

the national lawyers guild

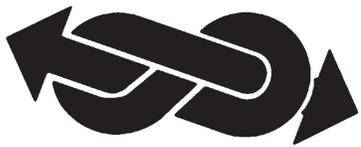
# NEWSLETTER of the Labor & Employment Committee

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May 2016

**JOIN US** *at the*



**LCC**

**NLG Labor & Employment  
Committee Events at the 2016  
AFL-CIO LCC in Chicago**

**Thursday, May 12th**

**L&EC Lunch Meeting**

Hilton Chicago - 720 South Michigan Avenue,  
TBD--come to our table for details

**1:00 PM-2:15 PM**

**Friday, May 13th**

**L&EC Breakfast**

In the Hotel  
Lake Michigan Room

**6:50 am-8:00 am**

See page 5 for more

**Friday, May 28th**

**LCC ROUNDTABLE**

**2:30 pm-4:00 pm**

See the article to the right for more

## EVERYTHING OLD IS NEW AGAIN

*Using Section 7 to support  
worker centers*

BY ELI NADURIS-WEISSMAN

While the labor movement continues to struggle to hold on to what it has, worker centers are fighting and winning important victories for workers—with the Fight for 15 movement only the best-known example. These new organizations have used a variety of tactics—pursuing individual workers' legal wage and hour, OSHA and discrimination claims, organizing workplace actions, and engaging in legislative campaigns—to win concrete gains for their members.

Those tactics are all, of course, tools that unions have been using for more than a century. But while many of these new organizations are engaged in classic Section 7 activities, they have, for the most part, not used the NLRB to protect those Section 7 rights.

One reason is obvious: most of these new organizations have steered clear of defining themselves as “labor organizations” under the NLRA, preferring to keep the freedom of movement that being a workers’ organization rather than a labor organization brings. In addition, the NLRA is no cure-all: seeking justice through the NLRB can be just as slow



and frustrating a process as pursuing retaliation claims through local agencies or the courts.

And it is even more so for workers and their organizations that do not have any experience with the Board or familiarity with Board law.

Which is where we labor lawyers can provide some useful assistance, not only to these worker centers and their members, but to the labor movement as a whole. Labor lawyers may not know everything (although some of us might disagree) but we know enough about enough things to be able to help worker centers use labor law to protect workers and themselves.

This is the topic we will be discussing at a workshop at this year's LCC Conference in Chicago, where we will open up

*(continued on page 2)*

# Everything Old *(continued)*

the discussion to allow for the fullest and freest discussion of the issues possible. This article offers a sneak preview of some of the practical lessons we will be sharing, based on our work with ROC-LA here in Southern California.

## Working with ROC

ROC-LA engages in policy advocacy and direct worker support, both through the legal process (usually referrals to legal aid attorneys) and by helping employees organize to make demands on their employers. In Los Angeles, it currently has two main campaigns: the Raise the Wage campaign, in which ROC formed a key part of a successful coalition of union and other community allies that secured passage of a \$15 minimum wage, and the Dignity at Darden campaign, part of ROC's national effort to improve the working conditions at the restaurant chain behemoth that operates popular restaurant chains such as Olive Garden, Yard House, Capital Grille, Longhorn Steakhouse, Seasons 52, Eddie V's, and more.

In addition, ROC has also engaged in a number of micro-campaigns that combine organizing with legal claims, usually in response to worker outreach. These campaigns typically begin when legal service provider files a wage claim, and ROC-LA organizers help to educate affected employees to demand payment from their employer through delegations and direct action. In line with its national identity and approach to organizing, ROC seeks to effect industry-wide change outside of the traditional channels of collective bargaining and without being considered a "labor organization" under the NLRA or LMRDA.

In 2014, a legal aid attorney contacted us regarding the labor law implications of a protest ROC-LA had planned. Josh Adams and I gave initial advice and used the opportunity to get to know the ROC-LA organizers. After several telephone calls and an in-person meeting, we developed a Section 7 PowerPoint presentation specifically tailored to ROC-LA's goals, which we later delivered to ROC-LA organizers.

