# The Global Labour Rights Reporter

## The Role of Lawyers in Union Growth Initiatives


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Cover Image
Lawyers of the Law Society of Zimbabwe bar association take part in a "March for Justice" toward the Constitutional Court in Harare to call for restoration of the rule of law, respect of human rights as well as the country's Constitution.

Credit: Jekesai NJIKIZANA / AFP / Getty Images

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# THE ROLE OF LAWYERS IN UNION GROWTH INITIATIVES

JON HIATT

Legal work on behalf of trade unions today is taking place in most countries and regions in the context of gradual or even sharp decline in union density – that is, decline in union membership as a percentage of the overall workforce. According to ILO and OECD statistics, over the past two decades, to cite just a few examples, union density has gone down from approximately 28% to 22% in the U.K.; 20% to 13% in Brazil; 21 to 16% in Japan; and 21% to 14% in both Germany and the Netherlands. Even where exceptions exist, the levels of union density are generally still low.

The reasons for this trend may vary from country to country, yet there are various recurrent factors: the change in many countries' economies from more heavily unionized sectors to less unionized ones, the shift from jobs in the formal economy to jobs in the informal economy, the prevalence of casualization and outsourcing of jobs and revised definitions of employment status, the impact of technology and automation of jobs, and the significant increase in corporate and/or government opposition to unionization.

And yet, there is a paradox at the heart of this bleak trend. Public support for unions is rising in many regions. In the United States, recent surveys show that approval of unions has climbed to heights not seen since the 1960s, with nearly 71% of adults stating they approve of unions, and 67% believing that the decline in union membership is bad for working people and the country as a whole. In Latin America, support for union ideals remains high even as union density contracts toward historic lows. Research from Western Europe, East Asia and elsewhere reveals similar contradictions. Support and need for collective representation remain acute, even where the formal structures of the labor movement are weakest. And indeed, consistent with this support and need, in many countries unions are shifting more attention, resources, and creativity into union growth strategies.

The ways in which unions grow their membership vary substantially from one country to another. In some locations, unions must organize on an enterprise, or even workplace by workplace, basis; in others, the organizing is sectoral; in yet others, unions have a legislated right to represent workers in certain industries or sectors, however they must actively recruit workers into the union to build membership growth.

Recognizing that the manner in which unions increase in size and recruit new members differs from country to country, we know that the role that union lawyers play in these efforts varies as well. Moreover, we further know that significant numbers of lawyers are indeed making important contributions, as the response to the call for articles for this edition demonstrates, coming from countries all over the world. And as Italian labor lawyer Marco Tufo observes at the outset of his article below, "[a]lthough historically lawyers have always played a key role in union growth initiatives in Italy, the recent trend of a decline of union density has intensified their efforts."

This edition of the GLRR is thus devoted to the role of lawyers in union organizing and other growth initiatives. We begin the issue with 12 articles from ILAW lawyers in Asia, Africa, South America, Australia, Europe, and North America.

Following the articles, we also include two related special features – first, a speech given by Nigerian ILAW lawyer Femi Aborisade to a Nigerian union federation outlining his vision of the fundamental steps that all unions must take, with legal assistance, to grow and thrive as

**Jon Hiatt**
Of Counsel, ILAW Network

effective, democratic worker organizations; and second, a conversation among four experienced ILAW union lawyers from India, Brazil, Nigeria, and Canada discussing the critical relationship between union lawyers and their clients as the lawyers offer support in these growth campaigns and other important initiatives.

Our first published article comes from **Ukraine**, written by Ina Kudinska, Tristan Masat, and George Sandul. They describe a nationwide legal aid worker center called Labor Initiatives that labor lawyers are jointly running with unions, and that is expressly charged not only with providing legal services, but also with achieving union growth. With the surreal backdrop of the almost four year-old Russian invasion, the authors hail the lawyers' contributions to the formation of several new unions in multiple sectors including domestic work, childcare, platform work, and even within multinational companies.

Next is an article about another labor movement-union lawyers worker center partnership, this one devoted to young workers in **Australia**. Here, Amanda Threlfall describes how the Australian labor movement has capitalized on the demographic group most likely to join unions today by creating the Young Workers Centre, where legal services are offered to young non-union workers as a means of attracting them into the labor movement.

Gayatri Singh, Katyageri Chandola, and Akhil Surya then write from **India** about how labor lawyers there are addressing the law's "mechanisms of disenfranchising workers from forming unions", especially in the informal sectors of the economy, by developing counter-strategies and successfully engaging the unions in organizing workers previously excluded from the right to unionize – one involving a campaign in waste-picking, the other in health centers and childcare.

From **South Korea**, Aelim Yun, describes how labor lawyers, together with the Korean Confederation of Trade Unions (KCTU) and various industrial unions, are providing legal support for workers while assisting unions in organizing from inside. She describes the importance of this development, and the challenges they face, where Korean employers are increasingly converting employees to non-standard forms of employment in the "fissured workforce" - a trend seen in so many other countries, as well. Aelim offers reasons for hope in describing progress in the fight for changes to the nation's labor laws and union structure, itself.

In the article that follows, Marco Tufo, from **Italy**, also addresses his country's reliance on "flexible employment relationships" and the related crisis in union membership. Marco focuses on two legal strategies that lawyers have developed, in concert with Italian unions, to address these trends: one involving strategic litigation aimed at protecting the rights of "atypical" worker in the platform economy – litigation that addresses misclassification of employee status, app-generated discrimination, and "social dumping" practices; and the other seeking to use national ballot referenda to extend individual employment protections to former contract workers and the self-employed with a goal of building political support for unions in their membership recruitment campaigns.

Up next is an article from **Ecuador** by Syliva Bonilla Bolaños, who together with two other young women has founded the Center for Research and Defense of the Right to Work, from which they combine a practice of research, training, strategic litigation, and advocacy. Sylvia explains how in the Ecuadorian context the only effective path to union growth is through sectoral organizing. Drawing on campaigns that her Center has helped to spearhead in the agroindustrial, entertainment, and paid household worker sectors, she describes how the lawyers helped design and implement strategies that creatively sequenced litigation, ILO mechanisms, amicus curiae briefs from allies, legislative proposals, and social media (including Instagram, Facebook, TikTok, and graphic publications), as well as a podcast.

We move on to an article by Tetsuro Kinoshata and colleagues describing how a group of Japanese union lawyers, including ILAW members, embedded themselves in a campaign to organize Amazon delivery workers in **Japan**. Acknowledging the decline of union density that Japanese unions

have been experiencing in recent years in the traditional enterprise-based sectors and failure to date to gain traction among the new workforce in new sectors, the authors describe a new model of community-based union organizing including various strategies and tactics employed, discuss the prospects for its proliferation, and analyze lessons learned from this case study.

If the Amazon workers' union and their lawyers represent an upsurge of organizing and strategic lawyering in Japan, the Starbucks workers and their lawyers in recent years have reflected a similar burst of creative energy in the **United States**. Mary Joyce Carlson, on the front lines of this ongoing struggle, offers a set of fundamental principles that she argues should guide the union lawyers' role as they assist with this type of new organizing, including preparing and supporting strikes, rewriting rules for workers excluded from legal protections, challenging corporate interference with organizing, and "taking accountability to the top."

An article from **Nigeria** by Ngozi Okagbue explains the role of legal strategy in expanding trade union presence in Nigeria's oil and gas industry. Describing the systemic fragmentation of the workforce in this sector, through labor contractors, service companies, and other third party intermediaries, Ngozi discusses how the role of legal professionals has correspondingly transitioned in many instances to "strategic negotiator" and "policy architect," and how legal expertise has been instrumental in developing new union growth strategies.

The article by Argentine labor lawyer Monica Tepfer offers something of a roadmap for how union lawyers can utilize ILO processes to advance trade union growth. Drawing not only on the guarantees of freedom of association and collective bargaining in the ILO's fundamental Conventions 87 and 98, and the supervisory systems providing relevant enforcement mechanisms, but also on other conventions' protections as well, such as those emanating from Convention 190 on violence and harassment in the workplace and also the ongoing efforts to secure a new Convention for platform workers, Monica shows how trade unions in **Argentina** and elsewhere have made use of ILO standards and procedures to win important organizing and bargaining rights for workers in their respective countries.

The article that follows, written by Pablo Franco of **Mexico**, maintains that Mexico's recent, fundamental labor reform that began in 2019, gradually to be phased in, has transformed the role of labor lawyers from largely irrelevant under the "protection contract" system to what have become central figures in guiding newly empowered, democratic unions. He suggests that lawyers must now provide legal expertise in union formation, collective bargaining, litigation, and compliance, while also training workers to exercise their rights. At the same time, he cautions, care must be taken to ensure that lawyers empower, rather than displace, workers' democratic voice.

In the final article, based on the author's past experience as an in-house union lawyer in **Ghana,** the ITUC's current Legal Director, Paapa Danquah, focuses on the link between strong, effective institutions and the ability of unions to grow – most relevantly to the role of lawyers in achieving this dynamic. Paapa explains how various legal and structural internal tools, such as sound governance, constitutional development, democratic representation, and strategic leadership, are not simply important for a union's effective functioning, but also contribute significantly to advance union growth initiatives. He argues that as in-house lawyers, union counsel serve in a unique capacity as "strategic insiders," and are positioned to play an important, influential role with union leaders and members in the field.

We hope you find this collection interesting and inspirational, and that you will be sure also to read Femi Aborasade's speech on labor law reform and the "roundtable discussion" among the four ILAW lawyers that follow the articles.

# LAW IN THE SERVICE OF WORKERS: BUILDING SOCIAL MOVEMENT UNIONISM IN UKRAINE

**INNA KUDINSKA, TRISTAN MASAT, AND GEORGE SANDUL**

*Ukraine | Originally written in English*

## INTRODUCTION

Labor lawyers are service providers to workers in the struggle to build powerful democratic trade unions and a dynamic labor movement. Like a good barber, their role is to bring expertise to a client, to be of service, and hopefully not to supplant the desires of the client, or take on undue self-importance in the outcomes. They can suggest the most recent trends, offer advice, facilitate a new look, but where they step into leading through their expertise, they can, in our experience, over-emphasize law, and distract from the construction of power through membership growth and mobilization. This isn't unique to lawyers as a profession, but the allure of law as a panacea, a solution separate from a theory of power, is particularly strong, especially as unions around the world find themselves with weak bargaining power, searching for answers—where the aesthetic drapery of the law is all the more likely to seem like structural power. Providing a highly valuable and skilled expertise as a service, but not suggesting law as a destination in and of itself, is a constant balance for lawyers as practitioners, and more so for lawyers as unionists and activists.

In Ukraine, the authors played a founding and developing role in the first nationwide worker center and labor law free legal aid NGO, Labor Initiatives (LI). Our experience building this worker center has intensified our belief that legal centers, associations of lawyers domestically, such as Labor Initiatives, and internationally, such as ILAW, can play an essential role in the vitalization of social movement unionism—especially when built on a foundation that includes a healthy skepticism of the law itself in the context of capitalism and il/liberal democracies.

For more than ten years, we have been testing the thesis that legal services, presented in a context of horizontal integration with a broad range of other areas of expertise and social and cultural community building, strengthens union growth strategies. This is certainly not a unique or new thesis, and unionists have for many decades seen that a diversity of tactics and approaches improves campaign outcomes.[1] It is also not an approach without challenges, often requiring lawyers to navigate the complex realities of supporting different groups of workers in local, sectoral, and national unions who sometimes have competing interests, and building and maintaining relations with union leaders who are understandably leery of civil society involvement in union work. In our experience such challenges are often navigable, if not always solvable, but outcomes are improved if the legal and support work is developed in collaboration with worker leaders, by professionals who know their limits and consciously work to respect the democratic institutions of unions, keeping that form and its development centered in their efforts.

In Ukraine, where freedom of association has long been restricted by one flavor of authoritarianism or another, we believed that an approach that dealt specifically with showing the role of workers' unions and the role of union-side lawyers, together in new communities of solidarity, would be particularly useful to change the public perception of worker organizing campaigns.

Thankfully, we were not alone. We identified this need in close cooperation with elected labor leaders and union activists. Over the past decade

1 An approach supported in the still valuable book, *Organizing to Win: New Research on Union Strategies*, Bronfenbrenner, K. (Ed.). (1998). Ithaca, NY: ILR Press.

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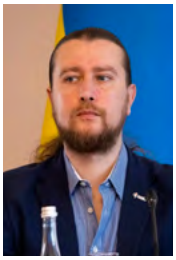
**Tristan Masat**
J.D., L.L.M., is a labor union organizer, the founder of Labor Initiatives, and the Country Program Director for Solidarity Center Ukraine.



**George Sandul**
Attorney, legal director of the NGO Labor Initiatives

Ukraine began to experience a broad rebirth of civil society and renewal of grassroots efforts, particularly in the context of more than a decade of defense against Russian invasion. Our worker center was founded in the winter of 2013-2014, during the Euromaidan protests, a few months before the start of the war. Over the next decade and now through several years of escalated war, we believe our work with union partners has been essential in the formation of numerous new unions in multiple sectors. This includes, for example, a conservative estimate of 65,000 workers being covered by new or dramatically improved CBAs in the energy and logistics sectors alone by 2025.

More than the numbers, though, we think this approach and the work for LI and partners has helped to keep unions alive in Ukraine, despite extremely difficult days, months, and years, with the existential threat of a foreign imperial invasion, but also of a domestic political and economic milieu that continues to push narratives of neo-liberalism and austerity, and certainly continues to experience high levels of corruption and arbitrary power in the hands of an economic elite. The environment is extraordinarily difficult for workers; and for unions not just to survive, but to be actively working towards new forms of organizing and mobilization, is impressive.

To bring the focus back down to the day-to-day work, lawyers have certainly always played a vital role in both traditional and innovative methods of union organizing and growth campaigns. They are often instrumental in ensuring that their union clients are well-supported, guided by legal expertise, and protected, to the extent possible, from being legally or illegally targeted by employers or governments seeking to obstruct freedom of association. In Ukraine, as in many countries, legal professionals frequently serve as catalysts or aggregators of innovative concepts and proposals pertaining to strategies for union development.

We particularly want to share some examples of LI and Solidarity Center's experience in helping partners to integrate legal services with union growth—drawing upon extensive years of service with LI as a service bureau for unions and unionists in Ukraine, including work with the country's major trade union centers, their affiliates, and myriad worker advocates. These partnerships encompass legal support, collective bargaining assistance, dispute resolution, diverse training programs, strengthening union capacity, and extend beyond these more traditional services to a wide variety of worker center activities—including humanitarian assistance during the war, cultural and community development, and social engagement with youth, art, design, and branding for unions, and more.

To illustrate this experience, we will describe several specific legal service efforts occurring in Ukraine in the context of union growth campaigns in the informal and platform economies, and within multinationals. The first of these is in the challenging area of care work, of domestic workers, household workers, and others whose legal and organizing context is difficult at best.

## Union of Home Staff - Nurturing Connections through Lawyers` Services

According to the available data from the State Statistics Service, approximately 162,000 domestic workers[2], primarily female, provide care services to families in Ukraine.

Since 2018, attorneys from LI have been drawing attention to the challenges faced by domestic workers in Ukraine[3], including, but not limited to, undeclared work, employers' failure to remit social taxes, and insufficient rest periods. Globally, domestic workers tend to be both physically and legally isolated, which also holds true in Ukraine. Within this context, a legal environment that formalizes employment, social protection, and enforcement mechanisms takes on more importance, as does corresponding educational and awareness-raising efforts. Non-ratification of ILO Convention 189[4] and

2 Explanatory note to the Law 3680-IX "On Amending Certain Laws Regarding Domestic Work Regulations" https://itd.rada.gov.ua/billInfo/Bills/Card/27156

3 Speech of Labor Initiatives lawyer at the parliamentary hearings on the rights of women from vulnerable groups (Oct.10, 2018), https://youtu.be/2rscffm-wdo4?si=Y-aEQkSrCkCIJ-0u

4 International Labour Organization Convention on Domestic Workers, (Convention No.189), 2011

the absence of national regulations on this issue at the time only made discriminatory tendencies worse and left many in the workforce without adequate social security.

In 2018, Labor Initiatives' legal clinic began working with a group of child-care providers and tutors in Ukraine who needed assistance in registering a non-profit organization. Their goal was to raise awareness about the labor rights challenges faced by Ukraine's care economy workers and support the country's efforts to formalize domestic work through legislation. To foster productivity and a sense of community for child-care workers, LI provided its office space for team meetings, worker interactions, and training sessions for child-care workers and activists. Legal counseling on forms of workers` representation and media outreach support from LI attorneys and the Solidarity Center in Ukraine led to the establishment of the United Home Staff (UHS) NGO[5] in July 2019, which later evolved into an information hub and community center, serving its 1,800 social media platform members.

However, the conversation about the need for legislative protections for domestic workers in Ukraine moved forward only very slowly. Several versions of a new labor code, from 2019 to 2022, included proposals to regulate domestic labor; however, these proposals were not adopted. In 2021, a group of lawmakers submitted draft law No. 5695, "On Amending Certain Laws Regarding Domestic Work Regulations," to the parliament, which then took another four years to adopt.[6]

In 2023, to shape public discourse and provide lawmakers with empirical data on the care work sector, lawyers from Labor Initiatives, along with well-known Ukrainian sociologists, initiated and developed the first nationwide survey on working conditions and the needs of domestic workers.[7] The survey revealed that over 60% of respondents were either unaware of or struggled to answer questions about trade unions or professional associations that support domestic workers. At the same time, 74% of respondents


Bolt food rally in Kyiv, a group of Bolt food delivery riders near the company's offices in Kyiv are demanding an increase in their earnings, as prices have skyrocketed in Ukraine.
Credit: Labor Initiatives NGO

would like to apply to a professional association or other organization that can help domestic workers secure their rights or serve as a platform for sharing experiences.

The survey release and the subsequent community discussions helped to develop the UHS NGO and highlighted room for growth in its capacity to advocate for the legislative changes needed for domestic workers. Due to the lawyers` assistance, domestic workers established a union and affiliated with the Federation of Trade Unions of Ukraine (FPU) in March 2024, based on the membership of the UHS NGO.[8] This new union, which emerged from the UHS NGO, retained its parent organization's name and acronym, UHS, and now represents several dozen domestic workers, with a much larger informal network.

From 2018 to 2025, LI attorneys actively engaged in shaping the discourse through publishing articles, commenting in national media on domestic child-care workers, developing video content on the need for the adoption of legal regulations, and emphasizing the importance of expanding union representation opportunities.[9] This combined legal and media strategy was enabled by coordination between Labor Initiatives attorneys and in-house media and communications professionals. The care

5 Official Facebook page of the United Home Staff NGO, https://www.facebook.com/UHS.in.ua/

6 Draft law No.5695 "On Amending Certain Laws Regarding Domestic Work Regulations," which became a Law 3680-IX was voted by the Ukrainian Parliament on 25.04.2024 and entered into force on 24.08.2024, https://zakon.rada.gov.ua/laws/show/3680-20

7 Labor rights of domestic workers in Ukraine, Results of the nationwide survey conducted in March-May 2023, https://domesticworkers.trudovi.org.ua/en/

8 Поповнення в профспілковій родині: профспілка домашнього персоналу [Enlargement of the union family: the union of home staff], (March 2024), https://fpsu.org.ua/materialy/25836-popovnennia-v-profspilkovii-rodyni-prof-spilka-domashnoho-personalu.html

9 Невидимі: домашні працівники в Україні [Invisible: domestic workers in Ukraine], video produced by Labor Initiatives, (March 16, 2023), https://www.youtube.com/watch?v=aVyFFlxo9Lw&

workers' campaign was one of the reasons Labor Initiatives developed a video-cast series, Union TV, which highlighted various legal topics in social media videos posted weekly. It is worth noting that regular media coverage and labor law explanations have led to various applications from workers to the Labor Initiatives legal clinic, seeking help in forming local union chapters across different sectors. The LI lawyers' sharing of best practices and successful cases on social media has increased the willingness of workers to form or join unions.

Notwithstanding the implementation of legislative regulations concerning domestic work in 2024, the obstacles faced by workers persist. In May 2025, LI attorneys, in conjunction with leaders from UHS, participated in the hearings of the Parliamentary Committee on Social Policy and Veterans Affairs to discuss the next steps for enforcing the law10. Among them was the necessity of conducting an information campaign among domestic workers and their employers to educate them about the new law provisions and the benefits of official employment. At the same time, legislative changes were needed regarding social taxes paid (tax payments for social benefits) by employers of domestic workers, along with improved regulation of home staff agencies.

## Protecting Platform Workers` Rights - Innovative Approaches

The platform economy in Ukraine began to grow rapidly in 2017-2018, marked by the entry of well-known multinationals into the market, as well as the establishment of domestic digital platforms, predominantly in the taxi and food delivery sectors.

The deficit of labor rights and decent working conditions in the sector led to an increasing number of protest movements by platform workers'—with drivers and delivery workers' protests becoming a common sight in the streets of Kyiv and other large cities in particular. In July 2019, Glovo delivery couriers held the first protest in the gig-economy sector, demanding the restoration of bonuses that the company had cut[11], leading to a decrease in pay for the number of hours worked. These events marked an initial series of protests, following which the LI and the Solidarity Center established lasting support relationships with the community of delivery couriers[12], providing legal counsel to address their concerns[13], offering legal protections to help organize unrepresented sectors of the informal economy, and providing community connections, meeting and logistics support, and video and podcast production on the LI media about the working realities of platform workers in Ukraine, to deliver a message to other workers that they are not alone and that their work is just as valuable as any other. Legal experts from LI helped platform workers form alliances with journalists, civil society organizations, and traditional trade unions. In addition to raising awareness, Labor Initiatives held workshops with platform workers and journalist partners to develop organizing strategies and communications plans for public education on platform worker issues in national media and on their own social media. LI also connected platform workers from different countries to share experiences, best practices, and analyze unionizing efforts abroad.

In 2021, LI lawyers consulted with delivery workers from BoltFood during Ukraine's first digital strike[14]. Workers turned off the app during peak hours, resulting in a collapse of delivery services in Kyiv. Workers petitioned for the reinstatement of previous employment conditions and an increase in remuneration. Ultimately, the company addressed these demands to a limited extent over time. Although delivery riders lacked a persistent formal union structure, following the wave of protests, they established a cohesive activist community consisting of over 200 members, primarily communicating via digital platforms such as Telegram.

10 Як "невидимі" працівники стають "видимими", а домашня праця - престижною [How the "invisible" workers become "visible", and domestic work - prestigious], results of the hearings of the Parliamentary Committee on Social Policy and Veterans Affairs, (May 27, 2025), https://komspip.rada.gov.ua/news/main_news/77663.html

11 Stasiuk I., У Києві кур'єри Glovo вийшли на протест проти умов праці [Glovo riders protest against working conditions in Kyiv], (July 23, 2019), https://hmarochos.kiev.ua/2019/07/23/u-kyyevi-kur-yery-glovo-vyjshly-na-protest-proty-umov-pratsi/

12 More than 300 delivery workers were members of the online initiative group that emerged after the change in Glovo's policies in 2019.

13 Hadwiger, F. 2022. Realizing the opportunities of the platform economy through freedom of association and collective bargaining, ILO Working Paper 80 (Geneva, ILO), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_protect/%40protrav/%40travail/documents/publication/wcms_857284.pdf

14 Kostyrin V,. У Києві страйкують кур'єри служби доставки: "доходи вже не покривають ризиків" [Delivery riders strike in Kyiv: "income does not cover risks"], (September 3, 2021) https://www.rbc.ua/ukr/styler/kieve-bastuyut-kurery-sluzhby-dostavki-dohody-1630686576.html

Moreover, not only can labor attorneys and union lawyers assist platform workers with organizing and building a community, LI also has experience connecting platform taxi drivers with union-sympathetic attorneys to help them in cases like traffic accidents. In one instance, a driver of a ride-hailing company crashed while transporting a passenger. Although both were unharmed, the passenger's expensive laptop was destroyed, and the platform company refused to pay any compensation. The platform drivers' union, which operated in Kyiv at the time, stated that it supported the passenger's claim for compensation, both to hold the company accountable for the risks faced when using its services and to foster solidarity between drivers and customers. The union said it wants to protect both passengers and drivers in such situations, since the informal nature of the platform economy can leave both workers and customers vulnerable, though not the company itself. The LI workers' center helped establish a connection with an attorney specializing in traffic accidents. This case highlighted the risks that the platform economy poses to drivers and riders, and helped promote public discussion about the rights people have when engaging with platform companies. It also encouraged more ride-hailing drivers to join the union, as they saw specific assistance and benefits from it.

Even in the midst of a full-scale invasion, delivery workers still struggled for their labor rights. In 2022[15] and 2023, Bolt Food delivery workers staged protests in major Ukrainian cities, including Kyiv, Lviv, and Dnipro[16]. The protests were sparked by the company's ongoing wage cuts, including reductions in payments for the time workers spent traveling to restaurants.

Attorneys and communications staff at LI regularly supported the initiative group of platform workers not only by providing legal advice, but also by bringing attention to workers` concerns in public through media outreach and in-house video productions[17], and also by designing legal and organizing strategies to help worker advocates recruit young workers into the labor movement and educate platform workers on the benefits of representation.


Dipro-based Bolt food delivery couriers organized a rally to protest for increased payments. Credit: Labour Initiatives NGO

## Legal Support for Workers in Multinationals - a Key Factor in Organizing and Improving Working Conditions

In 2016, the local trade union chapter at the Ukrainian branch of the international beverage company was formed, partnering with the LI legal clinic in Ukraine from the start.

Over the years, LI attorneys provided union representatives with comprehensive legal consultations, focusing on negotiations with the employer to improve working conditions and secure wage increases. Specifically, LI experts conducted strategic research and provided an analysis of wage levels and working conditions in other countries where this multinational company operates. A separate direction of Labor Initiatives activities, in partnership with the trade union, involved a series of legal and organizing workshops aimed at helping the union refine its internal governance and structure to expand opportunities for union representation and recruit more workers to the union.

Legal professionals also offered consultations concerning a series of peaceful assemblies, which were organized by the union to foster dialogue with the management of this international

15 Кур'єри BOLT влаштували мирний протест: компанія зменшила зарплатню працівникам [Bolt delivery riders hold a peaceful protest: the company slashed wages], (July 6, 2022)
https://www.youtube.com/watch?v=26fK0k8gEgw

16 Balashova L. Проблеми зелених рюкзаків. Українські кур'єри Bolt Food страйкують проти компанії, а вона дорікає їм обманом. Що відбувається [Green backpack problems. Ukrainian Bolt Food riders are striking against the company, and it accuses them of deception. What is happening], (October 25, 2023),
https://forbes.ua/innovations/problemi-zelenikh-ryukzakiv-ukrainski-kureri-bolt-food-straykuyut-proti-kompanii-a-vona-dorikae-im-obmanom-shcho-vidbuvaetsya-25102023-16894

17 One woman's work in Ukraine's gig economy, Labor Initiatives YouTube channel, (July 26, 2021)
https://www.youtube.com/watch?v=QFb5UxGRFOw

beverage company. They resulted in a 50% wage increase for all workers at the Ukrainian branch of this international beverage company in 2018, a notable achievement for multinationals in Ukraine and the region[18]. Following this success, union membership increased by more than 20%.

## Conclusion

Decidedly, one strong emphasis of our reflections here is that law best serves workers as one element – one service – of a horizontally integrated network of efforts where more is in fact merrier, and more effective in supporting organizational growth and power development. Law must be one foundation, but it is weaker without a community of parallel skilled service providers from other areas of expertise, approaches, strategies and tactics. It also relies on right-sizing our view of our roles, as legal experts, in the internal functioning and external support for unions. We have to be vigilant to, in organizing terms, to inoculate workers from the overconfidence that courts can always, or even often, solve problems against power imbalances. That said, we still believe the experience of building a legal team, and team to support social movement unionism in Ukraine has essentially been a remarkable success, at the least holding open and growing a space for future organizing efforts by Ukrainian workers. Youth activism among our union partners, the capacity for media and communications campaigns, and cultural and community building efforts have emerged in parallel to the legal work, consciously fostered as not only complementary, but strategically needed.

18 Movchan S. Профспілка на заводі Coca-Cola добилася підвищення заробітної плати у півтора рази [Trade union at the Coca-Cola plant achieved a 1,5 times wage increase], (June 23, 2018) https://politkrytyka.org/2018/06/23/profspilka-koka-kola-dobilasya-pidvishhennya-zarplati-u-pivtora-raza/

# AUSTRALIA: THE ROLE OF LAWYERS IN UNION GROWTH THE YOUNG WORKERS CENTRE

**AMANDA THRELFALL**

*Australia | Originally written in English*

Australia is experiencing the largest growth in union membership in two generations. Recent data shows that union membership increased by almost 200,000 members from 2022 to 2024, representing a 12.5 per cent increase. There are now 1.58 million union members, an increase from 1.4 million, showing the biggest growth in union membership since data was collected by the Australian Bureau of Statistics. While union membership has increased in every age category, the largest union growth is among young workers aged 15 to 24 years, an increase of 53 per cent, followed by workers aged 25 to 34 years, an increase of 22 per cent. The typical age of a union member in Australia is now 44 years old. Young workers aged 18 to 29 years are also the most likely age group who intend to join their union in the next 12 months. Union density has increased from 12.5 per cent to 13.1 per cent as union membership growth of 12.5 per cent is outpacing the general growth in employment at 7.7 per cent.[1]

Unions in Australia are implementing new initiatives to recruit young workers and drive growth. Victorian Trades Hall Council is the peak body for unions in the state of Victoria in Australia, representing 40 affiliated unions covering every industry and more than 450,000 workers.[2] The Young Workers Centre was established by Victorian Trades Hall Council and affiliated unions in 2016 as a mechanism for creating safer, fairer workplaces for young people aged 30 and under.[3] Based at Victorian Trades Hall, the Young Workers Centre is a one-stop-shop for young workers who want to learn more about their rights at work or who need assistance in resolving workplace issues. The team of lawyers, organisers and educators seek to empower young people working in Victoria with the knowledge and skills needed to end workplace exploitation and insecurity.

In 2016, more than half of young people seeking legal assistance with problems at work were being turned away due to a lack of dedicated services. Unions in Australia had lost 140,000 members in 12 months and almost 70% were young workers.[4] The Young Workers Centre was set up to address the deficit in support available for young workers and as a hub for young people to connect with others going through similar experiences. It is committed to organising young people in workplaces across the state of Victoria.

## Community Legal Centre

The Young Workers Centre is an accredited community legal centre and provides free personalised legal advice and representation for young people with employment law issues such as wage theft, unfair dismissal, bullying and harassment. It is the first and only specialist community legal centre in Victoria to represent young people with employment law issues. The Young Workers Centre is accredited by Community Legal Centres Australia under its National Accreditation Scheme, which is an industry-based certification process for community legal centres to support, recognise and promote good practice in the delivery of community legal services. The dedicated team of lawyers are early career and work subject to the supervision of the Principal Solicitor.

1 ACTU, Media Release, *Young workers powering growth in union membership,* 27 February 2025, https://www.actu.org.au/media-release/young-workers-powering-growth-in-union-membership/

2 Victorian Trades Hall Council, We Are Union, https://www.weareunion.org.au/

3 Young Workers Centre, https://www.youngworkers.org.au/

4 Paul Karp, *Unions launch Young Workers Centre 'to empower' youth against exploitation,* The Guardian, 18 February 2016, https://www.theguardian.com/australia-news/2016/feb/19/unions-launch-young-workers-centre-to-empower-youth-against-exploitation

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Since its inception, the legal team has grown from one lawyer to a team of four (soon to be five) lawyers plus a legal assistant and two advocate team leaders. The community legal centre is a training ground for early career lawyers to move on to in-house union lawyer positions and other important roles in industrial relations. For example, Oanh Tran was appointed to the Fair Work Commission (the national industrial relations tribunal) as a Commissioner while she was Principal Solicitor of the Young Workers Centre; similarly, Kelly Thomas was appointed National Industrial Director of the Australian Services Union while she was Principal Solicitor.

Since 2016, the Young Workers Centre has recovered almost $3.5 million Australian dollars for young workers for wage theft, discrimination and termination of employment matters (more than $2.2 million in US dollars). The legal team has received over 4,200 enquiries, provided specialised legal advice to more than 1,700 young workers and represented almost 900 young workers in legal matters including litigation. Importantly, legal advice or representation is only provided once to a worker as a way of recruiting young workers to join the union for ongoing support throughout their career. The legal team is focused on assisting non-union members and bringing them into the union movement.

The legal team also recruits law students to the union movement through university placements and networking nights. Each year, the legal team trains law students from seven different universities as Young Worker Advocates, who undertake placements for university credit. In its first year of operation, the legal team trained 24 law students. As of 2025, that number has now increased to 49 law students each year. When young workers speak up about their problems at work, Young Worker Advocates are the first to hear their stories. A typical day as a Young Worker Advocate includes the following:

- interviewing a young worker over the phone or face to face to identify their legal issues
- finding the relevant industrial instruments
- researching workplace issues and legislation; and
- drafting correspondence and legal documents including court forms and applications.

Legal Networking Nights are designed to connect aspiring young lawyers with in-house union lawyers and the Young Workers Centre and are attended by over 100 people. Attendees learn about legal careers in the union movement. Other former advocates and attendees at Legal Networking Nights join their union and work in the Young Workers Centre's legal team or as union lawyers.

The Young Workers Centre has a volunteer Committee of Management which provides opportunities for in-house union lawyers to develop governance and board skills. The additional observer positions on the Committee of Management encourage young lawyers to witness and learn how a board operates without the pressure of traditional board duties. The observer positions are also a stepping stone to progress to a member position on the Committee of Management.

## Outreach Team

The Young Workers Centre's outreach team has educated over 73,000 young people on their workplace rights and the role of unions, primarily delivered face-to-face in secondary schools, vocational education and training providers (TAFEs) and community organisations. Outreach sessions are designed to prepare young people for life at work before their first job, and to support them in navigating their early working years. Students can share their own experiences at work and be directly referred to the Young Workers Centre legal team for tailored legal advice if needed. The Young Workers Centre began with two outreach organisers in 2016. As of 2025, the outreach team has now grown to 8 organisers including a Director. James Lea, a former legal client of the Young Workers Centre, joined the union, became an outreach organiser in the Young Workers Centre and was Acting Director in 2024. He now works at Union Assist, based at Victorian Trades Hall, representing injured union members in workers compensation matters.

