



Mapping the Future: Cross-Border Unionizing Strategies

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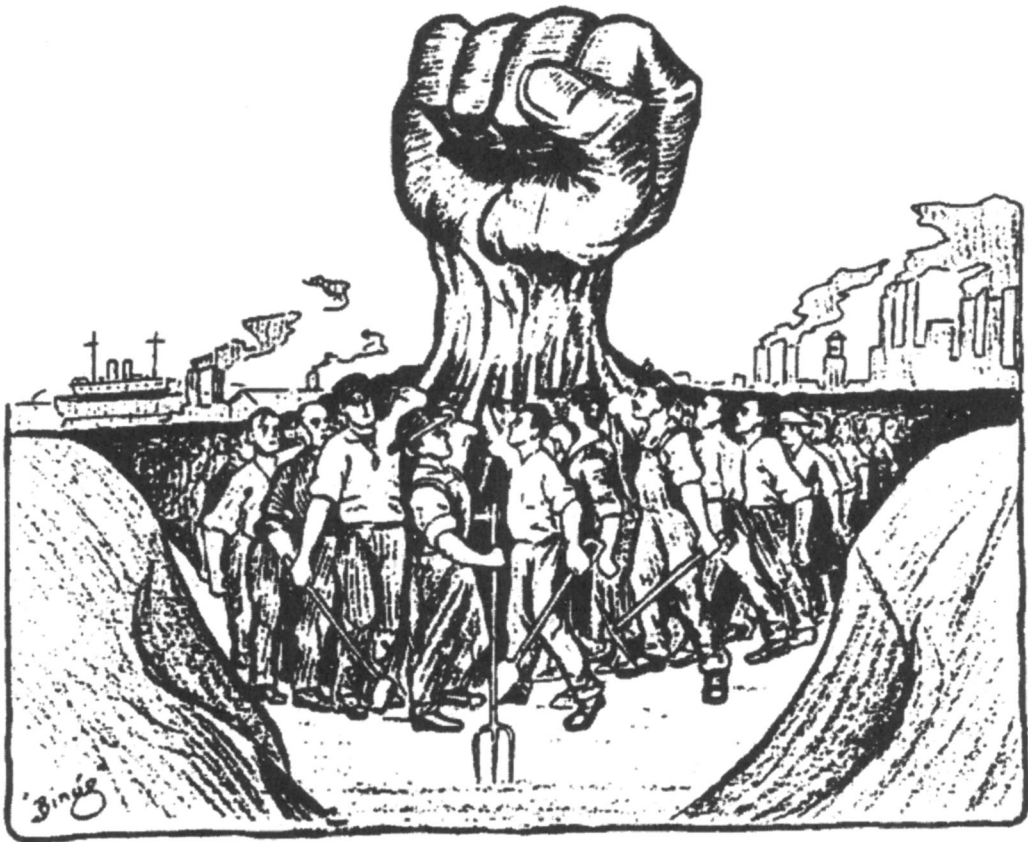
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International Workers of the World, 1917.



MAPPING THE FUTURE

Cross-Border Unionizing Strategies

*Meet me at the bottom, don't lag behind
Bring me my boots and shoes
You can hang back or fight your best on the frontline
Sing a little bit of these workingman's blues*

— Bob Dylan, “Workingman’s Blues #2”

INTRODUCTION

IT HAS BECOME AXIOMATIC IN THE LABOR MOVEMENT that global responses are necessary if unions are to rebound and prosper.

Fueled by private equity barons who “buy it, strip it, and flip it,” a system of global labor arbitrage, in which labor speculators skip from country to country seeking a workforce to work at a lower price, is intensifying pressure on those who labor.¹ In response to corporate and governmental aversion to unions, union leaders throughout the world have embarked on a number of creative cross-border initiatives in

an attempt to increase their bargaining power. These efforts can be divided into three major areas: changes in the organizational structure of unions and their federations; comprehensive global campaigns in support of organizing and bargaining objectives; and legal efforts that include cross-border litigation and use of international and treaty law.²

