

California Co-Enforcement Initiatives that Facilitate Worker Organizing

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I. Introduction

State and local labor standards agencies in California have been experimenting with collaborations with worker centers and other community groups as part of their enforcement efforts. The goal of these co-enforcement programs is to improve compliance and enforcement by training worker and community groups in the law and using their networks and cultural and linguistic competence, along with their years of base-building and member organizing, to improve outreach to low-wage workers in ways that increase worker awareness of their legal rights at work and, thereby, to increase worker power to demand decent conditions at work. Likewise, co-enforcement programs train enforcement officials about the problems faced by low-wage workers and the myriad ways in which employers avoid compliance so that government can be more efficient and effective in enforcing minimum labor standards laws. Co-enforcement also supports organizing among workers on the theory that an organized and informed workforce is more likely to demand and attain compliance with minimum labor standards.

This paper describes the co-enforcement initiatives in the San Francisco Office of Labor Standards Enforcement (OLSE) and the California Division of Labor Standards Enforcement (DLSE). The paper also discusses how those programs facilitate worker organizing, even though neither was explicitly intended to support organizing, and neither directly facilitates collective bargaining. What these initiatives do reveal, however, is that when enforcement agencies work closely with community groups, the cooperative relationships (1) produce better compliance and better enforcement in the short term; (2) improve the professional development, sophistication, and commitment of enforcement officials, which may have longer term payoff in better enforcement even after the pilot programs end or the pioneering agency leaders leave office; and (3) provide modest revenue increases, better legitimacy, and a strengthened institutional framework for groups working with, and composed of, low-wage workers most vulnerable to wage theft and other substandard working conditions.

II. Background

State and local governments have emerged as focal points for efforts to improve working conditions and to empower workers. The focus on state and local government is for reasons of both politics and policy. The politics story is a familiar one: improvements have long been stalled by Congressional intransigence and have recently been thwarted by the anti-worker Trump Administration. Advocates have turned to state and local governments which are sympathetic partly because states and localities directly bear the health, homelessness, and other social and economic costs of worker exploitation. There are policy reasons for reliance on state and local law regardless of which party is in the White House, whether Congress refuses to raise standards, whether agencies enforce existing laws, or whether state and local law has the effect of supporting worker organizing. One policy reason is the value of experimentation, and another is the value of tailoring standards to the local situation. The experience of San Francisco's Office of Labor Standards Enforcement illustrates both, as it has shown the feasibility of substantially raising minimum standards and local enforcement in a high cost of living city with political commitment to raising labor standards in low wage work.¹

California is the ideal laboratory for experimentation because more than ten major California cities² have passed minimum wage and related laws that are well above both the federal and state minima. As one study that focused on municipal laws in California concluded, "Delivering on the promise of higher wages hinges on our ability to put robust enforcement systems in place to fight the chronic wage theft that low-wage workers experience far too often."³ The experience of labor standards enforcement agencies in California and San Francisco shows that effective enforcement of must include adequate legal remedies, accessible and effective enforcement mechanisms, and the devotion of adequate resources towards enforcement.

The value of tailoring standards to the local situation refers not only to the need for a higher minimum wage in high cost of living cities, but also to the ability of localities to demand decent labor standards in notoriously low-wage industries regardless of whether the federal government chooses to prioritize labor standards. During Republican administrations, the United States Department of Labor (DOL) enforcement has been less aggressive, focused more on employer "outreach, education and compliance" rather than on suing employers to recover unpaid wages. Conversely, Democratic administrations have defined enforcement as the aggressive efforts to recover unpaid wages, steep penalties, and fines. President Obama, for

¹ See Ken Jacobs & Michael Reich, *When Do Mandates Work?*, in *WHEN MANDATES WORK: RAISING LABOR STANDARDS AT THE LOCAL LEVEL* 35 (Michael Reich, Ken Jacobs & Miranda Dietz eds., 2014).

² The cities are San Francisco, San Jose, Oakland, Berkeley, Richmond, Sunnyvale, Emeryville, Mountain View, Santa Clara, San Diego, and Los Angeles city and county. See TIA KOONSE, MIRANDA DIETZ & ANNETTE BERNHARDT, *ENFORCING CITY MINIMUM WAGE LAWS IN CALIFORNIA: BEST PRACTICES AND CITY-STATE PARTNERSHIPS*, (UCLA Center for Labor Research & Education and UC Berkeley Center for Labor Research and Education, Oct. 2015), <http://laborcenter.berkeley.edu/enforcing-city-minimum-wage-laws-in-california-best-practices-and-city-state-partnerships/>.

³ See KOONSE ET AL. *supra* note 2, at 3.

example, ordered a drastic increase of the nationwide cadre of DOL wage and hour investigators⁴ and later focused on strategic or directed enforcement, whereby DOL targeted key industries with the most egregious wage and hour violations and sought to effectuate broader enforcement than might have been achieved through a “wait and see” or “first come first served” enforcement model.⁵ Anticipating a return to anemic federal enforcement efforts, worker advocates may discover that state and local law supports organizing as well as robust enforcement.

There has long been a consensus in the literature that involvement of a worker group (usually a union) improves labor law compliance and enforcement.⁶ An organized workforce is typically informed about safety and health standards, wage and hour issues, and the range of other legal protections for workers. Formal involvement of a worker representative in enforcement also creates an institutional role for a labor organization by legitimizing the organization in the eyes of workers, which is especially important either when employer opposition to the organization is vociferous and intense or when worker ignorance of the benefits of organizational affiliation makes it difficult to recruit committed and dues-paying members.

In a seminal article, Janice Fine and Jennifer Gordon proposed augmenting labor standards enforcement agencies by giving groups like unions and worker centers a formal, ongoing role in enforcement.⁷ Since then, Janice Fine and her collaborators have produced a number of significant articles on co-enforcement efforts in many jurisdictions, including in San Francisco.⁸ Her thoroughly researched and insightful work finds that, across jurisdictions, properly administered co-enforcement programs improve enforcement of minimum standards laws, including in economic sectors with substantial immigrant populations where standards violations are endemic and difficult to eradicate. As Fine’s work shows, co-enforcement offers two benefits to workers. First, it improves enforcement and compliance, thus improving labor standards. Second, it offers funding and institutional support to worker and community organizations, which further facilitates worker organizing. Fine, and Fine and Gordon, have

⁴ See Press Release, U.S. Dept. of Labor, Statement by US Secretary of Labor Hilda L. Solis on Wage and Hour Division’s Increased Enforcement and Outreach Efforts (Nov. 19, 2009), <https://www.dol.gov/opa/media/press/whd/whd20091452.htm>.

