

Worker Centers

Union Front Groups and the Law



U.S. CHAMBER OF COMMERCE
Employment Policy Division

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Introduction:

The Office of Labor-Management Standards (OLMS) in the U.S. Department of Labor is the federal agency responsible for administering and enforcing most provisions of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). The LMRDA was enacted by Congress to ensure basic standards of democracy and financial integrity in labor organizations representing, or purportedly representing, employees in private industry. The LMRDA promotes labor organization and labor-management transparency through reporting and disclosure requirements for labor organizations and their officials, employers, labor relations consultants, and surety companies.

In recent years, groups representing workers and their interests have evolved into organizations known as “worker centers.” Worker centers have historically been non-profit organizations that offer services to their members, including education, training, and advocacy for worker rights through research, communication, lobbying and organizing. Increasingly, however, worker centers have sought to directly engage specific employers or groups of employers to effectuate change in the workplace on behalf of workers they claim to represent. When it comes to such direct engagement and dealing with employers, many worker centers act no differently than traditional labor organizations.

As worker centers have evolved over the years, many have assumed roles akin to those of a traditional labor organization, and as such should be accountable to the workers they claim to represent under the laws Congress passed to establish such accountability.

The LMRDA was enacted, in part, to ensure protection of certain minimum rights of employees *vis-à-vis* the labor organizations that represent them. The LMRDA contains significant protections for employees with respect to promotion of the principles of organizational democracy, access to basic information, and promotion of a duty of fair representation. As worker centers have evolved over the years, many have assumed roles akin to those of a traditional labor organization, and as such should be accountable to the workers they claim to represent under the laws Congress passed to establish such accountability. However, few appear to have embraced the obligations of the LMRDA.

Background of the Labor-Management Reporting and Disclosure Act:

In 1935, Congress passed the Wagner Act, also known as the National Labor Relations Act (NLRA).¹ The purpose of the statute was to promote freedom of association and collective bargaining. It did not regulate labor organizations. The absence of such regulation subjected the law to criticism, arising out of corruption and undemocratic actions exhibited by some labor organizations of the time.

¹ Pub. L. No. 74-198, 49 Stat. 449-50 (1935).

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Concern about the power of labor organizations contributed to the introduction of the Taft-Hartley Act, which created a series of unfair labor practices and other requirements designed to protect employees from the labor organizations that represented them. A goal of the legislation was to provide workers the same protections from labor organizations that the Wagner Act offered workers from employers.² “[T]he freedom of the individual workman should be protected from duress by the union as well as from duress by the employer.”³ The House echoed this sentiment. “[T]he American workingman had been deprived of his dignity as an individual... cajoled, coerced, and intimidated... in the name of the splendid aims set forth in Section 1 of the National Labor Relations Act. His whole economic life has been subject to unregulated monopolists.”⁴

Following passage of the Taft-Hartley Act, there remained public concern over the lack of oversight of labor organizations, which prompted the Senate Select Committee on Improper Activities in the Labor or Management Field, known as the McClellan Committee, to conduct hearings on the matter.⁵ The inquiry and subsequent hearings revealed corruption, fraud and other inappropriate behavior by leaders of labor organizations at the expense of their membership.⁶ The McClellan Committee concluded that there was a need to require democratic procedures to hold leaders of labor organizations accountable to their members.⁷ This debate eventually resulted in passage of the Landrum-Griffin Act, more formally known as the Labor-Management Reporting and Disclosure Act of 1959.⁸

The LMRDA provides significant protections for the rights of employees with respect to the labor organizations that purport to represent them.

2 Senate Report No 106 on S. 1120, Supplemental Views, reprinted in 1 Legislative History of the Labor Management Relations Act of 1947 at 456.

3 *Id.*

4 House Report No. 245 on H.R. 3010 as reprinted in 1 Legislative History of the Labor Management Relations Act of 1947 at 295.

5 *The Labor Reform Law*, Bureau of National Affairs: Washington, D.C. (1959).

6 *Id.*

7 Leslie Marshall, *The Right to Democratic Participation in Labor Unions and the Use of the Hobbs Act to Combat Organized Crime*, 17 Fordham Urb. L. J. 189, 196 (1989); S. REP. No. 187, 86th Cong., 1st Sess. 5 reprinted in 1 NLRB Legislative History of the Labor-Management Recording and Disclosure Act of 1959 at 397.

8 29 USC §§ 141-144, 167, 172-187.

The Legal Framework of the LMRDA:

The LMRDA provides significant protections for the rights of employees with respect to the labor organizations that purport to represent them. The following is a summary of such protections:

Title I of the LMRDA, referred to as the Worker Bill of Rights, addresses issues of organizational democracy and basic protections for workers. These include the following: equal rights and privileges for all union members to nominate and elect leadership of their choosing, to attend meetings, and to participate in deliberations of the labor organization; the freedom of members to assemble and to express their views, arguments, or opinions to other members and during meetings of the labor organization; protection of members from increases in dues or initiation fees without majority approval; and the provision of due process protections for members in disciplinary matters.⁹ Title I further requires labor organizations to retain copies of all collective bargaining agreements to which they are a party, and to make them available for review by any member or by any employee whose rights are affected by such agreements.¹⁰ Finally, the Bill of Rights gives members of labor organizations the right to pursue civil enforcement of the statute's protections in federal court.¹¹

Title II of the LMRDA requires labor organizations to disclose financial information about the organization, its officials, and employees.¹² Title II also requires labor organizations to have a constitution and by-laws containing requirements for membership, regular meetings, censure and removal of officers, and provisions for how the organization's funds may be spent.¹³ These provisions not only promote transparency to protect workers' rights to fair elections of officials, they also serve as a deterrent on misuse of an organization's funds.¹⁴ This, in turn, promotes memberships' knowledge of a labor organization's affairs so that they may exercise their voting and free speech rights.¹⁵

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Title II also requires labor organizations to report this information to the Department of Labor through the submission of documents and completed disclosure forms, including the LM-1

9 29 U.S.C. § 411(a)(1)-(5)

10 29 U.S.C. § 412.

11 29 U.S.C. § 414.

12 29 USC §§ 431-432.

13 29 USC § 431.

14 Nelson, *Slowing Union Corruption*, 8 Geo. Mason L. Rev. 527, 551 (2000).

15 Marshall, *The Right to Democratic Participation*, 17 Fordham Urb. L. J. at 197.

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and LM-2.¹⁶ Those reports are available for review by the public through OLMS. Title II also grants members, but not the public, the right to inspect and verify records that support an organization's reports to the Department of Labor.¹⁷

Title III of the LMRDA limits a parent labor organization's ability to create a trusteeship over local or subordinate unions.¹⁸

Title IV of the LMRDA requires regular secret ballot elections of officers at the national and local levels.¹⁹

Title V of the LMRDA creates a fiduciary duty for officers and employees of a labor organization to the members regarding the organization's money and property.²⁰ It requires officers to hold the labor organization's money solely for the benefit of the organization and to refrain from "holding or acquiring any pecuniary or personal interest which conflicts with the interest of such organization."²¹

The Definition of a Labor Organization under the LMRDA:

The strong protections of the LMRDA, however, only become meaningful if groups purporting to represent workers are found to be labor organizations subject to the statute. The definition of a labor organization under the LMRDA appears in section 3(i) of the statute with clarifying examples in section 3(j).²²

Section 3(i) defines a labor organization as any organization,

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"engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body."²³

¹⁶ 29 CFR §§ 401-404.

