

the national lawyers guild

# NEWSLETTER of the Labor & Employment Committee

<http://www.nlg-laboremploy-comm.org>



May 2019

## WHERE to find us

at the



**AFL-CIO LCC  
Detroit 2019**

**MONDAY, MAY 6  
6:45 am – 8 am**

**AFTA NAFTA:**

**Workers' Rights under NAFTA 2.0**

breakfast & panel discussion

**Cadillac Room, 5th floor, Detroit**

**Marriott Renaissance Center**

**RSVP ASAP to**

**[nlglabor@gmail.com](mailto:nlglabor@gmail.com)**

**TUESDAY, MAY 7  
7:00 am – 8:00 am**

**NLG Labor & Employment  
Committee dinner meeting  
Motor City Pantry**

Lobby of the Detroit Marriott  
Renaissance Center

## WHAT DOES NAFTA 2.0 MEAN FOR WORKERS' RIGHTS?

BY JEFFREY VOGT

In 1993, the Clinton Administration proposed the North American Agreement on Labor Cooperation (NAALC) as a last-ditch effort to assuage (unsuccessfully) the concerns of organized labor as to the economic and social impacts of the North American Free Trade Agreement on US workers.<sup>1</sup> The NAALC established a set of labor principles which the three parties to NAFTA (US, Canada and Mexico) were required to promote, subject to each party's domestic law. Each party was also required to "ensure that its labor laws and regulations provide for high labor standards" and "effectively enforce its labor law through appropriate government action."<sup>3</sup> The NAALC did not, however, require any upward harmonization of labor laws.

If a party failed to enforce its laws, anyone can file a submission with the National Administrative Office (in the US, housed in the Department of Labor) of one of the two countries not associated with the alleged violation.<sup>4</sup> The NAALC includes a state-to-state dispute settlement procedure, including ministerial consultations relating to all of the labor principles, an expert committee on a subset of those principles and finally binding arbitration only on claims involving occupational safety and health, child labor or minimum wage laws. Over the course of 25 years, approximately 40 complaints were filed; however, none of them went beyond ministerial-level consultations.<sup>5</sup> In the end, a handful of the submissions resulted in MOUs and cooperative activities aimed awareness-raising. As most agree, while the NAALC helped to facilitate cross-border solidarity as well as establish a quasi-legal framework for the examination of specific labor violations, the NAALC did not lead to meaningful and lasting reforms benefitting workers in any of the three countries.



Since 1994, labor has demanded both reform of the NAALC and abandonment of it as model for future FTAs. The labor chapters of subsequent FTAs did eventually move away from the NAALC model, with the most recent generation of FTAs in force requiring parties to ensure that their laws comply with the ILO Declaration on Fundamental Principles and Rights at Work and be effectively enforced.<sup>6</sup> However, to prove a failure to effectively enforce, a party must demonstrate that it was done through a "sustained or recurring course of action or inaction, in a manner affecting trade or investment between the parties."<sup>7</sup> This requirement proved insurmountable in the only (continued on page 2)

## New NAFTA *(continued)*

case ever to have been arbitrated under the labor chapter of an FTA—against Guatemala.<sup>8</sup>

Despite incremental improvements on the labor standards side, no administration has been willing to consider a radically new approach to standards or dispute settlement. Indeed, with Michael Froman, a former Citigroup executive and Rubin acolyte, as the US Trade Representative during the Obama Administration, the labor chapter of the draft Trans-Pacific Partnership reflected little new thinking.

Surprisingly, the Trump Administration has moved the discussion on labor standards further than any previous administration. The draft US-Mexico-Canada (USMCA) Trade Agreement does include some improvements as to minimum labor standards, including reforms to address weaknesses exposed by the Guatemala arbitration, including a clarification on “in a manner affecting trade,” as well as recognition of the right to strike, prohibitions on anti-union violence and protections for migrant workers.<sup>9</sup> An annex requires Mexico to pass legislation to prohibit protection contracts, which has been a persistent barrier to the exercise of freedom of association in Mexico. However, these amendments have important qualifiers which may limit their effectiveness in practice.

The biggest problem with the labor chapter of the USMCA is that it relies on the same enforcement mechanisms of previous FTAs. This means potentially years of fruitless state-to-state consultations and other measures, up to and eventually including arbitration. Worse, a party complained against could effectively block the establishment of a dispute settlement panel. This was a problem with NAFTA but which had been addressed in later FTAs. The lack of progress on labor enforcement, as well as concerns on several other chapters of the agreement, has led the AFL-CIO to oppose the USMCA. Some Democrats have echoed this point and are insisting on a rethink of the dispute settlement provisions in order for the USMCA to be considered.

*Jeff Vogt is the Rule of Law Director of the Solidarity Center, the largest U.S.-based international worker rights organization helping workers attain dignity on the job and greater equity at work and in their community. He supports trade unions on labor law and policy and advocacy before national, regional and international tribunals.*

### NOTES

1. See, North American Agreement on Labor Cooperation, available at <https://www.dol.gov/ilab/reports/pdf/naalc.htm>.
2. See Article 2.
3. See Article 3.
4. See Article 15.3.
5. See, US DOL, Submissions under the North American Agreement on Labor Cooperation (NAALC), available at <https://www.dol.gov/ilab/trade/agreements/naalc.htm>.
6. See, e.g., Chapter 17 of the US-Colombia Free Trade Agreement, Article 17.2, available at [https://ustr.gov/sites/default/files/uploads/agreements/fta/colombia/asset\\_upload\\_file993\\_10146.pdf](https://ustr.gov/sites/default/files/uploads/agreements/fta/colombia/asset_upload_file993_10146.pdf).
7. Article 17.3.
8. See, In the Matter of Guatemala—Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR, available at <https://www.trade.gov/industry/tas/>.
9. Chapter 23 of the USMCA, available at [https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23\\_Labor.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23_Labor.pdf).