⁵ The Wage and Hour Division of the U.S. Department of Labor increased its directed investigations from 27% of investigations in 2009, to 44% in 2013, and focuses those investigations on priority industries. U.S. GOV’T ACCOUNTABILITY OFF., GAO-09-458T, DEPARTMENT OF LABOR: WAGE AND HOUR DIVISION’S COMPLAINT INTAKE AND INVESTIGATIVE PROCESSES LEAVE LOW WAGE WORKERS VULNERABLE TO WAGE THEFT (2009), <http://www.gao.gov/assets/130/122107.pdf>.

⁶ See generally, DAVID WEIL, THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT (2014); Lawrence Mishel & Matthew Walters, *How Unions Help All Workers*, BRIEFING PAPER (Econ. Pol. Inst., D.C.), Aug. 2003, at 11, <http://www.epi.org/files/page/-/old/briefingpapers/143/bp143.pdf>; Alison D. Morantz, *What Unions Do for Regulation*, 13 ANN. REV. L. & SOC. SCI. 515.

⁷ Janice Fine & Jennifer Gordon, *Strengthening Labor Standards Enforcement through Partnerships with Workers’ Organizations*, 38 POL. & SOC’Y 552 (2010).

⁸ Janice Fine, *Enforcing Labor Standards in Partnership with Civil Society: Can Co-enforcement Succeed Where the State Alone Has Failed?* 45 POL. & SOC’Y 359 (2017); Janice Fine & Gregory Lyon, *Segmentation and the Role of Labor Standards Enforcement in Immigration Reform*, 5 J. ON MIGRATION & HUM. SEC. 431 (2017); Matthew Amengual & Janice Fine, *Co-Enforcing Labor Standards: The Unique Contributions of State and Worker Organizations in Argentina and the United States*, 11 REG. & GOVERNANCE 129 (2017).

thoroughly documented many case studies of how co-enforcement works. It plays a role in improving prevailing wage enforcement in Los Angeles, in janitorial services in Los Angeles, and in wage and hour enforcement in New York,⁹ in restaurant work in many cities, in home care work, and in a range of low-wage and predominantly immigrant work sectors.¹⁰ In addition, reports issued by the Center for American Progress¹¹ and the National Employment Law Project,¹² as well as a paper by Ken Jacobs of the UC Berkeley Labor Center,¹³ have described various co-enforcement initiatives and how they both strengthen enforcement of minimum labor standards and empower worker groups.

This article contributes to the literature on co-enforcement by offering an in-depth account of the legal mechanisms used by the City and County of San Francisco and the State of California to incorporate co-enforcement initiatives into their labor standards enforcement in low-wage sectors. After describing the legal mechanisms, with an eye toward enabling replication of the San Francisco and California programs in other jurisdictions, the article assesses the accomplishments of the programs. In San Francisco, which has ten years of co-enforcement experience, and in California, which has a shorter record, the evidence suggests that co-enforcement improves compliance and enforcement and empowers worker organizing. The last part of the article addresses some of the legal and logistical challenges co-enforcement programs encounter and how they can be addressed.

III. San Francisco Office of Labor Standards Enforcement

The City and County of San Francisco is a legal subdivision of the State of California with the governmental powers of both a city and a county under California law. The only such joint city-county subdivision in the state, it has broader regulatory powers than some cities, as San Francisco combines the power of both types of subdivision. San Francisco exercises its power through an 11-member legislative branch—the Board of Supervisors—and an Executive Branch consisting of a Mayor and other independent elected officials. San Francisco provides the broadest range of worker protection laws of any municipality in the country, including laws that afford workers a higher minimum wage, paid sick days, a health care mandate, ban-the-box protections, secure scheduling for retail workers, paid parental leave, pay equity, lactation

⁹ See Fine & Gordon, *supra* note 7, at 563-71.

¹⁰ See Fine, *supra* note 8, at 377-78 (describing how enforcement partnership between San Francisco's Office of Labor Standards Enforcement and local Chinese Progressive Association and Filipino Community Center resulted in large minimum wage settlements for restaurant and care home workers); Fine & Lyon, *supra* note 8, at 440 (describing how Seattle Office of Labor Standards collaborated with local Fair Work Center to assist a Korean immigrant assistant to a hairdresser who made less than \$5.50 an hour, a Mexican immigrant painter who was misclassified as an independent contractor and denied overtime, and a Somali immigrant wrongly denied a security guard position because of an erroneous background check).

¹¹ DAVID MADLAND, CENTER FOR AMERICAN PROGRESS, *THE FUTURE OF WORKER VOICE AND POWER* (2016); DAVID MADLAND & ALEX ROWELL, CENTER FOR AMERICAN PROGRESS, *HOW STATE AND LOCAL GOVERNMENTS CAN STRENGTHEN WORKER POWER AND RAISE WAGES* (2017).

¹² NATIONAL EMPLOYMENT LAW PROJECT, *WINNING WAGE JUSTICE: AN ADVOCATE'S GUIDE TO STATE AND CITY POLICIES TO FIGHT WAGE THEFT* (2011).