STRUCTURAL RESPONSES

UNION BODIES HAVE ENGAGED IN FORMS OF cross-border relations for many years. Left-wing unions have communicated and col-

laborated with the political parties or groups with which they were associated. Right-wing unionists, including the previous administration of the AFL-CIO, pursued joint international initiatives financially sponsored by the American foreign policy apparatus.³ Such international joint work was an active tool in the capitalist fight against communism. However, when political solidarity on the left or on the right did not underlie cross-border work, international union relations seemed simply an excuse to provide perquisites for unions leaders, revolving around “hotels and resorts.” As Larry Cohen, president of the Communication Workers of America (CWA) recently noted, “For a hundred years, too much has been about sending leaders to meet and dine together.”⁴

The world wide union movement is acutely aware of the need to change this paradigm and to create structures of organization, nationally and internationally, that are responsive to the globalized political and economic forces workers face today. Two trends can be identified. The first is increased attention to umbrella organizations of national unions, Global Union Federations (GUFs). In the past, many have seen GUFs as too clunky, large, and passive to be useful. However, some change can be discerned. In November 2006, the International Confederation of Free Trade Unions, historically the largest GUF, merged with a smaller Christian world federation of unions and several independent federations, such as the CGT of France, to form the International Trade Union Confederation (ITUC). The establishment of the ITUC was seen as crucial by some within the mainstream labor movement.

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federations and individual unions in the service and technical sectors came together to form the Union Network International (UNI). At their formative meeting in Chicago, more

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than 1,000 leaders of service and technology unions, coming from over 140 countries, met under the banner of “Global companies require global organizing, global unions.” Presently, UNI is composed of 900 national unions representing over 15 million members in the service industries. While it is too early to know if GUFs can be a breakthrough for labor, some unions are finding their structure useful. The Service Employees International Union (SEIU) has been especially active in UNI’s Property Services Division, seeing it as an outlet through which creative approaches to this globalized industry can be attempted and analyzed. The delicate relationship between global and local activity is front and center. National labor unions, which receive support from UNI to organize in this sector, are given great leeway to adapt strategies to their local conditions. At the same time, through UNI, the SEIU is attempting to convince multinational cleaning companies to agree to global framework agreements that would guide collective bargaining agreements in the countries in which they operate throughout the world. However, those involved with GUFs realize the difficulty of their task,

including that of communicating their message. As Ron Oswald, general secretary of a GUF, the International Union of Foodworkers (IUF), said, "I'm not sure any worker or employer knows there's a global union. It's a brand, not a reality. International companies are clearly a reality. International unions have yet to become so."⁵

The second trend is the consideration, by national unions, of international mergers. In many countries, such as the United States, economic necessity has long forced mergers of national unions. While such efforts at international combination have been ineffectual, there

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is hope for the future. Recently, the United Steelworkers of America (USW) has been in serious exploratory conversations with UNITE, the largest trade union in the United Kingdom,

about some form of united structure. However, structural change in the labor movement is not easy. Reformers have many obstacles to surmount. First, with the decline in membership has come financial pressures on unions. Costs of transportation and technology for unions engaging in global efforts are not insubstantial. When considering new forms of relationships among unions, the question of paying for the costs of merger or a new set of fees to a GUF entails difficult decisions for a national union that is suffering financially from losses in dues paying members. Second, mergers of unions carry personal questions for the union leaders

involved. Fewer unions means a smaller pool of slots for officers. Few union officers want to or physically can return to their old pre-union jobs, and opportunities outside the labor movement are often meager. Thus, mergers in the American labor movement often revolve around the resolution of the job or pension status of the officers of the smaller union. Third, due to their different national cultures, labor histories, and bargaining structures, joint work among unions from different nations is often complex. National differences produce different cultures and different necessities that make such work and cooperation problematic. For example, in Scandinavia bargaining is highly centralized, yet in Japan there are more than 30,000 unions and joint bargaining is rare. Policing contractual rights is paramount for unions in the U.S., but

much less important in the U.K. Thus, "strategies that are crucial in one country may be worse than useless in another."⁶ In the face of this reality, benefits of cross-border mergers are

often hard to articulate. Fortunately, language, transportation, and communication barriers are becoming less confining. Ethnic and religious pluralism throughout the world is lessening divisions among workers.