¹⁷ 29 U.S.C. §431(c).

¹⁸ 29 U.S.C. § 461.

¹⁹ 29 U.S.C. § 481.

²⁰ 29 USC § 501.

²¹ 29 USC § 501(a).

²² 29 USC § 402(i) and (j).

²³ 29 USC § 402(i).

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Section 3(j) provides five *examples* of organizations that qualify as labor organizations.

A labor organization shall be deemed to be engaged in an industry affecting commerce if it:

1. is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or
2. although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or
3. has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or
4. has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or
5. is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.²⁴

The examples set forth in Section 3(j) are just that - examples. Section 3(j) is not intended to limit coverage of the LMRDA only to groups identical to the examples provided.

The examples set forth in Section 3(j) are just that - examples. Section 3(j) is not intended to limit coverage of the LMRDA only to groups identical to the examples provided. Rather, it is intended to *maximize* coverage by ensuring that labor organizations cannot wriggle out from under the Act by claiming that they are not “engaged in an industry affecting commerce.” In fact, Courts have rejected attempts to use the 3(j) list to exclude entities from coverage under the LMRDA.

Specifically, in *Brennan v. United Mine Workers of America*,²⁵ the United States Court of Appeals for the District of Columbia rejected an attempt by a labor organization to skirt coverage under the LMRDA merely because the form in which it existed was not included in one of the five enumerated examples set forth in Section 3(j). Finding the entity at issue in the case to be a labor organization subject to coverage under the LMRDA, the Court held that

²⁴ 29 U.S.C. 402(j).

²⁵ 475 F.2d 1293 (DC Cir. 1973).

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Sections 3(i) and 3(j) exist as a complement to one another because Congress intended for them to “increase the scope of the statute’s reach and not restrict it.”²⁶ The Court went on to confirm that Congressional intent in passage of the LMRDA was “to provide comprehensive coverage of labor organizations *engaged in any degree in the representation of employees* or administration of collective bargaining agreements” irrespective of what they are called.²⁷

If an organization “represents its members *in any manner* regarding grievances, labor disputes, or terms or conditions of employment, the organization is subject to the Act regardless of any formal attributes... or the extent of its representative activities.”²⁸

The regulations promulgated under the LMRDA also confirm that the definition of a labor organization is very broad.

The regulations promulgated under the LMRDA also confirm that the definition of a labor organization is very broad. First, the LMRDA covers all organizations not expressly excluded, irrespective of what they are called and “irrespective of size or formal attributes.”²⁹ “To come within the quoted language in section 3(i) the organization must exist for the purpose, in whole or in part, of dealing with employers concerning grievances, etc. In determining whether a given organization exists wholly or partially for such purpose, consideration will be given not only to formal documents... but actual functions and practices of the organization as well. Thus, employee committees which regularly meet with management to discuss problems of mutual interest and handle grievances are ‘labor organizations,’ even though they have no formal organizational structure.”³⁰

Flaws of OLMS’s 2008 and 2013 Guidance Letters:

The specific mention of “employee committees” is key because it contradicts guidance letters published by OLMS in 2008 and 2013.³¹ In the 2008 letter, OLMS states that “a labor organization ‘must also be engaged in an industry affecting commerce under section 3(j) of the Act, 29 U.S.C. 402(j).’” Likewise, the 2013 letter (referring to the 2008 letter) states that the Restaurant Opportunities Center (ROC) could not be a labor organization because it “was not engaged in an industry affecting commerce under section 3(j) of the Act.” Thus, both letters suggest that unless an organization comports with at least one of the examples in 3(j), it cannot be considered a labor organization. This interpretation is incorrect as a matter of law.

26 *Id.* at 1295, fn. 8 (citing 105 Cong. Rec. 6516 (1959)(remarks of Senators Goldwater and Kennedy), and H.R. Rep. No. 741, 86th Cong., 1st Sess. at 28, U.S. Code Cong. & Admin. News 1959, p. 2424).

27 *Id.* at 1296 (citing H.R. Rep. No. 741, 86th Cong., 1st Sess. at 28 U.S. Code Cong. & Admin. News 1959, P. 2451)(emphasis added). See also, *Donovan v. National Transient Division*, 736 F.2d 618 (10th Cir. 1984).

28 *Donovan v. National Transient Division*, 736 F.2d 618 (10th Cir. 1984)(emphasis added)(citing *Brennan v. United Mine Workers*, 475 F.2d 1293, 1295-96 (D.C. Cir. 1973) and *National Education Assn. v. Marshall*, 100 LRRM 2565 (D.D.C. 1979)).

29 29 C.F.R. § 451.3(a)(1). See also, *Roddy v. United Transportation Union*, 479 F. Supp. 57, 60 (N.D. Ala. 1979).

30 29 C.F.R. § 451.3(a)(2).

31 Memo from Andrew Davis, January 16, 2008; Letter from Brian Kennedy, Assistant Secretary OCIA, to Rep. John Kline, August 26, 2013.

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In fact, the example above from the LMRDA's implementing regulations regarding employee committees would simply make no sense if 3(j) were a limiting clause and only organizations meeting the examples therein could be considered labor organizations. Likewise, section 030.622 of OLMS's Interpretive Manual states: "loosely formed employee committees, appointed by employers to present grievances to the employers, and neither having bylaws or offices, nor collecting dues, are 'labor organizations' under the Act."³² Again, this analysis of the LMRDA provided by OLMS itself would make no sense if the approach taken in the 2008 and 2013 letters regarding 3(j) were correct. Finally, there is the language of section 030.668 of the interpretive manual, which states: "the definition of 'labor organization' and the examples of labor organizations deemed to be engaged in an industry affecting commerce in section 3(j)(5)..."³³

Thus, the language of the LMRDA and of its accompanying regulations as well as OLMS's own Interpretive Manual make it perfectly clear that an organization need not match the examples set forth in section 3(j) of the Act to be found a labor organization.

In addition to the flawed interpretation of section 3(j), OLMS's 2008 and 2013 letters include other incorrect interpretations of the statute.

In addition to the flawed interpretation of section 3(j), OLMS's 2008 and 2013 letters include other incorrect interpretations of the statute. For example, the 2008 letter attaches weight to the fact that "there was no evidence of ROC being a signatory to a collective bargaining agreement (CBA) with an employer or ROC seeking to negotiate a CBA with any employer."³⁴ However, the OLMS Interpretive Manual states: "the fact that [an organization] does not now have contracts with any employers does not place it outside the scope of the Act."³⁵ In other words, having a CBA in place, or even having the intent to enter a CBA (as opposed to other less formal methods of "dealing with" an employer), is not necessary for an organization to be covered under LMRDA.

