



JOIN US *at the* **NLG Convention • NYC** **L&E Committee Events**

Thursday August 4th

Know Your Economic Human Rights
1:00 pm to 5:00 pm

Friday August 5th

**Labor Migration in the Americas:
Structural Causes and Exploitation**
10:30 am to 11:45 am

Labor & Employment Committee meeting
2:00 pm to 3:15 pm

**Joint Reception with the International
Committee**
5:45 pm to 7:15 pm

Saturday August 6th

**Making Human Rights More Sacred Than
Property Interests: Here & Abroad**
9:00 am to 10:30 am

**Flint: A Case Study— Future Cities
& the Neo Liberal Agenda**
1:45 pm to 3:15 pm

**This schedule is subject to change!
Check in at the registration table for
the latest information.**

FIGHTING UBER-EXPLOITATION IN NYC

BY ZUBIN SOLEIMANY

On June 2, 2016, ten Uber driver members of the New York Taxi Workers Alliance (NYTWA), along with the NYTWA, filed a federal class action suit against Uber for minimum wage and overtime violations and systematic wage theft in violation of Uber's own contract. The case, brought by Mirer, Mazzocchi, Schalet, Julien and Chickedantz, PLLC challenges Uber's wage violations in its largest US market, and is the first action brought against Uber by a labor union. The NYTWA is also seeking injunctive relief from National Labor Relations Board—also a first—over Uber's unlawful arbitration provision, which it uses to stifle any driver group action.

While Uber has sought to justify its "gig work" business model as "disruptive" and "innovative" change, as if that somehow justified open defiance of labor laws, NYTWA's legal and organizing strategies have drawn a line in the sand against this multibillion dollar giant's failure to offer its workers even the most basic worker protections.



This fight starts with our rank-and-file members. Last summer, several Uber drivers came forward to discuss problems with their income and payments with union staff. Many of these drivers had worked for other Black Car companies and were surprised to see that, unlike their previous employers, Uber was deducting sales tax and a workers' comp surcharge from their pay and calculating the company's commission on each fare, including the sales tax and surcharge. Not only had none of the companies they'd worked for before done this, Uber's contract didn't even seem to allow this.

Uber had mostly recruited these drivers from other jobs in the Black Car and taxi industry with promises of a decent wage, yet, through its oversupply of drivers and broken promises, Uber has widely contributed to a race to the bottom, where Uber drivers and taxi drivers can barely make ends meet, despite regularly working 60 or more hours per week.

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Fighting Uber-Exploitation *(continued)*

Although companies like Uber may assign work through a “ping” on an app instead of a phone call, there really is nothing new going on here. Uber is increasing its profits through tired old methods: providing insecure work with no benefits and low wages and misclassifying workers as independent contractors, leading most to believe they have no right to minimum labor protections such as the minimum wage, unemployment insurance, full workers’ compensation benefits, and the right to join together with other workers in concerted activity without fear of retaliation.

NYTWA’s Wage Theft, FLSA, and New York Labor Law Claims

While other Uber drivers have brought similar wage and hour claims against Uber that challenge their misclassification as independent contractors, the NYTWA members’ claims include causes of action for a breach of contract, regardless whether drivers are found to be employees, alleging that Uber deducted more from driver earnings than Uber itself had agreed it to take.

Uber has been systematically nickel and diming every one of its New York City drivers by passing on the cost of the sales tax and a surcharge for workers’ compensation benefits, not to the customer, but to its drivers. While Uber’s driver contract states that Uber would assess its commission on the fare net of tax, Uber profited on the inclusion of tax and contributions to an injured workers fund in the fare, assessing its commission on the fare amount, including tax and workers’ comp surcharge. These schemes have cost Uber’s New York drivers millions in stolen wages.

NYTWA’s lawsuit also challenges Uber’s misclassification of its drivers as independent contractors and its attempt to avoid liability for minimum wage and overtime violations, as well as unlawful deductions.

While Uber enjoys the low overhead of treating its 30,000+ drivers as independent contractors, it profits from creating a uniform brand through strict labor control, requiring drivers to follow a litany of instructions. For example, Uber e-mails its drivers to inform them of what topics of conversation to avoid with passengers, reminds them to purchase and offer bottled water to passengers, dictates a

detailed policy on how to first deny, and then graciously accept tips, and suspends and terminates drivers who receive an average passenger rating of less than 4.5 out of five stars.