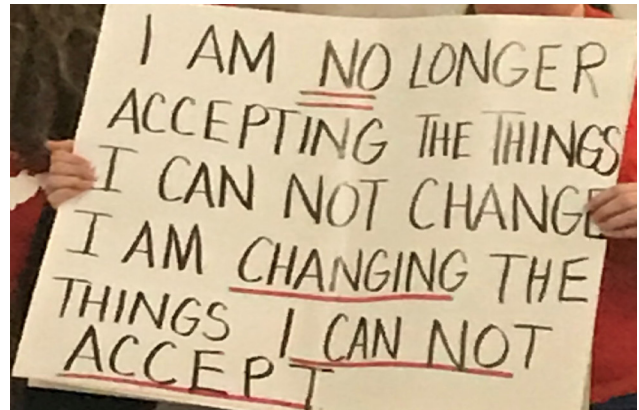
## WHAT WE'RE FIGHTING FOR:

### Teachers and other school employees strike to preserve public schools

By CHRISTINE CAMPBELL

**I**n my eighteen years of teaching middle school students and six years as the President of AFT-West Virginia, the 2018 West Virginia School Employee Strike was the hardest but most inspiring experience of my life. As every teacher across our nation struggles in the confines of our classrooms while shaking our heads at the silo approach to education “reform,” rural West Virginia also battles the isolation of the hills and hollers. Teachers and service personnel stay focused on the task at hand: do your best every day to help every child overcome their own social, emotional and academic hurdles. With endless unfunded mandates and the “throw it against the wall and see if it sticks” mentality of policymakers, our classrooms have become minefields that teachers and students must navigate every day.

It was that spirit of frustration that brought thousands of school employees out on strike, forcing the Legislature to finally do its job of providing the funding needed to attract and retain quality educators to meet the needs of our students. And that same spirit brought us out again in 2019, when the Legislature attempted to subvert our success in 2018 by inviting charter schools in to redirect these resources into private hands.



The first day of the 2018 strike a sign read, “I am no longer accepting the things I cannot change; I am changing the things I cannot accept.” Public school employees and working families have accepted the things someone told them they cannot change for too long. In West Virginia, we watch local families struggle to make ends meet, as our natural resource industries boom and bust. We fight to keep our neighborhood schools when consolidation efforts arise, touting more opportunities for students that result in the demise of small towns that can’t survive without the “hub” of our communities. We don’t see the businesses pouring in for the corporate tax breaks, but we certainly see the local restaurants, gas stations and grocery stores closing down around our empty schools, while our

students endure longer bus rides to the new schools over the mountain that lack funding for those claimed opportunities.

We couldn't see the charter school threat heading to West Virginia because we were focused on the class next to ours that no longer has a certified teacher, as the ever-changing content standards require a new standardized test. And most importantly, we were too busy with our second and third jobs to know the people we elected from our hometowns weren't supporting us, they were coming after what was left; ripping the "public" out of public education.

Like the mountains we cherish, our immediate lives obstruct our view of the destruction ahead. But when danger is present, we protect our own without fear; without a thought of risk, retaliation or injury. We are the West Virginians who had no idea we were leading the strike "heard 'round the world." The West Virginia teachers and service personnel are the folks who had the strength and courage to stand up; not only for themselves, but for our colleagues, our communities and our students . . . twice.

The 2018 strike was the result of a perfect storm; no salary increases in years and consistent increases in health insurance cost maintained a simmering pot. Throwing salt on the expanding wounds, a wellness program proposed as an incentive would penalize participants who did not meet the requirements. As school employees called and emailed state representatives to no avail, the simmering pot boiled. The factor that gets little attention in the mounds of reports regarding the 2018 strike, is the West Virginia hills.

Our bus drivers transport students from every hill and hollow, across backroads and creeks; children often riding well over an hour each way. In West Virginia, lost instructional days due to inclement weather are normal. The beginning of the legislative session in January of 2018 was no different, except that a couple snow days across most of the state gave school employees an opportunity they usually don't have when focused on meeting the students' needs. There was time to talk to each other, engage in social media threads, make calls and organize! We may not be able to control the weather but as teachers with only forty minutes a day for instructional preparation, we certainly know how to utilize our available time wisely.

The news reports stressing the organic, grassroots organizing that led to the 2018 strike are absolutely accurate. Just like the storms that can drop a foot of snow overnight or flood our rivers in a day, the unions were not prepared for the tremendous activism that erupted. We'd spent the last several years informing employees of anti-public education initiatives and the political agendas of legislative leaders. We'd fought and lost battles at the State Capitol, as the Legislature whittled away sections of the Code that attract and retain qualified

professionals. We informed the public of the increasing vacancies that had a direct impact on student achievement, while initiating one campaign after another to get people engaged. Although activism had increased over the last few years, I honestly didn't believe every district in the state would walk; I've never been so proud to be wrong.

When school employees in the southern counties took action on "Fed-up Friday," the evidence was clear, and the rest of the state was ready to follow. As the unions were organizing strike votes, the legislative leaders were organizing anti-union messaging, which proved to be futile because public support was high and teachers, service personnel and administrators had banded together as one; "55 United." While the unions were not initially prepared for the employees to take action, the legislative leaders were even more unprepared for what would take place during the statewide strike in West Virginia, and they certainly weren't prepared for another successful strike less than a year later.

Before 2018, the last massive work action of school employees was in 1990. Those who had been there knew 2018 was a completely different situation. In 1990, Democrats controlled the Legislature, anti-public education and anti-union initiatives weren't rampant, and information was not instantaneously communicated through a device in the palm of our hand. (Ironically, having so many modes of communication allows incorrect information to travel just as quickly as correct information.) Additionally, collaborating with competing organizations in a non-collective bargaining state required a new level of communication and trust. We struggled at times and made plenty of mistakes along the way, but we learned from those mistakes; the Senate leadership did not.

In many ways, the 2019 strike paralleled the strike of 2018; the differences were a direct result of lessons learned from the teacher and service personnel organizations, while the Senate leaders' tactics did not change. Given the short time frame between the two actions, in 2019 the employees and respective organizations mobilized more quickly, and with less hesitation. Strike votes were taken with increased ease and understanding and the purpose was clear and unwavering; public education is not for sale.

Prior to the 2018 general election in November, the Governor publicly announced his plan for another 5 percent pay raise and health insurance funding. While this appeared to be a political move, Senate leaders went on record supporting the Governor's plan. While the Senate leaders touted pay increases and healthcare funding during campaign season, the

*(continued on page 4)*





# What We're Fighting For

(continued)

2019 legislative session shot out of the gate with "Education Reform," specifically the "Omnibus Education Bill." Once again and in true retaliatory fashion, the Senate leaders slapped educators in the face with a host of anti-education, anti-union initiatives; including the (ALEC) American Legislative Exchange Council's agenda to institute charter schools, Education Savings Accounts, seniority reductions and payroll deduction restrictions.

