

Co-Production:

Bringing Together the Unique Capabilities of Government and Society

for Stronger Labor Standards Enforcement



Janice Fine, Rutgers University Center for Innovation in Worker Organization



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THE LIFT FUND IS A FIRST-OF-ITS-KIND PARTNERSHIP BETWEEN LABOR UNIONS, PHILANTHROPY AND WORKER CENTERS. Its goal is to strengthen and advance the movement for workers' rights, good jobs and a fair economy by funding collaborative projects between worker centers and traditional labor organizations. The LIFT Fund aims to explore, develop and test innovative strategies to improve labor market standards and build long-term economic and political power for workers. It does this by identifying promising partnerships, documenting successful models and sponsoring cross-sector, field-level convenings to share emerging practices.

In April 2013, The LIFT Fund held its first grantee convening in Austin, Texas. In one of the small group sessions, a vibrant conversation emerged around the issue of monitoring and enforcing policies that protect low-wage workers. One of the key questions asked was “how do we monitor and enforce effective workplace laws that uphold labor standards while supporting the ongoing building of worker power over the long term?” This question led the LIFT Fund to commission Janice Fine of Rutgers University to write this report as well as invest resources in grants to organizations actively engaged in monitoring and enforcement strategies at a local level.

Increasingly, worker centers and unions are creating new strategies to improve and enforce wage and hour, health and safety, and other key labor laws within strategic local labor markets. Campaigns are focused on rooting out low-road business practices and improving industry standards. Co-production of enforcement aims to create new opportunities for building worker power, ensuring workers and worker organizations play an essential role in the implementation of key labor laws. In some cases, new employer responsibilities (i.e., putting up a bond to ensure wage theft claims will be paid) and other strategies that promote high-road business practices have been created. In other cases, new strategies for revenue generation and sustainability also are being explored. This report examines a broad range of opportunities around monitoring and enforcement that are working to shift industry standards and build support systems for low-wage workers.

For more information about the LIFT Fund, please visit our website, theliftfund.org, or contact Monique Mehta at liftfund@gmail.com.

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Executive Summary

GOVERNMENT + CIVIL SOCIETY = IMPROVED ENFORCEMENT

To increase compliance, the Wage and Hour Division (WHD) at the U.S. Department of Labor has been targeting specific high-risk industries in which there is a lot of subcontracting, independent contracting and reliance on temporary workers for intensive inspection. WHD's strategic enforcement strategy entails focusing at the top of industry structures, targeting entire business entities rather than individual workplaces, thus holding joint employers liable for violations. It is a huge step forward. However, for strategic enforcement to fulfill its promise, workers, worker organizations and high-road firms must play a central role in government labor standards enforcement efforts. Without the knowledge that workers have about workplace practices and conditions, and the relationships of trust they have with worker organizations, government never will have the information and trust required for vulnerable workers to come forward.

Effective deterrence in low-wage sectors necessitates *co-production: worker, worker organization and high-road firm* participation in enforcement and *greater transparency* among government, workers and worker organizations. Co-production of enforcement is when those closest to the action, with the most information and the greatest incentives, partner with government and are accountable to government to enforce labor standards, and health and safety laws. Under co-production, unions, worker centers, legal and community-based nonprofit organizations, and high-road firms, partner with government inspectors to educate workers on their rights and patrol their labor markets to identify businesses engaged in unethical and illegal practices. In contrast to government contracting

with a third party to deliver a service previously delivered by a government agency, co-production is intended to complement, rather than replace, government enforcement capacity.

FOUR CORE DESIGN PRINCIPLES UNDERPIN CO-PRODUCED ENFORCEMENT

1. Recognize and leverage the unique, nonsubstitutable capabilities of government and society.

The **government** has the power to set standards and strongly advocate for them, to incentivize behavior and compel firms to undertake improvements. State regulators have the power to demand information, to investigate workplaces through conducting on-site inspections and reviewing the payroll records of companies, and to punish through fines, suspensions and closing down firms.

The **Workers** have unique capabilities to enhance enforcement because they are regularly present at the worksite, have direct knowledge of the work process, and have firsthand experience with changes in working conditions and employer practices.

The **Worker organizations** can enhance the work by identification of noncompliance through relationships with workers, outreach to workers in targeted sectors, and the trust of workers so that when the organization vouches for the agency, workers are willing to come forward and file complaints.

High-road firms have the power to establish a set of best practices at their own facilities regarding wages, working conditions, benefits and scheduling, and to use their buying power to require these practices of firms throughout their supply chains, backed up by strong market consequences for violators.

2. Routinize the flow of information and resources across the state-society divide.

Regulators need to have access to the information about what is happening at the workplace level that worker organizations have through their connections to workers. Equally, worker organizations that are actively bringing workers forward to government need to know not only what the regulatory agency is capable of doing and how it functions, but also to be consulted about strategy and kept abreast of how cases are proceeding.

Resources are instrumental to extending the operational capabilities of both government agencies and worker organizations. Enforcement-related work is very time consuming and it competes for resources with other critical activities like organizing and service provision. When resources also flow from the state to society as is proposed here, regulatory partnerships can strengthen the ability of worker organizations to support enforcement.

3. Prioritize the relationship, using clear communication and decision-making processes and modulation of demands.

The success of co-production depends upon strong relationships¹ among government enforcement agencies and workers, worker organizations and high-road firms. Trust, adaptation, accountability and communication are key. Collaborative governance is not possible without facilitative leadership on both sides that brings stakeholders together, sets and maintains clear ground rules, builds trust, facilitates dialogue, explores mutual gains and works together in a collaborative spirit.

4. Political support to create and maintain collaboration.

Political support for enforcement agencies is crucial, because business interests in the United States frequently push back against regulation and attempt to discredit regulators. Co-produced enforcement requires additional support because it is not seen as the norm; therefore, there must be willingness and capacity among multiple actors to advocate for the partnerships.

While co-production might sound like a departure from standard government norms and practices, it is not. Many rules, regulations and standards are developed and

administered by firms in the private sector in cooperation with government. There are examples of formal grants of government power to private groups at the federal, state and local levels going back to the early 1800s. The original architects of the Fair Labor Standards Act of 1938 envisioned the setting of minimum standards by industry, along with a robust role for civil society organizations in enforcing them.

CO-PRODUCTION IN PRACTICE

Previous research by Fine and Gordon (2010) and Fine (2013) profiled several contemporary examples of co-production at the local, state and federal levels. Support from The LIFT Fund in 2014 made the exploration of six additional cases of co-production possible. These are:

Workers Defense Project (WDP) and the Austin Police Department, the City of Austin and OSHA

- OSHA signed a Memorandum of Understanding with WDP to work together on improving enforcement on Austin construction sites. The organization surveyed construction sites and OSHA conducted inspections of worksites that WDP identified as problems. OSHA issued multiemployer citations and provided the organization with Susan Harwood grants to engage in training and education.
- The Austin Police Department (APD) and WDP worked together to investigate and enforce wage theft under the state criminal theft of service law.
- The city of Austin required Apple to allow WDP to regularly walk its construction site and provide all workers with WDP contact information. It required Trammell Crow, another large private developer, to allow a WDP representative to accompany representatives of the developer and the general contractor on scheduled monthly safety inspections, and to investigate and address concerns raised by construction workers regarding safety conditions or wages.

National Guestworkers Alliance (NGA) and OSHA

- Worked together to gather evidence of unsafe conditions at a subcontracted warehouse distribution center of Hershey Corp. in Palmyra, Pennsylvania, from student guestworkers. Companies were cited for nine problems, including six willful workplace safety and health violations totaling \$283,000. NGA broke new ground by expanding the use of the OSHA walkaround rule to worker centers and rooting out illegal and unethical practices in the J-1 cultural exchange visa program.

Community Labor Environmental Action Network (CLEAN) Carwash Campaign, the California Division of Labor Standards Enforcement (DLSE), the Underground Economy Unit of the California Attorney General's office and the Los Angeles City Attorney's office

- DLSE had the campaign make a presentation to all investigators, created ongoing access to field investigators, and encouraged them to work together with the campaign to build cases and to interview workers at the worker center. It also coordinated on sweeps, strategized on organizing campaigns and contracted with the Wage Justice Center to enforce their judgments.
- The Los Angeles city attorney filed a criminal complaint against the campaign's largest target on the basis of the state's unfair competition law and openly touted unionization as a means to clean up the sector. Owners were sentenced to prison and ordered to pay \$1.25 million in unpaid wages.
- The California attorney general filed a \$6.6 million lawsuit against eight of the 15 carwashes owned by one family (another major campaign target). Faced with a huge settlement, the family agreed to a union neutrality agreement and became the first unionized carwash in the United States.

San Francisco Office of Labor Standards Enforcement (OLSE) and "the Collaborative" (of worker centers and nonprofit legal advocacy groups)

- The first local enforcement agency in the country was established in 2001 to monitor prevailing wage and now has a staff of approximately 20 monitoring 11 local labor laws. In 2006, the San Francisco Board of Supervisors amended the minimum wage ordinance to add a section that required OLSE to establish and fund a community-based outreach program. Asian Law Caucus, Chinese Progressive Association, Dolores Street Community Services, Filipino Community Center, La Raza Centro Legal, Pride At Work and Young Workers United now receive a total of approximately \$750,000 per year to engage in education, outreach, complaint identification, counseling, and resolution or referral. By the end of FY 2013, OLSE had collected \$6,573,572 in back wages and interest since the ordinance went into effect in 2004, for more than 3,000 workers.

Los Angeles Black Worker Center (LABWC) and the Metropolitan Transit Authority (Metro)

- Groundbreaking project labor agreement has national and local targeted hiring goals for a \$70 billion Federal Transit Administration-approved project. In addition to federal affirmative action requirements, LA Metro has agreed to a 10% "disadvantaged worker" component. The goal is to double the representation of black construction workers on transit projects, particularly in predominantly black neighborhoods. Crenshaw/LAX Transportation Project is first up. LABWC is monitoring the contractor, subcontractors and unions to ensure they comply. There is an oversight table that includes Metro, contractors, elected officials, the Equal Employment Opportunity Commission and city agencies together with LABWC to review recruitment and retention numbers and develop strategies for raising them, in real time. LABWC has won access to all pre-jobs meetings conducted by Metro with contractors and is negotiating for access to jobsites, and also is working with the parties on developing a complaint system.

Coalition of Immokalee Workers (CIW), the Fair Food Standards Council, corporate tomato buyers and the Florida Tomato Growers Exchange

- Some of the largest tomato buyers in the country, including Yum Brands, McDonald's, Burger King, Aramark, Bon Appetit and Walmart, signed legally binding agreements to pay farmworkers between a penny and 4 cents more per pound and work together to implement a code of conduct in the fields, including a requirement to cut contracts for repeat noncompliance. The code of conduct resulted in dramatic improvements, including the direct hire of farmworkers (which has resulted in less power for crew leaders), the addition of time clocks in the fields, compensation for wait time, a 24-hour hot line and 48-hour complaint process, a grievance procedure, shade, water and toilets in the fields, zero tolerance for sexual harassment, worker-to-worker education and workers paid for the time they spend receiving training from CIW and farm-based health and safety committees.

FINDINGS FROM THE CASE STUDIES

1. Deep collaboration and trust have been instrumental to the success of co-production efforts.

Ongoing public relationships between worker organizations and government bodies are at the center of each of the six cases. Agency leaders and investigators found that access to workers and their willingness to come forward greatly

increased when they were in relationships with organizations the workers trusted. Likewise, when they felt they could trust organizations, government officials articulated strong advantages to working closely with them. Strong, collaborative relationships between worker organizations and businesses also have begun to emerge. Some of these are with firms that once were highly opposed to the involvement of workers' organizations in their sectors; others are with firms at the top of supply chains that have agreed to require their contractors and suppliers to comply and cease doing business with them if they do not.

2. Organizations playing a formal role have enabled more effective monitoring and enforcement of labor and employment laws in low-wage sectors.

Government officials are largely positive about what organizations are bringing to the table. Concern on an agency's part that close collaboration with civil society organizations could lead to charges of favoritism or breaches of confidentiality reinforces the importance of formalization of the relationship with a clear set of rules and procedures. However, while formalization may be necessary, it is not sufficient when the commitment to the collaboration on either side is weak.

3. Co-production is building institutions and making gains sustainable.

Development of effective enforcement models has become increasingly urgent as more labor mandates are being passed at the local and state levels. Cities are considering expanding the enforcement role of existing agencies, the establishment of new institutions, and formal contracts with worker organizations and legal nonprofits to assist in enforcement activities. In regions and sectors where public agencies historically have been weak, innovative place-based and sector-specific private monitoring regimes linked to strong market consequences have emerged.

4. Co-production leads to new approaches to building worker power and raising standards.

Organizations are finding new pathways to worker power through representation in private inspection regimes, settlement agreements, direct action, worker-to-worker education and public policy.

The crisis of compliance in low-wage industries will not be solved through enforcement initiatives undertaken by the state alone. Re-embedding a norm of compliance will require creative collaboration between government, workers, civil society organizations and high-road firms. This study provides concrete evidence for the promise of collaboration between the state and civil society.