The Young Workers Centre's outreach modules have been approved by WorkSafe which is Victoria's workplace health and safety regulator, and Apprenticeships Victoria, a state government department. The Young Workers Centre's lawyers are involved in reviewing modules to ensure information is up-to-date with legislation and often provide legal cases as real life examples to include in the modules. Sometimes, a lawyer will attend a training session with an outreach organizer depending on the audience. The modules include:

- Occupational Health and Safety
- Bullying and Discrimination
- Your Rights at Work; and
- Apprentice Readiness.

Modules delivered by the Young Workers Centre to secondary school students and TAFE students have been overwhelmingly well received. Students are surveyed before and after the module to determine the effectiveness of the session and are showing a significant improvement in their workplace knowledge. In 2024, 81% of secondary school teachers gave the outreach program 5 out of 5 stars (the highest 3ranking) when asked if they would recommend the program to other educators. The remaining 19% of teachers gave the program 4 out of 5 stars.

Since July 2023, the outreach team has delivered the four modules to first year apprentices at vocational education and training providers (TAFEs). More than 95% of apprentices showed improvements in understanding their rights at work and knowing where to seek help after attending a Young Workers Centre session. Almost 90% of apprentices had an increase in legal knowledge. Numerous apprentices acted directly following the training including contacting the legal team, raising issues with employers or speaking with peers about their workplace rights or experiences at work.

The Young Workers Centre is based at Victorian Trades Hall. The 2023-2027 Victorian curriculum (VCE Vocational Major Work-Related Skills) specifically lists excursions to Victorian Trades Hall as a way for students to be assessed on how to analyse, evaluate, and explain strategies to contribute to a healthy workplace.

Victorian Trades Hall is the oldest continuously functioning trade union building in the world and home to the 8-hour day and the Workers Museum. It is listed on the National Heritage List. In the last financial year, the Young Workers Centre outreach team delivered 52 educational tours to school groups at Victorian Trades Hall. This work is in addition to the workplace rights education and training sessions. In the last financial year, approximately 1,700 school students attended a Young Workers Centre tour of Victorian Trades Hall and learnt about the history of the union movement and current campaigns. The work of the legal team is highlighted during the tour including that they are available to provide free and confidential legal advice on workplace issues. Tours and outreach work in schools and TAFEs drive an increase in the number of legal inquiries coming through to the Young Workers Centre.


Young Workers Center based in Victorian Trades Hall
Credit: Amanda Threfall

Union Winter and Union Summer, a biannual two to three week paid internship program coordinated by the Young Workers Centre, is held in February and July each year. Interns are union members and participate in training at the Young Workers Centre before being placed with a union for the remainder of the internship. Interns learn on the ground with the union and may attend mass meetings, participate in industrial action or accompany in-house union lawyers to the Fair Work Commission. During training at the Young Workers Centre, the legal team deliver sessions on employment law and discuss current legal cases. On graduation day, interns present ideas to unions, Victorian Trades Hall Council and the Young Workers Centre including ways to increase engagement with young workers. Many of the ideas are implemented by unions. Unions often offer ongoing jobs to the interns. Billy Elrick, a former Young Workers Centre intern, is now Secretary of the Health Services Union South Australia/Northern Territory Branch. As of 2025, there have been almost 500 paid Union Winter and Union Summer internships. For the July

intake, the Young Workers Centre received over 140 expressions of interest/applications for the Union Winter program.

Monthly Solidarity Nights organised by the Young Workers Centre focus on different workplace issues and bring together young activists to join union campaigns. Last year, over 300 young activists attended Solidarity Nights to hear from union organisers and the Young Workers Centre on campaigns and social justice issues affecting young workers. As part of Victorian Law Week, the legal team recently hosted a panel for Solidarity Night about how young workers can use new casual conversion rights.

The Young Workers Centre prides itself on delivering services in regional Victoria that are commensurate to metropolitan Melbourne. The outreach team regularly travels to regional Victoria to deliver workplace rights education at schools and TAFEs. The legal team has also delivered employment law education to school students and run clinics in regional Victoria.

## Peer to Peer Model

The strength of the Young Workers Centre is young staff connecting with young workers. Most staff at the Young Workers Centre are under the age of 30 and from diverse backgrounds. Young workers are more willing to seek assistance with workplace issues through peer-to-peer education and support. The Young Workers Centre is trusted to explain legal processes and can answer questions to break down barriers and overcome challenges for young workers in enforcing their legal rights.

For example, a young worker contacted the legal centre for advice about unpaid overtime and penalty rates, rostering and bullying at an art studio school in Melbourne called Kisdoo. A Young Worker Advocate interviewed the young worker from Kisdoo over the phone and provided the information to the early career lawyer. The legal team offered legal advice to the worker from Kisdoo and identified an organising opportunity for the outreach team. The outreach team organised another 10 young workers at the workplace who were experiencing similar issues. With advice from the Young Workers Centre, the workers recovered back pay, achieved wage increases, negotiated fairer employment contracts and implemented systems to track overtime. All of the workers joined the Independent Education Union. Many of them have now left the Kisdoo workplace but have been back in touch with the Young Workers Centre to check which union they should join in their new roles.

The Young Workers Centre mentions the importance of joining a union every single time contact is made with a young worker – from emails to phone calls to face-to-face discussions. The most valuable recruitment technique is through face-to-face discussions and warm referrals, where the Young Workers Centre will connect the worker with a specific contact at the relevant union who will sign up the worker.

Another example of the strength of the Young Workers Centre's peer to peer model is the outreach delivered to on demand workers to inform them about their rights at work and how to access support. Over a couple of months, the Young Workers Centre reached more than 250 on demand workers all over Victoria including at 5street blitzes and Gig Worker Support Nights. On demand workers shared their workplace experiences with the Young Workers Centre and almost 90% were between the ages of 15 and 35.

## Campaigns

The Young Workers Centre is passionate about improving the lives of young workers. Campaigns are young worker led, and young worker centred and drive union growth. The legal team is best positioned to identify the trends and impacts of the law on young working people. Legal cases regularly generate significant media attention and law reform campaigns often start with the legal team. Recently, 70% of ongoing legal clients were apprentices experiencing exploitation and mistreatment at work – rampant wage theft, bullying and harassment and unsafe workplace practices. The Young Workers Centre's "Ban Bad Bosses" campaign, with the strong support of unions, resulted in the Victorian Government establishing an Apprenticeships Taskforce to improve enforcement and regulation. Unions, Victorian Trades Hall Council and the Young Workers Centre sit on the Apprenticeships Taskforce. Apprentices, who are union members and Young Workers Centre activists, sit on the reference group of the Taskforce.

During the "Ban Bad Bosses" campaign, the Young Workers Centre partnered with the McKell Institute, a public policy institute, to release a report highlighting low apprenticeship completion rates in Victoria at just 52%. The report recommended more rigorous regulation and better protections for apprentices bolstering

the Young Workers Centre's campaign.[5] The "Ban Bad Bosses" campaign generated significant media attention at both a state and national level across print, radio and television. Young Workers Centre activists led the campaign and shared their powerful stories in the media which resulted in change and law reform. They attended meetings and roundtables with politicians to advocate for better regulation.

Jae Wassell, a former apprentice boilermaker and Australian Manufacturing Workers' Union member, created a petition which attracted over 10,000 signatures. In the lead up to the state election, union members knocked on doors to talk to voters about supporting a safe and fair apprenticeship system. The outreach team's workplace rights education program for first year apprentices in TAFEs was developed in response to the increase in legal clients.

In Australia, one in five workers aged under 25 experience wage theft[6] and young workers are turning to lawyers at the Young Workers Centre to recover lost wages and represent them pursuing legal action. In 2025, wage theft continues to be the number one issue that young workers are seeking assistance from the Young Workers Centre. Young people are joining unions to fight back against systemic workplace issues, and the Young Workers Centre and unions successfully campaigned to make wage theft a crime. Victoria was the first jurisdiction in Australia to criminalise wage theft and new laws making wage theft a crime at a national level have now come into effect.

The Young Workers Centre's current campaign, "Fair Wages All Ages", is focused on advocating to the government to abolish junior wages and lifting apprentice wages. A petition has generated over 5,000 signatures and young workers have shared their experiences at roundtables, in the media and in the Young Workers Centre's "Aged Based Wages – Ending junior rates in Australia" report.[7] Students are learning about the campaign during educational tours to Victorian Trades Hall and sharing the petition at school. The "Fair Wages All Ages" campaign will also appear in the upcoming Insight Issues: For and Against textbook for secondary school students which is distributed to over 10,000 students.

The Young Workers Centre amplifies the voices of young workers in the media by empowering legal clients and activists to share their stories on radio, television or print. Both the Director and Principal Solicitor of the Young Workers Centre regularly appear in the media as experts discussing issues affecting young workers or highlighting legal cases. The importance of joining unions is always mentioned in media interviews which generates an increase in website visits, social media interactions and new inquiries to the Young Workers Centre. The Director and Principal Solicitor, alongside Young Workers Centre activists, also participate in key forums such as Parliamentary inquiries and national summits. The Young Workers Centre produces resources aimed at assisting young people to understand their rights at work. It also lodges written submissions in State and Federal Government consultations and reviews. The legal team is heavily involved in developing and drafting fact sheets, reports and submissions. Campaigns increase union membership by bringing together young workers to advocate for change.

## Union Lawyers

The union movement in Australia is implementing innovative approaches to increasing union membership. The Young Workers Centre, a community legal centre established by Victorian Trades Hall Council and affiliated unions, is focused on empowering young workers to join their union. Union membership growth in Australia is driven by young workers. Union lawyers are playing a major role in bringing young workers into the union movement which is contributing to overall union growth in Australia. A young worker who joins their union is more likely to remain a union member for their entire working career. Now, more than ever, young workers in Australia are joining together in unions to stand up and fight back against attacks on their rights at work.

5 We Are Union, *McKell Report finds bad bosses are driving apprenticeship drop outs*, 29 September 2022, https://www.weareunion.org.au/_breaking_mckell_report_on_vic_apprenticeship

6 ACTU, Media Release, *One in five young workers victims of wage theft as election looms*, 22 April 2025, https://www.actu.org.au/media-release/one-in-five-young-workers-victims-of-wage-theft-as-election-looms/

7 Young Workers Centre, *Junior Wages must end,* 2 July 2024, https://www.youngworkers.org.au/junior_wages_must_end

# LAWYERS AS AGENTS OF UNION GROWTH: LEGAL PATHWAYS TO WORKER ORGANISING IN INDIA

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*India | Originally written in English*

## Introduction

Traditional perceptions of lawyering and its professionalism dictate that lawyers are expected to provide case-by-case, transaction-by-transaction service to their clients without reference to either their own or to their clients' values, socio-political commitments, and policy preferences.[1] However, in one's practice as a lawyer, in the courtroom and otherwise, individuals frequently cross these lines and engage themselves with a community, a cause, a transformative goal, or an aspect of the law-justice conundrum. The latter kind of lawyers often find themselves in flux with the changing configurations of state power, corporate capitalism, and individualism.[2] Overall, it would not be amiss to say that the role of lawyers and the character of lawyering as a practice, over being a profession, is pivotal for changing socio-political circumstances and the state's constant readjustment of the law and its scope to suit its circumstances, policy goals, and pressures from various sections of the society.

Given the myriad forms and processes of law-making and various levels of the justice delivery system, the legal profession's role is adorned with rich options for interventions and engagement with a community or a cause. It is this richness of opportunities that has contributed to the robustness and sustainability of the labour movement throughout history and across jurisdictions. And consequently, labour lawyers not only elucidate the substantive rights enshrined in the law but also focus on developing and expanding the procedural laws that enable access to rights and the strengthening and preservation of workers' organisations.

In this article, limiting our focus to the role of lawyers in the growth of labour unions in India, we chart out the law's mechanisms of disenfranchising workers from forming unions with particular reference to obstacles faced by informal workers. Drawing mainly from our own practice and experience in engaging with unions and campaigns, we present certain strategies that contribute to the growth of unions, specifically through brief case studies on two categories of informal workers. We conclude with a general overview of lawyers' role in the activities of unions on a more quotidian scale and the impetus for deeper engagement by lawyers with unions.

## Definitional Exclusion and The Shrinking Scope of Labour Laws

The numerous existing labour laws in India—many of which are the fruit of massive worker struggles and campaigns—are, in many ways, restrictive in their definitions and apply only to the formal sector, which comprises a minuscule 4% of the total workforce.[3] These laws typically apply to establishments that fall within the definition of "industries", with a threshold number of workers, usually ranging from 10 to 20. Smaller units and their workforces are invariably left unprotected under any law. The definition of "industry" under the Industrial Disputes Act, 1947 [hereinafter referred to as "the IDA"], which is the principal Indian labour legislation for settling

1 Sarat, Austin, and Stuart Scheingold, Cause Lawyering and the Reproduction of Professional Authority: An Introduction, in Sarat, Austin, and Stuart Scheingold (eds), Cause Lawyering: Political Commitments and Professional Responsibilities (New York, NY, 1998; online edn, Oxford Academic, 31 Oct. 2023).

2 Sarat, Austin, and Stuart Scheingold , State Transformation, Globalization, and the Possibilities of Cause Lawyering: An Introduction, in Sarat, Austin, and Stuart Scheingold, (eds), Cause Lawyering and the State in a Global Era, (Oxford University Press: New York), 2001.

3 Standing Committee on Labour, Code on social security, 2019: Report of the standing committee on labour, PRS Legislative Research, https://prsindia.org/files/bills_acts/bills_parliament/2019/SCR-Code%20on%20Social%20Security,%202019.pdf} (last visited July 14, 2025).

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disputes between workers and employers through the intervention of the State and for protecting workers from termination (whether through closure or retrenchment), which originally applied to establishments with 100 or more workers, is a case in point.[4] The new Industrial Relations Code, 2020 [hereinafter referred to as "the IRC"], which is yet to be implemented, raises this threshold to 300 workers to further propel the exclusion of workers further in no subtle terms.

Furthermore, obfuscation of the employer-employee relationship and contesting the scope of the definition of "workman" are the default strategies by the employers to prevent them from organising and claiming their entitlements under the law. It is through this legal labyrinth that labour lawyers must navigate and achieve successful outcomes for the communities and clients they work with.

## Definition of industry: Bangalore Water Supply

Restrictive application of existing laws can be challenged and the protections under existing laws could be extended to hitherto excluded workers. In this line of practice, lawyers redraw the boundaries of the applicable law through the judiciary. One of the earliest landmark cases that broadened the definition of "industry" was the judgment in the Bangalore Water Supply case, in which workers raised a dispute concerning the recovery of fines illegally deducted from their salaries without giving them a hearing.[5] The Appellant-Board, which supplied water to the city and employed the workers, raised a preliminary objection claiming that it was not an "industry," as it was performing a "regal function" by providing basic amenities like water to citizens. As a consequence of this, it was argued that the employees were not "workmen."

The Appellant-Board's objection was taken to the Supreme Court after meeting with unsuccessful challenges at the Labour Court and the Appellate Court. By then, various apex court judgements had reasoned on a case by case basis, making the general principle of law a rather messy one. A larger, judicially active, bench of seven judges was constituted to provide a "comprehensive, clear, and conclusive" declaration of what constitutes an "industry" under the IDA. The Supreme Court held, rightly so, that simply because an activity is carried out by the State does not mean it is not an industry. The nature of the activity, and not the entity carrying it out, must be considered and a systematic activity, even if pursued with charitable intent—such as those by hospitals, educational institutions, or societies—can be considered an "industry", if they meet certain requirements.

The Court laid down three general ingredients of what would constitute an industry:

a. There must be systematic activity, organised in a manner similar to trade or business. The nature of the activity is relevant, not the identity of the actor. Whether the activity is carried out by a private enterprise, a public body, an educational institution, or a charitable organisation, the motive is irrelevant. Even rendering "free or near-free services" or diverting profits for charitable purposes would fall within the scope of Section 2 (j) of the IDA
b. There must be cooperation between employer and employee.
c. The activity must be aimed at the production and distribution of goods or services calculated to serve human wants and needs.

Following this judgment, many establishments which previously were excluded from the definition of industry, such as clubs, educational institutions, charitable organisations, and corporations, were brought under the IDA and other labour laws, enabling workers to organise, form unions, protect themselves against unfair labour practices, and raise various disputes. Needless to say, the lawyers' role in legal interpretation and innovation are central to what essentially had the result of enfranchising more workers.

4 Industrial Disputes Act, 1947, Act No. 14 of 1947, (India).

5 1978 SCR (3) 207.

## Definition of worker

However, merely being covered under the definition of "industry" does not automatically entitle workers to a wide range of rights and protections under the labour laws – rights which include the freedom to organise and form unions, the right to minimum wages and other allowances, the right to social security, protection from occupational hazards and accidents, the right to workplace safety, medical benefits, maternity benefits, among others.

The definition of "worker" under industrial laws has also been interpreted narrowly, despite being broadly defined in the legislation. Workers paid on a piece-rate basis, part-time workers engaged by multiple employers, scheme-based workers, or those designated by employers as volunteers, partners, agents or contractors are often not considered "workers". Thus, a mere misclassification by the employers pushes them outside the purview of labour laws. In such cases, unions, with the help of lawyers, have used legal interventions to broaden the scope of the term "worker" and to include informal workers within the framework of existing laws. In a series of judgments – from Birdhichand Sharma v. First Civil Judge, Nagpur[6] to Silver Jubilee Tailoring House[7] – the definition and tests for identifying an employment relationship have evolved. Initially, control over the manner of work was the primary test for determining an employer-employee relationship. However, by 1974, it was held that this was not the decisive factor. Courts began emphasizing other tests, such as asset ownership, integration into the business, economic dependency, payment of remuneration and power to impose disciplinary action amongst other tests.[7] These evolving standards have helped expand the scope of who qualifies as a "worker" and what constitutes an "industry," thereby enabling more individuals to claim rights under labour laws and form unions.

And yet, a large number of workers are not recognized as such within the bounds of the existing laws. Concomitantly, they are unable to organise effectively and register themselves as unions. For instance, sex workers in India attempted to register themselves into a union, but the Registrar of the Trade Unions rejected the application on the ground that they are not "workers." They were then forced to register as a society. A key disadvantage of this is that office bearers of a society do not enjoy the same legal immunities from criminal prosecution that union office bearers do and the legitimacy of a society for advocacy and campaigns is unlike that of a registered union.

## The Case of Informal Workers

As discussed, around 96% of the Indian workforce is informal/unorganised. Though it is impractical to draw a strict separation between the organised and the unorganised, given the generalized condition of casualization of labour in the global neoliberal regime, a few material conditions, such as precarious working conditions, vulnerable living conditions, segmentation and disaggregation of the workers, and upholding of caste and sex based occupations and its modern configurations are some of the core characteristics of the informal/unorganized workers.[8] In this section, we briefly present the struggles of informal/unorganised workers and the lawyers-unions experience through case-studies of two categories of informal/unorganised workers.

## Waste Pickers

There are an estimated 4 million waste pickers in India who play an important role in helping the local municipal bodies in diverting a significant amount of waste from landfills.[9] Generally, the waste pickers are not compensated for their work, even though their work provides significant financial benefits to the corporation/local bodies and sustains the crucial environmental task of recycling waste. Majority of waste pickers are women and belong to marginal communities of Dalits, Adivasis and Other Backward Castes (OBC's). They have to work under hazardous conditions with no safety protection and no compensation for their death or injury. They are paid starvation wages with no leave, medical benefits or maternity benefits. Unions can be formed only if it can be shown that the waste pickers are workers. Quite mindful of this requirement, the local bodies across the country have disowned any relationship on the

6 1961 SCR (3) 161.

7 Sushilaben Indravadan Gandhi v. The New India Assurance Company Limited, AIR ONLINE 2020 SC 467.

8 Jan Breman, *A Dualistic Labour System? A Critique of the 'Informal Sector' Concept: I: The Informal Sector*, 11 48 Economic and Political Weekly, pp. 1870–76, 1976; Jhabvala, Renana, *Informal Workers & the Economy*, 3 48 Indian Journal of Industrial Relations, pp. 373–86, 2013.

9 The state of informal waste workers in India, Social and Political Research Foundation (Aug. 19, 2020), https://sprf.in/wp-content/uploads/2021/02/19.8.2020_The-State-of-Informal-Waste-Workers-In-India.pdf}(last visited July 14, 2025).

ground with the workers and insist that they are 'independent contractors.'

Despite this, a union of waste pickers was formed in Pune, Maharashtra known as *Kagad Kach Patra Kashtakari Panchayat*. The workers were being paid less than minimum wages through contractors. Having failed to make the municipal corporation pay the minimum wages, the union filed a case before the Minimum Wages Authority and won a major victory when an order was passed directing the corporation to pay minimum wages. As a result of this victory, the union has been able to force the corporation to recognize it and engage with it in all matters relating to social waste management. Similarly, an organisation known as *Hasiru Dala* was formed in Karnataka which was registered as a society. It managed to enable the Municipal Corporation to recognise it as a representative body of waste pickers, and utilised the provisions under the law to negotiate and settle with it by entering into contracts with the corporation to collect and recover reusable and recyclable solid waste from the source of waste generation, enabling the waste pickers to get a reasonable and fair remuneration. Despite these successes, it is still an ongoing struggle as municipal corporations are more keen on entering into contracts with financially sound contractors.

*Hasiru Dala,* working with a broad coalition of lawyers and other unions, has taken advantage of the Solid Waste Management Rules, 2016[10], along with state rules to ensure that the voices of waste pickers are heard and their organisation recognized. These policies/strategies acknowledge the primary role played by the informal sector of waste pickers and also provide broad guidelines regarding their integration into the waste management system. It helped the organisation to integrate the informal nature of work into the formal waste management system and ensured social security benefits by making the local bodies responsible.

## Anganwadi and ASHA Workers

Another major category of persons who have been excluded from the definition of workers are Anganwadi and ASHA workers. Anganwadi workers are engaged under the Integrated Child Development Services (ICDS), a scheme implemented through the Ministry of Women and Child Development.[11] Launched in 1975, ICDS is a unique early childhood development programme, aimed at addressing malnutrition, health and also development needs of young children, pregnant and nursing mothers. The beneficiaries under the scheme are children in the age group up to 6 years, and pregnant and nursing women. This scheme is operated through 1.36 million Anganwadi Centres staffed by frontline health staff known as Anganwadi workers (AWWs) and Anganwadi helpers (AWHs). It is the world's largest programme for early childhood care and development covering about 158 million children.

It is important to understand the administrative hierarchy in which the Anganwadi and ASHA workers are placed.[12] The project level implementation head of the ICDS is the Child Development Project Officer (CDPO), who are mostly men, and are Class I employees (Urban Projects) or Class II (Rural Projects) and are considered State Government employees, with all benefits including pension and gratuity. Just below them are Anganwadi Supervisors who report to the CDPO and are Class III State Government Employees. The vast majority at the bottom of the hierarchy are Anganwadi workers and helpers who are mostly women but are considered "honorary" workers or "volunteers", thereby being denied various benefits under the labour laws. They are paid piece-rated wages which fall even below starvation wages with no overtime payment even as they work for more than 8 hours. In *Adarsh Gujarat Anganwadi Union,*[13] the Gujarat High Court held that "discrimination of AWW (Anganwadi Workers) and AWH (Anganwadi Helpers) vis-à-vis government employees is writ large on the face of the functions, duties and responsibilities of AWWs and AWHs." It further held that just because there were no comparable equivalent posts in the State or Central service, it would not disentitle the AWWs and AWHs to challenge the state's arbitrary action in paying meagre amount per month by labelling their work as voluntary/honorary services.

Lawyers working closely with Anganwadi Unions have helped in contributing to a landmark decision by the apex court in the case of *Maniben*

10 The Solid Waste Management Rules, 2016, Ministry of Environment, Forest and Climate Change Notification New Delhi, the 8th April, 2016, S.O. 1357(E).

11 Integrated Child Development Services (ICDS), Department of Administrative Reforms and Public Grievances, https://darpg.gov.in/sites/default/files/ICDS.pdf} (last visited July 14, 2025).

12 *Id.*

13 Adarsh Gujarat Anganwadi Union & Anr. v. State of Gujarat & Ors., C/SCA/25469/2022 (Guj. HC Feb. 5, 2025)

*Maganbhai Bhariya v. District Development Officer Dahod*,[14] in which the Supreme Court set out in detail the arduous duties and responsibilities carried out by AWWs and AWHs while being deprived of minimum wages and concluded that they were workers and therefore entitled to gratuity.

On the other hand, ASHA workers (Accredited Social Health Activists) work under the National Health Mission, which was earlier bifurcated into the National Rural Health Mission (NRHM) and the National Urban Health Mission (NUHM).[15] They are mostly women from local communities and serve as a link between marginalized communities—such as slums in urban areas and villages in rural and tribal areas—and the government health system. They are considered the third cadre of 'community health volunteers' alongside Auxiliary Nurse Midwives and Anganwadi workers. Although they are labelled as 'volunteers,' they are appointed through the Zila Parishad or the State's urban local bodies.

Unlike contract workers who perform similar duties under the NHM scheme, ASHA workers are denied benefits such as comparable wages and medical benefits under the Provident Fund (PF), and Employees' State Insurance (ESI), which provide maternity benefits, sick leave, and medical coverage. Both ASHA workers and their supervisors, known as Block Facilitators (BFs), play a crucial role in ensuring that health services reach the poor in both rural and urban areas. In contrast, Block Community Mobilizers (BCMs), who are mostly men and employed through contractors and who perform similar work as BFs, are recognized as 'workers.' The State Government of Maharashtra recently issued a notification to regularize the contract workers who have completed 10 or more years of continuous service.[16] However, ASHA workers and BFs, despite having served for more than 10 years and being similarly placed, have been excluded from this benefit solely on the ground that they are categorized as 'community health volunteers.' The unions, with the help of lawyers, have filed a Writ Petition No. 16328 of 2025 before the Bombay High Court seeking relief in the form of permanency on the grounds that the refusal to do so amounts to discrimination.

The Supreme Court, in its recent judgement in the case of *Jaggo v. Union of India & Ors.*,[17] laid down an important postulate on the regularization of long-term temporary employees performing essential functions. Given the importance of the judgement and the fact that it is a culmination of long struggles of lawyers and unions, it is worthwhile to cull out the excerpt containing the fulcrum of the court's reasoning. The Court held:

*"Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equality.*

*Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.*

*In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody."*

## Lawyers in the Functioning of Unions

Lawyers play a significant role in bridging the capacity of unions to conduct research and analysis, understand the existing labour laws ecosystem, and deploy legal instruments towards grievance redressal and access to labour rights. Often the multiplicity of laws and rules, compounded by jurisdictional complexities,

14 2022 SCC Online S.C. 507

15 National Health Mission Overview, Ministry of Health and Family Welfare, https://nhm.gov.in/index1.php?lang=1&level=1&sublinkid=150&lid=226} (last visited July 14, 2025).

16 Deshpande, Chaitanya, Contractual NHM Staff may get permanent jobs; honorarum hike planned, Times of India, https://timesofindia.indiatimes.com/city/nagpur/contractual-nhm-staff-may-get-permanent-jobs-honorarium-hike-planned/articleshow/121276552.cms (last accessed July 14, 2025)

17 2024 INSC 1034.

serve a distancing function within legal systems, depriving rights-holders and their representatives such as unions and workers collectives of clear and accurate access to vital legal information. Language – both as legalese and the choice of language – is another significant and oft overlooked hurdle. There are also extreme imbalances in terms of resources and access to them based on unions' size, spatial coverage, nature of registration, industry category, and special designated status such as recognition as industry-wide negotiators, which restrict their capacity to translate, disseminate, and study frequently changing laws without specialised legal support. Lawyers, especially those based locally and well-conversant with local grievance redressal procedures and forum-dynamics, can significantly strengthen these activities by contributing to legal strategy and helping build tools that facilitate legally sound and efficient entitlements application and complaints process across the membership-base.

For instance, in *International Union of Food Agriculture v. Union of India*[18], one of the petitioner unions, Paschim Banga Khet Mazdoor Samity, worked closely with local unions and lawyers across four major tea growing states to bring forward workers' claims for pending dues against tea gardens. In West Bengal alone, they were able to raise approximately 27,000 such claims before the court appointed one-person committee (Justice Sapre Committee), through rigorous workers legal education and filing-assistance campaigns, an astute legal strategy that channelled not only the existing labour laws but also the Indian Evidence Act in order to overcome evidentiary challenges to worker recognition, and in the process, contributed impetus for the creation of the Paschim Bang Chah Mazdoor Samity, a tea workers' union in West Bengal.

At this moment, in India, a total of 29 central labour laws have been repealed and replaced by the four new Labour Codes passed between 2019-2020 and the lawyers' role in dissecting these laws, understanding how they impact workers, and challenging these laws is paramount.[19] These legislative changes have a domino effect on multiple state laws and rules, and central rules, either invalidating them wholly or in parts. Frequent changes, industry-specific or wide-ranging impacts, and overhauls tend to generate ambiguities in law and its application, obsolescence of long-held knowledge and experiences of interaction with legal procedures. In India, where laws have been enacted but not yet enforced, workers and unions operate under the shadows of two laws – the old, repealed but still in force, and the new, current but not in force.

Informal Street cleaner
Credit: iStock

## Democratic Inroads into Law-Making Processes

As labour laws undergo change, some legal systems provide a renewed opportunity for stakeholders to participate in law-making through structured dialogue processes (pre-legislative consultative processes) between law-makers, administration, and industry representatives, including workers' unions. In the case of India, stakeholders have the scope to engage at the Standing Committee stage, Joint Parliamentary Committee stage (where mandated), and at the Ministries and Departments stage under the Pre-Legislative Consultation Policy of 2014 (PLCP). While the Standing and the Joint Parliamentary Committees may seek input through public notices, written submissions, oral evidence, expert consultations and site-visits, under the PLCP, comments may be received in writing or video consultations from stakeholders and the general public. With some variation in details, similar pre-legislative processes have also been adopted by states either formally or by way of convention.[20]

18 W.P. (C) No. 365/2006.

19 The Code on Wages, 2019, and Other Labour Codes, Ministry of Labour and Employment, https://labour.gov.in/sites/default/files/labour_code_eng.pdf (last visited July 14, 2025).

20 The Parliamentarian's Handbook on Pre-Legislative Consultation Process, Manupatra Academy, https://www.manupatracademy.com/assets/pdf/foundation-resources/the-parliamentarian's-handbook-on-pre-legislative-consultation-process-civis.pdf (last visited July 14, 2025).

Taking the example of the four new Labour Codes in India, each of their Draft Bills was displayed on the Ministry of Labour and Employment's website for public scrutiny and consultations, and Parliamentary Standing Committees were set up to examine them. From 2015 to 2019, nine tripartite discussions were organised by the Ministry, inviting all Central Trade Unions, employers' representatives and state governments.[21] Later, comments in writing were also sought on the Draft Rules of the Central Government, and on State Rules which were drafted and published by State Governments.

Lawyers provided crucial support to unions, especially in textiles and garment and plantations sectors, from monitoring and tracking legislative developments, public disclosure of drafts, and calls for comments or for participation in consultations, to providing legal breakdown of proposed provisions and their implications in practice, and providing technical guidance in drafting detailed comment documents, position papers, press-releases, and legal advocacy strategies. In West Bengal, Paschim Bang Cha Mazdoor Sangh, a union of plantation workers, submitted two pieces of shadow legislation on the Industrial Relations Code and the Social Security Code to the state Labour Department, working in collaboration with local lawyers and other labour law experts.

The actual impact of the constructive processes on the new labour codes in India has been lukewarm, with the legislative bills being rushed through the houses of the Parliament without detailed discussions, little acknowledgement for and incorporation of the Unions' feedback, and complete sidelining of the Indian Labour Conference as a platform for tripartite negotiations.[22] Irrespective of these tactics, consistent collaboration between the legal profession and workers' bodies has enabled unions to demand engagement with legislative systems at every opportunity, and more significantly, mobilise worker and public opinion in their favour over the past five years. [23]

## The Impending Danger for Unions in India

Globally, as civic spaces continue to decline and dissent is suppressed using legal instruments, this tactic is also reflected in the evolving labour law regimes. In India, the IRC and its Draft Rules have introduced the concept of sole negotiating union and negotiating council, completely altering the entitlement to represent workers within collective bargaining mechanisms and also forcing unions to prioritise large-scale membership expansions in order to maintain their representative status. By associating a minimum membership as a percentage of the total workforce as the only eligibility requirement for becoming the sole negotiating union, this law disadvantages smaller unions, especially those constituted or led by marginalised communities and/or women, who may not be able to muster large membership. It threatens a race for membership without providing any safeguards to prevent coercion or illegal methods to establish such membership.[24] In industrial establishments where a single union exists, the rules require it to show a minimum membership of not less than 30% of the total workforce in the establishment, with no alternative for instances where a union fails to meet this threshold. Where more than a single union is present in an industrial establishment, any union having 51% or more of the workers on the muster rolls in its favour will be granted the negotiating union status. It is important to note that in the earlier versions of the Bill, the threshold was much higher at 75% of the workforce.

While the reception to these provisions have varied based on industries, major central trade unions such as the All India Trade Union Congress (AITUC)[25] and Centre for Indian Trade Unions (CITU)[26] have rejected the provisions as limiting the collective bargaining power of

21 New Labour Code for New India, Union Department of Labour, India, https://labour.gov.in/sites/default/files/labour_code_eng.pdf (last visited July 14, 2025)

22 Sarkar, Kingshuk and Mehrotra, Santosh, *Why the New Labour Codes Do Little for Indian Workers*, THE WIRE, https://thewire.in/labour/why-the-new-labour-codea-do-little-for-indian-workers (last accessed on July 15, 2025).

23 Rajalakshmi, T.K., Code red for workers, FRONTLINE, https://frontline.thehindu.com/news/labour-codes frade-unions-strike-workers-rights/article69459887.ece (last accessed on July 15, 2025).

24 Ravishankar, Krishna, *The Industrial Relations Code's System of Recognising Trade Unions Needs a Rethink*, The Wire https://thewire.in/labour/the-industrial-relations-codes-system-of-recognising-trade-unions-needs-a-rethink (last accessed July 14, 2025).

25 AITUC Rejects Proposed Draft Rules Pertaining To Negotiating Union Under Industrial Relations Code, 2020, The Economic Times (Apr. 20, 2021), https://economictimes.indiatimes.com/news/economy/policy/aituc-rejects-proposed-draft-rules-pertaining-to-negotiating-union-under-industrial-relations-code-2020/articleshow/82405565.cms?from=mdr. (last accessed July 14, 2025).