As employees, labor organizations, supportive legislators and the media questioned the need to combine so many initiatives in one bill, the Senate continued their rhetoric; insisting support for better pay in conjunction with education reform. As opinion editorials from a wide variety of citizens flooded the local papers, national attention renewed and educators took to the streets for the second time, the Omnibus Education Bill was sliced and diced until its imminent death in the People's House, the House of Representatives. The teachers and service personnel stood their ground for public education; they were not for sale. It appeared the Senate leaders never intended to uphold the promises made in November, without a quid pro quo of reducing workers' rights and implementing privatization initiatives.

One interesting difference in the 2019 strike that received minimal attention was the county that remained open during the two-day strike, which happens to be the largest county represented by the Senate President. The incredible reaction of the employees is definitely a highlight of both work actions; picket lines were set up at the schools, and carloads of teachers and service personnel from counties all over the state arrived in solidarity with Putnam County employees. While the last few legislative sessions may be depicted in the history books as the Republican "attack years," the employees should be given medals of honor for how they handled the attacks; organized, respectful and unified... "55 Strong."

In leading the 2018 West Virginia strike, an understanding of the varying perspectives in any given situation emerged; the

reality, the optics and the politics. While reading *55 Strong: Inside the West Virginia Teachers' Strike*, I realized the perspective of those who contributed to this collection of essays was very different from mine; not wrong, just different. Their perspective was their reality of the decisions that were made, from the outside looking in. Likewise, we made decisions from an alternate reality; the inside looking out. The constant that few consider is the politics tainting the reality and the optics.

Our members elected me to fight for them and protect them, which often feels contradictory as a leader and a lobbyist. Opposing sides don't seek common ground while shots are being fired. In the absence of collective bargaining in West

Virginia, each sixty-day legislative session is an annual trip to the bargaining table; 134 legislators on one side of the table, several union leaders on the other side, with numerous special interest groups weaving in and out, as the media decides what is newsworthy. As lobbyists, our role is to seek common ground with policymakers; as leaders, our job is to fight injustice without fear of retaliation toward our members. It's an unnatural dichotomy I wrestled with every day; knowing the majority controls the legislative

agenda, politics often trump policy, the media can influence the optics, and the reality gets lost in the house of cards.

It's disheartening that this infectious political environment has created so much distrust; not only in our elected officials, but also in the union leaders elected to represent the employees' interests. In my classroom, we established our learning environment together; and absent the externalities of the politics and optics, they were confident I had their best interest at the forefront of every decision. My students didn't always agree with the decisions I made regarding their education, but they never called me a "sellout." When the governor agreed to a 5% raise for all state employees and guaranteed funding to stabilize health insurance costs, we knew the Senate would be a problem but were assured the leaders would agree. Under extreme pressure and knowing the strike was reaching a critical point, we agreed to call them back to work. In education, we're required to produce evidence of achievement; the employees wanted hard evidence, and they weren't going back until a bill was signed. In this social media driven era and such an intense environment, it's easy for all of us to get entwined in the optics,



harder to weave through the politics and nearly impossible to maintain focus on the reality. In that moment, it was the educators who remained focused on the reality. Even with my internal struggle and constant awareness, or fear, of how my decisions would affect the people who dedicate their lives to our students, leading the renewed offense was the highest honor of my career.

So if the Republicans are still in control and determined to receive an “A” on the ALEC report card, what does success look like in West Virginia and beyond? Success isn’t something tangible people gain from collective action; it’s how they change as a result of that action. From my perspective, the change is extraordinary. Educators are proud of their activism; asking the hard questions, following up with more questions, tracking bills and policies and engaging in political debate. Additionally, the true representatives are working with their constituents to develop realistic, innovative solutions. Working people are not rising up against injustice in the workplace and at the State House, they’re running for office and winning!



The ultimate equalizer is a quality public education system that meets the needs of every child. This awakening of collective action is not about the politicians, school employees or unions today; it’s about tomorrow. This wave of renewed energy is embracing the comfort of our West Virginia hills and refusing to hide behind them; honoring those who have come before us and paving the way for those who come after us.

Success isn’t one pay raise, another year of health insurance funding or beating back the latest anti-worker initiative. Success is meaningful engagement, educating ourselves on the issues, standing up for economic and social justice, taking responsibility for our own actions, uniting despite our differences and most importantly, modeling the behavior our children desperately need to see. The actions recently taken by teachers, service personnel, parents and students across the nation and beyond are evidence that we are making a difference; an imperative difference. I am no longer accepting the things I cannot change; I am changing the things I cannot accept.

*Christine Campbell is an 18-year veteran teacher who spent the majority of her career teaching middle school Language Arts and Reading in Pocahontas County Schools. She served as president of the West Virginia American Federation of Teachers during the 2018 statewide strike of public school employees.*

# WHY EDUCATORS IN NORTH CAROLINA ARE GOING BACK TO RALEIGH ON MAY 1

BY MICHELLE BURTON

**M**ay 16, 2018 was an historic event in North Carolina history. Close to 30,000 educators, parents, students and community allies marched on the State Capital in Raleigh to let lawmakers know that educators vote and we would exercise our right to vote in full force come November 6. Forty-two school boards across the state voted to close that day to allow educators to attend the rally and demand respect from our legislators. We are going back to Raleigh on May 1 and this time we have five demands for our elected officials.

2018 was significant because it was an election year. All the members of North Carolina General Assembly (NCGA) were up for re-election and we knew that educators had to show their collective power once and for all. For years, North Carolina was known as a progressive southern state, particularly when it came to public education. However, in 2010, the NCGA had become increasingly more conservative and in 2013, when the conservative majority captured the Governor’s office, several laws were passed that negatively impacted public education. Some of the laws that were passed were:

- Elimination of Master’s pay,
- Elimination of Career Status (better known as Tenure),
- Elimination of Longevity Pay for Teachers,
- A-F letter grade system for schools was put into effect, which makes it much easier to designate schools as either high or low performing,
- The school voucher law was enacted, and
- The cap of only 100 charter schools in the state was lifted.



The Durham Association of Educators (DAE) and members of the North Carolina Association of Educators (NCAE) Organize 2020 Caucus were so inspired by the teacher strikes in West Virginia, Oklahoma, Kentucky, and Arizona that we felt that the time was right for a major demonstration. We were tired of our legislators not paying attention to what was happening to our students, schools, and communities and we felt we had everything to gain and nothing to lose.

