

In Defense of Dignity

By Andrew Friedman and Deborah Axt*

Julia Ortiz, Consuelo Echeverry, and Maria Martinez walked in the door of Make the Road by Walking¹ in Brooklyn. They had just been fired from their jobs, and their boss did not disguise his motivation. They had “caused trouble” by complaining to the Department of Labor about the eleven hour days they worked at the sizable local discount retailer Save Smart without receiving overtime pay. How did their boss know who had complained? He knew because the Department of Labor investigator told him.

At another retail outlet in the neighborhood, twenty immigrant workers were selling sneakers and athletic apparel at Footco and New York Sneakers. The two shops had common ownership. The stores were located on the bustling shopping corridor of Knickerbocker Avenue and were part of a city-wide chain employing approximately 100 workers. When the minimum wage in New York State increased to \$6.00 on January 1, 2005, the workers received a raise: from \$4.00 an hour to \$4.75. That was the rate of pay for most Footco and New York Sneakers employees when they joined Make the Road’s Despierta Bushwick campaign in the spring of 2005.

INTRODUCTION

Millions of workers face extreme exploitation on the job.² Notwithstanding myriad legal protections, wage theft by employers is rampant in

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¹ Founded in 1997 in Bushwick, Brooklyn, by New York University law students Andrew Friedman and Oona Chatterjee, Make the Road by Walking was a not-for-profit community-based organization engaging in multi-issue community and worker organizing using a model similar to the type of organizations often referred to as “worker centers.” Worker centers are community-based organizations, often with 501(c)(3) tax status, which involve low-wage workers in efforts to improve the laws, policies, and workplace conditions that affect them. See sources cited *infra* note 14. Make the Road by Walking differed from many worker centers in the breadth of issues it addressed that were not directly related to worker or workplace organizing, and in its broader use of in-house legal, education, and other services than had been popular among Alinsky-style and Midwest Academy-influenced organizing groups in the late 1990s and early 2000s. In October 2007, Make the Road by Walking merged with the Latin American Integration Center to form Make the Road New York, which now operates through neighborhood-based offices located in three boroughs of New York City: Brooklyn, Queens, and Staten Island.

² In addition to those sources specifically cited throughout this article, academics, researchers, and advocates have written extensively in recent years about the problem of wage theft. See, e.g., KIM BOBO, WAGE THEFT IN AMERICA (2009).

low-wage workplaces across the United States.³ Nationwide, over a quarter of low-wage workers receive less than the minimum wage rate required by law.⁴ Sixty percent of those are underpaid by more than \$1.00 per hour.⁵ Seventy-six percent of low-wage workers who work more than forty hours per week do not receive the legally mandated time-and-a-half overtime rate.⁶ These workers average eleven hours of unpaid or underpaid overtime work each week.⁷

Workers also have their tips stolen by employers, are denied legally mandated breaks, or suffer sexual harassment or physical violence on the job. Workers injured on the job, most of whom are eligible for workers compensation, go without badly needed wages and medical care. Employers use intimidation to prevent workers from filing meritorious claims, often convincing them that undocumented immigrants are ineligible or that the employer can legally determine whether to “give” workers compensation benefits.⁸ Workers who complain of abuses are routinely subjected to retaliatory measures, such as firing, demotion, harassment, stalking, and threats to “call immigration authorities on” the worker or undocumented colleagues or family members about whom the worker is concerned.⁹

The consequences of these violations are severe for the workers, their families, and the rule of law. Employer wage theft in New York costs the average low-wage worker \$3016, or a full 15% of her income each year.¹⁰ That \$3016 would provide a family with \$250 per month for food, medical expenses, clothing, or rent. Three thousand and sixteen dollars also can be the difference between staying in one’s home and facing eviction.¹¹ As this is only the average, many workers have even more stolen from them.

Focusing solely on employer wage theft, however, does not illuminate the depth and breadth of the tragedy facing our workforce. Even without garnished or stolen wages, the New York low-wage worker would only be paid an average of \$20,644 annually, a figure which still falls below the much-maligned official federal standard for a family of four.¹² Additionally, the average low-wage worker usually receives no health insurance and no

³ ANNETTE BERNHARDT ET AL., *BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICAN CITIES* 49-50 (2009).

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ See ANNETTE BERNHARDT, DIANA POLSON, & JAMES DEFILIPPIS, *WORKING WITHOUT LAWS: A SURVEY OF EMPLOYMENT AND LABOR LAW VIOLATIONS IN NEW YORK CITY* 4 (2010) (discussing these types of violations in New York City). See also Telephone Interview with Amy Carroll, MRNY Legal Director (Jan. 30, 2010).

⁹ BERNHARDT ET AL., *supra* note 3, at 3.

¹⁰ BERNHARDT, POLSON, & DEFILIPPIS, *supra* note 8, at 6.

¹¹ Telephone Interview with Amy Carroll, *supra* note 8. (“A typical family facing eviction because of a few months’ nonpayment of rent would be able to stay in their home if they [sic] could come up with around \$2000 to \$3000 and show an ability to pay going forward.”).

¹² The poverty level for a family of four under the 2009 federal poverty guidelines is \$22,050 annually. The 2009 Poverty Guidelines, 74 Fed. Reg. 14, 419-21 (Jan. 23, 2009).

protection from losing her job when she needs to take sick time or time off for family emergencies.¹³

Make the Road New York (“MRNY”) has served as a leader in developing the worker centered approach to workplace justice organizing for a decade.¹⁴ We have innovated effective strategies to confront the problems of workplace exploitation facing low wage workers in New York City. We have learned from our work on the ground, and this article seeks to share lessons gleaned from our work. This article argues that a multifaceted approach to enforcing and expanding workplace rights is the only way to enforce workers’ rights, to force legal compliance across the low-wage sector, and to improve working conditions beyond fulfillment of the basic rights currently provided by law.

In this article, we describe MRNY and its Workplace Justice Project. Then we review four core approaches that we have used to promote the interests of workers: 1) confronting employers through direct action, boycotts, and legal action; 2) collaborating with the state enforcement agencies; 3) partnering with unions and organized labor; and 4) reforming labor and employment law through legislative advocacy. Throughout, we share concrete experiences and assess the advantages and limitations of each strategy. We conclude that multiple approaches, multifaceted alliances, experimentation, and innovation are essential to defend the dignity of workers in a society where worker exploitation is so severe and widespread.

MAKE THE ROAD NEW YORK

MRNY is a grassroots organization with close to 7000 dues-paying members. MRNY combats inequity and poverty through a strategic combination of policy advocacy, legal and educational support services, leadership development, and community organizing.¹⁵ Its operations are based in storefront community centers in the high-density immigrant communities of Bushwick, Brooklyn; Elmhurst, Queens; and Port Richmond, Staten Island. MRNY members work together on issue-centered organizing projects with thirteen standing member-led committees. These projects focus on issues of critical importance to low-income immigrants and their families, such as immigrant civil rights, access to health care, civil rights of lesbian, gay, bisex-

¹³ Jim Dwyer, *Health Care? Not if You Can’t Leave Work to Get It*, N.Y. TIMES, Oct. 4, 2009, at MB1.