¹³ Ken Jacobs, *Governing the Market from Below: Setting Labor Standards at the State and Local Levels* (unpublished working paper).

accommodation, and more. Most of these laws apply to people who work in San Francisco; certain laws apply only to workers working under public contracts; and a subset of laws apply to both groups of workers. The San Francisco Office of Labor Standards Enforcement (OLSE or Agency), which since its founding fifteen years ago has come to employ a staff of 26, enforces fourteen different worker protection ordinances.¹⁴

A. San Francisco's Minimum Wage Ordinance

In November 2003, San Francisco became the first joint city-county in the country to pass its own minimum wage law.¹⁵ Importantly, it was passed by voters as a ballot initiative and had broad support from both community groups and labor. In addition to raising the city minimum wage above the federal and state minima, the San Francisco ordinance imposed other requirements to aid enforcement and build worker power.¹⁶ Like the Fair Labor Standards Act, the San Francisco ordinance requires employers to retain payroll records, but San Francisco requires employer record retention for up to four years and creates a rebuttable presumption of non-compliance for record-keeping violations.¹⁷ It gives OLSE investigative access to onsite workers and records,¹⁸ prohibits retaliation,¹⁹ imposes administrative penalties of up to \$50 per employee per day,²⁰ empowers OLSE to seek suspension or revocation of certain business licenses of noncompliant employers,²¹ and enables the Agency to cite employers—for violations like failure to produce records or for retaliation—without first seeking judicial approval.²² To ensure that wage judgments will be paid, the ordinance allows OLSE to impose liens against the property of any employer that fails to pay an administrative citation.²³ The most important innovation of them all, and the one that ensures the wage law will be enforced, is the mandatory creation of co-enforcement: a community-based outreach program by which the Agency formally collaborates with community partners to strengthen the shared goal of enforcement.²⁴

B. The Origins of Co-Enforcement in San Francisco

Following the closure of San Francisco garment factories in the late 1990s and early 2000s, community organizations, especially the Chinese Progressive Association (CPA), began focusing on other rapidly growing low-wage industries. CPA since its founding in 1972 has “organize[d] and empower[ed] the low income and working class immigrant Chinese community in San Francisco to build collective power with other oppressed communities to demand better

¹⁴ See CITY & COUNTY OF SAN FRANCISCO OFFICE OF LABOR STANDARDS ENFORCEMENT, sfgov.org/olse/ (last visited Nov. 16, 2017).

¹⁵ See Minimum Wage Ordinance (SF MWO), S.F., CAL., ADMIN. CODE ch. 12R (2003). Two cities in New Mexico—Santa Fe and Albuquerque—passed minimum wage laws before San Francisco.

¹⁶ Certain of the SF MWO provisions discussed here were contained in the original law and others were later incorporated by amendments.

¹⁷ SF MWO § 12R.5(b).

¹⁸ *Id.* § 12R.5(d).

¹⁹ *Id.* § 12R.6.

²⁰ *Id.* § 12R.7(c)(2).

²¹ *Id.*

²² *Id.* § 12R.16.

²³ *Id.* § 12R.17(d).

²⁴ *Id.* § 12R.25.

living and working conditions and justice for all people.”²⁵ Restaurants are a major employer of low-wage labor in San Francisco, and wage theft is endemic. In San Francisco’s Chinatown, for example, half of restaurant workers surveyed in 2008 reported earning less than the minimum wage.²⁶ CPA had prevailed in several discrete high-profile wage theft recovery cases,²⁷ but wage theft within the industry nevertheless remained rampant. Worker centers shifted emphasis to building broad-based, industry-wide worker power and, as one CPA organizer explained, “we sought to make these labor standards real—for workers.”

The key to making labor standards real was to change San Francisco law to expand the enforcement authority and other powers of OLSE. As the then-Campaign Coordinator of CPA put it: “Proposition L [the San Francisco minimum wage ordinance] promised to raise the income of the city’s 54,000 lowest paid workers by a combined \$100 million per year. Unfortunately, no additional resources were allocated to the City agency responsible for enforcing Prop L, and employers who are determined to violate labor laws have learned how to exploit deficiencies in the law and enforcement procedures.”²⁸ So between 2004 and 2006, CPA built on its existing efforts to organize a broad coalition of community and labor organizations that included worker organizations, labor unions, City staff, and then-Supervisor Sophie Maxwell. Together they crafted legislation that would clarify and expand the enforcement authority and other powers of OLSE.

In July 2006, the Board of Supervisors passed the Minimum Wage Implementation and Enforcement Ordinance, which amended the San Francisco Minimum Wage Ordinance to, among other things, require that OLSE “*establish a community-based outreach program to conduct education and outreach to [San Francisco] employees.*”²⁹ The Board specifically directed OLSE to establish “community-based outreach to minority and immigrant communities to combat minimum wage violations.”³⁰ In taking this direction and issuing the first Request for

²⁵ CHINESE PROGRESSIVE ASSOCIATION, *Mission and History*, <http://www.cpasf.org/mission> (last visited Nov. 16, 2017).

²⁶ See *San Francisco Leverages Health Permits To Combat Wage Theft*, HEALTH EQUITY GUIDE, <https://healthequityguide.org/case-studies/san-francisco-leverages-health-permits-to-combat-wage-theft/> (last visited Nov. 16, 2017)

²⁷ The CPA was instrumental in garnering \$525,000 in back pay and penalties for workers at Dick Lee Pastry. *Wage Theft Lawsuit Seeks to Recover \$440K in Back Pay, Interest for Cheated Workers*, (July 11, 2011), CITY ATTORNEY OF SAN FRANCISCO, <https://www.sfcityattorney.org/2011/07/12/wage-theft-lawsuit-seeks-to-recover-440k-in-back-pay-interest-for-cheated-workers/>; JANICE FINE, CO-PRODUCTION: BRINGING TOGETHER THE UNIQUE CAPABILITIES OF GOVERNMENT AND SOCIETY FOR STRONGER LABOR STANDARDS ENFORCEMENT (2015), http://theliftfund.org/wp-content/uploads/2015/09/LIFTRReportCoproductioOct_ExecSumm-rf_4.pdf.

²⁸ Press Release, Chinese Progressive Association, Supervisors Enact Minimum Wage Enforcement Ordinance (2006), <http://www.cpasf.org/content/supervisors-enact-minimum-wage-enforcement-ordinance>.

²⁹ S.F., CAL., ADMIN. CODE § 12R.25 (2003).

³⁰ SAN FRANCISCO OFFICE OF LABOR STANDARDS, REQUEST FOR PROPOSALS 4 (2006) [hereinafter “RFP I”]. See also SAN FRANCISCO OFFICE OF LABOR STANDARDS ENFORCEMENT, MINIMUM WAGE ANNUAL REPORT: FY 2012-2013 (2013), http://sfgov.org/olse/sites/default/files/FileCenter/Documents/11225-FINAL%2069_MinWageOrdinanceReport_1213.pdf.