First, we presented a new business item at the state NCAE convention in March 2018 to get delegates to vote and approve a day of action for May 16. Once it was voted on  
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# Why We're Going Back to Raleigh *(continued)*

and approved, DAE members went back to our home district and convinced as many teachers as possible to take a personal leave day for May 16 so the school board could vote to shut down due to a lack of substitutes. Over 1,000 teachers in Durham requested personal leave and we were the first school district to close for May 16. Afterwards, one school system after another in the state began to shut down. In total, 42 school districts in North Carolina closed for May 16, affecting close to one million public school children.

The May 16 march was a tremendous success. The rally energized educators to go back

to their counties and campaign for pro-public education candidates. Teachers canvassed, phone banked, and worked the polls to get the word out about which candidates supported public schools and our efforts paid off. On November 6, we elected enough pro-public education candidates to eliminate the veto proof majorities in both the North Carolina House and Senate. The Governor's veto had power and now legislators had to compromise.

Yet our work wasn't finished. Though we eliminated the veto-proof majorities in both the House and the Senate, the extreme right-wing conservatives still held the majority in both chambers. There were issues that still needed to be tackled such as the biennial budget that was going to be approved in 2019 and the abhorrent working and learning conditions of our teachers and students.

Then in January of this year, the Los Angeles teachers went on strike for two weeks, the first strike in Los Angeles in over 30 years. Again, educators in North Carolina were inspired about what teachers in Los Angeles won for their students. DAE and the Organize 2020 Caucus felt another mass rally in Raleigh was necessary to have impact on budget negotiations. To get the ball rolling, NCAE sponsored regional meetings across North Carolina during the months of January and February to train members on giving surveys in their

districts so we could find out what educators really wanted and what the working conditions were like in their schools. Then on March 23, during the NCAE annual convention, delegates overwhelmingly voted to have another Day of Action in Raleigh on May 1. We call it "5 Demands, 1 Day." Taken from over 1,000 surveys we received from educators from across the state, these are the five demands we are presenting to our legislators on May 1:

- Provide enough school librarians, psychologists, social workers, counselors, nurses, and other health professionals to meet national standards.
- Provide \$15 minimum wage for all school personnel, 5 percent raise for all school employees and a 5 percent cost of living adjustment for retirees.
- Expand Medicaid to improve the health of our students and families.
- Reinstate state retiree health benefits for teachers who will be hired after 2021.
- Restore extra pay for teachers with advanced degrees such as a master's degree.

The North Carolina Association of Educators has been criticized by many conservative legislators and right-wing think tanks for calling for this Day of Action. The president of the Civitas Institute, a conservative think-tank in North Carolina, stated that the real purpose of the march is to bring a "socialist labor movement to North Carolina." But as educators, we know what our true intentions are. We are doing this for our students to make sure they are suc-

cessful and have every opportunity to succeed. We are doing this for our fellow colleagues who we want to be paid a living wage so they can live and thrive in the cities where they work and that they are able to provide for their families. We are doing this for the families that we serve so they are healthy and well and that they can better take care of their children. That is our goal. That is our agenda.

Teachers in North Carolina made history on May 16th, 2018. We showed up, 30,000 strong, to let the politicians in Raleigh know that educators are a force to be reckoned

with. We are going back May 1st to finish the job with our five demands in hand and we are confident that we will win.

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*Michelle Burton is an elementary school librarian in Durham, North Carolina. She is the President-Elect of the Durham Association of Educators (DAE) and a member of the NCAE Organize 2020 Caucus. She can be reached at [thelibraryteacher@gmail.com](mailto:thelibraryteacher@gmail.com).*



# USMCA— CANADIAN LABOUR LAW PERSPECTIVES

BY CLAUDE MELANÇON & SIMON ARCHER, CALL-ACAMS

**W**e might summarize the new free trade agreement with the old adage: *plus ça change, plus c'est la même chose*.

## What drove the renegotiation?

From our perspective, the impetus to renegotiate NAFTA was the threat of protectionist nationalism fueled in large part by a focus on US trade deficits, primarily the US trade deficit with Mexico. The President said, now and then, that Canada was not the problem, for whatever that was worth.

The trade deficit the President seemed most worried about was that with China, but a close second seems to be just over the not-yet-wall, the trade deficit with Mexico. That deficit (surplus if you're Mexican) is largely driven by Mexico's emergence as a major global site of automotive production: of Mexico's \$71 billion surplus with the U.S. in 2017, \$63 billion was in auto. During the NAFTA years, Mexico received some 90% of new automotive capacity, and Canada has actually seen its capacity decrease.

This led to the following changes in automotive-sector trade intended to benefit US production of autos and auto parts: changes to increase in the rule of origin percentage (to 75%), which is not expected to change much, because most production is already around that; 40–45% must originate where average wages are over \$16, which is again not expected to change much, because the penalty for violating this is only 2.5%, which is cheaper than raising wages in Mexico to \$16; and, lastly, a new exemption from penalties imposed on auto imports from Canada and Mexico when or if they are imposed as a result of a national emergency. This last sentence contains its own critique.

However, the real judgement of the auto sector changes is that about 10 minutes after concluding the USMCA, General Motors announced it was pulling out of its largest assembly plant in Canada.

## Expanded access

Other sectors were subject to expansion of access for US-based producers at the expense of Canadian based producers.

Dairy markets have been opened in Canada, and pharmaceutical patents extended from 8 to 10 years. So: concessions to US producers of IP and farmers. These are traditionally not central concerns of the Canadian labour movement, although the IP provisions should be in particular, as they drive the cost of health care considerably.

## Labour side agreement

The labour chapter is largely modelled on the Trans-Pacific Partnership, but with a few tweaks. Like the TPP, the USMCA refers to the International Labour Organization's (ILO) Declaration on Rights at Work, rather than the more robust ILO core conventions.

This is not surprising since the US has ratified only two of these eight fundamental conventions, but it limits any potential impact of the USMCA labour provisions in scope.

The USMCA strengthens the TPP provision "to prohibit the importation of goods produced by forced labour" (Art.

23.6). It also includes new, improved provisions that aim to protect against discrimination based on sex, sexual orientation and gender identity (Art. 23.9); address violence against workers (Art. 23.7); and provide protection for migrant workers under labour laws (Art. 23.8). Forty Republican senators have voiced their opposition to the protections for sexual orientation and gender identity, and we will soon see SCOTUS consider whether prohibitions against discrimination based on "sex" include or exclude the term "gender" and by extension, LGBTQ matters. For these reasons, there may be headwinds in the ratification process.