In addition to the Section 7 presentation, we also have made ourselves available for periodic check-ins on legal issues arising in ROC's campaigns, including assessing potential ULPs. We have provided assistance when workers in ROC-LA campaigns have been retaliated against, in one instance working with a legal aid organization to defeat an employer-initiated restraining order using the state

anti-injunction law for labor disputes—a lawsuit we will cover in more detail at the workshop. The relationship has developed to the point that we now give on-going informal advice on labor law questions.

Has it made a difference? ROC-LA continues to use litigation, particularly in the areas of harassment,

discrimination and wage theft, to organize; the NLRA will always be something of an afterthought for it. In addition, its strong aversion to being a labor organization under the NLRA—another topic we will touch on at the workshop—means that it will not attempt to engage in formal collective bargaining with employers, even while it negotiates consent decrees and settlement agreements

that cover some of the same territory. But it has also added the NLRA as a tool to its arsenal of anti-retaliation protections for itself and its members – something that all worker centers can do, no matter what their organizational style.

## Building a relationship with a worker center near you

We have found that the key ingredients to making connections with worker centers around Section 7 rights are interest and outreach. LCC and NLG attorneys throughout the country know best about what alternative labor groups are doing in their area; here we try to provide a roadmap based on our own experience for how you can develop the type of relationship we have established here in Los Angeles.

1. *Connect with a local worker center or legal aid attorney who is assisting worker centers in your area.* If you are not familiar with local groups, contact the AFL-CIO or consult one of the national networks of worker centers. One such group is Interfaith Worker Justice, which has a national membership: <http://www.iwj.org/locations>.
2. *Have a lunch meeting with worker center staff or the legal aid attorneys assisting them.* Worker centers want assistance dealing with the problems that they care about, not the ones we think are most important. The first step is to understand the worker center's campaigns and needs and to explore just where labor lawyer assistance could be of use.



3. *Offer to give a training in Section 7 rights.* This may appear to contradict what we just said in paragraph 2—didn't we emphasize looking at the issue from their point of view, not ours?—but it's not. Section 7, with all its limitations, can be a far more useful weapon than the other anti-retaliation protections that workers enjoy under Title VII, OSHA and similar statutes, if only because unions have been pushing the NLRB to apply those principles to all sorts of workplace actions over the years, and because the Board, for all its flaws, processes cases in a timely manner that can get an employer's attention. We can find ways to use Section 7 to support the work that a worker center is doing or to think of new tactics it could use; the staff and attorneys working for it will come up with others. We will be providing a sample Section 7 PowerPoint presentation at the Conference.



4. *Discuss the best way to have an ongoing relationship with the worker center.* A real relationship is the key. This could be through periodic phone calls to discuss campaigns, an openness to field e-mail or phone inquiries, participation in worker center clinics, or otherwise.
5. *Use the LCC “worker center” list-serve and resources from the National Lawyers Guild to share ideas and discuss particular legal issues arise in the relationship.* Just as circumstances vary across the country, each experience will be different. We are hopeful that advocates will continue to share their experience, and to work towards developing a broader brain trust of labor lawyers armed with practical knowledge of the legal issues worker centers face. The list-serve can help create a virtuous cycle, in which reports of successes (and setbacks) can lead to others learning from our experience and then having their own victories (or defeats) to report, and so forth and so on. Contact the LCC to sign up (lccworkercenter@googlegroups.com).

## What's in it for me?

In addition to furthering the labor movement's goal of fostering partnerships with worker centers, and supporting alternative labor organizations in your area, there are some practical benefits that connections with worker centers may bring. This is just a partial list:

- potential source of Wage & Hour plaintiffs
- opportunities for Associates to develop and work with clients
- enhancing the visibility of LCC firms in the progressive community

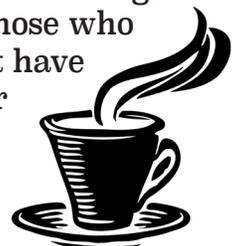
All of this on top of the incalculable benefits, psychic and otherwise, of helping workers get a portion of what they are due. Please contact me at enaduris-weissman@rsglabor.com if you would like a copy of the PowerPoint presentation that Josh Adams and I created (with the help of Jay Smith, who created a similar one for the Carwash campaign). And please contact Josh, me or Henry Willis at hmw@ssdslaw.com if you need any other assistance getting a project started in your area.