Some Notes on Constructing a Local Co-Production Regime

A local co-production regime would begin with the establishment of a government institution with the power to generate resources by requiring low-wage employers to register and post bonds as well as to levy fines, and the tools necessary to gauge noncompliance, respond to complaints and carry out strategic enforcement across low-wage sectors. The institution would have a formal mandate to enter into partnerships with civil society organizations and administrative procedures, and staff assigned to facilitate them.

The agency would have the power and administrative capacity to create sector-specific bodies in problem industries with responsibility for standard setting, registration and licensing, as well as for the establishment and coordination of formal mechanisms for worker voice and participation at the workplace. It would be funded by a tax on employers in highly noncompliant sectors, licensing fees and fines,² and would allow complaints on behalf of workers to be filed directly by unions, worker centers, legal advocacy organizations and others (third-party complaints). The agency would have detailed administrative procedures through a field officers' handbook, access to which would be broadly available. It would carry out baseline sectoral studies of wage and hour and health and safety compliance, and then would prioritize specific sectors based on the extent of noncompliance found in the sector (when noncompliance exceeded a certain percentage, a more intensive program would be triggered). When noncompliance is found to be above a certain threshold in a sector, the agency would take the following steps:

1. Convene a sectoral table that brings together high-road employers, unions, worker centers and nonprofit legal organizations with government to devise and implement strategic approach to enforcement.
2. Establish a licensing and registration regime that requires employers to register with city or state agencies, connects registration and licensing to wage and hour and health and safety compliance, and requires annual renewal.
3. Require firms in highly noncompliant sectors to fund heightened enforcement/penny per hour to enforcement fund or to post a high bond as part of licensing, with an exception for those firms that have a collective bargaining agreement.
4. Create a sectoral employer association that regularly convenes discussions and trainings (as a strategy for establishing new norms and communities of compliance).

5. Establish mechanisms for worker voice, both at the workplace level and across the sector (e.g., elected workplace representatives who receive training and have authority to provide training and assistance for co-workers).
6. Fund worker organizations to conduct training, education and enforcement, and provide them a broad mandate and standing to engage in each stage of the enforcement process.
7. Commit investigators to work with employer associations and worker organizations to investigate complaints of labor standards noncompliance.
8. Strive for parity between worker organizations and firms with respect to information-sharing and settlement negotiations.

Endnotes

1 See Dara O'Rourke on the importance of social and political connections or linkages among state agencies and between state officials and civil society actors as well as firms. O'Rourke, *Community Driven Regulation: Balancing Development and the Environment in Vietnam*, 225.

2 For more on generating fees for labor standards enforcement, see Haeyoung Yoon, “Local and State Business Registration Fees” (presentation for the Roosevelt Institute, New York, New York, March 12, 2015).

Introduction: Enforcement in Crisis

In the United States today, low-wage workers comprise about one-fourth of the labor force, and their ranks have been growing steadily.¹ Occupational projections by the U.S. Bureau of Labor Statistics predict that by 2016, *fully half* of all jobs will require only modest on-the-job training and little, if any, post-secondary education.² Since 1994, more than 120 municipalities have enacted living wage ordinances,³ and since 2003, 15 cities and counties have passed minimum wage laws higher than the federal level.⁴ In 2014 alone, Seattle and San Francisco raised their minimum wages to \$15 an hour and four states—Alaska, Arkansas, Nebraska and South Dakota—voted to raise their minimum wages as well. These are critical and creative interventions. But how are the new laws to be enforced? If contemporary rates of federal minimum wage, overtime, and health and safety violations are any indication, we should be worried.

For many low-wage workers, noncompliance with basic labor standards and health and safety laws by businesses of all sizes has become the new normal. Health and safety violations and fatalities are at unacceptable levels. In 2013, an average of 88 workers died on the job every single week—more than 12 workers a day. Foreign-born Latinos were especially vulnerable, averaging more than 15 deaths a week. Many workplace injuries are preventable: in 2014 there were more than 6,000 OSHA citations issued for businesses lacking fall protection for their workers, more than 5,000 for not communicating dangerous workplace hazards, 4,000 for not having proper scaffolding and more than 3,000 for not providing adequate respiratory protection. In addition to workplace hazards, wage theft is rife in low-wage sectors.

A path-breaking study in 2009 in the nation's three largest cities—Chicago, Los Angeles and New York—found that 26% of workers⁵ suffered minimum wage violations in the week prior to being surveyed, and that more than 76% of those who had labored more than 40 hours in the prior week had not been paid according to overtime laws.⁶ In some regions, the U.S. Department of Labor (DOL) itself recorded Fair Labor Standards Act (FLSA) compliance levels below 50% in such industries as nursing homes, poultry processing, day cares and restaurants.⁷ In 2013, the Southern Poverty Law Center found that 41% of Latino immigrants

working in the agriculture, construction, hospitality and poultry processing industries in towns and cities in Northern Alabama; Charlotte, North Carolina; rural southern Georgia; Nashville, Tennessee; and New Orleans also had experienced wage theft. In New Orleans, a staggering 80% of workers surveyed reported having experienced wage theft.⁸ Most recently, in a study conducted on behalf of the DOL, the Eastern Research Group found that in 2014, between 3.5% and 6.5% of all wage and salary workers in California and New York were paid less than the minimum wage. The group estimated that more than 300,000 workers in every state suffered minimum-wage violations each month.⁹ Why is noncompliance in certain sectors so high?

Firms comply with health and safety and minimum wage laws for one of three reasons: economic—it costs them less to comply than to risk fines and penalties; social—they don't want to be unfavorably compared with others in their industry; and normative—they believe it is the right thing to do.¹⁰ Unfortunately, for too many employers of low-wage workers, the economic motives are in the opposite direction and the incentives not to comply are swamping any social or normative incentives to do so. The desire to cut costs and limit liability also has contributed to the “fissuring” of the employment relationship,¹¹ in which companies have shifted direct employment of workers to other business entities through heightened subcontracting, increased use of fixed-term contracts, temporary staffing agencies and independent contracting arrangements. In reaction to tight competition and thinner profit margins, subcontractors are strongly incented to cut costs wherever they can, and low-road practices have become normalized across many labor markets. Those firms that want to maintain higher standards are placed at an enormous disadvantage. A systemic transformation is needed.

Broader, more impactful enforcement of basic labor standards must begin with an effective logic of deterrence. In order to convince firms that lack the social or normative motives to comply with the law, there must be a credible threat of powerful consequences through detection and costly punishment.¹² Thanks to groundbreaking research conducted over many years by David Weil, now the

Wage and Hour Division (WHD) administrator, and strong leadership by others at the DOL, strategic or directed enforcement has become a significant programmatic focus.¹³ To increase compliance, WHD has been targeting specific high-risk industries in which there is a lot of subcontracting, independent contracting and reliance on temporary workers for intensive inspection. High-risk sectors include residential construction, eating and drinking establishments (especially fast food), hotels/motels, janitorial services, landscaping/horticultural services, retail trade, health care and home

health care services, domestic work and agriculture.¹⁴ WHD's strategic enforcement strategy entails focusing at the top of industry structures, targeting entire business entities rather than individual workplaces, holding joint employers liable for violations and expanding the use of the "hot goods" provision of the FLSA.¹⁵ It is a huge step forward. However, for strategic enforcement to fulfill its promise, workers, worker organizations and high-road firms must play a central role in government labor standards enforcement efforts.

Co-Production is the Next Frontier

Effective deterrence in low-wage sectors necessitates *co-production*: *worker, worker organization* and *high-road firm* participation in enforcement and *greater transparency* between government, workers and worker organizations. Without the knowledge that workers have about workplace practices and conditions and the relationships of trust they have with worker organizations, government never will have the information and trust required for vulnerable workers to come forward.

Co-production of enforcement is when those closest to the action, with the most information and the greatest incentives, partner with government and are accountable to government to enforce labor standards, and health and safety laws. Under co-production, unions, worker centers, legal and community-based nonprofit organizations, and high-road firms partner with government inspectors to educate workers on their rights and patrol their labor markets to identify businesses engaged in unethical and illegal practices.¹⁶ In contrast to government contracting with a third party to deliver a service previously delivered by a government agency, co-production is intended to complement rather than replace government enforcement capacity.

To have a meaningful impact on government enforcement, collaborations must be ongoing and robust. They must be *formalized, clear and enforceable* (parties openly negotiate their expectations and make binding commitments to each other to ensure trust, including the distribution of resources; this is also important to render partnerships less vulnerable to changes in leadership), *sustained* (so that relationships between the staff of the agency and the organizations have time to develop, increasing the resiliency of the bond in the face of conflict, and so that lessons learned can enrich the next stages of the collaboration),¹⁷ and *vigorous* (so that the role of third-party partners is not symbolic, marginal or merely consultative, but fully integrated into the work of the agency).¹⁸ The partnerships also must be adequately *resourced*—government enforcement agencies must allocate enough staff to mount a credible effort and provide a threshold level of financial support to partner organizations that need it in order to

fully participate, either through direct funding or levying enforcement fees on businesses in sectors with high levels of labor standards noncompliance.

FOUR CORE DESIGN PRINCIPLES UNDERPIN CO-PRODUCED ENFORCEMENT

1. Recognize and leverage the unique, nonsubstitutable capabilities of government and society.

The government has the power to set standards and strongly advocate for them, to incentivize behavior and compel firms to undertake improvements. State regulators have the power to demand information, to investigate workplaces through conducting onsite inspections and reviewing the payroll records of companies, and to punish through fines, suspensions and closing down firms. They have the ability to identify retaliation against complainants and informants, and provide protection through a heightened monitoring presence and punishment. By targeting specific sectors and citing specific employers, the state also has the power of legitimization¹⁹ of the claims of worker organizations and experiences of workers. Beyond formal power, the stance taken by government matters a great deal. “Bureaucratic neutrality” does not mean that agencies must adopt a neutral posture with regard to enforcing labor codes and protecting workers. In 1937, the Supreme Court ruled in *West Coast Hotel v. Parrish* that Washington State could restrict the terms of private contracts in order to protect the welfare of its citizens, and that it could impose minimum wage regulations on private employers without violating the 14th Amendment. In a groundbreaking 5-to-4 decision, the court held that it was constitutional for governments to set a floor under which wage levels could not drop in order to protect the health and welfare of workers.²⁰ As we have seen, without vigorous enforcement, the floor gives way.

Workers have unique capabilities to enhance enforcement because they regularly are present at the worksite, have direct knowledge of the work process, and have firsthand experience with changes in working conditions and employer practices. They also have relationships with other

workers. But it is often only through relationships with organizations and the information they uncover due to the trust they have in the community that investigators will learn about violations and gain access to and trust of workers.

Worker organizations can enhance the work through identification of noncompliance through relationships with workers, outreach to workers in targeted sectors and the trust of workers, so that when the organization vouches for the agency, workers are willing to come forward and file complaints. Organizations that are grounded in communities and have relationships with workers, organizational capacity and make the choice to focus some of their resources on enforcement can provide inspectors with specialized knowledge of industry structures and details of the range of subcontracting arrangements and employment practices, as well as tips on employers who are not complying with laws on wages and hours, occupational health and safety. They can help gather information about firm practices, encourage workers to file complaints with state and federal agencies, and provide technical assistance to them in doing so, including helping to assemble the information necessary to bringing cases, like gathering testimony and documentation from workers about hours worked, deductions taken and safety conditions. Organizations can help identify the full scope of a subcontractor's operations and expand cases beyond initial complainants by identifying others who have been impacted. They can assist inspectors in engaging ethnic communities through language interpretation and providing access to community institutions and leaders. They can work through worker networks to identify workers employed in targeted firms and industries and provide a safe space, interpretation and facilitation for inspectors to meet with workers who might be intimidated about going to a government office to discuss their situations.

High-road firms have the power to establish a set of best practices at their own facilities regarding wages, working conditions, benefits and scheduling, and to use their buying power to require these practices of firms throughout their supply chains, backed up by strong market consequences for violators.²¹ They have the power to join with like-minded businesses to advocate for high-road practices in their sectors and to strengthen enforcement of minimum standards through working with government agencies and worker organizations as well as financing private monitoring and watchdog organizations to patrol labor markets for unfair competition.

2. Routinize the flow of information and resources across the state-society divide.

What needs to flow across the state-society divide to make enforcement more effective? To begin, regulators need to have access to information that worker organizations can provide at a granular level. Equally, worker organizations that are bringing workers forward need to know not only what the regulatory agency is capable of doing and how it functions (more on this below), but also to be consulted about strategy and kept abreast of how cases are proceeding. Advocates express tremendous frustration that, after they have done the work of persuading workers to come forward and helping them file complaints, a “cone of silence” often descends over the case and there is a lack of information sharing by government officials. The lack of information about the progress of cases undermines organizational credibility with workers. In fact, there is a dramatic imbalance between information shared and opportunities provided to employers vs. workers and worker organizations to intervene in the process. This is certainly the case with the Fair Labor Standards Act, which provides opportunities for employers to meet and negotiate with government without workers or worker organizations present. Lack of information is the major reason worker centers do so much “venue shopping” between government agencies and why they often prefer private lawsuits, where they have much greater control over the process and the case.