Finally, especially in the U.S., unions can count on national legal structures to cause difficulty for true integration. Labor law, including the financial and procedural requirements which occupy much union staff time, is profoundly national. No accommodation is present today for true international unions. While no template exists for the organizational structure of truly international unions, unions are only now actively considering this issue, though corporate and non-governmental entities have wrestled with similar questions for some time. However, the National Labor Relations Board (NLRB) and the U.S. Department of Labor displayed a Machiavellian creativity in the recent torrent of anti-union and anti-worker decisions. This dynamic will surely resurface to erect legal roadblocks to international worker solidarity in any true global union consolidation. This mix of financial, personal, and legal impediments make a quick resolution to structural dilemmas unlikely. Unions, however, will con-

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tinue to restructure themselves and their federations to attempt to better respond to global capital. There really is no other choice. (In this issue of *New Labor Forum*, see Ruth

Needleman's "The Steelworkers Union Goes Global").

STRATEGIC GLOBAL COMPREHENSIVE CAMPAIGNS

WHILE UNIONS HAVE ENGAGED IN CROSS-BORDER collective bargaining solidarity for decades, the nature of this work is changing and becoming more focused, strategic, and substantial. Cadres of union activists and attorneys are studying international law and corporate finance in order to devise strategies to resolve the obstacles they confront. Worldwide practices of companies are being challenged in federal courts.⁷ National borders no longer have the limiting force they once had. The SEIU has recently sent Polish-American organizers to Poland as part of a multinational security industry unionizing campaign and now has more than a dozen organizers based outside of the United States. Although cross-border activity in support of collective bargaining campaigns at unionized facilities occurred for some time, campaigns supporting new organizing at targeted globalized companies have just begun to take off.⁸

While the efforts that constitute comprehensive campaigns are mature strategies now refined for the present situation, unions' relations with the human rights movement, both in theory and in practice, is a significant new direction. Practically, learning from the tactics of human rights activists around the world, unions are incorporating the "name, blame, and shame" strategy of human rights advocates as a tool to highlight labor injustices and to support organizing. The "Clean Clothes Campaign" has targeted the 2008 Olympics in China as a means of improving

worker and union rights in the worldwide apparel industry. Clothes made in eco-minded plants are increasingly called “green clothes” effectively merging the popular environmental movement with workers’ concerns.⁹

Consider the campaign of the SEIU to organize security workers in the United States and around the globe. The union, collaborating through UNI, formed “The Alliance for Justice at Group 4 Securicor.” With nearly a half a million employees in more than a hundred countries, Group 4 Securicor is the world’s largest security provider. A sophisticated website built by this alliance describes the purpose of the campaign as to “bring together G4S workers and their unions from across the globe to win a better future for security workers.”¹⁰ With graphic examples of mistreatment of its employees shrewdly portrayed in various media outlets, especially in developing countries, the media has reported that the Alliance has put the company on the defensive.¹¹

Yet if these international efforts are successful, what does success look like? High on the theoretical agenda today is developing global collective bargaining agreements with employers. Yet, today, the only true success has been an agreement between a GUF, the International Transport Workers Federation, and global shipping groups, covering cargo ship crews on “flag of convenience” (FOC) ships.¹² This GUF now negotiates with a global employers’ federation, the International Maritime Employers’ Committee, over pay scales for seafarers on FOC ships, setting a pattern for most of the global seafaring workforce, in developed and developing countries alike. A lesser form

of agreement guaranteeing basic labor rights, one resembling codes of conduct, has proven to be a transitional strategy. Over fifty international employers, beginning in 1988 with the French food company Danone, have signed

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such agreements. More than corporate codes of conduct pioneered by human rights activists, these agreements are negotiated with employers by unions and include some measure of future participation by unions in corporate governance. However, enforceability of these codes has been spotty, especially in the United States and in the developing world, the locations in which the provisions of these agreements are most likely to be ignored by employers. UNI and the SEIU are attempting to respond to these weaknesses in their framework agreements in the property services sector. Their redrafted agreements reference conventions of the International Labor Organization (ILO), American-style access requirements and procedural rights, European-style labor and management consultation, and room for local

creativity and freedom. As with American collective bargaining agreements, however, without strong enforcement mechanisms even global contractual rights carry little weight.¹³ Much work needs to be done in this area.