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*Eli Naduris-Weissman is a partner at Rothner, Segall & Greenstone, where he represents public and private sector unions and also advises worker centers on a pro- and lo-bono basis. He is the author of The Worker Center Movement and Traditional Labor Law: A Contextual Analysis, 30 BERKELEY JOURNAL OF EMPLOYMENT AND LABOR LAW 232 (2009). Josh Adams and Henry Willis contributed to an earlier version of this article.*

## JOIN US AT BREAKFAST

Those who haven't RSVP'd for the **Guild Breakfast on Friday** (see page 7 for details) can still sit down with us for breakfast if you RSVP by Wednesday, May 11. Email us at [fschreiberg@kazanlaw.com](mailto:fschreiberg@kazanlaw.com). Breakfast is \$20 for members, \$40.00 for nonmembers and \$50 (a \$10 discount) for new members. Bring a check or pay for breakfast or dues with breakfast here: [http://www.nlg-laboremploy-comm.org/Membership\\_Info.php](http://www.nlg-laboremploy-comm.org/Membership_Info.php). And those who simply want to listen, but not have breakfast, can participate for free; just let us know that you are coming— email us at [fschreiberg@kazanlaw.com](mailto:fschreiberg@kazanlaw.com).



# ¡CUBA SI!

## L&E delegation sees firsthand how Cuba's relations with the U.S. are changing in advance of President Obama's historic visit

In late February, 2016, the Labor and Employment Committee Cuba research delegation—made up of 15 lawyers, 4 law students and 4 labor activists—returned to Santiago de Cuba after a decade to participate in the 17th annual research exchange on labor rights and role of Cuban trade unions. Change was evident from the moment we landed in Holguin, and then traveled some 70 miles to Santiago, the de facto capital of the African-influenced and historically rebellious eastern part of the island. The U.S. business people we saw at the airport in Holguin and the wifi in our Santiago hotel lobby were concrete signs that the blockade is beginning to crumble and normal relations between our countries may not be so far in the future.

Our research began with a meeting hosted by ICAP, the Cuban Institute for Friendship of the Peoples, a non-governmental organization that receives all U.S. solidarity delegations. We were reminded that the “essence” of the blockade is still intact in the form of the Helms-Burton and Torricelli laws, as well as a host of punitive regulations that the Obama Administration has yet to undo. More than four years into the implementation of economic reforms and a rapid expansion of non-state work, the main protection for workers in Cuba, as is the case with U.S. workers, is to join and participate in their union.

This became even clearer in our meeting with Provincial union leaders in Santiago. Their role is to organize workers and educate them to better represent all workers in their community, to defend labor rights and protections and to enforce the labor code. They told us about the history of unions in Cuba, born out of the struggle for rights in the 1930s under the leadership of Lázaro Peña. Modifications to the labor code over the decades established a workplace system of justice. Today, one of the biggest challenges faced by the Cuban labor movement is protecting the half million workers in the self-employed sector. Participants in previous delegations particularly appreciated the scope of the changes happening in the name of economic reforms and the importance of extending the labor code to the *cuenta propistas*.

Before leaving Santiago we witnessed an example of the new form of worker cooperative for non-agricultural workers when we met with the worker-owners of a local restaurant. Listening to their business plan and their success in significantly increasing the sales and income of the



enterprise provided some sense that the expansion of non-agricultural co-ops may in some cases represent a positive step forward for restaurant workers. We also met with a primary care doctor and nurse and their staff at a community clinic. They explained and demonstrated how the emphasis of Cuba's

comprehensive, neighborhood-based primary care system is on the prevention of illness and disease rather than treatment. The consequences of the blockade were evident in the clinic: modern medical equipment was lacking, records were painstakingly maintained in a sort of log book, and little or no technology existed in the small neighborhood building. We ended our Santiago research at a senior center, where services from daycare to assisted living to skilled-nursing care were offered. Here, the patients were even organized, and elected representatives, their Council of Elders, to act as their advocates within the facility.