Resources also are instrumental to extending the operational capabilities of both government agencies and worker organizations. As a practical matter, the hours worker organizations spend on labor standards and health and safety issues should be viewed as resources flowing from society to the state. Enforcement-related work is very time consuming and it competes for resources with other critical activities like organizing and service provision. When resources also flow from the state to society as is proposed here, regulatory partnerships can strengthen the ability of worker organizations to support enforcement.

3. Prioritize the relationship, using clear communication and decision-making processes and modulation of demands.

Fundamentally, the success of co-production depends upon strong relationships²² between government enforcement agencies and workers, worker organizations and high-road firms. Trust, adaptation, accountability and communication are key to these relationships. Worker organizations emphasize the necessity of collaboration and sharing as much information as possible as quickly as possible in order for them to maintain credibility with workers and to continue to expand cases. Government agencies emphasize

that worker centers and unions need to understand and adapt to the pressures and constraints government must operate within and have the capacity to add real value to investigations. Maintaining support for the collaboration requires both state regulators and worker organizations to accept each other's limitations and modulate the demands each makes on the other. Scholars find that in rare cases, negotiations take place organically without assistance, but that collaborative governance is not possible without facilitative leadership on both sides that brings stakeholders together, sets and maintains clear ground rules, builds trust, facilitates dialogue, explores mutual gains and works together in a collaborative spirit.²³

4. Political support to create and maintain collaboration.

Political support for enforcement agencies is crucial, because business interests in the United States frequently push back against regulation and attempt to discredit regulators. Unions long have mobilized to defend the programs and budgets of labor standards enforcement agencies. Co-produced enforcement requires additional support because it is not seen as the norm, therefore there must be willingness and capacity among multiple actors to advocate for the partnerships.

A Brief History Lesson

While co-production might sound like a departure from standard government norms and practices, it is not. Many rules, regulations and standards are developed and administered by firms in the private sector in cooperation with government. Some scholars have referred to the army of industrial safety experts, toxicologists, industrial hygienists, affirmative action specialists, auditors, product safety experts and environmental engineers employed by corporations as the “response bureaucracy.”²⁴

Today, product standards formulated by engineers who serve on a broad array of private committees cover some 20,000 items, from the width of railroad track to specifications for stainless steel wire and surgical implants. The Registry of Toxic Effects of Chemical Substances, which contains threshold limit values for safe exposure levels in the workplace for hundreds of chemicals, is put together by conferences of government and private experts. Powerful sanctions are wielded by private institutions for inadequate performance: hospital tissue committees and mortality-morbidity committees can bar surgeons who are judged by their peers to have acted unwisely; county medical societies can expel physicians; and the ubiquitous Underwriters Laboratory (UL) can functionally ban an unsafe electrical product from the market simply by withholding its seal of approval.²⁵

There are examples of formal grants of government power to private groups at the federal, state and local levels going back to the early 1800s. While certain powers have been struck down, courts have upheld state statutes that conditioned the practice of medicine upon having graduated from a school receiving an “A” from the American Medical Association, calling for the drawbars of trains to conform to the standard height determined by the American Railway Association and, during the New Deal, the granting of approval powers for benefit payment plans to committees composed of dairy and agricultural producers elected by their peers.²⁶

The history of the American Society for the Prevention of Cruelty to Animals (ASPCA) is of particular interest, because it involves the complete delegation of law enforcement authority. The ASPCA was founded as a nonprofit organization by an act of the New York State legislature in

1866.²⁷ In 1888, the legislature gave ASPCA agents the title of “peace officers,” with the power to enforce the law regarding cruelty to animals, including the ability to carry weapons, investigate complaints regarding cruelty to animals, seize abused animals as well as any vehicles in which they are held, make arrests and conduct searches.²⁸ Similar programs are now in place in states across the country.²⁹ If government can recognize the importance of harnessing and formalizing the power of civil society in the service of the protection of vulnerable animals, extending the argument to vulnerable human beings facing grave injury and mistreatment at work seems reasonable. Again, there is historical precedent.

In 1932, Congress passed the National Industrial Recovery Act (NIRA), which created the National Recovery Administration (NRA) to oversee codes of fair competition through the setting of maximum hours and minimum wages by industry. By including a collective bargaining clause that guaranteed workers the right to organize and to participate in the setting of codes, NRA supporters were trying to provide workers not only with wage and hour standards but also with the bargaining rights that would enable them to ensure business compliance.³⁰ This “regulatory unionism” was viewed as especially appropriate in sectors with many marginal firms in which cutthroat competition on the basis of wages and conditions was the norm.³¹ The key idea was to *combine public policies* that established minimum levels by sector *with bargaining rights* and incentives for employers not to fight unionization.

The NRA also established a Consumer Advisory Board (CAB) to ensure that businesses did not utilize the codes to raise prices unfairly. Consumers were actively enlisted and encouraged to report gougers. Local NRA compliance boards were set up to receive complaints and, in its boldest move, the CAB established county consumer councils to function as local watchdogs.³² They were envisioned as grassroots organizations that would serve as local enforcement agencies to address consumer complaints of price gouging. The county councils did not live up to initial ambitions and the NIRA itself was infamously struck down by the Supreme Court, but the New Dealers persisted in their vision of regulation that combined the setting of minimum standards with the organizational means to achieve them.

The original architects of the Fair Labor Standards Act of 1938 envisioned the setting of minimum standards by industry along with a robust role for civil society organizations in enforcing them.³³ The original wage and hour bill would have regulated the employer's freedom to contract by establishing substantive rights to a fair wage and reasonable hours. It would have established a Fair Labor Standards Board (FLSB) to establish minimum standards by industry.³⁴ The board would not have been impartial—it would have been an enforcement arm to protect basic labor standards, remove them from what Labor Secretary Frances Perkins referred to as the “arena of unfair competition” and ensure that individual workers

secured their rights from employers. Most importantly, enforcement would have gone beyond the administrative apparatus of the agency. The original vision was for unions and firms to band together to police sweatshop employers who then would be tried by the FLSB. Unions, enlightened employers and other types of labor and trade associations would have played a major role in setting and enforcing wages and hours to benefit the workforce. Although not the version of FLSA that ultimately was introduced in and enacted by Congress due to political considerations, the original draft law exemplified what the original drafters thought it would take to enforce standards in low-wage sectors.

Co-Production in Practice

Previous research by Fine and Gordon (2010), and Fine (2013), profiled several contemporary examples of co-production at the local, state and federal levels. Support from the LIFT Fund in 2014 made the exploration of six additional cases of co-production possible. These are:

- Workers Defense Project (WDP) and the Austin Police Department, the City of Austin and OSHA
- National Guestworker Alliance (NGA) and OSHA
- Community Labor Environmental Action Network (CLEAN) Carwash Campaign, the California Division of Labor Standards Enforcement (DLSE), the Underground Economy Unit of the California Attorney General's office and the Los Angeles City Attorney's office
- San Francisco Office of Labor Standards Enforcement (OLSE) and “the Collaborative” (of worker centers and nonprofit legal advocacy groups)
- Los Angeles Black Worker Center (LABWC) and the Metropolitan Transit Authority (Metro)
- Coalition of Immokalee Workers (CIW), the Fair Food Standards Council, corporate tomato buyers and the Florida Tomato Growers Exchange

Although lengthy individual case studies are available, the aim of this paper is to summarize the key findings that emerge when looking across cases.

1. Deep collaboration and trust have been instrumental to the success of co-production efforts.

Ongoing public relationships between worker organizations and government bodies are at the center of each of the six cases. Agency leaders and investigators find that access to workers and their willingness to come forward greatly increased when they were in a relationship with organizations the workers trusted. Likewise, when they felt they could trust organizations, government officials articulated strong advantages to working closely with them.

THE CLEAN CAMPAIGN is a powerful example of what can happen when unions and worker centers collaborate not only to enforce existing labor standards, but also to raise them. Moved by the work being carried out by worker centers and legal advocacy groups in Los Angeles, the national AFL-CIO and the United Steelworkers of America joined forces with the Korean Immigrant Workers Alliance (KIWA), Maintenance Cooperation Trust Fund (MCTF), *Instituto de Educacion Popular del Sur de California* (IDEPSCA) and the UCLA Downtown Labor Center to create the carwashero organizing campaign.

This campaign also exemplifies the promise co-production holds with respect to collaboration with government. When Gov. Jerry Brown appointed Julie Su, former leader of the Asian Pacific American Legal Center, as labor commissioner in 2011, it transformed from an agency that often was perceived as hostile to advocates to an important ally. There is now a close working relationship between DLSE and CLEAN. Su has arranged for CLEAN Carwash Campaign organizers to make presentations to agency staff and created access to field investigators, making clear it was important to communicate and collaborate with the campaign on an ongoing basis. Investigators are briefed by the organization prior to going out to a carwash, so they know what to expect and the names of some workers to ask for when they arrive on site. Investigators do follow-up interviews with workers at the worker center, benefit from CLEAN's assistance on payroll reconstructions and wage calculations and keep the organization informed about the progress of cases. When the agency wants to identify additional workers for a complaint, it asks for CLEAN's assistance. The Bureau of Field Enforcement (BOFE) now thinks about how its sweeps on a particular employer might impact union organizing campaigns.

In addition to its collaboration with DLSE, the CLEAN campaign has worked closely with the Underground Economy Unit of the California Attorney General's (AG) office, which has used a state unfair competition statute³⁵ to pursue civil and criminal cases. The AG has been a strong ally in recognizing that unionization is instrumental to raising standards in the carwash industry. In 2010, with help from the campaign, the AG filed a \$6.6 million lawsuit against eight of the 15 carwashes owned by the Sikder family, charging that the family businesses had not paid

state taxes or unemployment or disability insurance and had falsified payroll records. Employees had not been paid minimum wage for all hours worked or time and a half for overtime; they had been denied meal and rest breaks; and they had not been paid in a timely manner and sometimes were issued paychecks that bounced.³⁶ The suit asked for \$1.7 million in lost wages and \$4.9 million in penalties and unpaid taxes. Faced with a huge settlement, in 2011 the family agreed to a union neutrality agreement. When 30 workers expressed support for the union, Bonus Car Wash signed a collective bargaining agreement, becoming the first unionized carwash in the United States. This was possible because the AG's office made clear it would look favorably on an outcome that would raise standards and would be willing to negotiate on the size of the settlement. Underwriting these actions was the state government's conviction that organizing the sector is in the public interest because it greatly increases the probability of compliance with wage and hour and health and safety laws and stabilizes the industry by eliminating incentives to compete through racing to the bottom.

In Austin, Texas, the **WORKERS DEFENSE PROJECT (WDP)**, a worker center focused on documenting and confronting problems faced by low-wage Latino workers in the construction sector, and the Austin Police Department (APD) have been working together on enforcement of the Theft of Service section of the Texas Penal Code,³⁷ which empowers local law enforcement agencies across the state to investigate wage theft. According to representatives at the APD, even when workers come to them first, they often are referred to WDP because the organization has the expertise and capacity to advise them. When the "intent not to pay" criteria is satisfied, either WDP or APD calls the employer and attempts to negotiate payment. Although in most cases employers assure the detective from the APD they will contact the worker and pay the back wages, most often it does not happen. If negotiations are unsuccessful, WDP sends a certified demand letter with return receipt notifying the employer that wages are owed, along with a memo from the APD explaining the theft of service law and the department's commitment to enforcing it. If the employer does not pay the wages within 10 days, WDP files an arrest warrant³⁸ APD lets WDP know when an arrest warrant has been signed by a judge and is in constant contact with the organization as the case moves forward. Once the warrant is signed, it can be served either by sending a police unit out or when the employer is pulled over for another reason. Once arrested, the employer appears before a judge, who will either make a ruling ordering the company to pay or sending the employer to jail. In addition to the local police

department, WDP has formal arrangements with OSHA, which are described below.

Strong, collaborative relationships between worker organizations and businesses also have begun to emerge. Some of these are with firms that once were highly opposed to the involvement of workers' organizations in their sectors; others are with firms at the top of supply chains that have agreed to require their contractors and suppliers to comply and cease doing business with them if they do not.

From a dynamic foundation of farmworker community organizing in Immokalee, Florida,³⁹ the **COALITION OF IMMOKALEE WORKERS (CIW)** has put in place a worker-led enforcement strategy that has transformed an industry that had been purposefully left out of both the Fair Labor Standards and National Labor Relations Acts.⁴⁰ After a long public pressure campaign, Yum Brands, the parent company of Taco Bell, signed an agreement in 2005 to pay a penny more per pound of tomatoes, to be passed on by growers to the workforce. It won similar agreements with McDonald's in 2007, Burger King, Subway and Whole Foods in 2008, Bon Appetit and Compass Group in 2009, Aramark and Sodexo in 2010, Trader Joe's and Chipotle Mexican Grill in 2012 and Walmart in 2014. After a long struggle, the Florida Tomato Growers Exchange (FTGE), the main trade association representing about 80% of tomato farmers, agreed to sign a code of conduct and implement the original penny-per-pound pass-through that is now called the Fair Food Program Premium. The Fair Food Code of Conduct was implemented in 2011, and CIW and representatives of the FTGE meet regularly to review progress and further refine policies and procedures.⁴¹ The result is a high-road mode of production in which tomato buyers at the top of the supply chain have made possible the transformation of tomato growers' labor practices and created strong market incentives for ensuring the fair treatment of farmworkers.