Likewise, the 2008 letter, in analyzing the meaning of "dealing with an employer," states: "the term refers to an interchange or transaction between two or more parties resulting in a mutually beneficial agreement. In the labor-management context, this logically refers to collective bargaining..."³⁶ Again, however, this analysis is contradicted by the language of the Interpretive Manual, both in section 030.611 referenced above and in section 030.610: "an organization in which employees participate need not actually deal with employers; only exist for the purpose..."³⁷

32 OLMS Interpretive Manual, section 030.622.

33 OLMS Interpretive Manual, section 030.668 (emphasis added).

34 Memo from Andrew Davis, January 16, 2008.

35 OLMS Interpretive Manual, section 030.611.

36 Memo from Andrew Davis, January 16, 2008.

37 OLMS Interpretive Manual, section 030.610.

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The 2008 letter further states that “employers have not negotiated over [ROC’s] demands, nor has ROC sought to negotiate over such demands.”³⁸ But whether formal negotiations have taken place is irrelevant under the statute, as the language of 030.610 mentioned above makes clear. To sum up, the 2008 letter simply gets it wrong: actual negotiations, let alone a formal CBA, are not necessary to establish coverage under the Act.

Finally, the 2008 letter includes an unusual and unwarranted definition of “participate.” The letter states that ROC members “do not ‘participate’ in the governance or operations of the organization.”³⁹ This definition of “participate” as meaning the actual governance or steering of the operations of an organization is wholly lacking in the statute. In fact, “participate” is left undefined in the LMRDA. However, Webster’s defines “participate” as “to take part” or “to have a part or a share in something,” which is much broader than the definition in the 2008 letter.⁴⁰ The broader definition is consistent with the Interpretive Manual, which states: “The terms used in the Act are, generally speaking, defined broadly so as to provide the maximum coverage.”⁴¹ It is not clear why OLMS settled for such a restrictive definition of “participate” in its 2008 letter.

To sum up, the 2008 letter simply gets it wrong: actual negotiations, let alone a formal CBA, are not necessary to establish coverage under the Act.

The 2013 letter repeats the flawed interpretations of the 2008 letter. However, it makes an even stronger implication that an organization must meet one of the definitions of 3(j) to be found a labor organization.

None of this is determinative of whether, at the time those letters were written, ROC was a labor organization. However, it should be abundantly clear that the analysis used to determine that ROC was *not* covered by the Act was deeply flawed. To ensure that other stakeholders do not rely on these letters in making their own determinations, the Department of Labor should issue clarifying guidance as soon as possible.

Issues Relating to “Employer” Under the LMRDA:

With respect to what constitutes an “employer,” the LMRDA and its corresponding regulations make it very clear that the statute covers any “employer within the meaning of any law of the United States relating to the employment of any employee.”⁴² Such laws include the Fair Labor Standards Act, the Railway Labor Act, the Labor Management Relations Act and the Internal Revenue Code. This broad coverage includes employers that are in industries that may not be subject to federal laws that govern labor relations. For example, labor

38 *Id*

39 *Id*

40 <https://www.merriam-webster.com/dictionary/participate>.

41 OLMS Interpretive Manual, section 020.005.

42 29 USC § 403(e); 29 CFR § 451.3(a)(3).

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organizations that represent agricultural employees, which have no federally protected right to form such labor organizations and engage in collective bargaining, are covered by the LMRDA.⁴³ The same goes for labor organizations that represent employees in industries over which the National Labor Relations Board has declined to exercise jurisdiction, such the horse racing industry.⁴⁴

In determining whether an organization exists for the purpose in whole or part, of “dealing with employers,” the regulations promulgated under the LMRDA cite to Supreme Court interpretations of the phrase under the National Labor Relations Act.⁴⁵ Although interpretations of the phrase under the National Labor Relations Act are not binding on the Department of Labor, they can be instructive in guiding compliance and offering certainty with respect to compliance with the law. Under the NLRA, the phrase “dealing with employers” has been extensively analyzed.

The concept of “dealing with employers” is far broader than collective bargaining in the traditional sense.

The concept of “dealing with employers” is far broader than collective bargaining in the traditional sense. When the Senate debated definitions in the original draft of the Wagner Act, the Secretary of Labor recommended “dealing with” be replaced with “bargaining collectively.”⁴⁶ That recommendation was rejected in favor of broader language.⁴⁷

The National Labor Relations Board (NLRB or Board), the independent federal agency that administers the NLRA, has also developed a significant body of law surrounding this phrase. It has reached a similar conclusion that the phrase is very broad and goes well beyond mere collective bargaining. Much of the analysis arises within the context of employer dominated labor organizations or employee committees established by an employer for the purpose of engaging with management to address matters of employee interest, which is unlawful.⁴⁸ For example, where an organization makes recommendations to an employer regarding policies and employment actions, and the employer responds to the demand, the Board will find the “dealing with” requirement satisfied.⁴⁹ In general, there should be more than a one-time communication with an employer over a discrete issue.⁵⁰

43 29 CFR 451.3(a)(3).

44 *Stein v. Mutual Clerks Guild of Massachusetts, Inc.*, 560 F.2d 486 (1st Cir. 1977).

45 29 C.F.R. § 451.3(a)(2), fn. 6 (citing *National Labor Relations Board v. Cabot Carbon Co.*, 360 U.S. 203 (1959)).

46 *National Labor Relations Board v. Cabot Carbon Co.*, 360 U.S. 203, 210-212 (1959) (citing the legislative history of the Wagner Act at S. 1958, 74th Cong., 1st Sess. 66-67, reprinted in 1 Leg. Hist. (1935) 1442-1443).

47 *Id.*

48 29 USC § 158(a)(2). See e.g., *Electromation, Inc.*, 309 NLRB 990 (1992); *E.I. du Pont & Co.*, 311 NLRB 893 (1993); *Keeler Brass Co.*, 317 NLRB 1110 (1995); *Crown Cork & Seal Co.*, 334 NLRB 699, 700 (2001).

49 *Keeler Brass Co.*, 317 NLRB 1110 (1995).

50 *Stoody Co.*, 320 NLRB 18 (1995); *Vencare Ancillary Services, Inc.*, 334 NLRB 965, 969-970 (2001), enf. denied on other grounds, 352 F.3d 318 (6th Cir. 2003). *But see, Porto Mills, Inc.*, 149 NLRB 1454 (1964) (holding that an informal group had “dealt with” the employer by demanding the termination of an employee leading a union organizing effort).

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A critical element in the analysis under the NLRA is whether or not there exists intent on the part of the organization to “deal with” the employer. In many cases the requisite intent is easy to find. Such cases often involve organizations established by an employer to facilitate employer-employee engagement. Within that context, intent is implicit in the fact that the employer created the organization for the purpose of dealing with it. The focus of the analysis therefore is on the manner of dealing, and the subject matter of those dealings, not the existence of intent.

A different analysis must take place when the case involves independent organizations that the employer had no hand in creating, and with which the employer may not wish to deal at all. In those cases, care needs to be taken to fully understand the overall purpose of the organization to discern whether the organization possesses the requisite intent to deal with employers.

In light of the limited authority interpreting intent under the LMRDA, one must turn to interpretation of the NLRA for guidance. Under the NLRA, to determine whether a group possesses the requisite intent to deal with an employer, a thorough analysis of the overall purpose of the organization must occur. In undertaking such an analysis, several principles become evident.