Proposals (RFP) for conducting such outreach, OLSE recognized that “[p]reventing wage theft requires targeted efforts in the communities where wage theft is most likely to occur.”³¹

In 2013, OLSE renewed the community based outreach program for another three years. In doing so, it strengthened its approach to co-enforcement. As that second RFP explained, OLSE sought “access to culturally competent, community-based support in bringing complaints to the City or the State. A proactive, targeted program of worker education and outreach will prevent wage theft by addressing the lack of knowledge, insufficient resources, and feelings of vulnerability that many workers currently face.”³² OLSE sought partnerships with groups that could provide “education and outreach to workers in immigrant communities with limited English proficiency ... in as many of the languages spoken by employees in San Francisco as possible” and also those that organize workers in specific low wage industries.³³

In 2016, OLSE issued a third RFP to continue the co-enforcement program. In seeking partnership with still other community groups and worker formations, OLSE described the basis of co-enforcement in even more detail and using even stronger language. Co-enforcement, OLSE explained, “is supported by research that found workers who are most likely to be victims of wage theft, including low-wage workers, immigrants, limited-English-proficiency workers, and young workers, are less likely to report labor law violations than workers in other groups.”³⁴ The RFP continued that where agencies expect workers “to file complaints on their own, in the absence of targeted support or other enforcement strategies,” effective enforcement will be unattainable because enforcement cannot rely “on the voices of workers who feel the most vulnerable, the most exposed, and are the least likely to pick up the phone. These are workers in industries with low union density and high immigrant populations.”³⁵ These workers, the RFP acknowledged, “are often misinformed about labor laws, and even when workers in these groups know their rights, they are unlikely to believe that a government agency can recover wages or benefits due, and they are likely to fear retaliation from their employer. The lack of information and fear lead to underreporting of violations in industries and communities where violations of worker rights are common.”³⁶

OLSE explained that its community-based outreach program was designed to address these enforcement challenges by: “1) informing low-wage and immigrant workers about their rights; and 2) *creating conditions* in which these workers are more likely to report labor law

³¹ The creation and evolution of San Francisco co-enforcement provides an important lesson in legislative drafting, political negotiation, agency statutory interpretation, and how three branches of government within the municipality prescribe, interpret and execute on their respective roles in the creation of something as novel as co-enforcement model. This paper will not delve into that analysis but, suffice it to say, there is much to be learned from the process, particularly for municipalities that seek to enact similar legislation.

³² SAN FRANCISCO OFFICE OF LABOR STANDARDS, REQUEST FOR PROPOSALS 6 (2013) [hereinafter “RFP II”].

³³ *Id.*

³⁴ SAN FRANCISCO OFFICE OF LABOR STANDARDS, REQUEST FOR PROPOSALS 4 (2016) [hereinafter “RFP III”]. The research cited was David Weil, Administrator, Wage & Hour Div., U.S. Dept. of Labor, Keynote Address at the Harvard Trade Union Program John T. Dunlop Memorial Forum: Strategic Enforcement in the Fissured Workplace (Feb. 12, 2015) 18, <https://lwp.law.harvard.edu/event/fissured-workplace-why-work-became-so-bad-so-many-and-what-can-be-done-improve-it>.

³⁵ RFP III, *supra* note 34.

³⁶ *Id.* at 4.

violations.”³⁷ The phrase “creating conditions” signals the Agency’s recognition that a primary goal of co-enforcement is to deliberately make space for low-wage worker organizing.³⁸

C. The Community Based Outreach Contracts and the Funding

In all three of its iterations, OLSE implemented the legislatively mandated “community-based outreach program” by seeking a formal contractual relationship between the OLSE and one or more community worker organizations and community partners. Because OLSE partners with a collaborative of community organizations to do this work, the contracts for education and outreach services have colloquially come to be known as “Community-Based Outreach Contracts” (CBO Contracts) and the partners with which OLSE contracts are known as the “community collaborative” (Collaborative).³⁹

The funding for these CBO Contracts has grown steadily over each of the three iterations of the program because the San Francisco Board of Supervisors was persuaded that the co-enforcement model works. As part of the initial 2006 amendment to the minimum wage ordinance that established the co-enforcement model, the Board of Supervisors allocated a budget of \$186,500 to be contracted out over three years. The effort was so successful that for fiscal year 2013 the Supervisors increased that annual funding amount to \$482,125—a more than two-fold increase.⁴⁰ Following the second successful iteration of the CBO Contract, in FY 2016 the Supervisors yet again increased the contract amount to \$660,000 per year for three years, amounting to \$1.98 million total. Like its predecessors, this co-enforcement contract also provides the City the option to renew the contract for two additional one-year terms.⁴¹ On July 1, 2017, CBO Contract III was negotiated between OLSE and the newly-selected collaborative partners: Chinese Progressive Association (CPA) will serve as the Prime Contractor and will subcontract to AAAJ-ALC, Dolores Street Community Services, Filipino Community Center, La Raza Centro Legal, Young Workers United, and South of Market Community Action Network (SOMCAN).

D. How Co-Enforcement in San Francisco Works: A Case Study of Community-Based Outreach from 2013 to 2016⁴²

³⁷ *Id.* (emphasis added).

³⁸ The 2016 RFP also expands the scope of work to include education and outreach for four more of San Francisco laws enforced by OLSE – the Family Friendly Workplace Ordinance (FFWO); the Fair Chance Ordinance (FCO); the Formula Retail Employee Rights Ordinances (FRERO); and the Paid Parental Leave Ordinance (PPLO). RFP III, *supra* note 34, at 5-6.

³⁹ The City and County of San Francisco and the San Francisco Office of Labor Standards Enforcement (OLSE) officially refer to these contracts as contracts “for education and outreach services.” To date, OLSE has entered into three such contracts, each of which covers a three-year term and the most recent of which is currently in effect. For this paper and for ease of reference, we refer to the contracts generally as “Community-Based Outreach Contracts” (CBO Contracts). To reference each individual iteration of the contract, we refer to the CBO Contracts in sequential order—e.g., “CBO Contract I” (FY 2010-2013), “CBO Contract II” (FY 2013-2016), and “CBO Contract III” (FY 2017-2020).