¹⁴ Worker centers came to prominence beginning with the Workplace Project, founded by Jennifer Gordon. See Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.–C.L. L. REV. 407 (1995); see generally JANICE FINE, *WORKER CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM* (2006). Make the Road by Walking was founded soon after, the name in homage to Gordon as well as to Myles Horton, a hero of the popular education techniques that form part of Make the Road’s community organizing methodology.

¹⁵ See generally Make the Road New York, www.maketheroadny.org.

ual, and transgender community members, tenants' rights, public education, and workers' rights.

THE WORKPLACE JUSTICE PROJECT AT MAKE THE ROAD NEW YORK

MRNY's Workplace Justice Project cultivates active, democratic committees of low-wage, predominantly immigrant workers.¹⁶ It works with them to combat workplace abuse, to foster democratic participation among low-income and immigrant workers, to support worker organizing, and to promote public policies that expand workers' rights.

The Workplace Justice Project (the "Project") at MRNY was launched in 1999 at Make the Road by Walking in northern Brooklyn. In 2007, Make the Road by Walking and the Latin American Integration Center merged to form Make the Road New York, and the Workplace Justice Project became one of MRNY's major initiatives, now operating in three boroughs of New York City. The Project operates primarily through democratic committees of predominantly immigrant workers. These committees run two projects, *Trabajadores en Acción* ("Workers in Action") and *Trabajadores Unidos* ("Workers United"),¹⁷ based at MRNY neighborhood centers in Bushwick, Brooklyn and Jackson Heights, Queens, respectively. Each project benefits from the support of a full-time professional organizer and a leadership team of experienced members. Each project also elects its own representative to the MRNY Board of Directors. Additionally, the in-house legal department at MRNY provides staff attorneys who specialize in employment law as applied to immigrant workers, partner with the committees, run know-your-rights trainings at weekly meetings, and provide legal services to members with employment-related legal issues.

The workers' committees include workers from a range of low-wage industries. The largest concentrations come from residential and small-scale commercial construction, restaurants, building maintenance and janitorial, retail, manufacturing, and wholesale warehousing. As mentioned above, unorganized immigrant workers in these industries experience gross exploitation and mistreatment as the pervasive industry practice, not just the occasional aberration of a rogue employer.¹⁸

¹⁶ MRNY membership is open to any resident of the five boroughs. Non-immigrant workers are welcome and do participate. However, MRNY's membership is predominantly Latino, and the workforce at low-wage places of employment in New York City tends to be almost entirely immigrant.

¹⁷ MRNY works through locally-based committees focusing on specific issue areas, from workplace justice to housing to public education. Each committee develops its own priorities and locally-based campaigns and elects its own representatives to the MRNY Board of Directors.

¹⁸ BERNHARDT ET AL., *supra* note 3, at 7-9. See also Press Advisory, Make the Road New York, Latino Workers Collect Over \$13,000 in Unpaid Back Wages from Celebrity Billionaire Jocelyne Wildenstein (Jan. 30, 2010), describing wage-nonpayment for over a year and a half to workers who remodeled her Trump Towers apartment. Ezequiel Huerta, Luis Romero, Felix Allaico, and Omar Noboa were employed by billionaire Jocelyne Wildenstein to remodel her

The Workplace Justice Project at MRNY currently operates campaigns and strategic initiatives of several types, usually simultaneously. On the most basic level, we engage in single-employer campaigns, utilizing protest, boycott, and litigation strategies to enforce existing labor and employment law. Second, MRNY collaborates with, and works to enhance, the work of government agencies charged with enforcement of key federal and state employment laws by tracking the agencies' handling of complaints and by partnering with them to create innovative large-scale enforcement initiatives. Third, MRNY undertakes strategic organizing targeting particular industries in partnership with labor unions. Finally, MRNY is increasingly drafting, and working to pass, legislation to improve the workplace rights of low-wage workers.¹⁹

SELECTED STRATEGIES AND THEIR IMPACT ON THE IMMIGRANT WORKER

STRATEGY 1: Direct employer confrontation through direct action, boycotts, and legal action

Overview and Strategic Rationale

Confronting a specific employer or group of employers through multiple tactics is a core strategy in MRNY's work. The primary tactics are three-fold. The first is direct protest action, which sometimes takes the form of worksite activism but more often involves public protests directed at the media, consumers, and others. The second is consumer pressure or boycotts. Finally, we coordinate the first two strategies with litigation or the filing of government complaints seeking payment of back wages and damages where statutory violations have occurred.

This approach leverages both financial pressure and reputational pressure to the employer, and in almost every case attains something of concrete value, most often payment of back wages for the employees involved. MRNY has collected millions of dollars in unpaid and underpaid wages for low-wage New York workers. The approach is effective because economically rational employers will give in and negotiate once it becomes clear that

luxury apartments in Trump World Towers through August 2008. During the last few weeks of their employment during June, July, and August of 2008, these four workers were paid no wages at all. Ms. Wildenstein's representatives first claimed that the workers had not worked in July and August. The workers presented cancelled checks signed by Ms. Wildenstein herself on her personal account, contractor sign-in logs from the Trump World Tower front desk for the weeks in dispute, ID badges, and notes handwritten by Ms. Wildenstein. Following a press conference in front of Trump Towers to publicize her wrongdoing, and after a yearlong lawsuit, Ms. Wildenstein finally paid the workers the full amount of wages owed, including interest and attorneys' fees.

¹⁹ MRNY has extensive experience at the city council level in New York City passing legislation in other issue areas. However, the focus on legislation is relatively new for the Workplace Justice Project.

complying with campaign demands will cost less than continuing to fight. Our power relative to many targets is significant. MRNY's members largely work for small employers,²⁰ who are locally-based and uncertain about the specifics of their legal obligations.

Boycotts in geographic areas near MRNY's neighborhood offices leverage MRNY's strong local neighborhood presence. Organizers and members can influence consumers sympathetic to workers. For some industries with fairly low profit margins, like retail, business profitability is dependent on income at certain key times, such as the height of holiday shopping periods. Boycotts or the threat of workplace disruptions at such times can exert enormous pressure on an owner of a single business or small chain, especially one without back-up investors.

Consumer support also helps workers feel protected. Most MRNY members are not sheltered within a large group of coworkers who can engage in workplace actions together. Many workers labor in workplaces that have fewer than ten employees and fewer than five that share the same shift. The barriers to entry for most of the positions are virtually nonexistent; only cashiers in the small retail context require any specific training, or need to speak basic English. The threat that an employer will replace an employee who protests workplace conditions is very real.²¹ Employers who know that consumers and community supporters are watching may exercise greater restraint in disciplining employees who stand up for their rights. In addition, workers backed by consumers and other allies receive critical psychological strength from the knowledge that they are not alone. Direct employer campaigns arise in varied and always emotionally compelling circumstances. Publicity, even on a small scale, serves to educate the public and elected officials about employer abuse and the need for systemic, broad-impact policy reform.