First, intent to deal with an employer can exist even if there is no dealing at all.⁵¹ In other words, the NLRB has found groups of employees to meet the definition of a labor organization under the NLRA where they sought to “deal with” an employer but never managed to do so. The mere making of demands, even if the demands amount to nothing, satisfies the requisite intent on the part of the organization to deal with an employer.⁵²

Second, intent to deal with an employer may also be found even if demands made of an employer are not customarily associated with collective bargaining. For example the NLRB has found that refusing to work with an unpopular employee is evidence of intent to deal with because it amounts to “asserting a grievance and seeking to effect a change in their working conditions.”⁵³

The mere making of demands, even if the demands amount to nothing, satisfies the requisite intent on the part of the organization to deal with an employer.

Third, intent to deal with an employer must be evidenced by more than the mere pursuit of a broad social cause that does not target an employer to impact its wages, hours or terms and conditions of employment.⁵⁴ However, the mere pursuit of a broad social cause does

51 For example, in *Coinmach Laundry*, 337 NLRB 1286 (2002), an NLRB Administrative Law Judge wrote that “under this definition, an incipient union which is not yet actually representing employees may, nevertheless, be accorded 2(5) status if it admits employees to membership and was formed for the purpose of representing them.” See also, *Early California Industries*, 195 NLRB 671, 674 (1972)(finding a group of employees to constitute a labor organization where the group’s purpose was to negotiate wages, hours and working conditions with an employer, even though such negotiations had not yet occurred).

52 *Betances Health Unit*, 283 NLRB 369 (1987).

53 *Porto Mills, Inc.*, 149 NLRB 1454, 1471 (1964).

54 See e.g., *Center for United Labor Action*, 219 NLRB 873 (1975)(finding that a group that never directly engaged or sought to engage an employer but pursued a broad social purpose was not a labor organization); *Northeastern University*, 235 NLRB 858 (1978).

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not exempt an organization from compliance with the LMRDA if it engages in other conduct that evidences intent to deal with employers. It should be noted that many established labor organizations pursue broad social causes.

Application of the LMRDA to Worker Centers:

The worker center, although not new, has evolved in the last decade. In the past, they were non-profit, community-based organizations that offered a variety of services to their members, including education, training, employment services and legal advice. They historically advocated for worker rights through research, communication, lobbying and community organizing, rather than through direct engagement with specific employers. In the early 1990s there were only a handful of known worker centers, but they now number in the hundreds.

A recent trend has seen some of these organizations move away from their historical mission and toward the goal of targeting specific employers for the purpose of effectuating change in specific workplaces. These groups have also acted as surrogates of established labor organizations to advance the interests of those organizations. Those interests may include increased membership, effectuating change in the workplace, or to gain recognition rights. At the same time, many convey the public impression that they are organic or grassroots groups created by workers.

There can be little doubt about the fact that a number of worker centers have the requisite intent to deal with employers about wages, hours and terms and conditions of employment.

There can be little doubt about the fact that a number of worker centers have the requisite intent to deal with employers about wages, hours and terms and conditions of employment. Assuming they meet the remaining elements of section 3(i), they would be labor organizations as that term is defined under the LMRDA. Recent studies of select worker centers reflect this fact. A 2014 study by the United States Chamber of Commerce revealed that several prominent worker centers at the time were either sponsored by established labor organizations or independent entities that acted like labor organizations under the definition of 3(i).⁵⁵

The evolution of the worker center model over the past decade has created confusion about who these organizations are and on whose behalf they are acting. One of the fundamental purposes of the LMRDA is to promote transparency and organizational democracy within labor organizations. It is within the context of the confusion surrounding many of these organizations that the LMRDA offers an elegant and simple solution to provide clarity to the workers these organizations count as members and purport to represent, as well as to the public. For that reason, OLMS should pay particular attention to worker centers and similar organizations that meet the definition of a labor organization under the LMRDA.

⁵⁵ See, *The New Model of Representation*, <https://www.uschamber.com/report/the-new-model-representation-overview-leading-worker-centers>. See also, *Marculiewicz and Thomas, Labor Organizations by Another Name: The Worker Center Movement and its Evolution into Coverage under the NLRA and LMRDA*, 13 Fed. Soc. Engage 64 (2012).

Analysis of Specific Worker Centers under the LMRDA:

The following is a list of several worker centers that are likely to meet the definition of a labor organizations under the LMRDA. If so, they should comply with the law by structuring themselves as democratic institutions governed by officials elected by their members, and filing the requisite forms with OLMS.

1. Retail Action Project

The Retail Action Project (“RAP”) was founded in 2005 as an organization of retail workers “dedicated to improving opportunities and workplace standards in the retail industry.”⁵⁶ In 2010, RAP expanded to a membership organization of retail workers.⁵⁷ In addition to providing educational and advocacy services, RAP has been involved in a variety of campaigns targeting workers’ rights at retailers in New York City.⁵⁸ As part of this process, RAP works with labor unions and other community advocacy organizations.⁵⁹ For instance, the Retail, Wholesale and Department Store Union (“RWDSU”), which is part of the United Food and Commercial Workers Union (“UFCW”), lists RAP as an RWDSU campaign on its website.⁶⁰ As an RWDSU campaign, RAP and this union work closely to target specific employers.

In 2006, RAP accused a New York City clothing chain of violating state and federal minimum wage and overtime laws, failing to comply with New York’s reporting pay requirements, and forcing stock employees to work in poor conditions.⁶¹ RAP filed a lawsuit on behalf of employees. While filing litigation in and of itself would not be evidence of “dealing with” an employer, RAP used this lawsuit to convince the employer to enter a neutrality agreement with the RWDSU.⁶² RAP has also pursued other campaigns to pressure specific employers to increase wages and services to workers.⁶³

56 See About, Retail Action Project, available at <http://retailactionproject.org/about/> (last visited Sept. 26, 2017).

57 *Id.*

58 Allies, Retail Action Project, available at <http://retailactionproject.org/about/allies> (last visited Sept. 26, 2017). Amongst its social platforms, RAP is involved in the NYC Minimum Wage Campaign, which lobbies to raise the minimum wage in New York State from the federal minimum of \$7.25 per hour to \$8.50 per hour, the NYC Paid Sick Days Campaign, which lobbies for minimum paid sick time for part-time and full-time employees. See <http://retailactionproject.org/coalitions/> (last visited Sept. 26, 2017).

59 See Former Scoop NYC Workers File Lawsuit Against Trendy Retail Chain Citing Wage Theft and Labor Violations, Retail Action Project, available at <http://retailactionproject.org/2009/07/former-scoop-nyc-workers-file-lawsuit-against-trendy-retail-chain-citing-wage-theft-and-labor-violations/> (last visited Sept. 26, 2017) (“Fired workers from high end retail clothing store Scoop NYC joined with leaders of the RWDSU and its Retail Action Project (RAP), elected officials and labor and community leaders to announce a lawsuit against the trendy clothing retailer for labor violations, wage theft and discrimination over a period of 8 years from 2000-2008.” (emphasis added)).