⁴⁰ *Id.*

⁴¹ See RFP III, *supra* note 34, at 4.

⁴² This part of the paper will focus on the second iteration of the SF OLSE Community-Based Outreach Contract—CBO Contract II—which spanned FY 2013-2016. While a full-fledged analysis of each of the three contracts and a

The RFP that created the second set of what OLSE described as “Wage Theft Prevention Education and Outreach Services,”⁴³ listed several obligations of the community group that would be the co-enforcement partner. It would be required to “perform services including participating in community events, holding workshops and training sessions, providing counseling and referral services, and conducting media outreach.”⁴⁴ The purpose of this education and outreach was “to ensure that workers understand their rights and report violations of local and state labor law to enforcement agencies.” The contract would be “a professional services contract with an organization with expertise in San Francisco labor laws and low-wage minority and immigrant communities to provide assistance with worker education and outreach.”⁴⁵

The 2013 RFP provided for an initial contractual term of three years with the option for OLSE to renew the contract for up to two more one-year terms.⁴⁶ In proposing a possible five-year contract, OLSE recognized the need for sustained investment in co-enforcement and in community organizations that sought to build worker power. The contract provided \$466,800 annually to the community partner; the maximum monthly contract amount was therefore \$38,900.⁴⁷

When OLSE issued the RFP in 2013, it had enforcement authority for seven city ordinances, but OLSE’s RFP also sought assistance from community partners in ensuring enforcement of state laws. Authorizing community partners to assist OLSE in enforcing state laws meant broad protection for workers where city law was silent. For example, it would allow the co-enforcement initiative to rely on the state law prohibiting employers from retaliation against a worker complaining about unpaid wages or some other municipal law violation.⁴⁸

OLSE received two bids in response to the 2013 RFP and awarded the contract to the Chinese Progressive Association (CPA). To ensure adequate enforcement beyond CPA’s own cultural, linguistic, and sectoral network, CPA assumed the role of Prime Contractor and subcontracted with seven other community partners. Collectively, the community partners had decades of experience organizing across the demographic groups that comprise San Francisco’s

deeper comparative/contrasting analysis of the three would surely be useful, we choose here to focus on execution and implementation of CBO II, and find it the most instructive, because it is the most recent, fully executed three-year contractual co-enforcement relationship between SF OLSE and the community partners, and because Seema Patel was directly involved in overseeing performance of that contract during that time.

⁴³ The first such RFP had been issued in 2007 shortly after the MWIEO had passed which first established the co-enforcement model.

⁴⁴ RFP II, *supra* note 32.

⁴⁵ *Id.* at 3. The contractor would have to show “demonstrated experience in labor law education, including community outreach in low income and immigrant communities, labor law training workshops, counseling and referral services, and media outreach.”

⁴⁶ *Id.* at 2. OLSE exercised this option to renew the CBO Contract.

⁴⁷ *Id.* at 3.

⁴⁸ CAL. LAB. CODE § 1171.5 (2003) (making immigration status irrelevant to entitlement to protections of state labor and employment laws); CAL. LAB. CODE § 98.6(a) (2016) (prohibiting retaliation of any kind against any employee who engages in conduct protected by Labor Code). *See also* Act of Oct. 5, 2017, ch. 492 and Act of Oct. 5, 2017, ch. 495 (to be codified at CAL. GOV’T CODE § 7285 *et seq.*, CAL. LAB. CODE §§ 90.2, 1019.2), which will prohibit employers from providing warrantless workplace access to ICE agents and from cooperating with ICE beyond what is required by federal law.

low-wage labor force. One partner was La Raza Centro Legal (LRCL), which was established in 1973 to advocate on behalf of “the Bay Area’s Latino, low-income, monolingual Spanish-speaking and immigrant population.”⁴⁹ Operating out of the Mission District in San Francisco, their workers’ rights program was founded in 1991 to root out and redress unfair labor practices against vulnerable populations.⁵⁰ As the organization has grown, they adopted the San Francisco Day Labor Program to provide job development and social services to workers, along with the Women’s Collective of the Day Labor Program, to empower Latina immigrant women.⁵¹ Another partner was Filipino Community Center (FCC), which was founded in 2004 out of activist efforts to support Filipino airport screeners terminated after mass layoffs after the events of 9/11.⁵² Located in the Excelsior District in San Francisco, the organization has advocated on behalf of the Filipino community, notably lobbying the city to declare Tagalog to be an official language for city services, alongside Chinese and Spanish.⁵³ Other partners include the longstanding Asian American advocacy and organizing group Asian Americans Advancing Justice-Asian Law Caucus (Advancing Justice-ALC), and Young Workers United (YWU), a multi-racial and bilingual membership organization founded in 2002 and dedicated to improving jobs for young and immigrant workers in San Francisco through worker and student organizing, advocacy, and leadership development.⁵⁴ Another partner was Dolores Street Community Services (DSCS), which was founded in 1982 to assist Central American refugees and expanded over the decades to assist homeless people, AIDS patients, LGBT people, and poor and exploited people of all races and immigration status.⁵⁵ The last partner was a local chapter of the National Day Laborers Organizing Network (NDLON).

This prime contractor/subcontractor arrangement enables the Agency to maintain a single contractual point of contact while also partnering with myriad community organizations to achieve a broad and wide reach of low-wage workers within diverse communities and in far-flung neighborhoods. OLSE invited this kind of prime contractor/subcontractor arrangement by including in the RFP a requirement that when the contracting partner was “a collaborative of organizations,” the required qualifications would be applicable only to the lead agency.⁵⁶ It was important that OLSE provide for a collaborator that partnered with many other organizations to expand the partnership to include different communities, community organizers and community groups that span a breadth of cultures, ethnicities, languages and square mileage within the city, but without the logistical burden of coordinating with so many different point persons and organizations.

⁴⁹ LA RAZA CENTRAL LEGAL, *Our Mission and History*, <http://www.lrccl.org/who-we-are/mission-values/> (last visited Nov. 16, 2017).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Fine, *supra* note 8, at 24.

⁵³ Ned Valen, Review of *Filipino Community Center*, FACEBOOK (Nov. 29, 2014), <https://www.facebook.com/ned.valen/posts/298764033655598>.