26 Chhabra, Ronak, *IR code & COVID-19 surge: Centre proposes to limit scope of collective bargaining in industries*, Newsclick (May 06, 2021), https://www.newsclick.in/IR-Code-COVID-19-Surge-Centre-Proposes-Limit-Scope-Collective-Bargaining-Industries (last accessed July 14, 2025).

workers.[27] Lawyers have played a significant role in developing this stand, with nuanced analysis of the Code and rules, providing clarity on the legal implications on the independent functioning and growth of unions. In many instances, especially during the pre-legislative consultative processes in the plantations sector, they have supported unions in developing and advocating for pro-worker alternative provisions and have also supported litigation challenging the recognition criteria for unions under the new law.[28] Once this law is in force, and if the disputed provisions remain unmodified, they are bound to create legal challenges not only related to the recognition of negotiating unions but also to assessment and verification of membership of the unions. Hence, lawyers' role in strengthening unions is expected to grow further in the coming years.

## Conclusion

The legal profession has become, and effectively so, an integral force in both informal sector and formal sector organising in India. Workers' organisations are strengthened in part due to the role lawyers have played in ensuring that rules and regulations are understood when demanding the implementation of legal provisions. Identifying weaknesses in the law and finding innovative ways to overcome them are among the ways in which lawyers have played a crucial role in achieving major victories—many of which were previously considered unattainable. From representing workers directly to legally empowering their unions through policy, legislative and organisational strategy, and legal knowledge-building interventions, lawyers continue to innovate in the face of rising corporate and institutional challenges that seek to prioritise ease of doing business at the cost of labour rights and collective bargaining.

27 Paliath, Sreehari, *Why Trade Unions are Pushing Back against India's Proposed Industrial Relations Code*, The Scroll https://scroll.in/article/949030/why-trade-unions-are-pushing-back-against-indias-proposed-industrial-relations-code (last accessed July 14, 2025).

28 SRMU moves HC challenging new criteria for recognition of trade unions, The Hindu https://www.thehindu.com/news/national/tamil-nadu/srmu-moves-hc-challenging-new-criteria-for-recognition-of-trade-unions/article35617827.ece (last accessed July 14, 2025).

# LABOUR RIGHTS ADVOCACY FOR EXPANDING WORKERS' RIGHTS

**AELIM YUN**

*South Korea | Originally written in English*

In the wake of massive labour protests in 1987, a new, independent and democratic trade union movement re-emerged in South Korea. This movement rose to challenge the government-dominated industrial relations systems and practices that had been in place for nearly half a century. Together with similar movements in South Africa and Brazil, a 'social movement unionism' took hold, characterised by high levels of rank-and-file mobilization, the involvement of unions in broader issues beyond the workplace, and a deep coalition-building ethos with other social movement groups.[1]

Although the labour law had strictly restricted the right to freedom of association and to collective bargaining, the democratic union movement grew, reaching a unionisation rate of 18.6 per cent as of 1989. Although most collective agreements were concluded at the enterprise level and applied only to union members due to legal restrictions,[2] democratic unions' fights for better working conditions contributed to improving working conditions for all workers.

However, the Asian financial crisis of 1997 posed significant challenges to the growth of trade unions. First, the government pushed ahead with neo-liberal structural adjustment programmes and labour law reform which would legalize mass layoffs and the use of non-standard forms of employment. Employers, especially the large conglomerates ('*Chaebol*') and public sector companies, replaced regular, directly-employed employees with precarious, indirectly-hired workers. Workers in multiparty work relationships (e.g. agency workers and subcontracted workers) and dependent contractors[3] rapidly increased, and the unionisation rate declined.[4] Faced with these challenges, labour movement groups attempted to organise precarious workers into unions beginning in the late 1990s. Precarious workers themselves struggled for their rights and formed their own unions with support from established unions and civil society.[5]

1 Peter Waterman, *Social Movement Unionism: Beyond Economic and Political Unionism* (1991), Working Paper No. 18, Amsterdam: International Institute for Research and Education; Eddie Webster, The rise of social-movement unionism: The two faces of the black trade union movement in South Africa, in STATE, RESISTANCE AND CHANGE IN SOUTH AFRICA (Philip Frankel et al. eds., 1988).

2 Under the military dictatorship, the Trade Union Act of 1980 permitted employees to organise or join a union established at an enterprise or a workplace level only. In addition, when one union was established, other unions at the same business unit could not get registered as a "trade union" pursuant to the law (trade union monopoly), thus they could not enjoy any collective labour rights.

3 "Dependent contractors" are sometimes referred to as "own-account workers" or "dependent self-employed". However, the term "self-employed worker" would seem to imply that these workers have in some way created employment for themselves, which is questionable. I use the term "dependent contractor" to describe them as persons who have contractual arrangements of a commercial nature to provide their labour for or through another economic unit. In this article, though, the term "dependent contractor" is used in an open way, which does not presuppose a determination on their employment status.

4 As of 2024, precarious workers including fixed-term contract and temporary workers and workers in multiparty work relationships account for 41.7% of total wage workers. Union membership has declined since 1989, to the point where it fell to 12.5 per cent in 2024. (Yoosun Kim, *Size and the Employment Conditions of Precarious Workers* (2024), Working Paper No. 202, Seoul: Korea Labor & Society Institute [*in Korean*]).

5 See in detail, Aelim Yun, *The ILO Recommendation on the Employment Relationship and its Relevance in the Republic of Korea* (2007), GURN Discussion Paper No. 4, Geneva: International Labour Office, *available at* https://webapps.ilo.org/public/libdoc/ilo/2007/107B09_95_engl.pdf. (last visited August 19, 2025).

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## From Civic Groups to Union Lawyers

Historically, labour lawyers have played an important role in supporting workers in their fight for freedom of association and humane working conditions. While the Constitution of the Republic of Korea has, since 1948, proclaimed that workers have the right to independently organise, collectively bargain, and take collective action to improve working conditions, freedom of association has been severely restricted under collective labour law. The Trade Union Act of 1953 narrowly defined "worker", "employer", "trade union", and "labour disputes," and set forth burdensome requirements for the establishment of trade unions.[6] Moreover, the government suppressed independent trade unions, which had led collective action since the Japanese colonial period, and promoted the establishment of a federation of unions that was aimed as the counterweight to the independent unions.[7]

Throughout the 1970s and 1980s, labour advocacy groups actively participated in the democratization movement. The democratization movement, which reached its peak in 1987, opened up space for the independent union movement to erupt. Millions of workers formed unions and participated in strikes and rallies, even though freedom of association was not guaranteed by labour law. Thousands of unionists were dismissed and imprisoned, and labour rights advocacy groups provided legal aid for workers. After the establishment of a national centre of democratic unions (Korean Confederation of Trade Unions, hereinafter KCTU) in 1995, labour lawyers have directly joined the confederation and industrial unions.[8] These union lawyers have provided legal aid for union members and workers exclusively and assisted unions in organising the unorganised and staging collective action.

## Fissured Workplace and Legal Impediments to Union Growth

In the late 1990s, union lawyers helped unions in navigating legal obstacles that hindered attempts to organize workers in precarious employment such as those in subcontracted work arrangements. Public authorities, as well as large conglomerates, took advantage of contracting-out in order to shed their legal obligations and break the momentum of unions.[9]

Notably, 'in-house subcontracting' has been frequently used, in which a worker on an employment contract with a 'subcontractor' is provided to a 'contracting firm' ("principal contractor"), and works at the principal's worksite under the control of both entities.[10] Large conglomerates such as Hyundai Motor Company and Samsung Electronics, which were companies with high unionisation rates, replaced union members with the in-house subcontracted workers. While the number of in-house subcontracted workers amounted to 30 per cent of workers at large firms, the unionisation rates among subcontracted workers were merely 3-4 per cent.[11]

6 The Trade Union Act of 1953, for example, prescribed that an organization shall not be recognised as a trade union in cases falling under any of the following subparagraphs:
(a) Where an employer or other persons who always act in the interest of the employer is allowed to join it;
(b) Where most of its expenditure is supported by the employer;
(c) Where its activities are only aimed at mutual benefits, moral culture and other welfare undertakings;
(d) Where a person other than a worker is allowed to join it.

7 Hagen Koo, *Korean Workers: The culture and politics of class formation*, Cornell University Press, 2001.

8 In June 2000, the first Labour Law Support Centre was launched in the Seoul Regional Centre of the KCTU. In 2000, a labour law centre was established at the Korean Metal Workers' Federation (KMWF). In February 2002, the KCTU Legal Centre was launched. The Legal Centre is currently composed of 42 lawyers, 29 Certified Labour Attorneys and 28 staff. The Legal Centre has carried out over 1,000 lawsuits annually and has legally defended hundreds of cases of union members penalized by reason of union activity.

9 David Weil described the modern workplace as the "fissured workplace", noting that the basic terms of employment are now the result of multiple organizations, and consequently responsibility for conditions has become blurred. David Weil, *The Fissured Workplace: Why work became so bad for so many and what can be done to improve it*. Harvard University Press, 2014.

10 See in detail, Aelim Yun, Realizing workers' rights beyond corporate boundaries in South Korea, in THE NOTION OF EMPLOYER IN THE ERA OF FISSURED WORKPLACE (2017), Bulletin of Comparative Labour Relations 95, Wolters Kluwer.

11 Ministry of Employment & Labour, *Survey on Labor Conditions by Employment type*, available at https://moel.go.kr/english/resources/survey.do. (last visited August 19, 2025).

While they usually worked the same job as regular employees did previously, the average monthly wage of subcontracted workers was half of that of regular employees in the same workplace. Moreover, subcontracted workers usually suffered from discriminatory treatment in terms of wages, benefits and protective equipment. In addition, these workers fell outside of protection of trade unions as most unions were enterprise-level unions representing regular employees. In addition, labour law itself has numerous impediments to organising precarious workers.

Until 1997, labour law permitted workers to join a union only at a level of an enterprise or workplace. Even after the *Trade Union & Labor Relation Adjustment Act* (hereinafter, TULRAA) of 1997 allowed workers to join other forms of unions, such as industrial unions, collective bargaining continued to take place on an enterprise level basis. In this structure, it was very difficult to organise regular employees and subcontracted workers into the same union, as they were regarded as employees of different enterprises. In cases where subcontracted workers were organised into separate unions, it was hardly possible to engage in meaningful collective bargaining, as user-employers could refuse to negotiate with the union, arguing they were not an employer within the legal term.

## Campaigns for Conversion of Precarious Workers to Regular Employees

To curb precarious work, labour movement groups first sought to re-regulate labour law on the use of non-standard employment. In the Korean labour law system, multiparty work relationships including agency work were prohibited prior to 1998. Under the *Act on Protections for Temporary Agency Workers* (hereinafter APTAW), enacted in 1998 during the Asian financial crisis, agency work was allowed in 197 job categories for a maximum of two years. In addition, where a user-employer used an agency worker for over two consecutive years, the user-employer was required to employ the worker directly. In practice, however, user-employers usually replaced an agency worker with another worker every two years, or disguised agency work as 'in-house subcontracting' to avoid their legal responsibility.

Against this backdrop, the campaign to abolish the APTAW was launched by unions and workers' rights advocacy groups in 2000. The campaign groups exposed precarious and discriminatory working conditions of agency workers and

Workers Rally in Commemoration of labor day, Incheon, South Korea
Credit: iStock

demanded a ban on the agency work. Labour lawyers litigated cases where agency workers demanded the direct employment by user-employers who manipulated the loopholes of the APTAW. Legal action for direct employment was also used as part of an organizing strategy. Since the mid-2000s, unions representing in-house subcontracted workers in the metal industry, in particular, filed a series of suits, demanding direct employment by user-employers.

As a result, workers and union lawyers have been winning lawsuits. Courts ruled that a number of large corporations including Hyundai, Samsung and GM Korea had to implement its legal obligation of direct employment.[12] While these victories contributed to the improvement of employment conditions, it must also be noted that such legal action has had only a limited impact on the growth of unions. Firstly, lawsuits take time, are costly and risky. It took several years for subcontracted workers to get a final ruling by the Supreme Court and were uncertain whether the case would be won. Moreover, the business practice of using subcontracting has hardly changed even though some of the subcontracted workers did become regular employees of the user-employer. Most importantly, winning a lawsuit has not automatically led to union growth. A larger portion of subcontracted workers has still been excluded from union protection.

12 For instance, the Supreme Court, 22 July 2010, 2008-du-4367 (Hyundai Motor Company); the Supreme Court, 10 June 2016, 2016-da-10254 (GM Korea); the Supreme Court, 12 June 2025, 2022-da-166 etc. (Samsung Electronics).

## Legal Action against Unfair Labour Practices

Since the late 1990s, unions and the labour advocacy movement groups have also attempted to organize precarious workers. In-house subcontracted workers at large conglomerates led in union organizing, as they worked along with regular employees protected by strong unions, and were aware of the effectiveness of union protection such as collective agreements. Existing unions including the Korean Metal Workers' Union (KMWU) launched a campaign to organise precarious workers and reduce discrimination against them. Still, such efforts faced old-fashioned legal dogmas that only a single employer could become a legitimate party to industrial relations. When subcontracted workers attempted to form their union, user-employers often terminated the contract with subcontractors whose workers were unionized, and expelled union members from their workplace.

Worse, subcontracted workers have encountered criminal punishment and enormous damage claims in cases when they engaged in collective action vis-à-vis the principal contractor. Under the TULRAA, collective action is 'legitimate' only in cases when the union leads such action against the "employer" for the purpose of concluding a collective agreement on 'mandatory bargaining subjects' (e.g. wage and working hours). Korean courts maintained that the principal contractor was not the "employer" but rather a "third party" to industrial relations.

Labour lawyers have assisted these workers in making unfair labour practices claims. Through these workers' fights and legal actions, judicial precedents have gradually changed to recognise collective labour rights vis-à-vis entities other than a direct employer. For instance, in 2010, the Supreme Court held that a user-employer also should be liable for unfair labour practices under the TULRAA, where the user-employer would effectively and concretely control or decide the employment and working conditions of a subcontractor's worker.[13] Certainly, this change in court rulings was a positive outcome of workers' fight and trade union legal work. However, unfair labour practices claims are merely remedial measures. It takes several years for courts to recognize unfair labour practices, and by then, the union may suffer irreparable damage to its collective rights.

13 The Supreme Court, 25 March 2010, 2007-du-8881.

## Ensuring Collective Labour Rights for Precarious Workers

Unions organising precarious workers went a step further in demanding collective bargaining with the principal contractor. Recently, subcontracted workers providing labour for Daewoo Shipbuilding & Marine Engineering went on strike demanding collective bargaining with the principal in the summer of 2022. The principal contractor had pushed wage cuts of the subcontracted workers for many years. Their union had demanded collective bargaining with Daewoo for over a year but the principal contractor refused and brutally cracked down on union members. Ultimately, seven union leaders held sit-ins in the dockyard in June 2022.

The Korean Government decried the collective action as illegal ("obstruction of business"), arguing that the principal contractor is not an "employer" under the TULRAA. Under the government threat of police intervention, subcontracted workers had to cease their collective action. The principal contractor then filed an enormous number of damage suits against the workers, without negotiating with the union.

The subcontracted workers' fights led to public support for collective bargaining with the 'real' employer. A solidarity alliance – The *Solidarity for the Amendment to Article 2 & 3 of the Trade Union & Labor Relation Adjustment Act* – was formed in September 2022, among civil society organisations, labour rights advocates and unions. Its aim is to seek to amend Article 2 (Definitions of "worker" and "employer") and Article 3 (Restriction on Claim for Damages) of the TULRAA, for the effective recognition of collective labour rights. Since the law had permitted an enterprise-level union only over past decades, single employer bargaining became a 'norm' in the labour law. This norm has made employing entities easily shift their cost and risks onto a nominal employer or even vulnerable workers. Against this, labour lawyers drafted a bill to amend the definition of an "employer" to embrace the entity having the right to control over the working conditions of the concerned worker. The solidarity alliance has carried out various campaign activities such as rallies, hunger strikes and public hearings.

After many twists and turns, including the previous President's veto, the bill was adopted by the National Assembly in August 2025. The 2025 amendment to the TULRAA adds 'a person who is in a position to substantially and specifically

control and determine the worker's working conditions' to the definition of an "employer" [Section 2(2)].

## Concluding Remarks

For decades, Korean unions and labour movement groups have made efforts to organise precarious workers and to expand union structures to embrace vulnerable workers. The shift from an enterprise-level to sectoral or industrial model was such an attempt. Demanding collective bargaining with the principal contractor, rather than the subcontractor, was another one. Labour lawyers have played a supportive role in facilitating such changes in union structure and in labour law.

Collective labour law has been a battlefield where different legal and political ideas have clashed. Korean collective labour law, in particular, has played a role in restricting the freedom of association, as mentioned above. Historically, the Government, political parties and courts have opposed amending labour law to expand the freedom of association and the right to collective bargaining. Such a restrictive legal framework and political climate have helped to create a fear of retaliation by employers and also reinforces negative perceptions of unions among the population. Against this, labour rights advocacy groups have supported workers in their struggle to regain their rights and justice. Increasingly, union lawyers are requested to develop the legal theory and discourse that labour unions are essential for promoting fairer and democratic society.

Arguably, collective bargaining with the 'real' employer would improve working conditions for precarious workers and would contribute to strengthening the power of organised workers. However, new challenges to union growth are emerging. Currently, the Government is preparing a new regulation on the subject of collective bargaining and procedural restrictions on negotiation with the principal contractor. Such regulation would likely limit collective bargaining with entities which retain power to control over working conditions, to the legal frame of enterprise-level negotiations. For unions, building common interests and solidarity between regular employees and precarious workers is a critical task that can no longer be postponed. Once again, these challenges are requesting labour lawyers to advocate workers' rights and to redraw legal boundaries beyond the existing labour law frame.

# THE ROLE OF LAWYERS IN UNION GROWTH INITIATIVES IN ITALY IN RECENT YEARS

**MARCO TUFO**

*Italy | Originally written in English*

## Introduction

Although historically lawyers have always played a key role in union growth initiatives in Italy, the recent trend of a decline of union density has intensified their efforts. A shift in the labor economy towards more 'flexible' employment relationships and the rise of app-based gig work has contributed to the decline of union membership and, consequently, more precarious employment. In this framework, trade unions find it difficult to intervene on behalf of workers in the traditional sense.

In this context, two main strategies have emerged over the past two years: strategic litigation and national political referenda. Targeted litigation focuses on the promotion of workers' rights in nontraditional sectors, antidiscrimination, and challenges to the business practice of exploiting differences in labor standards. Labor lawyers have taken up advisory roles to promote public referenda on labor law and citizenship, bringing labor issues to the forefront of public debate. Both initiatives aim to bring young and atypical workers into unions by extending labor protections to meet the realities of the new labor economy.

## Strategic litigation in platform work

Platform work has grown significantly in Italy, particularly in the food delivery sector. The first collective actions in this sector date back to 2016, when Italian platform workers began to strike against Foodora and Deliveroo, demanding better pay and working conditions.[1] These collective actions were not instigated by the traditional actors - trade unions such as CGIL, CISL, and UIL - but were coordinated autonomously by platform workers who built collective networks independent of institutionalized union structures.[2] Despite their long history of organizing workers, the traditional unions initially found it difficult to organize app-based delivery workers due to the diversity of their interests and the atypical nature of their working conditions. In contrast to the usual base of a trade union, platform workers tend to be young, immigrant workers who are hired as independent contractors and are particularly vulnerable to exploitation. This demographic of workers has difficulty seeing a traditional trade union as incapable of representing their interests.[3]

The development of worker protections available to these workers did not keep pace with the rapid growth of food-delivery platform work in Italy. As the sector became more prevalent, labor lawyers close to trade unions advised that instigating litigation against platforms designed to extend labor law to platform workers was a key opportunity to expand union membership.[4] This strategy was embraced by NIdiL CGIL (Nuove Identità di Lavoro), the atypical workers federation of CGIL, and their strategy had three key initiatives.

1 Giuditta Mosca, *Lo sciopero contro Foodora è il sogno infranto della* sharing economy, https://www.wired.it/economia/lavoro/2016/10/11/sciopero-contro-foodora-sogno-infranto-sharing-economy/ (last visited 5 July 2025).

2 *See* Federico Martelloni, *Individuale e collettivo: quando i diritti dei lavoratori digitali corrono su due ruote*, Labour & Law Issues 1, 2018.

3 Andrea Pietrantoni, *Il problema della rappresentanza sindacale dei lavoratori atipici: cause, effetti e possibili rimedi*, https://www.analisiqualitativa.com/magma/0902/articolo_11.htm (last visited 5 July 2025).

4 *See* generally the ILAW reports *Taken for a ride: litigating the digital platform model*, March 2021 and *Taken for a ride 2: accelerating towards justice*, December 2022.

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First, the federation pursued legal actions aimed at classifying app-based delivery workers as employees, rather than independent businesses, so they can benefit from traditional labor law protections afforded to all employees under Italian labor law. The complaint would be filed on behalf of a single worker with the support of trade union counsel and expertise. Although platforms formally classify these workers as self-employed, the workers' performances are directed and organized by the platforms themselves, which exercise a significant degree of control over scheduling, location of work, worker discipline, and termination of the relationship. This legal strategy has been successful, as many courts, including the Court of Cassation, the highest appellate division in Italy, have acknowledged that the degree of control exercised by the platform over the workers far exceeds the degree of control the individual worker has over their schedule and means of work.[5] Moreover, these favorable court decisions were fundamental to the codification of a minimum standard of protections for food delivery platform workers, inspiring the adoption of new labor law covering riders, granting them basic minimum wage, antidiscrimination, privacy, and occupational health and safety rights.[6]

Filing lawsuits under Italian antidiscrimination law is the second prong of the litigation strategy embraced by labor lawyers working on behalf of platform workers. Trade unions and their attorneys discovered that the criteria ingrained in the platform algorithm that developed the individual worker's reputational rating, and by extension, the amount of work they were given through the app, engages both direct and indirect discrimination against workers exercising their labor rights, caregivers, and workers with disabilities or requiring religious accommodations. This discrimination results in a loss of delivery opportunities, and therefore a loss of income. Filing complaints under antidiscrimination law for this practice has produced positive results, pushing some platforms to change their reputational systems to avoid including these factors in their calculations and the relationship between the reputational rating and the availability of shifts.[7]

Finally, labor lawyers sought to curb the social dumping practices of the app-based delivery platforms. Social dumping is defined broadly as the practice whereby workers are given pay and/or working and living conditions which are sub-standard compared to those specified by law or collective agreements in the relevant labour market, or otherwise prevalent there.[8] In 2020, UGL Rider, representing the workers, and AssoDelivery, representing the platforms, signed a national collective bargaining agreement. These organizations claimed to be the most representative collective associations entitled by law to set wages on the basis of deliveries and not of working time, and the best organizations to collectively represent their respective stakeholders in the specific sector of food and delivery work.[9]

The agreement stipulates that platform workers are self-employed individuals paid on a delivery basis with few employment protections. This practice of skirting labor standards through a contractual agreement is quite common in the Italian system, where the parties' will is expressed in a collective bargaining agreement that has *non-erga omnes* effects lowering labor standards for the sector as a whole. This practice creates a negative incentive for employer associations to sign collective bargaining agreements with nonrepresentative collective organizations, cutting out large swaths of the sector to compromise working conditions with so-called "pirate" collective bargaining agreements.[10] To challenge the AssoDelivery agreement, NIdiL CGIL took legal action to neutralize the provision and declare the result of the agreement anti-union activity.

5 Tribunal of Turin 27 December 2021; Tribunal of Palermo 24 November 2020; Court of Appeal of Turin 4 February 2019.; Court of Cassation 24 January 2020, no. 1663.; Tribunal of Turin 15 November 2022; Tribunal of Milan 20 April 2022.

6 Articles 47-*bis* ff. Legislative Decree no. 81/2015, introduced by Law no. 128/2019.

7 Tribunal of Palermo 17 November 2023; Tribunal of Bologna 31 December 2020.

8 *Social Dumping*, EMN Asylum and Migration Glossary, European Migration Network (last updated June 11, 2025), https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/social-dumping_en.

9 Annex Law no. 128/2019; Paolo Tosi, *La tutela dei* riders*, carenze legislative ed eccedenze interpretative*, Lavoro Diritti Europa 1, 2021, at 17.

10 *See* Marco Ferraresi, *La categoria contrattuale nel diritto sindacale italiano* (2020).

The majority opinion found that the agreement was unlawful.[11]

As a result of this three-pronged litigation strategy driven by traditional trade union attorneys on behalf of app-based delivery workers, the establishment unions have begun to be considered counterparts by platforms in negotiating collective agreements covering logistics and labor standards at company and national levels.[12]

## Public Referendum on the Italian Jobs Act

On June 8th and 9th of 2025, Italy voted on a public referendum concerning labor law and citizenship.[13] On the advisory activity of labor lawyers, an issue was presented to the Constitutional Court, which decided that Italian voters would vote on five issues in a public referendum: four labor questions and one citizenship question.[14]

The labor issues were developed by CGIL, the Italian General Confederation of Labor, and was developed by the Consulta Guirdica, a committee of labor scholars, judges, and attorneys formed in 1987 to advise CGIL on legal frameworks in support of their priorities.[15] The first referendum question concerned an appeal of a 2015 labor law reform known as the Jobs Act. The Jobs Act reformed termination and dismissal protections. Where previously workers at companies with more than 15 employees who were unlawfully dismissed were entitled to reinstatement, the Jobs Act limited the conditions that qualified a worker for automatic reinstatement and opportunities for money damages.[16] Because the Jobs Act only applied to employees hired after its enactment, it created a bifurcated system of protection for workers that disfavored younger workers in the labor market.[17]

The Constitutional Court has repeatedly intervened, finding that the Jobs Act does not sufficiently protect employees from wrongful termination, and recommended the question of the repeal for a voter referendum.[18] If the voters favored this referendum question, the rules on termination would have reverted to the pre-2015 terms, which provided a broader right to reinstatement. This result was important to the protection of employees, but also to addressing an incentive system that was facilitated by the relaxed penalties. Under the more lax Jobs Act employers could calculate the firing cost and potential damages and accept the minor fine as a palatable consequence for wrongfully terminating their employees without just cause.

The second referendum question also pertained to just cause termination protections, but this time for small enterprises, defined in Italy as those employing fewer than 16 workers.[19] Small employers face diminished penalties for unlawful terminations, set at a rate of damages equivalent to 2.5-6 months of wages.[20] Upon review, the Constitutional Court held that these limits are an insufficient deterrent against unlawful termination, and directed the legislature to develop a more effective regulation of wrongful terminations in small enterprises.[21] To date, the legislature has yet to develop any proposal or legislation to this effect. As a result, the task was presented to the Italian public in this referendum in the form of eliminating the minimum and maximum damages available, endowing judges with the discretion to determine appropriate damages for a wrongfully terminated employee.

The third referendum question aimed to modify legislation governing fixed-term employment contracts. At the time of the proposal, fixed-term contracts have a default maximum period of 24 months, where the employer must present a justification for termination if the contract is terminated at any point after the first year of performance.[22] This stipulation aims to create more security for contract and temporary workers, who face great precarity and job

11 Tribunal of Turin 12 March 2024; Tribunal of Milan 28 September 2023; Tribunal of Bologna 12 January 2023; Tribunal of Bologna 30 June 2021.

12 *Just Eat to Add 4,000 Workers on New Contract Terms in Italy*, Reuters (Apr. 9, 2021), https://www.reuters.com/article/markets/commodities/just-eat-to-add-4000-workers-on-new-contract-terms-in-italy-idUSL1N2LS1TU; Eurofound, *Collective Agreement Italian Logistics Sector* (Record No. 3006, 2021), Platform Economy Database, https://apps.eurofound.europa.eu/platformeconomydb/collective-agreement-italian-logistics-sector-103130.

13 *See* https://www.referendum2025.it/ (last visited 25 May 2025).

14 Constitutional Court 7 February 2025, no. 11-12-13-14-15.

15 Consulta giuridica, Strumenti: Ufficio giuridico, CGIL (Aug. 20, 2021), https://www.cgil.it/strumenti/ufficio-giuridico/consulta-giuridica-vn08ues7.

16 Article 2 Legislative Decree 4 March 2015, no. 23.

17 Article 1, para. 1, Legislative Decree no. 23/2015.

18 Constitutional Court 22 July 2022, no. 183.

19 Article 35 Law no. 300/1970.

20 Article 8 Law 15 July 1966, no. 604.

21 Constitutional Court 22 July 2022, no. 183.

22 Article 19 Legislative Decree 15 June 2015, no. 81.

insecurity as a result of their temporary status. Any fixed-term contract terminated after 12 months of performance must provide a reason that aligns with just-cause termination terms codified in collective bargaining agreements signed by the most representative national trade unions or technical, organizational, productive, or substantive reasons not accounted for in those collective bargaining agreements.[23] Referendum Question Three modified this practice, to also require justification if a fixed-term contract was terminated before 12 months of performance and to limit for-cause justifications outlined in national collective bargaining agreements. An affirmative outcome for Question Three would have standardized for-cause terms to align with collective bargaining agreements, protecting those labor standards, and curbed potential abuse of the fixed-term employee status.

Referendum Question Four concerned joint employer liability between contractors and subcontractors.[24] Under the status quo, contractors are insulated from liability resulting from accidents or injuries sustained at work caused by a subcontractor's breach of their duty of care. The objective of the proposal was to put pressure on clients in selecting contractors with high quality health and safety standards and exercise a great deal of quality control over their supply chains and subcontractors, an issue of particular concern in Italy, where the statistics about accidents at work, especially in private procurements, are dramatically high.[25] The joint employer liability would have also extended to failure to pay wages and social security contributions.

Despite not being directly related to labor law, the fifth referendum question had the potential to have great consequences for labor conditions for non-EU citizen residents of Italy. Question Five proposed to reduce the minimum residence requirement for an application for Italian citizenship from ten to five years. Although, on its face, this is a question relating to citizenship and immigration, Italian citizenship would come with easier access to employment and, by extension, labor protections that facilitate safety and dignity at work.


Uber Eats Delivery Rider
Credit: iStock

The positive outcome of these referendum questions would not only have improved worker protections against neoliberal policies originating in the Italian legislature's latest labor law reforms, but it would also have contributed greatly to the growth of labor density and CGIL membership. CGIL assumed the responsibility of proposing these pro-worker agenda items for a referendum that would have extended benefits to a great number of people outside their membership. This effort emphasizes the tenet that trade unions fight for all workers, not just their members.

The two-day vote on these referendum questions was held from 8-9th of June, 2025. Unfortunately, voter turnout was less than the required 30% quorum requirement, so the proposals were not approved and the reforms did not take effect.[26] Of note, however, are the results among those 14 million voters who did participate: "yes" in support of the proposals outlined in referendums prevailed in all the five referendum questions.[27] Although the referendum did not pass, it is important to underline the fact that about 14 million people in Italy showed up to participate in a public debate on labor issues, and overwhelmingly supported the proposals. In this sense, the results of the ballot have been considered by CGIL as a starting point to activate the public in favor of trade union policies and deliver answers to the concrete problems faced by workers in an increasingly precarious labor economy.[28]

23 *Id*.

24 Article 26, para. 4, Legislative Decree 9 April 2008, no. 81.

25 Infortuni e malattie professionali, nel nuovo numero di *Dati Inail*, il primo bilancio del 2024, *Inail Comunica* (Feb. 12, 2025), https://www.inail.it/portale/it/inail-comunica/news/notizia.2025.02.infortuni-e-malattie-professionali-nel-nuovo-numero-di-dati-inail-il-primo-bilancio-del-2024.html

26 Ministero dell'Interno, *Eligendo* — Risultati Referendum 8–9 giugno 2025: Votanti in Italia (June 9, 2025), https://elezioni.interno.gov.it/risultati/20250608/referendum/votanti/italia/01.

27 *Id*.

28 Maurizio Landini: "Non festeggiamo ma quasi 15 milioni

## Conclusion

The initiatives assessed here demonstrate new approaches labor lawyers can implement to help trade unions find new avenues for growth in the face of an industrial relations framework where traditional means of expansion have lost their driving force.

The underlying goal is to expand the influence of trade unions beyond the artificial boundaries of traditional union membership, but the strategy is not without risk. Strategic impact litigation relies on an individual plaintiff, which inadvertently lends to the already fragmented collective interests being held together by collective action. Presenting referendum questions to the public is also a gamble, not only because the public may not be able to fully grasp the technical nature of the referendum questions, but also because the quorum requirement has historically been a significant hurdle to the success of referendums. Even understanding these risks, however, the potential for a positive return for trade unions that support litigation and referendums with financial, institutional, and legal resources is significant. Unions are also protecting their own negotiated standards by intervening in this way — by ensuring that minimum standards are not compromised or weakened without their say. Trade unions have a significant role to play in the shaping of society and in their own growth, especially in the face of a legislature unresponsive to the demands and fears of workers and directives of the Constitutional Court.

di voti saranno un nuovo inizio," *Collettiva* (June 9, 2025), https://www.collettiva.it/copertine/lavoro/landini-non-festeggiamo-ma-quasi-15-milioni-di-voti-saranno-un-nuovo-inizio-megczhjg.

# LAW AS A TOOL FOR CLASS STRUGGLE: DEFENDING THE RIGHT TO WORK AND THE LABOR AND UNION MOVEMENT FROM WITHIN

**SYLVIA BONILLA BOLAÑOS**

*Ecuador | Originally written in Spanish*

*It was difficult for me to write this, largely because talking about our own work seems like an unnecessary self-referential exercise.*[1] *However, when the work consists of defending the dignity of those of us who produce wealth, perhaps it is worth sharing. I have decided to narrate it from a personal-collective perspective, because the personal is political, and from a political perspective, because our professional practice is built with and for the working class. These paragraphs come from the early hours of the morning when insomnia mixes with anger—each time a judge dismisses a lawsuit or a labor inspector submits a request—but also from the shared joy when a worker utters the word "union" for the first time without lowering her voice.*

## I. Institutional configuration of the barriers to unions

In Ecuador, labor organizations are struggling to survive in hostile conditions. According to the only data we have at this time, in 2022, the Ministry of Labor registered only 5,783 trade unions, 80% in the private sector and 20% in the public sector. These unions had a total of 313,727 members, representing a unionization rate of just 2.39% of Ecuador's economically active population of 8.5 million in 2024. The collective bargaining coverage rate does not exceed 1%. The ministry itself admits to having unreliable statistics, which underscores the scale of the problem.

If statistics are the mechanism by which the State becomes visible, the absence of reliable records reveals a lack of government interest in measuring how rights are guaranteed. Every missing figure is an omitted testimony, and every omission is a symptom of structural negligence.

