

From: Ross Fitzgerald <rfitzgerald@acornmail.net>
Organization: ACORN Labor Operations
Date: Wed, 05 Nov 2008 17:49:09 -0600
To: Jon Kest <nyacorn@acornmail.net>, <skest@acornmail.net>, Greg Will <glwill@gmail.com>
Subject: Re: FW: all hands on deck on efca and wage and hours

Wage and Hour Executive Summary
(Internal document)

Hopefully this answers what you need. I reattached the long version.
hopefull this summary makes the attachment easier to digest. When do we
do a call?

Intro

- Wage and hour violations are rampant and liability is high and common.
- Lawyers are starting to learn this and become interested in these cases.
- Unions should want this litigation to be systematic and strategic rather than a free for all.

...Because...

- a. Workers who face wage and Hour violations earn low wages, and bringing up standards for all workers is good for union members: In this instance a conversation about supporting a wage and hour center would be a similar to a conversation about our minimum wage, paid sick days or living wage work.
- b. Workers who face wage and hour violations in specific industries represent organizing opportunities for Unions who have jurisdiction over that sector. Wage and hour litigation provides leverage against employers to open up negotiations. Lawyers need a class of workers to make their money and therefore the litigation is a way to unite workers in a common industry who do not have a common employer, or are in an informal sector of an industry.

Example-- If you plot where construction workers live on a map of New York there are 2 hot spots-- Queens, and the South Bronx. Queens is the union "formal" sector; roofers, carpenters, laborers etc. South Bronx is "informal" subcontracted sector of the construction industry. The building trades do not have a model for organizing informal workers.

How to do it:

Screen workers with a survey.

Categorize the surveys. We see 3 categories that the surveys would fall in to.

1. Refer to allies- violations that are minor, and individual problems or not a part of an industrial pattern. We don't want to get bogged down with individual cases that don't help us organize. We may want to refer to Inter Faith Worker Justice Center.
2. Self help strategies- This is for workers whose problem can not be solved through litigation because the liability is not that high. Materialman's liens for unpaid construction workers is one example.
3. Significant litigation- This is where we think we have identified an employer, or a group of employers in a targetted industry that we want to get a suit against and get every worker we can in the suit to get the employer(s) to the table.

Unions are interested primarily in 1 and 3.

1. Interfaith worker Justice Centers are funded largely by the AFL. If

we refer cases to IWJ than maybe we can negotiate a price or get the AFL to fund somehow.

3. Industries with Wage and Hour Violations by Union-
SEIU- Janitorial, Security, Private homecare,
UNITE HERE- Hotels, restaurant workers,
AFSCME-Subcontracted city service workers (SEIU Public division also)
Building Trades- Construction -usually residential inheaily Unionized cities.
CWA- Call centers
UFCW- Grocery Stores, delivery drivers.
Teamsters- Independent truckers

Lawyer stuff

We see 2 teams.

1. Allies in an advisory and busy work assistance role. Good people who care about the work and want to help us learn the ropes, advise workers, and organize workers. Legal Aid, NELP, Greater Boston Legal Services for example,
2. Litigation. Need dirty money hungry lawyers to suck every dollar out of the employers. Also, some of the other groups have restrictions on representing non-citizens and other funding restrictions. Trial Lawyers association seems likely here.

Conclusion

We see Wage and Hour centers as a strategy to strengthen our own minimum wage, PSD, and Health Care campaigns. We see it as a useful tool for offices to have, and bring to different Unions and pitch partnerships that use the Wage and hour center in a way that fits the unions organizing targets. We see this as the only way to get to the informal sector in an EFCA scenario.