⁵⁴ YOUNG WORKERS UNITED, <http://www.youngworkersunited.org/> (last visited Nov. 16, 2017).

⁵⁵ DOLORES STREET COMMUNITY SERVICES, www.dscs.org (last visited Nov. 16, 2017).

⁵⁶ RFP II, *supra* note 32, at 8.

The creators of the co-enforcement model considered it critical that OLSE partner with organizations that have strong and longstanding connections in the low-wage worker communities that the Agency ultimately seeks to reach. The RFP required that “the lead staff proposed to be assigned to the City’s project(s) must individually have had at least four years of experience conducting education and outreach regarding labor law in low income and immigrant communities.”⁵⁷ CPA was such a partner, as it had worked for many years to organize communities and had a vibrant worker center in San Francisco. It had a long history of organizing workers and community members, a system for developing grassroots leadership, and a commitment to the individual and collective empowerment of its member-workers. Like many worker centers and grassroots organizations, CPA staff was committed not only to meeting one-on-one with workers but to working over the course of many months (sometimes even years) with groups of workers and community members to educate, empower and move workers to take action in response to various workplace problems that the workers face. CPA also had staff more skilled in external relations and with greater media savvy than is typical in a municipal government agency. OLSE sought a community partner with strong working relationships with other organizations, and CPA had spent years building strong alliances with San Francisco and California labor unions and with other worker centers and community partners.⁵⁸

Successful co-enforcement requires developing relationships between agency staff and community partners. As with any relationship, a meaningful co-enforcement partnership requires time, commitment, space, and trust. In San Francisco, quarterly meetings of OLSE and community partner staff provide a consistent forum for discussion of progress and for relationship-building. The collaborative point person—an Agency official—facilitates the meetings. Each community partner representative gives a brief update on what contract-related activities the organization has engaged in over the past quarter, any major campaigns/staff changes/events they have planned, and then provides any major case updates regarding cases that had been referred to OLSE. This group discussion does not delve into specifics of any given case—those communications are handled separately between OLSE compliance officers and community partner representatives and/or the complaining workers who brought the case to OLSE in the first place. The quarterly meetings create a different and dedicated space open for wide-ranging conversation.

Quarterly meetings are also the forum for discussion of new developments in law or policy, especially new regulatory authority conferred upon OLSE by statute or administrative action or some other significant change in law. It was an opportunity for legal training for the community partners. Between 2013 and 2017, OLSE assumed enforcement authority over five

⁵⁷ *Id.*

⁵⁸ Cities that are smaller in size and/or those with more nascent worker protection laws or labor standards enforcement agencies might consider allocating a portion of the co-enforcement dollars to enabling the community partners to better develop their own internal working relationship. While this might not seem like an obvious way for a municipality to invest/spend funds, the early investment into this inter-organizational relationship building will only further the win-win-win effect that a successful co-enforcement model seeks—e.g., it’s better for the Agency, better for the organizations themselves who can collaborate and build collective knowledge/skills around one issue that they all indelibly share/have in common – better enforcement of their respective workers’ wage claims, and ultimately and most importantly, better for the workers themselves.

new laws and an amendment to an existing law (FRERO, PPLO, Lactation in the Workplace, Pay Equity, and the PSL reconciliation amendment). Because several of OLSE's laws also contain phase-in periods and/or benchmarks—e.g., a steadily rising minimum wage—the Agency might spend time during the quarterly meeting discussing those upcoming changes with the community partners. This ensures the most effective, accurate education and outreach about the city's strong worker protections to those low-wage workers that need it the most.

For the most part, both OLSE and the community partners invest considerable time and commitment into co-enforcement; indeed, the ordinance requires them to do at least this much. And because the model has been in place for more than a decade, the relationship has deepened: certain practices and cultural co-enforcement norms have taken root. But all relationships require work. The San Francisco experience reveals four areas that present challenges even for the most committed government officials and community partners.

One is striking a balance between the time the agency expects community partners to devote to identifying wage theft cases, time working directly with agency investigators on existing cases, and time the community partner staff spend out in the community doing the organizing work that is the root of it all. Co-enforcement relies heavily on individual staff members' personal commitment to the work, and on the connections they forge with workers and community members. That takes time and energy. The agency must afford the community partners' staff adequate time to do the deep, time-consuming, sustained worker organizing that the organization needs to do in order to achieve its case development goals.

Second, it is challenging to reconcile government agency policies and procedures – which, understandably, require a certain degree of confidentiality for government work product, with the transparency and access that co-enforcement community partners rightly expect from a genuine partnership. Open, free-flowing communication channels between community partners and government officials, along with opportunities for individuals from both sides to get to know one another and build trust, are necessary but are not easy to develop.

Third, and perhaps most difficult, is developing ways for the government agency to be acutely aware of and responsive to the worker communities it exists to serve and protect. It is a constant struggle for government officials who do not spend their days “in the streets” and engaged in organizing to remember that building worker power needs to be a constant focus if wage theft and other abuses in the low wage workplace are ever to be truly eradicated. Even the most progressive municipal government comprises a vastly different DNA than its community organization counterpart. Even as basic a step as having Agency leadership inwardly, outwardly, and openly lift up, promote—and maybe even celebrate!—the tremendous benefits of co-enforcement to all parties would further strengthen just how effective the model will be in building worker power.

Finally, to make co-enforcement maximally effective might require the agency to prioritize co-enforcement cases. Currently, OLSE does not prioritize collaborative-referred cases. The failure to prioritize them, while understandable from a bureaucratic point of view, is controversial because it squanders the organizing and worker-empowerment potential of the co-

enforcement model. An agency might institute a triage protocol that would prioritize co-enforcement cases through either an amendment to the ordinance or rulemaking; indeed, at one time when OLSE was lagging so far behind on closing cases, the community lobbied the San Francisco Board of Supervisors to institute a one-year time limit on the resolution of minimum wage ordinance cases.⁵⁹ Whether or not an agency prioritizes co-enforcement cases, the San Francisco experience with backlog in case handling illustrates the importance of the community holding the enforcement agency accountable.

