labor newsletter

National Lawyers Guild National Labor Committee Issue #9 FEBRUARY 1974

THEIR LAW OUR STRUGGLE

In a sweeping and harshly worded decision, a National Labor Relations Board judge accused the Farah Manufacturing Company of Texas of wholesale lawlessness and ordered the company to restore all striking workers to their jobs. He ordered the company to rehire six employees ousted for union activities and to give them back pay for the period since their discharge. He directed that the approximately 2000 workers who went on strike after the dismissals be taken back to work at their old levels of seniority. The order also requires the company to allow the Amalgamated Clothing Workers of America access to the plant and its facilities for the purpose of organizing workers. Finally, it orders the company to pay not only the union's legal costs but the costs of the NLRB as well.

The Farah strikers, most of whom are Mexican-American women, walked off their jobs on May 10, 1972. The major issues were their right to organize, and job security, in addition to wages and working conditions. On January 28, 1974, the NLRB found that the company "engaged in a wide variety of unlawful conduct" and perpetrated "evil" against its workers over the last four years. It should be apparent that the "evil"-not only wholesale trampling on the rights of the workers, but a vicious campaign of terrorism and police brutality--is not merely a blight on the soul of Willie Farah. In fact, most of the conduct that so shocked the judge is carried on fairly routinely, if a bit more subtly, by employers all over.

The NLRB decision against Farah made the front pages of newspapers that never dreamed of publicizing the two-year strike and the national boycott against Farah pants. Yet what could the Board's decision possibly mean if the workers and their supporters all over the country hadn't had the strength to maintain the real struggle against Farah, its retail outlets, local courts and the police. Even now, the company plans to appeal the order to the Federal Court of Appeals, which will tie up the legal machinery for another couple of years. And if they simply ignore the NLRB order, the Board has no power of enforcement short of its own appeal to the Court of Appeals.

It would not be correct to describe the NLRB decision, or other legal remedies, as meaningless. It remains to be seen, however, whether the strikers will get any jobs or money out of it. Farah's policy of ignoring the law was described by the NLRB judge: "This respondent has been repeatedly directed to mend its lawless ways, and yet it continues on as if nothing had happened, pursuing its policy of flouting the Act and trampling on the rights of its employees as if there were no Act, no Board, and no Ten Commandments."

The Farah case, as well as several others reported on in this issue of the Labor Newsletter, bring home once again the gap between law and reality. What meaning workers can derive from labor law exists only insofar as they can use it to their advantage in furtherance of the real struggles on shop floors and in communities.

Victory to the Farah strikers!

THEIR LAW:
coal safety setback

by Edd Taub, San Francisco

"The dispute in this labor case does not involve hourly wages, pension benefits or the like. It involves the life and death of the workers in the most dangerous occupation in America." So says Justice Douglas in his dissenting opinion in the Supreme Court's latest shaft, Gateway Coal Company v. The United Mineworkers of America, Case #72-782. Douglas' dissent points out that the mine involved in this case was classified as "especially hazardous" by the U.S. Bureau of Mines, triggering special inspection procedures. Douglas would have upheld a Court of Appeals decision which allowed the Gateway miners to strike over safety issues instead of arbitrating them. Unfortunately, Douglas' fellow justices felt differently.

The Gateway Coal Company owns and operates a mine in Greene County, Pennsylvania which employs 550 production and maintenance workers. The workers are members of Local 6330 of the United Mineworkers of America. Early on the morning of April 15, 1971, a shuttle car operator noticed that the air flow in his section of the mine was unusually low. He notified his foreman, who checked the flow and found it to be 11,000 cubic feet per minute, substantially less than the normal 28,000 cubic feet per minute. After the miners were evacuated, a collapse in part of the ventilation system which partially blocked the intake airway was discovered. Two days later, an investigation requested by the UMW revealed that the collapse occurred between 4:00 and 4:30 a.m. on the 15th. Yet the records of anemometer checks made by three foremen between 5:00 and 8:00 a.m. showed no reduction in air flow. These foremen had deliberately falsified their reports.

In the face of the determination of the Pennsylvania Department of Environmental Resources to press charges against the foremen, Gateway decided to suspend two of them. Since the third reported the trouble, the company rationalized not removing him. At a meeting on the 18th, the miners voted overwhelmingly not to return to work until the other foreman was suspended. The Company acquiesced.

On May 29, 1973, the Pennsylvania Department of Environmental Resources notified the Company that the foremen would not be decertified and were eligible to return to work. The Company scheduled two to start on June 1 (the third had decided to retire). On June 1, the miners struck to protest the safety hazard created by the presence of these foremen in the mine. The Company offered to arbitrate on June 8. The Union could see nothing about which to arbitrate: these were two potential mass murderers running around making that mine unsafe.

Gateway then brought suit against the UMW in Federal District Court under section 301 of the Taft-Hartley Act, which allows suits between employers and unions, for breach of contract. Gateway claimed the UMW violated a provision of their bargaining agreement, the 1968 National Bituminous Coal Wage Agreement, which compels arbitration to settle all local and district disputes. The Company contended that the arbitration clause applied in this situation, as the presence of these killer foremen was a local issue.

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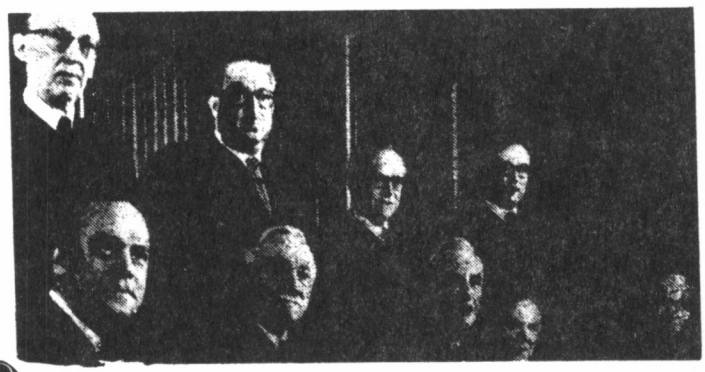

OUR STRUGGLE!

taxi holding action

Information from Steve Seltzer, Taxi Drivers Rank and File, and Richard Levy, N.Y.; written by Debbie Honig, S.F.

On November 26, 1973, a U.S. District Court judge issued a preliminary injunction restraining the New York City Taxi Drivers' Union, Local 3036, from entering into a new contract with the fleet owners, or submitting any issues to arbitration binding on union members, with out membership approval.

For the Rank and File Coalition, the injunction is a victory in the struggle taxi drivers have waged for three years against both their employers and their union leadership who together have decided issues that should have been submitted to membership approval. (See Labor Newsletter #5, June 1973). The last contract, signed in December, 1972, by union president Harry Van Arsdale, (who had power only to call a strike), bound drivers to arbitration on vital wage and benefit related issues. As a result of the arbitrators' decisions, drivers were stuck until November, 1973 with a contract that they never would have ratified, had it been submitted to them as required by the union constitution and by-laws.

Under the contract new drivers got only 43% of the meter (a one percent increase over the rate in effect at the beginning of 1971, despite the sharp rise in the cost of living.), those who had worked 240 days got 49% (no increase over what they got three and one-half years before), and the costs of pension and welfare benefits continued to be divided between employers and drivers. All of these terms had been opposed by the union rank and file.

The following April, the Rank and File Coalition filed suit in Federal Court against the union leadership, charging violations of the Labor Management Reporting and Disclosure Act (Landrum Griffin). (The suit was brought by Guild attorneys Richard Levy and Michael Ratner of New York City, with the assistance of Rutgers law student Vicki Erenstein.) The coalition alleged that union officials had violated members' rights to participate in union business in meetings; that they had fraudulently deprived union members of their right to discuss and vote on submission of wage and benefit provisions to binding arbitration; and that they had violated the union's constitution by failing to present the December, 1972 contract to members for ratification.

The complaint filed in April, 1973, demanded both short- and long-term relief measures. Among these was a demand to have Van Arsdale's contract submitted to the membership for ratification and declared null and void if a majority rejected it.

The Rank and File suit was still pending on November 16, 1973, when the December, 1972 contract expired. Van Arsdale again tried to commit the union to binding arbitration without membership approval. This time, however, the Coalition immediately went to court to block arbitration.