While the key USMCA labour provisions are subject to dispute settlement, their enforceability remains problematic. The rules contain hurdles that ensure a complaint will be time-consuming, expensive and unlikely to succeed. Troublesome provisions compel a complaining party to demonstrate that alleged violations result from a government's "sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties" (Art. 23.5). This systemic requirement all but eliminates individual complaints, no matter how meritorious or severe.





## USMCA *continued*

It also leaves public sector workers and most workers in non-tradeable sectors including health, education, retail and construction without meaningful protection. The inclusion of such hurdles in previous labour chapters has meant there has never been a single successful labour complaint under any trade agreement signed by the US, Canada or Mexico.

As far as the new labour side agreement is concerned, no mechanism has been put in place for ongoing monitoring of the chapter's guidelines and if these guidelines are violated there is no mechanism in place to meaningfully enforce them let alone swiftly enforce them. Which repeats the same problems with the NAFTA side agreement.

The brightest spot in the labour side agreement was a commitment by Mexico to eliminate company unions. The new Labour chapter concluded with the following declaration. "It is the expectation of the Parties that Mexico shall adopt legislation described above before January 1, 2019. It is further understood that entry into force of the agreement may be delayed until such legislation becomes effective." The above-described new Mexican labour legislation would create meaningful free collective bargaining rights and eliminate company unions.

We have high hopes for AMLO, who is by far the most promising President for labour in living memory. So far, however, there has been no concrete action.

### Dispute Resolution

Getting rid of Chapter 11 (investor state dispute mechanism) is a big deal up here. As of January 1, 2018, Canada has paid out nearly \$220 million in NAFTA losses and settlements, all to U.S. investors, and currently faces eight active claims in which investors are demanding approximately half a billion dollars. To this amount we can now add \$95 million in unrecoverable legal costs paid by Canada in defending ISDS cases.

Canada faced nearly twice the number of cases (just over 40) than the other two signatories (just over 20 each) despite its relatively smaller economy and population (the rough rule is Canada is 10% of the size of the US in terms of population and GDP).

Notably, for Mexico, Chapter 11 remains in force in energy and telecommunications, constraining Mexican policy in those sectors.

In short and in summary: rights of corporate actors and access to some sectors are largely expanded; little is changed to the scope or efficacy of labour side agreements, and the forces or reasons for the re-negotiation of the deal in the first place are unlikely to change in direction or magnitude as a result of the new deal.

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*Claude Melançon is a former principal in Melançon, Marceau, Grenier et Sciortino in Quebec.*

*Simon Archer is a partner in Goldblatt Partners and works with the Comparative Research in Law and Political Economy network at York University.*

## ORGANIZING WORKERS IN THE GIG ECONOMY

**W**e've seen the gigification of the economy expand greatly over the last two decades, as employers as diverse as Amazon, Uber and Kelly Services have tried to turn workers into raw materials or bookkeeping entries. This is, of course, nothing new: mill owners in the 19th Century referred to their workers as "hands"; employers now use corporatespeak to turn workers into "associates" or "talent." All in order to more efficiently keep workers atomized and to take as much profit as possible out of their work.

Unions and workers' advocates have been fighting these tactics in a variety of ways. Lawyers in our New York Chapter have played a major role in the fights led by the New York Taxi Workers Alliance to organize Uber drivers while members of our Los Angeles Workers Rights Committee are meeting with Uber and Lyft drivers to help them explore strategies. And, of course, labor lawyers, both in and outside the Guild, have developed other approaches to fight misclassification and exploitation of gig economy workers, from legislating to curb the worst scheduling abuses and to make it easier to organize supposed independent contractors, to representing port drivers in Southern California who have challenged their misclassification as an unfair labor practice and bringing wage and hour actions on behalf of misclassified employees.

We are working on a proposal for a workshop on these topics at the next Guild Convention, to be held in Durham, North Carolina from Wednesday, October 16 to Sunday, October 20. We will be discussing what this proposal should contain at our next meeting at the LCC on Tuesday, May 7, 2019 at the Motor City Pantry at 7 am. Please join us there to talk about these and other proposals and the other work that the Labor & Employment Committee is doing.

And, if you can't make it to that meeting, or would like to join the ad hoc working group that we have formed to explore future work in this area, please contact Ben O'Donnell ([odonneb@gmail.com](mailto:odonneb@gmail.com)) or Jeanne Mirer ([Jeanne@jmiererlaw.com](mailto:Jeanne@jmiererlaw.com)) for more information.





# UNITED TEACHERS —LOS ANGELES 2019 STRIKE: ONE FOR THE AGES

BY IRA L. GOTTLIEB

**I**t had been 30 years since the last teachers' strike rocked Los Angeles. The learning and working conditions in the Los Angeles Unified School District ("LAUSD")—the second largest system in the United States, with over 600,000 students and 34,000 teachers—had been deteriorating for years, exacerbated by the proliferation of charter schools siphoning daily attendance funds. The District routinely exceeded maximum class sizes established in the teachers' collective bargaining agreement because of a contract provision that allowed administrators to freely eclipse the caps. Nurses spent only one or two days a week on 80% of the 1000 or so campuses in the District. Librarians were scarce—itinerants running back and forth between two or three schools, leaving one library's doors shuttered while busy at another—and counselors were overwhelmed with as many as 900 students to assign to classes. Charters' "co-locations" were encroaching parasites on traditional school campuses—where teachers found their science labs and music rooms usurped by publicly funded but privately operated schools. Open green space was rare. The student population attending LAUSD schools was overwhelmingly poor, with 80% eligible for subsidized meals at school.

Public schools are chronically underfunded by the State of California, attributable in part to a tax limitation measure passed by the voters in 1978 called Proposition 13, which has led to a diminution in the resources available to the state's public education systems. Despite the state's overall wealth (touted as the world's fifth largest economy), its per-pupil funding ranks 41st in the country, spending a bit more than half the dollars paid per pupil by the state of New York. The fact that California, ironically touted as the bastion of liberalism—according to the legislative analyst's office—leads the nation at \$81,000 per year to incarcerate but spends only \$10,000 per year to educate—adds insult to injury.