E. CBO Contracts: Deliverables

Because co-enforcement is implemented by a government contract, the relationship is governed by the exacting requirements of government contracts, including deliverables. Deliverables are important for many reasons: they provide a measure for the Agency by which to track the contractors' successes; they comprise hard data that can be used to make the case for "successful" co-enforcement (e.g., the co-enforcement contract enabled [x] organization to bring in [y] number of cases during the first quarter and, [y+2] cases in subsequent quarters; therefore the contract was successful); and they are the fodder for municipal legislative budget analysts that make recommendations for renewing and/or removing government funding.

The 2013-2016 CBO Contract phrased deliverables in terms of community partners "coordinating outreach," providing specific services, and contacting a specified number of workers. In brief, the contractual deliverables were measured both in terms of specific numbers of cases brought or resolved and in terms of specific numbers of low-wage worker meetings in each partner's linguistic or ethnic community (Chinese, Filipino, Latino, Vietnamese, Middle Eastern, Muslim, and South Asian, and young workers).⁶⁰ The community contractors were required to "resolve" or "refer" to OLSE, the California DLSE, or the federal DOL a specified number of "labor law complaints" per quarter. The number of complaints requiring such action by each community partner depended on the capacity of such organization. CPA, as the largest and best established, was required to refer or resolve five cases per quarter; the others were required to resolve or refer between two and four per quarter.⁶¹ The community partners were required to conduct 195 total worker consultations per year, divided among the subcontractors in accordance with their organizational and staff capacity. For each consultation, the partner was required to provide the employee's name, the employer's name and industry, and the specific issue discussed. More broadly, the community partners were also required to conduct "outreach," wherein they must "touch" 3,500 workers per year (875 per quarter) "by speaking to them directly and sharing linguistically and culturally appropriate information on San Francisco and California labor laws." As part of this outreach, the organizations were required to "conduct

⁵⁹ S.F., CAL., ADMIN. CODE § 12R7(b) (2003) ("The Agency shall make every effort to resolve complaints in a timely manner and shall have a policy that the Agency shall take no more than one year to settle, request an administrative hearing ..., or initiate a civil action ... The failure of the Agency to meet these timelines within one year shall not be grounds for closure or dismissal of the complaint.").

⁶⁰ CBO Contract II, *supra* note 42, at 27.

⁶¹ *Id.* at 28.

workshops designed to educate low-wage San Francisco workers on their rights under local and state labor law.”⁶²

The deliverables also, interestingly, required community partners to engage in outreach beyond organizations’ core communities. In particular, the CBO Contract required them to “coordinate at least two workshops per quarter in target communities outside of the collaborative members’ base communities, such as Russian, African immigrant, Pacific Islander, Mayan, LGBTQ [...], and African American communities.”⁶³ In essence, the contract required preliminary and minimal organizing—if only just education about labor law rights—of workers in underrepresented communities who were not already represented by the community partners.

Deliverables also extended to educating workers on health benefits and the related San Francisco health care mandate, to hold four media events to highlight certain wage recovery successes and to educate the public on labor law and enforcement, and to assist OLSE in updating and distributing multilingual and culturally competent outreach materials.⁶⁴

Although numerically identified deliverables are customary in government contracts, and in theory were intended to spur community partners to engage in a certain kind of worker organizing, the deliverables were not always compatible with the more sustained work of building worker power or making adequate space for organizing. Organizing is personal, emotional, time-intensive, and requires building individual relationships and collective trust. For many of the worker organizations in the OLSE community collaborative, this capacity-building at both individual worker and collective levels is their organizational DNA—their life blood. It is worth acknowledging that the work of building collective worker power, or the foundational work of applying co-enforcement to make space for worker organizing, is not something that can simply be contracted out. Successful co-enforcement (more efficient and effective enforcement of labor laws) is itself work that takes time, relationship-building, a sustained commitment to a particular community, and a sustained commitment to workers. If the contract does not count as a deliverable getting to know an individual worker, particularly within a low-wage immigrant worker community, then the contract may value certain work but not an investment into that which is most conducive to effective organizing—the worker herself.

It is nevertheless understandable that a government contract must impose some specified deliverables both because municipal contracting rules demand accountability and because concrete accomplishments are necessary to make the case for renewing the program year after year. Nevertheless, OLSE tried to be creative in how it measured accomplishments. Sometimes this took the form of case-by-case evaluations of certain of a partner organization’s activities to determine which could count as deliverables. Sometimes community partners notified the Agency in advance that an upcoming mass campaign focused on another matter would make it impossible to meet the case deliverable requirement that quarter, but would make it up in the following quarter. This kind of flexibility and trust between the Agency and the community partners ensures the most cost-effective use of the co-enforcement resources for all, the most

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

efficient use of the funds by the organizations themselves, and ultimately better guarantees the shared end goal for all parties which is to improve local labor standards for low-wage workers in the most marginalized communities.

F. A Co-Enforcement Success

A successful co-enforcement case study involved a popular upscale San Francisco dim sum restaurant known as Yank Sing. CPA and Advancing Justice-ALC together worked closely with the SF OLSE and the State DLSE to achieve a \$4.25 million settlement and complete workplace transformation for nearly 300 workers. The success of this case and campaign is attributed to the co-enforcement model. The campaign began in 2013 when a handful of monolingual immigrant Yank Sing restaurant workers approached CPA for help in launching a workplace campaign to change egregious practices. Workers made less than the minimum wage, lacked proper meal and rest breaks, received no health benefits, and were routinely verbally abused by supervisors. Within months of CPA organizing at the worksite, the campaign grew to nearly 100 Yank Sing workers. By November 2014, the parties reached a historic settlement.

Yank Sing represents, to date, the single largest monetary wage settlement attained by OLSE or DLSE. But the wage recovery is not the only success of the campaign.⁶⁵ The collaboration demonstrated the success of key elements of a co-enforcement strategy. OLSE assigned a Chinese-speaking investigator to the Yank Sing case who conducted fact investigations and worked tirelessly on the audit. That investigator's cultural and linguistic competency and familiarity enabled the agencies to develop a factual record that is crucial to wage recovery. That OLSE investigator was herself the daughter of Chinese-Malaysian immigrants who at one time struggled to acclimate to American culture, and she had once worked as a community organizer so she understood the importance of worker empowerment. Her dedication and talent enabled the wage recovery, to be sure, but her assignment to the case had a crucial galvanizing effect on the campaign overall—and specifically, on the Chinese immigrant workers themselves. In addition, the city and state agencies' close collaboration with CPA and Advancing Justice-ALC encouraged a highly-marginalized workforce to take bold steps to assert their rights. The workers staged a walk out during peak restaurant hours—an unusual display of concerted activity for a non-union shop like Yank Sing and one that, just a year prior, the workers were far too fearful to undertake.