A final but critically important consideration in our continued use of direct employer confrontations is the role of MRNY members. Members can play a major role in developing and implementing direct action strategies,²² including marches, press conferences, and protests. Protests and small campaign planning recur throughout the year. MRNY members therefore have the opportunity to develop insight about the process. Experienced leaders train new members in key skills such as speaking to the press, articulating campaign demands, doing one-on-one outreach to workers and consumers, coordinating event activities, and interacting with the police.

²⁰ The National Employment Law Project finds that employers with fewer than 100 employees are more likely than larger employers to violate wage and hour laws. BERNHARDT ET AL., *supra* note 3, at 30.

²¹ *Id.* at 24.

²² Some activists and organizers define direct action as civil disobedience. MRNY engages in very little civil disobedience in large part because inviting additional police scrutiny and risking arrest of protestors carries unacceptable risks for non-citizen members.

MRNY leads strategic decisions and campaign direction, thus providing a training ground to develop MRNY leadership for bigger impact initiatives.²³

Limitations

The effectiveness of direct confrontation with individual employers is limited by a number of factors. Most critically, the target employers that are susceptible to our full range of tactics tend to be relatively small and economically marginal. Specifically, those employers most susceptible to MRNY-coordinated consumer boycott pressure within our base neighborhoods are relatively small. Additionally, those businesses that have violated wage and hour law such that they have accumulated wage claims of significant value are often smaller players.²⁴ Therefore, each individual employer confrontation is likely to impact directly only a small number of workers.

The various campaign tactics also present limitations. Boycotts require intensive coverage to maintain, especially when directed at employers open for business for long hours daily. MRNY members who are employed during the day cannot carry the weight of monitoring a boycott. Paid staff and interns thus become crucial to maintaining the boycott pressure. This requires resources and the smaller number of workers who can participate reduces the neighbor-to-neighbor contact that creates the dynamic of residents setting workplace standards in their own neighborhoods.

Boycotts against a well-resourced employer exacerbate these issues. As part of the *Despierta Bushwick* campaign, MRNY led a boycott of the Associated Supermarket on Knickerbocker Avenue. By our estimation, the boycott reduced the volume of business by at least 5% and perhaps as much as 15% during high-intensity periods. However, the two-year boycott was insufficient to convince the Supermarket to sign the campaign's Good Business Community Agreement. The owners also owned a number of other supermarkets and were deeply tied to a network of Dominican grocery store owners who were incentivized to cover the individual store's losses in order to avoid the spread of a successful wage enforcement campaign throughout the industry.²⁵

The coordination of organizing efforts with ongoing litigation presents additional complications. Most significantly, the litigation timeline can be

²³ This differs somewhat from coalition campaigns, where it is difficult for many MRNY members to participate meaningfully in leadership roles. The reasons for this are varied. For example, many of our members are monolingual Spanish speakers and most coalition meetings take place in English.

²⁴ Employers of 100 or more workers, at least in New York City, are less likely to commit the kinds of statutory violations that create excellent leverage opportunities. BERNHARDT, POLSON, & DEFILIPPIS, *supra* note 8, at 5.

²⁵ Other strategies, detailed below, ultimately resulted in major concrete victories for the Associated workers, including the arrest of their boss for record-keeping and wage nonpayment violations and two back wage settlements amounting to more than \$1 million for approximately forty workers.

very different from the organizing timeline. When litigation is a key part of the financial pressure on the employer, the employer can impact campaign momentum by slowing the pace of naturally slow-moving litigation. Litigation also tends to draw attention and focus away from the other organizing pieces because it is often the point of greatest leverage.

Another issue arises if organizing momentum fades, as happens in a substantial number of campaigns that initially show promise. If MRNY has begun providing legal representation to the workers involved, the organization is often still obligated to continue the litigation. This dynamic can result in attorneys spending excess time on litigation no longer linked to organizing, making it difficult to engage with new campaign priorities in a nimble way.

Workers' fear of retaliation is the most serious obstacle to achieving real workplace change through direct employer confrontation.²⁶ The result is that in the majority of campaigns that MRNY has waged through direct employer confrontation, most MRNY members involved are former employees of the target employer, or employed elsewhere altogether. Rational low-wage workers in many workplaces simply will not run the risk of standing up for their legal rights until they have already lost their jobs.

The Fair Labor Standards Act ("FLSA"), which establishes the right to minimum wage and overtime, also makes it illegal to retaliate against workers who file wage claims. Employees fired in the midst of an organizing campaign can be reinstated promptly by a court if attorneys obtain a Temporary Restraining Order and Preliminary Injunction.²⁷ However, the usefulness of that protection is substantially limited by the impact of the United States Supreme Court's decision in *Hoffman Plastics Compounds, Inc. v. NLRB*.²⁸ The *Hoffman Plastics* holding actually applies to the National Labor Relations Act and to facts involving employees who submitted fraudulent documents to show that they had authorization to work in the United States to an employer with apparently "clean hands." However, most advocates presume that the ruling will apply to the Fair Labor Standards Act, as well. The practical impact of this decision is that we must assume that no

²⁶ See BERNHARDT ET AL., *supra* note 3, at 3. Forty-three percent of those workers who made a complaint or attempted to form a union experienced at least one form of unlawful retaliation. An additional 20% of employees reported that they experienced either serious danger on the job or nonpayment of minimum wage and yet did not complain because they feared retaliation at the hands of their employers.

²⁷ To obtain a Temporary Restraining Order or Preliminary Injunction, which would return the fired employee to work immediately, the workers' attorneys must show a substantial likelihood that they will succeed at eventually proving that the firing was retaliatory, and that allowing the firing to stand pending the final outcome of the wage case would chill the participation of the fired employee and/or other witnesses to the wage violations, thus making it impossible to adjudicate effectively the underlying wage claim.

²⁸ *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002) (holding that employees fired in retaliation for engaging in protected union activity cannot be reinstated by the National Labor Relations Board where they obtained employment by using false immigration and work authorization documents).

judge will order an employer to reinstate undocumented workers illegally fired in retaliation for making complaints under the Fair Labor Standards Act. Foreign born workers in New York are almost two times as likely as United States born workers to face minimum wage violations.²⁹ The *Hoffman Plastics* holding therefore limits litigation-based retaliation remedies in support of the very workers most likely to be involved in unpaid wage claims.³⁰

Outcomes and Lessons Learned

Over the years we have learned many lessons about how to achieve maximum impact on workplace conditions, maximum development of the leadership capacities of our members, and maximum protection of often undocumented workers.