On Wednesday evening we flew to Havana to participate in the 10th International Conference on Labor Rights. Once in Havana, all the talk on the street was of President Obama's upcoming visit and the anticipated concert by Mick Jagger and the Rolling Stones. Again, to veterans of past delegations it appeared that on every street there was a new enterprise, mostly serving the tourist sector: shopping, galleries, restaurants, bars, and, of course, music venues.

As with prior conferences, a variety of speakers from Central and South America, the Caribbean and Europe spoke on the changing nature of work, the struggle to defend workers' rights, and progressive efforts in legislation and politics across the Americas. The theme of many of the presentations was the importance of overcoming our divisions in the labor movement and to unite against those who would oppose progressive measures.

The group ended the program by returning to our roots, engaging in a half day informal, bilateral discussion with Cuban lawyers—learning about their daily lives, their

# DEVELOPING SOLIDARITY AT B & H PHOTO

BY JEANNE MIRER

In the summer of 2014 organizers for the Laundry Workers' Center (LWC) were talking to workers at a laundromat in Manhattan about their working conditions. The workers were interested in knowing their rights, but one of the workers told the organizer, "My brother really needs your help." His brother, Raul Pedraza, worked for B & H Photo and Video's Warehouses in Brooklyn. This introduction began the LWC's campaign at B & H.

The LWC is a workers center, founded in 2011, with the initial purpose of organizing laundromat workers, who are primarily low-wage immigrant workers. The LWC, following through on its philosophy to train workers to empower themselves and to organize to improve their working conditions, has set up a Leadership Institute to promote worker education and through that process supported campaigns for workers in a variety of struggles. The LWC in fact supported the workers at a deli known as Hot and Crusty, which after a struggle over wage theft and health and safety successfully formed an all-immigrant workers union. The story of their struggle is chronicled an award-winning film called *The Hand That Feeds*.

B & H is one of the largest non-chain photo and video equipment stores in the United States, which caters to photographers and videographers throughout the world. B & H has significant government contracts and is perhaps a multi-billion dollar company. But its business model resulted in the exploitation of its mostly Hispanic workforce.

When Raul Pedraza and a small group of B & H warehouse workers met Virgilio Aran and Mahoma Lopez of the LWC they did not realize that they would be trained to be organizers who would be empowered to stand up to the company and form a

union. But beginning in the summer of 2014 the workers began an underground campaign to address the full panoply of issues in the workplace, from health and safety to hours of work to discrimination.

From the beginning the workers were initially supported by the LWC's lawyers, Jeanne Mirer and Ria Julien and later Kristina Mazzocchi. The first focus was on health and safety. Later the focus changed to organizing both of B & H's large Brooklyn warehouses because the workers determined that that in order to make long-lasting change, they needed to have a union and be protected by a union contract. The LWC reached out to the United Steelworkers, based in part on their commitment to health and safety training through the Tony Mazzocchi Center (TMC). Tony Mazzocchi is Kristina's father and she has been associated with the TMC from the outset.

Eventually, after months of underground organizing and weekly trainings, after OSHA raided the premises and found violations, and after developing a relationship and memorandum of understanding with the Steelworkers, the workers, along with the Steelworkers and their community supporters, made their campaign public on October 11, 2015 with a demonstration outside the B & H store.

The election under the Board's new rules was set for November 4, 2015. On that day, and despite a major effort by anti-union persuaders, the solidarity and empowerment of the workers held fast with a 200 to 88 vote in favor of the union. It was an

historic victory for a worker center/union collaboration to have a union of almost all immigrant workers.

The power of these workers excited the workers who worked in the warehouse in the basement of B & H's retail store on Ninth Avenue. They successfully organized on February 23, 2016.

Today, Raul Pedraza and many of the workers who the LWC initially met with are members of the bargaining committee. Many of the B & H workers now see themselves as organizers and committed to workers solidarity. Several are volunteering with the LWC on their laundromat campaigns, and more express their solidarity by participating in protests supporting other workers' struggles in New York City.

Kristina Mazzocchi and Brad Manzollilo will go into greater detail about this historic collaboration and struggle at the Guild's breakfast on May 13. We look forward to seeing you there if you are in Chicago for the LCC.