The reasons for this situation are well known but persistent:

**Legal hurdles**: Thirty people are needed to form a union, and more than half of all workers are required to form works councils or bargain collectively. The same requirement applies in the public sector, which is governed by the Organic Law on Public Service. "More than half" are needed to create public servant committees, and collective bargaining is expressly prohibited. These requirements clash with the reality of a country where 98% of productive units employ fewer than 50 people.

**Restrictive interpretations**: The Ecuadorian Ministry of Labor maintains that unionization is only possible "at the company level," which renders organization by sector of activity invisible and excludes independent, informal, and unemployed workers. This argument is based on a narrow reading of the Labor Code that ignores the hierarchy of ILO Conventions 87 and 98[2].

**Fragmented business structure:** Ecuador's productive structure, which is dominated by micro and small companies, makes the numerical threshold an insurmountable barrier. A group of twenty-nine workers cannot form or join an industry-wide union without the authorities deeming it "spurious."

**Practical hostility**: This includes anti-union dismissals, anti-union lists, and revolving doors between business and industry associations and the Ministry of Labor. There is also a State policy of "social dialogue" that confuses photo opportunities with negotiation. Our recent *Study*

1 https://ciddt.org/

2 International Labour Organization Conventions on Freedom of Association and on the Right to Organise and Collective Bargaining, COs 87 (1948) and 98 (1949), respectively.

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*on anti-union practices in Ecuador* revealed additional issues, including reprisals for union membership alone, pressure to leave the union, administrative obstacles to registering union leaders, and improper disclosure of membership data that exposes workers to the risk of persecution.[3]

The barrier is reinforced by administrative subterfuge, such as authorities losing files, officials demanding non-existent requirements, and lengthy deadlines that make the registration process a bureaucratic ordeal.

The International Labour Organization has consistently pointed out the structural obstacles to freedom of association in Ecuador. From 1990 to 2025, the Committee of Experts on the Application of Conventions and Recommendations made observations regarding Convention No. 87 for 28 years and Convention No. 98 for 27 years. They insisted on the same pending reforms throughout this time: enabling sectoral unionization, reducing legal requirements for incorporation, extending collective bargaining to the public sector, and ensuring effective mechanisms against anti-union practices. The repetition of these observations over more than three decades reveals systematic noncompliance. Only recently has Ecuador been included in the list of individual cases of the Standards Application Committee of the International Labor Conference (2022, 2024, and 2025), which confirms the seriousness and persistence of the noncompliance. While these pronouncements do not transform State practice, they constitute legal and political tools that, when invoked in hearings, obligate the authorities to formally recognize the validity of trade union rights in some cases.

## II. Law as a field of struggle

In 1986, Óscar Correas[4] argued that the liberal republic is "the only option" because the working class lacks the strength to impose anything else. He warned that in this scenario, "there is no democracy without lawyers," yet legal spaces are essentially political and "not all lawyers are the same."

This statement invites honest self-criticism. Those of us who practice labor law do not operate on neutral ground but rather in a minefield of powers and interests. Every word in a lawsuit and every adjective ("arbitrary," "illegal," "persecution") triggers defensive reflexes in employers and bureaucrats. This is why our work requires more than technical expertise; it requires ideological clarity, class consciousness, and a willingness to confront the consequences.

Julio Godio[5] linked union density with the ability of unions to protect themselves against the State. Where there is persecution and dismissals, membership collapses. Hence, the urgency of robust labor laws that guarantee robust jurisdiction. This approach remains valid. In Ecuador, the legal fragility of the organization corresponds unequivocally to the levels of productive atomization and contractual precariousness. To reverse the equation, we need to shield collective praxis: advocacy, then, is not merely a professional service, but an instrument of resistance.

Decades later, Nancy Fraser[6] would assert that "state-managed capitalism," also known as "social welfare," was a pact to avoid "the ragged revolutionary mob" and transform the working class into consumers. This was not a generous concession, but rather a strategic design. As she accurately puts it: "The creation of the state-managed regime was a matter of saving the capitalist system from its own self-destabilizing propensities — as well as from the specter of revolution in an era of mass mobilization." In other words, what is often presented as the golden age of the welfare state was, in reality, an attempt to manage the tensions between economic production and social reproduction by enlisting state power to stabilize capitalism. To this end, workers at the center of the system were enabled to fulfill a dual function: to be producers, yes, but also consumers. Unionization and

3 CENTRO DE INVESTIGACIÓN Y DEFENSA DEL DERECHO AL TRABAJO (CIDDT), Estudio sobre prácticas antisindicales en Ecuador (CIDDT 2025), available at https://ciddt.org/wp-content/uploads/2025/07/Estudio-sobre-practicas-antisindicales-en-Ecuador.pdf

4 OSCAR CORREAS, La democracia y las tareas de los abogados en América Latina, in Los Abogados y la Democracia en América Latina 211–18 (Joaquim Falcao et al. eds., Instituto de Servicios Legales Alternativos [ILSA] 1986).

5 JULIO GODIO, Reflexiones Sobre los Desafíos Actuales del Sindicalismo (International Labor Organization 1991).

6 NANCY FRASER, Capitalismo Caníbal (Siglo XXI 2023).

public spending were permitted only if they served that purpose. What was at stake was not the emancipation of the working class, but its functional integration into an order that, far from disappearing, was shielding itself from conflict.

However, that pact had limits and conditions: it only applied to some, and only for a limited time. It "resulted from a class compromise and represented a democratic advance," yes, but within the framework of a strategy to reproduce the system. Today, as that compromise crumbles due to the ongoing crisis of capitalism, recent digital transformations, and the latest offensive by the far right, the political dimension of labor law is once again becoming apparent. With it comes a strategic question: what role should we, as labor lawyers, assume?

The answer cannot be neutral. Our praxis is part of the reform–revolution dialectic: we operate within the system to expand it to its limits and, at the same time, we prepare for rupture when the correlation of forces allows it. We recognize the achievements made through the law—stability, decent wages, union organization—but we do not confuse them with emancipation. We know that, as Fraser warns, even the provisions that served to stabilize social reproduction temporarily were born out of a need on the part of capital, not a surrender to the working class. Therefore, our legal practice does not seek to restore an outdated pact, but rather to intervene in its cracks, expand its contradictions, and dispute its meaning. Reform, yes, but always with a revolutionary horizon.

We defend a reading of law as a "*field of struggles*"—to borrow Pierre Bourdieu's expression—a space where meaning is disputed, where the norm is stretched or shrunk according to the strength of those who invoke it. Such a conception seeks to transcend the formula of "alternative use" and embraces the notion of "*legal counter-hegemony*":

This political position entails making everyday decisions: respecting union autonomy, refusing to represent employers, forging alliances with critical academia, and training new generations of committed lawyers. We are few, but every lawsuit, every sentence, every footnote becomes a space for dispute: the law is not neutral, it is just another front in the struggle.

Ecuador Protest
Credit: Solidarity Center / Marcella Arellano

## III. What we do: collective work in the CIDDT

The dispute over the role of labor law, especially union law, is not just theoretical. It plays out, above all, in everyday practice. Angie Toapanta Ventura, María Belén Paladines, and I founded, created and continue to build the Center for Research and Defense of the Right to Work (CIDDT) to practice law with our hearts, from the left. Our work revolves around four inseparable pillars—research, training, strategic litigation, and advocacy—that reinforce each other. Based on these pillars, we have developed tools, precedents, and spaces for debate that, without aspiring to be a model, aim to encourage the development of advocacy *by and for* workers everywhere.

The Ecuadorian context provides telling figures: micro-companies account for 93% and small companies for 5% of productive units; only 1.86% are medium or large. With a legal threshold of thirty people to form a union, more than a million units are excluded from the possibility of collective organization. Hence, unionization by sector is, in practice, the only way for unions to grow. Our work—litigating, training, researching, and advocating—is inseparable from our political commitment to dismantling the structural barriers that prevent the working class from exercising their rights fully.

Although our first accompaniment was in a landmark case in the agro-industrial sector, we quickly realized that the true scope of the dispute went beyond a single union. Since then, our work has focused on a broader sectoral strategy, combining litigation, legislative advocacy, union coordination, and internationalization of claims, based on the conviction that this is the only way

to pave a real path toward guaranteeing freedom of association in the country.

### 1. Strategic litigation: the precedent of unionization by sector

The landmark case involves a union in the agro-industrial sector, composed of individuals from various companies—even though Ecuadorian law restrictively requires that all members be employed by the same employer in order to register a union—which was denied registration by the Ministry of Labor. In response to the refusal, the organization filed a complaint with the ILO Committee on Freedom of Association (CFA) in 2015, which, to date, has issued three provisional reports with explicit recommendations to the Ecuadorian State.

Based on these recommendations, and our counsel since 2020, the organization turned to constitutional justice. On October 14 of that year, an action for protection (constitutional amparo) was filed in connection with a violation of the right to freedom of association. The judge of first instance denied it, arguing that workers "have the right to associate [...] provided they meet the requirements established by law," a phrase that, in practice, legitimizes a regulatory framework contrary to ILO Conventions 87 and 98, reproducing a strictly formalistic view that ignores the State's international obligations.

The turning point came in the second instance. The Provincial Court directly applied ILO Conventions 87, 98, 110, and 141, as well as paragraphs 7 and 8 of Article 326 of the Constitution, to hold that the ministerial interpretation cannot prevail over international standards. In a ruling dated May 25, 2021, it recognized the union organization by sector, ordered its registration, and imposed additional obligations on the Ministry of Labor: to publish and disseminate the ruling, regulate unionization by sector, and refrain from blocking similar requests. Today, the case awaits a decision by the Constitutional Court, as the Ministry of Labor has filed an extraordinary appeal against the second-instance ruling, which will determine whether this precedent will be consolidated or reversed. Although we are no longer representing the organization at this stage, we know that the outcome will shape the future of the Ecuadorian trade union movement.

Following the provincial ruling that recognized sector-based unionization, we knew that litigation was just the beginning of a broader path involving courts, international oversight bodies, regulatory production, and union organization.

In 2024, the Committee on Freedom of Association determined that the Ministry of Labor was still refusing to regulate unionization by sector and was limiting the effects of the 2021 ruling to the original case. The Committee also noted that, on August 7, 2024, the Constitutional Court requested a report from the Ministry regarding compliance with the ruling. Additionally, in March 2024, the Labor Organizations Directorate declared itself incompetent to register the SITACE trade union. The Committee took note of the introduction of *Ley para la Garantía de la Libertad Sindical* (the Bill on the Guarantee of Freedom of Association, June 6, 2024) and its passage through the Right to Work Commission from October 3, 2024. The Committee regretted that it remains legally and practically impossible to form first-degree unions among workers from different companies.

None of this occurred spontaneously; it is part of a collective strategy with trade union organizations, in which legal work was crucial. We designed a sequence of litigation, activation of ILO mechanisms, amicus curiae, legislative proposals, and documentation of impacts for public communication to uphold and project the precedent to other fronts.

The following sections develop the pillars of this strategy: communication and new organizational experiences (III.2), production of norms and institutional dispute (III.3), and training the next generation of union lawyers (III.4).

### 2. Communication and new organizational experiences

The communication aspect has been equally crucial. Aware that unionization by sector had to become a social debate beyond the courts, we deployed a strategy on social media and alternative media: publications with images, campaigns on Instagram[7] and Facebook, and a TikTok channel[8]. At first, it was not easy to come up with scripts or record videos; we had reservations about using social media formats for legal and union work—I myself was reluctant to do so. Over time, we achieved greater clarity and effectiveness in this effort.

Although maintaining consistency is a challenge, as we are primarily focused on our legal practice,

7 https://www.instagram.com/ciddt.ec/

8 https://www.tiktok.com/@ciddt.ec

we continue to promote this work. At key moments, such as the referendum that sought to introduce hourly contracts in Ecuador, the digital strategy proved to be decisive: it allowed us to amplify demands, counter the State narrative, and reach young people, who have historically been excluded from traditional trade unionism. We thus confirmed that digital communication is not an accessory resource, but a tool for collective organization when articulated with legal and political processes.

This communications front was born out of the project with the Friedrich-Ebert-Stiftung (FES)[9] in 2022–2023 and, over time, became an autonomous line of work. Within this framework, we also produced the first systematic research on this topic in Ecuador, accompanied by a graphic publication for mass dissemination [10]

The workshops we carried out as part of the project brought together workers from sectors historically excluded from trade union organization, such as the audiovisual sector. From this meeting, the *Sindicato de Trabajadoras y Trabajadores Audiovisuales y Cinematográficos del Ecuador* (Union of Audiovisual and Film Workers of Ecuador, SITACE) was born.

The institutional response was a perfect example of the regulatory funnel that we have denounced. On October 6, 2022, the Social Organizations Directorate of the Ministry of Labor stated that "the constituent members [...] do not have an employment relationship with a common employer; therefore, this request falls outside the scope of the Labor Code." In a separate memorandum, the Legal Director stated that the Ministry "would be prevented from regulating something that is not previously mandated by law" and that the precedent-setting ruling on the agro-industrial union "is not *erga omnes* or *inter communis* in nature." In essence, the State said, "*We do not have a regulatory framework, we do not want to create one, and in the meantime, we are disobeying the court order*." With that argument, the request was put on hold. We have responded by preparing a complaint about this case before the Committee on Freedom of Association because persisting with international bodies is now an essential way to break through the internal regulatory barrier.

A similar situation occurred with the *Unión Nacional de Trabajadoras Remuneradas del Hogar* (National Union of Paid Household Workers), UNTHA-CEOSL). Founded as an organization of domestic workers[11] in May 2018 it succeeded in getting the Ministry of Labor to register it as the first autonomous sectoral union after employing a combination of public mobilization, administrative pressure, and international complaints. This registration set a key precedent, later cited in the agro-industrial union's litigation, to demonstrate the legal viability of sectoral unionization. Since then, UNTHA has played a dual role: as a regulatory reference certifying that the State has already granted a sectoral registration in direct application of ILO Conventions 87 and 189, and as a political spearhead against new institutional barriers.

Backed by this political force and our support, UNTHA presented a draft collective agreement for domestic workers in 2024. However, on July 17 of that year, the Regional Labor Directorate shelved the proceedings, citing two "formal breaches": (1) the lack of precision regarding the "relationship of dependency" that each worker has with their employer, and (2) the absence of a "clear and precise address of the contracting party." In other words, the State required domestic workers, whose labor relations are often informal and fragmented, to reproduce the employer structure that sectoral bargaining seeks to overcome. At the same time, the Ministry invoked the same argument used against SITACE: Without legal reform, sectoral collective bargaining cannot proceed.

These resolutions reveal a consistent pattern of recognizing the right in abstract terms while denying it in practice by hiding behind legislative loopholes that the executive branch refuses to remedy. For this reason, we will also bring the UNTHA case before the ILO Committee on Freedom of Association.

9 See https://sindicalizacionporrama.com/

10 See https://drive.google.com/file/d/1yLao8jUV6F4m1N5nfDaASn44JFFieVKS/view and https://drive.google.com/file/d/11HEfcx2bDxu1yM0ZpFT9WDYSWBbSqTnb/view.

11 We wish to emphasize that although "domestic work" and "domestic workers" are commonly used terms and ones that, for the sake of consistency with usage in other articles of this GLRR edition, we retain in this English language version of our article, we would normally opt to refer to this work as "paid household work" ("trabajo remunerado del hogar," in Spanish), and those performing the work as "paid household workers." Over the years, the question of terminology has become of significant political concern to the workers, themselves, and to their advocates, as a result of the various derogatory ways historically used in referring to their work and in addressing them directly, e.g. "domesticated work," "domestics," "girl," "child," among others (or in Spanish, "empleada doméstica", "chacha", "niña" or "empleada"). For these workers, their fight is about winning proper recognition for the work they do; therefore, this ongoing debate involves not simply a linguistic problem, but rather an issue of reclamation of identity.

Since April 2024, we have been following the legislative and constitutional dispute that culminated in the *Ley Orgánica Reformatoria al Código del Trabajo para Dignificar el Trabajo del Hogar* (Organic Law Reforming the Labor Code to Dignify Domestic Work)[12] entering into force on August 1, 2025. Despite attempts at veto and institutional efforts to block it, the approval of this law reflects how the organization of paid household workers, combined with the legal strategy we promoted, can translate into concrete legal victories amidst a structurally adverse scenario.

Additionally, UNTHA and SITACE intervened as *amici curiae* in the case brought by the agro-industrial sector union before the Constitutional Court of Ecuador, integrating the legal dispute into a collective strategy.

### 3. Production of norms and institutional dispute

In parallel with the expansion of communications and organizational growth described in the previous section, the conflict moved into the regulatory and institutional arena. Within the framework of the project on unionization by sector promoted by the Friedrich-Ebert-Stiftung (FES), a draft bill was drawn up to reform the Labor Code to guarantee freedom of association. It was subsequently refined in collaboration with the Confederación Ecuatoriana de Organizaciones Sindicales Libres (Ecuadorian Confederation of Free Trade Unions, CEOSL) and enriched with contributions from dear colleagues from the ILAW Network, as well as experiences shared by colleagues from other countries. From a legal perspective, we contributed to its architecture and technical foundation.

We understand the law as a scenario of conflict and, under this logic, the bill was presented to the National Assembly in 2024 by the CEOSL, through a group of allied assembly members, with our technical counsel. Thus, the bill became a political and legal tool aimed at dismantling the barriers that currently restrict freedom of association and collective bargaining in Ecuador.

In the coordination between the country's judicial and administrative bodies and the ILO's supervisory bodies, the latter was not only a source of political legitimacy but also an operational input to sustain and reinvigorate the legislative strategy. Its recommendations were translated into regulatory foundations and, simultaneously, into political demands to comply with international standards within the country. This legislative route translated the judicial precedent and the ILO's recommendations into a concrete instrument of reform, consistent with the legal-union strategy developed in the previous sections.

The project has three main objectives:

1. **Recognize unionization by sector**, eliminating the requirement of a common employer and the numerical threshold that excludes millions of workers.
2. **Enable sectoral and multilevel collective bargaining**, ensuring that agreements reached by sectoral unions prevail when they are more favorable.
3. **Guarantee effective protection against anti-union practices**, including safeguards that nullify dismissals, transfers, or repressive changes in working conditions, as well as mechanisms for reinstatement and full reparation.

Since then, parliamentary debate has stalled. First, the former Minister of Labor spoke out against it. Then, the new legislative majority, aligned with President Daniel Noboa, an agro-industrial businessman, relegated the text to the bottom of the agenda. Nevertheless, the mere existence of the bill has revealed a regulatory gap between the State's international commitments and domestic legislation. Thus, the bill has become a catalyst for legal and political disputes, reminding us that every law can and should be rewritten from the perspective of the working class.

### 4. Training the next generation of union lawyers

The shortage of legal professionals with a genuine trade union perspective is currently a real political bottleneck for the labor movement. Aware of this shortcoming, in 2023, we launched, together with the Friedrich-Ebert-Stiftung, the ILAW Network, and its affiliated organizations, an annual training program specializing in the defense of trade union rights, aimed at young lawyers and students in their final semesters of law school.

12 The law recognizes domestic work, requires enrollment in social security, guarantees preferential access to care, creates mechanisms for reporting violations and a specialized gender inspectorate, and establishes monitoring and enforcement of the law with the participation of workers in the sector.

In just two editions, the program has trained more than thirty people, several of whom are already providing counsel or litigation services to trade union organizations, thereby multiplying the legal advocacy capacity of the popular movement. As I write these lines, we are finalizing the details of the third edition, convinced that each cohort expands and consolidates a collective legal practice, based on networks of mutual support and class commitment, which strategically nourishes the struggles of the labor movement and strengthens the defense of freedom of association where it is most needed.

*In short, at CIDDT, in addition to pointing out the structural limitations of labor/union law under capitalism, we have sought to highlight concrete struggles: processes that combine strategic litigation, regulatory development, rigorous research, training, and communication to push the boundaries of what is possible. Our legal practice plays out in this tension between structural criticism and immediate action. We do not claim to be a beacon or a recipe; we only seek to demonstrate that committed, feminist, and situated advocacy can open cracks in the walls that constrain trade unionism.*

# THE ROLE OF LABOR LAWYERS IN ORGANIZING AMAZON DELIVERY DRIVERS IN JAPAN

**TETSURO KINOSHITA**

*Japan | Originally written in English*

The Labor Lawyers Association of Japan (LLAJ) is an organization of pro-labour lawyers founded in 1957 and currently comprising more than 1,500 lawyers across the country. Its mission is the protection and furtherance of workers' rights. Its independent nature allows it and its members to work with labour unions regardless of political or ideological disposition. In addition to being a group of labour and employment law specialists, it is a significant component of the labour movement in the country. This article introduces how a group of LLAJ lawyers - including ILAW members - worked together with union activists to organize Amazon delivery workers in Japan. The role the lawyers played in the efforts to unionize and to build and grow the union is unique in the context of the Japanese labour movement both in the level of involvement of legal practitioners and in the methods employed - to mixed degrees of success.

## 1. Organizing Challenges in Japan

As an initial matter, I will note as background the organizing challenges that the labour movement faces in Japan and to highlight how the Amazon organizing efforts differ from traditional organizing frameworks.

a. Declining union density amidst the traditional company union model

One feature of post-war labour unions in Japan is that they have largely been company-based. Coupled with union shop agreements between company and company-level unions which obligate employers to discontinue the employment of non-union employees, union density reached its peak of 55.8% in 1949. The result has been the confinement of labour-management relations to the cultures and particularities of each individual corporation. While union federations composed of company-level unions in similar sectors do exist, this compartmentalization generally hinders the ability of the labour movement to join forces to make concerted efforts to organize, be it within or across sectors. While unions that organize by sector do exist outside of sectoral federations, they are rare. Some examples would be the Japan Federation of Musicians, the All-Japan Construction and Transport Workers Solidarity Union, All Japan Dockworkers' Union, and the All-Japan Seamen's Union.

Japan's union density has steadily declined since its peak in 1949, standing at 16.3% on December 2023[1]. Another notable statistic is the number of collective actions (including strikes) carried out by unions and their membership: 75 in 2023, compared to 9,581 in 1974.

b. Reluctance to organize informal economy workers

Another historical feature of labour unions in Japan is that they have long focused on organizing "regular" workers. This refers to employees under full-time, permanent employment agreements, as opposed to part-time, fixed-term employees, or agency workers. The traditional employment practice in Japanese corporations has been to hire university graduates fresh out of school. Graduates would - upon joining their respective companies - join the company-level union, which would be equipped with a union shop agreement with the employer, enabling it to organize the workforce with relative ease.

However, the fissuring of the workplace through the outsourcing of work, deliberate efforts by corporations to shift from formal to informal work - at times through misclassification - and the

1 JILAF, 2023 Basic Survey of Trade Unions — Organization Rate Lowest Ever, 1 Sept 2024, https://www.jilaf.or.jp/en/news/20240115-3485/

advent of the gig economy/digital platform work had made it difficult to organize. Today, the non-regular workforce represents almost 40% of the entire workforce in Japan. Union membership among non-regular workers remains at a meagre 8.4% as of 2023.

c. Community unions' lack of resources

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Attorney/Board Member, Labor Lawyers -Association of Japan

The Labor Union Act in Japan (LUA) recognizes collective bargaining rights for any labour union that is independently and democratically organized and has a membership of not less than two. This is distinctly different from the United States, for example, where exclusive representation means that a union needs to win the support of a majority of employees in a bargaining unit in order to have the right to bargain with the employer.

This permits the formation of unions that organize individual workers regardless of what industry they work in or whom they work for. These unions are known as general unions, community unions or regional unions.

Community unions tend to be the upholders of the grassroots, bottom-up labour movement in Japan. A comparable type of organization would be worker centres in the United States. Many community unions are progressive, forward-thinking and unafraid to take collective action where necessary. Being in a position to organize any worker in any sector gives community unions the mobility and openness to tackling new, cutting-edge labour issues. However, the challenges for community unions lie in the lack of resources overall due to their size and lack of strength in numbers. This is compounded by the lack of financial resources due to limited membership and dues that are affordable for members but not always sustainable for the unions.

d. Union-lawyer relationship

Unlike in some other countries, Japan's labour unions do not have in-house lawyers. Instead, many unions have legal advisory arrangements with individual lawyers or pro-labour law firms with a view to assisting them in legal matters centring on labour and employment. For individual cases such as unfair labor practice complaints brought to the Labor Commission (akin to the NLRB in the US), unions rely on external attorneys where they do not pursue the cases on their own. The result is that lawyers tend not to be deeply involved in organizing workers into unions rather focusing on the individual day-to-day queries from union leadership and addressing individual labour-management disputes as they arise.

## 2. Organizing Amazon Delivery Workers

a. Issues faced by DSP and Amazon Flex drivers

Amazon is one of the largest e-commerce retailers in Japan[2]. According to Amazon, it made 780 million same-day or next-day deliveries for orders by Amazon Prime members in 2024, a 15% increase from 2023.[3] This equates to 2.14 million packages delivered on average per day. To have these packages delivered, Amazon has contracts with large enterprises such as Japan Post. Separate from these arrangements, Amazon's packages are also delivered by delivery service providers (DSPs) and Amazon Flex drivers (collectively "Amazon drivers"). The packages are sent from large-scale logistics centres called "fulfilment centres" to delivery centres operated by DSPs. From there, the Amazon drivers are charged with the last-mile delivery of the packages.

Until around November 2020, DSP drivers and Amazon Flex drivers were compensated by the package. The number of packages to be delivered daily was limited. With Amazon's launch of its delivery app named Rabbit, the remuneration of DSP drivers changed to a fixed rate by the day, regardless of the number of packages delivered. At the Miharu Delivery Centre in Yokosuka, Kanagawa Prefecture, the DSP operator (named Wakaba) explained to its delivery drivers that the number of packages would be up to around 80-90 a day, topping out at 150 on occasion.

2 Government of Canada, *Sector Trends Analysis, E-Commerce Market Trends in Japan*, 2025, https://agriculture.canada.ca/en/international-trade/market-intelligence/reports-and-guides/sector-trend-analysis-e-commerce-market-trends-japan

3 https://www.aboutamazon.jp/news/amazon-prime/amazon-delivered-record-numbers-of-items-through-same-or-next-day-delivery-in-japan-202

From May 2021, Amazon began to employ artificial intelligence to allocate the delivery of its packages. Subsequently, the number of packages that each driver was required to deliver per day continued to increase. Some drivers had to deliver over 200 packages a day. Amazon instructs its DSPs to limit the daily working hours of its drivers to 60 hours per week. This is a 12-hour workday in a 5-day work week. To deliver 200 packages in 12 hours, drivers need to deliver 1 package every 3 minutes and 36 seconds. The excessive number of packages not only impacts upon the workload of the drivers; it also compromises their safety. The sheer volume of packages causes the vehicles to be literally filled to the brim with packages, blocking the view of the driver in the rear -view and side-view mirrors.

b. Forming the Union

On October 25, 2021, a DSP driver visited the office of Shunji Suga, ILAW member, ex-lead secretary and current board member of the LLAJ. The driver worked at the Miharu Delivery Centre. In addition to the above issues, he spoke about verbal harassment by staff of Wakaba being rife at the centre and how the DSP operators would instruct drivers in danger of exceeding the 60-hour weekly work limit to use the identification codes of other drivers in order to prevent their records coming up as having exceeded the 60-hour mark. Suga saw the legal possibility of the DSP drivers being recognized as employees under the Labor Standards Act (LSA), the Industrial Safety and the Workers' Accident Compensation Insurance Act (WCA), and as workers under the LUA. This would afford them various protections such as limits on working hours and overtime premiums, paid leave, workers compensation and protection from dismissals without just cause. He also saw the significance of the problem presented by the DSP driver as part of a much larger and wide-reaching issue implicating algorithmic-controlled work. The issue needed to be addressed collectively and in numbers.

After closely consulting with and forming a team of over ten lawyers of the LLAJ (Amazon Workers Lawyer Group, AWLG) and working with the Tokyo Union, a community union with a membership of approximately 900, the Amazon Delivery Drivers Union in Yokosuka was formed as a branch of the Tokyo Union. The Yokosuka union started with a membership of 10, or approximately 30% of the Amazon drivers working out of the Miharu Delivery Centre. The AWLG was heavily involved in the organizing process, with lawyers making 2-hour trips to


Amazon delivery worker
Credit: iStock

Yokosuka and back to attend and provide advice at gatherings of Amazon drivers that began from 8 or 9pm to accommodate their work schedules. The meetings would continue until 10 or 11pm.

c. Expanding the union

On June 26, 2022, Tokyo Union, in concert with the AWLG, organized a free phone consultation day for delivery drivers. The AWLG lawyers took calls alongside organizers of the Tokyo Union. The bulk of the calls taken were from Amazon drivers across the country, presumably riding the wave of interest that followed the establishment of the Yokosuka union. Some of the callers expressed a real interest in organizing unions in their respective regions. Following the media and public exposure brought by the forming of the Yokosuka union and the free phone consultation, a second branch - this one in Nagasaki Prefecture - was formed on September 4, 2022. The Nagasaki union's demands centred on increasing the daily remuneration, which remained at a low level despite the mountainous landscape of the city, which made delivering packages for Amazon drivers more challenging than in other regions.

d. Actions and campaigns

Subsequent to the formation of the Yokosuka and Nagasaki unions, various actions have taken place, both by the union membership and by the lawyers supporting them.

i. Red Wednesdays and other actions

The AWLG presented to the Yokosuka union membership several of Labor Notes' grass roots organizing methods and encouraged them to use these methods as ideas to creatively organize. Among the AWLG lawyers were those who

translated Labor Notes' "Secrets of a Successful Organizer" into Japanese in 2018. The membership responded well, with members organizing actions such as petitioning for a super-majority for some demands in a show of solidarity and wearing red on certain days of the week.

This may not seem like much. However, in Japan, there has historically been very little sharing among or within unions of organizing tactics or methodologies. They have tended to rely on the individual organizing capabilities of each organizer, making organizing efforts inconsistent at times. Taking a page out of Labor Notes and putting it to practice is novel in the Japanese labour movement context. Moreover, it has helped instil a sense of belonging, responsibility and empowerment among the core members of the union, which was what the AWLG lawyers had sought to bring about.

After the Yokosuka union was formed, noticeable changes took place in the Miharu Delivery Centre. Managers that used to berate drivers suddenly became courteous, anti-harassment guidelines were adopted and the use of other drivers' IDs to falsify weekly hours worked ceased.

ii. Actions against Amazon

While failing to recognize the union as an official labour union, Wakaba, a DSP, engaged in dialogue with the Yokosuka union. However, their position on lightening the workload was that this was not under their control. The Yokosuka union went to Amazon demanding collective bargaining on the issue and other items, but Amazon refused to engage. Their position was that they do not have any contractual relations with the DSP drivers, and that the Amazon Flex drivers are independent contractors who do not enjoy collective bargaining rights. After a year and a half of collective bargaining demands and refusals, the union engaged the AWLG to file an unfair labour practice claim against Amazon in the Tokyo Labor Commission in January 2024 demanding a decision ordering Amazon to engage in collective bargaining with the union over the issues including the workload and the disclosure of drivers' data gathered by the delivery app and how it is used. The main points of dispute were whether the Amazon drivers are workers as defined under the LUA with rights to collectively bargain, and whether Amazon is obligated to engage in collective bargaining with the DSP drivers with whom they do not have a direct contractual relationship.


Red Wednesday

iii. Actions against Wakaba

In April 2023, Wakaba cancelled the contracts of two union members due to allegations such as mistakenly entering private property for a short period of time. Employees under the Labor Contract Act (LCA) would require just cause to be dismissed; independent contractors under service or consignment agreements have no such protections and their contracts may be cancelled at any time and without cause. Wakaba argued that the union members are independent contractors and therefore their termination is valid. The AWLG represented the workers in their suit against Wakaba demanding that they be found to have an employment relationship with Wakaba and that their dismissals be found to be without just cause.

Separate from this claim, union members of the Yokosuka union brought a claim for unpaid overtime wages against Wakaba and their subcontractors, also under representation by the AWLG. The claim relies on the LSA, which obligates the payment of overtime premiums. The main point of dispute here is also whether the DSP workers are protected by the LSA, whose definition of employees overlaps with that of the LCA.

Both cases continue to be actively litigated in the Yokohama District Court. The AWLG holds meetings open to the media and to union members after the hearings to keep the members and public informed and to address any issues or concerns the membership may have at that time.

iv. Workers' compensation insurance claims

In September 2023, the president of the Yokosuka union fell down a flight of steps on the way back to his vehicle after a delivery, breaking his back. The AWLG filed an application for worker's compensation under the WCA, which provides insurance to employees as defined under the Act. The definition of an employee under the WCA is identical to that under the LSA. One year after the accident, in September 2024, the labour standards inspection office recognized the driver as an employee under the WCA and granted compensation. In December of the same year, the Ministry of Health, Labor and Welfare (MHLW) issued a memo based on the application of the union president calling upon companies to take note that the conditions under which the president worked dictated that he should be treated as an employee.[4]

This was a big boost for the Amazon drivers and the union, as it backed up the argument made against Wakaba on the employee status of the drivers. The AWLG, along with the union president, held a press conference after the labour standards inspection office issued its decision, attracting widespread attention from the press and public. Further, another DSP driver working in a delivery station in Miyazaki Prefecture broke multiple bones after a bad fall down some steps in March 2024. The AWLG relied on its network within the LLAJ to find a lawyer in Miyazaki who would support the worker in bringing a worker's compensation application to the labour standards inspection office. In February 2025, this DSP driver was recognized as being an employee under the WCA and was granted compensation for his injuries, marking another significant victory in the union's fight to attain labour protections. The outcome was duly made public via a press conference by the AWLG.

v. Other activities

The AWLG has also coordinated with the Yokosuka union and Tokyo Union to hold symposia and other events with a view to gaining support and recognition of the issues that the Amazon drivers face in the workplace. Further, AWLG lawyers coordinated with union members, the Pacific Asia Resource Centre (PARC, a non-profit organization based in Japan and committed to global social and economic justice), and movie directors to participate in Make Amazon Pay[5] campaigns over the past few years. In November 2024, Japanese film director Tokachi Tsuchiya released a documentary titled "Amazon Delivery Personnel: Behind the Scenes of Free Shipping", depicting the harsh reality Amazon drivers face. The funds for the film were raised by Shoko Uchida, president of PARC, along with Tokyo Union leadership and AWLG members.

## 3. Significance of AWLG involvement in organizing Amazon drivers and challenges

Unions and lawyers working together inside or outside of courts or the labour commission in and of itself is not a rarity; however, the involvement of the AWLG in the organizing efforts of Amazon drivers has been markedly profound in that it specifically targets the nationwide organization of workers. From the creation of the Yokosuka union and the Nagasaki union, the AWLG participated in union meetings, holding of press conferences and events, and strategic lawsuits and labour commission complaints. These have all had the goal of gaining strength in numbers for the union and to further empower its membership.