In issuing the preliminary injuction of November 26, 1973, Judge Marvin E. Frankel found that the 1972 contract had not been submitted for ratification,

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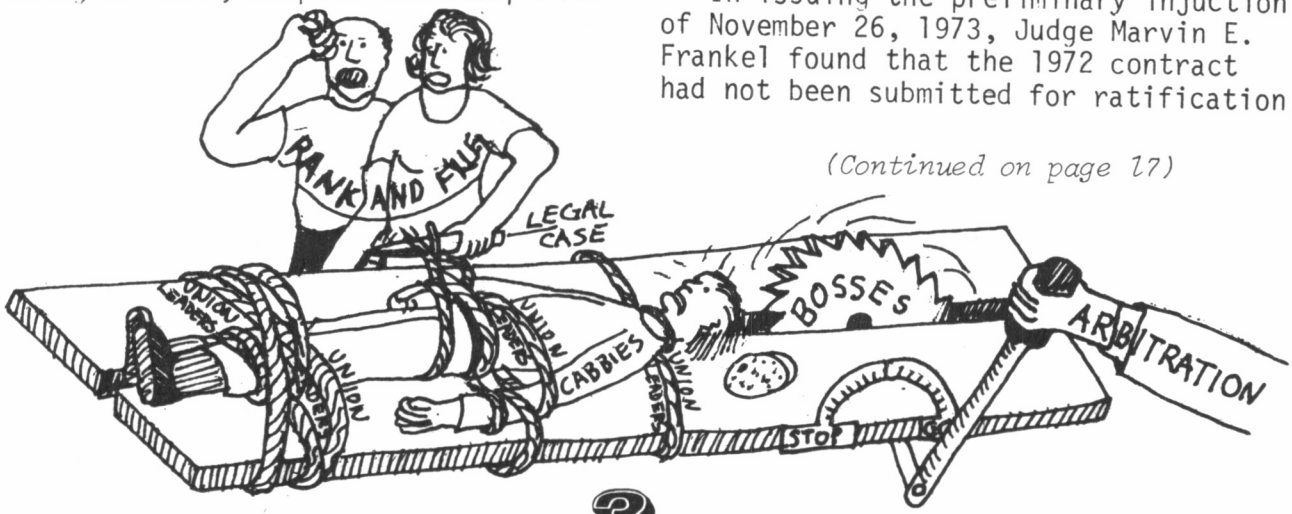

atlanta labor conference

Wini Leeds, San Jose

On March 22, 1974, the National Labor Committee of the Lawyers Guild will present a day-long labor conference in Atlanta in conjunction with the NLG National Executive Board meeting. The primary purpose of the conference is to provide the many Guild members who are involved in practicing labor law, or are interested in becoming involved, an opportunity to engage in political discussion with each other. Working people and organizers are invited to participate in the conference and contribute to the discussion groups that will take place.

At national Guild meetings in the past, labor law workshops have been sandwiched into over-crowded agendas, and we have been progressively more frustrated by the inability to communicate in the context of a two-hour meeting with 150 people present. Further, the people who are involved in labor work represent an incredible diversity not only of political opinion, but of levels of experience and involvement in actual legal cases, in broader working class struggles, in the left movement. As a result, our meetings have been pretty low-level (merely laying out different experiences) or frought with misunderstanding, bewilderment, and unexpressed political tensions.

The hope is that at Atlanta we will be able to discuss some of the political issues that confront us in our work, and to define and begin to debate some of our political differences. The emphasis is on a give-and-take and sharing of experiences, analysis, and information. Many people will be present who will want and need things explained to them. People who express political positions will be asked not to lay down abstract or conclusionary statements without explaining where they come from. We urge everyone to be as open as possible and to contain any impulses to lecture or name-call.

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in this issue:

position papers:

Several Guild members have agreed to write articles and position papers for the conference. Mike Adelman of the Detroit chapter has written a position paper that appears on the following pages. Other papers reflecting different positions should be available in the near future and reproduced for the conference. (People who do not have positions should not be intimidated. The conference is definitely for all of us beginners, a place to start asking questions and sorting through our ideas.)

THE CONFERENCE AGENDA

Three major issues with which we all have to deal sooner or later have been selected as discussion topics, to provide some focus and structure for our talks:

1. Wildcat strikes: to what extent do they advance organizing; are they suicidal or adventuristic.
2. Pros and cons of progressive or revolutionary organizers running for union office and/or attempting to take over their unions.
3. The options available to unorganized workers attempting to organize--bringing in a union, developing independent organizations, affiliating, etc.

Most of us are or will be involved with groups of workers who are making decisions and struggling around the above issues. What should be the nature of our respective relationships with such groups? How do legal people relate their politics to their work?

The conference will begin with a presentation on each of the above issues, utilizing one or more specific experiences to raise some of the questions and contradictions that must be dealt with. Then we will break down into small discussion groups for most of the rest of the day. Our goal is neither to reach firm answers to the questions posed nor and that the union leadership had taken the position that its agreement with the employers about binding arbitration rendered a ratification meeting unnecessary. The court rejected this contention, as day, we will reconvene in a plenary meeting to pull together and share the results of the discussions.

No final decisions have been made as to the exact times and places for the various meetings, except that the labor conference will begin Friday morning and continue throughout the day; nor can we provide concrete information right now about registration, meals, childcare, except to say that they will happen. You will be able to obtain more precise information from any local Guild chapter, the National Office (23 Cornelia St., NY 10014), or the people in Atlanta (NLG, PO Box 937, Atlanta 30303, 404-522-4584).

LABOR IN THE SOUTH

On Friday evening, there will be a presentation on the labor movement in the South which is being prepared by the Atlanta chapter. This will wind up the conference and begin the NEB. We expect that informal discussions of all kinds will continue through the weekend.

national labor committee: a political perspective

Michael Adelman, Detroit

The National Labor Committee was founded in June, 1972 during the NLG Labor Conference held in Detroit, Michigan. Since then, the National Labor Committee (NLC) has undergone intense development. The chief highlight has been the steady growth of the Labor Newsletter, an essential ingredient for the Committee. On a regional and local level, members of the Labor Committee have worked with woodcutters and poultry workers in Mississippi, farmworkers across the country, wildcat strikers and household workers in Detroit. The list is much more extensive. Local labor committees have developed in many chapters and regions and several educational and regional conferences have been held, usually with substantial success.

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perspective

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The upcoming political conference may mark the beginning of a new development for the NLC. Guild members in general, and certainly members of the NLC as well, have too often absorbed their politics from the people they represent. This has led to fad politics, at worst, and solid legal representation (but limited to legal representation) at best. In short, the Guild has too often suffered from the Leninist concept of "tailism".

Fad politics and tailism, in turn, are too often convenient masks. They elevate the role (i.e. form) above substance. It becomes of ultimate importance whether one is a lawyer, organizer, worker, etc. The role defines input. It allows people to avoid political struggle. After all, the lawyer or legal worker who is the "arm of the movement" can say: Arms do not make decisions.

But the lawyer or legal worker does, in fact, hold a great deal of power, because of skill, experience, training, knowledge, resources, etc. This is the very essence of manipulation: To have power without responsibility.

Fad politics, tailism and manipulation allowed Guild members to avoid the making of mutual political demands: i.e. demands on Guild members and demands flowing from Guild members to the groups and individuals they represent and with whom they work. While Guild members may debate political issues, such as the issues outlined and discussed below, by failing to make political demands, they fail to test their own conclusions. The concept of making demands should not be misinterpreted. This concept does not mean that Guild labor committee members should become dogmatic and rigid. It means that they should be willing to enter into political struggle and political debate, that they should be willing to put forth their ideas, that they should be willing to take political leadership when appropriate.

Guild legal people too often refer to themselves as either "stars" or as "worthless". "Stars" do not make demands; they are followed. "Worthless" people do not make demands because they view themselves as inferior. The concept of making demands means that legal people view themselves as no better and no worse than their fellow human beings. They must work together, each bringing their talents, knowledge, discipline to the goal of achieving socialism. In the course of this work, each must make political demands and engage in political struggle.

If mutual demands are made, then it is the political process of exchanging debate which defines political input. The concept of making demands means making demands on others, making demands on one's self, and being open to the demands of others.

The upcoming conference signals the beginning of an attempt to deal with these problems. This is clearly a step forward. While no one believes that these issues will be resolved during a one-day conference, hopefully the alternative political positions will become clear.

POLITICS - PRACTICE v. THEORY, LINE AND PRACTICE.

One of the concepts floating in and around the NLC is that politics flow from practice. This concept is based on the premise that class origin rather than political analysis determines political input. Reality and experience deny this premise. Lenin said: "Without a revolutionary theory there can be no revolutionary movement." (Lenin, Collected Works, Vol. III, p. 380 (What Is To Be Done?))