> *From:* Jon Kest [<mailto:nyacorn@acornmail.net>] <<mailto:nyacorn@acornmail.net%5D>>
> *Sent:* Wednesday, November 05, 2008 12:53 PM
> *To:* 'rfitzgerald@acornmai.net'
> *Subject:* all hands on deck on efca and wage and hours
>
> Please...in one page or less...try and outline to steve and I what the
> next steps need to be...
> Given our relationships this needs to happen and we need to put this
> money together...
> Nothing else matters
> -----
> Jon Kest
> NY ACORN Head Organizer
> 2-4 Nevins Street
> Brooklyn, NY 11217
> jkest@acornmail.net (* /NEW /*)
> (347) 756-7307 (o)
> (917) 748-9016 (c)

ACORN- Worker Justice Center concept

Systematic violation of labor laws is becoming standard business practice to stay competitive in an increasing number of low-wage industries – for example hotels, restaurants, building services, delivery, trucking, and home-based industries. It is widely believed the decline of labor movement density in these industries is directly related, and many labor leaders increasingly believe the future of the movement in their industry is linked to getting this “unregulated work” under control. However, with a few exceptions, they are not able to do this on their own. Unions are turning to organizations such as worker centers to address workplace standards in non-union sectors of their industries, especially wage and hour law violations. Worker centers generally cannot mount responses to scale with the problems because most are small local nonprofits, isolated and fragile financially. These are limitations ACORN can certainly overcome if we implement a program on wage and hour violations. By doing so we engage with a vital interest of labor movement.

The list of ingredients that allows a tax preparation site to serve as the start of a wage and hour program is relatively simple:

- screening
- lawyers
- community partners (optional)
- union partners (optional)

Wage and hour screening –

The attached screening questions are a generic form that allows a legal team to assess whether a worker is likely to have faced some sort of labor violation. Tax preparers or site operators can look at a combination of responses on the form to know whether or not the worker may need further review to determine whether there may be a case.

Lawyers –

Many ACORN offices have legal services organizations and/or progressive lawyers that they work with. Even if we have not worked with them on workers' issues before, many of these potential legal allies will have materials or programs designed to inform workers and advocates on wage and hours laws, on documenting violations, and on legal remedies for stolen wages. We want to know to what extent the claims coming from tax site screenings these organizations would be most interested in pursuing overlap with the ones we would regard as most strategically important for changing industry practices.

In terms of specific responsibilities, the ideal legal ally would be prepared to conduct trainings for ACORN staff to identify wage and hour violations, potentially conduct rights presentations to workers as well, engage in informal negotiation with employers, and represent workers in state administrative wage complaints. Legal allies should also be prepared to litigate cases that involve issues such as theft of wages, the failure to pay minimum wage and overtime, unpaid waiting time and travel time, illegal deductions, and the misclassification of employees as independent contractors – or if they themselves are not prepared to litigate, to line up lawyers who are.

A good working relationship with a legal ally is the essential ingredient in this worker justice center concept that will require the most care to develop and maintain.

Community partners –

Offices running a worker justice center program could benefit from making arrangements for other community partners to take on the small and non-strategic claims that screenings will uncover, ones we do not want to continue working on and lawyers are reluctant to take. The best candidates for doing this are likely to be the smaller, non-profit worker centers with experience in wage recovery.

The main national network of these organizations is Interfaith Worker Justice (IWJ), about seventeen centers around the country. Beyond IWJ, the only other functioning national network of worker centers appears to be the National Day Labor Organizing Network (NDLON), which focuses specifically on immigrant day labor organizing.

IWJ and NDLON affiliates rarely have membership programs, so if we refer people we should not have to worry about competing membership asks. In contrast, the Restaurant Organizing Committee (ROC), a growing national organization with specialization in workplace justice campaigns in the restaurant industry, is an organization to which we would want to refer people and has a strong membership program. Referring contacts to an organization like this would require advance negotiation regarding membership.

Targeted union partnerships –

Aside from the glaring injustice of work going unpaid, our major reason for wanting to become involved on the issue of wage theft practices is that the labor movement is interested. Reasons the labor movement is interested are described above in the introduction. As we try to build real, ongoing organizing partnerships with unions in cities around the country, our capacity to work on wage and hours issues will play a key role in building relationships with unions.