This level of involvement in organizing and growing unions has been made possible by several factors. One is personal, which is Shunji Suga's particularly strong interest in organizing workers. In January 2015, Suga was part of a delegation of the Japan Federation of Bar Associations that made a trip to the US to research wage and hour laws. One stop during that trip was to the UCLA Labor Centre where Suga met with Kent Wong, the then-director, who introduced Suga and the delegation to various worker centres and community organizing efforts. This experience and further exchanges with the progressive labour movement in the US in the following years strengthened Suga's interest in getting involved in union organizing. The DSP driver happening upon Suga in October 2021 was fateful in that regard.

The LLAJ has a national network of forward-thinking, movement-minded lawyers to tap into. It was not difficult for Suga to find the support he needed to form the AWLG. The fact that members of the organization are located everywhere in the country has also been helpful; the AWLG can readily call upon LLAJ members to help support Amazon drivers in that area, as

4 Cases where individuals were determined to be workers under the Labour Standards Act (Drivers of light goods vehicles in the light goods vehicle transport business)(as of December 2023) https://www.mhlw.go.jp/content/001180980.pdf

5 A coalition against Amazon's labor and environmental practices led by Progressive International and comprising over 80 organizations including PARC. https://makeamazonpay.com/

seen in the Miyazaki worker's compensation application. The LLAJ membership's connections to labour unions has also been key, as it has allowed the AWLG to work hand in hand with the Tokyo Union in establishing the Yokosuka and Nagasaki unions, and also to explore organizing opportunities in other prefectures and regions.

Whether this organizing model is transferable to other cases is debatable. Financial resources are limited both for the Tokyo Union and the AWLG. While this does not pose an immediate issue, it is not a readily sustainable setup. Multiple organizing opportunities have come and gone in prefectures such as Hokkaido and Gifu partly owing to a lack of Tokyo Union organizers who could make the trip to these prefectures located far from the capital.

In the long term, unions will likely have to think of ways to grow their organizations and organizing resources (human and financial) while relying on lawyers such as those in the AWLG or LLAJ in the interim to support their efforts. In order for this to happen, the labour movement has a lot of work to do, such as recruiting young, progressive activists into their ranks and finding new ways to financially sustain and grow their organizations outside of union dues. One of the LLAJ's key interests is in labour education, which we hope and believe will aid unions in identifying new leaders for the movement. One of the lessons to be learned from the Amazon Delivery Drivers Union would be that unions are not alone in finding creative and strategic ways to organize.

# THE LAWYER'S ROLE IN BUILDING A STRONGER LABOR MOVEMENT

**MARY JOYCE CARLSON**

*US | Originally written in English*

A common question today is, "Who supports unions—and who would join one if they could?" Recent polls show that support for unions in the United States is at its highest point in decades, with a particularly sharp rise in interest among young workers.[1] Yet, despite this enthusiasm, many workers still face enormous obstacles when they try to organize for better wages, working conditions, and dignity on the job - and it's only getting more difficult.[2]

According to the International Trade Union Confederation's 2025 Global Rights Index, workers' rights are deteriorating worldwide amid an increasingly hostile environment toward organized labor. The report shows that Europe and the Americas have hit their lowest levels of worker protections since tracking began in 2014. The ITUC report also revealed that 87% of countries violated workers' right to strike, and 80% interfered with collective bargaining. Nearly 72% of countries restricted access to justice for workers, marking the highest level of legal obstruction ever documented, and trade unionists were killed in at least five countries.[3]

As the legal landscape and economy shift rapidly beneath our feet, the need for legal support for workers is more urgent than ever. The answer lies not only in defending workers' rights in courtrooms and defending the legal paradigm that codifies organizing rights, but in helping build worker power from the ground up. I suggest that we, as the community of attorneys who are committed to defending democracy and its exercise in the workplace, contribute in the following ways:

## Strategize with our clients in the work of new organizing

First and foremost, lawyers must work hand in hand with workers in the crucial work of new organizing. We must understand that workers are the true experts in their workplaces: they know the points of tension, the daily indignities, and the moments of opportunity that can be used to bring colleagues together. Our role is to help them navigate the legal landscape—protecting them from retaliation and unlawful discipline when they exercise their right to organize, and affirmatively arming them with the knowledge they need to identify a violation of their rights on the job. Since December 2021, Workers United has filed over 1,000 unfair labor practice charges against Starbucks, including allegations of retaliation, coercion, discriminatory policies, unlawful firings, and refusal to bargain — hundreds of these cases are still pending. Meanwhile, the union has achieved significant success at the ballot box, winning over 600 elections (an 82% win rate) and organizing more than 10,000 workers as of mid-2025.[4] By standing beside workers during union drives and walkouts, lawyers can help ensure that corporations respect the legal rights of employees rather than resorting to intimidation and fear.

[1] Center for American Progress, Explaining Young Workers' Support for Unions, AM. PROGRESS (Sept. 14, 2022), https://www.americanprogress.org/article/explaining-young-workers-support-for-unions/.

[2] Kate Gibson, *Trump Has Paralyzed Agency That Safeguards Worker Rights, Labor Experts and Advocates Say*, CBS News (Feb. 10, 2025), https://www.cbsnews.com/news/trump-nlrb-national-labor-relations-board-gwynne-wilcox/.

[3] International Trade Union Confederation, Global: *Workers' Rights "In Free Fall" Across Every Continent, According to ITUC Global Rights Index*, Bus. & Hum. Rts. Rsrch. Ctr. (June 2, 2025) https://www.business-humanrights.org/en/latest-news/global-workers-rights-in-free-fall-across-every-continent-according-to-ituc-global-rights-index/

[4] Matt Bruenig, The Starbucks Labor Relations Board, AM. BAR ASS'N, Labor & Emp. L. News, Summer 2024, https://www.americanbar.org/groups/labor_law/resources/magazine/2024-summer/starbucks-labor-rel ations-board/.

**Mary Joyce Carlson**
Labor and ESG Best Practices Attorney

Labor lawyers can also accelerate organizing by democratizing legal information. Starbucks Workers United used social media to share "Know Your Rights" information, amplify protected union activity, and arm ground-up organizing efforts across the country.[5] Their campaign rapidly accelerated, filing for election after election and meeting every offense with a responding unfair labor practice charge. Each election won and charge filed was amplified by the workers themselves, highlighting how labor lawyers and their attorneys work hand-in-hand to see the impact of their work ripple out into new workplaces. Beyond legal defense, lawyers can play an important role in designing and supporting programs that train workers on the fundamental advantages of solidarity: from strikes and pickets to speak-outs and public campaigns. Legal knowledge should not be locked away in court filings or behind a paywall; it should be a baseline tool that empowers workers to understand and assert their rights collectively.

## Prepare, support, and defend strikes

The ability to collectively withhold labor is the greatest point of leverage available to workers. The strike can be crucial in new organizing campaigns: particularly when the workers are threatened with reprisals, leaders are discharged or the employer refuses to bargain with the certified bargaining units. These employer tactics are all unlawful, and charges should be filed with the National Labor Relations Board to trigger complaints against the employer. Section 7 of the National Labor Relations Act protects concerted activity taken for mutual aid or protection, whether those striking workers are members of a union or not.[6] The process of waiting for a remedy from the Board is slow and frustrating for workers, employers count on this delay to get away with violating the act. One of their most powerful and immediate assets workers have to respond to their employer's disregard for labor law is their ability to strike. Strikes can become necessary points of escalation, but they can also be tools to awaken new organizing efforts, strengthen coalition ties with the community, and raise area standards for health and safety beyond a singular workplace. At every stage - from the first utterance of the desire to walk off the job to the moment the workers return to their posts - labor lawyers need to be ready.

While Section 7 and its exercise very clearly codifies the right to strike, the formalization of a legal right to strike manifested the concept of an "illegal" strike. An illegal strike can carry serious consequences - revocation of hard-won contracts, significant financial penalties, and even jail time for union officers. While the labor movement sticks to the proverb that there is no such thing as an illegal strike, just an unsuccessful one, attorneys need to be ready at every stage. It's not our role necessarily to talk the workers down or discourage them from exercising this right, but instead to prepare them, keep them safe while on strike, and provide the zealous advocacy that every client is entitled to from their counsel.

Strikes are difficult to execute 'cold' - they are rarely the first step in the fight against the boss, and it takes a great deal of preparation, organizing, and fostering of solidarity to overcome the fear that naturally accompanies standing up to your employer and risking your livelihood.[7] Employers will do everything they can to leave workers with the impression that a strike will cost them their jobs, a particularly potent threat in times of economic precarity. The United States Supreme Court's decision in NLRB v. Mackay Radio & Telegraph Co., 304 U.S. 333 (1938), established critical principles concerning workers' rights during strikes.[8] While the case is often used by employer-side attorneys for the employer's right to hire permanent replacements during economic strikes, it also affirms that workers who engage in an unfair labor practice strike — that is, a strike prompted by an employer's unlawful conduct — have an irrefutable right to return to work at the

[5] Jo Constanz, "Starbucks workers fight union effort on TikTok," Fortune (Sept. 1, 2022), https://fortune.com/2022/09/01/starbucks-workers-united-union-fight-tiktok/.

[6] 29 U.S.C. § 157 (2018).

[7] Amanda Bell, *Practice Pickets: Solving the Problem of No-Strike Clauses Before Contract Expiration*, (Second Paper, Law in Contemporary Society, Columbia Law School, Spring 2010), available at https://moglen.law.columbia.edu/twiki/bin/view/LawContempSoc/AmandaBellSecondPaper

[8] NLRB v. Mackay Radio & Tel. Co., 304 U.S. 333 (1938).

conclusion of the strike.[9] Unfair labor practices include such acts as discrimination, refusal to bargain, or interfering with organizing through coercion and retaliation.

Since its founding in 2021, Starbucks Workers United has organized a series of work stoppages and strikes to protest Starbucks' refusal to bargain in good faith,[10] the company's discriminatory wage increases favoring non-union stores, and most recently over a forced dress code that violates workers' rights to wear union paraphernalia on the shop floor. Board decisions have created numerous specific triggers that Starbucks Workers United has kept a watchful eye out for, and the ability of workers to respond with ULP strikes eventually drove the employer to the bargaining table, but have also fundamentally changed how the public perceives the Starbucks brand. With every ULP strike, where workers reinforce their rights to call out violations of labor law and return to work, the broader public sees an employer who is repeatedly breaking the law.

In addition to ULP strikes, Section 7 has a more broad protection for concerted activity. The 'practice picket' deployed most recently by the UPS Teamsters and UAW was made possible by close readings and interpretations of no-strike agreements that allowed for organizers to prepare workers for what a strike could look and feel like, amplified the central demand, and set the employer on their back foot in the court of public opinion. In a "Guide to Practice Picketing" prepared for UPS Teamsters, clear but carefully vetted language arms the workers with their rights, prepares workers for the risks, and outlines a supply and preparation checklist.[11]Practice pickets gave the workers a headstart in setting the narrative of the conflict, and were possible in part because their attorneys found a window in the language of Section 7 and the no-strike clauses of their contracts that their clients could walk through.


Starbucks workers strike
Credit: FREDERIC J. BROWN/AFP via Getty Images

During strikes, it is the attorney's role to prepare for rapid response. It is an indispensable step to recruit and train legal observers and criminal defense attorneys to monitor employer and police activity during strikes. Typically, the mass-defense observers trained by the National Lawyers Guild - an organization that has long trained attorneys to monitor, observe, and document police activity at protests and rallies - are specifically trained in spotting First Amendment violations. While that is certainly a necessary skill on a strike line, labor lawyers will need to prepare observers to also spot and document potential unfair labor practices. It is unfortunately part of organized labor's historical tradition for police to disrupt lawful labor actions.[12] Even in the progressive urban stronghold of New York City, which boasts a comparatively high union density and general pro-worker sentiment, the NYPD were deployed at the end of 2024 and early 2025 to disrupt Amazon and Starbucks ULP strikes.[13] The workers were lawfully protesting their bosses' disregard for the law, but they ended up in handcuffs. Criminal defense attorneys will need to be prepared to respond to support workers through arrests, and in an ideal scenario, preemptively impart 'Know Your Rights' training so that everyone can be prepared for the moment police arrive and escalate strike activity.

[9] Id.

[10] *See* Ian Kullgren, *Starbucks Hit With Sweeping Complaint for Refusal to Bargain*, Daily Labor Report (Bloomberg Law), Jan. 12, 2024, https://news.bloomberglaw.com/daily-labor-report/starbucks-hit-with-nationwide-complaint-for-refusal-to-bargain.; Dee-Ann Durbin, *Starbucks Increases U.S. Hourly Wages and Adds Other Benefits for Non-Union Workers*, NPR (Nov. 7, 2023), https://www.npr.org/2023/11/07/1211131176/starbucks-increases-u-s-hourly-wages-and-adds-other-benefits-for-non-union-worke.; Starbucks Corp., 373 N.L.R.B. No. 90 (2024).

[11] International Brotherhood of Teamsters, *Guide to Practice Picketing: UPS Practice Picketing Fact Sheet* (June 2023), https://teamster.org/wp-content/uploads/2023/06/UPS-Practice-Picketing-FactSheet.pdf.

[12] *The Mine Wars*, PBS "American Experience" (aired Sept. 3, 2019), https://www.pbs.org/wgbh/americanexperience/features/theminewars-labor-wars-us/.

[13] See Claudia Irizarry Aponte, *Amazon Delivery Drivers Strike in Queens Over Pay and Conditions*, THE CITY (Dec. 19, 2024), https://www.thecity.nyc/2024/12/19/amazon-delivery-strike-queens/; James Ford, *Seven Arrested as Starbucks Baristas Go on Strike in Park Slope*, PIX11 (Dec. 22, 2023), https://pix11.com/news/local-news/brooklyn/seven-arrested-as-starbucks-baristas-go-on-strike-in-park-slope/#:~:text=Striking%20workers%20claim%20the%20company%20will%20not%20bargain%20with%20them.&text=At%20least%207%20people%20were,contract%20with%20raises%20and%20benefits.

Finally, when a strike eventually ends, labor lawyers should support workers by carefully reviewing return to work notices and monitoring the employer response to workers's return to the job. Organizing collective "walk backs" carries the strength-in-numbers feeling from the strike back to work, and emphasizes both to the bosses and the workers that, despite the strike ending, the conditions that made it possible remain. However, because of the slow pace of an adjudicatory response to unfair labor charges and an increasing barrage of attacks on the administrative bodies that exist to help workers legally vindicate their rights, the ULP strike must always be on the table. It is up to the supporting attorneys to be diligent about filing unfair labor practices contemporaneously with work stoppages, creating a buttoned-up paper trail to defend strike actions and respond to each bad-faith employer bargaining tactic in kind with a full-throated affirmation of workers' rights under Section 7.

## Rewrite the Rules for Excluded Workers

The National Labor Relations Act, the United States law that governs private sector worker organizing, carries exclusions in its black letter that leave huge swaths of essential workers vulnerable to exploitation, but that does not mean they have no means to protect themselves. As their lawyers, we must also think creatively about how to extend union membership and protections to workers who have traditionally been excluded from the standard labor law framework. Many workers—such as domestic workers, farmworkers, gig workers, and certain public employees—do not enjoy the same legal rights to collective bargaining as other workers. Yet, across the country, innovative efforts have shown what is possible.

If we allow ourselves to be bound by the requirement that a union can only exist if a collective bargain agreement exists, we as attorneys are imposing a false limitation on worker organizing. Attorneys can weigh in by closely assessing where union bylaws can allow for worker association without the prerequisite of a collective bargaining agreement. Lawyers can help workers form collective associations based on occupation, regardless of employer or geographic location. The National Domestic Workers Alliance, for example, has organized thousands of domestic workers despite legal exclusions, winning protections and raising standards through organizing and legislative advocacy. These domestic workers, despite not being covered by a collective bargaining agreement, have found the community of union membership by freely associating with labor unions who are ready to support their efforts.

Many workers who do not have the benefits of collective bargaining still want to be associated with the union. Home care workers in Minnesota and fast food workers in California pushed their state legislatures to enact minimum standards boards that give them a seat at the table to set wage, hour, and safety standards across the entire sector.[14] Lawyers can assist in designing structures and interpreting bylaws in a way that allow these workers to organize and win gains even without formal recognition or collective bargaining agreements. These tools, though not a replacement for classic worker organizing towards the ultimate goal of collective bargaining, lift the floor for workers. Every legislative or regulatory win that attorneys can bank for their clients facilitates a more secure, empowered position from which to organize.

## Take Accountability to the Top

Finally, lawyers have a critical role to play in challenging corporate interference with organizing efforts and holding employers accountable for unlawful retaliation. Beyond individual cases, lawyers can develop and pursue strategies that push corporations to accept responsibility for their treatment of workers at every stage in their supply chain. Earlier this year, a high-profile effort to run an independent slate of candidates for the Starbucks Board of Directors served as a complementary campaign that amplified the ground game of worker organizing. Shortly after that effort, the REI Union mounted a successful shareholder campaign to vote down a slate of board-backed candidates.[15] As attorneys, we can decode the tax law, due diligence laws, and antitrust violations that, when unchecked, allow multi-national employers to skirt accountability

[14] *See generally* Max Nesterak, *Pay Raises for Nursing Home Workers Passes Minnesota House with Bipartisan Support*, Minn. Reformer (May 6, 2025), https://minnesotareformer.com/2025/05/06/pay-raises-for-nursing-home-workers-passes-minnesota-h ouse-with-bipartisan-support/.; MIT Sloan Institute for Work and Employment Research, *New California Fast Food Council Law Could Lead to Improved Job Quality*, MIT Sloan Inst. for Work & Emp. Research (n.d.), https://mitsloan.mit.edu/centers-initiatives/institute-work-and-employment-research/new-california-fast -food-council-law-could-lead-to-improved-job-quality;

[15] Nate Sanford, *REI Co-op Members Reject Company Board Picks After Union Campaign*, Cascade PBS (May 8, 2025), https://www.cascadepbs.org/news/2025/05/rei-co-op-members-reject-company-board-picks-after-unio n-campaign/.

to working people beyond violations on the shop floor. Helping workers identify their bosses' labor, climate, and consumer abuses at every stage of the supply chain unites workers across borders, strengthening solidarity and amplifying the argument for a worker-led check on corporate power.[16] Whether through strategic litigation, shareholder advocacy, or public pressure campaigns, we can work in coalition with consumers and shareholders to demand that corporations respect the fundamental rights of all the workers they touch and every stage of their operation.

The resurgence of interest in unions is not just a statistic—it is a sign that millions of people are committing to defending democracy in all its forms. It is imperative that we take this seriously, as attacks on democracy in the workplace are foreshadowing for attacks on democracy at large. Lawyers have a choice: we can remain on the sidelines, or we can roll up our sleeves and take our place in this movement for dignity and justice.

[16] Milman, Oliver, "Starbucks sued over claims of labor and human rights violations in making of products," *The Guardian* (Jan. 11, 2024), https://www.theguardian.com/business/2024/jan/11/starbucks-labor-lawsuit-human-rights-violations-co ffee-farm.

# LEGAL ACTIVISM, THE FIGHT AGAINST CASUALIZATION, AND UNION GROWTH IN NIGERIA'S OIL AND GAS SECTOR

**NGOZI N. OKAGBUE***

*Nigeria | Originally written in English*

## Introduction

The contemporary labour movement exists within a rapidly evolving global economic terrain marked by declining union density, the casualization of work, and increasing employer sophistication in circumventing traditional labour protections[1]. This is particularly evident in Nigeria's oil and gas sector, a strategically vital industry that paradoxically reflects the strength and precarity of organized labour[2]. Against this backdrop, legal activism has emerged as a critical tool for defending workers' rights and proactively facilitating union growth and institutional survival[3].

This paper examines the role of legal strategy in expanding trade union presence and influence within Nigeria's oil and gas industry, focusing on the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN). Drawing from institutional experience within the union's industrial relations directorate, the paper situates its analysis within the ongoing challenge of casualization and third-party employment arrangements, practices that directly undermine union density and bargaining power. The study is grounded in the intersection of legal reform, industrial jurisprudence, and proactive union policy, presenting a model of legal engagement that treats the lawyer not only as a defender of entitlements but as an architect of organizational growth.

In line with this journal's thematic focus, the paper intentionally shifts away from traditional explorations of legal aid in workplace rights enforcement. Instead, it interrogates how legal professionals embedded within trade union structures can initiate or support strategies to expand the union's institutional reach. The Nigerian oil sector provides a compelling case study, as the struggle for union growth is often indistinguishable from the battle against worker invisibility.

## The Context of Unionism in Nigeria's Oil and Gas Industry

Nigeria's oil and gas industry has historically functioned as the fulcrum of national economic activity, contributing over 90 percent of foreign exchange earnings and a substantial proportion of government revenue[4]. Though relatively small compared to the broader labour market, its workforce occupies a privileged yet precarious position. The industry's strategic nature has made it a bastion of union power and a site of intense employer resistance, particularly in casualization and outsourced employment practices.

The sector's union is principally coordinated through two industrial unions: the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG), which organizes junior and technical staff, and PENGASSAN, which represents senior

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1 Bimbo Atitilola, "Federal Ministry of Labour Guidelines on Contract Staffing and Outsourcing in the Oil and Gas Sector", Labour Law Review (NJLIR) Vol. 8 N0. 4 (2014).

2 Rosemary Danesi, "Non- Standard Work Arrangements and the Right to Freedom of Association in Nigeria", Labour Law Review (NJLIR) Vol. 4 N0. 4 (2010).

3 Rosemary Danesi, "Taking Labour Laws Seriously: Agenda for Legal Advisers and Human Resources Managers", Labour Law Review (NJLIR) Vol. 6 N0. 4 (2012).

4 Gbolahan Osho, *Optimizing joint ventures and alternative funding for Nigeria's oil and gas industry: Improved financing and transitioning to commercial ventures*, Int'l J. of Professional Bus. Rev. (IJPBR), Vol. 10 NO. 2 (2025).

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and supervisory employees[5]. Since its formal recognition in 1979, PENGASSAN has become one of Nigeria's most visible and politically significant unions. Yet, in recent decades, the union has confronted a formidable challenge: the systemic fragmentation of the workforce through labour contractors, service companies, and third-party intermediaries. These arrangements have diluted employment rights and eroded the union's traditional membership base by redefining the boundaries of direct employment.

Legal and structural enablers have facilitated this trend. For instance, while Section 91 of the Nigerian Labour Act[6] defines a "worker," the legislation lacks clarity on who qualifies as the legal employer in triangular employment relationships[7]. Furthermore, the weakness of enforcement mechanisms has allowed multinational oil corporations and indigenous firms to employ service-level agreements as shields against direct employment responsibilities[8]. In this context, even highly skilled technical workers may engage through ephemeral workforce agencies with no pathway to union recognition or collective bargaining.

Efforts by PENGASSAN to resist this trend have often met with legal ambiguity and employer resistance[9]. The Nigerian Labour Act[10] also prohibits indefinite casual employment requiring that workers, once deemed suitable, be made permanent after six months (or up to two years for professionals). However, employers often bypass this by repeatedly issuing fresh temporary contracts instead of offering permanent positions or letting unsuitable workers go. Faced with the threat of unemployment, many workers reluctantly accept these recurring contracts[11]. Besides, in several instances, employers have argued that subcontracted staff fall outside the jurisdiction of PENGASSAN's organizing scope, thereby challenging both recognition and representational legitimacy.

Yet, union lawyers have had to evolve from mere legal technicians into strategic growth agents precisely by contesting these boundaries through litigation, advocacy, and engagement with the National Industrial Court of Nigeria (NICN). For example, in the case of *PENGASSAN v. Mobil Producing Nigeria Unlimited* (NICN/LA/200/2018), the union sought a declaratory order compelling the principal employer to recognize the representational rights of employees engaged through a contracting firm. While the matter was resolved through out-of-court mediation facilitated by the Ministry of Labour and Employment, the case spotlighted a crucial legal grey area: whether a union could claim organizational rights over individuals not employed directly by the primary economic actor[12]. The legal argument advanced, grounded in the principle of financial dependency and control became a template for future engagements.

At the Policy Level**,** Union legal departments have engaged with regulatory frameworks such as the Local Content Act and the Petroleum Industry Act (PIA), using their provisions to argue for the internalization of specific job functions and, by extension, their eligibility for unionization. While the PIA ostensibly strengthens governance and community participation, its implications for employment structures remain ambiguous. PENGASSAN has thus lobbied for its interpretation in implementation guidelines to reflect the dangers of unregulated third-party labour systems[13].

The confluence of legal work and union strategy has become indispensable. Within PENGASSAN's structure, the Industrial Relations Directorate, often staffed by legally trained professionals, has increasingly led not just in resolving disputes but in mapping out areas for potential union growth. These include legal audits of workforce contractors, engagement with regulatory bodies on licensing requirements, and drafting Memoranda of Understanding (MoUs)

5 Baba Aye, "'NUPENGASSAN' and The Struggle Against Precarious Work in the Nigerian Oil and Gas Industry". Geneva, ILO (2017).

6 Labour Act, LFN 2004

7 Rosemary Danesi, supra n. 2.

8 Rosemary Danesi, supra n. 3.

9 Bimbo Atitilola, supra n. 1.

10 Labour Act, supra n. 6.

11 Baba Aye, supra n. 5.

12 Based on my inside knowledge of PENGASSAN's Industrial Relations Directorate for close to a decade

13 Ibid.

that insert union access clauses into service agreements. In this way, law becomes not merely an instrument of defence but of expansion[14].

## The Lawyer in the Struggle: Legal Strategy as a Tool for Institutional Growth

Within PENGASSAN's organizational structure, the role of legal professionals has evolved beyond conventional representation in grievance resolution or collective bargaining. In today's industrial relations climate, marked by evasive employment structures and diminished union visibility, the union lawyer must function as a strategist, negotiator, and policy architect[15].

From an operational perspective, the industrial relations unit collaborates with other unions to identify employment structures that threaten union growth. During my tenure as Deputy Secretary-General (Industrial Relations), the delegation engaged Ministers of Labour between 2020 and 2023. These meetings culminated in a position paper advocating for a review of guidelines regarding staffing and outsourcing in the oil and gas sector[16].

Another critical element in this advocacy has been the legal audit, which systematically reviews employment contracts, outsourcing models, and collective agreements across the upstream, midstream, and downstream sectors. These audits uncover disguised employment relationships, shell contractors, and third-party arrangements used to circumvent unionization. A prominent example is the 2021 engagement with a major indigenous oil services firm that had contracted nearly 80 percent of its skilled workforce through a staffing company[17]. The legal audit revealed that most outsourced personnel worked exclusively under the company's operational supervision. The audit formed the evidentiary basis for a NICN petition seeking union recognition under co-employment doctrine.


Decent work protest, Nigeria
Credit: Solidarity Center

Such cases rely on legal imagination. Nigerian jurisprudence on triangular employment remains underdeveloped. Unlike South Africa or the UK, where legislation governs joint employment, Nigerian courts rely on traditional tests of control and mutuality of obligation. Union lawyers thus develop hybrid arguments combining international standards, economic dependency, and local precedent.

Beyond litigation, legal professionals negotiate institutional access. Recognizing the limits of court-centric approaches, PENGASSAN increasingly includes union-access clauses in MoUs. These may require consultation before contract renewal, disclosure of workforce data, or union orientation sessions during onboarding. Some MoUs even extend to voluntary recognition of PENGASSAN for outsourced supervisory workers[18].

## Organizing Through the Law: Turning Legal Action into Membership Growth

Legal intervention cannot be the sole growth strategy. PENGASSAN's legal activism aims not only for favourable rulings but for membership expansion, legitimacy, and bargaining power. One effective tactic has been using favourable judgments as organizing tools. For example, after a court recognized supervisory staff's right to unionize, the union launched a targeted recruitment drive. Legal officers accompanied organizers, using the judgment as a precedent and legitimacy tool. Over 200 workers signed up within four months. In another case, involving a subcontractor in downstream operations, the union secured a ruling affirming workers' eligibility

14 Ibid.

15 Ibid.

16 Samuel Anyanwu, *FG to address Outsourcing in Oil & Gas (Press Release) Federal Ministry of Information and National Orientation, Nigeria*", Federal Ministry of Information, Feb 22, 2023, https://fmino.gov.ng/fg-to-address-outsourcing-in-oil-gas/.

17 Victor Ahiuma-Young, *Why we're excited over Petroleum Industry Act – PENGASSAN*, Vanguard Newspaper, Aug 29, 2021, https://www.vanguardngr.com/2021/08/why-were-excited-over-petroleum-industry-act-pengassan/#google_vignette

18 Inside knowledge of PENGASSAN's Industrial Relations Directorate.

for PENGASSAN representation. A tripartite MoU followed, enabling phased union access. Within a year, the workforce was partly regularized, and PENGASSAN established a foothold.

These examples show that legal wins must be integrated into organizing campaigns. This requires coordination between legal, organizing, and communications units. Lawyers increasingly shape campaign framing, timing, and thresholds. Union lawyers have also negotiated structural changes facilitating long-term organizing. In one case, sustained legal pressure on a marginal field operator led to internalization of specific roles and the establishment of a joint industrial committee. This improved job security and expanded union jurisdiction.

Finally, PENGASSAN leverages legal victories to enhance external legitimacy. Strategic alliances with civil society, legislators, and international bodies, including Solidarity Centre and ILAW, provide organizing and institutional support[19].

## Challenges, Lessons, and the Way Forward

Despite significant gains, legal activism faces structural and institutional constraints. First, Nigeria's Labour Act[20] is outdated and poorly aligned with modern employment realities. It does not regulate triangular arrangements or protect against outsourcing that undermines employment obligations. Second, judicial inertia worsens doctrinal uncertainty. While the National Industrial Court of Nigeria (NICN) has grown more assertive, jurisprudence remains uneven. Some judges adopt purposive interpretations; others maintain formalism, as seen in *PENGASSAN v. Mobil Producing Nigeria Unlimited* (2012).[21] Third, the enforcement architecture is weak. Court orders may face delays, bureaucratic obstruction, or employer defiance. Lack of sanctions emboldens resistance. Fourth, the political economy of oil and gas adds complexity. Transnational capital, regulatory capture, and geopolitical dynamics often Favor flexible labour regimes. Union legal campaigns may face political pushback. Finally, internal contradictions hinder legal strategy. Fragmentation among unions, jurisdictional conflicts, and poor coordination between departments undermine legal interventions.

However, several lessons emerge:

- Law must be integrated into broader strategy, not used in isolation
- Union lawyers serve as institutional memory
- Proactive legal design should replace reactive litigation
- Legal reforms must expand beyond statutory change to include regulatory innovation

Ultimately, strategic legal activism remains essential for union growth. Lawyers must push boundaries, craft new interpretations, and forge alliances that convert legal possibilities into institutional power.

## Conclusion

The lawyer's role in union growth has taken on new significance in a global labour environment marked by declining union density and increasingly sophisticated employer strategies. In Nigeria's oil and gas sector, PENGASSAN's legal strategies have acted both as a shield against precarity and a catalyst for renewal. Legal professionals are not merely defenders of rights but architects of strategic expansion. Through litigation, policy advocacy, and contract design, union lawyers have resisted casualization and turned challenges into opportunities for growth. Legal activism, when intentional and integrated, becomes a powerful union growth strategy. In this framework, the lawyer is not peripheral but central to institutional development. The future of unionism hinges not only on resisting decline but envisioning new growth pathways. Embedded legal professionals will shape this future, interpreting the law, expanding representation, and strengthening collective power.

19 Ibid.

20 Labour Act, supra n. 6.

21 PENGASSAN had sought recognition and protection for contract staff engaged through a manpower agency. On appeal, PENGASSAN lost as the Court affirmed hat Mobil was not the workers' direct employer.

# THE ROLE OF TRADE UNION LAWYERS: NAVIGATING THE CORRIDORS OF THE ILO AND ADVANCING TRADE UNION GROWTH

**MÓNICA TEPFER**

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Trade unions are organizations that consistently influence the daily lives of their members while playing a crucial role in shaping the broader social landscape. They are vital to the functioning of democracy, influencing politics, the economy, education, culture and labour relations of a society. Trade unions play a vital role in democratic societies, becoming key actors in representing and protecting workers' interests and rights. However, despite their importance, the density of trade unions has declined across the globe in recent decades.

Within this movement, trade union lawyers stand shoulder to shoulder with the trade union movement fuelled by compassion, anchored in solidarity, and guided by an unwavering pursuit of justice.

Some may be surprised that I did not begin with the word 'justice', as one might expect it to be the most resonant word for a lawyer. However, for a trade union lawyer, justice can only be achieved through struggle, solidarity and organisation. For this reason, you will see that most trade union lawyers are not merely sitting behind a computer screen. Yes, we often read and write documents, but most of the time we are in trade union assemblies, accompany street protests, file legal complaints, educate workers on their trade union rights, develop collective bargaining strategies, and generally engage in the class struggle — most importantly in the critical fight to grow unions and restore union density.

The rights to freedom of association and the effective recognition of the right to collective bargaining are fundamental human rights at work. The right to strike is an inherent corollary to the principle of freedom of association and the right to organise. Deciding to call a strike is one of the most significant decisions that unions can make. Exercising the right enables unions to challenge the unequal power relationship with employers and governments. As one of the most powerful tools of trade unionism, it is also one of the most frequently attacked human rights, especially by far-right governments.

The Global Rights Index, published annually by the International Trade Union Confederation, records global violations of trade union rights, including attacks on the right to strike. In 2025, it reported that 87% of countries had violated this right.[1] In countries such as Argentina, trade unions have once again been compelled to fight against regressive labour reforms that aim to restrict the right to strike and other labour rights. For example, the government has attempted to declare the vast majority of the country's productive activities to be "essential services" in order to limit the exercise of the right to strike[2]

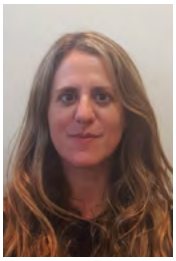
Trade union lawyers in Argentina have supported unions in preparing and filing legal claims, resulting in court rulings that have prevented the implementation of several of the government's labour reforms[3]. They have worked alongside trade unions to file complaints before ILO supervisory systems, including a request for intervention by the ILO Director-General due to serious violations of freedom of association[4].