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Finally, in any overview of cross-border union work, China cannot be ignored. According to a recent article in the *Wall Street Journal*, the work and advice of SEIU President Andy Stern was instrumental in the successful organization of the employees of Wal-Mart in China by the All-China Federation of Trade Unions (ACFTU).¹⁴ Much press was given to China's recent overhaul of employment regulations, which would move labor relations in China closer to the collective bargaining model. Given the importance of the Chinese economy and the reported ferment within the Chinese working-class, true collaboration between the ACFTU (which claims a membership of 150,000,000), GUFs, and other national unions could have positive short- and long-term re-

sults for the worldwide labor movement. It could bring together Western labor with the labor movement in fast growing China, while giving other unions a basis upon which to initiate discussions with Chinese companies beginning to operate in their countries.

However, while some national unions maintain fraternal relations with the ACFTU, there is much resistance to work with the ACFTU, especially in certain sectors of the American labor movement. Collective bargaining is little developed in China and the role of the ACFTU seems to be getting production to resume as quickly as possible when workers forcefully express their grievances. At a discussion in December 2007 of the General Council of the International Trade Union Confederation (ITUC), relations with the ACFTU were frankly discussed, including the promises and pitfalls of working with the authorized Chinese confederation which many feel is simply a part of the state apparatus. The issue cannot be ignored, however, as China is keen for the ACFTU to be accorded a leadership spot in the ILO governing apparatus and such is likely to occur in the near future.¹⁵ Given all these factors, the ITUC is likely to begin a process of engagement with the ACFTU. It is quite unclear where such activity will lead.

LEGAL ACTIVITIES—CROSS-BORDER AND THE USE OF INTERNATIONAL LAW

DESPITE MANY OBSTACLES, INCLUDING THE SKEPTICISM of a majority of the U.S. Supreme Court, international law is increasingly impor-

tant to cross-border union activity. Though no significant breakthroughs can yet be seen, unions are attempting to use current international law to advance their cause. Labor's burgeoning cross-border legal efforts can be seen in a wide variety of filings under numerous international treaties that some in labor see as a central avenue for development of union power in the coming decades. For example, in the United States, complaints have been filed using North American Free Trade Agreement (NAFTA) provisions on behalf of North Carolina state employees and Washington State apple pickers who do not have a statutory right to organize or bargain collectively. Trade law has been invoked to challenge violations of labor rights in China, Jordan, and the Philippines. Further, in a petition filed with the Inter-American Commission on Human Rights (IACHR), a body of the Organization of American States (OAS), on behalf of immigrant workers, the American Civil Liberties Union (ACLU), the AFL-CIO, and others have charged that the United States is failing to protect workplace rights guaranteed under international law, especially in the area of health and safety.

The Jordan case is especially interesting. At its inception, the Free Trade Agreement (FTA) between the United States and Jordan was hailed as an example of a trade treaty that included reasonable labor protections and adherence to ILO core labor standards. According to Thea Lee, policy director at the AFL-CIO, in the negotiation of the treaty in 2001 "we were offered a seat at the table."¹⁶ Yet today, in the free trade zones in Jordan where thousands of workers produce garments for L.L.

Bean, Wal-Mart, and Target, workers, mainly from South Asia, are seriously mistreated and barred from collective organization. A form of indentured servitude is the rule for most of these workers. In response, in September 2006, the AFL-CIO and the National Textile Association filed a complaint under the labor chapter of this free trade agreement. The complaint is currently pending.

