



Building a Stronger Labor Movement: The Rebirth of Worker Centers

by *Marielena Hincapie, National Immigration Law Center*

The growth and strength of the labor movement, with today's workforce as diverse as it ever has been, requires partnerships between traditional labor unions and worker centers. Worker centers are a new organizing model integrating diverse worker communities into struggles for living wages and improved working conditions for all. Immigrants and many other low-wage workers rely on the worker center model as an alternative to traditional labor unions. Indeed, in many communities this is the only type of worker organizing taking place. Building a partnership between labor and these new organizing forms also presents a challenge at a time when contingent work continues to be on the rise.

If organizing low-wage workers is difficult in this political and economic climate, then organizing contingent workers — especially those who are foreign-born and with tenuous immigration status — using traditional union models is even more daunting. When one looks at the conditions in which low-wage immigrant workers are laboring, it is no wonder they must organize. Immigrant workers make up approximately 15 percent of the labor force in the United States yet they head 1 out of 5 low-income families. One out of every two new entrants into the labor force throughout the 1990s was a new immigrant who entered the U.S. after 1990. These *new immigrants* also contributed to at least 60 percent of the growth in the labor force between 2000 and 2004.

Although immigrants have high participation rates in the workplace, low skills and other barriers mean that many work under the most exploitative conditions, often earning less than the minimum wage. The barriers immigrants face are exacerbated by the fact that so many recent immigrants — 40 percent of the estimated 8.6 million low-wage immigrant workers — lack citizenship/immigration status. As a recent study on immigrant worker centers concluded, "America's immigration policy has become one of her central *de facto* labor market policies."

In 2000, nearly half of all immigrant workers earned less than 200 percent of the minimum wage, compared with 32 percent of native workers. Immigrant workers are disproportionately represented in dangerous industries (construction, manufacturing and agriculture) and in hazardous occupations within those industries. Immigrant workers accounted for 69 percent of workplace fatalities in 2002, and Mexican workers are 80 percent more likely to die in a workplace accident than native-born workers.

Despite these challenges, immigrants are thriving, revitalizing many inner city and first-ring suburban neighborhoods and contributing to our tax base.

Immigrant workers are providing the stimulus behind many of the most successful union and community organizing efforts in the country. Many successful campaigns grow out of community-based organizations and worker centers. And the number of worker centers have grown exponentially between 1992 when there were about 5 worker centers in the country to the approximately 135 workers centers that exist today in over 80 U.S. cities, towns, and rural areas.

Worker centers share a common goal: to help workers help themselves. Worker centers are as diverse as their members. They range from ethnic-specific centers to ones that are multi-ethnic; some are industry-specific and related to unions. Worker centers provide a broad spectrum of services including a variety of training from teaching English as a Second Language (ESL) courses to trainings on immigrants' rights and workers' rights issues such as occupational safety and health. Most importantly, the majority of centers have leadership development as one of their core functions.

Another critical function of worker centers is to provide legal assistance and representation to worker members on wage and hour claims and issues related to working conditions such as safety. Nonpayment of wages continues to be one of the most prevalent abuses suffered by low-wage workers. Some recent victories highlight the critical role the centers are playing in assisting workers to exercise their rights and improve their working conditions. The Garment Worker Center (GWC), a project of Sweatshop Watch, recently reached an agreement in their three-year struggle against Forever 21, Inc. on behalf of several Los Angeles garment workers. The Young Worker United worker center has taken on the Cheesecake Factory in the workers' claims for over \$1 million in wage and hour violations.

In addition to filing legal claims, the centers are also seeking corporate responsibility through *codes of conduct*, which were integral to both the GWC and Young Worker United campaigns. This tactic has also been used widely by the National Day Laborer Organizing Network (NDLON) - a coalition of day laborer worker centers throughout the country. They are negotiating with Home Depot Corporation to adopt a code of conduct so that day laborers are treated fairly and not *criminalized* for seeking work.

Worker centers are at the cutting edge, combining legal strategies with multi-faceted organizing approaches. Labor lawyers can be part of these exciting campaigns and support low-wage workers by assisting through legal advice on strategies as well as litigation. And we can facilitate the relationships between the worker centers and the unions we represent.

LOCAL L&EC NEWS

NYC L&EC Chapter Hosts Presentation on WALMART's Anti-Labor Practices

by Ursula Levelt

First Inglewood, California defeated the arrival of Walmart, followed by Chicago's South Side, and now Queens, New York. Why refuse an offer of low prices and jobs coming to your community?

The NYC Labor and Employment Committee, together with the newly formed Labor and Employment Society at Cardozo Law School, wanted to expose the evil Walmart represents to U.S. workers. But, to avoid being labeled *one-sided*, the Cardozo students joined forces with the school's Federalist Society and organized a debate. They also thought this approach would get the interest of their fellow students. They were right. Last November more than 120 students showed up for *The Walmart Debate*. But Walmart did not. In spite of numerous and insistent invitations, the company declined to send a speaker. Instead Cardozo's Professor Daniel Crane agreed to take on Walmart's defense.