In Houston and Dallas, for example, SEIU Local 1 believes Fair Labor Standards Act liabilities could be critical to driving down the market share of bad contractors in the cleaning industry. In the Inland Empire of California, we are talking with Change To Win about how wage and hour work may help with organizing warehouse workers, most of whom are employed through temp agencies contracted to third party logistics providers, not the companies whose goods they move.

We want to identify as many opportunities as possible with other unions in other industries, do targeted outreach to bring the right workers in to find wage law violations, and coordinate with the union to pursue remedies. We do not absolutely have to have these partnerships in advance. If we don't then develop them through the course of the work, however, our model probably is not working.

Likely 2009 rollout

ACORN Labor Operations will look to roll out this program to ACORN's Financial Justice Center's and tax sites in January '09. ACORN offices will need to have a relationship with legal allies and should engage with local Unions about the opening of the center for additional resources, or as primary sponsors of the Center.

Texas-

Houston, Dallas- SEIU Local 1 has asked if we can specifically target janitorial contractors for litigation in the Dallas and Houston markets. This will be a contract that can hopefully lead to a recognition, affiliation and shared dues arrangement.

San Antonio and El Paso- These cities are in the service area of our legal allies (Texas Rio Grande Legal Aid) and we hope to see the screening process through the tax site translate into litigation and grant money.

Arizona-

Phoenix- The ongoing partnerships with Unions here and the interest level of SEIU and UFCW to target large numbers of immigrant workers makes this a good fit. This could be a way to target not only Basha's but the whole independent grocery industry. Phoenix ACORN has a high volume of people coming in through their intakes, and getting a large volume of workers seems promising.

New York-

This would be important to compliment the EFCA field canvass tests and is close to national relationships with Labor and lawyers.

California-

offices are well connected and positioned, able and willing to do this kind of work, and are likely to lead to targeted partnerships with labor, SF, LA and Oakland.

San Bernardino- This will be an important component of the Change to Win logistics campaign.

Baltimore-

AFSCME, SEIU, the Teamsters and the UFCW all interested in working with us. A wage and hour center would be good for AFSCME who is targeting contracted city workers, and the other Unions have jurisdictions that are ripe for this.

Seattle-

Has a good combination of quality intake models and labor allies. The fact that the minimum wage is so high there increases the likelihood that employers are susceptible to time and travel suits, or unpaid hours.

Boston- GBLS wants to do wage and hour to ID informal truckers with the Teamsters. Same partnership as created the Childcare association. Mimi has great relationships with labor there.

Next steps:

Grants

- Clean up list of grants
- Make a list of supporter letters
- If there's time adapt the LOI for some grants

-Get Steve Kest engaged after the election in making a contact and LOI submission schedule and sticking to it

Roll out and perfecting the model

-Get consensus from people like Jon and Keith and from head organizers who would potentially be points of contact for relationships with centers (after election, after getting buy-in on other parts of the program)

-Should we do a round of meetings with people like Janice Fine and the SEIU 1877 industry trust fund, NELP, other people we are not working with who have some depth of knowledge on this?

-Conduct meetings that propose starting partnerships based on select referrals from tax sites – Like Interfaith and/or CLC's workers who fit the profile of who the center works with, small non-strategic wage recovery – with the goal of finishing the round of meetings by the time the tax sites are in full swing.

-Begin putting business model to it; pricing for unions etc.

Legal strategy

-Start trying to set up NELP and trial lawyer contacts, assuming at maximum a month timeline until we get the right conversation.

-Have a conversation about the fellowship concept with ACORN and make plan from there.

-If we are trying to make state-by-state partnerships with legal services corporations or committees of the private bar, after NELP, TRLA, and trial lawyer conversations, make state-by-state plans with a five-month goal (meaning shortly after April 15 we anticipate working with whatever we've got).