In a significant move, faced with the anti-union NLRB majority and an American administration unwilling to uphold international norms, American unions have increasingly used legal actions before the ILO that are de-

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signed to show that present American labor law violates international law and core labor standards. In October 2007, the AFL-CIO filed a challenge to the NLRB's "September Massacre,"

an outrageous block of decisions designed to thwart union efforts. This filing and others from the AFL-CIO allege that the U.S. government's labor policies violate the ILO Constitution and its conventions 87 and 98. These ILO conventions guarantee freedom of association, and the right to engage in collective bargaining. While the ILO Committee has no enforcement power and the U.S. is one of the only western countries that has not ratified these conventions, the AFL-CIO is asking the ILO to add its "authoritative voice and moral weight in the international community" to protest American labor law and governmental practices limiting workers' rights to engage in collective activity.

Finally, it is important to note that, in spite of these filings, legal efforts on behalf of unions using international laws and treaties have been hindered by the weak position of international governing organizations dedicated to labor issues, as compared to those that look after corporate profitability. The ILO, though staffed with people who consider themselves labor advocates, has been ineffective at influencing and enforcing labor policy; meanwhile, the World Trade Organization (WTO), Organization for Economic Co-operation and Development (OECD), and the International Monetary Fund (IMF) have all been stout champions for the rights and protections of capital.

ANALYSIS AND CONCLUSION

WHETHER THESE CROSS-BORDER EFFORTS WILL succeed at arresting labor's decline is an open question. It is important to understand the considerable obstacles. On the structural front, tensions will take many years to abate, especially threatening the efficacy of GUFs. The distinctly national character of most unions and

their labor climate is problematic as well. In the United States, employment is considered to be "at will," while the legal structure of most other First World countries includes protection against termination without cause. Also, U.S. trade unionists are suspicious of the close relations that many European unions still have with their national employers, and with practices such as co-determination which results in board seats for union leaders. The recent scandal in Germany concerning improper perquisites for union leaders on those boards reinforces certain concerns about these relationships.¹⁷ On the other hand, American unions continue to struggle to overcome the historical presumption of their role as agents of American foreign policy in their cross-border involvement, especially in the Global South, where being American carries certain baggage, particularly under the current U.S. administration. Further, echoing concerns expressed by some religious leaders in the United States with whom American unionists often work, non-Americans question the resolve of Americans to see coalition work as anything other than a way to help American unions in times of crisis, arguing that American unions only care about international solidarity when they are about to go on strike or are threatened with plant closings. American union leaders argue that this attitude is fading, and that within the present cross-border activity, "we've moved from global solidarity to global strategy."¹⁸ Finally, when corporate decisions, such as in plant closings, often favor a facility in one country over another, unions in the affected countries often find themselves at loggerheads. This problem surfaced with Daimler-Chrysler, when differences arose between their American and German auto unions.

The efficacy of global strategic comprehen-

sive campaigns is still open to debate, especially as it relates to actual union organizing and the ability to secure binding collective bargaining agreements. Two recent books reviewed the anti-sweatshop movement, especially in regard

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to plants in Central America, which for many has provided one of the best examples of the combination of older collective bargaining tactics with those used by energetic human rights activists.¹⁹ Their conclusion seems to be that, as long as capital has the mobility it currently enjoys to move work from country to country almost at will, such efforts will seldom be fully successful. The social justice aspect of the movement, however, does seem to linger even if the collective bargaining objectives are ultimately unsuccessful. The result is that the political climate in these locations is affected by the struggle, opening the way for more indirect support of labor issues in the times to come. These same indirect benefits seem to have arisen from losses that the U.S. labor movement has suffered in American courts in which it has raised international labor issues.