James Linsey opened *The Debate* with an exposition of Walmart's legal violations. Linsey is a partner at Cohen Weiss and Simon LLP, a New York City labor law firm, and lead counsel in the class action on behalf of immigrant janitors who clean Walmart stores at night seven days a week for sub-minimum wages. Linsey described 31 complaints against Walmart for labor law violations, the largest class action suit for gender discrimination in U.S. history, child labor law violations, and Walmart's meager and unaffordable health plan (at a cost of \$264 for an employee making \$1200 a month).

Professor Daniel Crane, without defending Walmart regarding these legal violations, argued: **Walmart is legally free to engage in business as it sees fit and we all profit.** Crane's argument goes like this: Walmart's efficient operations are an example of what is good in this country. Government intervention will only lead to higher prices, less demand, and fewer jobs. Free markets should establish prices, wages, and what is left are profits for shareholders. The strength of this defense was easily confirmed when two thirds of the audience admitted they had shopped at Walmart recently. According to Crane, nobody is holding a gun to peoples' heads to force them to work for Walmart: if they don't like it, go elsewhere.

The logic of Crane's argument is as simple as it is wrongheaded, as anyone who has ever desperately looked for work knows, but, based on the questions coming from the audience, acceptable to many law students unburdened by the fear of ever having to work for Walmart. Some in the audience equated legal rights with moral rights, and some law students were unable to appreciate that actions can be morally wrong, although not illegal.

Joe Fine, a long-time Guild member, argued persuasively that Walmart was breaking a social compact: **if you work a job, you will be able to support yourself and your family.** Walmart is but the most conspicuous example of the current downward trend of companies that no longer feel bound to offer their employees a living wage.

Another pernicious aspect of Walmart's approach to business is that, by forcing employees to work part-time, it avoids health care costs and takes advantage of existing public health programs without contributing to them. Part-time workers' incomes are low enough to qualify for Medicaid and other public assistance programs tailored for low income families.

The Institute for Labor and Employment at UC Berkeley calculated the use of public benefits by Walmart employees cost the

Cartoon courtesy of Mike Konopacki.



taxpayers of California \$86 million in 2004. Harper's Index estimates Walmart employees were eligible for \$2.5 billion total federal assistance last year. Walmart made \$10 billion in profits last year, 4 times what taxpayers paid to provide for Walmart's employees basic needs.

If the Walmart approach to business is the model and other companies follow suit by cutting wages and health benefits, the result will bankrupt existing public health programs. In response, Crane, on behalf of Walmart, asserted that was acceptable if that was what the market dictates.

The unencumbered market argument may leave us with no employer provided health benefits and a bankrupt health care system. It is in everyone's interest to demand health benefits from our employers or alternatively national health insurance. (But we can presume the Federalist Society would oppose that option.)

What to do? Stronger laws may help, but have limitations. Stronger legislation, however, has little chance of passing in light of the current business oriented administration. And laws requiring all employers to provide health insurance or a living wage could force many a *Mom & Pop* store to close. Alternatively, we could create a market force to counter Walmart's power.

Moderator Dan Silverman, Professor at Cardozo and former Regional Director for the National Labor Relations Board, emphasized the importance of giving employees a true opportunity to organize. If we let market forces determine the kind of society in which we live, and the many resent the power of the few, then the many should be able to combine forces to counter the power of the few. Unfortunately, in the case of Walmart, the many have not been able to organize: the company is too strong and penalties for breaking labor laws negligible.

Walmart is willing and able to pay a high price to avoid unionization. When Canada's stronger labor laws forced Walmart to recognize the union at its newly built store in Jonquiere and accept binding arbitration for a first contract, Walmart closed the store and annihilated an investment of millions of dollars.

So far, only the People's Republic of China was able to force Walmart's hand and make it recognize the government-affiliated unions representing Walmart's employees in stores in China. A battle of behemoths. And for how long? 10% of China's exports to the United States go to Walmart stores. What chance have Chinese unions to stand up to Walmart if that export amount is threatened.

Are low prices always worth it? Is any job better than none? Not if that job destroys all decent jobs near it. Walmart is soon coming to a town near you. Start the debate!

The NYC Chapter will be hosting a reception for summer interns working in the labor and employment fields, just like it did last year. If you will be in NYC this summer or know someone who will be, please contact Ursula Levelt at ursulalevelt@yahoo.com.