60 See RWDSU’s website at <http://rwdsu.info/> (last visited Sept. 26, 2017).

61 See Lincoln Anderson, Cornered, Yellow Rat Bastard must cough up green to workers, *The Villager* Volume 77 / Number 37, Feb. 13-19, 2008, available at http://thevillager.com/villager_250/corneredyellowrat.html (last visited Sept. 26, 2017).

62 See *Mohammed Saleh, et al. v. Shoe Mania, LLC*, 09-cv-04016-LTS, Document No. 125. See also, Mischa Gaus, NY Boutique Boss Arrested, Faces 4 Years in Jail for Stealing Wages, *Labor Notes*, December 25, 2010, available at <http://labornotes.org/2010/02/ny-boutique-boss-arrested-faces-4-years-jail-stealing-wages> (last visited Sept. 26, 2017).

63 See “Protesters rally in front of Qns. Center,” *Queens Chronicle*, November 4, 2010, available at http://www.qchron.com/editions/central/protesters-rally-in-front-of-qns-center/article_38292a89-f2b8-5e4f-bcf2-7b22067b79fd.html (last visited Sept. 26, 2017).

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Through these actions, RAP is acting as a labor organization within the LMRDA. RAP is a membership organization in which employees participate and on whose behalf RAP seeks to deal with employers.⁶⁴ RAP also appears to serve as an agent of the RWDSU by organizing workers and convincing employers to enter neutrality agreements with RWDSU.⁶⁵ As such, RAP is a labor organization within the scope of the LMRDA and should comply with it.

2. Organization United for Respect at Walmart and Making Change at Walmart

Some of the most active worker centers in recent years have been those focused on Walmart. They include the Organization United for Respect at Walmart (“OUR Walmart”) and Making Change at Walmart (“MCAW”). Both OUR Walmart and MCAW are distinct from most worker centers because their efforts are aimed at a single entity instead of an industry or sector.

As part of its ongoing campaigns against Walmart, the United Food and Commercial Workers International Union (“UFCW”) sought to change its approach toward the company by creating OUR Walmart and MCAW. In public statements, these groups claim to have organized thousands of hourly workers in dozens of Walmart stores across the United States.⁶⁶

MCAW is a campaign that has undertaken a self-described effort to change Walmart into a more responsible employer and to improve the lives of Walmart workers.⁶⁷ Membership in the MCAW is open to current or former hourly Walmart employees.⁶⁸ It seeks to challenge the company’s employment practices and expansion efforts⁶⁹ and specifically highlights the following “issues”:

- Claims that Walmart’s jobs and wages allegedly keep communities “in poverty” and that “[m]inorities are disproportionately represented in low-paying positions at

64 RAP is described on its website as a membership organization of retail workers. See <http://retailactionproject.org/about/> (last visited Sept. 26, 2017).

65 See U.S. Social Forum Takes Detroit by Storm, Labor Notes, <http://www.labornotes.org/blogs/2010/06/us-social-forum-takes-detroit-storm?language=es> (last visited Sept. 27, 2017) (explaining that RAP’s strategy is to use the lawsuits “to convince employers to sign neutrality agreements and then win union elections.”). See also, Pam Whitefield, Sally Alvarez, Yasmin Emrani, *Is There A Women’s Way Of Organizing? Gender, Unions, and Effective Organizing*, Cornell University Division of Extension and Outreach School of Industrial and Labor Relations Report, page 13 (explaining that “RAP was created through the efforts of RWDSU as a way to reach out to young NYC retail workers, spark organizing campaigns, and establish a worker-community base”), page 26 (noting RWDSU trains members of RAP in organizing: “With our Member Volunteer Organizing Training, we are trying to develop the leadership of RAP so they can get involved in organizing. We do workshops so they can build their skills and can step up. [We have workshops on] how to do outreach, how to talk to your coworkers, how to motivate them, how to deal with excuses, overcome fear, listening skills.”).

66 Steven Greenhouse, “Wal-Mart Workers Try the Nonunion Route,” *New York Times*, June 14, 2011, *available at* <http://www.nytimes.com/2011/06/15/business/15walmart.html?pagewanted=all> (last visited Sept. 26, 2017). See About Us, Making Change at Walmart, *available at* <http://changewalmart.org/about-us/> (last visited Sept. 29, 2017).

67 See Are you a Walmart Worker?, *available at* <http://changewalmart.org/action/do-you-work-at-walmart/> (last visited Sept. 24, 2017).

68 See Making Change at Walmart, *available at* <http://changewalmart.org/> (last visited Sept. 26, 2017).

69 See Walmart and the African American Community, Making Change at Walmart, *available at* <http://changewalmart.org/issues/african-americans/> (last visited Sept. 24, 2017).

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Walmart.”⁷⁰

- Claims that “Walmart’s health care plans fail to cover hundreds of thousands of associates.”⁷¹
- Claims that “[p]eople of color are underrepresented in management jobs.”⁷²
- Claims that “Walmart has a disturbing track record of discrimination when it comes to women and mothers in the workplace.”⁷³
- Claims that the company has taken “drastic steps to discourage its employees from exercising their right to organize and collectively bargain.”⁷⁴

A separate organization, OUR Walmart, was also backed by the UFCW. The UFCW supplied organizers to OUR Walmart to recruit workers and is alleged to have paid members to engage in recruiting.⁷⁵ In 2015, OUR Walmart split into two factions. One faction remained aligned with the UFCW and appears to have merged its operations with MCAW.⁷⁶ The second faction, which was headed by Dan Schlademan, split from the UFCW and continued operations as “OUR Walmart.”⁷⁷

Prior to its split, in June of 2011, a group of OUR Walmart members traveled to the company’s headquarters and demanded to meet with Walmart’s CEO and presented a Declaration of Respect to a member of senior management.⁷⁸ Through its “Declaration of Respect,” OUR Walmart seeks to have Walmart change wages, hours and terms and conditions of employment for employees.⁷⁹ The changes sought include:

- “Confidentiality in the Open Door and provide associates with a written resolution to issues that are brought up and always allow associates to bring a co-worker as a witness;”
- Wages of “at least \$15 per hour and provide consistent, full-time schedules to all those that want them;”

70 See Walmart and the African American Community, Making Change at Walmart, *available at* <http://changewalmart.org/issues/african-americans/> (last visited Sept. 24, 2017).

71 See Healthcare, Making Change at Walmart, *available at* <http://changewalmart.org/issues/healthcare/> (last visited Sept. 24, 2017).

72 See Latinos, Making Change at Walmart, *available at* <http://changewalmart.org/issues/latinos/> (last visited Sept. 24, 2017).

73 See Women, Making Change at Walmart, *available at* <http://changewalmart.org/issues/women/> (last visited Sept. 24, 2017).

74 See Workers, Making Change at Walmart, *available at* <http://changewalmart.org/issues/workers/> (last visited Sept. 24, 2017).

75 See “Wal-Mart Workers Try the Nonunion Route”, <http://www.nytimes.com/2011/06/15/business/15walmart.html> (last visited October 30, 2017)(explaining that UFCW paid most of the salary of several hundred members, on leave from their jobs, to knock on doors and otherwise reach out to Wal-Mart employees to urge them to join OUR Walmart.) See also Lila Shapiro, “The Walmart Problem: Uncovering Labor’s Place in an Era of Joblessness,” *Huffington Post*, December 12, 2011, *available at* http://www.huffingtonpost.com/2011/12/12/our-walmart-labor-unions_n_1143527.html (last visited Sept. 26, 2017). Article profiles Philip Meza, a member of the UFCW who is paid to organize Walmart employees on behalf of OUR Walmart.