With the United States as a prime example today, labor efforts in many countries are more

successful politically than in terms of workplace organizing.²⁰ In a return to the themes of international political solidarity of unions in the Cold War and earlier, union leaders now recognize that a cross-border political agenda is needed as well as cross-border economic action. It is not only in the United States that collective organization is hampered by a hostile legal landscape, regulation intended to advance the interests of capital at the expense of labor, capital mobility, and the changing structures of work. Recent discussions within labor have considered the relationship of the influence and power of international organizations and national governments and laws. Many activists and leaders are promoting a common global political agenda for labor. Echoing historic debates of the left, the dialectic in the ability to secure labor justice in only one country is being raised and debated.²¹

In addition, a conversation is underway as to the very nature of unions themselves. Many argue that unions must refocus on the issue of what they can actually deliver for workers today. Much worker apathy toward unions in the U.S. comes from their perceived inability to actually deliver results. As workers in the American South know, the last twenty years have been times of givebacks and “concessionary bargaining.” There is a rational reason why fewer than half of the workers in many unionized southern factories are union members; this is not only due to “Right to Work” laws. Even workers in developing countries are beginning to express similar sentiments.²² The ability of cross-border efforts to reverse this reality must be expressed to the workers of the world. On a philosophical level, unions throughout the

world realize that their message must be re-examined in order to succeed. In most countries, especially in the Global North, the established union movement, with precious few exceptions, has lost its passion. Movements for change on behalf of the less advantaged, no matter their concerns, are nourished by such passion. The current predominance of individualism in the contemporary psyche compromises such spirit. For all the economic and legal issues involved, it is this radical individualism that characterizes modern life that is at the center of the problems faced by unions. The heart of the message of unions in response to power has been eviscerated by this focus on individualism. Without a coherent labor message, all global efforts, no matter the sophistication of the organization, strategy, and tactics, will surely fail. Labor must convince workers that the only way for the powerless to progress is in concert with each other, not alone. This will be a daunting contemporary task.²³ Finally, the contentious issue of immigration cannot be ignored. In nearly every country around the globe, the labor movement is struggling with immigration concerns. Immigration presents both powerful opportunities and pitfalls for unions. Some are comfortable with the present reality; others much less so.

However, an international wind may be blowing from a favorable direction for unions. The resounding rejection in the recent election in Australia of the anti-union “WorkChoices” program is but one example. Another can be seen in a June 2007 decision from Canada, in

which the Supreme Court of Canada struck down legislation from the province of British Columbia which had cut back on the collective bargaining rights of employees in the health care sector.²⁴ The Supreme Court ruled that under the Canadian Charter of Rights and Freedoms, the legislation “effectively precluded meaningful collective bargaining.” In so ruling, the Court held that collective bargaining is a “fundamental Canadian right” which enhances “human dignity, liberty, and autonomy.” As such, the court ruled that this workplace right is consistent with the underlying values of the Canadian Charter and the international obligations of Canada, such as those mandated by the ILO conventions. While the American “union avoidance” industry is trying to sell its wares globally, a growing worldwide consensus is forming, insisting that the rights of workers, like environmental rights, must be taken seriously in national and global laws, treaties, and relationships. The associational right to collective bargaining is as fundamental a human right as any other.

In conclusion, the workers of the world are watching, as unions remain their only organizational form. The last stanza of Bob Dylan’s *Workingman’s Blues #2* could very well be their call to this global union movement:

*Now I’m down on my luck and black
and blue
Gonna give you another chance
I’m all alone, and I’m expecting you
To lead me off in a cheerful dance. ■*

Notes

1. For example, the Cambodian government has announced its intent to lower the required night work wage in its garment factories from \$100 to \$50 a month, in order to “stay competitive. Cambodia to Amend Labor Law to Reduce Nighttime Pay for Garment Workers,” *International Herald Tribune* (May 15, 2007).

2. Definitionally, in some circles the terms “international” and “global” have taken on separate meanings. “International” includes matters in which the concept of the nation-state figures prominently. “Global” includes activities in which the nation-state concept is not part of the calculus. For this paper, however, these terms will be

used interchangeably.

3. The extent of the American labor leadership's involvement with the U.S. foreign policy apparatus has been much-debated. For one view, see Harry Kelber's articles at <http://www.laboreducator.org/darkpast/htm>. The current leadership of the AFL-CIO's Solidarity Center acknowledges many claims of the intimate relationship, but steadfastly declares that those days are over.

4. Quoted in David Moberg, "Solidarity Without Borders," *In These Times*, February 7, 2007.

5. *Ibid.*

6. Jeremy Brecher, Tim Costello, and Brendan Smith, "International Labor Solidarity: The New Frontier," *New Labor Forum*, Spring 2006.