First, research and appropriate targeting is critical. Long-term leases, for example, increase the vulnerability of retail employers who may be locked into expensive rent payments for many years to come. Closing down a store under a long-term lease may be financially impossible for the employer. This is especially true where individual principals have signed the lease in their personal capacities rather than only as representatives of a corporation, which can easily be dissolved. While research capacity at MRNY and other worker centers is extremely under-funded, computer savvy staff and volunteer interns can unearth useful information. Additional data is discoverable through litigation.

²⁹ BERNHARDT ET AL., *supra* note 3, at 5.

³⁰ Professor Ben Sachs, who himself was one of the founding Staff Attorneys of the MRNY Workplace Justice Project, has written thoughtfully about the use of Fair Labor Standards Act ("FLSA") anti-retaliation provisions in creating a framework for low-wage worker organizing. See Benjamin I. Sachs, *Employment Law as Labor Law*, 29 CARDOZO L. REV. 2685 (2007). Professor Sachs uses a Make the Road by Walking campaign as a case study. *Id.* at 2708-15. He argues, in relevant part, that worker centers are using employment law as a framework for organizing in the place of the National Labor Relations Act. *Id.* at 2687, 2700-21. Sachs posits that the FLSA, for example, can be used as a framework for collective workplace activity because it can help galvanize a group of workers capable of acting collectively, can insulate workers' nascent collective activity from coercive interference, and can generate successive and more robust forms of organizational and collective activity. *Id.* at 2690, 2730-33. In terms of offering meaningful protection to workers facing retaliation for collective action, we believe that Professor Sachs' assessment of the preliminary relief available under the FLSA is overly optimistic. As he acknowledges, the scope of campaigns where the FLSA serves as an appropriate framing statute is limited: employers without wage violations will fall outside of the strategy's usefulness altogether. And as a practical matter, the use of preliminary injunctive relief is substantially limited by *Hoffman Plastics*. The Make the Road by Walking case that he discusses is telling. The strategy of obtaining a Temporary Restraining Order to return the fired worker to work succeeded only because in an almost entirely undocumented immigrant workforce, the key fired leader happened to have full work authorization. She could therefore be ordered reinstated by Judge Trager. In MRNY's view, those employers most likely to be good targets because of wage violations that can be leveraged under FLSA are the very employers most likely to be employing a substantial percentage of undocumented workers, who are therefore not eligible for full FLSA retaliation protections.

Second, litigation is ideally handled by in-house attorneys or by close long-term allies. At MRNY an in-house legal department facilitates this approach. Our in-house counsel are more experienced at handling common member problems and are more accountable to members, who work in committees to help determine litigation and legal services priorities through the member-elected board of directors. Partnering with pro bono counsel at large corporate law firms is often the only way we can obtain the resources necessary to staff and fund the costs of litigation, particularly when more than several plaintiffs are involved.³¹ However, maintaining in house control of litigation strategies is always the goal, in order to anchor those strategies in member- and organizer-directed priorities and tactics. It takes substantial time of either an organizer or in-house attorney to align the entire litigation team on key issues that are often new to pro bono counsel. For example, pro bono counsel tend to take a less aggressive stance than MRNY in-house counsel does when seeking to exclude as irrelevant evidence of a client's immigration status. Pro bono counsel often presume that it is impossible to negotiate a settlement agreement without agreeing to confidentiality of the financial terms of the agreement.³² Aggressive pursuit of pre-litigation relief also is easier if we control the litigation in-house. Pro bono firm attorneys often do not realize that we can seek preliminary injunctive relief in cases of retaliation. In addition, MRNY lawyers have spent many hours struggling with pro bono attorneys on our litigation team about the ethics of group representation; some lawyers argue that we must counsel and negotiate for each client individually in situations where one client might be able to achieve a better result outside of the group negotiation setting.³³ These struggles consume staff and member time and can cause further delay in an already sluggish litigation timeline.

Third, the ability to drive successful employer confrontation campaigns depends in large part on workers' success with the press. MRNY does not employ specialist communications staff members or professional media or public relations consultants. However, we have managed to achieve fairly frequent and positive press coverage.³⁴ To achieve that success, MRNY has the following procedure. We immediately and consistently respond to reporters who contact us. These reporters are usually individuals who need

³¹ Working in partnership with government agencies is another way that MRNY expands the scope, scale and number of cases that our legal department can handle. See discussion *infra* STRATEGY 2: *Collaboration with the State*.

³² A confidentiality clause is a standard provision in many settlement agreements. Absent organizing goals, which make it important for workers to be able to publicize hard-fought victories, there is generally no reason for plaintiffs' counsel to refuse defense counsel's standard demand for confidentiality.

³³ It is MRNY's position that rational plaintiffs can and often do determine that committing to a group decision-making process is the best way to ensure a favorable outcome for all involved. We deal with the possible ethical dilemmas of such situations by establishing ground rules for group decision-making (such as voting arrangements) at the initiation of the case and maintaining those processes throughout.

³⁴ See, e.g., Make the Road New York, Press, <http://www.maketheroadny.org/press.php>.

information for a specific story. Given our membership base and interaction with thousands of families annually, we almost always are able to identify appropriate interviewees for the news outlet's request. We also position ourselves to respond to the reporter's needs, for example by providing translation during the interview.³⁵ When possible, we pitch exclusive stories to specific reporters, though we also circulate hundreds of press releases annually for MRNY events.

The Save Smart case, introduced at the opening of this article, illustrates the typical dynamics involved in MRNY's direct employer confrontation campaigns. Since Julia, Consuelo, and Maria already had begun a Department of Labor ("DOL") investigation when they came to Make the Road, they decided to continue with the investigation but to prepare for litigation simultaneously.³⁶ They eventually received notice from the DOL that their retaliatory firing would not go without remedy. The DOL would levy a \$2,000 retaliation penalty on their behalf, and the general treasury of the State of New York would be \$2,000 richer for their ordeal.³⁷ After receiving notice that the DOL would collect only a small portion of the total amount due to them in back wages and damages, the women of Save Smart filed suit in federal court. Make the Road New York enlisted pro bono counsel from Paul, Weiss, Rifkind, Wharton & Garrison LLP to assist with the litigation.³⁸ The members of *Trabajadores en Acción* organized a series of protests coordinated with the litigation strategy. MRNY also connected with Steven Greenhouse of *The New York Times*, who met one-on-one with each of the women involved, and ultimately profiled Julia Ortiz in his 2008 book *The Big Squeeze: Tough Times for the American Worker*.³⁹ In 2008, Maria, Julia,

³⁵ Providing translation also enables us to monitor the content of an interview and therefore intercede if the reporter asks inappropriate questions about, for example, immigration status, or other information that is not in our member's interest to reveal.