76 Nathan Layne and Lisa Baertlein, Wal-Mart worker group splits in two; both sides vow to continue wage fight, *Reuters* (Sept. 15, 2015), *available at* <http://www.reuters.com/article/us-walmart-union/wal-mart-worker-group-splits-in-two-both-sides-vow-to-continue-wage-fight-idUSKCN0RH06O20150917> (last visited Sept. 26, 2017).

77 See, <https://www.united4respect.org/> (last visited October 30, 2017).

78 See “Making Change at Walmart Stands With Walmart Associates in Bentonville, Arkansas,” *UFCW Newsletter*, Volume 10, Issue 11, June 21, 2011, *available at* <http://www.ufcw400.org/2011/06/22/on-point-making-change-at-walmart-stands-with-walmart-associates-in-bentonville-arkansas/>.

79 OUR Declaration of Respect, OUR Walmart, *available at* http://www.united4respect.org/our_declaration_of_respect (last visited Sept. 24, 2017).

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- “Wages and benefits that ensure that no Associate has to rely on government assistance;” and
- “Predictable and dependable” scheduling.⁸⁰

OUR Walmart has also engaged in work stoppages at Walmart stores, and other protest activities, including highly publicized Black Friday marches and rallies at company locations across the country.⁸¹ OUR Walmart also claimed to have successfully demanded the discipline and replacement of an unpopular supervisor.⁸²

Both OUR Walmart and MCAW meet the definition of a labor organization under the LMRDA. First, both constitute an “organization” of “employees” as those terms are defined under the LMRDA.⁸³ OUR Walmart solicits money from members⁸⁴ and both organize events at which they promote their agenda. MCAW is actively recruiting workers to reach out to it and to let it know if the employee would “like to be involved in the campaign.”⁸⁵ Likewise, OUR Walmart holds itself out to be “a nationwide membership organization of current and former Walmart and retail associates coming together to stand up for change at Walmart.”⁸⁶

It is clear that both OUR Walmart and MCAW possess the requisite intent to “deal with” Walmart as an employer.

Regarding MCAW, the organization’s self-described purpose is “to change Walmart into a more responsible employer and to improve the lives of Walmart workers.”⁸⁷ Specifically, the MCAW web site contains a variety of demands the organization has made of Walmart that demonstrate an intent on the group’s part to deal with the company. For example, MCAW claims that Walmart engages in discriminatory practices by locking up certain merchandise because of crime.⁸⁸ As the solution, in a petition to the management at the Walmart Supercenters at issue, MCAW asks them to “institute meaningful changes to staffing and security.”⁸⁹ In another request, MCAW asks Walmart to pay for the medical care of an associate by the name of Maria who allegedly

80 Id.

81 See Patrick Flannery, “Rockers Rally Against Low Wages and New Walmart Store in Los Angeles,” *Rolling Stone Magazine*, June 30, 2012, *available at* <http://www.rollingstone.com/music/news/rockers-rally-against-low-wages-and-new-walmart-store-in-los-angeles-20120630#ixzz204bvsww6> (last visited Sept. 26, 2017).

82 See Spencer Woodman, “Labor Takes Aim at Walmart—Again,” *The Nation*, January 4, 2012, *available at* <http://www.thenation.com/article/165437/labor-takes-aim-walmart-again> (last visited Sept. 26, 2017).

83 Walmart has been the subject of a number of NLRB cases in which Associate coverage has been presumed. See e.g., *Wal-Mart Stores, Inc.*, 352 NLRB 815 (2008).

84 See <https://www.united4respect.org/donate> (OUR Walmart); and

85 See <http://changewalmart.org/action/do-you-work-at-walmart/> (last visited October 30, 2017).

86 Join OUR Walmart, OUR Walmart, *available at* <https://united4respect.nationbuilder.com/join> (last visited Sept. 24, 2017).

87 See About Us, Making Change At Walmart, <http://changewalmart.org/about-us/> (last visited Sept. 24, 2017).

88 See <http://changewalmart.org/action/tell-walmart-to-stop-this-discriminatory-practice/> (last visited October 30, 2017).

89 Id.

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injured herself at work.⁹⁰ In still another, MCAW seeks to have Walmart reinstate laid off workers⁹¹ and apologize to an associate who was terminated.⁹²

With respect to OUR Walmart, its stated purpose is to convince Walmart’s management to meet with it and address concerns regarding wages, hours and terms and conditions of employment at the company.⁹³ It tells the current and former members that:

As a member of OUR Walmart, you help set the agenda for how we approach Walmart as an employer and work together to create opportunities to improve our work environment and our lives.... With your membership, you will gain a voice in our independent group of like-minded Associates as we work together to fix what is broken in our stores and shape our own destinies.⁹⁴

Whether successful or not, both MCAW and OUR Walmart possess the intent to engage Walmart. As such, they seek to engage the “bilateral mechanism” necessary to meet the “dealing with” element. It does not matter that Walmart may not have formally responded to their demands or will ever do so.

Because both MCAW and OUR Walmart meet the definition of a labor organization under the LMRDA, both should fulfill their obligations under the statute.

3. The Coalition of Immokalee Workers

The Coalition of Immokalee Workers (“CIW”) is a worker center organization based in Immokalee, Florida. It claims to be a “worker-based human rights organization” whose work encompasses three broad and overlapping spheres”: (1) the Fair Food Program, under which the CIW conducts worker-to-worker education sessions, audits employers’ compliance with the Fair Food Program, and charges a small Fair Food premium that tomato growers pass on to workers as a line-item bonus on their regular paychecks; (2) an anti-slavery campaign; and (3) a Campaign for Fair Food, which educates consumers on the issue of farm labor exploitation.⁹⁵

90 See <http://changewalmart.org/action/tell-walmart-to-pay-for-marias-medical-care/> (last visited on October 30, 2017).

91 See <http://changewalmart.org/action/walmart-reinstate-laid-off-workers/> (last visited on October 30, 2017).

92 See <http://changewalmart.org/action/tell-walmart-to-apologize-to-frank-swanson-and-the-west-plains-community/> (last visited on October 30, 2017).

93 The OUR Walmart Vision and Mission posted on the organization’s website confirms the participants in the organization are employees: “We envision a future in which our company treats us, the Associates of Walmart, with respect and dignity. We envision a world where we succeed in our careers, our company succeeds in business, our customers receive great service and value, and Walmart and Associates share all of these goals.”; *available at* <http://www.united4respect.org/splash?splash=1> (last visited Sept. 26, 2017).

94 Join OUR Walmart, OUR Walmart, *available at* <https://united4respect.nationbuilder.com/join> (last visited Sept. 24, 2017).