Bay Area L&EC Actively Supporting Sweatfree Ordinance in San Francisco

by Fran Schreiber

The NLG L&EC and the Bay Area NLG chapter endorsed the Sweatfree Coalition's efforts to pass *sweatfree* procurement ordinances in Bay area communities similar to one passed in LA. Our website has our support letter. We continue to attend coalition meetings and provide legal back up. Our legal volunteers are reviewing the draft ordinance, lobbying and involved in press and community work.

Various versions of the proposed Bay Area Ordinance as well as the Los Angeles anti-sweatshop law are on the website.

We recently received the April 22 Mayor's draft. The ordinance strives to assure that tax dollars do not underwrite worker exploitation here or abroad. The coalition meets April 26 to review the Mayor's draft. Another meeting is tentatively set for the Monday May 9 at 3 pm at New College, 766 Valencia Street, San Francisco. If you are interested in attending coalition meetings, contact Valerie Orth at valerie@globalexchange.org or at (415) 558-6938 to get on the mailing list. Check out the NLG L&EC webpage at www.worksafe.org/about/extra.cfm.

Thanks to **Laura Juran** and **Adrienne Fitch-Frankel** for their active participation with the Sweatfree Coalition.

Jobs with Justice Coalition

The Jobs with Justice coalition invited the NLG L&EC to participate. We are still looking for some one from the NLG L&EC to become active with JwJ. General meetings will be held on the 2nd Thursday at 7 pm at CWA 9415, 1831 Park Blvd, Oakland. Steering committee meetings will be held on the 4th Thursday at 7 pm at Alameda Central Labor Council, 7992 Capwell Drive, Oakland. The next Jobs with Justice Steering Committee meeting will be Thursday April 28 at 7 pm at the Alameda Central Labor Council. To get involved, contact the Jobs with Justice Organizing Committee (510) 834-9415. Check periodically the NLG L&EC website page.

UNITE HERE Local 2 Support

UNITE HERE Local 2 and its attorneys asked the NLG L&EC to assist in aiding workers in need of legal help (not labor related) as a result of being locked out. Before we had a chance to meet about this issue, the lock out ended and negotiations resumed. But the cooling off period has ended and actions are heating up; there may be a need for us to pick up this project with the help of Local 2 attorneys.

The 4300 members of Local 2 have been fighting for respect on the job, decent healthcare, fair wages and the right for non-union workers to choose union representation in an environment free of coercion and intimidation, continue to fight. For the better part of a year, the hotel workers have struggled for a decent contract. The workers were victorious in ending the lockout, but the hotels still want to cut healthcare and offer disrespectful wage increases.

The lockout in the fall ended because of strong picket lines and significant community support. The union seeks our help to secure a decent contract and the workers of are taking it to the streets for a huge march and rally. **Join the hotel workers on Tuesday May 3rd at 4:15 pm in Union Square.**

NEXT L&EC meeting - May 7, 2005

171 - 12th Street - OAKLAND, CA

6 - 7:30 pm

Sixth Labor & Employment Committee Delegation to Cuba Convenes in Havana

by Joan Hill & Dean Hubbard

The Sixth International Exchange of Trade Unionists and Labor Lawyers met March 14 - 19, 2005, in Cuba. The research program included two days of orientation and an overview of global challenges facing workers. The delegation, made up of labor lawyers, trade unionists and neutrals, heard presentations on the challenges facing Cuban workers, including the lack of housing and transportation, and the urgency to defeat the travel restrictions imposed by the U.S. and to end the 45-year long blockade. The Safety Director for national union, Central de Trabajadores de Cuba (CTC), also described the responsibility of the 17 national trade unions in demanding safe working conditions. Work site visits and worker interviews, which made up the largest portion of the research itinerary, included visits to various labor centers, including the Cuban trade union movement's national training center in Havana and a pharmaceutical enterprise. There, delegation members were able to look at the role of the labor unions in setting production goals, learn about wage and incentive programs, work conditions, and about investigating and resolving complaints through grass roots organs of labor justice.

A regular part of the program includes a presentation by Pedro Ross, General Secretary of the CTC. He reiterated the most acute problem facing Cuban workers is the blockade and its effect on the lives of Cuban workers, the economy and Cuba's relationship with other countries. He estimated the U.S. has lost over \$73 billion in trade as the result of the blockade. Housing issues, according to Ross, are being addressed by a new program announced by Fidel Castro, under which it is estimated that an additional 45,000 new houses will be built in 2005.

Kenya Bingham, a 4th year medical student in Havana and daughter of delegate Berry Bingham (SEIU organizer from Oakland), made a special presentation. Through Pastors for Peace, the Cuban government provided Kenya with full scholarship to study medicine at its University of the Americas. The University provides free medical education to talented students from poor and marginalized communities around the world in exchange for their agreement to return to their home countries and practice in underserved areas.