³⁶ At the time, the New York State Department of Labor (under Governor Pataki) was considered by MRNY attorneys and most of our allies to be an inept and unwilling enforcement agency. MRNY did not refer cases to the agency unless absolutely no other options remained. At the time that Julia, Consuelo, and Maria came to MRNY, we were engaged in a campaign to pressure the DOL to institute improvements in the way the agency handled its investigations. Upon request, the women eagerly agreed to use their case to help MRNY attorneys begin to understand more about the DOL's investigative and enforcement protocols and practices.

³⁷ The New York State Department of Labor was the investigative and enforcement agency involved in the Save Smart case. In addition to the \$2,000 fine for the retaliatory firing, the DOL continued the Save Smart investigation. Since the Save Smart case, the New York State Commissioner of Labor and the key politically appointed positions in the DOL have changed hands as a result of Governor Pataki's departure and replacement first by Eliot Spitzer and then by David Patterson.

³⁸ It is worth noting that Paul, Weiss, Rifkind, Wharton & Garrison LLP have served as MRNY's General Counsel on a pro bono basis for over ten years; attorneys there have worked with us on a number of matters and have been anything but timid in the group representation context.

³⁹ STEVEN GREENHOUSE, *THE BIG SQUEEZE: TOUGH TIMES FOR THE AMERICAN WORKER* 55-61 (2008).

and Consuelo settled their suit for over \$150,000. The total included damages for the retaliatory firing, this time going to the women themselves.

STRATEGY 2: Collaboration with the State

Overview and Strategic Rationale

For over a decade, MRNY engaged in a variety of forms of collaboration with the State, in particular with enforcement agencies charged with investigating wage non-payment and under-payment, to broaden the impact of our work. The most prominent of these collaborations have been our partnership with the office of the New York State Attorney General, in particular, the Labor Bureau of that office, and our more recent work with the DOL after Patricia Smith became the Commissioner of Labor for New York State.⁴⁰

The determinative factor motivating our decision to partner with government agencies is a history of trust with the agency's leadership. The Footco and New York Sneakers Campaign relied on partnership with the Attorney General. During the early phases of that campaign, MRNY and the Retail, Wholesale and Department Store Union ("RWDSU") approached the Labor Bureau leadership within the Attorney General's office about the possibility of collaborating on complaints unearthed during the campaign. The foundation of trust for the campaign collaboration was the result of two factors. First, MRNY had a prior history of collaborating on multiple-worker cases with RWDSU. The RWDSU, however, came to the table with a much stronger history. Jeffrey Eichler, the Coordinator of the Retail Organizing Project at the RWDSU, had previously collaborated with the key leadership of the Labor Bureau throughout the campaign to organize workers employed by greengrocers.⁴¹ This prior experience together had engendered a solid base of trust. Similarly, MRNY's ability to work with the DOL was enhanced when attorneys from Attorney General Spitzer's Labor Bureau, who had worked with MRNY for many years, moved over to the DOL when he was elected Governor.

Our partnership with each agency is also affected by the nature of that agency's resources. For example, the Attorney General's Office prosecutes very few cases, so we refer only higher-profile cases that are of higher priority for MRNY members and campaigns. These cases generally involve egre-

⁴⁰ When Eliot Spitzer became Governor of the State of New York, he appointed as Commissioner of Labor Patricia Smith, who had served as Chief of the Labor Bureau in Spitzer's Attorney General's office. Ms. Smith's Labor Bureau had handled a number of cases referred by MRNY, and her leadership of the NYS DOL was a welcome change in leadership. MRNY monitored the NYS DOL's handling of cases under the Pataki administration, when the agency had a reputation among workers' advocates for inaction and unresponsiveness.

⁴¹ The greengrocer campaign did not succeed at unionizing the workers involved. However, the campaign did achieve a code of conduct enforced by the Attorney General's office. The use of the code of conduct was itself an innovation in this type of campaign effort.

gious instances of abuse and employers against whom we are organizing on a broader scale. This was certainly true of the Footco and New York Sneakers case. In order to facilitate the investigation, MRNY and RWDSU organizers initially drafted affidavits with workers interested in filing complaints with the Bureau. Later, experienced litigators at the Attorney General's office met with workers at MRNY's neighborhood offices in order to take testimony. The Attorney General found that the employer owed over \$3 million in back wages and damages.

The relationship with the New York State DOL has functioned differently because of the much broader investigative role of the agency. MRNY engages with the New York State DOL on two levels. First, by necessity, we advise many of our members to file complaints with the DOL when we are unable to settle cases and do not have resources to initiate litigation. In order to improve our individual members' experience with the agency, and to advocate for systemic improvements, we monitor case investigations closely. Unlike many traditional legal services offices, MRNY advocates and lawyers maintain ongoing contact with member-clients, and thus stay intimately involved as administrative investigations proceed. This positions MRNY to identify and track problems that occur during investigations, intervene to correct the problem, and thus ensure workers recover the full unpaid wages owed. We also maintain records of key elements of each investigation in order to extrapolate data to help the agency improve its functioning.⁴² Our direct experience has allowed us to collaborate closely with the DOL to improve its investigative practices and policies, achieving better results for the thousands of workers each year who file *pro se* with the DOL. While DOL has improved immensely under the new leadership, workers still routinely encounter problems with frontline investigators. Because of our relationship, we are able to share insights and observations with senior investigators so they can further refine and improve their training and protocols. The result benefits our membership, but also the thousands of workers who file each year without any ongoing support from an advocate.

The second level of our collaboration with the DOL is through strategic industry sweeps and other proactive enforcement initiatives. By 2008, after the resolution of the Footco case, the *Despierta Bushwick* campaign also had collected hundreds of thousands of dollars in owed wages for other workers along Knickerbocker Avenue. At that point, the likelihood of unionizing additional shops along the strip seemed remote. MRNY, with the RWDSU's help, sought out other approaches to establish enforceable workplace standards along Knickerbocker Avenue. We settled on a collaborative approach:

⁴² For example, in coordination with allies, MRNY legal staff maintain a detailed spreadsheet of New York State DOL investigations, tracking such details as the length of time from initial complaint filing to the assigning of an investigator, the resolution of the case, and the attorney's calculation of the amount owed versus the amount of wages and damages eventually collected.

MRNY, the RWDSU, and the DOL partnered on a retail sweep (“retail blitz”) targeting labor law violators along the strip.

Again in 2009, we partnered with the DOL on an enforcement effort targeting supermarkets in three boroughs of New York City. In both sweep efforts, MRNY and RWDSU organizers conducted outreach to workers, identifying employers with likely wage violations and finding employees willing to come forward. DOL investigators conducted surveillance to develop an initial understanding of the businesses under investigation. The surveillance identified key information such as the hours during which businesses were open and the times of shift changes. The agency then launched investigations targeting the specific segments of the industry. In the case of the retail blitz, the agency demonstrated a show of enforcement strength during one day in which its investigators served subpoenas along the Knickerbocker Avenue retail strip during business hours. These efforts each have netted hundreds of thousands of dollars in unpaid and underpaid wages.