95 See “About CIW”, *available at* <http://www.ciw-online.org/about/> (last visited Sept. 24, 2017).

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It is the CIW's Fair Food Program that satisfies the necessary elements of the test that defines the CIW as a labor organization under the LMRDA. The program seeks to improve working conditions for its members, including through increased wages. In the past decade, according to CIW, it has engaged with many national companies, including Subway, Whole Foods, and Walmart.⁹⁶ Signatories to the Fair Food Agreements pay a little extra per pound of tomatoes purchased, which is allegedly passed on to workers represented by CIW, and commit to purchase tomatoes solely from growers that abide by a Code of Conduct.⁹⁷ CIW regularly engages and deals with these employers, according to its website. While some might argue that engaging with employers like Subway, Whole Foods, and Walmart does not implicate coverage under the LMRDA because they do not employ the workers CIW purports to represent (farmworkers), the OLMS Interpretive Manual is clear that the "participating employees" referred to in section 3(i) of the Act need not necessarily be the employees of the employer with whom the labor organization deals, so long as they fall within the broad definition of "employee" under the Act.⁹⁸

The Code of Conduct contains many basic terms and conditions of employment one might find in a traditional collective bargaining agreement.⁹⁹ It provides that growers pay a "minimum fair wage," abide by state and federal wage and hour laws, install time clocks, permit break periods, monitor worker health and safety, and provide written guidelines for employee advancement opportunities.¹⁰⁰ The Code requires growers to grant CIW access to their facilities to perform training and orientation for employees, and creates an enforcement mechanism to ensure the employer complies with the Code.¹⁰¹

Given the foregoing, there is little doubt CIW meets the elements of a statutory labor organization under the LMRDA. CIW is a membership organization which consists of employees (agricultural employees in CIW's case).¹⁰² Additionally, one of CIW's stated purposes is to deal with employers through its Fair Food Program. As evidenced by the existence of Codes of Conduct, CIW intends to deal with employers over wages, hours and other terms and conditions of employment and maintains the contractual right to monitor working conditions.¹⁰³ Because it is a labor organization under the LMRDA, CIW should comply with the requirements of the LMRDA.

96 *Id.*

97 See Bon Appetit Management Company Code of Conduct for Sustainable Tomato Suppliers, dated April 24, 2009, available at http://www.bamco.com/content/uploads/2014/01/TomatoGrowers_CodeofConduct_BAMCO_CIW.pdf (last visited Sept. 24, 2017).

98 OLMS Interpretive Manual, section 030.6021.

99 See Bon Appetit Management Company Code of Conduct for Sustainable Tomato Suppliers, dated April 24, 2009, available at http://www.bamco.com/content/uploads/2014/01/TomatoGrowers_CodeofConduct_BAMCO_CIW.pdf (last visited Sept. 24, 2017).

100 *Id.* The Code of Conduct also requires that the grower provide transparency to CIW and permit "third-party monitoring" to ensure the worker center is passing the "penny per pound" payments on to workers. *Id.*

101 *Id.*

102 *Id.*

103 *Id.*

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4. Restaurant Opportunities Center and its Affiliates

The Restaurant Opportunities Center (“ROC”) is a national worker center organization with affiliates in various cities throughout the United States.¹⁰⁴ ROC and its affiliates offer a variety of services to workers, including: (1) research and policy advocacy, which include lobbying at the state and federal levels;¹⁰⁵ (2) the High Road Initiative, which includes an organization of employers with ROC-approved employment practices;¹⁰⁶ and (3) a workplace justice campaign, in which ROC engages consumers to improve “wages and working conditions for people who work in the industry.”

ROC claims that it has organized over 25,000 workers and won more than \$10 million in settlements of lawsuits.¹⁰⁷ Through its efforts, ROC claims to have secured other benefits for workers at specific restaurants, such improvements in workplace policies, including grievance procedures, raises, sexual harassment and anti-discrimination policies, sick days, and job security.¹⁰⁸ The agreements ROC claims to have negotiated since 2009 also cover these terms and conditions of employment, which are similar to those contained in a traditional collective bargaining agreement. At least some of them require employers to provide ROC written notice prior to terminating any employee, affording ROC the opportunity to investigate.¹⁰⁹ The agreements also contain provisions that allow ROC to investigate and grieve a violation of the settlement agreement before it is turned over to arbitration.¹¹⁰

In a 2010 interview, ROC’s national policy coordinator, Jose Olivia, likened the worker center movement to the auto industry labor unions stating that “[b]efore people were unionized in the auto industry, it was dragging down the rest of manufacturing. Restaurants set the standards for the service industry. We’re trying to create a culture of organizing there, to make restaurant jobs stable jobs.”¹¹¹

104 See About Us, ROC United, *available at* <http://rocunited.org/about-us/> (last visited Sept. 24, 2017).

105 See Our Work, ROC United, *available at* <http://rocunited.org/our-work/> (last visited Sept. 24, 2017).

106 *Id.*

107 See Our History, ROC United, <http://rocunited.org/about-us/#our-history> (last visited Sept. 24, 2017).

108 See ROC United Worker Place Justice, *available at* <http://rocunited.org/2013/06/workplace-justice-outreach-organizer/>. (last visited Sept. 26, 2017).

109 See “Cleared plate: Dispute between Andiamo Dearborn and Employees Finds Resolution,” Metro Times, March 9, 2011, *available at* <https://www.metrotimes.com/detroit/cleared-plate/Content?oid=2148314> (last visited Sept. 24, 2017). See also, Sean Delaney, “Andiamo lawyer disputing ROC-MI allegations,” Press & Guide Newspapers (Dec. 1, 2009), *available at* http://www.pressandguide.com/news/andiamo-lawyer-disputing-roc-mi-allegations/article_d7f014dd-6812-5010-832d-0fe55e71b1e6.html (last visited Sept. 24, 2017); see also, Olivia Carrino See “‘U’ students protest Andiamo restaurant of Dearborn for workers’ rights breaches,” The Michigan Daily (Feb. 18, 2010), *available at* <http://www.michigandaily.com/content/u-students-protest-andiamo-restaurant-dearborn> (last visited Sept. 24, 2017). Quoting Jaimie Philip, a ROC-MI intern, who said the organization began its campaign against Andiamo restaurant by delivering a demand letter to the restaurant on Nov. 5, which all the workers involved in the campaign had signed. *Id.*

110 See “Cleared plate: Dispute between Andiamo Dearborn and Employees Finds Resolution,” Metro Times, March 9, 2011, *available at* <https://www.metrotimes.com/detroit/cleared-plate/Content?oid=2148314> (last visited Sept. 24, 2017).

111 Paul Abowd, Restaurant Workers Launch Multi-City Campaign to Transform Low-Wage Industry, Labor Notes, February 4, 2010, *available at* <http://labornotes.org/2010/01/restaurant-workers-launch-multi-city-campaign-transform-low-wage-industry> (last visited Sept. 24, 2017).

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Applying the LMRDA test, ROC and its affiliates are labor organizations subject to the provisions of the statute. First, ROC is an organization in which employees participate.¹¹² Second, the successes ROC has promoted demonstrate that the group's purpose is to deal with employers.¹¹³ Given the foregoing, ROC is a labor organization within the LMRDA and should comply with the statute.