The code far surpasses existing agricultural worker regulations. It includes a 24-hour hot line with a 48-hour turnaround time along with a zero tolerance for sexual harassment policy. It mandates water, toilets and shade in the fields and the establishment of farm-based health and safety committees. In addition to the fair food program premium (FFPP), which ranges from 1.5 to 4 cents per pound, the code includes a requirement that all farmworkers be directly employed by the growers, rather than by farm labor contractors and crew leaders who, with the power to hire and fire, had been the main enforcers of a deeply rooted oppressive system. Additionally, the code stipulates

that the time workers spend waiting before being allowed to begin working in the fields be compensated and that identity cards and time clocks be in use at every farm. In the past, workers would report to the buses at 5 a.m., arrive at the farms by around 7 a.m. and might spend another two or three hours waiting for the dew to dry on the crops—all without compensation. There is also mandatory worker education on these rights, both at the point of hire and twice a season, with presentations on each farm by CIW—and workers must be paid for the time they spend listening to the presentations.

Corporate buyers speak passionately about their relationship to CIW and FFSC. Cheryl Queen, who leads communication and corporate affairs for Compass Group USA, the leading contract food and support services company with annual revenue of \$12 billion, said “They are a wonderful partner.... This is a very special human relationship and there is enormous trust on both sides.” Eric Brown, head produce buyer at Whole Foods, expressed similar sentiments: “Our relationship with CIW and FFSC is important to us and it is important to me personally. It has been empowering to support this program and we wholeheartedly enjoy it.”

Many buyers and growers have begun to view the organization as a useful partner in capacity building and risk prevention and have adopted a cooperative attitude toward jointly resolving worker complaints with the FFSC. Brown, the Whole Foods buyer, appreciates that “We have a partnership that is legally binding and we can say to growers...if you want to sell your tomatoes to Whole Foods, here’s the number to call and start the process.” Longtime farmworker and CIW leader Julia de la Cruz believes it would be difficult to overestimate the magnitude of the shift: “...Workers now have the ability to speak out about problems. Before, no one could say ‘this money was stolen from me or this abuse was happening in the fields,’ because they would get fired if they did. But now people have an avenue to point out problems. It is like night and day.”

As a result of Workers Defense Project’s (WDP) work publicizing serious health and safety and wage theft problems in construction, the **Austin City Council held off on approving several large projects until companies signed “Better Builders Agreements”** with the organization that specified terms and conditions on the jobsite and allowed WDP monitors to enforce the agreements through visiting worksites regularly and talking to workers to make sure standards were being met, and doing general safety walk-throughs to ensure safe working conditions.

Apple and WDP negotiated an agreement on Apple’s \$300 million project in north Austin. The agreement requires a minimum wage of \$12/hour, that all workers on site will be certified with basic OSHA-10 safety training, provided with all necessary personal protective equipment free of charge and covered by workers’ compensation. Rest and water breaks will be given as required by city code, the general contractor will have an OSHA-30 certified safety representative for the project and subcontractors will be provided information about WDP’s OSHA-10 training courses as well as information regarding local occupational training programs. A WDP representative periodically will be allowed to walk the construction site with a representative of the general contractor. Workers will be provided contact information for WDP, the general contractor and Apple representatives, so as to report issues concerning nonpayment of wages. According to Stephanie Gharakhanian, WDP legal and policy director, there was a lot of public pressure on Apple because of worker deaths at Foxconn, one of the company’s major subcontractors in China: “It was a political moment in which Apple was more sensitive to allegations of workplace abuse or not being responsible auditors of their own subcontracting chain.”

Trammell Crow Green Water Master Developer LLC pledged to comply with prevailing wage and OSHA requirements and “all applicable state and federal laws relating to construction, including laws related to labor, equal employment opportunity, safety, workers’ compensation and other applicable insurance and wage and hour” standards, and to work with the WDP on enforcement of these standards. The agreement allows a WDP representative with a minimum of 30 hours of OSHA-approved supervisor safety training to accompany representatives of the developer and the general contractor’s safety representative on scheduled monthly safety inspections and requires reasonable signage to be posted on site with contact information for WDP. It also encourages construction workers to contact WDP regarding project safety or wage issues, contains a strong commitment to work with WDP to investigate and address concerns raised by construction workers regarding safety conditions or wages, and prohibits contractors from retaliating against construction workers who address workplace concerns with WDP.

In October 2013, at WDP’s urging, the city shifted from a practice of working toward individual agreements with contractors to the establishment of a citywide policy that ties worker protections to Austin’s corporate incentive program. Developers seeking fee waivers and economic incentives, or trying to purchase and build on city land, now are required to:

1. Adopt a living wage floor (currently \$11/hour) and pay a prevailing wage that would provide a ladder up from the living wage as workers obtain training and experience;
2. Obtain workers' compensation insurance;
3. Hire hard-to-employ workers; and
4. Provide basic safety training to all workers.

While the city is charged with monitoring and enforcing the standards, there are no specifics on the enforcement mechanism. Inspired by CIW's example and with its help, WDP has acted as the monitor on six projects, and is in the process of creating a private monitoring program that would charge a fee to work with developers, monitor their projects and offer a Better Builders credential to qualifying companies. According to the WDP's Gharakhanian, although developers are paying only a nominal fee right now, the organization is working with the Workers Lab and nonprofit business consultant Peter Murray to develop a plan for the monitoring work to become revenue generating. The organization hopes to strike a balance between continuing to identify policy hooks that facilitate the raising of standards and transforming the monitoring function into a product and a service. Gharakhanian says that while the organization continues to look for arenas in which high-road behavior can be incentivized through policy hooks, WDP is hopeful that businesses will see the monitoring work as added value.⁴²

2. Organizations playing a formal role have enabled more effective monitoring and enforcement of labor and employment laws in low-wage sectors.

Government officials largely are positive about what organizations are bringing to the table. Concern on an agency's part that close collaboration with civil society organizations could lead to charges of favoritism or breaches of confidentiality reinforces the importance of formalization of the relationship with a clear set of rules and procedures. However, while formalization may be necessary, it is not sufficient when the commitment to the collaboration on either side is weak.

THE LOS ANGELES BLACK WORKER CENTER (LABWC) works with black trade unionists and the building and construction trades unions to increase access to quality careers, address employment discrimination and improve conditions in industries that employ black workers in Los Angeles. It has set a goal of doubling the representation of black construction workers on transit projects, particularly those in predominantly black neighborhoods. In 2012,

the organization was a leading participant in a labor/community coalition that won the first metropolitan transit authority project labor agreement (PLA)⁴³ in the nation with national hiring goals for federally funded, Federal Transit Administration-approved projects. It is very big—covering \$70 billion worth of projects, with projections of creating more than 270,000 jobs. The organization has been focused on how to most effectively monitor and enforce the terms of the PLA.

Since construction commenced on the \$2.058 billion Crenshaw/LAX Transit Project in early 2014, LABWC has been developing strategies for strengthening the pipeline of black workers into the construction sector, providing ongoing support to ensure they succeed in their occupations and monitoring both the numbers of workers hired and employed on the jobsite as well as their experiences on the job. The organization's benchmark for success on the Crenshaw project is 25% black, 5% female and 20% apprentice participation.

LABWC created the Community Compliance and Monitoring Program to ensure that Metro, Walsh-Shea (the general contractor on the Crenshaw/LAX project), any subcontractors and participating unions all comply with the spirit of the PLA. The PLA requires the contractor to hire a jobs coordinator whose job is to facilitate implementation of targeted hiring requirements.⁴⁴ Metro releases a monthly Targeted Worker Report, but it is based on self-report data from contractors. Working with researchers from the University of Southern California, LABWC developed a Community Compliance Monitoring Toolkit with a methodology for carrying out project oversight, generating hiring statistics that can be compared to the Metro Targeted Worker Reports.⁴⁵ Additionally, given the enduring problem of blacks not being employed in the trades, the organization pushed for the establishment of an oversight table that is regularly bringing Metro, contractors, elected officials, Equal Employment Opportunity Commission (EEOC) representatives and city agencies together to review the recruitment and retention numbers, consider strategies for raising them, and probe the issues that affect black workers on the worksite, in real time. From Metro's perspective, LABWC brings unique capacities to the monitoring and enforcement process. According to Miguel Cabral, head of strategic business, PLA and construction careers, "They are right in the middle of the Crenshaw corridor and can advocate for the goals of the PLA and refer workers to the jobs coordinators. They are great partners and are providing things to make our PLA successful."

Due to the peculiar nature of construction, which happens in stages, it is particularly important to review numbers frequently and over the entire life of the project. Workers often are hired and employed to do specific jobs for limited periods of time. Close monitoring and data analysis has meant the organization is able to note patterns over time, finding that representation of black workers had fluctuated dramatically on the project: from a high of 78% in November 2013 down to 12% by May 2014. LABWC raised concerns that black workers were being employed largely in the early stages, but when site prepping was finished and prime contractor hours were introduced, the percentage of black workers dropped precipitously, suggesting they were not being hired for the long-term work.⁴⁶

Beyond the oversight table, LABWC has won access to all of the pre-jobs meetings conducted by Metro with contractors, is working on getting clear signage that provides information about who is in charge on the jobsite and is gaining access to workers on the jobsite. While protocol requires LABWC members to undergo safety training and sign in and out with the primary contractor, Metro is very supportive of the organization being able to go on job sites. “We have been facilitating this process for the BWC because we want to create a culture of transparency here. We want to put the most accurate numbers out there that we can, and BWC is doing that...” said Cabral. “From what I have seen them do already in terms of marketing, referral, in terms of going on site and doing validation, and providing supportive services to clients who have been placed on the job, publishing a quarterly report on Metro’s PLA summarizing where we are on each project, they have done a lot. I see them as a partner on our PLA...holding us accountable and making sure that we are monitoring and enforcing.”

The **NATIONAL GUESTWORKER ALLIANCE (NGA)** was founded by the New Orleans Workers’ Center for Racial Justice (NOWCRJ), an organization of African American and immigrant workers which began during the post-Katrina cleanup and rebuilding phase, during which thousands of immigrant workers were recruited to come to New Orleans to aid in the massive cleanup. At the time, although working conditions were especially dangerous due to storm damage, OSHA was under a federal order to cease all enforcement actions and engage in “compliance assistance” activities only. Workers could not file complaints to have their workplaces investigated and OSHA was barred from issuing complaints or fines against employers. Strikingly, while the Department of Labor (DOL) was running on a skeletal staff, federal immigration agents were engaging in aggressive enforcement efforts, further discouraging workers from reporting unsafe conditions or wage theft.⁴⁷ In

the face of these challenges, the worker center and NGA did pioneering work in calling attention to what was happening to the reconstruction workers and providing organizing and legal assistance to support them. During this period, the center was also contacted by guestworkers who had been charged thousands of dollars by recruiters and then subject to terrible abuse at luxury hotels damaged by the storm. Those who had spoken up about the exploitative conditions routinely were threatened with deportation. In the years following Hurricane Katrina, NGA has come to the aid of thousands of guestworkers in New Orleans and across the Gulf Coast and beyond, developing deep expertise, becoming forceful advocates for changes in the H2-B visa program and defending guestworkers’ right to organize. It has partnered with several unions, including the United Steelworkers and the United Food and Commercial Workers.

In 2011, NGA filed a complaint on behalf of J-1 students at Eastern Distribution Center III in Palmyra, Pennsylvania, which is owned by the Hershey Corporation, and requested permission for three students and NGA’s legal director to participate as the employees’ representative in the OSHA walkaround at the site. Recognizing the importance of employees being informed of government inspections and directly consulted about their experiences of workplace hazards, congressional drafters wrote them into Section 8 of the Occupational Safety and Health Act, giving representatives authorized by employees the right to accompany compliance safety and health officers (CSHO) on inspections.⁴⁸ This “walkaround” rule meant that OSHA inspectors, upon entering a facility, routinely asked for the highest-ranking union official at the plant to accompany them. At a time when unions represented a third of the U.S. workforce, the rule was largely assumed to apply to labor unions in the plants under inspection,⁴⁹ but more recently, the definition of employee representative is being interpreted much more broadly. Although Hershey opposed it, and Exel Inc. threatened to refuse the inspection, for the first time, OSHA granted the request and designated J.J. Rosenbaum, the NGA legal director, and three student workers as walkaround representatives.