Coordination of this type takes advantage of the strengths of all partners, and exemplifies the advantages of alliances between worker centers and government agencies. A key MRNY strength is the ability to engender trust and assuage fear among immigrant workers. Deep community roots and an ongoing presence in the neighborhood also allow organizers to find out about violations and locate employees willing to come forward.

In turn, MRNY is able to draw on the unique strengths of government. Most important among these is the simple scale of resources that can be leveraged. Geographic or industry-focused blitzes, like the supermarket and retail sweeps that MRNY coordinated with the New York State DOL in 2008 and 2009, can identify dozens of wage and hour law violators in a matter of days and incentivize employer compliance throughout a geographic area. Depending on media interest as well as other factors, these projects can also attract attention from industry trade publications and associations, thus increasing the impact on compliance beyond individual targets.

Investigations led by government agencies provide access to investigators, whereas hiring private investigators is not generally feasible in private litigation. The Attorney General’s subpoena power moves cases immediately to a crisis stage for an employer, whereas filing state or federal litigation on behalf of workers involves a much slower discovery phase before employers are obligated to turn over records and participate in depositions. The deposition phase in private litigation is typically the moment that finally forces the employer to recognize the economic pressure being brought to bear on her.

Significantly, the government can also impose criminal penalties. The sight of the owner of the Associated Supermarket under arrest provided a remarkable boost in the momentum of the *Despierta Bushwick* campaign at a moment that workers and consumers were growing weary of the two-year boycott. Similarly, aggressive actions by government actors have a unique ability to allay immigrant worker fears about employer retaliation.

Limitations

There are, of course, limitations on the usefulness of government agency partnerships. Our work in this area indicates that a need for credible political power and long-term relationship building is critical to achieve a large-scale positive impact on low-wage workplaces. Government enforcement agencies are almost universally under-funded and under-staffed. Enforcement agencies like the New York State DOL are often charged with such broad enforcement responsibilities that few resources remain available for strategic initiatives.

Collaborations often are not funded. Private foundations that might otherwise fund anti-wage theft work by community organizations tend to expect that government actors will bring resources to the table. However, we are unaware of any government enforcement program that offers funding to help community-based partners staff their participation. The Wage and Hour Watch⁴³ pilot program in New York State, in which MRNY and the RWDSU are among a handful of partner organizations, has been limited by the lack of resources for community partners and by the paucity of investigators available to respond expeditiously to the complaints filed through the program.

Immigrant workers sometimes believe that government agencies are corrupt and have been “bought by the boss.” Indeed, agencies often have histories of inept or timid enforcement. Many agencies are simply poor partners that will not help to advance enforcement, much less in collaboration with groups pushing an organizing agenda. That was certainly true of the New York State DOL under Governor Pataki. It is only after many years of tracking cases handled by each agency and engaging in aggressive administrative advocacy with their leadership, followed by a major change in political leadership, that MRNY has been able to collaborate with the DOL as a strategic partner.

Finally, a major constraint on the impact of this strategy is that government can only enforce existing rights under the law. Investigations and government-headed enforcement initiatives can be used as leverage in the same way that litigation can be used as leverage. However, this strategy limits us to organizing within swaths of the economy where statutory violations are prevalent and to focusing on the goal of compliance with the too-low standards currently set by law. This strategy will not help us move toward organizing for livable wages, provision of healthcare, or protection from

⁴³ Wage and Hour Watch is a pilot program underway in New York State where the DOL has designated partner organizations, such as community-based worker centers like MRNY, to conduct outreach to employers and employees in the industries or geographic sectors that fall within the purview of the partner organization’s work. Partner organizations commit to distributing information to workers and employers through DOL-approved work plans. Partner organizations also connect workers who have wage and hour complaints with designated Wage and Hour Watch investigators at the DOL.

arbitrary and cruel treatment on the job—all goals which go beyond the scope of the rights currently guaranteed by law.

Outcomes and Lessons Learned

MRNY, with critical support from the RWDSU, has begun to develop concrete methods for improving government partnerships in order to achieve maximum impact on workplace conditions, as well as maximum protection of often-undocumented workers. First, we invest in the relationship with the agency on multiple levels over time and understand the areas where our interests are aligned and where they are not. Second, we focus on high-impact and high-visibility collaborations, like geographic and industry enforcement actions. Third, we work to take advantage of the agency's ability to be flexible in structuring settlement agreements in the resolution of investigations. The Labor Bureau, for example, is able to offer an employer a reduction in the percentage of back wages and damages owed if the employer can demonstrate increased labor costs and/or some guarantee that violations will cease going forward.

Strategic partnerships are certainly possible absent the monitoring of government agencies' efforts, but the multidimensional interaction between MRNY and the New York State DOL has played a critical role in our ability to credibly push for changes within the agency, and in our ability to design the legislative reforms discussed in the next section of this article.

The work of building and maintaining trust with a partner agency requires give and take on the part of the worker center. It is critical to understand that the interests of a government enforcement agency are not identical to that of the worker center, though it is possible to find many areas where interests overlap. Government agencies have a legitimate need to maintain a neutral, non-partisan enforcement posture. The DOL cannot function as the investigative arm of a worker center, no matter how sympathetic some staff members or officials from the agency may be toward the worker center's goals. In order to maintain trust, it is critical to understand and communicate the differing interests of all players, and to openly discuss how each organization plans to share, or not share, information with members, the press, and other allies.

The mirror of the need to cultivate trust is the need to monitor the enforcement work of government agencies, even when led by worker center allies. MRNY still deploys attorneys, organizers, and law student interns to assist in our ongoing tracking of investigations handled under the "new" Department of Labor. Frontline investigators still make serious errors and cause delays in cases. We have trained our own frontline staff to take a cautious approach, pressing DOL investigators when necessary but in a way that does not jeopardize MRNY's relationship with the agency. For example, we monitor cases closely, send informal emails regularly to document telephone conversations, and offer help gathering evidence and communicating

with witnesses and clients in order to assist investigators as they do their jobs. The result is that we are able to ensure the best possible handling of individual cases, and provide useful information to agency leadership about the successes and failures we are seeing “on the ground.”

STRATEGY 3: Partnering with Organized Labor

Overview and Strategic Rationale

Even the most comprehensive and effective government labor law enforcement initiative will not ensure that all workers’ rights are respected on a day-to-day basis on the shop floor or that workers will enjoy respect on the job. Workers must be able to stand up for themselves and enforce their own labor rights without a state intermediary. Ideally, unions enable them to do just that by creating a standing workplace justice enforcement entity and protocol in every organized workplace. Unions also can expand workers’ rights in the workplace. They are not limited merely to defending existing legal rights. MRNY has partnered with labor unions both to organize workers and to promote pro-worker public policy.

