Age Act.

In *Smith* the police department of the City of Jackson, MS raised the pay of police officers pursuant to a plan that gave officers forty and older raises that were four standard deviations lower than the raises of younger officers. Following the conservative trend, the Fifth Circuit dismissed the claim, and the Supreme Court granted certiorari. Three years ago, the Court granted certiorari on the same issue, heard oral arguments, then dismissed the writ as improvidently granted. The Court seems more likely to reach a decision this year.

The workers argue that the prohibitory passage of the Age Act was copied, mutatis mutandis, from Title VII. Because the latter allows disparate impact, so must the former. In reply, the employer observes (correctly) that Congress was unaware of disparate impact in either 1964 or 1967; therefore, argues the employer, disparate impact should not be recognized as a legal theory under the Age Act. The argument would not apply to Title VII because the Civil Rights Act of 1991 ratified disparate impact under Title VII. The 1991 act, however, did not amend the Age Act in any relevant way.

But, as the Guild's brief points out to the Court, the employer's argument rests on a false assumption. The employer assumes that disparate treatment and disparate impact are separate claims. If that were true, Congress's innocence of the latter when the Age Act passed would be a serious objection. In fact, however, disparate treatment and disparate impact are not separate claims, but separate methods of proving the same claim, viz., discrimination. The courts are fully competent to recognize methods of proof that the legislature did not anticipate. *Griggs* recognized disparate impact as a valid method of proving discrimination under Title VII, and disparate

impact is an equally valid method of proving discrimination under the Age Act.

The employer offers an argument based on the texts of the two statutes. The Age Act contains a clause that Title VII lacks. This clause allows employers to differentiate among employees "based on reasonable factors other than age" (RFOA). The RFOA clause defeats disparate impact, argues the employer, because it derives from a clause in the Equal Pay Act which allows a pay differential "based on any other factor other than sex" and which precludes disparate impact. The workers reply with their own textual argument. The word "reasonable" appears only in the RFOA clause. To say that a factor other than age must be reasonable means, in the context of employment, that the factor must be related to job performance. Thus, the RFOA clause is a fair approximation of the defense to disparate impact. The defense would not be in the Age Act unless the prima facie case were there as well.

The workers note that EEOC regulations recognize disparate impact under the Age Act. The employer counters that regulations assume disparate impact, but do not promulgate it; moreover, they mistake the intent of Congress.

Both sides make plausible doctrinal arguments, and so the case may be decided by the purpose of the act. The workers direct attention to section 2, which states that its purpose is to promote employment of older workers based on their ability, not their age. The disparate impact method of proof does this well. The employer responds that section 2 also refers to "arbitrary age limits," as does the legislative history; arbitrary age limits are intentional discrimination, not disparate impact. For practices that "may work to the disadvantage of older persons," i.e., have a disparate impact, section 3 charged the Secretary of Labor to undertake research and educational programs.

The employer observes, accurately, that Congress thought age discrimination differed from race discrimination in that only the former was motivated by animus. From this the employer infers that the Age Act applies only to intentional discrimination. To begin with, this argument ignores sex discrimination, which is usually not based on animus and is covered by disparate impact under Title VII; thus, the absence of animus is not inconsistent with disparate impact. Further, the employer's argument leads to a *reductio ad absurdum*. Discrimination motivated by animus is intentional; thus Title VII properly bars disparate treatment. If the Age Act is not directed at animus, it follows that the Age Act does not bar disparate treatment — an absurd result that contradicts the employer's basic argument.

Chief Justice Rhenquist, dissenting from denial of certiorari in *Markham v. Geller*, expressed the view that Congress did not intend the Age Act to restrain employers in the way that disparate impact does. The entire Court subscribed to Justice O'Connor's statement in *Hazen Paper v. Biggins* that disparate treatment captures the essence of what Congress sought to prohibit by the Age Act, and Justices Kennedy and Thomas and Chief Justice Rhenquist stated in a concurrence that substantial arguments militate against importing disparate impact from Title VII into the Age Act. Thus, the workers are waging an uphill battle. Their arguments are stronger, but the best they can hope for is a decision by a closely divided court.