Thanks to NGA, as well as years of work by Eric Frumin, health and safety director of Change to Win, the late Tony Mazzochi of the Oil, Chemical and Atomic Workers Union, Peg Seminario, the AFL-CIO health and safety director, and other individuals, unions and state and local occupational health and safety coalitions, the rule now reads: “an authorized representative of the employee bargaining unit such as a certified or recognized labor organization, an attorney acting for an employee or any other person acting in a bona fide representative capacity including...members

of the clergy, social workers, spouses and other family members, and government officials or nonprofit groups and organizations acting upon specific complaints and injuries from individuals who are employees.” Worker centers are taking advantage of the change. OSHA now is hopefully in the process of drafting changes to its Field Operations Manual that will include the new walkaround interpretation and administrative language that will encourage more widespread inclusion of worker organizations in investigations.

In July 2010, **WDP and OSHA signed an alliance agreement that formalized the parties' commitment to working together.** The agreement included participation in OSHA's rulemaking and enforcement initiatives and the development of training and education programs for construction workers on workplace hazards and workers' rights, including the use of the OSHA complaint process and the responsibilities of employers to communicate these rights to their employees. Additionally, OSHA and WDP agreed to work together to develop and disseminate information on the recognition and prevention of workplace hazards to employers and workers in the industry. OSHA not only agreed to attend local meetings and events at WDP, but also to meet with the organization regularly to share information and discuss the progress of cases.

In 2012, the two worked together on a targeted campaign to improve compliance in the construction sector. WDP undertook an extensive survey of residential construction, canvassing worksites and speaking with workers. When hazardous conditions were identified, the organization would communicate the information with the OSHA area office, which then would conduct inspections. Going to work every day on residential construction sites, workers were the best sources of information about the actual workplace practices of subcontractors working on site. With its bilingual staff and volunteers, worker training capacity and the reputation, respect and trust it had built among workers, WDP had the unique capacity to gather information through worksite surveys and home visits, to assemble documentation of health and safety issues, and to find and file complaints.

“One thing our enforcement staff does, if they need to interview a lot of workers and they are scared to talk in the workplace, we will often interview them offsite and the worker centers will bring the workers together to talk to the inspector,” said Deborah Berkowitz, senior policy adviser at OSHA. “They feel more comfortable because worker centers say ‘you can trust these people,’ which is the role unions used to play,” she continued.⁵⁰ Dorothy Dougherty, deputy assistant secretary of OSHA, concurred: “Sometimes

workers feel more comfortable speaking with worker centers and kind of see the government as the IRS! It is difficult to approach them and maybe the hours are better for workers to go to these worker centers.... It removes some of the barriers that are perceived with the government.”⁵¹ OSHA representatives have the unique capacity to conduct investigations, issue citations and impose penalties, and the power to put more investigators on the ground. The agency opened an Austin office and provided a Susan Harwood grant⁵² to WDP to fund training and outreach.

OSHA and WDP worked together on an industry blitz of residential construction worksites. OSHA used tips from WDP surveys as a basis for launching investigations. Strong ties between the two allowed for the capabilities of each party to be maximized through identifying workers, interviewing them and creating the documentation necessary to bring complaints. OSHA kept WDP up to date about the progress of cases through frequent communication and copying the organization on letters, which also enabled WDP to ensure workers knew how they were proceeding. The two parties also held quarterly meetings to review their partnership.

3. Co-production is building institutions and making gains sustainable.

Development of effective enforcement models has become increasingly urgent as more labor mandates are being passed at the local and state levels. Cities are considering expanding the enforcement role of existing agencies, the establishment of new institutions, and formal contracts with worker organizations and legal nonprofits to assist in enforcement activities. In regions and sectors where public agencies historically have been weak, innovative place-based and sector-specific private monitoring regimes linked to strong market consequences have emerged.

The **SAN FRANCISCO OFFICE OF LABOR STANDARDS ENFORCEMENT (OLSE)** was created in 2001 in response to concerns raised by building trades unions that the city was failing to enforce the prevailing wage on public construction sites; it since has become the enforcement arm for a suite of first-in-the-nation local labor mandates, including minimum wage, health care security, paid sick leave and family-friendly scheduling. The agency is now in charge of enforcing 11 local labor laws in total.⁵³ OLSE funding comes primarily from the city's General Fund, although a third is provided through other city agencies to pay for prevailing wage enforcement on their own particular public works projects. The agency currently has a budget of \$3.7 million and a staff of approximately 20 people, including some 15

investigators. OLSE leverages its own power by requesting that city agencies or departments suspend or revoke the registration certificates, permits or licenses of violators. The city Department of Health (DPH) has explicitly defined wage theft as a threat to public health and uses its health permitting authority to require employers to provide proof of workers' compensation coverage, to affirmatively declare they will comply with all health and safety and labor regulations, and to pressure wage theft violators to repay workers' back wages and penalties owed.⁵⁴ Every year the agency takes 10% of permitted restaurants and asks for proof they are paying minimum wage and overtime wages. When OLSE has informed DPH about very uncooperative business owners or when organizations have reported a specific restaurant, the agency has initiated hearings and occasionally revoked health permits.⁵⁵

In 2006, the Board of Supervisors amended the minimum wage ordinance to mandate the establishment of a community-based outreach program to "conduct education and outreach to employees."⁵⁶ Since 2007, OLSE has contracted with a collaborative of organizations to assist in reaching out to low-wage immigrant workers, which has included La Raza Centro Legal, Asian Law Caucus, Chinese Progressive Association (CPA), Filipino Community Center, Young Workers United, Pride At Work and Dolores Street Community Services. Total annual funding has grown from just less than \$200,000 per year to approximately a half-million dollars.

Organizations in the collaborative sign annual contracts⁵⁷ that require them to engage in a specific type and number of outreach activities per quarter in each "base community." Organizations also are required to provide at least eight hours per week of one-on-one counseling and referral services to workers with allegations of employer violations of San Francisco labor laws, to screen complaints for validity and to attempt to mediate between the employee and employer or submit the complaint to OLSE staff. The contract requires each individual organization to resolve or refer to OLSE at least five labor law complaints each quarter. OLSE investigators are allowed to accept documentation about cases from the groups and to work cases jointly, and are required to participate in quarterly meetings with all collaborative partners.

In late 2009, CPA was instrumental in uncovering a major wage theft case at Dick Lee Pastry, after a worker received a flier and came to the organization looking for help.⁵⁸ Seven workers had been working six days per week on shifts that ranged from 11-14 hours, receiving "semi-monthly" wages of approximately \$550, averaging between \$3.02-\$3.91 per

hour. Charging that these actions constituted unfair and unlawful business practices in violation of California Business and Professions Code Section 17200, in July 2011 San Francisco City Attorney Dennis Herrera sued the company for more than \$440,000 in wages and interest, eventually recovering \$525,000, including penalties.⁵⁹

The Filipino Community Center grew out of work done by community activists in the wake of 9/11 after mass lay-offs of airport screeners at the San Francisco airport who did not have citizenship, the overwhelming majority of whom were Filipino. The activists helped laid-off workers find housing, health care and new jobs, and became engaged in the broader immigrant and worker rights movements. They also worked with the Asian Law Caucus to file a class-action lawsuit on the basis of national origins discrimination. The Filipino Community Center opened three years later in 2004, in the neighborhood with the largest concentration of Filipinos. There were many Filipinos working as home care workers, but they often were the most difficult to reach because of their isolation in small care-home facilities where they often lived as well as worked full time. What FCC found was a shockingly underregulated industry. "In the beginning, we focused on the three labor laws: minimum wage, paid sick leave and the health security ordinance, but in the course of doing that we found that workers had questions about overtime and meal breaks. We had to learn the state and federal laws and partnered with a number of organizations to help with wage calculations and get us up to speed..." said Terrence Valen, executive director.⁶⁰ FCC founded the Workplace Justice Initiative and worked with UC Davis sociologist Robyn Rodriguez to conduct an industry analysis and interview workers about their conditions of work.

Workers were responsible for washing, dressing, medicating and feeding multiple patients throughout the course of a day. Because they needed to be close by so they could hear their patients, workers often slept on chairs or floors. They told of the challenges of working with patients with severe dementia and other mental health problems who sometimes became violent, of taking care of multiple patients, which meant they seldom were able to get more than a few hours of uninterrupted sleep—and of feeling, given the limited incomes of those they were caring for, it was impossible to actually be compensated for all the hours they worked. Recruiters, labor brokers and placement agencies often were part of an oppressive system that placed workers in facilities that were not paying the minimum wage. "Owners would justify paying less than the minimum wage by telling them 'you are lucky to live here for free,'" said Edgardo Pichay, a former caregiver who now works as an organizer with FCC.⁶¹

Illegal deductions for housing and food expenses also were common.

Joining the collaborative and receiving OLSE funding enabled FCC to teach worker rights workshops, talk with home care workers about the issues they were facing and help them organize, advocate for changes in the programs and file wage claims. The organization has won many cases for caregivers, recovering more than \$1 million in unpaid wages. In 2013, with the help of the FCC and OLSE, 25 Filipino caregivers from Sunset Gardens, Nacario's Home of San Francisco and Veal's Residential Care Home filed wage theft claims against their employers and received settlement agreements totaling more than \$800,000. "The Filipino Community Center has done fabulous work organizing the home care workers.... At this point, we have done audits and recovered back wages in about 10 residential care homes, most of them brought by FCC," said Donna Levitt, head of the OLSE. "Their campaign has been very creative—from doing door-to-door outreach to holding community events like ballroom dancing... These are cases we would not have gotten for the most part and they build over time. When people have positive experiences, they tell friends and family." By the close of FY 2013, OLSE had collected a total of \$6,573,572 in back wages and interest for more than 3,000 employees since the implementation of the minimum wage ordinance in 2004.⁶²

After several years of trying to pass a bill in response to carwash workers' stories of harsh treatment by employers, illegally low pay and dangerous working conditions, in 2003 advocates succeeded in getting the California legislature to enact the **Carwash Worker Law, AB 1688**, which was modeled on legislation covering the garment industry, which suffered from many of the same issues.⁶³ The bill required carwash owners to register their businesses with the labor commissioner so the state could prevent employers who had violated labor laws from continuing to operate. Registration was important because "pirate" carwashes lowered standards and went in and out of business frequently. The law was an effort to bring them out of the shadows. It also required owners to post a surety bond of \$15,000 as insurance against wage and hour claims and contribute to the "Carwash Worker Restitution Fund," which provided a means for workers to collect wages if an employer was unwilling or unable to pay, as well as impose liability on the successor to a carwash employer for unpaid wages and penalties owed by the predecessor employer.⁶⁴

The bill had a sunset clause requiring that it be reauthorized by the legislature every three years. Despite the acute problems in the industry, AB 1688 was not actually

implemented until 2006, when the rule-making necessary for its implementation finally was completed by the Division of Labor Standards Enforcement (DLSE). Over the first three years of implementation, total registration in the state grew from 18% to about 63%,⁶⁵ and although investigations, citations and fines were significantly increased,⁶⁶ conditions in carwashes overall remained poor and large numbers continued to operate in violation of labor laws, even after being penalized. In March 2008, the Los Angeles Times reported that fully two-thirds of carwashes inspected by the state labor department since 2003 were out of compliance with labor laws and were likely to be paying less than half of the minimum wage.⁶⁷

By the close of 2012, four years of intensive enforcement and organizing by the CLEAN Carwash Campaign in partnership with the United Steelworkers had driven some real improvements through a significant portion of the industry in Los Angeles. But the campaign knew these gains were tenuous—it needed to find a way to institutionalize them. The campaign turned back to the carwash bill, which once again was up for renewal. With a democratic super-majority in both chambers of the legislature and strong support from the California Labor Federation, the CLEAN campaign decided to push for a much stronger bill—one that could raise the stakes on carwash owners enough that they would come to accept a collective bargaining agreement as the better alternative to paying the higher bond. Although the new law was not as strong as advocates had hoped it would be, it did accomplish three important things. First, it removed the sunset clause. Second, it raised the surety bond for registration and renewal of registration from \$15,000 to \$150,000 (the campaign had been pushing for \$500,000). Third, it created an exception to the bond requirement for carwashes that are party to collective bargaining agreements.⁶⁸ After the bill's passage, 25 carwashes became union shops and more than 200 workers became members of the United Steelworkers. This is an inspiring example of regulatory unionism, in which government sets minimum standards and explicitly supports collective bargaining as a means to stabilize a marginal sector and raise labor standards.