7. The USW, for one, has worked closely with private tort lawyers to initiate national legal action, often using international law, in support of striking union workers in other countries. The USW and the International Labor Rights Fund filed suit against the Drummond Company, an Alabama-based mining corporation with facilities in La Loma, Colombia, on behalf of the families of slain workers and their labor union. Discovery in this case, however, highlighted the murderous labor culture in Colombia and played a crucial role in Congressional debates over the "free trade" agreement with Colombia and the U.S. While a jury ruled for the company after a series of difficult rulings by the court, the case is currently on appeal. *Estate of Vankire Lacrozo Rodriques, et al. v. Drummond Company, Inc., et al.*, No. CV-02-BE-0665-W., U.S. District Court for the Northern District of Alabama, Western Division.

8. See Robert Hickey and Kate Bronfenbrenner, *Blueprint for Change* (2003), published by the AFL-CIO Organizing Department, page 39.

9. <http://www.cleanclothes.org>.

10. <http://www.focusongroup4securior.org/the-campaign>.

11. <http://www.pww.org/article/articleview/10964/1/369>.

12. Nathan Lille, *A Global Union for Global Workers: Collective Bargaining and Regulatory Politics in Maritime Shipping*, London: Routledge (2006). The maritime shipping industry may provide the best example of a truly global union in a global industry. Many of the tensions and challenges faced by a truly global union movement, such as those between unions in the Global South and the Global North, can be seen at work here. The particularity of this industry, however, problematizes comparisons to others.

13. Don Wells, "'Best Practice' in the Regu-

lation of International Labor Standards: Lessons of the U.S.-Cambodia Textile Agreement," 27 *Comp. Lab. L. & Pol'y J.* 357, 37 (2006).

14. "U.S. Labor Leaders Aided China's Wal-Mart Coup," *The Wall Street Journal* (June 22, 2007).

15. Yet, interestingly, the Chinese argument that the important ILO conventions 87 and 98 cannot be ratified, as they conflict with the arrangement of the Chinese socialist state. See Sean Cooley, "China and the ILO's Freedom of Association Conventions," *International Union Rights*, vol. 14:3, page 8 (2007).

16. Kristen Gillespie, "Free Trade Bondage in Jordan," *The Nation*, December 25, 2006 (page 20).

17. <http://www.iht.coj/articles/2007/04/20/news/siemens.php>. See also Benjamin Weintal, "Where is the German Trade Union Movement and Where is it Going?" *MRZine* (21/02/07).

18. Ginny Coughlin, Global Strategies Director, UNITE HERE, quoted in Moberg, *supra* note 4.

19. Jill Esbenshade, *Monitoring Sweatshops: Workers, Consumers, and the Global Apparel Industry*, Philadelphia, PA: Temple University Press (2004); Ralph Armbruster-Sandoval, *Globalization and Cross-Border Labor Solidarity in the Americas: The Anti-Sweatshop Movement and the Struggle for Justice*, New York: Routledge (2004).

20. Peter Francia, *The Future of Organized Labor in American Politics*, New York: Columbia University Press (2006).

21. The SEIU website includes this quote from Andy Stern: "Campaigns for social justice have almost invariably tended to pursue justice one country at a time. Now with the advent of globalization, it's no longer that simple. We have to achieve justice everywhere at once in order to achieve it anywhere at all." http://www.seiu.org/about/global_partnerships.

22. See the comments of C. LeRoy Trotman of the Barbados Workers Union and the ILO, http://www.labor-forgottennews.blogspot.com/2007_12_01_archive.html.

23. Even within the labor movement, the proper degree of unity and collectivity is being debated. The current efforts by the German train engineers union to separate themselves from lower paid German train workers is one example. See "Germany feels shift of union strategies in strikes," *International Herald Tribune*, December 25, 2007, <http://www.iht.com/articles/2007/12/25/europe/germany.php>.

24. Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia, 2007 SCC 27, Supreme Court of Canada, June 8, 2007.