HIGHLIGHTS of the NLG CONVENTION 2004 for NLG L&EC Members

THURSDAY, OCTOBER 21

- 5:15, 5:30 to 7:00pm **Reception and Tours** at Civil Rights Institute
5:15 to 7:00pm **National Immigration Project Presentation of the Daniel Levy Award** to the Laura Luis Hernandez Legal Team, at the Joint Reception with the NLG at the Birmingham Civil Rights Institute
7:00 to 9:00pm **Opening Plenary** at 16th Street Baptist Church

FRIDAY, OCTOBER 22

Workshops I

- 8:30 to 9:45 am **Forty Years After Title VII** of the Civil Rights Act (Brad Seligman)
Immigration 101 for Guild Members (Ellen Kemp)
Radical Law Students: surviving Through Mass Defense (Steckley Lee)

Major Panels

- 10 to 11:30 am **New Voice in the Civil Rights Struggle**
Globalization of the Fight for Workers' Rights

Noon to 1:30pm **WOMEN'S LUNCHEON with Anne Braden**

Workshops II

- 1:30 to 2:45pm **The New Abolitionists: Their own stories in their own voices** (Dr. Horace Huntley and David Gespass)
Representing Striking Workers (Victor Narro)
Immigrants' Struggle Against Database Profiling (Ellen Kemp)

Workshops III

- 3:00 to 4:15pm **Social Security: Disability from Soup to Nuts** (Aaron Frishberg)
The Right to have Rights: A National Campaign for Legalization And Immigrants' Human Rights (AFSC - Jon Blazer)
Mass Defense Committee: Defending the Movement in the Streets Post 9-11 (Carol Sobel/Mara Verheyden-Hilliard)
Challenging Local Police Enforcement Against Immigrants (Ellen Kemp)
Cuba: The Future under Bush or Kerry?

4:30 to 6:00pm **PLENARY I**

SATURDAY, OCTOBER 23

Workshops I

- 8:30 to 9:45am **The Challenges of Representing Undocumented Workers as Plaintiffs in Civil Litigation** (Barbara Hadsell/Elizabeth Haddix)

Major Panels

- 10 to 11:30am **Radical Lawyering in a Hostile Environment**
1:00 to 2:30pm **Special Panel Discussion: Women in the Civil Rights Movement**
2:30 - 4:00pm **PLENARY II**

Workshops II

- 4:30 to 5:15pm **Using Immigration Laws to Silence Political Opposition: The Denial of Immigration Benefits Post 9-11** (Ellen Kemp)
7:30 to 10pm or so...**the JUKE!!!!** (Pre-Juke Gathering in Foyer area)

California Farm Workers Stand for Union Victory

California is now the first state to ban the often torturous practice of hand weeding. Bent or kneeling farm workers denied access to long-handled tools routinely experience persistent back pain and long-term injury. The September 23 ruling by the **California Occupational Safety and Health Standards Board** is a temporary ban on most forms of hand weeding, and a permanent ban is coming.

Prior to 1975 in California, it was common to equip farm workers with a short-handled hoe, called *el cortito* (the short one), which resulted in chronic pain and serious back injuries. Cooperation by farm workers, **United Farm Workers Union AFL-CIO**, **California Rural Legal Assistance Foundation** (CRLA), and other key allies finally saw the short-handled hoe banned by *Sebastian Carmona et al vs. Division of Industrial Safety* in 1975. But rather than abide by the spirit of the ruling and provide workers with appropriate tools, many farms simply denied their workers any tools at all. A victory over hand weeding and a final good-bye to the legacy of *el cortito* has taken almost another thirty years. The ruling allows for some exceptions for organic farms or specific crops where long-handled hoes are ineffective. The September decision also increases the required break time for weeding workers. A permanent ban on hand weeding is expected within a year.

This victory for farm workers has a rich history in the farm workers' rights movement. As a boy, Cesar Chavez left school after the eighth grade to help support his family. Among his first jobs was weeding the lettuce fields with a short-handled hoe. He dedicated the rest of his life to the struggle for workers' rights and simple dignities such as being allowed safe and appropriate tools.

The long overdue goodbye to *el cortito*, a final realization of victory for farm workers that began in the lettuce fields with Cesar Chavez, is a personal victory for California farm workers and a symbolic victory for organized labor everywhere. At his funeral, Cesar Chavez's grandchildren placed a short-handled hoe on an alter as a symbol of Chavez's lifelong struggle for labor rights.