While CLEAN campaign leaders believed that if the bond requirement had been set at a half-million dollars, the majority of carwashes, including the biggest players, would have signed agreements, the bill was an undeniable breakthrough, and there is evidence conditions have improved in the industry as a whole. Beyond the heightened enforcement, many pointed to the transformation that unionization brought to their workplace. "Our salaries went up because of the union..." said one worker. "When we used

to tell the boss we needed more hours or more money, he would tell us to go and look for another job somewhere else, but things started to change when we organized with the campaign,” said another. One woman said, “There have been a lot of changes because we are being respected now and we were not being respected before. When we didn’t have a union, my co-worker was eating and the manager came and just kicked the food away from him and the food just fell on the ground.” Listening to this, another worker chimed in: “Now the bosses ask us whether we have already had our lunch break and they are even bringing us water.”⁶⁹

Instrumental to implementation of the Coalition of Immokalee Workers (CIW)’s Code of Conduct has been the establishment of the Fair Food Standards Council (FFSC), a full-time private, nonprofit enforcement arm established by the CIW.⁷⁰ FFSC is directed by a former New York state supreme court justice and has 10 full-time bilingual investigators who formerly worked in human rights and economic development as well as labor and community organizing, and one full-time financial investigator who is a certified public accountant and whose job is to verify that workers are being paid the correct fair food premium. The program has prompt and effective rewards and sanctions based on legally binding agreements with growers and buyers. In addition to responding to complaints, FFSC investigators conduct announced and unannounced inspections and financial audits of every grower each season. The audits are scheduled at the peak of the harvest, when workforces are at their highest levels. Investigators interview 100% of the workforces on small farms and 50% on larger farms (by comparison, typical corporate social responsibility audits usually are confined to 10% to 20% of the workforce), along with all field-level supervisors and crew leaders. The investigators produce official corrective action plans that stipulate specific steps that must be taken. In cases of where either complaints or audits identify noncompliance with the code, FFSC requires growers to present an action plan that includes a time frame for each corrective action and conducts multiple follow-up audits to verify the corrective action steps have been taken. If major problems are identified, growers must address them within two weeks.

Failure to provide an action plan or to pass remedial audits has resulted in a total of nine growers being placed on probation over the past three seasons and a total of six growers being suspended from the program over the same period.⁷¹ Between 1997 and 2009, CIW uncovered seven cases of forced labor by 15 contractors, affecting a total of 1,200 workers—but since the FFSC was established in 2011, not a single case of forced labor has been identified. Participating buyers have paid nearly \$15 million in Fair

Food Premiums. CIW has educated more than 20,000 workers face to face and reached more than 100,000 workers with written and video materials on their rights under the program. Workers have brought forth more than 600 complaints resulting in the resolution of abuses ranging from sexual harassment and verbal abuse to systemic wage violations. FFSC has interviewed more than 7,500 workers over the course of 100 comprehensive audits ranging from two days to two weeks, including field, housing, management and payroll components, in order to assess participating growers’ implementation of the Fair Food Code of Conduct.

Suspension has clear market consequences for tomato growers. They cannot sell to participating buyers who comprise an estimated 30% of the market. Both FFSC and key growers such as Jon Esformes of Pacific Tomato, one of the largest in the country, believe that a price premium for fair food tomatoes has taken hold in the market because buyers only can purchase from participating growers who can charge more for access to their crops. The fewer the number of participating growers, the higher prices can go. As Esformes explained, “If a participating grower has egregious actions taking place on their farm and they are suspended, buyers lose access to that grower... And the grower loses access to the market. That is the power of this program.” As an example, Esformes cited one grower who had refused to abide by the corrective action plan and left the program. When the spring crop came along, their large tomatoes, which had averaged \$6 to \$7 dollars a bucket, could not be sold to Burger King and Subway, and the grower was forced to sell as low as \$3. In another case, a grower who refused to comply was put on a no-buy list and this, along with sizeable debts, contributed to its bankruptcy.

Growers now take the audits and corrective action plans extremely seriously and make clear to their managers and crew leaders they must abide by the code of conduct. Additionally, in a tight labor market, in which growers are competing for the labor force they need to harvest their crops, the higher wages and superior conditions the fair food program requires is providing the FTGE with an important competitive edge. “It is all about market consequences,” said Judge Laura Safer Espinoza, the director of FFSC. “Everything comes back to that. We can be diligent or charming or intimidating...whatever approach we take would not have mattered but for the fact that there was enormous and growing market power behind this thing.” Buyers agree. “Probably like almost every company, we have a code of ethics that we expect our vendors and suppliers to adhere to, but what the fair food agreement has that makes it unique is that it is not just saying ‘great,

you signed this piece of paper, I will trust you that you will take care of it,” said Cheryl Queen from Compass. Being on the ground and functioning as a full-time enforcement agency with swift market consequences in its arsenal accounts for the increased effectiveness of the FFSC in comparison with the bulk of private compliance programs which, according to Brown University’s Richard Locke, who has studied compliance programs closely and gained access to thousands of audits, “appear largely unable to deliver on their promise of sustained improvements in labor standards in the new centers of global production...”⁷²

4. Co-production leads to new approaches to building worker power and raising standards.

Organizations are finding new pathways to worker power through representation in private inspection regimes, settlement agreements, direct action, worker-to-worker education and public policy.

When OLSE investigators first visited **YANK SING RESTAURANT** in San Francisco, they were unable to get workers to tell them the truth about not having been paid the minimum wage and likely would not have been able to conduct an accurate audit because payroll records had been falsified. When Chinese Progressive Association (CPA) organizers went to work conducting house visits and one-on-one meetings, they were able to persuade workers to overcome their fears and come forward. The result of joint work by CPA, OLSE and the state BOFE was a historic \$4 million settlement, with back-of-the-house workers collecting between \$30,000 to \$60,000 each. CPA also negotiated a “workplace change agreement” that improved conditions for workers going forward. The agreement includes wage increases for kitchen workers, paid holidays, an increase in paid time off and sick leave, schedules provided with more advance notice, some recognition of seniority, a progressive discipline policy and eight hours of worker rights training on paid time.⁷³ CPA intends to continue to work toward the implementation of workplace change agreements in other Chinatown establishments.

Given the level of economic and racial oppression and physical repression that had been endemic to Florida agriculture, **CIW learned through painful experimentation that work stoppages and strikes by farmworkers were not enough to transform the culture of the industry.**

The organization realized it only could win by expanding the scope of conflict beyond tomato growers to the multinational corporations that were the end users of Immokalee tomatoes. Farmworkers were deeply involved in the discussions that led to a shift in strategy, and they were

deeply involved as the organization mounted campaigns targeting Taco Bell, McDonald’s, Burger King and others. Farmworkers deliberated about strategy, participated in actions and helped to write the code of conduct.

The Fair Food Program is the result of collective action taken by workers and CIW and FFSC leaders who argue that farmworkers’ day-to-day trust and participation in it, after years of oppression, is a form of workplace activism in and of itself. Sean Sellers, one of the lead investigators at FFSC and the author of many articles about CIW and FFSC, says that “Under the FFP, workers take action both individually and collectively to preserve and protect rights. Talking to the auditors in the fields during work should be viewed as a form of activism itself, not simply a passive process devoid of agency.” Sellers thinks the FFP has created the space for a spectrum of daily activism at the workplace level that includes workers speaking to farm management about dangerous conditions in the fields; workers stopping to take a quick break under the FFP shade structure on a hot day; workers conveying their expectations to supervisors that they expect FFP standards when they travel north for the summer; and workers taking a stack of hot line cards to distribute to their colleagues at a nearby blueberry farm known for its harsh conditions.

Having worked in the industry for years, worker members of CIW were able to target very specific daily practices of crew leaders, dumpers and drivers in the fields that were at the center of the exploitative system. For many years, for example, it was common practice for crew leaders and dumpers to require workers to overfill their buckets beyond the 32-pound requirement, a practice referred to as “cupping,” so they could pocket the difference. If the dumpers decided a worker’s bucket was not filled up enough, he and the crew leader would threaten to withhold payment for the entire bucket. Gerardo Reyes, one of the worker leaders, recalled that, “The crew leader would sometimes send us back just to let workers know he was in charge. Sometimes we would not get paid, and if you talked back, they would respond violently.”⁷⁴ CIW and the FTGE agreed to end the practice over the angry objections of some crew leaders who saw their power as well as their incomes drastically curtailed. In the early months of the agreement, many crew leaders and dumpers tried to insist that things continue as before, but workers stood up strongly and found they were backed up not only by CIW, but also by the growers who did not want to suffer the market consequences of failure to comply. Beyond putting an end to cupping—a daily reminder of power relations between farmworkers and crew leaders—has been a fundamental restructuring of employment relations in

the Florida tomato fields: crew leaders no longer are the employers of farmworkers. The practice of direct hire by growers has fundamentally altered the relations of power between farmworkers and crew leaders.

As part of the binding agreement with growers, CIW also has a formal role in teaching other workers their rights and enforcing the code of conduct. Julia de la Cruz, a farmworker who now works with CIW on the educational sessions in the fields, recounted how much things have changed since the code first was implemented. “The first education session we ever did, we went through all the rights, but after we left one of the crew leaders came up and said ‘Everything you just heard does not apply. It doesn’t matter. We are going to keep working the same way here.’ One of the workers called the office and told us, and we called the grower and said how are we going to implement the program if crew leaders say that? So the company gathered all the supervisors and crew leaders together and said: ‘This agreement is something we want. It is serious.’ And the worker who had alerted us to the problem was able to continue with the company just as before.”⁷⁵

Over the course of a season, workers are likely to see the CIW presentation multiple times. They become aware of what the code of conduct requires and they call CIW and FFSC when it is not being honored. De la Cruz thinks it would be difficult to overestimate the magnitude of the shift: “...Workers now have the ability to speak out about problems. Before, no one could say ‘this money was stolen from me or this abuse was happening in the fields,’ because they would get fired if they did. But now people have an avenue to point out problems. It is like night and day.” Workers have become emboldened to confront the behavior of abusive crew leaders and to call in the FFSC when the behavior does not change. One investigator said that one of the biggest complaints he hears from supervisors is “I can’t say anything any more because the workers say they are going to call the consejo.”⁷⁶ Sean Sellers argues that worker-to-worker education is also a form of collective action. “The education sessions are for making sure that every worker passing through the new workplace knows his or her rights and how to defend them. The fact this takes place on the clock and in a Southern farmer’s fields is both remarkable and unprecedented,” says Sellers.⁷⁷

CIW’s influence is growing. In November 2014, the FFSC and Whole Foods piloted a new fair food label with the tagline “worker-driven, consumer-powered” emblazoned on every tomato. In the summer of 2015, the Fair Food Program expanded to tomato fields from Georgia to New Jersey. Workers in Georgia, Maryland, New Jersey, North

Carolina, South Carolina and Virginia received worker-to-worker education, access to the complaint investigation and resolution process, audits and the rest of the program for the first time. The FFP also is expanding in Florida this coming season into peppers and strawberries. Meanwhile, CIW has been working closely with Migrant Justice in Vermont on the development and negotiation of its Milk with Dignity campaign, which is modeled on the FFP. The campaign won its first agreement in principle with Ben & Jerry’s and the parties are negotiating the details of that agreement now.

The **NATIONAL GUESTWORKER ALLIANCE** uses labor and immigration law creatively in the service of collective action as a signature strategy in all of its campaigns. While many unions and worker centers often have assumed that immigrant workers, and particularly guestworkers, were just too vulnerable to engage in direct action against their employers, NGA always has put the strike option on the table, encouraged workers to strongly consider it and then worked hard to publicize the situation and aggressively recruit labor and community allies and government in order to indemnify workers against employer and recruiter retaliation and threats of deportation.

Guestworkers involved in the Hershey’s case were empowered by participating in the campaign. They became more and more confident through going on strike, targeting the key links of the corporate chain, including international labor recruiters as well as Hershey, working in coalition with local unions and community organizations and participating in a walkaround inside the plant with government officials. As Godwin Jacob, one of the strike leaders, described it, “Many of the students who came and were part of the strike came from a background where it was not the norm to go against authority, so for those students it reinforced the notion in them that if something was wrong, you could actually do something about it. Secondly, it was an experience to see how the wheels of justice worked.... On a personal level, I felt a sense of satisfaction, because I knew that because OSHA had come in to the factory at that time, things were going to change...Things would be better.” The student guestworkers felt that if OSHA had gone in alone, investigators would not have known the employer had intentionally slowed down the assembly lines and that workers typically had been laboring under much more difficult conditions. Chen Wen, a student from China, also talked about how empowered she felt by taking action and being supported by government authorities. “Before the strike I was very nervous and scared, but when I was actually doing it, I was really proud of what I was doing, because we got a lot of help from the media and authorities. The Department of Labor and also the local people and local

organizations gave us a lot of support and help, so the more support I got, the more firmly I believed I was doing the right thing. I was really proud of what I was doing at that time.... If we had just struck, we might have gotten people's attention for a while, but would not have achieved anything without the government."

Until the **CLEAN CARWASH CAMPAIGN** effort, *carwasheros* in Los Angeles' sprawling car country said they largely were ignorant of their rights and isolated from organizing. In focus groups conducted in the summer of 2014, *carwasheros* enthusiastically described the improvements that had come with the aggressive enforcement undertaken by the Division of Labor Standards Enforcement, the state attorney general's office and the LA district attorney's office. Many pointed to never having seen a labor investigator until the campaign began, but having had repeat visits over the past four years. "We didn't know what our rights were," one worker said, "but now we do." Another said: "The campaign is when I started learning about my rights and the obligations of the owner, and the limitations on how they can treat the workers...before nobody was there to enforce the laws." Heads nodded around the room when one worker said, "Having no papers, I thought I had no rights."