We are opposed to this conference being inundated by representatives from various political groups, who would be invited on the basis that they have correct politics because of extensive experience and practice. Obviously, there are numerous examples of "heavy" theory and line without practice. This should be rejected. However, practice without the correct political perspective can be counter-productive. For example, the organizing of unorganized is both exciting and difficult work. But, if this work results in no more than new trade unions or enlarged older trade unions, it will have been for nothing.

As to the relationship between theory and practice, Lenin said: "The role of vanguard fighter can be fulfilled only

by a party that is guided by the most advanced theory."

The Russian and Chinese Revolutions represented the merger of theory and practice. More than 25 years of theoretical struggle preceded both. In this country, while lip-service is paid to the concept that racism, sexism, and imperialist wars such as Vietnam are the result of class exploitation, any efforts which seem opposed to these conditions are supported as ends unto themselves. This is true whether the efforts are reformist, trade unionist, legislative or terrorist, and whether they are successful or unsuccessful. Thus, the struggle is seen in anarcho-syndicalist terms: black against white, women against men, workers against bosses.

Theory is not only indispensable for revolution, but it is simply incorrect to say that theory flows from practice. Practice may modify theory, but practice flows from theory. The theory may be subterranean, i.e., unexpressed for conscious or unconscious reasons. But it is there, whether in the form of nationalism, anarcho-syndicalism or liberalism. With each of these theories, exploitation is defined in terms other than by the exploitation of the class as a whole.

Hopefully, the upcoming conference will be a first step in accomplishing at least two goals: (a) rejection of the formulation that theory flows from practice; (b) a commitment to the development of an open, articulated political theory. As to the latter point, only the commitment, not the theory, can emerge from this conference. This commitment means political study, debate and struggle, i.e. the development of the ability to reach an open, articulated theory which will guide future practice.

The rest of this paper is an attempt to deal with the specific issues which are scheduled to be discussed at the conference. In this context, specific resolutions are presented,specific political principles are set forth. This writer realizes these are not necessarily Guild positions.

"WILDCAT" STRIKES

One of the central issues at the upcoming conference is the role of wildcat strikes, i.e. whether they should be supported and, if so, in what manner. During the summer of 1973, members of the NLC provided legal support for wildcat strikes in New Jersey, Chicago, Detroit, and other cities. Since this writer was involved in the Detroit strikes an analysis of those strikes will form the basis of this discussion. In Detroit three "wildcat" strikes, each involving Chrysler plants, took place within a period of less than a month. At least two of the strikes provided definite strengths; all three had basic limitations.

Jefferson Assembly Plant. Two employees, Isaac Shorter and Larry Carter, took control of the generator room of the plant. Approximately 100 other workers surrounded the generator room. The workers' demands were well-defined: removal of an oppressive foreman and no reprisals. The company consented to the workers' demands within 24 hours and in writing. Doug Fraser, UAW Vice President in charge of Chrysler, said Chrysler had made a critical mistake in "appeasing" the workers.

Detroit Forge Plant. The forge strike was essentially a safety strike, initiated by a severe injury and perpetuated by the general low-level health and safety conditions in the plant. The strike and its leadership received strong support from the workers in the plant, and there

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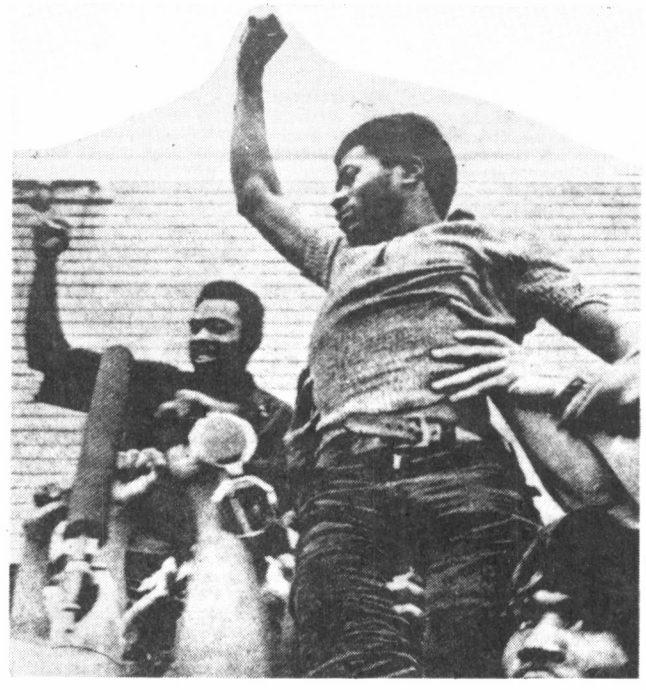

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is some semblence of ongoing struggle. However, the forge strike suffered from a lack of well-defined goals.

Mack Avenue Stamping Plant. This strike occurred on the heels of the Forge strike and became the occasion for the use of UAW goon squads against the strikers. The strike was called by the Workers' Action Movement(WAM) and seems to have been precipitated by the firing of two of WAM's leaders. While the strike touched upon conditions in the plant, such as health and safety, WAM was opportunistic and parasitic in its relationship with the workers. While both the Jefferson Assembly and Forge strikes had communist leaders, only in the Mack Avenue strike was there an announcement that the leadership was "Communist" and "revolutionary". This was the very opening that both Chrysler Corporation and the UAW were looking for.

Other than the reinstatement of the two WAM leaders, the goals of the strike were unclear. After WAM's announcement that the strike was being led by "Communists" and "revolutionaries", over 1000 UAW local union officers and committeemen, armed with baseball bats and clubs, gathered outside of the plant gates to "urge" the workers to return to the plant. On the morning of the second day of the strike, the workers returned to their jobs.

At the present level, wildcat strikes are essentially spontaneous. Thus, there are basic limitations. However, "wildcats" have potential political content far beyond that of an "economic" strike. They can be led by the workers as opposed to the bureaucratic union leadership. In fact, as in each of the Detroit strikes, and most dramatically in the Mack strike, the union leadership is willing to work hand in hand with the company to put the strike down. Wildcat strikes often dramatically illustrate the political partnership between unions and management in this country.

Wildcat strikes clearly should be supported, particularly where they are (a) led by the workers, (b) supported by the workers, and (c) present well-defined goals. These goals should have primary and secondary levels. The primary levels should consist of certain specific demands, e.g., reinstatement, health and safety improvements, no reprisals, etc. The secondary goals should be broader in nature: leaflets and meetings connecting the strike to political issues affecting both the strikers and the class at large: e.g. racism, sexism, imperialism, etc. One definite goal should be the establishment of an ongoing organization to continue the struggle begun during the strike.

The question is asked as to what is the role of the Guild lawyer or legal worker during a wildcat strike. Obviously, there are legal tasks to be performed. During the Forge strike, Guild lawyers struggled for three days to prevent the issuance of an injunction against the strike. This type of work is of extreme importance. However, lawyers and legal workers can participate beyond the level of legal work. They can make political demands, i.e. they can enter into debate and struggle over the goals and tactics of the strike, they can put forth their ideas. This does not mean that every one of their ideas or positions will prevail or should, in fact, prevail. But, the fact of the matter is that they should become involved in the political leadership process. They should not tail after the strike.

Lawyers and legal workers involved in wildcat strikes are involved in these decisions at any rate. The question is whether they are involved in this process openly and in a principled manner, or sub silento. The question, again, is whether they will use their power openly, i.e. dealing directly and honestly with the political issues at hand, or in a manipulative manner. If they choose the latter, the road is open to any number of directions which avoid a class analysis.

TRADE UNIONS and ORGANIZING THE UNORGANIZED

The second and third issues to be discussed at the upcoming conference have been framed along the following lines:

-Should communists and other radicals work with the trade unions, e.g. run for union office?

-Should the unorganized workers be organized into existing trade unions (or

new trade unions)?

The same principles would seem to apply to the answers to both of these issues, and thus they will be discussed together.

A trade union is not a revolutionary organization. In fact, in this country, trade unions, through their political cooperation, function as counter-revolutionary organizations. This was certainly clear in both the Forge and Mack strikes.

However, there is also no question that workers relate to trade unions. In many industries, such as auto and steel, they are legally required to belong to unions. Thus, unions cannot simply be ignored. The concept of running for union office or organizing workers into trade unions should not be seen in a vacuum. If these activities are seen as an end unto themselves, they are incorrect. In and of itself, achieving presidency of a union is meaningless, at least from the point of view of achieving socialism in this society. Given the structure of this society, and the role which trade unions play, the most well-intentioned individual, standing alone, can achieve nothing toward socialism.