*Jeanne Mirer is a labor, employment and civil rights lawyer in New York City, Co-Chair of the Guild's International Committee, President of the International Association of Democratic Lawyers and a founding Board Member of the International Commission for Labor Rights.*



## ¡Cuba Sí! *continued*

practice of law representing workers and trade unions, and the challenges on the horizon as a result of the (hopefully) impending normalization of relations with the U.S..

The L&E delegation will continue its annual research and participation in the International Conference. Contact Natasha Bannan at [lyciaora@gmail.com](mailto:lyciaora@gmail.com), Dean Hubbard at [deanhub@gmail.com](mailto:deanhub@gmail.com), or Joan Hill at [johill@usw.org](mailto:johill@usw.org) to get on the list for 2017.

# DEMOCRACY, TEACHERS' RIGHTS & PRIVATIZATION

## Inequality, "Education Reform" and *Vergara*

**W**e've seen the evidence of the damage that privatization has done in Flint, where an unelected emergency manager created a public health crisis by switching that city's water supply and nearly destroying the city's infrastructure in the process. Flint is a potent symbol of what happens when we eliminate public control over public affairs.

We have been going through the same process for years in our public schools. The enemies of public education—including ALEC, the religious right, the Tea Party, and privatizers of all stripes—have been trying to starve public schools and destroy teachers' unions for the last quarter of a century. That campaign has become even more intense since the financial crisis of 2008, as ALEC and its allies have cut education budgets to the bone, and then cut some more, while software and charter school entrepreneurs have discovered an opportunity to profit off the wreckage.

This attack on public education has taken many forms: from cutting taxes as part of the campaign to "drown the government in a bathtub" and using test results to punish the students and teachers who need help the most, to siphoning off tax funds to support unaccountable charter schools and reconfiguring education to champion software-based distant learning in a way that de-skills teachers and cheats students of a real education. And in an era in which the right hopes to crush unionism once and for all, "education reform" has become the biggest, although not always the most visible, battle in this war.

These anti-union, anti-public education forces have demonized teachers and their unions, creating a false narrative that public school teachers are lazy, indifferent, pampered and incompetent. They scapegoat teachers for the effects of racism and poverty and attack their unions for trying to make their jobs and workplaces better. And they have used the high-stakes tests that No Child Left Behind made so toxic as a tool to beat down both teachers and their students.

That war on teachers has taken a different turn in California, however. While California has allowed more than 1200 charter schools to open, it also has some of the strongest protections for teachers in the nation: tenure after two years, real due process protections for tenured teachers and layoffs governed, for the most part, by seniority within a particular teaching specialization. Unable to gut these rights legislatively, the corporate reform movement, in this case in the form of an Astroturf group called "Students Matter" funded by a Silicon Valley billionaire, opted instead to sue the State, the Los Angeles Unified School District and another much smaller district in State court, claiming that these statutory protections for teachers made it too easy for teachers to become tenured and too difficult to lay off senior teachers or fire those accused of incompetence.

*Vergara v. California* was nothing if not audacious: rather than focus on how any particular school district applied these statutes, the plaintiffs attacked these statutes on their face, claiming that they discriminated against poor and minority students who were exposed to "grossly ineffective"

teachers who could not be removed from the classroom. This is, in fact, standard fare: the advocates of privatizing public education have portrayed themselves for years as the only true champions of underserved students, particularly minority students in big city school districts, who can only be saved, according to their narrative, by remaking

those school systems through test-driven standards, vouchers, school choice and charter schools. The suit was a continuation of years of similar propaganda efforts.

The plaintiffs pursued this broad-brush theory at trial, dismissing the school district defendants (and, at the same time, using the former Superintendent of LAUSD to offer his opinions as to how his District mistreated its students) to focus on a facial Equal Protection challenge to the statutes. They achieved some early success, moreover, obtaining a trial court decision that was long



on rhetoric but short on analysis. But that approach ultimately boomeranged.

The basic problem with the plaintiffs' facial challenge is that they never offered any evidence to support their claims that the statutes caused any student any justiciable harm. As the Court of Appeal pointed out, even if these tenure and seniority protections made it more likely that some "grossly ineffective" teachers remained in the classroom—a proposition that the defendants and intervenors challenged at every step of this proceeding—those statutes did not single out either poor or minority students for worse treatment, or dictate that these teachers would end up assigned to schools with more poor or minority students. There was, as Gertrude Stein once said (about Oakland, not the plaintiffs' case) "no there there."