Following the orientation program, the U.S. delegation, Cuban lawyers, union officials, and representatives from Quebec and the U.K., traveled to the westernmost province of Pinar del Rio. Delegates met with workers in a steel fabrication plant, cigar factory, community hospital/clinic, and tobacco cooperative. The safety training received earlier in the program became quite useful as safety issues became apparent to the U.S. delegation while touring the steel plant. Traveling to the Municipality of Viñales, the combined delegation enjoyed a visit to the prehistoric murals and met local workers in the tourist industry. Before returning to Havana, the participants visited Las Terrazas, learning about an environmental program which led to a United Nations designation of Viñales as a biosphere. The area had been clear cut by Spanish colonists, and the region's people traditionally eked out a marginal existence making charcoal. In 1968, Cuba reforested the area, planting over 6 million trees. The area is now a self-sustaining community focusing on environmentally-sound economic development.

During the closing event, participants met Rosa Ross, wife of the CTC General Secretary, who described Cuba's retired workers

continued on page 7 at the bottom of the page in column 2

Labor Organizations Internationally Oppose Mexican Government's Labor Law Reform Package

by Robin Alexander, Jeff Vogt and Dan LaBotz*

Mexican independent unions, the Mexican Mine and Metal Workers Union (SNMMSRM), the Canadian Quebecois and U.S. labor organizations are opposing the Abascal Plan using the North American Free Trade (NAFTA) labor side agreement and other pressure tactics. This represents one of the most important instances to date of international solidarity at this political level.

Recent History

In December, 2004, two of the three major Mexican parties, the PAN and PRI, agreed to pursue a pro-employer labor law reform package, the Abascal Plan, in the Mexican Congress. They introduced the initiative December 12, 2002.

Arturo Alcalde and Hector Barba, lawyers for the Union Nacional de Trabajadores (UNT), Mexico's largest independent labor federation, declared the proposed modifications would strike a "mortal blow" to trade unionism. The reforms would strengthen the system of corporatist control over labor, further stifling the rights of workers, while giving business the unrestrained "flexibility" it has been demanding.

The Abascal Project also violates the *Twenty Commitments to Freedom of Association and Union Democracy* signed by Mexican President Fox with independent unions in 2000 during his candidacy, which promised greater respect and protection of democratic rights in the labor arena.

Mexican labor and social movements mobilized around the country with direct action. The UNT and the Mexican Union Front (FSM), called for unions and workers to take direct action to oppose the legislation. The organized opposition had grown into a broad movement - the Labor, Peasant, Social, Indigenous and Popular Front (FSICSP), which has drawn in many other social forces to oppose this labor law reform, privatization, and the neoliberal economic model in general.

In addition, the Frente Autentico del Trabajo (FAT) sought assistance on behalf of the UNT from U.S., Quebecois and Canadian trade unionists, who filed numerous protest letters. Human Rights Watch also issued an excellent letter condemning the reforms which received widespread coverage.

Faced with mounting national and international pressure, the Mexican government delayed the legislation until February, 2005, allowing international opposition to gather strength.

International Solidarity in Action

Human Rights Watch condemned the reforms in letters to the three Mexican parties' leaders. Soon after, 22 labor organizations from Mexico, Canada, Quebec and the U.S., represented by the Washington Office on Latin America (WOLA), a non-governmental human rights organization, filed a NAFTA labor side agreement case (per the North American Agreement on Labor Cooperation or NAALC). Within days, Representative Marcy Kaptur (D-OH) and 37 other Congress members issued a letter criticizing the reforms and demanding Labor Secretary Elaine Chao expedite review.

Why the Reforms would be so Devastating

Independent labor unions, academics and labor lawyers have criticized the Abascal Project harshly. Lance Compa, former Director of Labor Law and Economic Research for the Secretariat of the

Commission for Labor Cooperation, established under NAALC, summarized the principal objections in terms of freedom of association to the Abascal Project as follows:

The proposal would tighten government control of union formation and collective bargaining while granting employers new unilateral powers to sidetrack unions. ... The Abascal proposal would do nothing to increase transparency in union affairs [and] rejects independent unions' long-standing demand to list local unions and collective bargaining agreements in a public registry available to all citizens ... The Abascal proposal would also create enormous obstacles to workers' right to organize. First, it would tighten jurisdictional rules defining which labor organization can represent workers according to craft, enterprise and company. The effect would be to lock in bargaining monopoly by incumbent official unions and insulate them from challenges from independent unions. Finally, the Abascal proposal would require prior disclosure of the name and address of every worker who joins an independent union, then have the federal or state labor board with jurisdiction in the matter investigate each worker's signature. ... [This] puts all workers at the risk of reprisals and would have a chilling effect on workers' freedom of association.^{fn}

Labor Law Reform Effort Delayed, but is it Dead?

The matter had been on a fast-track for a vote in early March driven by the Mexican Employers Association (COPARMEX) which Mexican Secretary of Labor Abascal used to head. In addition to opposition from independent Mexican unions, social movements and their international allies, some more traditional Mexican unions recently criticized the proposal.