Even before the 2018 red state teacher uprisings in West Virginia, Oklahoma, Kentucky and Arizona made headlines across the nation, UTLA's leadership—with President Alex Caputo-Pearl at the helm—recognized the need for organizing members and the community to prepare for a strike, if necessary, to turn around the aircraft carrier and reclaim the schools for the educators covered by the CBA

and for the common good. The Union's aims were ambitious, encompassing and venturing beyond traditional bargaining boundaries—e.g., put a nurse on every campus every day; hire more librarians to keep all libraries open; recruit more counselors and assign each of them fewer students; reduce the crowded standing-room only classes and most fundamentally, deep six the problematic contractual clause that allowed the District to bust through the class size caps; protect threatened employee health benefits cost levels; stop unnecessary testing that interfered with teaching and grant teachers more authority over the testing regime; gain greater teacher decision-making authority at each campus and resist and reverse the trend toward the proliferation and co-location of charter schools and their draining of public education funds and resources; enhance and expand community schools featuring services beyond instruction; provide more green space on campuses.

Charter schools, over 90% non-union, constituted 20 percent of the District's schools (compared to 10% in the state overall) and posed an existential threat to LAUSD, where the billionaire-subsidized charter school lobby—e.g., the Waltons of WalMart, real estate magnate Eli Broad, Netflix CEO Reed Hastings, and media mogul Michael Bloomberg had recently spent more than \$10-million to capture a majority of the school board.

For the teachers union to alter the sociopolitical landscape that enabled and threatened the further privatization and disintegration

of the city's public education system would require a Herculean mobilization of teachers, parents and community allies in the street—a strike of epic proportions.

The parties started bargaining in April, 2017, but made little progress on key issues for 20 months. The Union declared impasse in July, 2018, triggering the gamut of statutory processes required prior to a strike, all designed to pressure the parties toward an agreement: mediation and fact-finding with the guidance of state public employment officials. At the end of August, some 98 percent of those educators who voted authorized a strike.

The impasse process dragged on into December, but neither the mediation nor the fact-finding, nor post-impasse meetings, produced an agreement. Just before fact-finding ended, the Union held a boisterous rally in downtown Los Angeles, with 50,000 in attendance to hoist signs that read Save Our Schools and to chant "Whose schools? Our schools!" as they marched through the streets, through an echoing tunnel, up to the doors of the Broad Museum built by billionaire school privatizer Eli Broad whose vision was to turn half of LAUSD into charter schools, a move that would surely bankrupt the District.

After the fact-finder issued his report on December 17, confirming that teachers in Los Angeles were underpaid,

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# LA ON STRIKE 2019 *(continued)*

the Union declared it would strike in January, shortly after the holiday recess was to end and the new semester begin. The District persisted with its pleas of poverty, all the while sporting a reserve that neared \$2 billion which it said would be dissipated if it agreed to the Union's demands. The Union scoffed at that prediction, having heard similar tales for several prior years while the reserve increased and charters siphoned \$600 million annually, failing to pay their fair share of building maintenance, health care and pensions.

The District tried to stop the threatened strike, first asking the California Public Employment Relations Board ("PERB") to seek an injunction, then sneaking without notice into federal district court, and finally asking the Los Angeles Superior Court, to enjoin the strike. All three tribunals rejected the District's overtures.

The District complained to PERB that the strike would do what successful strikes are supposed to do: disrupt the routine operation of the District. Management offered its version of Armageddon if the strike were not enjoined, though it had had months to prepare for a strike. The State of California, moreover, has recognized public employees' right to strike for over 30 years. PERB declined to engage in speculation about what might occur when educators exercised their right to withhold their labor, and agreed with the Union that there was no basis for the agency to go to Court in advance of the strike date.

In Superior Court, the District again posited the apocalypse if teachers were permitted to walk out. The Court rejected the District's arguments, and removed the last legal barrier to the strike.

On Monday, January 14, in the pouring rain, 34,000 Los Angeles educators—a sea of teachers wearing red UTLA t-shirts and carrying red umbrellas—took to the picket lines at 1000 school sites, and twice as many people rallied downtown later that morning, still in the rain, to revel in each others' support and that of the community. No more than a third of the total student population came to school, where they were usually herded into auditoriums to watch movies. The noise among striking teachers and community supporters was joyful, featuring a UTLA mariachi band, celebrity support from Tom Morello of Rage Against the Machine and E Street Band stalwart Steven Van Zandt, a viral video with a million Twitter hits of students dancing in support of their striking teachers at Venice High School and most importantly, the vital energy, undergirded by the pre-strike organizing efforts the union and its allies brought to bear, along with heartfelt support for the teachers of their children.

The rain and the strike—with all its energy and widespread community support from parents, students, organized labor and many others, persisted through the week as the parties began marathon bargaining sessions Thursday at Los Angeles City Hall. Mayor Eric Garcetti and his aides participated as mediators, as did a former school Board member trusted by

both sides, and a former union lawyer turned District negotiator in these very negotiations who had since left the District's employ. The negotiations included joint calls to the Speaker of the California Assembly, the newly-elected Governor, and the state Superintendent of Public Instruction to intervene on behalf of the teachers and communities they serve. Over the weekend, with the strike still on, parents clad in solidarity red picketed at the residences of School Supt. Austin Beutner, a former Wall Street banker, and pro-charter school board president Monica Garcia.

Finally, as Tuesday dawned, the parties neared a successful pact. At that last minute, the District, which had mightily resisted parting with its contractual hedge against class size caps, folded on that major issue in the face of the Union's preparations to depart City Hall if the agreement did not include that concession from management. In the end, the Union was victorious, putting a nurse in every school every day; ensuring each middle and high school was staffed with a full-time librarian; hiring additional counselors and reducing by hundreds the numbers of students on their rosters; erasing that longstanding contractual barrier that let the District exceed class size caps; winning a six percent wage increase untethered to cuts in new employee health benefits; establishing 30 visionary community schools with wrap around services, such as day care and health clinics; launching an immigrant aid service to protect immigrant children; curtailing administrative searches of students on campuses; implementing a process to cut testing by 50%; increasing green space—getting rid of some of those bungalows that made charter co-location too easy; setting up teacher representation on co-location committees and, last but not least, winning agreement from the Board to vote on a resolution to place a moratorium on new charter schools within the District. In all, a successful compilation of both traditional bargaining wins and extraordinary wins for the common good. Despite intense charter school lobbying, the Board passed that moratorium resolution with only one dissent, charter cheerleader Nick Melvoin, on January 29.

