

## **"Access to Justice for Workers"**

**Panelists: Jeremy O'Steen, Attorney, Miyashita & O'Steen, Nelson Salvador, Director of Organizing, Hawai'i Worker's Center, Lisa Grandinetti, Lead Organizer, UNITE HERE Local 5.**

**Panel Moderator: Isis Usborne, Legal Intern, Hawai'i Worker's Center**

Workers have been the backbone of the development of popular rights throughout history and across the globe, and this trend is especially prevalent here in Hawai'i. However, workers rights are being steadily eroded in favor of pro-business policies that are widening the gap between the very rich and very poor, lowering the quality of life of most people under the rule of U.S. power.

This workshop was meant to encourage a conversation about justice for workers between members of the legal profession and judiciary in Hawai'i and those who organize and fight for labor rights across the islands.

We began by inviting our three panelists to speak about barriers to justice for workers, what those are and how they respond to or overcome those barriers in their work. Nelson immediately asserted that in directly organizing with workers, one finds that wage theft is a very prevalent issue, along with instances of wrongful termination, as well as some immigration issues that intersect with labor laws. For example, 19 workers at Makalani Restaurant in Waikīkī were given paychecks that bounced. While laws exist to combat things like wage theft, including making the crime a felony C, this does not necessarily deter employers from committing the offense. This is likely because of low awareness of wage theft as an issue, combined with the fact that it is easier and more expedient for workers to simply find another job - the high cost of living here incentivizes folks to prioritize finding alternative income rather using their precious time to take up confusing legal processes that are difficult to win. In terms of immigration issues, Nelson mentioned examples of people who had been working in Hawai'i for 15 years, but they have not returned home to the Philippines in that time period at all for fear of legal repercussions; moreover, such people are often unsure if they will be able to enjoy the pension they rightfully earned through their labor because of their unknown or unclear legal status. Overall, it is difficult for workers to know how or where to proceed when it comes to asserting our rights, and groups like the Worker's Center could use lawyers or legal supports to be able to navigate everything.

Lisa similarly asserted that the biggest challenge facing workers is how to organize ourselves and therefore position ourselves/each other as leaders. She explained that this does not only mean planning rallies, picket lines, and strikes; it means meeting other workers face to face, on a daily basis, intentionally, in order to identify, recruit, and train each other as leaders. In this work, the biggest barrier is fear. Such fear is connected to a lack of real inner leadership that values the collective, and causes us to fall into the false divisions imposed by dictators like Trump and our bosses. These dictators, big and small, claim to be able to solve problems through their authoritarian approaches, and intentionally obfuscate and undermine our ability to see our own leadership capacities. Similarly, in places with (or considering) union representation, workers are led to believe that a union is a thing separate from the workers instead of understanding it as an organization made up of workers ourselves. Workers hold power, and when we make the decision to take it back from those with titles who claim to have it, we are

exercising our rights. Thus, a solution to this barrier is face to face connections between organizers and in-shop leaders through one-on-one conversations, agitations, and inspirations, getting core groups of leaders in workplaces and other community spaces to show leadership.

From Jeremy's perspective as a personal injury lawyer, there are procedural barriers to fair, efficient, and speedy compensation - his clients want justice and accountability, as well as to hold their employers responsible for making changes in their workplaces. The latter kinds of changes can sometimes be forced through personal injury claims, but these are fairly rare and difficult to win. He briefly discussed the worker's compensation model, highlighting how it only allows a worker to recover up to two thirds of their wages in addition to some limited medical coverage that is difficult to access because of the multiple levels of approval needed. In order to be made fully whole after a workplace injury (i.e for full wages, pain, suffering, loss of enjoyment of life, any emotional distress, etc), a worker must be able to show third party liability. That is difficult to prove, especially because of the different kinds of insurance policies that employers are usually covered by. For example, in Hawai'i, any employer that carries worker's compensation insurance is immune from suit - thus, even if the employer is responsible, negligent, or grossly negligent, they cannot be sued unless there is a co-employee who was also grossly negligent. However, in general, commercial general liability policies will cover an employer but not employee liability - thus, in most situations, a worker has no recourse for additional compensation beyond the worker's compensation scheme, as no attorney will take such losing cases. Sometimes, one can argue misclassification to show that, for example, an employer filed for worker's compensation to cover an independent contractor so that they only have to pay the  $\frac{2}{3}$  rate. All in all, it is best for workers to come to attorneys such as himself early in the process so that they can catch any complicated issues and try to fight for the best outcome. These processes can take multiple years to wind through courts, administrative procedures, and insurance hurdles.

More was said by all three speakers on the quality of governmental agencies that help with worker's issues, such as the State Department of Labor and Industrial Relations, the U.S. Federal Department of Labor, OSHA, and HI-OSH. These agencies can support individual and collective claims as well as conduct investigations of workplaces in order to issue violations, citations, and collect evidence for cases. Lisa mentioned that groups such as the National Labor Relations Board were made to prevent things like wildcat strikes, but now that it is materially defunct due to the current administration, it is time to lean into the strategies of past labor organizers to demand what we need. Nelson and Jeremy asserted that there are not enough legal supports to help workers navigate the use of these and other agencies in fighting for their rights, and there is functionally no government organization that provides information and resources for workers on how to pursue rights.

This discussion was followed by questions from the audience, and the workshop ended with a collective visioning exercise about what justice for workers in Hawai'i should look like. Some ideas included: livable compensation/wages, justice that is accessible to those with disabilities and language access needs, affordable or free housing, safe workplaces, fully remedying harms to workers, job stability, universal/nationalized healthcare insurance, paid time off/vacation/family leave, working public transit systems, a 4 day workweek, more community spaces, universal basic income, immigration rights and legal support for immigrant workers and their families, union representation, retirement benefits, information on and freedom to pursue help with workplace issues, enforcement of fair treatment rules, a

ready group of legal resources to assist workers and enforce workers rights, one job only (enough to support a person and their family), not having to fear retaliation, prompt payment, training in labor law for self-help type legal organizations that could partner with groups like HWC, establishing a worker's clinic at WSRSL, establishing a commission on worker's rights at the ATJ Commission, strengthening the ability of workers to recover through a new theory/fee/tort, guaranteed legal representation for workers (or, a Civil Gideon), training for union agents on legal issues and how to draft relevant legal documents, and greater knowledge and support for worker's rights in the public and legal sectors. Overall, participants seemed to agree that more needs to be done to fight for worker's rights, and that while incremental reforms might meet some of those needs, broader systemic overhauls of how the economy functions will also be necessary to building a future where the health and safety of all people is prioritized.