Opposition surprisingly came from the Mexican Mine and Metal Workers Union (SNMMSRM), criticizing some 60 odd articles in the proposal. An official of that union stated the union didn't want to see the law reformed, it wanted to see it enforced. This was followed by a denunciation from the CROC.

At press time, the session is ending; it appears progressive forces succeeded. However, a call for a special session to address labor law reform requires continued vigilance.

Participating Labor Organizations

American Federation of State, County and Municipal Employees (AFSCME) USA; Canadian Auto Workers Union (CAW) Canada; Canadian Energy and Paper Workers' Union (CEP) Canada; Canadian Labour Congress (CLC) Canada; Communications Workers of America (CWA) USA; Centrale des Syndicats du Québec (CSQ) Québec Canada; Confédération des syndicats Nationaux (CSN) Québec Canada; Federation des Travailleurs et Travailleuses du Québec (FTQ) Québec Canada; International Association of Machinists and Aerospace Workers (IAM) USA and Canada; International Brotherhood of Teamsters (IBT) USA; International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) USA; Labor Council for Latin American Advancement (LCLAA) USA; Paper, Allied-Industrial, Chemical & Energy Workers International Union (PACE) USA; Public Services International (PSI); Service Employees International Union (SEIU) USA and

continued on page 5 column 2 at the bottom of the page

fn See Lance Compa, Justice for All : The Struggle for Workers Rights in Mexico, AFL-CIO Solidarity Center (2003), p. 18, www.solidaritycenter.org

Students Urge the Inter-American Commission on Human Rights to Declare that Discrimination Resulting from Hoffman Plastic Violates Human Rights

by Anais Sensiba and Shaun Yavrom

Students represented over 100 labor, civil rights, and immigrants' rights organizations in the United States, including the NLG, the AFL-CIO, SEIU, National Immigration Law Center (NILC), and the Robert F. Kennedy Memorial Center for Human Rights at a hearing before the Inter-American Commission on Human Rights on March 3, 2005. They argued that the U.S. denies fundamental labor rights to undocumented workers. The hearing was requested to expose the U.S. government's violations of international law by tolerating discrimination against undocumented workers in the application of labor and employment law.

Students Shaun Yavrom and Anais Sensiba brought the matter to the Commission as part of the International Human Rights Law Clinic at American University. Students worked in conjunction with Rebecca Smith, National Employment Law Project (NELP) and Felicia Bartow, American Friends Service Committee (AFSC).

The U.S. Supreme Court decision in *Hoffman Plastic* led to the extensive discrimination against undocumented workers by state and federal courts. In *Hoffman Plastic*, the Supreme Court held that undocumented workers, unlike legally authorized workers, are not entitled to backpay for violations of their rights under the NLRA.

In response, the Inter-American Court of Human Rights issued Advisory Opinion OC-18 on the Legal Status and Rights of Undocumented Migrants. OC-18 stated every state must comply with the principle of non-discrimination and that when a state discriminates against undocumented workers in employment, based upon immigration status, it violates this principle.

The students presented evidence and arguments as follows. First, they presented stories of undocumented workers who faced exploitation by their employers which was tolerated by the U.S. government as a result of Hoffman Plastic. Second, Carlos Castera, a union representative with the Iron Workers District Council for the Mid-Atlantic States testified about the ways in which the U.S. government benefits from the labor of undocumented workers, despite the U.S. government's unwillingness to equally protect their rights. Third, the students presented examples of how U.S. state and federal courts have applied *Hoffman Plastic* to deny undocumented workers other rights and remedies including worker's compensation, personal injury damages, compensation for unpaid wages and overtime. Finally, the students formally requested the Commission apply the standards set out in OC-18 to the U.S., to compel it to comply with international law.

In preparation for this hearing, advocates interviewed undocumented workers so that their voices and experiences could be brought before the Commission. These interviews were compiled into a book of stories entitled *Employment Rights are Human Rights: the Denial of Employment Rights due to Immigration Status*. The students submitted the book to the Commission along with a brief. See <http://www.razzadesignworks.com/worker/workerrights.pdf>.

The stories of *George* and *Rosita* were among those taken from the book and highlighted at the hearing. “

George is an undocumented worker from Mexico. In his interview, he spoke of his efforts to organize his co-workers in response to multiple workplace abuses. Most of his co-workers were afraid to join in his efforts because they feared retaliation and termination. *George* quickly learned they were correct to have been worried because his employer fired him without justification shortly after discovering his activity.

Rosita is an undocumented pharmacy technician. She returned to school to get a degree as a pharmacy technician because her employer promised her a raise and a promotion if she did so. *Rosita* successfully completed the program but did not get the promised raise and promotion. In her interview, she explained what happened: “I waited for months and months [for the raise] I was supposed to get after my certification. Instead, they hired an [Anglo] high school [student] and in a matter of weeks, my supervisor trained her and she got paid more than me even though she wasn't certified.”