These activities, e.g. running for office, organizing the unorganized, only take on revolutionary meaning when the individuals performing them are responsible to a revolutionary organization. Thus, there is a need for a revolutionary party; thus, there is the need for a multi-national, revolutionary, communist party. This is the body to which responsibility must flow.

A party recognizes that political theory is necessary to guide revolutionary activity. Further, it recognizes that those who organize within the trade union structure are in need of (a) guidance in the form of theory and (b) responsibility to the goal of socialism which goes beyond individual commitment.

The party which is needed is neither a revisionist or populist party nor a vague, radical mass coalition. The party which is needed is one in which there is a commitment to struggle and a commitment to Marxist-Leninist principles. This means initially a commitment to political study. Members of the National Labor Committee should become involved in this process.

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Every time we plead and hassle for money, we get some new subscriptions; but far too many people still haven't paid. Moreover, it's beginning to look like the same group of supporters resubscribes or donates every time, and it isn't fair to place the whole burden on them.

So, please consider this a bill! You have to pay it, or else our new accounting system is gonna get you and instead of sending newsletters to 2000 individuals, it will send 20 each to our hundred favorite donors.

Also, we would like to encourage all of you to write up articles or send us information for the Newsletter. We really appreciate all the letters and contributions and support--they are what keeps us going those long nights at the stapling machine. We do write back, sooner or later, so if you haven't heard for months, don't give up.

Let us know if you subscribed and haven't received the Newsletter, which happens occasionally (especially when people move without telling us).

Back issues are growing very scarce. We can no longer send out copies of Numbers 4 and 6 at all.

"WE CAN ALWAYS DO MORE"

Working in Cuba

by Terry Karl

Che Guevara, once Cuba's Minister of Economics, said, "To build communism, a new person must be created simultaneously with the material base." The Cubans have made tremendous changes in their material base--constructing a socialist agricultural and industrial economy from a one-crop colonial economy. In the process, the consciousness of the people has changed. Today, the Cuban people have just completed the largest, most democratic workers' assembly in their history--the Thirteenth Workers Congress. Full discussions of complex economic problems facing the workers were held in every workplace. Each worker was given a booklet of the issues, attended study groups and a local assembly, then elected representatives to the Congress. Fourteen years ago, many of these same people could not read--let alone take part in the decisions that concerned them. During my recent visit to Cuba, I talked to workers and visited some of the major production centers of the country. These people are La Gente Nueva--the new people of Cuba--conscious of how much they have changed and how much they have yet to do.

INSIDE THE TOBACCO FACTORY:

"We work all the time--five full days and half a day Saturday. Volunteer work, too. No conocemos otra posicion," were the first words I heard from the jefe of the Corona tobacco factory. He led me through huge bundles of tobacco fresh from the fields into a small room where several workers separated leaves from the stacks. They washed them down with water, then hung them up to dry. Everyone greeted their director with a smile and some joking.

One of the women points to him, "He's blacker than the tobacco leaves. Could he be the director of a factory in the U.S.?"

The jefe explains that he is head of the administration. Together with the chief of each department, union and party representatives, and representatives from Frente Feminina (the women's section of the trade unions), they form the Council of Direction.

"We are all a family here," he adds. "You will see for yourself. Some of us have been working together for years before our revolution. The tobacco workers in Havana have a history of militancy. Listen, you can hear our reader." A voice comes over the loudspeaker. I recognize the morning news from Granma, one of Cuba's newspapers. "Many years ago we won the right to have someone read to us while we worked. In the past, organizers took advantage of this to read us the works of Jose Marti. Or they would read stories of resistance. Something to plant the idea of struggle in our minds. Years of such political development have paid off. Did you notice our banner outside? We have been awarded Hero of the Moncada for our outstanding work. We are very proud. It is an emulation award, showing we have exceeded our quota of work.

Terry Karl, San Francisco. Terry spent three months in Cuba during late summer and fall of 1973.

But we have to keep struggling. Our revolution is young."

By this time we have reached a huge well-lit room, filled mostly with women. As soon as the reader stops, several of the women begin singing. Others talk to each other, never once slowing down the incredibly fast movement of their hands as they separate tobacco leaves to make Havana cigars. I stop at an older woman's table.

"Our cigars are for export. Western European countries buy them in spite of the blockade against Cuba. Even capitalists can't do without our cigars. We try to produce as much as possible because this helps our balance of payments. We set our own production quotas in our assemblies, which we have once a month.

Almost everyone attends. Here, we have high quotas, because, as you can see, we work very fast."

I move to another area where the wrappers for the cigars are prepared and meet Ramon. "Everyone is in the union here. Many of us go to school in the factory. We have a slogan in Cuba: cada fabrica, una escuela (each factory, a school). Our classes are at night or after work. They are for everyone who wants to learn. We have to raise our cultural level. But here, come with me. You must meet a friend.

He introduces me to the general secretary of the trade union. He teaches biology and chemistry in the factory in addition to his full-time job. "Besides that," adds Ramon, "He has union responsibilities. He has to deal with our gripes. And he is a Party member. Also he has a family." He slapped the older man on the back. "But still you could do more, viejo. You could do more."

I ask a black woman about racism. "For us, it is not a problem. Slaves were brought in by the Spanish and U.S. occupiers. That is how my family got here. Before, I couldn't rent an apartment in Havana. There were special sidewalks for us. And we did the hardest work at the lowest pay. We built all the hotels around here. You see our director. What more can I say? We have all the conditions for equality."

Everyone around me (and by this time there were quite a number of people) laughed when I asked about the right to strike. "Chica, who should we strike against? Ourselves? We own this factory! Every month we have a huge protesta when we have the workers assemblies. We don't need more than that. We gripe to the union, then fix our own complaints. So who needs strikes?"

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Cuba

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TALKING TO THE WOMEN:

One million women are scheduled to make up the production force this year, a greater number than ever before. Through their new jobs, those women will be pushing hard to deal with the historical effects of male chauvinism and machismo in Cuba. Women still bear the primary responsibility for the home and family.

There exists a definite division of labor throughout the society. The women most involved in questioning the role of women in socialist Cuba are working in the factories, transforming themselves and their material base at the same time. They explained to me that the problems of incorporating women into production are both practical and ideological. Cuba is a poor country; it lacks essential services such as laundries, daycare centers, and synthetic ready-made clothing. It will be years before the country can provide many aids for housework. Furthermore, many women think, why should I work? Everything is free now--food, medical care, a place to live, education for my children. Why should I leave my home to go to work. The Women's Federation and the Frente Feminina of the trade unions see raising the capacity, cultural level and aspirations of women as one of the major ongoing tasks. An additional problem, of course, is the resistance of the men.

One day, during lunch at the tobacco factory, I sat in the sun with a group of women workers and talked. Migdalia, a woman of Indian origin, said, "I think the main problems are the circulos, the daycare centers. We need them for everyone, but we don't have the facilities yet. We are still building houses for our people. My mother takes care of my baby, but she is getting old and it is hard for her. I am in the Party, so my husband watches the baby when I go to meetings. He does the shopping, too. But I am lucky. He knows I am happy with my job in the factory. Anyway, he is a revolutionary, and what revolutionary can tell his wife to stay home when the country needs workers?"

Alfreda broke in. "Ay, mi madre. You are lucky. The men still aren't used to the women working. I had to get rid of mine because he complained of it so much." She turned to me with a grin on her face. "Another benefit of our revolution is divorce. It is very easy now since we are guaranteed our economic independence. Who could take care of me before the revolution? If I lost my husband, I would have starved to death. Now we have the choice to live with a man or not. Now we have all possibilities."

"It's not just changes in the home," Nelda said. "You should see what some of us went through when we first started to work. The men had to teach us jobs and they weren't always the best teachers either. Sometimes they made fun of us. They thought we couldn't do the work. So they had to learn to teach, to encourage us without being smug. The Revolution is on our side. Cuba needs more workers desperately. So it is important for the economy that women work. A husband who says no, a man who isn't encouraging, is working against our economy. And who wants to be counterrevolutionary? It is nice for us, no?