In this level of control, our members recognize Uber as an employer under the law, because we’ve been here before. In the 1960s and 70s, New York City taxi drivers worked on a commission basis and were directly dispatched by their garages. Not long thereafter, when garages switched to a leasing model, and removed dispatching radios from cabs in exchange for a street hail-only system, drivers found themselves ineligible for unemployment insurance and collective bargaining protections under the NLRA. In returning to a dispatch-and-commission system, and otherwise dictating driver behavior, Uber has placed its operations firmly back in the realm of an employer-employee relationship.

Several of the individual plaintiffs know an employer when they see one, because before working for Uber, they had worked for other Black Car companies in New York that never abandoned the commission-and-dispatch employment model. Employees of these companies have consistently been found to be employees by the National Labor Relations Board and by the New York State Department of Labor in countless unemployment insurance decisions.

With Uber’s misclassification left unchecked, drivers work endlessly to cover their costs, and with no guaranteed income. Some of the individual plaintiffs have worked over 80 hours a

week to make a living, with no overtime pay. Another driver worked a 49 hour week for Uber, only to take home roughly \$35 after expenses.

Uber’s Arbitration Clause and Class/Group Action Waiver

Other Uber drivers who have attempted to hold Uber accountable for labor law violations have run up against the employer’s arbitration clause and class waiver provisions, which require drivers to settle all disputes against Uber through individual arbitrations, and to split the costs of arbitration with Uber. In *NYTWA v. Uber*, that would essentially require 30,000 New York Uber drivers with identical breach of contract claims to go through 30,000 individual arbitrations—a process which, even if Uber’s contract were found to be lawful, would be practically impossible.

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REBUILDING DETROIT FROM THE GRASS ROOTS UP

Using the Democratic Process to See that the Community's Needs Are Met

By JOHN PHILO

Three years of sustained effort by a grass roots coalition of community groups in Detroit will come to fruition this Fall. At the end of June, the city clerk certified residents' petitions for a ballot initiative that would create a first-in-the-nation community benefits ordinance.

The ordinance would establish a process requiring developers on large taxpayer-subsidized projects to meet with representatives from the impacted community and address resident concerns related to the project. The goal of the meetings is to arrive at a binding community benefits agreement between the community and developers. If an agreement is not reached, developers would have to meet additional conditions before any tax subsidies could be granted.

Community organizations across the country have been negotiating these sorts of community benefits agreements, obtaining jobs for workers who have been historically underrepresented in certain occupations and who suffer disproportionately high rates of unemployment. They have also bargained for the payment of a living wage, access to apprenticeship programs, job training, and employment readiness programs. All while protecting project labor agreements and rights gained through organized labor.

The Detroit initiative arose from decades of frustration when public subsidies have been routinely awarded to private developers who steadfastly refuse to meet with representatives from the impacted community or insist that any agreement remain nonbinding and voluntary. As a result, too many projects have resulted in minimal hiring of city residents, the displacement of long-term residents, and little improvement in the quality of life within impacted neighborhoods.

The Sugar Law Center has been working for years in support of a broad community coalition that aims to change the status quo. The coalition proposed a community benefits ordinance to city council two years ago, working with neighborhood groups, members of organized labor, and small business groups. Despite strong support from the

city council president and others on council, the ordinance was stymied by a threatened mayoral veto and the efforts of other officials who have long been cozy with developers. After the proposed ordinance was again referred back to a committee for further consideration, activists turned their energies towards a ballot initiative.

Activists circulated petitions and gathered more over 5,000 signatures to place the community benefits ordinance initiative on the ballot this November 8. After the petitions were filed, an anonymous group filed objections, challenging the petitions. In the face of significant pressure from officials supportive of developers' interests, the city clerk denied the objections and certified the petitions for the election. Meanwhile, the city council president and others on city council have been working to defeat cynical attempts by city officials to defeat residents' right to vote on the issue by placing a confusing and competing initiative on the ballot that would freeze community members out of negotiations with developers and provide little meaningful enforcement.

We've learned the hard way over the last decade how important the right to vote is—particularly after the Republican Legislature

negated popular elections in Detroit, Pontiac and Flint, only weeks after the electorate rejected the original "emergency manager" bill, and then put Detroit into bankruptcy. This initiative seeks to use the democratic process to return some of what has been taken away from Detroit's citizens by giving its residents a real say in the development projects that affect them the most. If successful we may set a pattern for other communities across the nation.

If you are interested in supporting these efforts directly, please contact us and we can put you in touch with activists working on the community benefits initiative. If you are interested supporting Sugar Law's work more generally, including by volunteering or making a donation, call us at (313) 993-4505 or mail@sugarlaw.org. To learn more, visit www.sugarlaw.org.