5. Jobs With Justice

Since its founding in 1987, Jobs With Justice has campaigned with the goals of building “power for working people ... and developing strategic alliances nationally and globally that strengthen the movement for workers’ rights, economic justice, and our democracy.”¹¹⁴ Employees can join Jobs With Justice by signing up to be part of their online activist network.¹¹⁵ They can also donate money to the organization.¹¹⁶

Employees who join Jobs With Justice commit to the organization's pledge to do the following actions at least five times during the year:

- Stand up for our rights as working people to a decent standard of living;
- Support the rights of all workers to organize and bargain collectively;
- Fight for secure family-wage jobs in the face of corporate attacks on working people and our communities;
- Organize individuals to take aggressive action to secure a better economic future; and,
- Mobilize those already organized to join the fight for jobs with justice.¹¹⁷

Additionally, Jobs With Justice has noted in its mission statement that “all workers should have collective bargaining rights, employment security and a decent standard of living within an economy that works for everyone” and claims to lead and incubate strategic campaigns to make concrete advancements in workers’ lives.¹¹⁸ In furtherance of this mission, Jobs With Justice has taken steps to campaign for union representation on behalf of workers. Specifically, in 2008, after a 14-year campaign, Jobs With Justice helped the UFCW organize 5,500 workers at the world's largest pork processing plant.

Jobs With Justice has also undertaken a number of campaigns on behalf of its members to make changes to working conditions at particular employers. A number of these efforts have been detailed in the group's annual reports.

112 See About Us, ROC United, *available at* <http://rocunited.org/about-us/> (last visited Sept. 26, 2017).

113 Michael C. Duff, Days Without Immigrants: Analysis and Implications of the Treatment of Immigration Rallies Under the National Labor Relations Act, 85 *Denver Univ. L. Rev.* 93, 134-135 (2007); Eli Naduris-Weissman, The Worker Center Movement and Traditional Labor Law, 30 *Berkeley J. Emp. & Lab. L.* 232, 238 (2009).

114 See Our History, Jobs With Justice, *available at* <http://www.jwj.org/about-us/our-history> (last visited Sept. 26, 2017).

115 https://actionnetwork.org/forms/join-our-online-activist-network?&source=NAT_W_joinnavbutton. (last visited Nov. 6, 2017).

116 https://actionnetwork.org/fundraising/support-jobs-with-justice?&source=NAT_W_joinnavbutton (last visited Nov. 6, 2017).

117 *Id.*

118 See About Us, Jobs With Justice, *available at* <http://www.jwj.org/about-us> (last visited Sept. 26, 2017).

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For example, in the group's 2014 Annual Report, it detailed one claimed success, which involving making changes to working conditions at Walmart. Promoting its successes, Jobs With Justice wrote the following description:

Given that 57 percent of the 1.3 million people who work at the nation's largest private employer are women, there is great opportunity to better women's lives by pressing Walmart to improve its labor practices. After two Walmart moms submitted a shareholders' resolution on the company's insufficient policies for pregnant associates in 2014, coupled with advocacy from Jobs With Justice, Walmart revised its policy by allowing reasonable work accommodations for any temporary disabilities caused by pregnancy. In coordination with Walmart moms, we supported know-your-rights public education efforts about this important first step. We also urged Walmart to not require pregnant associates to prove they are disabled in order to be eligible for reasonable accommodations by mobilizing a dozen allies to sign a letter and thousands of our supporters to sign a petition.¹¹⁹

Here, Jobs With Justice sought to change Walmart's workplace policies regarding pregnant associates, and claimed its efforts to be a success when that change was made.

In its 2013 Annual Report, Jobs With Justice detailed its involvement in a dispute with another employer, Republic Services, in which the group claimed that it had advocated to protect the health and safety of the workers, and stopped employee benefit cuts.

After a fire uncovered Republic Services' 40-year history of illegally dumping radioactive nuclear waste at its Westlake Landfill in Bridgeton, Missouri, Jobs with Justice responded by launching a campaign to ensure the company's remediation of the crisis would not cause ensuing damage to the environment and would protect the health and safety of workers and the community. By building a partnership with environmental groups and local labor allies, the campaign succeeded in keeping over 300,000 area residents safe while also simultaneously stopping employee benefits cuts.¹²⁰

Again, Jobs With Justice claimed that its activities on behalf of workers resulted in protection for workers and prevented the loss of employee benefits.

Finally, in their 2012 Annual Report, Jobs With Justice touted the successes of their local chapters in making changes to working conditions at various employers the group had targeted. Of particular note are the efforts undertaken by Jobs With Justice on behalf of employees of AT&T.

119 http://www.jwj.org/wp-content/uploads/2013/11/jwannualreport2014F_small.pdf (last visited Nov. 6, 2017).

120 <http://www.jwj.org/wp-content/uploads/2013/11/jwannualreport2013final1.pdf> (last visited Nov. 6, 2017).

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“Atlanta Jobs with Justice helped prevent hundreds of AT&T workers from layoffs. The coalition stood up to the telecommunications giant utilizing civil disobedience, nonviolent direct action, and occupation in collaboration with labor and allies.”¹²¹

Jobs With Justice also plays an active role in strike activities in its attempts to engage employers. Members of Massachusetts Jobs With Justice attended an August nursing strike at Tufts Medical Center.¹²² Jobs With Justice also called for a general strike as part of its International Women’s Day events, encouraging women to work only 82 percent of the day—to reflect the 82 cents on the dollar that women make compared to men. Jobs With Justice organizer Gillian Mason said: “The idea is pretty simple: Withhold part of our labor that we aren’t being paid for and see what it looks like.”¹²³

Moreover, Jobs With Justice has partnered with MCAW, which as discussed above, meets the definition of a labor organization under the LMRDA. Indeed, Jobs With Justice has said that it is “a core partner driving a comprehensive and historic campaign to push Walmart to reform its business practices and ensure wholesale changes across the retail sector.”¹²⁴

While Jobs With Justice engages in a wide variety of activities, a significant portion of their work is intended to make changes to working conditions at targeted employers. Not only has the group sought to make such changes, but it has been successful in numerous situations. Because it is an organization in which employees participate, and which, in part, seeks to deal with employers, it meets the definition of a labor organization under the LMRDA.

Conclusion:

It is apparent that a number of worker centers have moved beyond the activities that once traditionally defined these organizations. Instead, they now regularly advocate for specific changes in wages and working conditions at specific employers. In so doing, they have crossed the line to become “labor organizations” under the LMRDA.

The LMRDA was enacted to provide important protections for workers with regard to organizations that claim to speak on their behalf. As long as groups like those referenced in this paper are allowed to escape coverage of the Act, the LMRDA will fail to live up to its purpose. It is up to the Department of Labor, and specifically OLMS, to ensure that this no longer occurs.

121 http://www.jwj.org/wp-content/uploads/2013/11/2012-JW-ARAW_Annual_Report.pdf (last visited Nov. 6, 2017).

122 Tufts Daily, Tufts University, August 29, 2017.

123 Boston Globe, “Women Consider Strike Goals,” March 7, 2017.

124 Change Walmart, Change the Economy, Jobs With Justice, *available at* <http://www.jwj.org/our-work/change-walmart-change-the-economy> (last visited Sept. 26, 2017).

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