1 https://www.ituc-csi.org/full-report-es

2 https://www.ituc-csi.org/argentina-ituc-supports-trade-unions

3 https://www.infogremiales.com.ar/causa-cgt-la-justicia-declaro-inconstitucionales-los-articulos-del-decreto-que-limitaban-el-derecho-a-huelga/

4 https://www.cta.org.ar/cta-t-junto-con-cgt-y-cta-a.html: https://cgtrainternacional.com.ar/?s=noticias&nov=893



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Legal Officer and Legal Project Coordinator ITUC.

When trade union lawyers challenge regressive labour law reforms in their country—such as those aiming to restrict the right to strike, undermine collective bargaining, reduce labour protections, weaken anti discrimination laws, limit employers' responsibilities, or prevent workers from exercising their fundamental right to join unions, they send a powerful message to society at large. By actively opposing legislative measures that weaken workers' protections, trade union lawyers help to reinforce the relevance of unions in the eyes of both workers and civil society, and the broader public. This, in turn, strengthens trade unions' ability to organise more workers as their credibility grows — paving the way for stronger worker engagement and public support.

The legal work is not only confined to national courts. Trade union lawyers also assist unions in the preparation of complaints and claims before ILO supervisory bodies which includes monitoring and annually reporting on the obligations that States undertake when ratifying ILO conventions. International labour standards are primarily tools for governments which, in consultation with employers and workers, are seeking to draft and implement labour law and social policy in line with internationally accepted standards.[5]

In Argentina, union lawyers were crucial in supporting unions in ratifying ILO Violence and Harassment Convention, 2019 (No. 190)[6]. By working alongside union leaders, lawyers were able to present robust legal arguments directly to members of Congress, clearly demonstrating the importance of ratifying the Convention from legal and human rights perspectives. This collaborative approach was instrumental during the parliamentary process. Following the ratification of the Convention, several members of Congress publicly acknowledged the substantial contributions made by the trade unions and their legal advisors, and expressed their appreciation for them. This public recognition validated the work done and increased public engagement on this critical issue, thereby fostering greater awareness within civil society.

Trade unions across the globe have led campaigns for ratification of ILO Convention 190[7], engaged in collective bargaining to embed its protections in workplace policies, and provided support to workers facing abuse. In Argentina and elsewhere, the unions – with critical assistance from trade union lawyers – have demonstrated to women and other, often marginalized workers that the best way to vindicate these and other workplace rights is through joining unions. Many trade unions in Argentina, after leading the campaign for the ratification of the ILO Convention, developed programs and action plans. These included initiatives such as visiting construction sites to inform women workers—who at the time were not union members—about the campaign and the ways in which unions can support women facing harassment.

The trade union in the construction sector ( Unión Obrera de la Construcción de la República Argentina) developed a Guide on how to use and implement the ILO Convention 190 on violence and harassment at the workplace level[8]. This guide demonstrated how targeted training and support could transform workplace culture and strengthen union presence in the construction sector. Such efforts contributed to an increase in union membership, particularly among women.

These efforts have contributed to an increase in union membership, as more workers recognise its value, and have strengthened unions internally. These actions have also promoted the role of trade unions within civil society, establishing them as key drivers of systemic change towards a world free from violence and harassment.

Trade union lawyers have also been deeply involved in International campaigns to develop legal standards to address legal gaps that have denied workers their trade union rights. Over the last several years, platform workers, whose labour is governed outside of the labor law, have

5 Rules of the Game: An introduction to the standards-related work of the International Labour Organization (Centenary edition 2019). Page 25

6 https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190

7 https://www.ituc-csi.org/ilo-convention-190-2025

8 https://mujeres.uocra.org/guia-convenio-190-de-uocra-mujeres/

been organising and demanding recognition of their labour rights and protections, particularly regarding the recognition of their employment status. The reality for many platform workers shows that they cannot enjoy their fundamental rights. Restrictions persist despite the strong legal basis and broad consensus in international law that the rights to freedom of association and collective bargaining are fundamental human rights of universal application.

Trade union lawyers have played a key role in fighting for recognition of these fundamental rights by directly supporting platform workers pursuing legal claims at the national level and assisting trade unions in organizing and representing them.

In Argentina, the Platform Workers Association (APP) was created in 2018 by delivery workers and drivers who work through platforms such as Rappi, Glovo and Uber. The organisation was formed after leading the first platform strike against Rappi in July 2018, demanding that the Colombian company re-establish its order allocation system, increase the rate per order and stop penalising delivery workers. The union worked with legal advisors to achieve recognition.[9] As the ILAW Network has documented, many courts addressing the misclassification of employment relationships have drawn upon ILO instruments and observations from the ILO supervisory system and found an employment relationship. Many countries have also recently introduced specific legislation for platform workers.

For instance, in Uruguay in 2020, the court recognised that Uber drivers are dependent workers. This case shows how trade unions lawyers can help to secure platform workers' rights by explaining how national courts can give legal effectiveness to international labor standards and by using the observations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR or Committee of Experts) through their respective annual reports.[10] These legal efforts open the door for workers to organise, establish their own unions, or join existing ones.


ITUC platform workers campaign
Credit: ITUC

Trade union lawyers and trade unions guided these workers through the legal process, helping them to gain recognition and the confidence to join unions and engage in collective action. Over time, this support has built trust between unions and platform workers, encouraging more people to join the movement and strengthening collective solidarity across the sector. In doing so, they contribute directly to the growth and strengthening of established union organisations.

These legal victories also generate media attention and public support, both of which are vital for union growth. Court rulings often make headlines, highlighting the injustices faced by platform workers and presenting union efforts positively. This kind of publicity raises awareness of workers' rights and lends legitimacy to unions in the eyes of society. These legal rulings have empowered platform workers to organise and raise awareness about the impact of court decisions and the rights and protections obtained. They have also enabled platform workers to join existing unions, and establish new ones. Many trade unions have supported the creation of platform unions by providing workers with legal assistance, strategically using the ILO supervisory system, and, in some cases, submitting complaints to the Committee on Freedom of Association to enable platform workers to join unions and negotiate collective agreements[11].

At an international level, trade unions and platform workers have launched a global campaign to encourage the International Labour Organisation to draft an international convention

9 extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.cippec.org/wp-content/uploads/2019/05/Como-es-trabajar-en-una-app-en-Argentina-CIPPEC-BID-LAB-OIT.pdf

10 https://hugobarrettoghione.blogspot.com/2020/06/los-choferes-de-uber-son-trabajadores.html?m=1

11 ILO Freedom of Association Committee. Case No 3455 (United Kingdom of Great Britain and Northern Ireland) - Complaint date: 28-FEB-24 - Definitive Report - Report No 409, March 2025

and recommendation to protect platform workers' rights.

Since the International Labour Organization (ILO) adopted the decision in 2023[12] to discuss a normative instrument at the International Labour Conference in 2025, platform workers and trade unions worldwide have launched a campaign to secure the adoption of a convention supplemented by a recommendation[13]. Trade union lawyers have supported this campaign in various ways. They have prepared and drafted legal reports on the regulatory framework in different national and regional contexts. They have also documented landmark cases where court decisions enabled platform workers to form or join unions and to be able to exercise their right to collective bargaining[14]. By turning legal precedents into tools for mobilisation, lawyers help unions to increase their numbers and amplify their voice.

The policy debates that take place at the International Labour Conference are initiated at a national level through social dialogue. This means that, prior to each discussion, the ILO encourages governments to consult with trade unions and employers regarding the agenda items to be discussed at each ILO conference[15].

The ILO's normative processes require member states, as well as trade union and employer organisations, to respond to a series of questionnaires. Governments have to consult with trade union and employer organisations on their responses. These consultations usually occur within social dialogue frameworks, where the priorities of the three parties are discussed, even if no consensus is reached. In such cases, governments must indicate whether consultations occurred. Trade unions may also submit their responses directly to the ILO.

12 ILO, Minutes of the 347th Session of the Governing Body of the International Labour Office, GB.347/PV(Rev.), 2023, para. 876.

13 https://www.ituc-csi.org/campaign-toolkit-platform-convention

14 ILAW. Series Taken for a Ride. https://www.ilawnetwork.com/es/issue-briefs-reports/

15 Convention on Tripartite Consultation (International Labour Standards), 1976 (No.144). As such, the Convention promotes a culture of dialogue between the tripartite actors and builds trust amongst them. Social and labour policies that are based on effective tripartite consultation with representatives of government, employers' and workers' organizations help ensure informed decisions and result in increased commitment and ownership by all stakeholders involved. https://www.ilo.org/resource/article/towards-universal-ratification-convention-no-144

Many Rappi riders waiting outside restaurant
Credit: iStock

The legal work carried out by trade union lawyers informed and provided strategic legal content for the discussions that took place at the 113th international labour conference. As a result of this first round, the General Conference of the ILO decided to pass a resolution for a second discussion in 2026, with the aim of adopting a Convention and a Recommendation on decent work in the platform economy.[16].

Trade unions and platform workers will continue to campaign and fight until the ILO ultimately adopts the new convention and recommendation in 2026. Trade union lawyers will support this effort, which is expected to significantly improve working conditions for platform workers, establish legal certainty, promote harmonization for governments, and address unfair competition between platform and traditional companies. Trade union lawyers also contribute to training and building capacity on international labour standards, their impact, and the use of ILO supervisory systems. Training is provided directly to members and non-members, through open training courses organised by trade unions and civil society organisations, and as part of professional education systems, such as at universities.

Many of these training programmes form part of collective agreements between trade unions and employers. These agreements often include clauses on training and education that were agreed during collective bargaining. This has a notably positive impact, as it reinforces the vital role of collective bargaining as a fundamental right and a key means of regulating working conditions. Training derived from collective

16 CNP/D.3

agreements strengthens the role of trade unions in training, and enables their continued growth, particularly in the context of rapid technological change. Many trade unions in Argentina contain similar clauses which has allowed them not only to increase their membership but also to continue providing skilling and upskilling.

Some collective agreements promote technical and trade union training for non-unionised workers within specific sectors. These agreements have enabled workers to learn more about trade unions, the importance of solidarity and organizing, their labour rights, and how to make complaints at national and at international level. Collective agreements with professional, legal and technical training clauses have also enabled trade unions to grow, both in terms of membership and in their impact on society as a whole.

Trade Union lawyers have played an active role in raising awareness of, and improving understanding of, the ILO supervisory system by offering specialised training. This has included developing interactive materials, workshops and role-playing exercises to engage workers in practical learning.

Trade union lawyers are an integral part of the trade union movement. We are a vital tool for supporting trade unionism. We support and follow the decisions of trade union leaders and, based on our knowledge of the law and our experience, we know that a world with social justice requires strong trade unions with ever greater representation. That is why union lawyers walk the halls of the ILO, contributing our knowledge to a cause much greater than winning labour lawsuits, filing complaints, and spending long hours debating in a large building in Geneva. We are committed to the struggle for workers' rights and justice.

All the stories and examples described above illustrate how the work of trade union lawyers within the corridors of the ILO is translated into concrete actions, campaigns, legal strategies, and policies that can contribute to the growth of unions.

# THE ROLE OF LAWYERS IN UNION GROWTH INITIATIVES AN EXPERIENCE FROM MEXICO FOLLOWING THE 2017-2019 LABOR REFORM

**PABLO FRANCO HERNÁNDEZ**

*Mexico | Originally written in Spanish*

In the period leading up to the labor reform of May 1, 2019, most trade unions were only simulating their role in collective labor relations.

Except when it came to movements opposing the prevailing model, trade unions rarely considered the possibility of growing legitimately. This was due to the widespread use of the "protection contract" model, a collective bargaining agreement between employers and union representatives that was kept from workers.

The purpose of the "protection contract" was not to represent or defend workers' rights before the employer or to manage labor relations collectively.

Rather, the aim was to hinder any attempt at genuine organization in defense of workers' rights and interests. This was achieved by ensuring that the employer had the power to unilaterally determine working conditions, thus preventing the exercise of genuine collective bargaining.

This model of employer protection is characterized by secrecy and coexists with the remnants of corporate unionism. In this model, although there is union presence and workers are familiar with collective bargaining agreements, there is no genuine democratic participation. Only agreements reached by the union leadership with the employer are legitimized. The union plays a controlling role, and there is frequent use of repression and violence.

In this model, trade unions did not require professional legal representation since they did not seek to grow by recruiting new members or contingents of people to represent. Their main task was to seek out new "clients" among employers or their lawyers who would grant them control of the collective bargaining agreement and pay for their services. It was common for their representatives to refer to employers as "the client."

Only a few independent unions fulfilled their role in a legitimate and democratic manner; these unions did require specialized professional attention. Lawyers could gain experience providing legal support for processes in this sector.

During that period, teaching labor law at public and private universities was limited to managing labor relations individually. Knowledge of collective labor law was relegated to practice, which was rare.

Logically, with public authorities promoting "labor peace" by obstructing the genuine organization of workers, and with no legal disputes between union representatives and employers over workers' rights or real disputes between trade unions to obtain representation through the courts, lawyers' activity was minimized.

The United States-Mexico-Canada Agreement (USMCA) obligated the Mexican state to reform labor legislation to effectively enforce the rights to freedom of association, unionization, and collective bargaining.

The new rules on democratic practices revealed a shortage of legal practitioners in public institutions created by the labor reform to carry out registration and jurisdictional functions, as well as in productive sectors.

This shortage was most noticeable within trade unions, in both existing organizations and organizational efforts arising from the reform itself.

Existing organizations, including independent and class-based unions, already had a body of

**PABLO FRANCO HERNÁNDEZ.**
Labour lawyer in Mexico, specializing in strategic litigation and the implementation and promotion of democratic practices in the workplace

lawyers that helped them handle the new procedural burdens and legal formalities resulting from the legal reform.

The legal counsel for new organizational efforts and the creation of new trade unions was supported by this body. Some of these unions emerged as a result of the reform, while others emerged from democratic struggles prior to the reform. This included groups resisting the corporate or protective trade union model, which received new impetus and a legal path for their claims because of the labor reform.

In this context, there is a need to train university-educated lawyers who have not received professional training in promoting and defending collective rights to meet the needs of workers. These needs range from legalizing and formalizing new organizations or unions to supporting their consolidation and development.

Mexican legislation provides for the inclusion of legal professionals as fundamental legal operators, stipulating that legal representation in unions shall be exercised through general secretaries or individuals chosen by union bylaws. Lawyers must have the appropriate professional license, such as a law degree.

In addition to shortcomings in the curriculum, Mexico does not require bar association membership, meaning a law degree is sufficient to represent a client in court with no guarantee that the lawyer has the necessary experience.

Experienced lawyers should contribute to training new lawyers who will be involved in the union movement's guidance and legal counsel at different stages. This training should be based on the promotion and defense of workers' human rights, especially collective rights.

During the incubation period of a labor rights movement, labor lawyers must guide workers on how to achieve their goals.

If the goal is to establish an organization for self-advocacy, workers must be informed of the best ways to exercise their freedom of association. If the movement requires forming a new trade union, workers must be informed of the legal requirements set forth in the applicable regulations and the criteria to be met. Where appropriate, assistance should be provided in formalizing the organization's constitution and registering with the Federal Center for Conciliation and Labor Registration. This institution was created to perform the registration function in the labor reform.

This includes providing guidance on properly preparing the basic documentation required by the Federal Labor Law, such as calls for meetings, articles of incorporation, and draft bylaws. All of this is necessary to register the trade union organization.

Lawyers must be familiar with and promote the use of relevant international legal instruments to ensure those promoting new trade unions benefit from applicable international labor standards and instruments, such as the Rapid Response Labor Mechanism provided for in Annex 23a of the USMCA.

All existing and newly created trade unions fully comply with the obligation to register changes to membership lists and to provide timely accounts of the management and administration of union assets.

Once a union is registered, lawyers must support the organization's crucial efforts to manage the collective bargaining agreement, including affiliating more workers and complying with legal requirements to obtain the right to collective bargaining.

Collective bargaining requires the advice and support of a lawyer. If the employer's workers are not covered by a collective bargaining agreement, the corresponding procedure must be carried out to obtain the representation certificate that gives the union the right to negotiate a draft collective bargaining agreement. This process may require consultation. If another union wishes to represent the workers, note that companies often use unions that previously administered "protection contracts" to achieve a collective agreement favorable to the company.

At this stage, a draft collective bargaining agreement must be drawn up that complies with applicable regulations and responds to the workers' needs and aspirations according to their work.

To achieve grassroots representation and authentic collective bargaining in workplaces with precarious bargaining agreements created by company-serving union representation, the union must prove it has at least 10% of the contract's covered members to initiate legal proceedings. A vote will then decide which union is responsible for representing and administering the collective bargaining agreement.

The lawyer will be responsible for presenting the case in labor court and attending the various stages of the proceedings.

Legal professionals must have the capacity and expertise to successfully represent the union and overcome the obstacles companies create when submitting lists of eligible voters. Workers should be involved in identifying errors or inconsistencies in incomplete or biased lists that favor employer unions.

Familiarity with international labor standards that guarantee the union's ability to carry out activities ensuring freedom of vote and disseminating information about its proposals to all participants is essential. It is also vital to ensure the employer complies with its obligation of neutrality during an inter-union conflict.

Once collective bargaining rights have been obtained, work must be carried out to improve perceptions and working conditions through the salary and contract review process. To this end, the lawyer must guide the union in drafting a list of demands and a strike notice containing the benefits sought by those covered by the collective bargaining agreement, in pursuit of fair remuneration and decent working conditions.

An initial collective bargaining agreement and salary and contract review can be achieved through a voluntary agreement between the parties, without legal action. However, in most cases, a strike notice is necessary to obtain them. In that case, it is the lawyer's responsibility to file the corresponding notice with the court. If it is an initial contract, the draft contract must be included. If it is a review, the list of demands mentioned in the previous point must be included.

Unions have the right to strike to demand compliance with the collective bargaining agreement in the event of refusal or resistance from the employer. In this case, the lawyer must draft a list of demands that specifies the nature of the breach and how it should be remedied.

March in Mexico City with oil workers demanding recognition of the independent union, which emerged with the push of the 2019 labor reform. Credit: Pablo Franco

The strike procedure requires intensive participation from the lawyer to guide union representatives through the conciliation process, which aims to reach an agreement that avoids a strike.

If an agreement to revise the collective bargaining agreement is reached, it must be submitted to the workers covered by the agreement for consultation. This procedure must be carried out by the union with the lawyer's advice.

Union lawyers and representatives must have the legal training necessary to meet the requirements of those they represent, whether they are facing possible disciplinary proceedings or participating in collective management.

Collective management encompasses more than just the administration of collective bargaining agreements. According to Mexican law, joint committees must include worker and employer representatives for the purpose of drafting internal work regulations, ensuring worker participation in company profits, and addressing other matters.

In this case, although the workers do not require professional legal training, they do need a basic understanding of the legal framework, which is essential for the day-to-day administration of the collective agreement, and the lawyer should provide this training.

In Mexico, lawyers can exert a great deal of influence in trade unions. Therefore, care must be taken to ensure that lawyers' and advisors' work does not replace union leaders' work. The activity must always be one of guidance and support, and the workers must make the decisions themselves.

# THE ROLE OF LAWYERS IN UNION GROWTH INITIATIVES

**PAAPA DANQUAH**

*Ghana | Originally written in English*

Trade unions, as organizations independently controlled by workers, are by their very nature subaltern. They represent the collective organizing and action of everyday workers striving to survive and build a life for themselves, their families, communities, and society at large. Without the right to freely associate and organize collectively to advance and defend workers interests and rights, the economic and political power imbalance between labour and business will widen, and with it, the persistent increase in the risk to commodify labour resulting in poorer and poorer working conditions for the substantial majority of workers.

Trade unions exist to transform the conditions of working people by advancing their interests and defending their rights. This transformation is only possible if unions themselves are established as strong, well-structured, and continuously growing organizations—vehicles for the sustained, effective, and resilient pursuit of their mission – their raison d'être. At the same time, lawyers have long supported unions in this quest, and their role is even more crucial today, in an increasingly complex world of work. The trade union lawyer is no longer just a defender of rights in the courtroom or during complaints and other such processes, but also a strategic architect of union strength, innovation, sustainable growth and expansion.

This article explores how lawyers contribute to union growth initiatives through legal innovation, sound governance, constitutional development, and strategic leadership – drawing on my personal experiences in Ghana's labour movement.

## Legal Innovation for Organizing Workers

Strong unions are a precondition for sustained social and economic progress. But for that strength to endure, unions must grow, including in non-traditional sectors, and must be built not only to survive but to thrive. Here, trade union lawyers play a pivotal role by crafting legally sound pathways for organizing the so-called "unorganizable" and building sustainable union structures as well as resilient and opportunity based organizational culture.

I joined the Trades Union Congress of Ghana (Ghana TUC) in 2013. As the legal counsel for the TUC, I was proud to provide legal support and guidance in the formation of the Union of Informal Workers Associations of the TUC (UNIWA), which organizes market traders, hawkers, and creative workers-- groups previously outside the scope of traditional labour law because of the absence of direct employment relationship (in many cases, these were either self-employed or in some kind of disguised employment relationship).

UNIWA, formed in 2015, is now one of the largest unions representing informal economy workers in Ghana. It serves as the umbrella body for TUC's informal economy associations, representing workers including metal fabricators, informal

trade and retail workers, traditional caterers, those in the creative arts (including the Musicians Union of Ghana and the Ghana Actors Guild) , among others.

Organizing UNIWA brought an additional 185,000 members into the TUC. One of UNIWA's flagship projects is the TUC UNIWA Informal Sector Pension Scheme, which promotes social security protection for its members and addresses major gaps in social protection. To enable this, we had to confront and overcome definitional legal barriers—especially the entrenched notion that labour law, particularly the exercise of trade union rights, only protects those in formal employment relations. We also had to create UNIWA as a legal

**Paapa Danquah.** Director, Legal & Human and Trade Union Rights, ITUC.

entity. We had to draw up its internal rules and constitution and form its governance structures.

We had support from UNIWA to adopt key policies to run the organization. Most importantly, we had to guide its new leadership to embed a culture of democracy, constitutionalism and good governance. I suppose this remains an objective and a herculean task at the same time because UNIWA's members are drawn from very different aspects of the informal economy, each with their own working cultural dynamics. This work of supporting UNIWA to form its organization, draw up its foundational documents, form its structures and hold its founding Congress in 2015 laid the foundation for a well-structured organization ready to deliver for the collective interests of its members. UNIWA attracted attention and was taken seriously in policy circles.

Prior to this, I had long argued, at least since 2013[1], that the Chief Labour Officer of Ghana should either extend collective agreements to cover whole industries with persistent decent work deficits and notorious for precarious working conditions or in the specific case of informal economy workers, to allow their trade unions to engage in industry-wide agreements or to set enforceable benchmarks on conditions for rendering services – collective agreement in that sense.

The Constitution of Ghana, with its very progressive human rights provisions, sets the framework for this view. The Constitution, in the area of economic rights, protects the right of workers ***at work*** regardless of a formal employment relationship. Article 21 (e) provides that all persons shall have the 'right to freedom of association, ***which shall include freedom to form or join trade unions*** or other associations, national and international, ***for the protection of their interest'***.

Article 24 also states that "Every ***person*** has the right to work under satisfactory, safe and healthy conditions, and shall receive equal pay for equal work without distinction of any kind. (2) Every ***worker*** shall be assured of rest, leisure and reasonable limitation of working hours and periods of holidays with pay, as well as remuneration for public holidays. (3) Every ***worker*** has a right to form or join a trade union of his choice for the promotion and protection of his economic and social interests. (4) Restrictions shall not be placed on the exercise of the right conferred by clause (3) of this article except restrictions prescribed by law and reasonably necessary in the interest of national security or public order or for the protection of the rights and freedoms of others."

It was important to urge the Chief Labour Officer to adopt a broad and purposive approach – as a first mover in ensuring the realisation or enjoyment of the right. In part, this was what the Chief Labour Office did regarding the request to register UNIWA as a trade union. And in that same spirit, we urged on him that he ought to enable UNIWA – many of whose members are self-employed or in much more complex work arrangements - to exercise collective bargaining rights by engaging with governmental bodies and business associations including chambers of commerce to establish industry wide conditions of service for its members as a floor or minimum.

UNIWA became a registered trade union and as earlier stated one of the flagship projects that UNIWA embarked upon was TUC-UNIWA Informal Sector Pension Scheme. In terms of attracting more members, the advocacy and creation of this scheme was strategic as an entry point – a low hanging fruit – that showed that the organization was poised to deliver for members and enhanced its attractiveness to future members. This kind of legal innovation enables unions to meet workers where they are and secure the needed protections by going around outdated legal barriers.

## Governance and Constitutionalism as Tools for Union Development

Trade union lawyers are also internal civic engineers. Clear constitutions, transparent governance, and sound strategic planning are not mere internal formalities but they are essential instruments for membership growth and organizational credibility and resilience.

1https://www.equaltimes.org/IMG/pdf/collective-bargaining-en-final_web.pdf

A prime example is the Union of Industry, Commerce and Finance Workers (UNICOF) of the Ghana TUC. Born out of a breakaway due to allegations of poor governance in a previous union, UNICOF's leadership—deliberately leveraging on legal and management expertise—consciously used strategic planning, constitutional governance and professionalised administration as drivers of growth.

I worked for UNICOF between 2004 and 2013 covering, over the period, industrial relations, administration and legal matters. At UNICOF, we developed a strategic plan with clearly defined growth targets, sustainable resource mobilization, succession planning, welfare systems and good governance values informed by a well crisp and inspiring vision and mission statements. This approach reassured potential members, especially professional and managerial workers in the banking, hospitality, and manufacturing sectors that UNICOF was a union worth joining.

The Strategic plan focused on building a trade union with good, transparent and accountable governance and respect for constitutionalism as a means to realise, in a stable, sustained and progressive manner, the aspirations of members. The motivation was to build the union based on the foundations of a strong institution not necessarily on strong leadership. Hence, as an example, recruitment and training of staff was aimed at ensuring a highly competent but activist secretariat able to deliver for members with a level of autonomy.

This kind of focus also helped the trade Union to prioritise its financial growth models, investments, staff recruitment as well as the continuous education of its members and leaders. This likewise helped workers in the professional and managerial staff of organizations to become attracted to the UNICOF. The plan was adopted by the second highest decision-making body of the Union so that unilateral side-stepping of the plan will have disciplinary consequences for the Executive leadership of the Union.

In my role, akin to a corporate board secretary to the Executive leadership, I was supposed to provide legally sound advice that accords with good governance principles, enables the smooth running of the organization and aligns with the constitution and values of the Union in a manner that will build the trust and confidence of members in the institutional governance of the Union beyond the individuals at the helm.


May Day Rally in Ghana
Credit: Solidarity Center

The Union became vision and issues driven while at the same time holding leadership accountable. The plan helped to build an institutional ethos and culture that placed premium on opportunity for all through succession planning and for that purpose, for example, consideration for term limits for the elected leadership was combined with the inclusion of women and young people in the structures of the Union. Also, efforts were made to establish a trusted mechanism (formal and informal) for addressing internal disputes and to avoid trade union splits.

As indicated earlier, UNICOF broke away from another trade union centre and had learnt that strong, democratically elected but unaccountable leadership may service the trade union in the short-term but do damage to the union's reputation and its long-term prospects by haemorrhaging on membership growth and thereby killing the very spirit of the Union. Within just four years of adopting the Strategic plan, membership grew from 5,000 to over 10,500 – one of the fastest growing periods in UNICOF's history (The Union grew its fastest in the first 10 years as a result). The growth trajectory continued.

Many know that one of the often used smears to discourage workers from joining unions is the refrain that unions are corrupt and union bosses are unaccountable. With this plan and the changes it brought, it was clear that organizing among senior staff or the professional and managerial staff became much easier.

## Expanding growth opportunities through democratic representation

Another vital aspect of constitutional development that leads to union growth is ensuring representation for women and young people. By

securing constitutional spaces for groups historically marginalized within unions—and doing so in a legally sound and democratic way—union lawyers help build organizations that are more inclusive, representative, and attractive to new generations of workers.

This strategic plan of UNICOF was used to expand the demographic representation of women and youth in the governance structures of the Union. This addressed both democratic representation concerns and union growth opportunities.

In reforming the constitution of UNICOF to ensure the mainstreaming of gender in the governance structures of the Union, we provided for positive discrimination provisions after creating women's structure at the branch and regional level of the union. The President of the regional women's committee, upon election, will be an automatic vice-chairperson of the regional council of UNICOF (whether or not the region has elected other women as leaders) and the regional vice-chairperson will be an automatic member of the National Executive Council (NEC) of UNICOF.

With this, almost overnight, out of the thirty-three regional representatives of the NEC, eleven (11) were women. We also formed the National Women's Committee (NWC) and the President of the NWC was an automatic vice-chair of the National Executive Committee (whether or not another woman was elected to the Executive Committee). In the current Constitution of UNICOF2, article 10.3(b) provides for the automatic inclusion of women in the NEC while in article 13 (b) the National 2nd Vice-Chairperson position is still reserved for women but elected at the quadrennial congresses of the Union instead of being automatically filled by the President of the NWC. The NWC structure is provided for under article 16 and the national youth structure under article 17.

## The Union Lawyer as Strategic Insider

In-house union lawyers (or general counsel) occupy a unique vantage point. They understand both the legal landscape and the internal dynamics, politics, mission, and long-term trajectory of their unions. This enables them to steer decisions—often behind the scenes—that influence whether unions, in the end, are resilient, sustainable, and aligned with workers' future needs. Additionally, lawyers also serve as safeguards, creating protective legal structures to prevent internal capture by employers, governments or government-influenced factions or splinter groups within the Union. Union lawyers are, therefore, strategic insiders. In this sense, innovative recourse to constitutional law as well international labour law and human rights is both a shield and an engine for growth.

Talking about a strategic insider, I recall how in one case a big national employer wanted to railroad some disgruntled union members into forming a rival union and one had to strategically and strongly push back arguing against management's efforts to jump on a genuine internal dispute to form what would have become a 'yellowish' union by purely arguing on procedural safeguards and non-interference. In the end, management backed off and with time the needed accommodations were reached internally with the disgruntled faction and the issues were resolved amicably. The union kept its integrity and membership strength. As an 'embedded' trade union lawyer - a strategic insider - it was much easier to come up with the legal tools to rebuff management's agenda.

Trade union lawyers, working hand-in-glove with members on the field, must give meaning to the associational rights of the members, structurally, procedurally and substantively by supporting to make tangible and realizable the time-tested foundational principles that labour is not a commodity and that freedom of association and of expression are essential to sustained progress and in that regard workers have the right to form their own organisations - draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes – to protection, defend and advance their rights and interests.

## Conclusion

Strong and growing unions do not emerge by accident. They are legally engineered and must be carefully nurtured and sustained over time. When empowered and strategically positioned, trade union lawyers become essential to union growth—ensuring that the fight for workers' rights is underpinned by organizations that are dynamic, democratic, effective, resilient, and built to grow.

Whether it is creating room for legal innovation, capturing opportunities for organizing and expansion, or protecting union integrity through good governance, trade union lawyers are indispensable to the task of building strong labour institutions.

[2] https://unicofgh.org/wp-content/uploads/2021/12/Constitution-4th-QDC-2021-2024-new.pdf

The trade union lawyer has to always strike the balance between 'professionalising' the structures of the organization while allowing it to be nimble, flexible, sustainable and responsive to the needs of members.

The emerging world of work, in this era of chaos, uncertainty and discontent, requires not just activism in the streets (which we certainly need), but also legal craftsmanship in union offices where trade union lawyers support union growth from within by innovating legally to organize new categories of workers in response to new and aggressive business models and embed good governance and constitutionalism as an organizational culture to foster the development of strong, growing, resilient, responsive, nimble and lasting organizations.

# WHAT KIND OF UNIONISM DO WE NEED TO BUILD TO MEET THE CHALLENGES OF THE TIMES WE LIVE IN?

**FEMI ABORISADE**[1]

*Nigeria | Originally written in English*

## Introduction

I thank the leadership of the union for inviting me to give a speech on **"Re-engineering NUSDE**[2] **for growth and effective Service Delivery"** at the 6th Quadrennial, but 13th overall, National Delegates' Conference of the Union, the 1st National Delegates Conference of NUSDE (i.e. the Inaugural Conference) having been held in 1977.

## THE CHALLENGE OF THE ECONOMY TO THE STATE OF MEMBERSHIP STRENGTH AND GROWTH OF THE UNION

We cannot deny the fact that the state of the economy has a tremendous impact on growth or decline of the membership strength of any union, and the fate of NUSDE cannot be different.

It is beyond controversy that the ruling class is inflicting the harshest burden on the working class in the entire history of the Nigerian economy under the anti-working-class policies of the Bola Ahmed Tinubu regime since the 29th day of May 2023.

The most vicious and pernicious attacks on living standards have occurred under the current regime. This has had huge effects on the membership strength which has been on a steady decline.

We can measure the effects of the regime's economic policies on the living standards of workers by considering two factors – the minimum wage and the exchange rate. In 1981, the minimum wage was 125 Naira (₦125) per month, equivalent then to $208. Fuel cost then was 15.3 Kobo[3] per litre. Therefore, the minimum wage of ₦125 could purchase 817 litres of fuel. In May 2023, the minimum wage is ₦30,000 per month, which could buy 154 litres. On the date this speech is given, 15 November 2024, the minimum wage is ₦70,000, which, even if actually paid, can buy only 63.6 litres —less than eight percent (8%) of its value in 1981.

The realities also show that in the entire history of devaluation of the national currency, or of the devaluation or destruction of living standards, the regime of President Bola Ahmed Tinubu has surpassed all others.

For the masses of our people, life appears to have been turned upside down since the 29th of May 2023. The exchange rate in May 2023, shortly before President Tinubu took over, was ₦461 for USD$1. As of today, it is N1, 670.41 for USD$1. Within a period of barely one year, 2023-2024, there has been a percentage change or devaluation in the value of the national currency by 258%.[4]

## UNDERSTANDING THE LOGIC OF CLASS RULE

It is critically important to understand the logic of class rule from the point of view of the difficulties being faced by ordinary people. Two important position papers authored by the current Nigerian President Bola Ahmed Tinubu (PBAT) may explain the logic of class rule and the attendant

1 This paper was originally delivered at the 6th quadrennial (13th) National Delegates' Conference of the National Union of Shop and Distributive Employees (NUSDE) held at the SDM Tavern, Opposite 2nd Gate UCH, Behind Access Bank, Agodi GRA, Ibadan on November 15,2024. The original title was 'Re-engineering NUSDE for growth and effective service delivery' It has been slightly modified and adapted for this edition of GLRR.

2 The National Union of Shop and Distributive Employees (NUSDE) is a national union in Nigeria representing workers in the retail, wholesale, and distributive industries.