Collaborations between community worker centers and unions can provide significant, tangible benefits to workers, worker centers, and unions alike. Worker centers have deep roots in the community, legal expertise, ties to local elected officials and the media, and familiarity with and strong connections to the constituencies to be organized. Community-based worker centers can provide supplemental services, like English as a Second Language classes, to facilitate a connection to particular workers. Worker centers also can access foundation support for particular campaigns. Finally, worker centers are often more effective spokespeople to the press and the public because of their less direct self-interest. Unions, on the other hand, can bring significant financial resources, research departments, political power, and experienced staff to any collaborative endeavor.

Most importantly, given the scale and scope of workplace injustice, it is essential to bridge historic divides and bring all available power to bear on solving the problems of wage theft and worker abuse. When work to facilitate union organizing is included with labor law enforcement efforts, the impact of these efforts can be greatly enhanced, both in terms of back wage settlements and future labor rights that are secured.

The *Despierta Bushwick* campaign is the product of Make the Road’s most in-depth work to date in alliance with a labor union. As discussed above, we partnered with the RWDSU on that initiative. In April 2004, members, organizers, and lawyers from Make the Road New York developed a plan to garner consumer support for the payment of back wages and for worker unionization in the commercial area at the heart of the Bushwick, Brooklyn neighborhood where our center was located. We launched a systematic effort to knock on the door of every family that lived within two

blocks of the half-mile retail strip stretching along Knickerbocker Avenue. This bustling area is just around the corner from Make the Road's Brooklyn storefront office. The goal was to prepare local consumers to boycott any employers that might refuse to comply with the demands of the campaign, which aimed to establish enforceable workplace standards above and beyond what was already required by law for employees of retailers along the strip. The strategy was multi-layered: utilize Make the Road's natural geographic base to mobilize consumers and create press attention, add the leverage of litigation or complaints to government agencies where employers had accumulated a record of wage underpayment and other actionable statutory violations, and use those two primary sources of pressure to force employers into a neutral posture toward any unionization efforts that employees might undertake. Less than a year after the campaign's launch, 6,006 residential neighbors of the Knickerbocker Avenue strip had signed official pledges to boycott stores refusing to comply with the campaign's standards. More importantly, Make the Road had forged a partnership with the RWDSU, among other campaign allies, to secure the benefits of unionization for workers on the strip.

In the first year, the campaign focused on uncovering and remedying instances of underpayment of wages at specific workplaces. It collected hundreds of thousands of dollars for Knickerbocker Avenue employees in back wages and damages. By the next summer, the campaign had successfully collected additional hundreds of thousands of dollars from several workplaces. That summer, workers from Footco and NY Sneaker Company approached MRNY for support, having heard of the organization from *Despierta Bushwick* outreach efforts. As noted above, these workers were being paid significantly less than the minimum wage and were denied overtime pay.

Make the Road members and organizers sent a letter to the owners of Footco and New York Sneakers, indicating an intention to hold a press conference and initiate a boycott of the stores on August 21, 2005. The owners called immediately, and a delegation comprised of members, organizers, and an attorney was sent to the Footco store to commence the negotiation process. An hour later, the delegation of MRNY members and organizers declared victory and called off the boycott and the planned press event. The store owner had signed the campaign's Good Business Community Agreement, committing to remain neutral in the face of any union organizing efforts its workers might pursue. The Agreement also named Father Powis, a local priest with longstanding activist roots, as the arbiter of any disputes that might arise. In return, Make the Road promised consumer peace and press silence.

Limitations

Historically, tensions between labor unions and worker centers have created obstacles to meaningful and sustained collaborative efforts. Many worker centers evolved specifically to support and organize workers, particularly low-wage, immigrant workers who were alienated from labor unions. The member base of many immigrant worker centers worked in sectors of the economy such as small garment factories, local retail, light manufacturing, day laborers, and domestic work that were not high priority for union organizing drives. Even when workers were members of labor unions, language barriers, racism, and ineffective or corrupt leadership of union locals left immigrant workers unsatisfied by the quality of their union representation.

The staff and members of worker centers often dismissed traditional unions as insensitive or unresponsive to their concerns. Other critiques of unions focused on their top-down leadership models, inadequate rank-and-file participation and power, and their lack of deep community roots. Unions, on the other hand, have historically dismissed community worker centers as small, new, unsophisticated, and marginal actors that lack resources, expertise, capacity, and political power. These tensions between unions and community worker centers persist today and make collaboration difficult in many circumstances.

Finally, winning sustained improvements in workplace settings is an extremely difficult project, even when partnerships work smoothly. MRNY's partnership with the RWDSU has not always achieved direct success. In 2007, more than forty immigrant employees at a Brooklyn supermarket came together to complain about abysmal working conditions at the store. For example, a seventy-eight-year-old worker from the Dominican Republic worked thirteen hours a day for as little as \$15 a day. After years of consumer pressure through a community boycott, legal action with the New York State Attorney General, and intensive worker organizing by the union, we were able to win more than \$1.1 million in back wages and damages for the workers. Our efforts also resulted in the arrest and criminal conviction of the store's owners for falsifying records. However, we were unable to force that supermarket to sign the campaign's Good Business Community Agreement.

Many times, the force created by innovative collaboration is simply inadequate to overcome general barriers to worker organization. Even when organizing is supported by creative strategies and community support, it remains a slow, resource-intensive process. That process is made all the more difficult by the reasonable fear, particularly among immigrant workers, that participation in organizing drives might lead to loss of employment. Furthermore, opposition to unions in highly organized industries, as well as complex industry contracting and sub-contracting structures that obfuscate

the employer-employee relationship, can create barriers to organizing that are difficult to surmount.

Outcomes and Lessons Learned

The Footco victory was unprecedented. Consumer pressure and legal action alone might have enabled workers at Footco to win hundreds of thousands of dollars in back wages. Placing increased pressure on the employer through the union organizing drive enabled workers to win far more. The workforce won a total of approximately \$400,000 from a back wage settlement through the Attorney General's office. Additionally, workers obtained ongoing representation and protection in the workplace through the RWDSU. Finally, they secured increased wages, health benefits, and paid sick and vacation leave, as well as a contract that requires progressive and transparent, as opposed to arbitrary, discipline and termination procedures.

MRNY has explored other partnerships and projects that would enable us creatively to support union organizing while also enforcing labor rights. Targeting lawless practices among employers in industries with a high density of union organization not only has the potential to win back wages for exploited workers, but also can, by raising the wage floor, lower the barriers to union organization at these workplaces.

Recently, MRNY launched a campaign against labor exploitation at the Queens Center Mall in Elmhurst, Queens. The mall is home to over 170 employers, with more than 3100 workers. Similar to our campaign against exploitation at Footco, we are organizing consumers to support the workers. Our demands are not limited to mere labor law compliance at a handful of shops. We are targeting individual employers for organizing drives, but we are also seeking a commitment from the mall ownership to include a union neutrality clause in all of the mall's lease agreements with employers.

Collaboration with organized labor can leverage the power of community worker centers and magnify the impact of our work.

