

The Role of Lawyers in Union Growth Initiatives

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Participants

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Sylvia Bonilla, Ecuador
Saad Mohammed, Pakistan
Marco Tufo, Italy
Amanda Threlfall, Australia
Mary Joyce Carlson, United States

ILAW lawyers, like their union clients, focus on a wide range of issues involving the defense and expansion of worker and union rights. The quality of their work is often extraordinary, as is their personal dedication. Similarly, ILAW, itself, has undertaken a broad array of research projects, webinars, reports and other publications, litigation assistance, and more – generally also aimed at assisting union lawyers and their clients with the protection or extension of worker rights.

Yet we must recognize that the present global context in which our legal work takes place in most countries and in most regions of the world is one of gradual or even sharp decline in union density – that is, in union membership as a percentage of the overall workforce. And even where exceptions exist, the levels of union density are often quite low.

The reasons for these trends may vary from country to country, yet there are certainly various recurrent factors: the change in many countries' economies from more heavily unionized sectors to other less unionized ones, the shift from jobs in the formal economy to jobs in the informal economy, trends relating to the casualization and outsourcing of jobs and the revised definitions of employment status within a "fissured" work economy, the impact of technology and automation of jobs, and in many

places, an increase in corporate and/or government opposition to unionization.

In past years, some unions and even some national labor movements have failed to sufficiently recognize or address these trends of union decline. However, in many countries, labor today is becoming increasingly aware of the perils of ignoring the numbers; and in many places we see encouraging signs of unions that are shifting more attention and resources into union growth strategies.

The ways in which unions grow their membership vary significantly from one country to another. In some locations, unions must organize on an enterprise, or even workplace by workplace, basis; in others, the organizing is sectoral; in yet others, unions have a legislated right to represent workers in certain sectors, however they must actively recruit workers into the union to build membership growth. In some countries existing legal structures are adequate to enable additional growth; in others, labor law reform is badly needed or at least desirable.

Just as the means by which unions grow vary from country to country, so too does the role of their lawyers with respect to the legal assistance that they provide in union growth initiatives. Moreover, in some cases lawyers play a crucial role in implementing the legal components of a union growth initiative designed by their union clients; in other cases, the lawyers, themselves, are proposing union growth strategies for their union clients to consider. Either way, the role of union lawyers is often a key component of both traditional and new types of union growth campaigns.

This ILAW Conference panel — hopefully as the beginning of a larger global discussion and study that ILAW would undertake on this subject — will share a few examples of how lawyers in six different countries are rising to the occasion and helping their union clients reverse the union decline trends.

The geographic diversity of this panel illustrates the global scale of the value that lawyers are bringing to this role. So do the individual examples that the panelists will share, summarized below, and ranging from helping unions to shape their internal governance and structures to facilitate expansion of union representation opportunities; making use of the International Labour Organization (ILO) and national courts to help achieve significant labor law reform legislation; offering legal protections to help organize unrepresented sectors of the informal economy; litigating to make “atypical” workers of the platform economy and other sectors eligible to unionize; designing legal strategies to recruit young workers into the labor movement and educate non-union workers on the benefits of representation; and developing new models of union representation outside a country’s existing legal structures.

We believe that nothing we do as labor lawyers is more important; after all, if unions are not successful in reversing these trends and growing their membership in significant ways, many of the other worker and union rights topics we focus on in our daily practice and at our conferences will become increasingly irrelevant.

Ghana: lawyers using internal union governance and union structures to facilitate growth campaigns. Paapa Danquah will describe how as a union lawyer in Ghana, practicing inside the Ghana labor federation, he focused on internal union governance and institutional structures that have an important impact on various types of growth or new union campaigns. He will give examples of how the constitutional or structural changes he proposed and helped to implement led to the unions being able to admit new sectors of membership into their ranks.

Paapa will also discuss how lawyers’ blending of political and legal advice, especially in his capacity as an “in-house” union lawyer, can be significant.

Ecuador: lawyers designing and implementing multi-faceted strategies, starting with the ILO, to achieve labor law reform allowing for sectoral union representation rights and collective bargaining. Sylvia Bonilla will describe how labor lawyers in Ecuador, working with the labor movement, have sought to achieve fundamental labor law reform using the ILO, the courts, the National Assembly, and a grass roots pressure campaign. She will explain how at the outset, Ecuador's banana plantation workers obtained from ILO's Committee on Freedom of Association a finding that Ecuador was violating workers' freedom of association by not permitting banana plantation workers to seek union representation in a sector-wide unit. The lawyers took this ILO finding to win an order from the Ecuadoran courts to force the Minister of Justice to allow for sectoral representation in the agricultural sector, but he then declined to enact the necessary implementation regulations, and also refused to extend the ruling to other sectors. Returning to the ILO's CAS and CEARC Committees, the lawyers have used additional favorable findings from the ILO to draft labor law reform legislation and are litigating in the country's Constitutional court to force the National Assembly to enact this new law. The legislation would specify the terms by which workers in all sectors would be permitted to seek sectoral representation and collective bargaining.