John Philo is the Executive Director and Legal Director of the Sugar Law Center for Economic & Social Justice in Detroit, MI.



Fighting Uber–Exploitation

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The NLRB has consistently found such class waivers to violate the National Labor Relations Act, starting with its original decision on this issue in *D.R. Horton, Inc.*, 357 NLRB 2277 (2012). While the Fifth Circuit refused to enforce that decision, the Seventh Circuit has recently upheld *D.R. Horton* in *Lewis v. Epic Systems Corp.* The NYTWA wants to move the Second Circuit and the rest of the country to join the Seventh.

Uber’s arbitration provision violates employees’ right to engage in concerted, protected activity, as guaranteed by Section 7 of the NLRA. While Uber has sought to avoid answering for its misclassification and failure to pay the minimum wage by invoking the Federal Arbitration Act (FAA), the NYTWA’s NLRB charges force questions of drivers’ rights to protected, concerted activity to the fore: NYTWA is seeking a an injunction from the NLRB to enjoin the federal court from enforcing Uber’s arbitration provision in the wage theft litigation while Board charges are pending.

New York State Unemployment Insurance Claims

Almost universally, when Black Car drivers in New York State have filed for unemployment benefits, the NYS DOL has considered them to be employees entitled to benefits when they lost work through no fault of their own. Yet, Uber drivers in New York, even though they work under substantially identical working conditions as other Black Car drivers, have not been able to receive benefits, or even have their cases processed by the NYS DOL.

In an odd twist, though, the DOL has avoided having to rule that Uber drivers are employees, because it seems the agency has blocked all Uber UI cases from being processed, let alone proceeding to a hearing where an ALJ could attempt to determine the drivers’ employment status.

One NYTWA member, Levon Aleksanian, came to our office this past spring with a question about why, after seven months, he had not received an initial determination on his unemployment claim for Uber. Although Mr. Aleksanian had previously worked for another Black Car company, and the DOL processed this claim within two months, yet ten months later, he has still not received an initial determination regarding his Uber claim.

When Mr. Aleksanian asked the DOL service representative handling his case why it was taking so long he received an e-mail that stated, “All Uber claims we have are under Executive Review. Once that decision is made and [the

Unemployment Insurance Division of the DOL] is given it, we can complete your claim.” When Mr. Aleksanian responded to ask what exactly was meant by “executive review,” a supervisor responded, writing, “I have discussed claims filed against UBER with my manager and the director of our call center. The information we are being given is these claims (not just yours) are under executive review, which means the Department of Labor is not making the decision whether or not this employment is covered.”

Such a delay and the need for extensive review seems odd considering that, in recent years, the only Black Car drivers that the DOL has found to be independent contractors were those with an ownership or co-op interest in the putative employer’s business. Uber drivers have no such stake in the company. Meanwhile, this unexplained delay has cost unemployed drivers access to benefits required to help them pay for immediate living expenses while looking for new work. NYTWA is taking steps to challenge this denial of drivers’ rights.



Moving Forward

While some discussions of the “gig or “on-demand” economy may start with the assumption that employers like Uber and Lyft have created a new model of employment that existing laws cannot adequately address, worker protection in the “gig economy” does not require a novel legislative or regulatory framework. Rather than looking to water down our labor laws with a “third way” employee classification, real worker advocacy means holding employers accountable for abiding by (and agencies for enforcing) the labor laws that have already, for decades, protected these workers. That is exactly what we intend to do.

Zubin Soleimany is a staff attorney with the New York Taxi Workers Alliance.

LA STORY: the Workers Rights Committee Returns

BY BEN O'DONNELL

The Los Angeles Chapter's Workers Rights Committee is back in action after a long hibernation. Starting in March, we have organized quarterly panels on topics of interest to labor attorneys, to organizers, and more broadly to workers and their advocates, while putting together a know your rights booklet for workers when picketing or protesting and organizing a happy hour to help introduce our members to each other.

The first panel, on March 22nd, focused on how labor law (and labor lawyers) helped a workers center, in that case ROC-LA, beat off an employer's lawsuit targeting the employees leading a ROC campaign. The panel featured Tia Koonse from the UCLA Labor Center, Yanin Senechai from AAAJ, and committee member Eli Naduris-Weissman. Those of you who attended the workshop that Eli took part in at the LCC in Chicago last May will know how that lawsuit turned out and what it tells us about the prospects for labor lawyers helping workers centers use the NLRA.