STRATEGY 4: Labor law reform

Overview and Strategic Rationale

Securing economic stability for and ensuring recognition of the dignity of low-wage, immigrant workers requires more than just enforcing the current law. Many legal protections are inadequate to ensure New Yorkers a meaningful quality of life. For example, New York's minimum wage—which rose to \$7.25 this summer, indexed to the federal rate—is simply inadequate to support a family on a forty-hour work week. Thus, low-wage workers routinely work at least sixty or seventy hours a week, sometimes more, which leaves little time to care for family members. Workers with serious illnesses continue to work, often against doctors' orders, because the

lack of paid sick leave or protection against termination for absence forces them to do so. Wage and hour law, meant to provide a floor of basic protections for non-union, low-wage workers, is no longer doing the job it was meant to do for workers, their families, or the community at large.⁴⁴

Additionally, the law fails to provide adequate incentives for employers to comply with even these basic legal protections. As we have discussed, in many industries, flagrant violations of wage and hour laws are the norm, rather than the exception. Since the likelihood of detection is low, the risk of noncompliance for employers is low. Even if they are caught, penalties often are minimal. Under New York Labor Law,⁴⁵ employers only owe the back wages plus 25% of wages as additional damages. Unscrupulous employers make the rational calculation: it is far cheaper to violate the law, and possibly pay a small fine down the road, than to pay the correct amount the first time around. Furthermore, employers know that the State enforcement agencies are overburdened, which reduces the likelihood that violations will be detected or remedied. Delay benefits the employer. In New York, state law does not toll the worker's statute of limitations while the complaint is pending at the Department of Labor. Thus, each passing day lowers the chances that the worker can litigate her claim in court and ultimately recover the wages owed.

Low wage immigrant workers are harmed by the convergence of these two trends: inadequate substantive rights under the law and inadequate enforcement of, or incentives for, employers to comply with even those limited rights. Through our involvement across the spectrum of advocacy efforts—from direct action against employers to recover wages, to collaboration with the New York State Department of Labor to recover lost wages, to multiple-plaintiff federal litigation—MRNY's members and organizers are intimately familiar with the limits of New York Labor Law as it currently exists. Even as we seek to enforce the current law and create strategies to support worker self-organization, it is imperative to engage in policy innovation and advocacy to improve the economic position of workers and to ensure broad legal compliance.

MRNY has engaged our members in legislative advocacy campaigns that seek to raise the minimum wage, create living or prevailing wage requirements in exchange for government support, impose employee benefits requirements in exchange for subsidies or tax breaks, and improve incentive structures which influence employers' assessments of whether and to what degree they should comply with labor laws. For example, MRNY is currently one of the organizations leading an effort to pass local legislation that will require paid sick leave for all New York City workers.⁴⁶ The legislation

⁴⁴ BERNHARDT ET AL., *supra* note 3, at 51-54.

⁴⁵ N.Y. LAB. LAW § 198 (McKinney 2009).

⁴⁶ See, e.g., Dwyer, *supra* note 13, at MB1; Albor Ruiz, *New York Workers Deserve Paid Sick Leave*, N.Y. DAILY NEWS, Oct. 7, 2009, at 32.

will impact more than one million New York City workers who currently do not have any paid sick leave. These workers currently lose income and risk being fired every time they, or family members for whom they care, get sick.

While labor unions, policy and research organizations, and others have important contributions to make to law reform initiatives, community worker organizations, such as MRNY, add significant value to these coalition efforts. First, we bring thousands of directly-affected workers into the campaign. These workers can do the heavy political lifting of organizing direct actions, conducting legislative visits throughout the city, providing testimony at public hearings, and being spokespeople for the media. Second, we bring a legal and organizing staff with a proven track-record of drafting and passing local legislation on civil rights and education issues. Finally, our institutional relationships with key legislators are a valuable coalition resource.

Altering the legislative and regulatory landscape that protects and expands workers' rights holds the promise of broad impact. This advocacy work also can help overcome or eliminate obstacles that we face in our ongoing organizing or enforcement activities.

Limitations

MRNY's growing membership base, the ascendant political power of immigrants—particularly Latino immigrants—in New York State, and the fact that there are far more workers than employers are all significant advantages in this arena. Nonetheless, the political process is complex and low-wage immigrant workers, even those with strong institutional relationships and expertise, are marginal players. Reform work can only be done by coalitions, and coalitions have drawbacks. The most significant drawback is that the most powerful coalition partners are often able to prioritize their own interests and concerns over those of their partners. The implementation and monitoring of legislative gains are also challenging.

CONCLUSION

The workers of Footco and New York Sneakers walked away from the *Despierta Bushwick* campaign having won a \$3.00 per hour raise, health insurance coverage for all employees, and protections against being fired without cause. On February 15, 2008, the RWDSU signed the first contract renewal with the owners of the sneaker store chain, sustaining the campaign's wins for three more years. To date, MRNY members patrol the Knickerbocker Avenue retail strip in partnership with the New York State Department of Labor's Wage and Hour Watch program. This outreach to workers and employers alike is designed to sustain and extend the victories won along that strip, to establish an enforcement presence, and encourage the next group of abused employees to come forward. However, in today's

economic climate, if there are not similar wins throughout the retail industry, MRNY and the RWDSU's wins are precarious.

The prevalence and severity of employer wage theft is tragic. MRNY and worker centers across the country are often mired in battle merely to enforce the minimum standards set by law—standards that, when enforced, do not even enable families to move out of poverty. We must use wage violations and similar points of employer vulnerability as leverage to win collective bargaining agreements and other guarantees of workplace improvements that can endure. If workers themselves are to play a meaningful role in organizing on their own behalf, our campaigns must fight against abuses that workers believe they have the power to remedy. Abuses that violate basic statutes are sometimes the only abuses that vulnerable employees believe they can change. However, the enforcement remedies for wage theft in today's climate are weak—too weak to protect immigrant workers from retaliation. We must employ multiple approaches to remedy wage theft and to move beyond mere statutory enforcement to fighting for living wage jobs, benefits, and in the workplace, we must employ multiple approaches. We must create multifaceted alliances, employ myriad intersecting and parallel strategies, and constantly experiment and innovate to fight exploitation.

At this moment in history, worker centers are emerging through at least three distinct networks, which aspire to national coverage and impact.⁴⁷ The change in administration on the federal level opens, for the first time in a decade, the possibility of real partnership between workers' advocates and federal enforcement agencies like the United States Department of Labor. This is the moment for advocates of working people to build on the lessons learned through MRNY's purposeful and multidimensional experimentation. The problem of worker exploitation is a stubborn problem deeply entrenched in our low-wage industries. We must build on the model successes and learn from the challenges of those campaigns already fought.

⁴⁷ The three networks are National Day Laborer Organizing Network, The Restaurant Opportunity Center Network, and The Interfaith Worker Justice Network.