Because *George* and *Rosita* are both undocumented workers, the fact that they were discriminated against by their unscrupulous employers is sanctioned and encouraged by U.S. law due to the *Hoffman Plastic* decision.

In addition to requesting that the Commission issue a statement holding the U.S. accountable for its violations of international law, the students asked the Commission to visit workers like *George* and *Rosita* in various states across the country. Advocates in many locations are ready to facilitate these worker meetings. In Florida, Felipe, an undocumented worker was killed on the job when a forklift he was operating tipped over. When his family brought a products liability case, the court held his family was not entitled to wages he would have earned since Felipe was undocumented.

The advocates who planned and participated in this hearing, and the workers who courageously told their stories, hope their efforts will compel the Commission to remedy the discrimination against undocumented workers in the U.S. The student attorneys further urged the Commission to engage directly with advocates, workers, and members of Congress, in order to promote a legislation to address the inequities of the *Hoffman* decision.

Int'l Solidarity Opposes Mexican Labor Law Reform

continued from page 4

Canada; Sindicato Mexicano de Electricistas (SME) Mexico; Sindicato Unico de los Trabajadores del Gobierno del Distrito Federal (SUTGDF) Mexico; Syndicat de la Fonction Publique du Québec (SFPQ) Québec Canada; Unión Nacional de Trabajadores (UNT) México; UNITE-HERE USA and Canada; United Electrical, Radio and Machine Workers of America (UE) USA; United Steel Workers of America, AFL-CIO/CLC, USA and Canada.

Robin Alexander is Director of International Affairs for the United Electrical, Radio and Machine Workers of America (UE) and a member of the Guild's International Committee, Jeff Vogt is Senior Associate at the Washington Office on Latin America (WOLA) and a member of the Guild's labor and Employment Committee; Dan LaBotz is a Professor at Miami University and is Editor of Mexican Labor News and Analysis which can be viewed at www.ueinternational.org.

Ivory Tower Sweatshops Endorsed by Bush NLRB

by Sally Otos

Thania Sanchez, a teaching assistant in Columbia University's political science department and a PhD candidate, teaches the Universal Declaration of Human Rights to undergraduates. The Declaration includes the right to unionize. But Thana's union election ballot was destroyed by the NLRB without being counted when the Republican majority decided she was not an employee.

The *Brown* decision, 342 NLRB No. 42 (2004), overturned the Board's unanimous *NYU* decision, 332 NLRB 1205 (2000), which acknowledged jurisdiction over private university graduate employees. Graduate employee ballots from Columbia, Penn, Tufts as well as Brown, were discarded as a result.

NYU graduate employees had won the first private university union contract in the U.S. in 2002. It raised stipends by nearly 40% for many, provided health care benefits, and paid members extra for working more than 20 hours a week. Other private universities scrambled to match NYU's gains. As a result, graduate student pay at *unorganized* private universities increased from \$12,000 in 2000 to \$18,000 in 2004, according to the Christian Science Monitor.

The *Brown* majority claimed it returned to pre-*NYU* precedent, but *NYU* was actually a case of first impression. The cases cited in *Brown* only established that graduate students did not belong in a *faculty* union for lack of common interest [*Adelphi* 195 NLRB 639 (1972)]; and that RAs doing research for their own dissertations and not for the institution's benefit were not employees [see *Leland Stanford* (214 NLRB 621 (1974))], which excluded some RAs in *NYU*.

Brown Ignores Law and Reality

The Liebman-Walsh dissent accused the *Brown* majority of ignoring both the law and reality, and of "seeing the academic world as somehow removed from the economic realm that labor law addresses – as if there was no room in the ivory tower for a sweatshop." The majority admitted the subjects of graduate student collective bargaining "give the appearance of being terms and conditions of employment," to which the minority responded, "Obviously, they **are** terms and conditions of employment."

Graduate and adjunct issues at public and private schools are in fact nearly identical with those of Walmart, McDonald's, contingent and other low-paid workers: poverty-level salaries, disrespect as workers, expensive or nonexistent medical coverage (including the need to turn to state aid for family coverage); and no job security, child care, collective voice, grievance procedure, or pathway to a lifetime job. Student issues relate largely to their low pay and vulnerability, e.g., soaring tuition costs coupled with low pay.

Nearly 20% of public sector graduate employees – over 40,000 of them – have successfully organized and bargained since the 1960s, either under state labor laws or without government recognition. These grad employees comprise at least two dozen recognized locals. The University of California and State University of New York systems are among the employers. The grad employees are represented by the AFT (most locals), UAW (most members), AAUP, UE and CWA. [See Coalition of Graduate Employee Unions, www.cgeu.org for links to specific units.]^{fn} These successful organizing efforts have been supported by the AAUP and their local faculty unions and often by students as well.