L&E Committee Announces 6th Bilateral / 3rd International Professional Research Exchange in Cuba

Dean Hubbard, Co-Coordinator, NLG Cuba Labor Delegation

The Committee's annual legal research/solidarity trip to Cuba continues, unimpeded by the Bush Administration's new regulations seeking to restrict Cuba travel. Next year's exchange is tentatively scheduled to begin with a welcoming event Sunday night, March 13, 2005, and to run until Saturday, March 19. We will begin with a one day research orientation in Havana. The balance of the trip will consist of visits to workplaces to meet with workers and local union leaders and municipal court to see a labor case. Hopefully, we'll also have the opportunity to observe a session of one of the grass roots labor justice boards. As usual, we will journey together to one of the provinces, returning to Havana either Friday night or Saturday morning. Join us as we continue our critically important work of building bridges of mutual education and understanding, and contribute to the growing momentum for an end to the illegal blockade of Cuba and the normalization of relations between our countries. *To preregister, complete and submit the preregistration form below.*

For more information, contact Joan Hill jhill@isdn.net or Dean Hubbard dhubbard@slc.edu

6th Bilateral (U.S./CUBA) and 3rd International Professional Research Exchange of Labor and Employment Lawyers, Scholars and Trade Unionists

Havana, Cuba - Tentative Dates: March 13-20, 2005

Co-sponsored by National Lawyers Guild L&EC and the Cuban Workers' Central (CTC)

Orientation at CTC Headquarters (3/14/05), Field Research (3/15/05 - 3/18/05).

Interview workers, labor lawyers & union leaders, observe grass roots and judicial workplace dispute resolution mechanisms in Havana and the provinces, and contribute to a published report on labor law and policy in Cuba.

To pre-register, please send before 12/15/04, a check for \$200* payable to "National Lawyers Guild Labor & Employment Committee" with the following information to:

Dean Hubbard, Co-Coordinator, NLG Cuba Labor Delegation
Sarah Lawrence College
One Mead Way
Bronxville, NY 10708

Name: _____

Address: _____

Home and Work telephones: _____

E-mail address: _____

Labor relations professional affiliation (e.g., General Counsel, ABC International Union): _____

By preregistering, I acknowledge my understanding that the purpose of this trip is to conduct professional academic research and to exchange information and views regarding labor relations and workers' rights in Cuba, the United States and other countries. I agree to participate in the preparation of a report of the results of this research which is intended for public dissemination. I agree to participate in this research and exchange with an open mind and in a spirit of solidarity.

Signature: _____

* refundable if cancellation received before December 31, 2004

continued from page 3

Supporting U.S. Troops and Opposing War

to build an international coalition to deal with security and redevelopment. Other labor leadership has spoken out against Iraq policy – in 2003 the AFL-CIO passed a resolution supporting the war on terrorism but calling for “multilateral resolve,” a broad international coalition, and cooperation with the United Nations to deal with Iraq.

The Vermont Council resolution recognized “the courage and sacrifice of U.S. military personnel who have faced extraordinary dangers” and called for the Bush administration to return troops to the U.S. LAW is online at www.uslaboragainstarwar.org.

This July, the California Labor Fed adopted a resolution recognizing the courage of U.S. military personnel and calling for an

immediate end to the U.S. occupation of Iraq. California adds a powerful voice to the anti-war labor chorus, as the state boasts the single largest labor federation, with its two million members representing more than 1/6 the entire membership of the AFL-CIO.

The Federation also pledged to actively support U.S. LAW and protect the “lives and livelihoods of working people everywhere.”

continued from page 4

Botswana Miners

Funds were received through the **International Federation of Chemical, Energy and Mine Workers Unions (ICEM)**, an umbrella organization of international labor unions in certain industries. Additional donations can be sent to the ICEM North America Regional Office, 1150 17th Street, N.W., Suite 300, Washington, DC 20036, earmarked for the **Botswana Miners' Legal Defense Fund**.

Join the L&EC at the
National Lawyers Guild Annual Convention in Birmingham
Law for the People Convention

The site of Law for the People 2004 is Birmingham, Alabama, one of the most important places in the history of the Civil Rights Movement and at one of the most critical and threatening times for human rights in the history of the Guild. Your hosts, NLG Alabama, invite you to take advantage of outstanding educational programs, inexpensive travel and lodging, networking opportunities, movement building, a friendly and vibrant environment, and our legendary Southern hospitality.

Radisson Hotel Birmingham - 808 South 20th St - Birmingham, AL 35205 -(205) 933-9000

Thu - October 20 - 3 pm - 5 pm - L&EC Steering Comm
Thu - October 20 - dinner with the L&EC - all welcome
Sat - October 22 - lunch - full committee meeting

**Stop by the L&EC Table for Information on
Committee Meetings and Special Events!**

National Lawyers Guild
Labor & Employment Committee
c/o Kazan McClain Abrams Fernandez Lyons & Farris
171 - 12th Street
Oakland, CA 94607