The strike changed the conversation about public education in Los Angeles and California, if not the country. The Union planned and laid the foundation well in advance of the expiration date for not only a potential strike, but for community involvement, and the pursuit of improvements well beyond the traditional economics and working conditions of educators in an underfunded public school system. The organizing begins anew with the ratified contract, the reopeners on wages and limited other items in the next year, and the treks to Sacramento and the ballot box to pursue legislation and referenda that will finance public education as it once was and should be again in California.

*Ira L. Gottlieb is an attorney with Bush, Gottlieb, which represents UTLA, as well as other unions, individual workers and benefit funds in the public and private sectors. He began his career working for the United Farm Workers and has taught labor law and written extensively on labor law issues. A longer version of this article appeared in the LCC Bulletin. He will speak at greater length at a workshop Monday morning on the return of the strike.*





# UPDATES FROM SUGAR LAW

BY JOHN PHILO

**R**ecent months have been exciting and inspirational ones here at the Sugar Law Center. In a historic election last fall, we saw a member of our team, Rashida Tlaib, elected to the United States House of Representatives, representing the 13th District of Michigan. Along with Ilhan Omar from Minnesota, she becomes one of the first Muslim women elected to Congress and has been shaking up D.C. ever since. We are proud of her achievements and her spirit will always be with us in our work.

## Victory for vocational students

With the explosive increase in for-profit vocational schools has come widespread exploitation of their students. These schools often operate on a model where profits are derived by providing limited educational value while maximizing revenue from federal student grants and loans and the exploitation of unpaid student labor to generate still more revenue. Against this background, the Sugar Law Center and our clients obtained an important victory.

For more than four years, we've been representing vocational students who attended Douglas J. Aveda Institute cosmetology schools. Douglas J is a for-profit company operating six schools spread across Illinois, Michigan and Tennessee. It is one of the largest Aveda franchises and its operations have served as a model for other for-profit cosmetology schools chains across the country. The class action suit challenges the schools' exploitation of unpaid student labor to: 1) perform nearly all internal school janitorial, laundry, and other building upkeep tasks; 2) provide market rate fee-based services for patrons; and 3) aggressively upsell products to the public. The schools derive millions of dollars of revenue from each of these activities, while charging students tuition and fees near those of private universities. The schools also own higher-end salons and use the student clinics to compete against stand-alone salons operating at a mid-range and lower price levels and who pay wages to all their workers.

Following motions for summary judgment by both parties, the court ruled in our favor and found that students must be compensated for noneducational tasks. Most importantly, the court recognized what our clients knew well—that the hours

and hours of work on janitorial, laundry, and other building upkeep tasks provided absolutely no educational value to the students, generated significant profits for the schools, and displaced paid workers. The students' work on these tasks ranged from one hour per day to the entire school day. The decision is the first ruling in favor of vocational students in the nation on these issues, after years of poorly reasoned opinions in other circuits allowing this sort of exploitation. It highlights the importance of advocates undertaking an exhaustive, empathetic, and detailed documentation of the facts that show the actual experiences of the students that define an educational institution, and putting that information before the court to confront the imbedded assumptions and hypocritical biases that pollute public discussion on worker rights issues.

## Standing with the unemployed: The fight continues

**S**ince 2014, the Center has assisted over a thousand workers who were unfairly charged with unemployment insurance fraud by the State of Michigan. Through direct representation of individuals, training of advocates, and educating groups of workers and individuals to represent themselves, Tony Paris from our office has led efforts to combat the corrupt implementation of an automated system that rampantly and wrongfully charged unemployment insurance claimants with fraud.

The fight began when the state's unemployment insurance agency laid off investigators and adopted an automated system

for determining whether unemployed workers were committing fraud to obtain unemployment insurance benefits. The changes were an effort by the agency to improve its balance sheet in a state hard hit by the last recession. To generate balance sheet revenue

from the system, the state adopted the automated system and ramped up efforts to ferret out what right wing state officials perceived to be rampant attempts at fraud—by claimants, not employers. Among other abuses, the automated system levelled fraud charges whenever the statements of workers conflicted with the statements of their employer (whose statements were automatically accepted as truthful).

During the course of a prior suit brought by SLC, it was revealed that the system had charged over 40,000 persons with unemployment insurance fraud and in each case, assessed the maximum penalties allowed. Our office has seen the fines and penalties as high as \$130,000 assessed against an individual based on bogus fraud charges. It

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# SUGAR LAW UPDATE

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was ultimately revealed that the system had an error rate of over 90 percent in determining whether fraud had been committed.

Our prior lawsuit stopped the state's use of the automated system to make fraud determinations and required the review of all pending charges by a human investigator. The system, however, was created and aggressively marketed to compliant state officials by corporate vendors who promote expanded use of automated systems to process public benefit claims to states across the country. The SLC is now representing wrongfully charged individuals in a civil rights action brought under 42 USC § 1983. The suit is brought against the state officials and corporate vendors that designed and implemented the automated system. In recent months, we defeated renewed motions to dismiss by the corporate vendors and prevailed on a qualified immunity appeal to the Sixth Circuit by state officials.

These efforts represent work on just two of our efforts over the past months. Our work continues on our community benefits project for equitable development, Section 7 rights for unorganized workers, plant closings, wage theft, environmental justice and a range of other efforts. In addition we are excited to welcome Tonya Myers Phillips to our staff in the role previously performed by Rashida and all of us here at the Sugar Law Center look forward to continuing the struggle with all our partners and allies over the year ahead.

The Sugar Law Center for Economic and Social Justice is a national non-profit, public-interest law center. Sugar Law

Center provides legal advocacy, representation, education and technical support to workers and low-income communities seeking systemic change toward economic and social justice. Visit [www.sugarlaw.org](http://www.sugarlaw.org).

*John Philo is the Executive and Legal Director of the Sugar Law Center for Economic & Social Justice.*



# IMMIGRANTS' RIGHTS ARE LABOR RIGHTS

As part of its overall war against immigrants and immigrants' rights, the Trump Administration has attempted to end Temporary Protected Status (TPS) for people from various countries, including Haiti, El Salvador, Nepal, Sudan, Honduras, and Nicaragua while the conditions that lead to the TPS designation persist. Working Families United, a coalition of unions including UNITE

HERE, the International Union of Painters and Allied Trades, the Ironworkers, the International Union of Bricklayers and Allied Craftworkers, The United Food and Commercial Workers, the Teamsters, and the Laborers International Union of North America, has organized to save TPS and protect their members.