^{fn} There are many additional locals in Canada, where 230,000 students are on strike in Quebec in opposition to cuts in financial aid as part of huge cuts in social welfare programs – combined with a massive tax cut.

The *Brown* majority also incorrectly echoed the claim that unions interfere with advisor-student relationships and academic freedom. In fact, a Tufts study found that 90% of faculty at schools with graduate employee unions felt the unions did not interfere with those academic relationships (see www.2110uaw.org/gseu).

Tenured faculties do continue to organize although under the NLRB, faculty members involved in university governance, however remotely, are considered managers. See *Yeshiva* 444 US 672 (1980)

Post-Brown Organizing

NYU management, pointing to *Brown*, is threatening to refuse to bargain when the current contract expires. NYU students are organizing to keep their recognition – which is not forbidden by the NLRB, just not subject to the Board's protections and processes (such as they are). Yale and Columbia graduate employees are also continuing to fight, coordinating their April 18, 2005, strikes for recognition. Columbia's GSEU/UAW struck for four weeks last spring. Yale's GESO joined that university's clerical and service and maintenance unions in a 5-day strike in March, 2003, and struck again for nearly four weeks in September, 2003.^{fn}

NYU and Columbia graduates have engaged in joint organizing activities. The U of Minnesota campaign to unionize 4500 teachers was aided by UE's U of Iowa local and by other organized members of the *Big Ten* during the union vote the week of April 11, 2005. Unfortunately, the union lost 1779 to 1296. See www.mndaily.com.

Graduate employees, both public and private, are relying on creative tactics to gain recognition and contracts without federally-sponsored elections and protection: in-and-out and rotating strikes; card count majorities certified by prominent politicians; corporate campaign tactics; and urging speakers and event or conference organizers to boycott their campuses. University of Michigan at Ann Arbor graduate students struck for 12 hours in March, seeking better wages (they earn \$14,000 per year) and health care benefits. The University said the strike was *spotty* covering only a *handful of departments*, but it involved those where two-thirds of the 2100 employees work and a settlement was quickly reached.

Organizing tactics must be creative, given pressures to finish degrees quickly, publish before graduating, and work additional jobs to survive. Maida Rosenstein, President of UAW Local 2110 which includes Columbia's GSEU, identifies some of those tactics as short action and organizing e-mails, short meetings, and the rotation of members in and out of union staff positions a semester at a time. Rotations and permanent-staff hiring outside the unit counteract the lack of long-term core union employees.

Adjunct Organizing

Organizing adjuncts and other non-tenure-track teachers presents additional challenges. They are scattered, less visible and more vulnerable. Some adjuncts teach full-time at the same school for years; others struggle for new jobs every semester; and some teach as a sideline to a professional career (the origin of *adjuncting*). Their wage and benefit package is often worse than graduate employees; with some schools hiring grads as adjuncts to save money or avoid unionization. Adjuncts may carry huge graduate student debt burdens and also may never obtain a permanent post.

^{fn} Yale's service/maintenance unit previously joined clericals for a 10-week recognition strike in 1984; that strike in turn inspired Columbia clericals who struck for a first contract the following October.

continued on page 5 top of page in column 1

To Make a Long Story Short - **The Life and Times of Arbitrator Sam Kagel**

by Ian Ruskin

The Harry Bridges Project is excited to produce an oral history film about Sam Kagel, recognized as the model for labor arbitration in America, who was, in his heyday, the most prominent arbitrator in the country. Today, in his nineties, he is still a force to be reckoned with.

His life encompasses the great influences that helped shape 20th Century American history. His parents emigrated from Russia at the turn of the century, his father to escape the Czar's army. Sam remembers ringing a bell on Armistice Day (World War I), seeing his first automobile, and meeting his first Wobblies. As a young man he saw the terrible impact of the Depression on the working class neighborhood of Oakland in which he grew up, and the tides of optimism that swept the country with the rise of labor organizing.

As a Berkeley graduate in economics, he was taken on by the Pacific Coast Labor Bureau in 1933 as an advocate for labor. A year later he was advocate, advisor and confidant to militant labor leader Harry Bridges and the then West Coast ILA during the San Francisco General Strike of 1934.

Until the outbreak of World War II he counseled the ILWU in all its negotiations, including the 1938 *Hot Boxcar* dispute. He made headlines regularly as a brilliant legal advisor, facing the best legal council management could buy, and winning.

After World War II, Kagel attended law school at Boalt. This led not to work as an attorney, but to the position of Arbitrator to a myriad of industries, including his 1948 appointment as West Coast Arbitrator to the longshore industry. He had represented the ILWU for nearly two decades, his heart was with the workers, and he was a close personal friend of Harry Bridges, yet the Waterfront Employers Association (soon to become the Pacific Maritime Association) along with the ILWU asked Sam to accept the appointment, a position he held for 54 years. Both sides saw Sam as the true *Impartial Chairman*, a man whose concern was for the language of the contract and the good of the industry.