In fact, as the Court of Appeal emphasized, it was the local school districts, not the State or the statutes, that make these hiring, retention and assignment decisions. There is nothing in these statutes that dictate that any district hire or retain bad teachers; on the contrary, as the record evidence shows, school districts can, and did, avoid many of these problems by adopting policies to help struggling teachers and remove those who could not bring their performance up to district standards. Rather than sending the case back for further proceedings the Court of Appeal remanded it with instructions to dismiss the action.

The plaintiffs will ask the California Supreme Court to review the Court of Appeal's decision, but there is little reason to think that it will. They will also insist that they proved something at the trial court level, although the Court of Appeal evidently did not believe that they had proved anything meaningful. They cannot, however, barring a wholly unlikely reprieve from the Supreme Court, escape the fact that their attempt to overturn California's tenure and seniority protections for teachers as unconstitutional has failed completely.

**B**ut even if we have seen the last act of *Vergara*, the larger drama is far from over. The privatization forces want to cripple public sector unions, particularly teachers unions. They missed their chance in *Friedrichs* and appear to have missed it in *Vergara* as well. But there will be other lawsuits and other campaigns as long as the Waltons and Eli Broad and Michael Bloomberg and Dick DeVos have millions to contribute to privatizing public education and attacking teachers unions.

We can't win by playing defense. Public education is one of the essential ingredients of a democracy; as Horace Mann wrote more than 150 years ago:

It was the tradesmen who came to the legislature to plead the cause of public education, for they realized that their sons and their daughters would forever remain slaves to an industrial machine unless given equal opportunity for education with the sons and daughters of the wealthy.

We need to engage the parents whose children's future is at stake to remake education. We need to abandon the fixation with high stakes testing and programs such as "No Child Left Behind" and "Race To The Top" that are covers for failed policies of stigmatizing students and their schools and teachers. We need to focus instead on the real obstacles: poverty and racism, starting (but not stopping) with the impact that they have within our schools. We should return charters to what they were originally intended to be: collaborators, not competitors, with the public schools of which they should be a part. The online charter schools such as K12 Inc. and the for-profit charters should be shut down. And to quote Diane Ravitch's minimum program for education:

[E]very child, regardless of zip code or family income, race, gender, disability status, language proficiency, or sexual orientation, should be able to enroll in an excellent school. . . . [A]n excellent school has small classes, experienced teachers, a full curriculum, a well-resourced program in the arts, science laboratories, and a gymnasium, situated in a well-maintained and attractive building. Students should have the opportunity to study history, literature, the sciences, mathematics, civics, geography, technology, and have ample time for physical activities, sports, and exercise. The school should have a well-stocked library with a full-time librarian. It should have a school nurse, a social worker, and a psychologist. The principal should be an experienced teacher, with the authority to hire teachers and to evaluate their performance. Teacher evaluation should be based on peer review and classroom performance, not on test scores.

These are not pie-in-the-sky goals; they can be achieved if we take the value of education, democracy and equality seriously. We need to make them part of the agenda, not just in election years, but every year.





**T**he Labor & Employment Committee is working on a project to provide training to workers centers, the legal aid offices and other advocacy groups that assist them, and employment lawyers who work with low-wage workers about the Section 7 rights that unorganized workers enjoy. We have developed training materials and launched a pilot project in Los Angeles to make sure we are meeting the needs of those groups and their constituents. Eli Naduris-Weissman and Josh Adams will share a panel addressing the work that needs to be done with Leone Bicchieri of the Chicago Workers Collaborative on Friday, May 13th—join us!

We will also be covering this project at our Guild Breakfast on Friday morning (see pages 3 and 5 for details) and at our membership meeting at the LCC on Thursday May 12th. We invite you to join the conversation about how we can best apply our knowledge and experience to the challenges that unorganized workers and their advocates face.

And for those of you who cannot join us at the LCC in Chicago we would like to hear your thoughts on what needs to be done and who can do it. Please contact our Los Angeles Workers Rights Committee at [hmw@ssdslaw.com](mailto:hmw@ssdslaw.com) to join the discussion.



### **Labor & Employment Committee**

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