3 There are 100 Kobo to the Naira.

4 In 1981, a US dollar was worth .61 Nigerian Naira.

**Femi Aborisade**
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harsh economic policies which make life increasingly unbearable for the working class.

The first is the statement dated 8th January 2012, published on 11th January 2012, entitled "**Removal of oil subsidy: President Jonathan Breaks Social Contract with the People".**[5] In the paper, President Bola Ahmed Tinubu opposed the fuel price increase under his then-predecessor, President Jonathan. He maintained that it was a policy meant to deepen the misery of the masses, which reflected the class the government chose to favour and the class to punish, as government policies tend to have class character rather than being class neutral**.**

The second paper is the Presidential speech entitled **"Nigeria's economic challenges"**[6] delivered on 31st July 2023 to explain the hardship following the removal of the fuel subsidy by President Bola Ahmed Tinubu's now-current regime.

The 12th paragraph of the Presidential speech sums up its essence and perhaps reflects the essence of his government, itself. The summary of the Presidential speech is that for the masses there is no alternative to suffering, hardship, uncertainty, and hurting tough life.

The 12th paragraph goes as follows:

*"Our economy is going through a tough patch and you are being hurt by it. The cost of fuel has gone up. Food and other prices have followed it. Households and businesses struggle. Things seem anxious and uncertain. I understand the hardship you face. I wish there were other ways. But there is not. If there were, I would have taken that route as I came here to help not hurt the people and nation that I love."*

The President's speech quoted above shows that the capitalist ruling class does not rule in the common or mutual interest of all classes, or "the nation", but in the interest of the capitalist class. Though there may be exceptions where policies may appear to be class neutral in terms of serving welfare interests of ordinary people, these exceptions occur as products of pressures from below by ordinary people and their organisations.

If we apply the principle which Bola Ahmed Tinubu espoused in his January 2012 paper (as a politician) to his 2023 fuel subsidy removal (as current President), it is clear that he consciously uses state power to benefit the capitalist class and punish the masses. It is a choice, a political choice.

## WHAT KIND OF UNIONISM DO WE NEED TO BUILD TO MEET THE CHALLENGES OF THE TIMES WE LIVE?

### 1. Class Struggle Unionism

Nigeria has a President who is unapologetically committed to advancing and protecting the class interests of the employers of labour. That context requires that we build class struggle unionism. We need class struggle unionism that will fight for the policy of wage indexation – a policy that favours a review of the minimum wage to match the rate of inflation among other welfare needs of workers. In present-day Nigeria, workers can no longer survive without having their wages and salaries pegged to cost of living increases caused by the policies of the regime; moreover, to the extent union dues are correlated to worker salaries, unions' finances are at risk as well.

### 2. Aggressive Membership Recruitment

There is strength in numbers. To fight successfully, we need to unionise all non-unionised companies. This can be done through full time union organisers and workers-recruiting workers programs. An inspiring leadership of NUSDE can inspire rank and file workers to take on this challenge. See the inspiring examples of how the Starbucks Workers organise to grow their union. Many of their materials are available online.[7]

5 https://guardpost.ng/when-bola-tinubu-saw-everything-wrong-with-subsidy-removalremoval-of-oil-subsidy-president-jonathan-breaks-social-contract-with-the-people/ available online as at 27/7/25.

6 https://guardian.ng/features/for-the-record/bola-tinubus-speech-on-nigerias-economic-challenges/#google_vignette available online as at 27/7/5.

7 See, e.g., https://sbworkersunited.org

### 3. Solidarity

The union should undertake an amendment to its constitution to commit NUSDE to a union built on solidarity.

It would strengthen the labour movement if every union included the concern for solidarity with other unions, nationally and internationally, as part of their constitutionally guaranteed policy objectives. More often than not, unions win their demands either from employers or government, as the case may be, not only on the basis of their own localized strength but also on the basis of different forms of solidarity from other unions, nationally and internationally. This reality could be codified and reflected in the union's constitution. Unions essentially fight against injustice. The frontier for the fight for justice should be global because injustice anywhere is injustice everywhere. Besides, some employers have an international structure and others at least maintain an international network with other employers, private or state, which is used to provide class solidarity against the working class. Unions should similarly build working class solidarity with other unions, nationally and internationally – solidarity not just in attending international and national conferences, but solidarity in action to advance, promote and defend existing rights.

Indeed, Section 41(1) of the Trade Unions Act explicitly provides that "it shall be lawful for one or more persons, [to take action] on their own behalf or on behalf of a trade union or registered federation of trade unions…for the purpose of peacefully obtaining or communicating information or peacefully persuading any person to work or abstain from working." Trade union solidarity, in other words, is a legally recognized right.[8]

Protest in Nigeria
Credit: Solidarity Center / Nkechi Odinukwe

## FACTORS THAT AFFECT TRADE UNION SOLIDARITY AND IMPACT ON UNION MEMBERSHIP STRENGTH

### 1. MAINTAIN AND EXTEND MEMBERSHIP

Although numerical size alone does not determine the influence and weight of an organisation, it is a crucial factor. The members are the union and the union is the membership. Without the members, there can be no influence or finance. Without influence and finance, the union cannot defend the interests of its members. If the union is unable to defend the interests of the members, solidarity and loyalty to the union will suffer. In the context of a weak union, loyalty may in fact shift to the employer who pays marginal, insignificant benefits without the union fighting.

It is important to develop a system of checks and balances to ensure that all officers and organs at all levels play their individual and collective roles with a view to strengthening the confidence of the membership in the ability of the union.

It is not only important to sustain the membership of the existing branches, it is imperative to expand the membership by recruiting new individual members and unionising new branches that have not been unionised or that are just developing. An organisation that suffers frequent loss of large numbers of members can hardly attract new members and even if it succeeds in attracting more members, solidarity among the members will suffer. Frequent changes in membership undermine solidarity.

8 See also Trade Union Act, section 41 (2), such acts of solidarity shall not constitute an offence under Nigeria's criminal code; section 42(1), nor shall such acts be actionable in tort; section 23(1), nor shall tortious act actions brought by workers or employers with respect to tortious acts alleged to have been committed by or on behalf of a trade union in furtherance of a trade dispute be entertained by any court in Nigeria.

## 2. COMMITTEE SYSTEM

It is one thing to convince more members to join an organisation, it is another to integrate them fully into the organisation. *Integration* here is used in the sense of *differentiation* of duties to as many members as are willing (particularly active members) so that they have a sense of belonging.

The union, being a mass organisation, can only be run effectively through committees. The various responsibilities of education, organisation and unionisation may be neglected if there are no committees charged with paying particular attention to them. The purpose of a committee should be clearly defined so as to guide its composition. Certain committees may be made up of professionals as members or advisers who may not necessarily be members of the union. Although the goal may be unanimity, the union should welcome minority reports, as unanimity may not always be helpful. The size of a committee will be determined by the load of the assignment and the period within which reports are expected. Through the methods of committees, the active members who are outside the Executive can be actively involved. Every member should be seen as a voluntary activist.

## 3. COMPETENT OFFICERS

Selection of officers at any level of the union should be based on merit rather than on ethnicity, religion, gender or other immutable factors. Choice of officers should hinge *on ability to perform rather than acceptability to government or the employer***.**

Particularly during the era of military dictatorship, trade union officers were often selected based on acceptability to the government to ensure that the union was officially registered. Officers so selected tend to serve the interest of the state rather than the interest of the union, and solidarity will suffer in the long run.

Effective pieces of advice given by a competent trade union secretary to a branch will enhance the confidence of the membership in the secretary and the union's leadership. Confidence in the leadership will facilitate constant consultation with the secretariat, and loyalty to the union by the branches will be strengthened. By contrast, an incompetent secretary whose advice never works will destroy the solidarity-building process within the union.

## 4. UNION CONSTITUTION

The constitution sets the rules for running the union. Violation of the union's constitution can create a crisis in the union. Therefore, all activities should be done and decisions taken in accordance with the constitution.

## 5. GOAL ATTAINMENT

Trade unions are formed to attain certain worker rights goals which individual workers acting on their own cannot or cannot easily achieve. From this point of view, the worker's relationship with the union is *instrumental*. In other words, loyalty to the union is predicated on the expectation of enjoyment of certain benefits. Once the benefits are not forthcoming, the leadership can no longer count on solidarity of the membership.

It is also important that the *means of attaining the goals* is not through appeals to the employer, but rather through *trade union power* – e.g., engaging in lawful strikes or other action to force the employer to accept workers' demands, to enter into collective bargaining, to implement agreements. When members believe that it is the goodwill of the employer that counts, loyalty will shift from the union to the employer. In that situation, union solidarity is the victim.

The failure of the union to achieve its basic objectives breeds a crisis of identity. We know that a child whose father/mother performs his/her fatherly/motherly role may concede to the control of the parents. By contrast, parents who cannot meet the basic needs of the child may face problems of indiscipline; the influence of the parents may decline. The same thing applies to the union. The crisis of identity is often at the background of factionalisation of the union, withdrawal from union activity and general decline in trade union density as members attempt to accommodate themselves unquestioningly to managerial decrees.

## 6. DEMOCRATIC ELECTION AND MANAGEMENT OF UNIONS

One of the major reasons for the weakness of the trade union movement today is the problem of *bureaucratic degeneration* **–** a situation in which the trade union *bureaucracies and the trade unions are not being controlled by the wishes, policies, interests and will of the membership.*

To strengthen trade union solidarity therefore, there is a need to entrench basic democratic principles, many of which are also found in the United Nations Universal Declaration of Human Rights[9] and the International Labour Organization's International Labour Standards,[10] in the internal running of the trade unions, as follows:

### *(a) Freedom of Peaceful Assembly and Association*

In a democracy, strength flows from tolerance of opposition rather than suppression. Union members should enjoy the right of opposition. Factional activity should be tolerated. Members should enjoy the right to hold meetings outside official union meetings without being attacked. The tendencies so formed in the union should be free to develop alternative policies and field panels of candidates at elections based on programmes and policies.

### (b) Freedom of Expression and the Press

Members, factional groups, branches, regions or zones as the case may be, should be allowed to maintain open and independent contacts within the union and with the larger labour movement, nationally and internationally. They should be free to publish independent journals, and circulate propaganda materials, if they so wish. Each region or branch should be given considerable autonomy to organise their activities and link up with pro-democracy organisations or political parties.

### (c) Right to Representative Governance

This right is incompatible with the imposition of caretaker committees, except where it is absolutely inevitable.[11] Trade unions should be run independently by elected representatives. To this extent,

(i) Key administrative officials such as the General Secretary and his/her assistants should be selected through election rather than appointment. It must however be emphasised that election does not automatically guarantee democracy. For example, in a situation in which the incumbent has developed a clique that is able to suppress opposition and deny the right of assembly to opposition candidates, the real candidates favoured by the membership may not still emerge. However, the principle of election provides an opportunity for genuine changes to take place at some time in the future.


Protest in Nigeria
Credit: Solidarity Center / Nkechi Odinukwe

(ii) No paid, full-time officials should be permitted to vote on any of the union's committees**.** Full time officials should only be recognised to give advice. Where the official has earned the respect of the membership by his/her dedicated service, the membership will tend to observe such advice.

(iii) Representation at Delegates' Conferences should be on the basis of elected branch delegates rather than hand-picking. This will ensure active involvement by the majority of the members in the affairs of the union.

(iv) Proposals and motions to be decided at Delegates' Conferences should first be circulated to branches so that branch delegates may be given a mandate along a particular line.

(v) Referendum (i.e. general ballot of the membership) should be used for key issues, e.g. dissolution or merger of union, strike action, increase of union dues and other major changes to rules.

(vi) Regular meetings of all the organs of the union should be held and every member

9 See, e.g., UN General Assembly, Resolution 217A (III), *Universal Declaration of Human Rights*, A/RES/217(III) (December 10, 1948), https://www.un.org/en/about-us/universal-declaration-of-human-rights, Article 23

10 See, e.g. International Labour Organization (ILO), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), 4 July 1950, C87, Article 3.

11 For example, where a Delegate Conference to elect new leaders cannot be held, for objectively determined reasons, for a limited period of time, such as a maximum of three months.

given an opportunity to initiate proposals and express an opinion on motions or issues raised by others.

### (d) Opposition to Witch-Hunting

The general principle of the rule of law should be observed in the trade unions:

(i) Rules should be precise to avoid ambiguous interpretation favourable to those in position of power.
(ii) Behaviour that may amount to offenses should be clearly spelled out with the corresponding penalties, e.g. suspension, expulsion, etc.
(iii) Accused members should be given reasonable notice of the charges against them. They should be allowed to call witnesses and question their accusers.
(iv) The right of appeal to a higher authority within the union should be provided. The (British) Amalgamated Union of Engineering Workers' (AUEW) constitution, for instance, provides for the Final Appeal Court to adjudicate disputes within the union. The Final Appeal Court can also call the Executive to order if it fails to implement policy decisions adopted at Conferences. It should be stipulated that officers complained against should not be members of the Appeal Committee. Where officers complained against are already members of a standing Appeal Committee such as the National Executive Committee (NEC), the Constitution of the Union should expressly provide that such members recuse themselves whenever complaints submitted touch their roles. The Constitution should clearly state that the union's Appeal Committee does not have the power to give final determination since a still dissatisfied member or officer reserves his/her statutory right to go to Court.

## 7. SOLIDARITY WITH THE COMMUNITY

Maintaining solidarity with the larger society has a way of cementing loyalty of union membership and thereby strengthening solidarity.

Some scholars explain that what sustains the loyalty of some sections of union membership to the union is the commitment to justice and the welfare of poor people generally. Therefore, there is a need for the union to set up a political/human rights commission to link the struggles at the industrial level with the wider political or community issues.

## 8. EDUCATION

Education programmes designed to meet the education needs of members need to be organised and systematic. Generally, however, trade union education does not concern itself with how to read and write (although it cannot be ruled out where the bulk of the members are not literate), but to assist members in critical analysis and understanding of events, issues, and problems as they arise so as to guide the union in adopting correct or appropriate trade union policies. In other cases, education programmes may have to be organised to develop their skill in particular areas. For example, the unit secretary needs to know the simple rules to follow in taking notes or minutes, the treasurer needs basic knowledge of how to keep proper books of accounts, the chairman particularly needs to know the basic rules about how to run meetings. It is the duty of the union to organise educational programmes for new members to understand the operation of the union's constitution, and to know their basic rights and responsibilities in collective bargaining agreements, procedural agreements,[12] and the like. When members are informed, the task of mobilisation for struggle is facilitated.

## 9. MEETINGS

To keep organisations alive, regular meetings are indispensable. A trade union, being a mass organisation as opposed to a private company, can only be run through meetings by the membership.

Apart from the frequency provided in the constitution, particularly in the case of branches, all organs must meet whenever needed in emergency cases.

Solidarity in any organisation is dependent on the members looking at issues from the same point of view. Therefore, when meetings are called, all views should be entertained and criticised in a friendly tone so as not to scare some members away at subsequent meetings. Only in this manner can we ensure that all members (including the

12 In contrast to substantive agreements on pay, holidays, excess workload, and so forth, procedural agreements are used to define the processes or steps necessary to ensure discussions or negotiations on issues; where disputes arise, procedural agreements may also stipulate what steps will be taken to bring in outside parties to avoid crises.

minority who may disagree) carry out decisions taken at meetings.

Notice of meetings should be given in advance and state the agenda, the venue, and the date and time; only regular and democratically run meetings can clear rumours and keep members united.

In this age of the internet, meetings may be facilitated through web-based/virtual platforms for meetings, training, conferences, such as zoom, google meet, skype, and so on.

### 10. PARTICIPATION

It is one thing for meetings to be held, it is another thing to consciously encourage broad participation of the membership in running the affairs of the union. At meetings, specific efforts should be made to decentralise responsibilities rather than concentrating everything on just one person. For example, devices such as the use of study circles to help educate, training members to gain confidence in speaking, or the formation of women's leadership committees where their numbers are underrepresented, may all be means of building grassroots participation among the membership, and thus further enhance solidarity.

### 11. STRONG FINANCIAL BASE

The quality of management of union funds can build or ruin solidarity in a union. The feasibility of carrying out the responsibilities of education, research, organisation, and communication is dependent on availability of funds. When these basic functions are not carried out, members will not see the union as a force to reckon with.

It is therefore imperative for the union to generate adequate funds to meet the basic responsibilities. Funds must be properly administered at all levels to ward off suspicion of corruption. In addition, members should be allowed to have free access to the books of accounts to preempt management or government attempts at blackmailing the leadership.

### 12. THE RIGHT TO STRIKE

The attitude of appointed officials to strike action by branches or state councils can make or mar the union. For example, most, if not all, the unions have a provision in their constitutions to the effect that "a strike or any other type of industrial action not authorised by the NEC [National Executive Committee] shall be regarded as not official"; in other words, prohibited. The NEC is expected to meet only twice in a year, i.e. every six months. Given the arbitrary manner by which workers' rights are being trampled upon, a section of the union could be forced to embark on action, as a last resort, before an NEC could sit. Also, workers appreciate solidarity action by other branches, so ordinarily workers would want a declaration of support by the NEC.

Therefore, shouldn't the constitutional provision compel the secretariat to support a strike action of any section of the union, provided the majority of the members vote in support? At this age and time, anyone who does not have the right to withdraw his/her labour is no better than a slave. The right to strike is a fundamental human right recognised internationally. The attitude of a union secretariat to strike action will determine the degree of solidarity in the union.

### 13. REGULAR PHYSICAL CONTACT

Organising secretaries ought to visit the branches and not wait until workers call at the secretariat, even though they should also be encouraged to visit the secretariat regularly. When the organising secretary visits the branches, there is the advantage that grievances can be addressed and discussions held with the unit's union officials on how best to handle the issues. With regular visits, branches that are not active in union activities can be energized.

### 14. INFORMATION

There should be no secrecy in the running of the affairs of the union; in the absence of transparency, suspicions and rumours capable of dividing the union may arise. Passing regular information to members about union activities, achievements and failures, and future aims and policies, will help in assessing the mood of the workers and guide the leadership in effecting necessary changes.

The establishment of newsletters at all levels of the union will facilitate the task of information transmission. Unions should also display notices on notice boards. If members are adequately and properly informed, decisions at meetings are taken more easily.

Information sharing may be also facilitated through setting up social media platforms, such as Whatsapp, Twitter (now X), Instagram, and so on. There is also informational software, including

interactive websites, E-publications such as e-books and e-learning packages that the union may take advantage of by engaging professionals in these areas.

### 15. RESEARCH

It is not enough to assert that union demands are just, union officials have to back up their claims with facts and figures. Employers can throw off-balance the union leader who is not prepared to disprove management's position with his/her own data. Not only do we need to prove to the employer that we know what we are talking about, we would also gain the confidence of our members to fight if we can prove our case convincingly. So, some form of research must be undertaken by the union at all levels. This may be begun by regular purchase of dailies, keeping proper records of correspondence, paying attention to government and company publications and policies, etc. Only with a research base can members be properly informed. It is necessary for the union to have a department and or link up with labour-based research institutions/centres.

### 16. EQUALITY

Union leaders should not act as the bosses. Members should be approached on the basis of equality. In this way, self-confidence, particularly of shy members, can be built. There should be no discrimination based on considerations of ethnicity, gender or religion. All workers are exploited. The common experience of deprivation and exploitation should therefore unite workers.

Any sign/attitude of discrimination on the basis of immutable factors, either by a leader or an ordinary member, should be seriously attacked in unison. Employers, regardless of their tribe or religion, are united on the basis of exploiting workers. All workers, regardless of their differences, should therefore unite to fight the employers collectively. The greater the feeling of equality among members, the greater the solidarity.

### 17. SOCIAL INTERACTION

The more opportunity to interact, the greater the solidarity in the union. Therefore, the union should make demands for canteens, staff clubs, or other for a for workers from all sections or departments to meet. In addition, workers should be encouraged to attend social events, e.g. naming ceremonies, weddings, and the like, organised by union members. This strengthens feelings of solidarity and encourages activists who may not have other social relationships. The more the members depend upon each other, in both their working and social lives, the greater the solidarity.

### 18. REWARDS AND PENALTIES

Both rewards and penalties build union solidarity. Active members who make outstanding contributions or sacrifices (for instance during a strike) should be rewarded by means of some form of gifts every year so as to encourage such activists to keep up their spirit and encourage others to be more active.

At the same time however, the union should not hesitate to *award penalties for major shortcomings* in any member or official. By doing this, we would be helping not just the individual but also the organisation. If serious shortcomings are not condemned and punished, it sets a bad precedent which may be emulated by others.

### 19. INTERNATIONAL SOLIDARITY

To be able to fight effectively, trade unions have no choice but to build international solidarity with their counterparts in other countries. The capitalist system that produced the working class is an international system which unites employers. Workers therefore also have to unite internationally. This is usually done by affiliation or fraternisation with international bodies.

However, trade unions should not limit their international collaboration to trade union bodies. Affiliation can also be effected with human rights bodies such as Amnesty International. For example, the British National and Local Government Officer Association (1982) asserts that it affiliated to Amnesty International in 1977, arising from the recommendation of its International Relations Committee. The NALGO also encourages direct branch-to-branch and member-to-member contacts internationally. Such an arrangement ensures international support in cases of attacks on human and trade union rights.

### *Important closing remarks/observations*

### THE MILITANT TRADITION OF NUSDE SHOULD BE RE-INVENTED

The significance of unions that are the precursors of NUSDE may be appreciated by realizing that under colonialism, the major employers were

those in the shop and distributive sector of the economy, next in importance only to the colonial government as an employer of labour. Fashoyin[13] asserted that indigenous and third world employers were insignificant under colonialism. The Western multinationals operating in the country were mainly trading companies. Indeed, the Royal Niger Company, that is, the precursor of the United African Company (U.A.C.), was the governing agency of the British government throughout the territories later called Nigeria. In 1886, the Royal Niger Company had been granted a Charter (license or contract) to administer Nigeria, make treaties, impose customs duties and trade in all the territories of the Niger Basin and its effluents. The Charter given to the Royal Niger Company was not revoked until 1890 when the British government took over the administration of the Northern and Southern Protectorates.[14] By 1940, two British companies, the U.A.C. and John Holts, had established themselves, not only as the leading produce merchant companies but also as major employers of labour in the private sector, next only to the colonial government in terms of size of workers employed. Others included the C. Zard Company and J. Allen, K. Chellerams and Sons (Nigeria).[15]

The U.A.C. recognized a house union only in 1945, after the first nation-wide industrial strike in the history of Nigeria. Emboldened by the gains of the 1945 general strike, all the 11 autonomous craft/house/plant level unions in the U.A.C. formed, in 1947, the Amalgamated Union of U.A.C. African Workers, referred to above.[16] This was, in the main, the initiative of the Secretary of one of the unions in the U.A.C., the radical nationalist, Nduka Eze. The forerunner-unions of NUSDE, in the shop and distributive trade sector therefore had a militant tradition, thanks to the striking, daring and infectious commitment of Nduka Eze. The history of the trade union movement in Nigeria cannot be complete without a recognition of the roles played by union leaders in NUSDE. NUSDE has a duty to re-invent that militant fighting tradition.

## THE ROLE OF LABOUR LAWYERS IN CONTRIBUTING TO UNION GROWTH

This paper has focused on what unions may do to achieve the goal of union membership effectiveness and growth. A critical question is whether there is a role for lawyers who act for unions. I answer the question in the affirmative. I am of the opinion that the identified measures or activities that may facilitate union growth will benefit from the active participation of union lawyers in a number of ways.

First, in the course of mobilization and campaign activities, during or outside working hours, union members individually and the unions, collectively, may likely come under attack. There is the tendency to either criminalize the exercise of democratic right of peaceful protest and/or resistance to unionization efforts. Workers in precarious employment, in particular, are likely to be victims of attacks. Union lawyers will be required not only to render legal services in defending the fundamental rights to organize without interference by employers and governments, relying on domestic and international legal instruments, they may also be required as resource persons in trade union education programmes to raise awareness of basic rights under the law with a view to giving workers the needed confidence to fight for their rights.

Second, and just as importantly, in the struggles for union growth, we need lawyers who not only act as professionals, but who are also conscious of the tension between employers' and governments' tendencies to operate within a unitarist industrial relations mindset and the tendency of the trade unions striving to operate within pluralist industrial relations perspectives. Furthermore, we need lawyers who are not only committed to enforcement of the rule of law, in all its ramifications, but lawyers who are aware of and committed to the promotion and observance of International Labour Standards established by the International Labour Organisation (ILO).

13 Fashoyin, T. (1988). **Labour and Development in Nigeria.** Lagos: Department of Industrial and Personnel Management, Faculty of Business Administration, University of Lagos and Landmark Publications Limited.

14 Oluwide, Baba. (1993). **Imoudu: A Biography.** Ibadan: West African Economic Consultants and Social Research and Ororo Publications

15 Cohen, R. (1974). **Labour and Politics in Nigeria,** London: Heinemann and Fashoyin, T. (1988). **Labour and Development in Nigeria.** Lagos: Department of Industrial and Personnel Management, Faculty of Business Administration, University of Lagos and Landmark Publications Limited

16 Fashoyin, op. cit. at p. 7 and Oluwide, Baba, op. cit., at p. 58.

ILAW Conference in Casablanca Morocco Credit: Solidarity Center / Mosa'ab Elshamy

# THE RELATIONSHIP BETWEEN UNION LAWYERS AND THEIR UNION CLIENTS

## A Discussion Among ILAW Lawyers Gayatri Singh (India), Maximiliano Garcez (Brazil), Nancy Nzom (Nigeria) and Steven Barrett (Canada)

The role of labor lawyers in union growth initiatives varies significantly depending not simply on country and culture, as we have learned from the 12 articles that precede this discussion, but also on the relationship with the union clients themselves. Whatever the nature of the lawyers' particular contribution to designing and implementing solutions for union growth, lawyers commonly need to determine the most effective ways to work not only within the country's particular legal structure, but also within the expectations of their union leadership, staff, and membership clients.

Therefore, to conclude this issue of the GLRR, we explore this topic with four highly regarded ILAW lawyers, from four distinct countries and continents, including Gayatri Singh from India, Max Garcez from Brazil, Nancy Nzom from Nigeria, and Steven Barrett from Canada. The four came together over a zoom call on September 5, 2025, and we transcribed the discussion. What follows is the lightly edited version of the conversation.

*Jon Hiatt (moderator): We'll begin by asking you each to introduce yourselves.*

**Gayatri Singh:** I am from India where I practice law in the Bombay High Court and the Supreme Court, and specialize in labor law. I'm connected with a number of legal and civil society organizations in India.

**Maximiliano Garcez:** I am a lawyer with a law firm representing labor unions in Brazil. We used to call ourselves a labor law firm, but now our aim is to be a progressive law firm, meaning we deal with any issue that a union brings to us, not only through labor law, but through public law, or civil law, or criminal law – in parliament, in the press, in the political arena. So we do not see ourselves as labor lawyers anymore, but union lawyers more broadly.

**Nancy Nzom:** I am a Nigerian lawyer with a PhD in Employment Law, specialising in employment and labour law practice. I am a Barrister and Solicitor of the Supreme Court of Nigeria, and a Notary Public. I represent clients before the High Court, the National Industrial Court, the Court of Appeal and the Supreme Court of Nigeria, while also prioritising informal dispute resolution through mediation and negotiation. Alongside my legal practice, I have extensively researched and published on employment disputes and related areas of labour law, contributing articles and scholarly works that bridge legal theory with practical workplace realities.

**Steven Barrett:** I practice in Toronto, Canada. I think we would also consider ourselves to be a union law firm, rather than a labor law firm. In my own practice, I do a lot of constitutional litigation under the Freedom of Association guarantee in the Canadian Charter. I do a lot of public sector bargaining. I have a public health law practice representing various people in the health sector. And I bring class actions for mostly non-unionized employees, around wage theft and issues like that.

*Jon: Thanks for the introductions. And I am Jon Hiatt, co-founder and of counsel at ILAW, from the U.S. I have been a union lawyer throughout my career, both in a union-side law firm in Boston, Massachusetts, then in-house as the General Counsel at the Service Employees International Union and after that the AFL-CIO, in Washington DC.*

*To help focus in on our discussion today, we have prepared five questions relating to 1) union lawyers' role clarity; 2) union lawyers' defensive versus proactive approaches; 3) union lawyers acting as more than legal technicians; 4) union lawyers resisting the law as a panacea; and 5) union lawyers as strategic insiders.*

*So let's start with the first, regarding **role clarity**, as follows: Both for in-house lawyers and law firm practitioners, the role of labor lawyers vis-a-vis their union clients' can be complex. In some cases, union leaders do not expect their lawyers to create new organizing or growth strategies, but simply to carry out the legal components of campaigns that they or their staff develop. In other cases, union leadership grants their lawyers a significant amount of autonomy, not only with respect to the legal aspects of the campaign, but in designing or defining many aspects of the campaign's elements. In yet other cases, the expected role of the lawyers lies somewhere in between.*

*So, let me ask you each to discuss that, starting with Gayatri.*

**Gayatri:** By way of background, in India we have a hybrid system of in-house lawyers and law firm practitioners. In-house lawyers functioning inside the unions and organizations are actually more rare, and those that exist often do not have the required infrastructure. There is also a problem of finances, as most unions are unable to support in-house lawyers, except for the large unions or those affiliated to the ruling political party, which are therefore better able to provide financial support.

That is one major problem. As far as law firm practitioners are concerned, for some of us who practice on issues relating to human rights, which like Max and Steven said, include a number of issues beyond labor law, such as criminal law or constitutional law, we try to be well-versed in those particular fields so that we can match the abilities and the caliber of the employers' lawyers. The problem here in India is that both for lawyers who practice independently and those who practice in association with various unions, there is often a question of whether those lawyers are able to take immediate actions independent of union leadership when a catastrophe happens or when workers are being victimized. For example, in Chennai where about 2,000 workers went on strike and were severely beaten up, two of the lawyers who were supporting them were also picked up by the police and beaten up as well, and their whereabouts were unknown. Lawyers from all over the country then quickly got together, mainly based on social media, so that we could oppose the arrests and demand that those arrested be produced before the court. The struck corporation had wanted the strike to be called off, and basically the arrest and detention of the lawyers was a way in which they could be victimized and therefore demoralize the workers. So it was in that context that the lawyers from around the country decided spontaneously to respond immediately - basically their own decision.

In this case, the prompt, spontaneous action actually helped in terms of getting those workers and the lawyers released and rebuilding the morale of the workers in continuing the strike.

*Jon: Thank you, Gayatri. Max, you're up next.*

**Max:** Thank you, Jon. It's very hard to be a union lawyer sometimes, and that's my first point. We should perhaps differentiate whether a lawyer is in a country which has rule of law and an independent judiciary. Representing a labor union in some countries can involve trying to prevent people from being killed. Or sometimes you have to be a union lawyer in a situation where it is illegal to be the union lawyer. In Brazil in the 70s, you had several lawyers in Brazil that became tradespeople themselves in order to be able to create unions. So, you had lawyers that became bus drivers to help to found an independent union in the public sector. You had lawyers that became workers in banks to found a union. My point is that there are many situations in which being a labor lawyer inevitably means to be part of the struggle, which often means to create the space and be bold and offer their own solutions.

But at the same time, I think we also have to recognize that a union lawyer doesn't have any mandate, and hasn't been elected by anyone. We had several of the most successful strikes in Brazilian history taken against the advice of their respective lawyers. During Lula's big strike in 1979, when he was in jail, lawyers were trying to convince him to stop the strike because it was considered illegal.

Often lawyers can help with union organizing, with growing union density, but in most countries, lawyers generally come from the upper middle class. It's not very common for you to have lawyers that come from poor sectors of society, so sometimes the concept of class struggle for a lawyer can be hard to grasp, and so that's something to take into account.

But a creative, bold and progressive lawyer can make quite a difference in union organizing, union growth, not only through the legal aspects, but also by bringing information of successful stories from other situations, even other countries and not necessarily limiting himself or herself to the current legal system or the common orthodox tactics, when necessary.

*Jon: Great. Nancy?*

**Nancy:** In Nigeria, the services that union lawyers provide can generally be divided into two broad categories: those tailored to the formal economy and those designed for the informal economy. In the formal economic sector, union members are typically more educated, able to read and write, and better equipped to defend themselves. In this context, lawyers take on a more conventional legal role: filing cases, drafting petitions, and defending members in internal and external disputes. For example, I recently handled a case where a union chairman sued one of his members for criminal defamation. Upon reviewing the union's constitution, I noted that internal dispute resolution procedures had not been exhausted before resorting to litigation. I wrote to the chairman, pointing out this oversight, and the case was subsequently withdrawn. The matter was resolved internally, culminating in the resignation of the chairman and the election of new executives. This process was highly technical and formal, demonstrating the structured nature of legal services in the formal sector.

By contrast, in the informal economy where you find market women, artisans, and domestic workers, the approach is very different. Most workers here are not formally educated and often have only basic schooling. As a result, they may lack familiarity with the legal system. In these cases, union lawyers provide more practical and accessible support. We design informal strategies, engage directly with government ministries on their behalf, and guide them in conducting lawful campaigns. We also draft union constitutions and documents in plain, simple language to ensure accessibility and understanding.

In this setting, the lawyer is not just a legal representative but also a partner in union-building, advising, educating, and ensuring that workers' collective actions remain both effective and within the boundaries of the law. In essence, while lawyers in the formal sector serve primarily as technical advocates, in the informal economy they often step into roles similar to union leaders, helping to shape and strengthen the organisation itself.

*Jon: Thank you, Nancy. Steven?*

**Steven:** I practice in the relative comfort and safety and stability of Canada, which is, I think, a different environment from what some of the others here have described. I would have included the United States in the first category until recently, but I would say that there's been a bit of an adverse change there.

Leaving aside the difference between in-house and external counsel, which we'll talk about later, I think, the union lawyer is often more proactively engaged in developing strategies for public sector clients than for private sector clients. We also tend to be more proactive for less experienced and less sophisticated unions.

I certainly have been involved, as have others in my firm, in various organizing campaigns for workers who are excluded from our country's labor relations model. Our work for them has involved not only strict legal work, but also assisting and working with the unions in developing various

organizing strategies. Similarly, where the law has required us to push the boundaries of the legal limits that are imposed, I've also been involved more in the broader aspects of the organizing itself.

For example, clients without any collective bargaining rights, excluded entirely from collective bargaining legislation, have come to me. In Canada, ironically, these tend to be professional employees and gig workers, so two ends of the spectrum. And we have worked very closely, from start often to successful finish in the campaigns to secure bargaining rights and then to negotiate agreements.