His work as an Arbitrator and Mediator covered garment workers, newspaper guilds, retail workers, public employees, building trades, the nursing profession, transportation workers, the cannery industry and the NFL, among others. And Sam's career may have included somewhere between 10,000 and 12,000 cases. But more important than these sheer numbers is the fact that so many set the standards and precedents still observed today.

Sam is as clear and incisive now as he has been throughout his 95 years. He is a source of endless wonderful stories with great insight into the history of 20th century arbitration, stories full of his very personal memories of the men and women - some giants of history, some ordinary working people - who filled his life. Sam is a natural storyteller, and his ability to paint a vivid picture of people and places, to give us the intimate details that stir our imaginations, make him the perfect subject for an exciting documentary.

As an example, he describes getting Harry Bridges and Jimmy Hoffa down on their knees in a San Francisco hotel room drawing a plan of the docks on big sheets of butcher's paper. The drawing became the basis of an agreement between the ILWU and the Teamsters, something that months of negotiations had failed to produce. From the street battles of 1934 to the sophisticated contract negotiations for NFL stars, over the past 6 decades and continuing today Sam Kagel has covered just about every aspect of American working life.

continued from column 1

The film, being editing now, will be widely available for purchase and will be distributed to cable channels including the Biography and History Channels, A & E. and public access channels. We will provide copies to all project funders.

The film will introduce the vital role of arbitration and medication in keeping America at work. Sam Kagel, the pragmatic yet passionate *Mr. Impartial Chairman*, is the perfect vehicle through which to do this. See our web site at www.theharrybridgesproject.org for further information about our work and about ways to support this project.

Graduate Student Organizing

continued from page 6 column 2

Calling adjuncts temporary employees was a ploy engaged by some. The University of Alaska called its adjuncts *temporaries* and NYU claimed adjuncts were *new hires* every semester they taught, even if they taught consistently for 20 years. Both arguments were rejected. Alaska's statewide unit of 1,000 adjuncts was recognized in 1998.

Adjunct issues include class size; minimum rates per student per credit; pay for non-classroom duties; and the right to desks, telephones, copying, supplies, and even to appropriate space for those working evenings.

Before the union contract, NYU paid adjuncts an average of \$2,700 per course, with no health insurance, pension, sabbatical rights, job security, and pay for hours worked outside the classroom. The lucky adjuncts got desks; others worked out of their briefcases.

NYU's 6-year adjunct contract includes a reappointment process, a long Freedom of Speech clause (controversial matter presented in class must relate to the subject matter) and dignity clauses: "Adjunct faculty shall not be required to conduct classes or instruction in his/her private residence or office."

The New School's adjuncts - in the same UAW Local 7902 as NYU, a few blocks away - are bargaining hard for their first contract.

In conclusion, keep in mind the following regarding the importance of this organizing:

The intellectual worker, due to his lack of organization, is less well protected against arbitrariness and exploitation than a member of any other calling. . . . An organization of intellectual workers can have the greatest significance for society as a whole by influencing public opinion through publicity and education. Indeed it is its proper task to defend academic freedom, without which a healthy development of democracy is impossible. Quoting Albert Einstein at www.newschoolluaw.org.

Editor's note: Sally Otis is preparing another article for the fall issue of this newsletter to address other broader issues regarding university organizing.

6th L&EC Cuba Delegation

continued from page 3 column 2

education program initiated five years ago. This program offers retired workers entry into university programs with certificates available in over 600 degree programs. Presently, over 17,500 students from rural and municipal areas participate, with many students in their late 80s.

Barring further restrictions by the U.S. government on travel for professional research, next year's delegation is invited to attend May Day activities in Havana, which usually involves a march of over a million Cubans in the Plaza de la Revolución.

Join the
National Lawyers Guild Labor & Employment Committee
at the 2005 LCC in San Francisco

**Building a Stronger Labor Movement:
The Rebirth of Worker Centers**

BREAKFAST SPEAKERS

Juan Taizan, organizer with Young Workers United and student at UC Berkeley
Chris Newman, Legal Programs Coord, Natl Day Laborer Organizing Network (NDLON) LA
MODERATED by Marielena Hincapie, National Immigration Law Center

Thursday-May 12 @ 7 am - Breakfast - SF Marriott Club Room

Please RSVP for the breakfast to fcs@kazanlaw.com

Thursday-May 12 @ 1 pm - L&EC lunch meeting - all welcome

Meet for lunch at our table at the Marriott, 55 Fourth St. If late, see a note re where we will be going.

Stop by the L&EC table for up to date 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