Positive changes have gone beyond the unionized carwashes. Several of the nonunion *carwasheros* described significant improvements at their workplaces. One worker said, "they used to pay us cash, now they pay us with checks," and another said that they had stopped paying daily rates and were now paying by the hour. One worker pointed to the fact that managers now have time clocks and the workers themselves punch in every day, whereas before the managers would fill out their timesheets. "Thanks to the campaign," said one worker "now we know what to do when

wage theft is occurring at our workplace." The changes extend beyond wages and hours to safety and health: "Now if I am sick, they send me home; before, I would be dying and the manager would say 'no you are very important here.'" "Before they never gave us protective equipment like gloves and aprons. We would get injured on the job and they would say 'too bad'; now they give you something..." "Now my manager is always on top of the safety equipment." "Before my carwash used to be really filthy, but now the manager sees that we have support from the campaign, he started cleaning up the carwash..."

Beyond the specific improvements, workers expressed increased confidence: "Managers in the past could do whatever they wanted...we didn't know the law and they took advantage of us, but as soon as the campaign came and started educating us about our rights, we stopped getting intimidated and started talking about the abuse we were getting from the owners..." Another said: "They can't humiliate us because of all the worker laws we have now. They think twice when there is an organization in the middle." "Thanks to the campaign" one worker said, "we are not intimidated any more, we have the courage.... When we first started we were very scared but now we are secure, we feel somebody has our back." One woman said: "Before we were not valuable, now we are called workers. Now if the owner sees a lot of work and employees are on break, she will go and wash a car!" Many pointed to the carwash worker law that was passed by the California state legislature in 2010 and renewed and strengthened in 2014 and said they felt the law was forcing carwashes to improve their practices. "Now every nonunionized carwash is looking at the experience of unionized carwashes and they are saying 'You know what? They had lawsuits' and we don't want to go through that process..."

Notes on Constructing a Local Co-Production Regime

The crisis of compliance in low-wage industries will not be solved through enforcement initiatives undertaken by the state alone. Re-embedding a norm of compliance will require creative collaboration between government, workers, civil society organizations and high-road firms. This study provides concrete evidence for the promise of collaboration between the state and civil society.

In the Austin, Los Angeles and San Francisco cases, co-production has drawn new state actors into enforcement efforts. The Austin Police Department, utilizing an old statute in a new way, is enthusiastically helping workers recover unpaid wages in partnership with WDP. In Los Angeles, the city attorney for a time and the attorney general have inaugurated major initiatives, bringing cases based on the unfair competition statute and the carwash worker registration law, by including a carve-out for unionized establishments, explicitly recognizes the value of collective bargaining institutions to lifting standards. In San Francisco, an entirely new institution has been created that has a broad mandate and significant powers, including the ability to involve multiple city agencies in enforcing labor laws. OLSE has substantial investigative capacity and also provides funding for community organizations to engage in the co-production of enforcement. Seattle is also in the process of setting up a new government institution and nonprofit organization to oversee enforcement of its newly enacted \$15 minimum wage. Building a local institution and involving organizations on the ground in labor-standards enforcement is strongly supported by leading scholar Stephanie Luce's research, which documents much higher levels of compliance with the living wage in cities where there is a local government entity involved in enforcement and community organizations involved in policy implementation.⁷⁸

Building upon these examples, a local co-production regime would begin with the establishment of a government institution with the power to generate resources by requiring low-wage employers to register and post bonds as well as to levy fines, and the tools necessary to gauge noncompliance, respond to complaints and carry out strategic enforcement across low-wage sectors. The enforcement regime would be connected to high-road

economic development policies, including minimum wage and living wage laws, PLAs and community benefits agreements, and would look for opportunities to promote the raising of standards through encouraging workforce development, career ladders and collective bargaining agreements. The institution would have a formal mandate to enter into partnerships with civil society organizations and administrative procedures and staff assigned to facilitate them. The agency would have the power and administrative capacity to create sector-specific bodies in problem industries with responsibility for standard setting, registration and licensing, as well as for the establishment and coordination of formal mechanisms for workers' voice and participation at the workplace.

This local agency would monitor all low-wage sectors, but would have dedicated staff by sector, because it is important to have investigators who really grasp the particularities of the sector. It would be funded by a tax on employers in highly noncompliant sectors, licensing fees and fines,⁷⁹ and would allow complaints on behalf of workers to be filed directly by unions, worker centers, legal advocacy organizations and others (third-party complaints). The agency would have detailed administrative procedures through a field officers' handbook, access to which would be broadly available. It would carry out baseline sectoral studies of wage and hour and health and safety compliance and then would prioritize specific sectors based on the extent of noncompliance found in the sector (when noncompliance exceeded a certain percentage, a more intensive program would be triggered).

When noncompliance is found to be above a certain threshold in a sector, the agency would take the following steps:

1. Convene a sectoral table that brings together high-road employers, unions, worker centers and nonprofit legal organizations with government to devise and implement strategic approach to enforcement.
2. Establish a licensing and registration regime that requires employers to register with city or state agencies, connects registration and licensing to wage and hour and health and safety compliance, and requires annual renewal.

3. Require firms in highly noncompliant sectors to fund heightened enforcement/penny per hour to enforcement fund or to post a high bond as part of licensing, with an exception for those firms that have a collective bargaining agreement.
4. Create a sectoral employer association that regularly convenes discussions and trainings (as a strategy for establishing new norms and communities of compliance).
5. Establish mechanisms for workers' voice both at the workplace level and across the sector (e.g., elected workplace representatives who receive training and have authority to provide training and assistance for co-workers).
6. Fund worker organizations to conduct training, education and enforcement, and provide them a broad mandate and standing to engage in each stage of the enforcement process.
7. Commit investigators to work with employer associations and worker organizations to investigate complaints of labor standards noncompliance.
8. Strive for parity between worker organizations and firms with respect to information-sharing and settlement negotiations.

Clear agreement must be reached about how cases coming from worker centers or unions will be handled, including how priority will be assigned and by what methods organizations will be kept up to date about investigations. Liaisons should be designated who are in regular contact and are actively engaged in sharing information and reporting on progress with cases. The parties need to meet regularly and investigators should hold meetings on site at worker centers and union offices. There must be accountability and timely follow-up on both sides. Fundamentally, all parties must be clear about their roles and willing to accept the dynamic tensions that are inevitable in the relationship.

Even in cases where investigators are positively inclined, effective working partnerships require patience, goodwill and results. For co-production to succeed, government, firms, worker centers and unions must invest time in the relationship. In addition to formal agreements, parties need to get to know each other, openly discuss and negotiate expectations, identify goals and establish mechanisms for ongoing collaboration as well as conflict resolution. Agency leaders must communicate strong support for the partnerships and actively facilitate relationship building.

Specific steps the U.S. Department of Labor Wage and Hour Division could take to support co-production:

- Provide more learning, training and leadership development opportunities for investigators that include knowledgeable worker center, legal aid and union advocates as presenters.
- Consider ways to analyze, evaluate and support co-production; establish a Susan Harwood-type grant program within the Wage and Hour Division.
- Address the “cone of silence” problem: complaint and investigation procedures must strive for greater parity between firms and workers and worker organizations with respect to information on how the complaint is proceeding, and equal representation during the investigation and settlement negotiations.
- Make the entire WHD Field Operations Handbook publicly available, as OSHA has done.
- Hold subcontracting (joint) employers accountable for violations of their subcontractors using the broad employment definitions in FLSA and the “joint employer” regulation in the act. Expand the use of hot goods remedies to enhance subcontractor accountability.
- Require ongoing compliance monitoring agreements after hot goods seizures and other enforcement actions, building on successful models used by DOL in garment manufacturing. Require employers and subcontractors to submit periodic payroll information on an ongoing basis during the monitoring period and provide for expedited remedies where violations are found.
- Require the employer to bear the cost of third-party monitoring through enhanced compliance agreements and court-supervised monitoring.
- Incentivize participation in promising private monitoring schemes, where they exist (e.g., Immokalee tomato harvesting) by exempting participating firms from DOL-directed enforcement initiatives.

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- 3 "Local Living Wage Laws and Coverage," National Employment Law Project, last modified July 2011, www.nelp.org/content/uploads/2015/03/LocalLWLawsCoverageFINAL.pdf?nocdn=1.
- 4 "City Minimum Wage Laws: Recent Trends and Economic Evidence," National Employment Law Project, last modified May 2015, www.nelp.org/content/uploads/City-Minimum-Wage-Laws-Recent-Trends-Economic-Evidence.pdf.
- 5 This definition of low-wage workers is drawn from Lawrence Mishel, Sylvia Alegretto and Jared Bernstein of the Economic Policy Institute. Low-wage workers are all workers earning less than the hourly wage that would lift a family of four above the poverty threshold, which was \$11.06 or less an hour in 2011, given full-time, full-year work. Lawrence Mishel, et al., *The State of Working America, 12th Edition* (New York: Cornell University's ILR Press, 2012).
- 6 Annette Bernhardt, et al., "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities" (New York: Center for Urban Economic Development, National Employment Law Project and UCLA Institute for Research on Labor and Employment, 2009), 2, www.unprotectedworkers.org/index.php/broken_laws/index.
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- 11 David Weil, *The Fissured Workplace* (Massachusetts: Harvard University Press, 2014).
- 12 Weil, *The Fissured Workplace*, 10.
- 13 David Weil, "Improving Workplace Conditions through Strategic Enforcement" (Report to the Wage and Hour Division of the Department of Labor, Washington, D.C., 2010).
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- 15 FY 2012 Congressional Budget Justification, United States Department of Labor Wage and Hour Division, <https://www.dol.gov/dol/budget/2012/PDF/CBJ-2012-V2-03.pdf>.
- 16 Co-production as put forward in this paper was developed by Amengual and Fine and also draws heavily upon Fine and Gordon and also draws important inspiration from proposals by Josh Cohen and Joel Rogers about associative democracy as well as the idea of tripartism as envisioned by Ayres and Braithwaite, which provided a specific public interest organization with a formal and ongoing role in enforcement. Ayres and Braithwaite propose that relevant organizations be made fully fledged partners in enforcement, which involves providing them clearly delineated and publicly recognized responsibilities; access to the information the regulator has about noncompliance; the same standing as the regulator to sue or prosecute under the regulatory statute; and a seat at the table along with investigators and firms in negotiations regarding improvements, fines and penalties. Matthew Amengual and Janice Fine, "Co-Producing Labor Standards Enforcement: Convergence at the Meso-Level in Argentina and the United States" (Working Paper, Mini-Conference on Labor and Global Solidarity, New York, American Sociological Association, 2013); Janice Fine and Jennifer Gordon, "Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations," *Politics & Society* 38, No. 4 (2010): 552-85; Joshua Cohen and Joel Rogers, "Secondary Associations and Democratic Governance," *Politics & Society* 20, No. 4 (1992): 393-472; Ian Ayres and John Braithwaite, "Chapter 3: Tripartism," in *Responsive Regulation: Transcending the Deregulation Debate* (Oxford, UK: Oxford University Press, 1992); Joshi Anuradha and Mick Moore, "Institutionalized Co-production: Unorthodox Public Service Delivery in Challenging Environments," *The Journal of Development Studies* 40, No. 4 (2004): 31-49; Elinor Ostrom, "Crossing the Great Divide: Coproduction, Synergy and Development," *World Development* 24, No. 6 (1996): 1073-87; Tony Bovaird, "Beyond Engagement and Participation: User and Community Coproduction of Public Services," *Public Administration Review* 67, No. 5 (2007): 846-60.
- 17 Dara O'Rourke, *Community Driven Regulation: Balancing Development and the Environment in Vietnam* (Massachusetts: MIT Press, 2004), 215-51.
- 18 This section is drawn from Fine and Gordon, "Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations," 552-85.
- 19 Jennifer Gordon, *Suburban Sweatshops: The Fight for Immigrant Rights* (Massachusetts: Harvard University Press, 2005).
- 20 Decided March 29, 1937, "Deprivation of liberty to contract is forbidden by the Constitution if without due process of law, but restraint or regulation of this liberty, if reasonable in relation to its subject and if adopted for the protection of the community against evils menacing the health, safety, morals and welfare of the people, is due process...In dealing with the relation of employer and employed, the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression." *West Coast Hotel Co. v. Parrish*, et al., 293 P. 391-93 (300 U.S. 379 1937).