AT ONE CONSTRUCTION SITE:

Alamar is a brand new city outside Havana. It will hold 100,000 people when it is completed, a major aid to the housing shortage in Cuba. Construction work is done through microbrigadas formed by workers from every major factory and production unit in the country. Workers on the brigades still remain a part of their original work center and receive the same salary as before. Other workers, left behind in the factories, make up through voluntary work the labor of those who are building houses. When a building is finished in Alamar, all the workers in the factory whose microbrigada did the construction decide who will live in the new home. The homes have electricity, running water, furniture, and even a television. They are free. For many Cubans, accustomed to shacks of grass and mud, this is their first real house.

To be selected for the microbrigadas by fellow-workers is an honor. Some honor, I thought--working 50 hours a week under the hot sun to build a house for somebody else. I spent several days talking to brigadistas from the tobacco and petroleum industry.

"If you could see where our comrades live, you would work hard, too," a man of about 40 told me. "Every day they live in such holes it's a crime. My house isn't too good, but the other companeros have more needs than me. We want to see our friends in the work center happy. Look, here we will have laundries, furniture, water, schools, clinics, daycare centers, a swimming pool...."

"An ice cream parlor and a sports arena," someone called out.

Only one of these men, Enrique, had any previous experience in construction. He explained, "We learned from each other and from practice. It was some process."

Enrique continued, "The microbrigadas were Fidel's idea. They solved the problem of where to get workers to build houses. We couldn't take them from key industries without making up the work. It is a real communist ideal to us. Many

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Cuba

(Continued from page 13)

of us have houses, so we build for others. When you have a home, you know how important it is. It makes us work harder."

In a short time, Enrique became a friend. He is one of La Gente Nueva, the new people of Cuba. He works eleven hours a day, he is director of his site, a member of the Party, father of four children, and a student at a technical school. Like the worker in the tobacco factory, he says, "But still I could do more. We can always do more." I went to say goodbye to him shortly before leaving Cuba. He greeted me with a huge smile and a Havana cigar. In the middle of our conversation we heard some shouting, and we ran outside.

"It is here! The papers are here!"

Everyone was shouting and laughing, hitting each other on the back. Work was forgotten. One man jumped off the bulldozer while it was still moving. Everyone lined up behind a woman waving a white paper. I ran to the line.

"What's going on?"

"It is the paper to go to Viet Nam. We are going to Viet Nam!"

"What for?"

"What for? To build houses! That's what for!"

Enrique explained, "We have a chance to volunteer to build houses in Viet Nam. We can go there for a year, or maybe two, to help reconstruction. Look, everyone is volunteering." He looked very proud.

"But Enrique, you have a housing shortage here. Why would you go to Viet Nam when the workers in your own factory need places to live?"

An old man in line turned around. "Viet Nam fought for all of us. The United States was so busy in Asia, it couldn't invade us again. The Vietnamese have taught us that we are not just working for ourselves. We are working for our children, for their children, for all children. Everything is for the future. We will build houses in Viet Nam because their needs are greater. It is an honor for us. They fought for us."

These same workers, along with all representatives of the Thirteenth Workers Congress have recently pledged one apartment from each new building free to a Chilean refugee family, fleeing from the recent military coup. "A house is very little," I am told over and over. "We will give even our own blood for the people of Viet Nam, for the people of Chile."

THE THIRTEENTH WORKERS CONGRESS:

Every worker in Cuba participated in the Thirteenth Workers Congress. The Congress arose from a 1970 decision to rebuild the trade unions, once felt to be unnecessary in a workers' state. After the failure of the ten million ton sugar harvest, the Communist Party embarked on a program to strengthen all mass organizations in order to increase worker participation and control. "We have to face our problems and the errors we have made in the past. And we must all participate. Anything else is not socialism." These sentiments were expressed to me by workers, administrators, and Party members.

Faced with the continuing task of building a new material base and faced with the different levels of consciousness of its people, the Party and the workers of Cuba have used the Congress to reorganize production, introduce new wage scales, repeal certain laws relating to the economy, reactivate the trade unions, and propose a balance between material and moral incentives, between collective and individual awards. For the first time, workers will be awarded through their paychecks when they exceed the norms of their workplace. They will be financially penalized for absenteeism and underproduction without legitimate reason.

At the center of these changes lay basic assumptions concerning a country's transition from socialism to communism. Reaching communism requires both the communist consciousness of the people and abundant riches created by highly developed productive forces. We are not at that stage, say both the Party and the trade unions. The communist phase is guided by the principle: From each according to one's ability, to each according to one's needs. The socialist phase is guided by the principle: From

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CAUCUS RIGHTS

Story behind the 'New Morning' Decision

Information supplied by Sandy Karp, Denver, compiled by Randy Padgett, San Francisco

It is a well-known fact to those of us who attempt to use the courts to support worker's struggles that the decisions of the NLRB are often not worth the paper they are printed on. A clear example of this is the present situation at the Samsonite plant in Denver. As reported in the last Newsletter (#8), the efforts of the company to prevent distribution of a caucus newsletter led to a decision by the Board that neither the company nor the union could prohibit the distribution of caucus materials in non-work areas. It was held that such a ban violated the workers' Section 7 rights to engage in concerted activity.

The case began when three workers were fired shortly after the second distribution of the caucus newsletter "New Morning". The grounds for the firing of one of the workers was violation of the company/union ban on the distribution of literature, while the others were fired for allegedly falsifying their job applications.

As things now stand, the Board has ordered the reinstatement of the worker fired for distribution of literature, but Samsonite has refused to rehire him, The Board will go to the Tenth Circut Court of Appeals for enforcement, but this could take years.

The fate of the other two workers remains even more doubtful. The NLRB Trial Judge (Examiner) found no violation of the Act after a hearing. The Trial Judge's ruling was due mainly to the slip shod work of the NLRB attorney assigned to represent the workers at the hearing.

The company denied that it knew of the involvement of the workers in the caucus. In NLRBize this is a defense of no animus (if they didn't know then they couldn't fire them for organizing). As it turns out, the FBI "inquired" as to the two workers two weeks before they were fired. At one of their visits , they asked to interview one of the men. It was the FBI that gave the company info of criminal arrests, that was eventually used to show falsification of job applications. As both men had worked for Samsonite for a year falsification is a pretty weak excuse for firing them.

There was no attempt made by the NLRB attorney to call witnesses at the hearing to determine to whom the initial FBI inquiry was made or how much of upper management was really involved in the firings.

The workers have contacted members of the Colorado Labor Committee and with their help are presently trying to have the hearings reopened bring in this evidence. Barring this, the dismissal will be appealed to the Tenth Circut. The three workers are still out of work and the union local is doing its best to have other workers forget the case. While the Samsonite decision will look helpful to caucuses elsewhere, it hasn't furthered the struggle in Samsonite yet. Struggle in the NLRB hearing rooms is secondary to struggle on the shop floor. Workers taken on by both their company and the FBI should not rely on another branch of government (the NLRB) to win their battles for them.

coal

(Continued from page 2)

The District Court agreed, and issued a temporary restraining order, enjoining the strike. The United States Court of Appeals for the Third Circuit reversed and dissolved the injunction. The Court based its decision partly on Section 502 of Taft-Hartley, which says, ". . . ; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment. . . be deemed a strike under this Act." The purpose of 502 was clear enough for the Court to see public policy against compulsory arbitration of safety disputes. The Court also stated that since the contract did not specifically require that questions of safety go to arbitration, the Union could strike.

Unfortunately, the Supreme Court rejected the lower courts' reasoning. They held that ittakes more than a "good faith" belief in imminant danger to support a 502 walkout. There must also be "objective evidence" to suppoet the existance of an abnormally dangerous condition. (Presumably the workers could have walked out when they discovered that the ventilation system was malfunctioning, because that danger was measurable but the walkout over the reinstatement of the supervisor was too remote from the"real"danger. Otherwise, said the Court, any worker who believed his supervisor to be incompetent could walk off the job. The Court concluded that the reasons which caused the Gateway walkout might not have been enough to comply with the 502 requirement of "imminent danger". They also said that the suspension of the foremen settled the 502 question. This is patently absurd, since the walkout which triggered this case did not occur until after the foremen were reinstated.

In addition the Court held that strikes over local issues were not excepted from arbitration under the contract; therefore the miners violated the agreement by going out. Chief Justice Burger stated that under Section 203(d) of Taft-Hartley the purpose of arbitration clauses in contracts is to resolve the unforeseen disagreements which arise after the contract goes into effect, thus avoiding "industrial strife". It must be noted that Burger never considered the question of the time it takes to arbitrate a dispute. While an employer is trying to bullshit his way around the unsafe conditions in his plant or mine, workers could be maimed or killed in an accident. The Supreme Court's unwillingness to see this rather obvious flaw in arbitration is a reminder to the working class that the good justices, in their infinite wisdom, know which class butters their bread.