And of course, it's very gratifying to be successful in those campaigns. I want to also be clear, though, that even the more sophisticated, experienced clients, to the extent they have confidence in you, will also bring you into the strategy articulation and implementation. And that's a real pleasure as well. But in all these categories, I think we have to be mindful of our distinct roles as lawyers, and the role of the elected union officials and workers that we represent. There's a boundary there that I think, as lawyers, we need to be a bit careful about, at least from the Canadian perspective of not going over a particular line.

**Gayatri:** I would like to add one more aspect to the issue of worker victimization, because in India, though we have some very good laws, we do not have the right to form associations or the right to strike under law. So, when workers go on strike, the first issue that comes up is the issue of victimization. And, therefore, the role of the lawyers at that stage is really to prevent the workers from getting demoralized, and ensuring that the strike is successful without any victimization. And that is why, whether you are a seasoned labor practitioner or not, and whether you are running a law firm or not, there is an emphasis on protecting the workers.

That was true in this particular case involving the Chennai sanitation workers in South India that I described earlier. The law firm, itself, took immediate action without really sitting down with the workers or the unions to strategize. More specifically, we are part of a national association of progressive lawyers predominately labor lawyers called Najjar, who practice in different parts of the country. When an issue like this comes along, we provide case law, arguments and other legal support to the lawyers in court, all to assist with a nationwide campaign on behalf of the workers in that area, and - in this case - sanitation workers in other parts of the country as well.

The effect was very positive in building up the struggle and galvanizing the union. And the struggle is still going on. In the end, as Steven said, much depends on the client on whether the union is strong enough to fight. And if they are not, whether the lawyers are available to take it up, and whether there are sufficient lawyers to do it immediately. If we are not or we do not have the resources, we ensure that some lawyer who is there locally is able to support the workers either financially or in terms of providing the necessary literature.

**Max:** I was going to add, and it's somewhat delicate but necessary to mention, that the role of the union lawyers is also partially defined by how they make a living. There are several countries – Brazil, for instance – in which labor lawyers rarely receive a monthly stipend from the unions. Generally, they live off contingency fees from individual lawsuits or class actions they file. So there's no financial incentive for a lawyer generally to be very involved in union growth, because that doesn't necessarily materialize into legal fees. It’s not that the lawyer is greedy, but sometimes it’s simply a case of fighting to make a living.

Consider a lawsuit dealing with health and safety. If the lawyer files a class action, you may force a company to change their air conditioning system that's poisoning people, but an injunction won’t result in fees. This sometimes influences how certain lawyers choose to engage on labor matters. In-house lawyers, of course, do not have the same constraints. This makes it easier to represent unions on issues that are not necessarily going to be solved through litigation. This is important because there are often important legal battles that a union can win in other ways, such as to be able to represent more people, or to fight against anti-union activities that do not involve the

courts. You can pressure the company through public law, you can make the board of directors aware of what the company is doing, you can solicit the shareholders to be concerned about the potential risk. You can denounce the company to the authorities, you can have a public campaign, you can have a hearing in Parliament to denounce what's happening. But again, not if the lawyers are counting on legal fees.

In our law firm, we filed several class actions during COVID. We were able to get over 10,000 people the right to work from home, to prevent the spread of COVID, except where the employer proved that it was absolutely necessary to have in-person work. This litigation was very costly because we knew there would be no fees. One of the reasons we're able to do that was thanks to a small grant from ILAW's Strategic Litigation Fund.

**Steven:** Max makes an important point. The nature of legal work as a source of income is something I never had to worry about, because in Canada, lawyers are paid very differently. We're paid for the most part either on an hourly basis for the work we do or on a flat rate basis, but very little contingency work, very little at risk. But as I think about it, that could profoundly affect the types of work that lawyers do and their relationships with their clients. I don't know about Gayatri and Nancy, how the payment structure works for the lawyers in their countries.

**Gayatri:** Yes But you are paid by whom?

**Steven:** We're paid by the unions who obviously have a more stable financial base from which to pay us under Canadian labor law and in Canadian society. And those unions often actually pay us even to be involved in broader public interest litigation that doesn't directly or exclusively affect their members. That obviously is quite different for some of you. So I can understand how that must affect both the type of cases and the type of work that lawyers do.

***Jon: That's very interesting, and clearly relates to some degree to the amount of autonomy that union lawyers may have in participating in union campaigns. The discussion makes me think of when I went from being an external lawyer in a private union law firm to being in-house in a large union, the Service Employees International Union in the U.S. In the law firm. I was typically called upon to help in an organizing campaign only for the very narrow components of the campaign that the union client considered to be the "legal" components. Normally, I wasn't brought in to strategize about what comes before or after the legal aspects. When I later became SEIU's lawyer and moved in-house, I was welcomed to sit in on meetings from the very beginning of a campaign to the very end – not just legal meetings, but meetings of the organizing staff, the corporate campaign staff, the research department, the health and safety department, and so on. I think this was both because now I was "one of them" – still the lawyer, but with no competing loyalties to other unions, other clients – but also because my much broader involvement didn't result in any hourly billing to them. If I thought I might have ideas to contribute beyond the strictly legal aspects, that was fine with them. It allowed me a much broader role in assisting with union growth campaigns.***

**Max:** I have been a lawyer for 31 years, and I've never used a timesheet in my life.

**Steven:** By contrast, I get angry at lawyers in my office who don't use the timesheet, since that is how we are paid! But Jon, on that point about the distinction between in-house lawyers and external lawyers and your experience, two points I just wanted to quickly make about that. Number one, as you point out, you could do what you did in-house in terms of your broader involvement, because your compensation was secure. You were getting paid a salary. And second, my role as external

counselor, and I've been doing this even longer than Max, is sometimes as broad as the role you describe as in-house counsel, to varying degrees, so we need to be careful not to necessarily paint that stark divide between those two. It depends, of course.

**Nancy:** In Nigeria, both in-house labour lawyers and external union lawyers face significant challenges.For those working in-house, the restrictions are considerable. Employment contracts are often drafted in ways that allow termination without cause, leaving lawyers with limited rights to challenge dismissals in court. The legal framework itself is restrictive, which makes in-house practice precarious and offers little job security.

For external union lawyers, the difficulties are different but equally pressing. Many lawyers shy away from labour practice because it is poorly funded and rarely lucrative. Union members often cannot afford legal fees, while opposing parties – frequently government institutions or large employers – retain counsel with substantial resources at their disposal. This creates a deeply unequal playing field, where underfunded union lawyers face heavily financed opponents. As a result, labour law practice in Nigeria is widely regarded as risky and insecure, with little financial reward and minimal institutional protection for the lawyers who choose this path.

***Jon: The second question is about defensive versus proactive approaches: Lawyers may advise on the limits of lawful conduct during membership growth initiatives, which can sometimes frustrate leaders who wish to push the boundaries or respond aggressively to employer tactics. On the other hand, union lawyers may need more proactively to find ways around those limits rather than simply advising that certain conduct cannot be taken. I would ask each of you to discuss that. Gayatri, we'll go back to you.***

**Gayatri:** Again, I will be talking here more in the context of external lawyers, because, as I said before, there are hardly any strong in-house lawyers who take up these issues. They might take up individual cases, but not cases relating to strikes or various other major issues. I'll just give one example, it really pertains to issues relating to strikes. Under the applicable law, we have the right to strike only under certain conditions. As I've explained, it's very difficult for workers to go on strike without being victimized or thrown out of jobs.

One example regarding the lawyer's defensive or proactive roles is of the Uber strike, where Uber drivers in Maharashtra basically tried to stop the Uber company from plying their cars, because they were doing it without any license from the Regional Transport Department, and also because they were refusing to display the rate that was fixed by the RTO. So the drivers went on a strike, spread over a large area. There were instances of tires being slashed, and drivers being beaten up. On the second or third day of the strike, the company went to the high court and got a stay without even bothering to issue a notice to the unions who were named in the petition.

There were about five or six unions involved in this.They basically said, we will continue with the strike, whatever happens, even though the court had passed an order saying that you cannot go on strike, and you cannot do xyz, so basically you must start driving the cars. An issue before us as lawyers was: should we encourage the workers to stay on strike, when the workers themselves will face consequences of contempt of court or should we take a step backwards and urge, for the time being, that the workers stop driving again?

There was a heated discussion on this. Most of the officers of the union did not want to withdraw from the strike. And ultimately, our role was to explain what the consequences would be.

But at the same time, we had to balance it in terms of what was the capacity of the union to continue with the strike and whether withdrawing from the strike would have worse consequences in terms

of demoralizing the workers. Or would it actually strengthen the union, if they continued with the strike? So that was a very, very difficult task, and ultimately we had to give certain suggestions to avoid the office-bearers being hauled up for contempt.

So we were involved in a debate involving the lawyers, the officers, and the union members, and the solution was a difficult one. It's not so simple, because we were trying to balance the limits of the law, while also trying to see that the workers did not get demoralized if told to withdraw from the strike.

A similar situation arose with regard to the electricity workers in Uttar Pradesh, a state where the electricity was being run by a public sector undertaking until the government decided to privatize it and hand it over to Gautam Adani, a private, billionaire owner. So when the workers went on strike, the company immediately approached the High Court, which restrained the workers from going on strike even though the union had followed the required legal procedures. So again the question was, should the strike be withdrawn, or should they continue with the strike?

Ultimately, the opinion given was that the situation was not ripe for a strike, to withdraw it for the time being and to pursue the legal strategy differently by focusing on the right to protest. So, in terms of defensive and proactive issues it's a very, very difficult task, and you have to play a balancing role, as far as lawyers are concerned.

*Jon: Those are great examples. Max?*

**Max:** I think one of the factors that differentiate the defensive vs. proactive considerations is the size of the company and how powerful it is. If a union is just dealing with a small employer, that's one thing. But when you're dealing with a very powerful multinational that employs lots of people, and they have power in the local government, you may need a big union law firm that has multiple professionals from different sectors that can endure and fight aggressively. Often, what I see in unions in Brazil and Latin America is that there are lots of opportunities but the unions too often lose because they don't know the fight terrain. For instance, if you're fighting a big multinational, there is a potential match at the OECD. You have an international arena at the Inter-American Commission of Human Rights. You have the space to fight illegal activities of companies in different fora: the Government antitrust tribunal, the stock exchange, multiple fora to challenge the internal compliance of the big companies.

Too often, if unions are fighting at all, they are likely just using slingshots, and they don't know they have bazookas in the basement. And for a lawyer trying to make a living on his own, trying to access all these opportunities is very, very difficult. Also, the work itself may not be very romantic – not like a strike or protest, but rather just many nights at the office analyzing financial documents of companies. But what I see in general is that the unions lose important opportunities to fight because they're not aware of the possibilities, and they don't have the legal capacity to use all those instruments.

We have lots of criticisms of the US, but I think there is a logic of lawyering sometimes in the US. In Canada, too. The lawyers are often more familiar with the reality of the companies they fight against than we are in Brazil sometimes, and so they're not so limited to traditional litigation tactics.

Another concern I have: the risk of lawyers being too involved in the legal aspects of union organizing and giving too much advice about what can be done, what cannot be done. That makes the unions bureaucratic and risk averse. As lawyers, we're trained sometimes to be a bit paranoid about worse possible outcomes. Often also we are afraid of going too far in the fight against the tribunal that gives an order for the union to stop a strike. As lawyers we know that we have other cases to take

care of sometimes, and that a particular judge is also going to be involved when we are defending another union in the future. That can make us too afraid of going too far.

Finally, sometimes you have a situation in union organizing-related litigation where a debate occurs whether to settle or go for a decision, and the lawyers may place too much emphasis on the jurisprudence that may be created, thinking ahead about how other unions may be affected by the legal precedent in the future. So it's very complex, and it can be even more difficult to navigate when the union's lawyer is trying to fight for his financial survival. And I think that's the reality in many developing countries.

*Jon: Nancy?*

**Nancy:** In Nigeria, our labour laws are highly restrictive. As union lawyers, we often remind union leaders that if they were to avoid every activity prohibited by law, many unions would never even be established. This means that our role requires us to act both defensively and proactively. On the defensive side, we constantly caution union leaders against actions that would clearly expose them to legal sanctions such as engaging in unlawful strikes or disrupting essential services. These prohibitions are well established in Nigerian law, and failure to observe them can result in severe penalties. Yet, union leaders often feel compelled to take bold action, even when warned of the risks.

This is where our proactive role becomes essential. Rather than telling leaders simply, "This cannot be done," we help them identify lawful alternatives that can still advance their goals. For instance, when the government went to court to stop a strike by the Association of Resident Doctors, we advised the union to pursue negotiations instead of direct strike action. In this way, the union was able to continue pressing its demands without being exposed to legal consequences.

At times, we serve as a bridge between the union and the employer, balancing the need to protect unions from legal risk with strategies that maintain their legitimacy and attract new members. We are mindful that aggressive tactics can invite state repression, including arrests and imprisonment, which not only discourages members but also deters non-members from joining. In a country like Nigeria, where poverty is widespread and decent jobs are scarce, workers often say, "I cannot risk losing this job I struggled to get."

Unions themselves are strategic; they alternate between bold, militant steps and calculated restraint. Our task is to guide these decisions, ensuring that their strategies remain within the law while still advancing their rights. We frame arguments for workers around international labour standards including the rights to freedom of association and collective bargaining and, in some cases, we have successfully helped workers form new unions, including in the domestic and informal sectors, and secure recognition in Nigeria. Ultimately, union lawyers in Nigeria must strike a delicate balance: acting defensively to shield unions from crippling legal liabilities, while at the same time being proactive in developing lawful, creative strategies that enable workers to organize and pursue justice effectively.

*Jon: Thanks, Nancy. Steven?*

**Steven**: I want to push back a bit against the premise of the question, Jon.

It sort of reminds me of the old adage that the best defense is a strong offense. I think you have to do both. Obviously, you're obligated as a lawyer, I think in all of our jurisdictions, to advise your

clients about the risks of engaging in illegal conduct, and that they ought not to engage in illegal conduct. That's true at least in Canada, which has a strong professional obligation. But, you know, I remember very early in my career the response to that from a union leader being "Okay, sure, you can tell me what I can't do, but what I really need you to tell me is how I can resist. And how I can accomplish what I want to accomplish." So I think the role of the union lawyer is to do both. I want to point to two very recent experiences in Canada, where we've been faced with that dual role.

Our laws aren't as repressive as in Nigeria, certainly, or India or Brazil, but we've recently had the federal government in Canada relying on a very broadly worded provision of the Canada Labour Code and giving the Minister of Labor the power to order an end to various strikes in the ports, in the postal service, in the railways. Most recently, it was used against flight attendants who work for Air Canada. Within 12 hours after the strike started, the Minister issued that order.

So yes, I advised my client that they had to comply with the board order. And my client said to me, we can't. We're not going to. In fact the president of the union ripped up the order in front of the media. But then it fell to me to say, okay, how can we best advise you as to what you can do. So when the government moved to enforce the order at the Labor Board, we resisted as best we could by buying time for the workers on the ground, to enable them to exercise their power in defiance of the law. Technically, this was contrary to our advice about what they had to do, but we were able to buy them the time they needed and the strike settled a day later.

Similarly, in 2022 the Ontario government education workers went on strike.They were very badly paid, they were demanding a meaningful wage increase.The government legislated them back to work. The union and the workers defied it, and we had engineered a four-day hearing at the Labor Board, making every argument I could think of, subpoenaing ministers and deputy ministers, and arguing over whether that was valid. This was all perfectly within the boundaries of a legitimate defense, while we gained those four days while the union continued to be out on strike. Ultimately that resulted in the government withdrawing the legislation, the parties returning to the table, and a far more favorable collective agreement was reached.

So I think one aspect of the lawyer's role is that your clients need to know what the potential consequences of illegal action are: fines, imprisonment, and so on. But it's ultimately their choice about assessing the risks, and then your job to help them achieve their goals by enlarging the space in which they can continue to act as they deem fit.

**Gayatri:** Exactly. I just want to say that I'm encouraged by what Steven said. And it's very necessary that we are able to pinpoint or give examples of successes. That is the only way in which unions can thrive and grow. It's very encouraging, Steven.

***Jon: The next discussion item focuses on the ideological context in which union lawyers practice the law, and the situations in which they are called upon to be more than legal technicians. Gayatri put it so well in the introduction to her own article published below when she observed that traditional professional norms dictate that "lawyers are expected to provide case-by-case, transaction-by-transaction service to their clients, without reference to their own or their client's values, socio-political commitments or policy preferences". However, as she also notes, "frequently lawyers do cross this line and engage themselves within a community, a cause, a transformational goal, or an aspect of the law-justice conundrum."***

*Sylvia Bonilla Bolanos, author from Ecuador of another of the articles here, made a similar point when she stated: "those of us who practice labor law do so not on neutral ground, but in a minefield of powers and interests. Every word written in a lawsuit … triggers defensive reflexes in employers and bureaucrats. Hence our work demands more than technical expertise: it requires … a willingness to bear the costs of confrontation."(translated from Spanish).*

*So, starting with Gayatri, let me ask you all to discuss this third issue.*

**Gayatri:** I want to break it up into two parts. One is case-by-case legal practice, and the role of a lawyer when dealing with individual cases. I think it's very different from the second, which arises when our lawyers are dealing with more strategic cases, or cases which cover a large number of workers.

As far as case-to-case practice is concerned, union members want success in their case, so you might have great ideas about how we or the union should advance more general concerns, but we must remember that the workers simply want success. In that context, it is the lawyer who has to deal with the client who has been terminated, for example. When workers are terminated, do they ask for reinstatement or do they ask for compensation? We might feel that they should ask for reinstatement, but the workers might want only compensation, because they don't want to go on with the case or with that employer.

But when we come to the lawyer's role as being part of the movement, a lawyer's role is not to be a technician, nor is it to sit in his or her office and give judgments on what should or should not be done. Rather, it is to listen to the workers – the union might want to take up a particular case in a particular manner, and then, as Stephen put it very nicely, it's the role of the lawyer to develop that idea.

I will give one or two examples of the lawyer being a part of the movement . First, in cases where workers have lost in fighting against closures or privatization, it becomes the role of the lawyer to build confidence amongst workers. The workers had informed the union that they were facing a lot of pressure from the management, the government was supporting management, etc. It was therefore felt that the workers should be informed about their rights under the law and that they were merely demanding what was legitimately theirs. So when the union had a general body meeting, the lawyers helped explain the law, which helped galvanize the workers. And they then decided to take up the fight against management.

The second example is with regard to critiquing existing and drafting new legislation. For instance, a number of lawyers got together to draft the gig workers' bills which have now generated so much interest in many of our states including Telangana and Andhra Pradesh. The lawyers also worked with the domestic workers' unions, participated in the meetings to better understand the issues, and then drafted the legislation, so that we were then able to frame the legislation in much broader, novel terms not just about rights but also what is meant by "domestic work", what is meant by "living wage", "what is meant by "decent working conditions", and so on.

*Jon: Thanks, Gayatri. Max.*

**Max:** I have seen throughout my career the difference between a union lawyer who shares the socio-political commitments of the Union, and who personally understands class struggle, on the one hand, and a very competent labor lawyer that does his work properly, but doesn't share the

same ideological view, on the other. For the lawyer to be able to go the extra mile, to have the grit to face the grinding machine which is the legal system, it's much harder if you don't share those ideological values of the Union more generally.

Of course, that sometimes creates problems, as well. Sometimes you have a tendency to forget that you're not elected, you don't have any power, and you're just part of the bureaucracy. Still, fundamental to having a successful career in this calling is going beyond being legal technicians. I like Steve's phrase "to enlarge the space in which the unions can operate."

There are many victories that were obtained where the union was doing so-called illegal activities. I went to law school in the late 1980's when the military regime had just ended. Until 10 years ago or so, if a unionist here in Brazil would tell a colleague of theirs that he's never been arrested, people would be pretty skeptical of this guy. "What have you been doing all this time?" Now, things are not as bad, but if you are over 50 and haven't been arrested as a union leader, watch out.

We have to remember also that apartheid in South Africa was legal, that you had various abhorrent laws in Germany, in Hungary, different places, that were legal. If you're a lawyer for a Palestinian unionist in Israel, you're fighting a legal system that considers apartheid to be legal, and so there are lots of situations in which confining yourself to the current legal system is not going to accomplish much.

The lines can get tricky. Occasionally during strikes, union leaders ask me to go to a meeting.I ask, "are you sure you want me to be in this meeting?" And they say, "yeah... well, maybe not..." Or I'll offer to go to a meeting, but then the officer says, "actually, maybe you shouldn't go," and I then say, "yeah, maybe I shouldn't".

***Jon: Ha! I like that!. Thanks, Max. Nancy?***

**Nancy:** In Nigeria, labour lawyers cannot afford to be mere technical advisors. Beyond interpreting statutes and drafting legal documents, we are often required to stand with workers in their wider struggles. While we provide the expected legal services filing cases, interpreting laws, and shaping arguments ,our role frequently extends into advocacy, mobilization, and even leadership.

A clear example was during the strike between the Nigeria Union Confederation (NUC) and the universities' academic staff union. As lawyers, we not only helped frame the constitutional arguments around freedom of association and presented them in court, but we also supported the mobilisation of public opinion in favour of workers' rights. This demonstrated that in Nigeria law and justice cannot be divorced from politics.

Our involvement does not stop at the courtroom. We are equally drawn into community struggles, particularly when vulnerable groups are involved. In the informal economy, for instance, we may sit with market traders, domestic workers, or artisans, listening to their stories and transforming those experiences into legal claims or campaigns. In these contexts, we provide not only representation, but also leadership, training, and empowerment.In practice, this means that Nigerian labour lawyers move beyond the traditional role of professional advisors. We become partners in the workers' fight for dignity, rights, and justice ensuring that their struggles are both legally grounded and socially impactful.

*Jon: Interesting. Steven?*

**Steven:** The reason that I am a union lawyer, and the reason that we all are I assume, is that we share the values and transformational goals of our clients. Not of all of our clients, perhaps, but of many of them. We are absolutely engaged with a community or a cause. Whether that's through public education, or media, or law reform, or Workers' Action Centers, and so on, that is all a vital part of who we are.

I want to make a slightly different point, though, which is I think we need to be careful as union lawyers to recognize that we are still lawyers. And sometimes, even in my own firm, there are lawyers who venture, perhaps, too far when advising clients or making court submissions into the social justice arena. And by that I mean we have particular skills as lawyers to advance the social justice causes of our clients, but if we act in a way that moves beyond the boundaries of what the courts and tribunals consider to be legitimate legal arguments, I think that potentially undermines our credibility and effectiveness as lawyers.

*Jon: Point well taken. I want to move to the fourth question now. This one is about* ***the law as a panacea****. Ina Kudinska from Ukraine raises this in her article, where she asks how can lawyers avoid what she calls the "allure of law as a panacea" and avoid having "the aesthetic drapery of the law" be all the more likely to seem like structural power; and finally "how can we provide valuable and skilled expertise as a service without suggesting the law is a destination in and of itself."*

*She cautions that this is a balancing act for lawyers, like everything else we've been talking about today. So let's start with that, and Gayatri, please begin.*

**Gayatri**: Sure, but first I want to go back and add to what Steven said, that as union lawyers you can't just go beyond the law and make speeches about how bad the system is, and that we need to overthrow the system, or whatever. As lawyers we need to be as professional as our opponents are. That is to say, in India, where cases come up in courts and the employers will engage well-known, experienced lawyers, the unions must be in a position to engage lawyers who are able to confront the employer's lawyers. We need to be at par with the employers' lawyers in terms of knowing the law, but also in being innovative. We can't just confine ourselves to the four corners of the law as they presently exist. So if a client comes to us and says, okay, I need to get some justice from court with respect to some circular that the government has issued but which goes contrary to the law, we need to look at the law as it exists then give advice as to what can be done within the four corners of the law. However, we also have to be innovative in terms of being able to develop the law and go beyond it.

I'll give one example. Most of the labor laws that were enacted in India were enacted through workers' struggles , the Industrial Disputes Act, the Minimum Wages Act, and the Health and Safety Act. As a result, they are mostly limited to organized workers, not applicable to unorganized workers. So today, where new restrictive codes are being enacted, it is largely the organized workers who are losing whatever rights they had under the preexisting laws.

In addition, while the government kept saying that we are going to universalize the benefits of the various laws to the informal sector, that is not being done. And therefore, informal sector workers are not protected under any law which exists today.

In this context, many of the states have started extending the working day from 8 to 12 hours in some states without paying overtime. As a result, several unions challenged the amendment before the Gujarat High Court, and it went up to the Supreme Court.The Supreme Court took the workers' arguments and not only dealt with the issue of overtime, but it also defined what is meant by decent working conditions, and issued a very good judgment. Previously, minimum wages were restricted to starvation wages, but now some courts are defining minimum wages as living wages, and defining what those are; and they have extended those benefits to all workers.

But overall, since 1991 the judges in India have become very, very conservative. It makes it risky to take cases involving the law on strikes or the law on privatization, for instance. So the question really is, you might be a very good lawyer, you might know the law, you might do whatever has to be done for the benefit of the workers, but if the judiciary is not willing to listen to your arguments, we can't let the workers think the law will rescue them, especially if that keeps them from considering how otherwise to broaden the struggle.

***Jon: Thank you, Gayatri. Okay, law as panacea. Max?***

**Max**: I've been thinking of what Steven mentioned, that union lawyers sometimes forget about the circumstances of our profession. I've reviewed petitions in my firm drafted by young lawyers where I've told them "I really loved what you wrote here, but I'm certain the company is going to love it too, because we are going to antagonize the court with such a revolutionary argument. You should write it in an article, or for a master's degree, but not here." I see too many progressive lawyers that would prefer to have a very inspirational petition that he can show to his colleagues.

I think we have a responsibility to our clients to be as effective and as pragmatic as we possibly can, so we try to leave our politics out of the courts, and to be taken seriously. Often, that's also a problem with the unions. Sometimes they want to file a lawsuit or a class action that we know is not viable, just for political reasons, and we explain to them that if you guys start doing this it's like the boy that cries wolf. The next time, when we have a serious case to present to the courts, you will have lost credibility. We need our clients to understand what is realistic and not to confuse revolutionary language with effective action - The law is not a panacea.

***Jon: Okay, Nancy and then Steven:***

**Nancy:** In Nigeria, many workers hold the belief that justice can only be achieved in the courts, creating the impression that the judiciary is all-powerful. This mindset often obscures the reality that workplace conditions are shaped just as much by social and political forces as by legal decisions. One of the things I consciously try to do is shift this perception. I explain to workers and union leaders that not every dispute needs to end up in litigation. Under Our Trade Disputes Act, there are recognized mechanisms such as negotiation, mediation, and other forms of collective action that can resolve conflicts effectively and often more quickly than court proceedings.By encouraging these alternatives, I have helped many workers see that the courts are not the only nor always the best avenue for justice. This approach also brings clarity and confidence to union members, showing them that disputes can be addressed through their own collective strength. In turn, it strengthens unions, as potential members are more likely to join when they realize that justice is not confined to the courtroom but can be pursued through a variety of practical and accessible means.

*Jon: Really good point. Steven?*

**Steven:** We've talked about our role as union lawyers in opening up space for our clients, and using the law aggressively to do so. In Canada, I've been involved for 30 or 40 years now in trying to persuade the courts that our freedom of association constitutional guarantee includes the right to organize, the right to bargain, and the right to strike. Initially, in the 80s, they said no, and although I kept banging my head against the wall with my colleagues, we finally persuaded the Supreme Court of Canada 10 years ago now that the right to strike is constitutionally protected, as is the right to bargain and the right to organize.

But one of the things I've been conscious of is, as workers and unions have come to say, oh, we have a constitutional right to do these things – organize, bargain, strike – that can potentially have a deflating effect on their ability to do the organizing, mobilizing, education work necessary to have power on the ground. They come to over-rely on what they consider their constitutionally protected rights. When the government enacts repressive legislation, instead of mobilizing and organizing against it, instead they tell me or their lawyers to go to court and challenge it. And, that is highly problematic and often less effective.

So, there's a paradox there, where you finally struggle to get the courts to recognize your human rights, your constitutional rights and then it saps the workers' energy. It reminds me of what I think Lord Wedderburn said when talking about the difference between the North American system of collective bargaining, where you apply for certification, and the old British system, where there was no law, really, there was no certification process or anything like that. Workers had to actually rely on their own power, both to get recognized, and to enforce their collective agreements. They didn't grieve, they just struck. He talked about the difference between collective bargaining and collective begging and he expressed the concern that in the North American system we have become so reliant on the law that unions have lost the capacity to do those things that are necessary to be effective on their own. Because at the end of the day your influence comes from your members, not from your lawyers. And so I do think we need to be careful.

Having said that, I've also noticed the opposite. I refer to illegal strikes in the education sector and in the airline sector. One of the things that I think helped to empower those workers was when the labor board or the minister had said they were exercising their constitutional right to strike. And that gave them some power at the same time. It was inspiring. They were acting legitimately. So I think there's a tension there that we're always going to see: the legal strategy is not a panacea, but rather just one part of what has to be a broader effort by the union and its members.

***Jon: Okay, thanks, Steve. I do want to end with this one last question about the strategic insider issue that Paapa Danquah from Ghana addresses in his article. Namely, that in-house union lawyers, at least in some places, occupy a unique vantage point, because they so well understand the legal landscape and the internal dynamics, the politics, the mission, and the long-term trajectory of their unions. This, he suggests, enables them to steer decisions often behind the scenes that influence whether unions in the end are resilient, sustainable, and aligned with workers' future needs. Even though he applies this to in-house counsel, you may want to comment on whether it's a good description for both In-house as well as those external lawyers who've become long-term professionals within certain institutions and with certain clients.***

**Max:** In Brazil, it's not very common to have in-house lawyers. But I think it would be the ideal. With some unions, we act as in-house lawyers in many respects. If you have a lawyer doing such work for the union on an almost daily basis, then knowing the everyday life of the union makes the work a lot easier. I think often labor unions use lawyers to outsource the struggle, and that's a big problem. And it can make the unions more bureaucratic. I jokingly complain to one of my union clients that If there is a legal battle and we win, it's always the union's victory but if we lose, it's always the lawyer's fault, right? They say - yeah, that's right!

*Jon: Great. Nancy?*

**Nancy:** In Nigeria, in-house lawyers are typically those engaged by large unions or union federations such as the Nigerian Labour Congress. These roles are often filled by younger lawyers who function mainly as legal advisors, but their real value lies in their understanding of union politics, objectives, and internal struggles. Because they are embedded in the organisation, they can provide guidance that is not just technical but also strategic, aligning legal advice with the union's broader goals. Similarly, some lawyers in private law firms, though not formally in-house, have managed to integrate themselves into union structures. By building close relationships with union leaders and gaining insight into their political and organisational dynamics, these lawyers act as strategic insiders. This insider status allows them to shape advice and strategies in ways that anticipate the union's and workers' future needs.A strong example can be found in the Academic Staff Union of Universities (ASUU). Here, in-house lawyers play a central role in shaping responses to government policies, supporting negotiations during strikes and helping to plan membership mobilisation campaigns. Their involvement demonstrates how in-house and closely aligned external lawyers can move beyond narrow legal functions to become critical partners in union strategy and survival.

*Jon: Thank you, Nancy. Steven?*

**Steven:** I think there's a lot to the point that in-house union lawyers have a unique vantage point and understand the union as a whole in a way that it's somewhat difficult for external counsel to do. I do think that while that provides opportunities, it also at times constrains in-house counsel due to the internal politics of the union or due to their subordinate employment status. I think it's very hard to be in-house counsel. It's not a role I've had to play, but I often admire the way they have to balance those competing tensions.

Just a final few points about this. First, in-house counsel sometimes want external counsel to give the advice to union leaders that is difficult for them to give to their clients, and I've seen that dynamic play out a number of times. Second, I don't think it's just in-house counsel that play a strategic insider role. Outside counsel also can play important strategic roles in advising their clients as well, as Gayatri, Nancy, and Max have been emphasizing. Finally, in jurisdictions like the U.S. and Canada where the large unions often have in-house counsel, for external counsel to find a way to work together with in-house counsel is key, and you can learn a lot from them about the various tensions, pressures, and internal politics of the client you're advising, which is highly relevant to the effectiveness and quality of the services you're giving.

*Jon: This is all so interesting, and I would like to finish up with one personal anecdote here, having spent many years of my career as both external counsel in a union law firm in the U.S. and as in-house counsel as the General Counsel of the Service Employees International Union and then the AFL-CIO. When I was at the AFL-CIO, we had our domestic version of ILAW, in other words a domestic network of labor lawyers around the United States who represented unions both in-house and in law firms. There came a time when worker centers, not traditional unions but community-based worker organizations, started to be more commonplace around the country. In some cases, unions were feeling threatened by them. In other cases, unions were trying to figure out how to work collaboratively with them. But mostly unions really knew very little about them and were trying to figure out how, if at all, to interact.*

*At that point, with the go-ahead from our union leadership, the AFL-CIO decided to use the lawyer network to try to explore relationship-building with the worker centers and get our union clients more comfortable with them. We were fortunate to have had progressive leadership inside the AFL-CO at the time that was very interested in this, and particularly supportive of allowing the lawyers to play this role, with a good deal of autonomy basically to allow the lawyers to design and carry out this program , a program that went well beyond traditional legal work. I found that there were large numbers of lawyers who had enough standing inside their own unions to be given their own union client's blessing to participate in this work, and they included both in-house and external lawyers as well. In some cases that may have been because the union leadership was truly interested in the project, and happy to have the lawyers participate and report back; in other cases, it may simply been that the lawyers, themselves, were interested, thought the project was potentially useful for their union clients, and had enough respect from their union leadership to be allowed to play this role, even if the union leaders were more indifferent (or even skeptical).*

*In any event, the lawyers started building coalitions between the unions, and the worker centers. And little by little, that started spilling over into other union departments at the AFL-CIO, such as the organizing department, the health and safety department, the corporate research department, and others. It was interesting, and many of the union leaders ultimately determined it had been worthwhile. And I always felt that the lawyers had somewhat acted as the labor movement's vanguard in getting this project designed and off the ground.*

*Which, I think, illustrates the potential that union lawyers have to play important roles - not instead of, but in addition to, their more traditional ones. Mindful, of course, of the all-important relationship that union lawyers must develop with the union leadership as you have all been discussing today.*

*So once again - Gayatri, Max, Nancy, Steven - thank you all so much for participating in today's discussion. You've offered many terrific insights.*

The International Lawyers Assisting Workers (ILAW) Network is a membership organization composed of trade union and workers' rights lawyers worldwide. The core mission of the ILAW Network is to unite legal practitioners and scholars in an exchange of information, ideas and strategies in order to best promote and defend the rights and interests of workers and their organizations wherever they may be.