Sylvia will also describe how the lawyers have accompanied their efforts at the ILO, in the courts, and in the National Assembly by providing the unions with necessary education and training materials, and helping them to carry out a public pressure campaign using social media - instagram, tiktok, videos.

Pakistan: lawyers protecting non-union workers from the universal threat of job termination as a strategy to expand union membership, and helping the labor movement with outreach to various low wage sectors of the informal economy, as a union organizing tool. Saad Mohammed will explain how in Pakistan the "casualization of jobs" has become widespread such that without unions to support them, workers in many sectors are constantly in fear of losing

their jobs. In response, union lawyers assist their union clients in devising strategies to help these workers organize and gain job protection. Saad will also describe how this kind of organizing, itself, poses a serious threat to workers' job security, since when an employer learns that workers are attempting to register a union, those workers are often terminated. Saad will describe the techniques they have used to address this challenge. Applying their legal services strategy to large workplaces, they have been able to recruit many new non-union workers. One recent example involved 12,000 sanitation workers in Lahore, all union-registered following a successful reinstatement campaign that the PWF lawyers waged on behalf of 400-500 of them.

Also, focusing on the informal economy, PWF has been establishing community centers on the county level. Through lawyer and organizer-led seminars they have been informing domestic workers, for example, of their worker rights. After a five year campaign domestic workers were finally able to organize. Thereafter, home-based garment workers began using this model. In both cases they have won the right to engage in sectoral bargaining, and in 2021, again with lawyers playing a major role, PWF began organizing agricultural workers, and have recently won an agreement from agricultural employers to pay 5% of their profits for workers' social security, a ban on child labor, and payment of school fees for the children - all following strike threats.

Italy: lawyers litigating to bring "atypical" workers into unions and using national political referenda to make unionization more attractive to affected workers. Marco Tufo will describe the role of lawyers in developing strategies and conducting litigation to bring "atypical workers", for example platform economy drivers, into unions. This has led to these workers being declared employees rather than contractors, and thus entitled to important worker rights. Initially other worker groups, but not unions, were helping the platform economy workers, but the lawyers helped show the unions that this was fertile ground to recruit new union members in a new sector.

Marco will also describe how a coalition of academics and lawyers, working with the Italian CGL federation, have developed a national referendum strategy with the goal of getting a repeal of repressive labor laws including one that makes it easier for employers to terminate workers - both union and non-union. With 500,000 signatures, they will be able to get this referendum on a national ballot. A conscious goal, if successful, is to follow up with a membership registration campaign for young workers not presently in a union, once they see the role of the unions in getting this legislation repealed. They are similarly seeking to repeal temporary work and subcontracting laws.

Australia: lawyers developing and implementing strategies to attract non-union young workers into the labor movement, to educate non-union workers around newly won gains by unions, and to convert casual workers' employment status through union protection. Amanda Threlfall will describe the role that lawyers have played in union growth initiatives in the Victoria Trades Hall Council, the principal public and private sector federation with some 40 affiliated unions in the state of Victoria, where she is an elected assistant secretary and long-time lawyer. In recent years, they have established a legal services center, open to all young workers whether union members or not, which offers legal advice and representation from a team of union-provided lawyers. One of the center's main goals is the recruitment of young non-member workers who come in the door.

Amanda will also describe three new union organizing strategies in which lawyers are playing a major role inside Australia's national federal public sector union, the CPSU. One involves negotiating enterprise agreements containing legal protections to organize, including union delegates' workplace rights, union access to new employees, and the union's role in dispute resolution. The second involves education and extension to non-union workers of newly bargained rights on working from home, paid parental leave, cultural leave, and work-life balance measures. The third involves a casual employment conversion campaign, where the union's lawyers have designed mechanisms to

achieve secure employment, thereby recruiting large numbers of non-members wanting access to permanency, but who are unable to act without help from the unions. .

United States: Lawyers litigating at the National Labor Relations Board and in the Courts to gain union recognition, and developing new models of membership for workers to join unions even in the absence of collective bargaining rights.

Mary Joyce Carlson will describe the context of the steady decline in the USA of the number of workers covered by collective bargaining in both the public and private sectors. She will discuss how labor lawyers often work in close coordination with union organizing campaigns to gain new members. She will offer examples from her personal experience including the recent successful campaign to gain recognition for the Starbucks Workers Union, where lawyers prosecuted large numbers of unfair labor charges that have resulted in both bargaining orders and vindication for discriminatorily discharged workers. She will also describe an innovative shareholder campaign that allied important shareholders with the Starbucks workers .

Mary Joyce will also explain how labor lawyers have been innovators and partners in developing new models of membership that allow workers to directly join the union even in the absence of collective bargaining. This model can be successfully used in campaigns where a union vote is lost but the numbers of activists who want to be a part of the union have a path to union membership even in the absence of collective bargaining.