Thus, the majority opinion, a solid reflection of the Nixon Court, severely limits the legal rights of safety strikers. However, Justice Douglas' dissent suggests a few arguments that could be used in future litigation.

The first is a policy argument based on 30 USC 801, Congress' findings and declaration of purpose for the Federal Coal Mine Health and Safety Act of 1969. 801(a) states "the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource--the miner." 801 (c) declares that "there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the nation's coal mines in order to prevent death and serious harm. . ." Douglas contends that a strict interpretation of this Act would displace the argument that disputes over safety conditions must be arbitrated. Applied to Gateway, Douglas would have held that even if the contract calls for arbitration, the combined effect of this Act and Section 502 of Taft-Hartley precludes arbitration.

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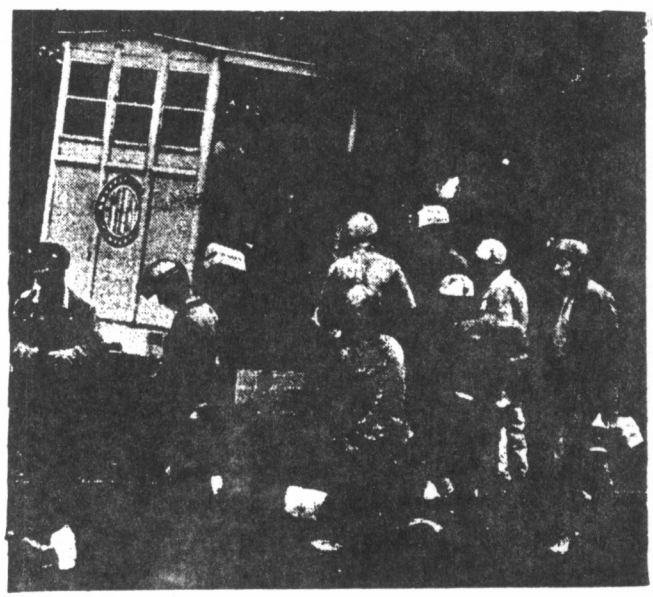


Another possible way of circumventing the Gateway decision involves the Union's Mine Safety Committee, which has the power to remove workers from a mine found to be dangerous. Douglas claims that no-strike provisions do not apply in these situations, meaning that he thinks Mine Safety Committees have the power to close a mine due to safety hazards. If so, a union could declare all its members to be on the committee, allowing any miner who sees or suspects danger to "inspect" on the spot and "evacuate" himself and his fellow workers. One problem with this approach (besides the obvious--that the courts won't buy it) is that even Douglas agrees with the majority interpretation of Section 502--that a "good faith" belief in imminent danger requires some objective corroboration. But it's worth a try, and in light of the Gateway decision, the miners may be willing to try anything.

taxi

(Continued from page 3)

to arrive at political unity. The questions are to serve as concrete bases for open-ended political discussions that hopefully will just the beginning of an educational process. At the end of the well as the union's further argument that a series of "garage meetings" held late in 1972 constituted a valid ratification of the contract. In short, the court held that "none of these consultative activities comprised the union ratification meeting called for by the union's constitution."

The injunction that resulted from these findingsis precedent setting not only in that it requires rank and file approval of a new contract and of submission of critical issues to binding arbitration, but also in that it ordered the union and its officers to conduct a meeting to discuss and vote on ratification under conditions set forth by the court. These conditions are:

1. Fifteen days' advance notice to be posted in all garages, with a summary of all proposed contract changes or proposals to submit items to binding arbitration;
2. Meetings open only to union members covered by the proposed contract (no owner-drivers), with a Rank and File Coalition member permitted to observe and ascertain that only members in good standing are admitted;
3. Open discussion, two hours or longer, to be permitted with an open microphone available alternatively to pro and con speakers ;
4. Votes are to be taken and counted, a Coalition member observing the counting and
5. Removal form the meeting of any person attempting to incite violence.

At present the injunction has not been appealed by the union officials, nor has it been made final. Negotiations over a new contract are progressing slowly, partly because an increase in driver benefits will have to come out of owners' profits, rather than out of the public through a fare increase, and partly because the court order has limited the tactics Van Arsdale has used in the past.

In this situation, it's clear that the injunction issued last November represents at best a holding action instead of a permanent gain. Rank and File's long range task is to build a strong following among the union membership. They want to challenge those leaders who sell out at every opportunity in next November's elections for the Union's Executive Committe and Presidency. But in the short run, it can only continue to apply pressure through the courts and through members who support the Coalition to prevent Van Arsdale from slipping through another bad contract.

NEW YORK

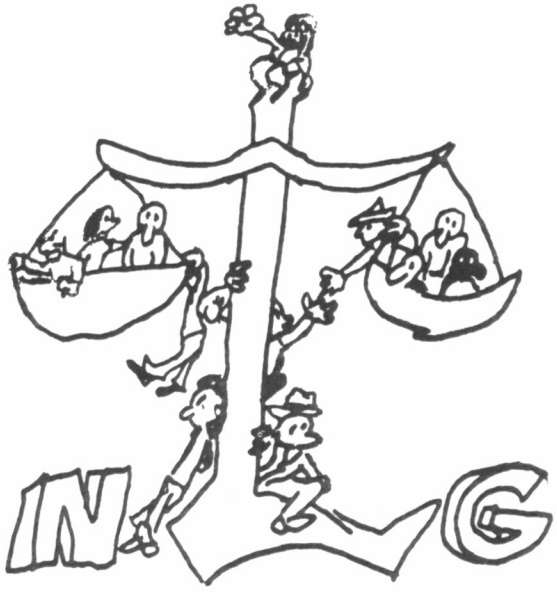
Dorothy Shtob, New York City

The Labor Project of the New York Chapter was organized in the fall of 1972 because of the requests that were being made for help in rank and file organizing and for classes on various aspects of labor law for rank and file groups. People from a number of groups met with legal people from the Guild to work out the kind of material workers wanted to study. These classes were organized and attended by about 25 rank and file workers and taught by a group of lawyers. It was felt by everyone that it was a successful beginning in bringing together Guild people and workers from a number of industries who needed a background in labor history and a fund of information on labor law for their work.

Following these classes, there were requests for specific help in communication, taxi, longshore, etc., in dealing with day to day problems faced by workers. The small group of experienced lawyers could not continue to give the kind of detailed, on-going assistance that was needed nor provide the close relationship which was most helpful to the workers.

In addition, it was felt that the work was becoming increasingly important and should involve younger lawyers and law students, very few of whom had any background or experience in the labor movement.

Another series of classes was organized and involved workers from taxi, maritime, telephone, office workers and a few community organizers. These classes also included some of the law students from the project and was taught by labor lawyers and a few specialists in immigration law, Title VII and health and safety. These classes were not as successful as the previous series because it was felt at the evaluation that the combination of workers, students and lawyers made it much more difficult for the rank and file workers to participate, feel at home and freely discuss their problems.



At a subsequent discussion in the project, it was agreed that while classes were needed by everyone, the next group of classes would be organized for workers who requested them--with a totally different kind of approach to the needs of the students and lawyers new to this work.

At the present time, our project includes four experienced labor lawyers who are involved in most aspects of the work, a few other lawyers who can be called on for help in specific cases, and about 15 law students in varying degrees of participation. We have been beginning to develop a structure of groups of law students who have on-going relationships with rank and file groups, such as in longshore. This group meets regularly with the rank and file group and at a recent project meeting gave a report on the history of the longshoremen's union, the development of rank and file struggles in New York and some the current issues of the rank and file caucus. Present at the meeting were four members of the rank and file longshore group who filled in with additional background, anecdotes, explained the complex problems faced by longshoremen today, answered questions and provided beer for the whole project.

We met with a group of the Taxi Rank and File to discuss the new move of the rank and file coalition to block upcoming arbitration of their contract in Federal Court. The rank and file coalition and their legal help--two lawyers and a law student--won an injunction

chapter reports

which blocked any contract or agreement to arbitrate unless it was approved by the membership at a special general membership meeting. The judge also ordered the union officers to follow certain procedures to guarantee that the meeting would be a democratic one.