The second panel, on June 29th, examined workers' rights on the picket line and strategies for dealing with law enforcement while demonstrating. Carol Sobel of NPAP, Nam Le of UFCW 770, Mike Long of SEIU 721, and Jim Lafferty, the former ED of NLG-LA, all spoke, drawing on years of experience both in the streets and in court. We have developed a Know Your Rights pamphlet for picketers and protestors (see the article on page 6 for more about the one that the national Labor & Employment Committee has prepared) which we hope to distribute through the County Federation of Labor, the UCLA Labor Center and unions and workers centers around Los Angeles. The UCLA Labor Center deserves a great deal of credit for helping write the pamphlet and publishing it.

In September we will present a panel on the new minimum wage and wage theft ordinance in California and LA. This new ordinance not only raises the minimum wage to \$15.00 over time, but creates a new enforcement mechanism that can, if used properly, make a dent in the thousands of cases of wage theft that occur every year in Los Angeles. We will also discuss the work it took to get it passed and how we can duplicate it in other communities.

Looking beyond that we are organizing a panel, cosponsored by the Black Workers Center in Los Angeles, for later this year or early next year examining the intersection of Black Lives Matter, initiatives such as Fight for 15 and the labor movement. We are also looking further down the road at CLEs and similar presentations on the new gig economy,

strategies for organizing temporary workers, and the rights of health and safety whistleblowers. We are at the same time working to bring in as many employment lawyers and workers rights activists as possible, in addition to the labor lawyers and law students who make up the backbone of our Committee now.

Last but certainly not least, the Committee also hosted a happy hour for worker advocates in July—which presents a few logistical challenges in a community as spread out as Los Angeles, but which we are happy to tackle. One of the strengths of the Guild is that we have so many members working in different areas, but who have common interests; the happy hour was another way to bring them together.

Ben O'Donnell is a member of the steering committee of the Workers Rights Committee of the LA Chapter.



KNOW YOUR ECONOMIC HUMAN RIGHTS!

The International Committee's annual CLE event will take place on Thursday, August 4, from 1 to 5 pm, featuring noted experts Jeanne Mirer, Andrew Reid, Eric Tars, and more. Jeanne has written extensively on the application of international human rights law to labor law in the U.S., arguing that it should invalidate so-called "right-to-work" laws, prohibitions against collective bargaining for public sector workers in North Carolina and elsewhere, and laws depriving public sector workers of the right to strike, such as the Taylor Law in New York.

This program will focus on economic human rights, their scope and application, relevant human rights conventions and treaties, and strategies for applying and using these conventions and rights in active practice. Economic human rights include, but are not limited to, the right to water, the right to housing, the right to social security, the right to food, and the right to health. As people are struggling across the U.S. for economic human rights, from Flint to California to New York, learn about how you can include these important arguments and legal rights in your practice to support these movements.

The application for New York accreditation of this course is currently pending. The course is appropriate for both newly admitted and experienced attorneys. You can register at <http://www.nlginternational.org/2016/07/cle-registration-know-your-economic-human-rights/>.

KNOWLEDGE IS NOT POWER

Knowing your rights and using them is.

The Labor & Employment Committee has created a booklet for picketers, titled “YOU HAVE THE RIGHT TO BE HEARD,” a counterpart to “YOU HAVE THE RIGHT TO REMAIN SILENT,” the Know Your Rights booklet that the Guild’s National Police Accountability Project has published. Our booklet lays out the basic First Amendment and NLRA rights that workers have, both inside and outside the workplace, with particular emphasis on the rules that apply while picketing, when engaged in civil disobedience and if arrested.

We have posted a version of our handbook that anyone can download, print, fold and cut to make their own booklets on our website, which you can find at <http://www.nlg-laboremploy-comm.org>. We are also producing a version in Spanish, which should be posted sometime in the next month.

You can also get the original that inspired our version, which goes into greater detail on the rights of protestors, at <http://www.nlgnyc.org/pdf/publications/kyr-righttoremainsilent.pdf>.

You should also take a look at the invaluable Know Your Rights pamphlet that the New York City Chapter has produced to inform both organized and unorganized workers of their rights under federal and New York law. You can download that pamphlet at <http://nlgnyc.org/wp-content/uploads/2015/06/NLG.NYC.WorkersKnowYour-Rights.pdf>; printing instructions are at <http://nlgnyc.org/know-your-workers-rights-printing-instructions/>.

**YOU HAVE
THE RIGHT
TO BE
HEARD**

**(& TO REMAIN SILENT
WHEN YOU WANT TO)**

A know-your-rights guide for workers who are organizing, speaking out and demonstrating in the workplace and public places

**LOS ANGELES CHAPTER OF THE
NATIONAL LAWYERS GUILD**



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