- 21 Weil, *The Fissured Workplace*, 63-73.
- 22 See Dara O'Rourke on the importance of social and political connections or linkages among state agencies and between state officials and civil society actors as well as firms. O'Rourke, *Community Driven Regulation: Balancing Development and the Environment in Vietnam*, (Massachusetts: MIT Press, 2004), 225.
- 23 Chris Ansell and Alison Gash, "Collaborative Governance in Theory and Practice," *Journal of Public Administration Research and Theory* 18, No. 4 (2008): 554.
- 24 Eugene Bardach and Robert Allen Kagan, *Going by the Book: The Problem of Regulatory Unreasonableness*, (New Jersey: Transaction Publishers, 1982), 217-242; Richard M. Locke, "Compliments or Substitutes? Private Power, Public Regulation, and the Enforcements of Labor Standards in Global Supply Chains," in *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy* (Massachusetts: Cambridge University Press, 2013).
- 25 Bardach and Kagan, 218.
- 26 "Delegation of Governmental Power to Private Groups," *Columbia Law Review* 32, No. 1 (1932): 80-94.
- 27 Laws of the State of New York, 89th Session, Chapter 469 (1866). At that time, nonprofit organizations were created legislatively. Elizabeth Clemens, "The Encounter of Civil Society and the States: Legislation, Law, and Association, 1900-1920" (paper presented at the American Political Development Workshop, September 30, 2005).
- 28 Laws of the State of New York, 111th Session, Chapter 490 (1888).
- 29 The New York State government's delegation of power to the ASPCA and local animal protection agencies is more than a century old and has survived a number of legal challenges. See, for example: A.S.P.C.A. v. City of N.Y., 199 N.Y.S. 728 (N.Y. App. Div 1923) (Overturning an earlier ruling and finding that fines paid to the S.P.C.A. did not violate the state constitution because the money rendered to the S.P.C.A. was being used for a valuable public purpose); Irving Hand, et al. v. Stray Haven Humane Society and S.P.C.A., Inc, et al., 799 N.Y.S.2d 628 (N.Y. App. Div. 2005) (Dismissing a suit against a local animal protection agency for trespass and affirming that New York law authorized peace officers to enter private property to investigate reported animal abuse).
- 30 Meg Jacobs, *Pocketbook Politics: Economic Citizenship in Twentieth-Century America* (New Jersey: Princeton University Press, 2005), 107.
- 31 Colin Gordon, "The Lost City of Solidarity: Metropolitan Unionism in Historical Perspective," *Politics & Society* 27, No. 4 (1999): 561-85.
- 32 The councils were made up of one representative of a women's organization, a county agricultural agent, a home demonstration agent or economist, a "dirt" farmer, a moderate or low-income housewife, an employed manual laborer and a cooperative or credit union member. Local bodies forwarded complaints they were unable to address to the NRA Fair Price Section and the Department of Justice and the Federal Trade Commission would then undertake investigations. Jacobs, *Pocketbook Politics: Economic Citizenship in Twentieth-Century America*, 116, 121-122.
- 33 Ruth O'Brien, "A Sweat Shop of the Whole Nation: The Fair Labor Standards Act and the Failure of Regulatory Unionism," *Studies in American Political Development* 15, No. 1 (2001): 33-52.
- 34 Howard D. Samuel, "Troubled Passage: The Labor Movement and the Fair Labor Standards Act," *Monthly Labor Review* 123, No. 11 (2000): 32.
- 35 California's UCL is broadly written, defining unfair competition as an *unlawful* business act or practice, an *unfair* business act or practice, a *fraudulent* business act or practice or unfair, deceptive, untrue or misleading advertising and allows courts to order injunctions and other equitable defenses to prevent the unfair competition. California Business and Professions Code, sec. 17200-17210, www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=17001-18000&file=17200-17210.
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- 37 Texas Penal Code, sec. 31.04 creates a presumption of intent to avoid payment if the employer fails to pay a laborer within 10 days after receiving a notice demanding payment.
- 38 Rita J. Verga, "An Advocate's Toolkit: Using Criminal Theft of Service Laws to Enforce Workers' Right to Be Paid," *New York City Law Review* 8, No. 1 (2005): 283-310.
- 39 Sean Sellers and Greg Asbed, "The History and Evolution of Forced Labor in Florida Agriculture," *Race/Ethnicity: Multidisciplinary Global Contexts* 5, No. 1 (2011): 29-49; John Bowe, "Nobodies: Does slavery exist?," *New Yorker* 79, No. 9: (2003): 106-10 and 121-33.
- 40 Many have written about CIW's campaign, for the most comprehensive treatment of its organizational evolution, model and strategies, see: Sean Sellers, "Del pueblo, para el pueblo: The Coalition of Immokalee Workers and the Fight for Fair Food" (master's thesis, University of Texas at Austin, May 2009). For an excellent short summary of the fair food campaign, see: Deborah Barndt, "Mexican Migrant Workers Take on the Fast Food Giants" (presentation to CEPPAC Roundtable, University of Brasilia, June 9, 2009).
- 41 To read the full Code of Conduct and some of the administrative language regarding oversight, see: "Fair Food Program 2014 Annual Report: Worker-Driven Social Responsibility, Comprehensive, Verifiable and Sustainable Change for U.S. Farmworkers and the Agricultural Industry" (a report for the Fair Food Standards Council, Sarasota, Florida, November 2014) 50-55.
- 42 Stephanie Gharakhanian, interview with the author, March 12, 2015.

43 Recognizing the unique nature of the construction sector, the National Labor Relations Act allows workers to enter into a collective bargaining agreement before a project begins. A PLA, or “pre-hire agreement,” is a collective bargaining agreement that applies to a specific construction project and lasts only for the duration of the project. It is a contract between the two parties involved in a construction project: the owner or managing entity of the project and the consortium of all the labor unions who will be carrying out the work, so that rather than separate contracts with each trade, there is one master agreement. President Obama signed Executive Order 13502 in 2009, which encourages federal agencies to consider requiring the use of PLAs on large-scale construction projects. For more on PLAs see: Uyen Le and Lauren D. Appelbaum, “Project Labor Agreements in Los Angeles: The Example of the LA Unified School District” (research and policy brief, UCLA Institute for Research on Labor and Employment, Los Angeles, California, December, 2011); John T. Dunlop, “Project Labor Agreements” (working paper, Joint Center for Housing Studies, Harvard University, Cambridge, Massachusetts, November 2002); Gerald Mayer, *Project Labor Agreements*, Washington, D.C.: Congressional Research Service, 2010; Dale Belman, Matthew M. Bodah and Peter Philips, “Project Labor Agreements” (report presented for ELECTRI International-The Foundation for Electrical Construction as of January 15, 2007).

44 The jobs coordinator always works for the contractor, not for Metro. On the Crenshaw/LAX project, that position is held by PV Jobs, which is responsible for generating and maintaining specific programs targeting residents for construction opportunities at the project, attending jobs fairs and/or community meetings to reach out to the community regarding opportunities available for the union, provide assistance to clients for entry into the unions, generate and maintain program specific documentation for the project’s request for skilled workers and for reporting and tracking purposes, provide referrals that meet the geographic project requirements for low income, and specific skill set requirements, coordinate and collect monthly reports indicating conformance of each hiring requirement, and assume full administrative responsibilities for program implementation of hire and apprentice requirements.

45 Wei Wang, Prawit Thainiyom and Liz Kofman, “Guidelines on Community Compliance Monitoring Toolkit: A Collaborative Research Project by the Los Angeles Black Worker Center and University of Southern California” (research project conducted for the LABWC, Los Angeles, California, May 15, 2014).

46 “Community Compliance and Monitoring Report,” (report prepared by the Los Angeles Black Worker Center, Los Angeles, California, April 2014), 3.

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49 Deborah Berkowitz, interview with the author, Aug. 14, 2014.

50 Berkowitz, interview, Aug. 14, 2014.

51 Dorothy Dougherty, interview with the author, Aug. 14, 2014.

52 The Susan Harwood Training Grant Program, a competitive discretionary grant program established by OSHA in 1978, is a long-running program that explicitly supports civil society organizations engaged in helping to see that health and safety laws are enforced. For more than 30 years, OSHA has provided approximately \$10 to \$11 million per year in direct funding to faith-based organizations, worker centers, unions, employer associations, and state and local government-assisted institutions of higher education to provide training and education to employers and workers “on the recognition, avoidance, and prevention of safety and health hazards in their workplaces and to inform workers of their rights and employers of their responsibilities under the Occupational Safety and Health (OSH) Act.” “Susan Harwood Training Grant Program—Program Overview,” Occupational Safety and Health Administration, www.osha.gov/dte/sharwood/overview.html.

53 In addition to prevailing wage on public works projects and those mentioned above, the other laws OLSE is charged with enforcing include the Minimum Compensation Ordinance, Healthcare Accountability Ordinance, Sweatfree Contracting Ordinance, Displaced Worker Protection Act and the Retail Workers Bill of Rights. For a description of these mandates, see: Office of Labor Standards Enforcement, City and County of San Francisco—Office of Labor Standards Enforcement, sfgsa.org/index.aspx?page=391 (It does not have an official handbook or field operations manual that specifies complaint or investigation protocols).

54 Karen Yu, interview with the author, Aug. 13, 2014, p. 1; “Application for Food Permit to Operate or Certificate of Sanitation,” San Francisco Department of Public Health, Work Environment Program, <http://businessportal.sfgov.org/sites/default/files/forms/FoodPermitAppPacket2012.pdf>; “Wage Theft and Health Fact Sheet,” San Francisco Department of Public Health, Work Environment Program, www.sfhealthequity.org/component/jdownloads/finish/35-wages-and-health/215-wage-theft-and-health-fact-sheet/0?Itemid=62.

55 Yu, interview, p. 2.

56 San Francisco Administrative Code, sec. 12R.25.

57 Organizational contracts in possession of author were provided by OLSE staff.

58 Donna Levitt, interview with the author, Aug. 18, 2014, p. 11.

59 “Wage Theft Lawsuit Seeks to Recover \$440K in Back Pay, Interest for Cheated Workers,” City Attorney Dennis Herrera News Release, July 12, 2011, www.sfcityattorney.org/2011/07/12/wage-theft-lawsuit-seeks-to-recover-440k-in-back-pay-interest-for-cheated-workers/.

60 Terrence Valen and Edgardo Pichay, interview with the author, Aug. 12, 2014, p. 6.

61 Valen and Pichay, interview, p. 8.

- 62 "Minimum Wage Ordinance Annual Report," San Francisco Office of Labor Standards Enforcement, July 1, 2012–June 30, 2013, <http://sfgsa.org/modules/showdocument.aspx?documentid=11225>.
- 63 Kevin Barry, Marcy Koukhab and Chloe Osmer, "Regulating the Car Wash Industry: An Analysis of California's Car Wash Worker Law" (paper prepared in partial fulfillment of the requirements for the master's in public policy degree, UCLA School of Public Affairs, April 2009) 8–10.
- 64 When the successor is operating in the same location and using the same facilities to perform substantially the same services. California State Bill, AB 1688 (2003), Ch. 825, www.leginfo.ca.gov/pub/03-04/bill/asm/ab_1651-1700/ab_1688_bill_20031011_chaptered.html.
- 65 Barry, Koukhab and Osmer, 21.
- 66 "2008 Report on the Status of Enforcement in the Car Washing and Polishing Industry: Labor Code Section 2068," State of California Department of Industrial Relations-Division of Labor Standards Enforcement, 2, <https://www.dir.ca.gov/dlse/carwashreport-2008.pdf>.
- 67 Sonya Nazario and Doug Smith, "Inspectors Find Dirt on Books at Southern California Carwashes," Los Angeles Times (Los Angeles, California), March 23, 2008.
- 68 Specifically, the law provided that the bond requirement "shall not apply to [a car wash] employer covered by a valid collective bargaining agreement, if the agreement expressly provides for all of the following: (A) Wages. (B) Hours of work. (C) Working conditions. (D) An expeditious process to resolve disputes concerning nonpayment of wages." California State Bill, AB 1387 (2013) www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1351-1400/ab_1387_cfa_20130625_090150_sen_comm.html.
- 69 These quotes are taken from focus groups conducted by the author and the CLEAN campaign with carwash workers in August 2014.
- 70 For a full description of the program written by its architects, see Greg Asbed and Sean Sellers, "The Fair Food Program: Comprehensive, Verifiable and Sustainable Change for Farmworkers," University of Pennsylvania Journal of Law and Social Change 16, No. 1 (2013): 39.
- 71 "Fair Food Program 2014 Annual Report: Worker-Driven Social Responsibility, Comprehensive, Verifiable and Sustainable Change for U.S. Farmworkers and the Agricultural Industry."
- 72 Locke, *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy*, 17. For a thoughtful critique of voluntary certification and labeling programs, see: Sandy Brown and Christy Getz, "Privatizing Farm Worker Justice: Regulating Labor through Voluntary Certification and Labeling," *Geoforum* 39, No. 3 (2008): 1184–96.
- 73 Shaw San Liu, interview with the author, Aug. 19, 2014.
- 74 Gerardo Reyes, interview with the author, April 20, 2014.
- 75 Julia de la Cruz, interview with the author, March 31, 2014.
- 76 Matt Wooden, group interview with the FFSC, April 1, 2014.
- 77 Sean Sellers, interview with the author, April 10 and 12, 2014.
- 78 Stephanie Luce, *Fighting for a Living Wage* (New York: Cornell University Press, 2004).
- 79 For more on generating fees for labor standards enforcement, see Haeyoung Yoon, "Local and State Business Registration Fees" (presentation for the Roosevelt Institute, New York, New York, March 12, 2015).



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