At that meeting, we also spent time talking about the history of the attempts to organize taxi workers in New York, the history of the present rank and file coalition, how it operated, special problems of the industry and workers, etc. At our next meeting, we hope to get another group of project members who will begin the same kind of relationship with these workers as has been achieved in longshore. We are attempting to build this kind of structure for two reasons: the workers feel this is the kind of assistance and relationship they need, and the law students can get a better understanding of the labor movement and experience in handling specific cases.

We hope to be able to get together groups of project members to relate to the Sunset Coalition--a group of community organizers in an industrial section of Brooklyn--to phone workers and others who have requested education in labor law, and help in their day to day work.

PEOPLE THIS ISSUE:

Mike Friedman, Sharon Gold, Barbara Hanfling, Debbie Honig, Wini Leeds, Randy Padgett, Edd Taub, Laura Uddenberg, Kathy Weremiuk, and Geoff White

COLORADO

Sandy Karp, Denver

After a long period of investigation by the members of the Guild Chapter in Denver and Boulder, the Labor Committee has begun to function. The investigation involved contacting organizers, activists and legal people to find the areas in which the needed assistance, and analyzing the resources in the area and determining what the role of the Committee should be. A meeting was then held to determine what should be undertaken first.

Because of the lack of experience of most Guild people in Labor work, it was felt that a priority should be education, both for Guild people and for organizers. We began a newsletter, the forst issue came out on January 2and. We also saw the necessity for education around people's immediate needs. In order to see what the feelings of people would be and what degree of participation would be forth coming, a single day seminar on work people's compensation and unemployment was scheduled. This seminar will be directed towards both Guild people and organizers and will be held in mid-February. It will be on a basic level, and if things go well a more extensive program may begin on other topics. Hopefully this could somehow be tied into the Rocky Mountain Free Law School in order to rely on their expertise.

The first newsletter and the proposed seminar have generated a great deal of enthusiasm. Hopefully the Labor Committee will expand from it present size of 4-5 members, and grow to include people from other areas of the state.

SENIORITY

COMPENSATION FROM

by David Rosenfeld, San Francisco

Perhaps the most divisive force in the American labor movement is the struggle among workers for scarce jobs. As working people organized and the bosses were deprived of the unilateral power to control organized work places, employers developed new techniques or refined old ones of pitting worker against worker. Bosses have always manipulated racial, ethnic and sexual differences to destroy working class solidarity. Although the seniority system is a condition imposed upon management by organized workers, the bosses have managed to use it to pit white worker against black worker against female worker in the scramble for good jobs.

This article discusses the use of seniority to divide workers. Its thesis is that the destruction of the discriminatory aspects of current seniority systems can reduce racism and sexism by opening up jobs and promotions to blacks and women. It may however fan sexism and racism if the reforms simply take jobs and job security from older white male workers rather than penalizing the real culprits-- the bosses who discriminated years ago by hiring only white males. To attack the seniority system without a sensativity to the fact that older white workers are dependant on their jobs is play into managements clever game of manipulation.

WHY SENIORITY?

There is some reason to have a rational process of determining who gets what jobs. This limits arbitrary control by the boss or the union. At one extreme, the boss has total power over hiring and firing and all other decisions with respect to job tenure. (This is the common state of affairs in unorganized workplaces.) In other instances, workers can exercise significant control over the workplace, for example, by enforcing a collective bargaining agreement that may permit discharge for certain limited causes, and require that other cases be arbitrated.

Once the initial hurdle of qualifications needed to work is defined, the system of job allocation depends upon other non-job related qualities: union membership, favoritism or age. Seniority, which is defined as length in service in a particular work group, has been by far the most common means of job allocation in unionized shops. Seniority systems vary, and may depend on length of service in a particular plant, a department in a plant, a single job classification, a multi-plant unit, or an entire industry. Several different seniority systems may operate within a given plant. Seniority systems determine not only who possesses the right to retain a job if an economic reduction in force occurs, but also often determine who may bid on a better job, who gets promoted, the basic wage paid, other fringe benefits, and pension rights. The legal issues that emerge from disputes over seniority--especially in situations involving layoff, bumping and recall rights; plant closings and plant mergers; and changes in seniority systems--are extremely complex.

One example of the discriminatory use of seniority systems became the basis of a federal court decision in United States v. N.L. Industries,479 Fed. 2d 354 (8th Cir. 1973) (the legal implications of this case discussed below). In this instance, the union and the company had agreed upon a dual system of seniority: departmental and plantwide. There were 6 departments, in each of which a person acquired seniority. When a vacancy occurred in a department, bidding was based on seniority in that department first. Certain departments included higher paying positions and preferable work so that there was competit-

AND RACISM

BOSSES OR WORKERS?

ion to break into these departments. If no one bid on a job form within the department, workers from the other departments would bid on the job. The person with the highest plant-wide seniority would receive the job.

Seniority in the new department was departmental only; there was no transferring of seniority from department A to department B. If a reduction in force occurred, the new transferee lost his or her job. He/she could then transfer back into the previous department only if a vacancy occurred there. If a job opened up in the old department, the transferee could bid from his/her vacant position asserting total departmental seniority.

This system drastically limited interdepartmental transfers because few workers were willing to risk job loss by bidding on jobs in other departments. Typically, at N.L. Industries, blacks were hired into the department where the work was hardest, conditions were poorest, and pay was lowest. Even after the company changed its discriminatory hiring practices, blacks who had been hired earlier were frozen into the worst jobs by the seniority system which penalized and restricted transfers.

Generally speaking, the broader a seniority unit, the more mobility there is for workers in the plant as a whole, and the less security there is for workers in a particular department or job classification. Those who seek to narrow a seniority unit do so for selfish reasons: to protect their jobs from those who are outside the unit but who may have more seniority.

SENIORITY AND THE COURTS

The courts have dealt with four types of seniority problems. The first is where the union and the company alter a seniority system from one collective bargaining agreement to another. Here there are virtually no restrictions. See Ford Motor Company v. Huffman, 345 U.S. 330 (1963), but see Ratana v. Elevator Operators Union, 453 Fed.2d 1018 (9th Cir. 1972). Since seniority is not a vested right but a contractual obligation, the expiration of the collective bargaining agreement ends the duties of the employer to observe it. To be sure, there is little impetus to change long standing systems, but it is not illegal or impossible. For instance, where rank and file dissidents are low in the seniority system (often because of youth), struggles may erupt to reduce the impact of seniority provisions.

The second circumstance arises where one worker claims that the seniority system has been incorrectly applied. The union may press this claim on behalf of the worker, or it may agree with the interpretation that the boss has made.

The third and most difficult problem arises when two companies merge, reducing the workforce. Where separate unions represent the employees, jurisdictional disputes may develop. Where the same union represents all the employees involved, it faces the difficult political decision of determining which workers keep their jobs. Even where there is no reduction in force, it is still difficult to determine seniority in the merged plant.

In circumstances where a smaller unit merges with a larger one, a majority vote of the workers involved usually will result in end-tailing the seniority systems. That is, members of the smaller unit start below the last person in the larger unit for seniority purposes. This has occurred frequently in Teamster units in the over-the-road trucking industry. Another system is dovetailing, whereby the units merged and each employee retains the seniority earned in the old unit. The courts have ruled that end-

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SENIORITY

(Continued from page 21)

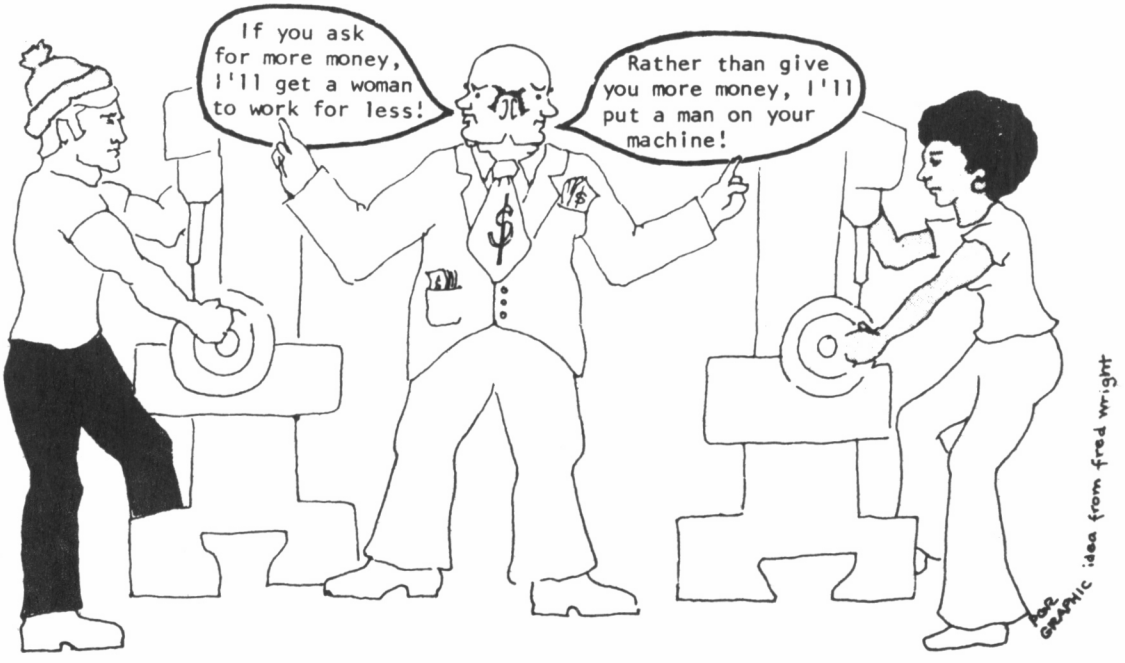
tailing or dovetailing are permissible in appropriate circumstances. See Humphrey v. Moore, 375 U.S. 335 (1964).