WFU approached the Guild's Labor and Employment Committee last year for help

- organizing clinics to assist TPS holders in finding alternate forms of immigration relief,
- training union and community organizers on preparing and responding to raids and audits from both labor and employment, and immigration angles so that organizers and lawyers can spot issues on both fronts, and
- developing up-to-date materials for both the clinics and the trainings.

With local partners we have already hosted two clinics in Los Angeles and D.C.; we are planning more for New York, New Jersey, Orlando and Houston.

The next phase will be organizing regional training sessions for worker advocates. We are looking now for Guild members (both labor and immigration lawyers and legal workers) who can help put on this training or are interested in joining a rapid response network, similar to the ones that the Guild, the ACLU and other immigrants rights groups have organized in many communities.

We'll talk more about this project and any ideas for similar work at our next committee meeting, to be held on Tuesday, May 7th at the LCC in Detroit. If you can't make it to Detroit, contact either Setareh Ghandehari at [nlglabor@gmail.com](mailto:nlglabor@gmail.com) or Henry Willis at [hmw@ssdslaw.com](mailto:hmw@ssdslaw.com).





# SAVE THE LABOR EDUCATION AND RESEARCH CENTER

**N**early every public university in America hosts business schools to train the next generation of managers and entrepreneurs; relatively few offer similar programs for workers and their advocates. And, by some strange coincidence, when those universities face budgetary issues, those labor-oriented programs are almost always the ones that face the deepest cuts.

That drama is replaying at the University of Oregon, where the University President has declared a campus-wide budget crisis and imposed cuts of two to ten percent for most departments. But not for the Labor Education and Research Center, which instead faces a 68 percent reduction in funding.

And what is it that the President proposes to cut? LERC

- Provides classes in history, law, economics, politics, collective bargaining and leadership development to workers across the state,
- Brings 150 union members from across the Northwest to campus for a 3-day Summer School of intensive classes,
- Provides strategic planning and organizational development training to help unions adapt to changing technologies and economic conditions,
- Produces top quality research, including two recent books and a series of policy reports on minimum wage, sick leave, and scheduling that provided the Oregon Legislature with critical information.

In addition LERC faculty teach on campus, serve on dissertation committees, and run a union internship program for students. This budget reduction would cut the faculty by at least half.

This comes at a time when UO's grad student union is in intense bargaining with the University, while labor statewide is proposing new legislation to improve working conditions and labor relations. The University of Oregon has a history of avoiding contracts with union labor, while selling its soul to Nike. And so here we are again.

This doesn't have to happen: please (1) go to <https://www.savelerc.com/> to sign the petition there and (2) send a personal letter to President Michael Schill at [pres@uoregon.edu](mailto:pres@uoregon.edu) (with a cc to [savelerc@gmail.com](mailto:savelerc@gmail.com)), so that we can publicize these statements of support. Thanks to Andi Pla, a Lawyers Guild leader at UO, for sounding the alarm.



# JOIN US IN DURHAM!

**T**he Guild will be holding its 2019 Law for the People Convention in Durham, North Carolina from Wednesday, October 16 to Sunday, October 20. We hope to see as many of you there as possible.

The Labor & Employment Committee will be submitting proposals for both Major Panels and Workshops at the Convention. (Major Panels are 75 minutes long and fewer in number than workshops, which last 60 minutes.) The deadline for submitting these proposals is Monday, May 20, 2019.

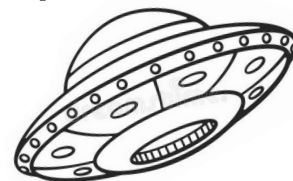


We want your ideas! We are interested, as always, in presentations that link the Guild with other activists on labor issues, whether it is the teachers strikes of 2018 (which we covered at last year's Convention in Portland), or organizing workers in the taxicab industry, or international labor rights, or working with workers centers, or other critical issues involving workers' rights. Please also give us suggestions for speakers, a majority of whom should be women and people of color.

We'll be discussing possible proposals at our next committee meeting, to be held on Tuesday, May 7th at 7 a.m. at the LCC in Detroit. If you can't make it to Detroit, please contact Setareh Ghandehari at [nlglabor@gmail.com](mailto:nlglabor@gmail.com). And more information and links are also available on the National Office's website at [nlg.org/2019-major-panels-and-workshops/](http://nlg.org/2019-major-panels-and-workshops/).

## DO YOU BELIEVE IN UFOS?

### Workers Centers & Section 7 Rights



Workers centers have been with us for decades—and under attack from right-wing politicians and corporate interests as alleged “union front organizations” (or “UFOS”) for nearly that long. Labor has responded to these new forms of worker organizations in a range of ways, from indifference to close collaboration. And hovering in the background, the Trump Administration may follow through on plans to change the rules of the game.

Matthew Ginsburg (AFL-CIO Associate General Counsel) and Eli Naduris-Weissman (Rothner, Segall & Greenstone) will be addressing these issues as part of a roundtable discussion with LCC lawyers at the LCC in Detroit this May. The discussion will focus on educating union lawyers about the legal issues worker centers face, including how union lawyers can assist worker centers while responding to continued attacks from labor's enemies.

The discussion will take place from 12:30 p.m. to 2:00 p.m. on Tuesday, May 7, 2019.

# JOIN US at the LCC!

**T**he Labor & Employment Committee will be hosting a breakfast on NAFTA 2.0 for both members and others on **Monday, May 6th** at the LCC in Detroit. As anyone who has dealt with the labor protection provisions of the North American Free Trade Agreement knows, they offer very little actual protection for workers' rights. The new NAFTA 2.0 negotiated last year was supposed to change that—but whether it will remains to be seen.

**Join us bright and early at 6:50 a.m.** to hear from three speakers with a wealth of knowledge about workers' rights under NAFTA—and what needs to be done to strengthen them under the new law. More details in the flyers available at the LCC.

**We're also meeting the next morning at 7 a.m.** in the Motor City Pantry in the lobby of the Marriott Detroit Renaissance Center. Come join our discussions of the Committee's ongoing work helping unions defend the rights of TPS holders and organizing in the gig economy, to mention two current projects, and to plan other work we can take on in the year to come.



**Labor &  
Employment  
Committee**

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