Since 1964, the courts have dealt with a fourth type of seniority problem: suits brought to eliminate seniority systems which use race or sex as a means of allocating jobs or suits brought to alleviate the results of such past discrimination. Such suits have been brought under the equal protection clause and Title VII of the 1964 civil rights act. The result of such court actions has been mixed. On the one hand, they have helped reduce racist and sexist hiring practices, and thus tended toward the long-run elimination of divisions among workers. In the short run, however, compensatory measures designed by the courts have often penalized other workers rather than the bosses who created and fostered the discrimination.

Under Title VII law, only a "compelling business necessity" justifies a discriminatory system, and rarely will seniority systems meet that test. Head v. Timken Roller Bearing Co., 486 F3d.2d 870 (6th Cir. 1973). The more difficult problem, legally and politically, is with respect to the appropriate remedy. The issue is to what extent will the remedy be compensatory and simultaneously deprive white workers or male workers of seniority and job security which they have earned. Although the job security has been accrued at the expense of the discriminatee, the radical legal person must seek to develop a remedy which does not deprive other workers of seniority, security or pay, but rather forces the boss to pay for the discrimination. After all, it was the boss who created and benefitted from the discrimination to begin with.

One of the most representative cases is United States v. N.L. Industries, 479 Fed.2d 354 (8th Cir. 1973). It arose from the seniority system described above. At this company, blacks had been hired exclusively in the Labor department until 1962, when blacks were permitted to enter any department. However, this left a whole generation of black workers previously hired in the Labor department frozen in a discriminated class because none would bid out of the department for fear of risking loss of job security. Those who remained were afraid to transfer, and those who did transfer were deprived of accrued seniority.

The court in this case considered the alternatives that had been advanced in Local 189, Paperworkers v. United States, 416 Fed. 2d 980 (5th Cir. 1969), cert.



denied, 397 U.S. 919 (1970). A complete purge of the discrimination would put black workers into positions held by white workers who held jobs that, but for the discrimination, blacks with greater plant-wide seniority would be entitled to. At the other extreme, the employer would only be required to end explicit racial discrimination at the point of hiring. This would leave those hired previously without a remedy. The third alternative is to compromise, ending departmental seniority and permitting anyone to bid on jobs on the basis of plantwide seniority from that day forward.

In the N.L. Industries case, a modified form of the last alternative was adopted. The employees who had been discriminated against were to be permitted to bid on jobs in other departments based on their plantwide seniority. This gave them priority over white workers in the more favored departments who had less plant seniority. With respect to the Labor department, departmental seniority was virtually abolished. Members of the Labor department who had previously transferred were ordered restored to their previous seniority status (that is, they received credit in the new department for time spent in the Labor department). No bumping of whites was permitted.

In a landmark case of United States v. Detroit Edison, 6 FEP Cases 612 (E.D. Mich. 1973), the court ordered a broader remedy. In addition to abolishing departmental seniority for the affected class, the defendant employer was forced to pay back wages from the date of the inception of the Civil Rights Act, July 2, 1965. The amount of back wages was to be calculated on the basis of what would have been earned by black workers had they not been discriminated against. In addition, the company and the union were ordered to pay punitive damages. The advantage of these remedies is that they did not operate against the interests of the other workers.

LIMITATIONS OF COURT REMEDIES

There are no remedies for workers who, prior to the act were not hired for discriminatory reasons. Because seniority systems offer real benefits to workers who remain on jobs for a long time, older white male workers who took jobs in industries that practiced discrimination in the past, do enjoy the benefits of that discrimination, greater benefits than older black men and women enjoy.

Furthermore, changes in hiring practices in the last ten years to give blacks and women access to better jobs can be undercut easily by hard times and "non-discriminatory" seniority clauses. Seniority decisions do not give much protection when the last hired are the first let go, and those let go are blacks and women. In the auto industry, which has seen massive lay-offs, most women have been let go and blacks are less secure in their jobs by having less tenure.

Two recent suits in the Northern District of California challenge these concepts. In Bryant v. California Brewers Association, C-73-1866 LHB, plaintiff claims that a provision in the contract granting permanent status only to those employees who work 45 weeks in any one year is discriminatory. The employers have used this clause to prevent workers from obtaining permanent status, thereby vastly reducing their benefits.

In the case of Jones v. Pacific Intermountain Express, C-73-RHS, plaintiffs challenge two provisions. First, they challenged discrimination between the over-the-road drivers and the local pick-up and delivery drivers. But more important, plaintiffs challenged the fact that if an economic reduction in force occurs because of the energy crisis and other adverse economic conditions, those who will be fired and laid off are the Third World people most recently hired.

graphic from lincoln gazette

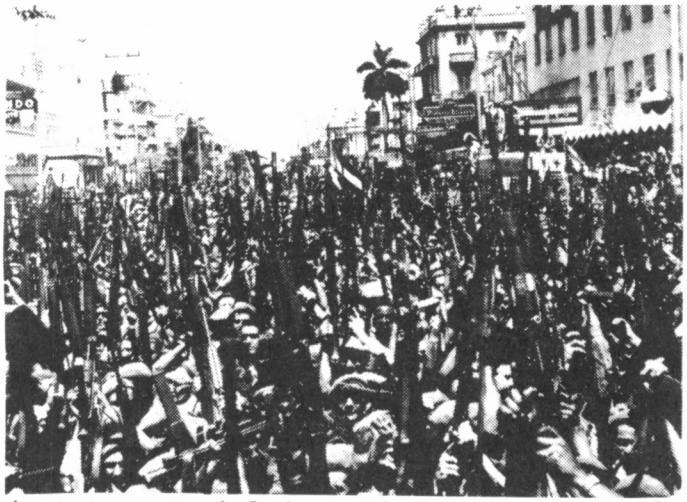
Cuba

(Continued from page 14)

each according to one's ability, to each according to one's work. Workers agree that the great majority of Cubans are not prepared to live under communism.

Hilda works in a refrigerator factory. She told me: "For one thing, we just aren't rich enough. We still have to decide who gets a new home, or a refrigerator, or access to a childcare center. There still isn't enough for everyone. And when there is enough to go around, look what happens. The Government decided to distribute water free. Well, everyone just stopped turning off their faucets. None of the leaks were fixed. After all, it is free, verdad? Well, of course it is not free. Our work provides the water and now we are squandering a precious, precious resource. We're an island, but we don't have enough water. So now, maybe we will start paying for it again.

"You know, there are some who understand the new values. You can see them in every factory. Generally, they are our leaders. They conserve water because they understand it comes from our work. They renounce overtime pay. They do volunteer work to build schools. They sacrifice. But many of us don't. We are too lazy. Or perhaps we have too much of the old society in us. Che once told us, those who know to sacrifice must become leaders. Those who don't should be subject to material incentives and the moral pressures of society. Until we all change, or our children change. It is a process. We still have much to do."



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The day before I left Cuba, I returned to say goodbye to friends in the tobacco factory. We sang, hugged, and drank at the end of the day. When we said goodbye, the jefe took my arm and said, "Once the rebel army was small, but now it is our whole nation. Like you in the United States. You are small, but soon, you will be united. And finally, even though it may take years, it is always the same--the liberation and happiness of the workers will be reached.

"We are fighting your government, but not your people. Our revolution is yours, too. All of us are children of America. And one day, the South, the Center, and the North of our America will be one."

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