During the enforcement action and campaign, CPA recruited a significant number of bilingual staff to assist with intake; this was a tremendous help for the government agencies. During the site visits, many workers were afraid to talk with agency staff; this was not uncharacteristic of immigrant workers' general distrust of government agents on the whole. The role of CPA and AAAJ-ALC in organizing the claimants, investing in the workers' education about the wage laws and their rights, and in developing many of the workers into leaders during the campaign was indispensable to the enforcement action and, more importantly, to the broader goal of empowering low-wage workers.

⁶⁵ Twilight Greenaway, *SF Restaurant Yank Sing Workers Earn Historic \$4 Million Settlement*, CIVIL EATS (Nov. 19, 2014), <http://civileats.com/2014/11/19/sf-restaurant-yank-sing-workers-earn-historic-4-million-settlement/>.

All told, from both the organizing and the enforcement perspectives, Yank Sing resulted in precedent-setting outcomes across the board: meal and rest breaks and paid sick days; wages that were higher than the local minimum (including a 5% raise for non-tipped workers); non-mandated holiday pay and vacation pay; full health coverage for employees with no deductibles; and, because most workers have family in China, the right to take up to four weeks of approved time-off without risking their jobs. Moreover, the settlement included an admission of guilt, an apology, and a commitment by the employer to righting the wrongs going forward—crucial elements of the campaign and even more importantly for the workers themselves. These non-monetary elements of the settlement restored workers’ dignity and respect. And combined with the monetary benefits, the campaign sent a powerful message to both the worker community and industry players that when low-wage workers speak up and organize, government agencies will listen and vigorously enforce the law, and employers had best take stock, comply with minimum standards, and even go beyond the minimum to treat their workers with dignity and respect.

For the community organizers, Yank Sing models something more than just that co-enforcement generates wage settlements. The campaign represents the power of tying enforcement to organizing. It shows the feasibility of building power for marginalized workers and leveraging that power to effect workplace transformation. It is a reminder that strong laws and policies are tools for organizing—not ends in and of themselves. Laws should be used to inspire, to raise expectations in all sectors, and to raise the floor. By no means can or will the laws and policies alone, or even the enforcement of laws, replace worker organizing. But when supported by a strong co-enforcement model, as Yank Sing demonstrates, everybody wins—and most of all, the workers themselves.

G. Other Insights about Enforcement of Worker Protection Laws in San Francisco

OLSE engages in several general practices beyond the specific co-enforcement initiatives that result in the robust enforcement of San Francisco’s worker protection laws. As of the time of this writing, OLSE uses a first come, first served approach to case processing. When OLSE receives a worker complaint, the complaint enters a chronological “line,” and subject to only minimal exceptions, the next available OLSE Compliance Officer that can take the case will do so.⁶⁶ Importantly, OLSE places a high priority on conducting in-person interviews of each complainant. First, it helps the Agency obtain the most information from the complainant. Second, it enables the Agency to assess the severity of an alleged violation and, with that, to determine whether the complaining worker(s) and her co-workers face imminent threats of retaliation. Where the Agency has any reason to believe that such retaliation has occurred, is occurring, or might imminently occur, the Agency takes swift action—e.g., within that same day, if possible—to warn the employer that the law prohibits retaliation, provides for steep penalties for retaliation, and that the Agency will issue a formal administrative citation if the retaliation does not cease immediately.

⁶⁶ This FCFS enforcement model is subject of course to certain exceptions including language considerations—e.g., if a case involves Chinese- or Cantonese-speaking workers only then SF OLSE will ensure that an investigator with language capacity is assigned to the case. Likewise, if a case involves an urgent issue like suspected, alleged or actual human trafficking, SF OLSE will expedite assignment of that particular case rather than leave the case in the standard “line.”

OLSE also places an extremely high value on protecting the anonymity of the complaining worker(s) for as long as possible during the life of a case, regarding this as necessary to prevent retaliation.⁶⁷ Assurance of confidentiality encourages complainants to be candid with Agency investigators, an essential part of ongoing fact investigation.⁶⁸ When a Compliance Officer is assigned to a case, she investigates the entire workplace on behalf of all workers, and sometimes even multiple locations of the same employer when it appears violations may be widespread. Wage and other minimum standards violations rarely occur for a single employee, so a broad investigation “also allows investigators to recover back wages for everyone affected.”⁶⁹

IV. California Division of Labor Standards Enforcement

The California state-wide model of co-enforcement is similar in many ways to the San Francisco model and, therefore, we will describe it in less detail. We focus here on a few differences and then turn to an assessment of the promise and challenges of both versions.

A. Varieties of Co-Enforcement in California

Since noted workers’ rights advocate and pioneering labor lawyer Julie Su became the Labor Commissioner of the State of California and the head of the state Division of Labor Standards Enforcement (DLSE), she has made a huge effort to transform the agency’s approach to enforcement from passive and bureaucratic to proactive and engaged with low-wage worker communities. That is, rather than waiting for complaints to be filed, processing paper, conducting hearings, and trying (mainly futilely) to collect judgments for unpaid wages, Commissioner Su has attempted to use DLSE’s limited resources more efficiently to target industries with high rates of wage theft, to make the hearing process accessible to unrepresented low-wage workers with limited English, and to ensure that the wage judgments the agency renders are actually enforced.

A key to that transformation has been to partner with various worker and community organizations on education and enforcement. DLSE has engaged in a co-enforcement partnership focusing just on wage judgment collection by contracting with the Wage Justice Center (WJC), a nonprofit in Los Angeles, to enforce unpaid judgments.⁷⁰ A UCLA study of wage claim data from 2008 to 2011 showed that 83 percent of workers who obtained judgments for unpaid wages never collected a cent.⁷¹ WJC has developed expertise in California wage judgment enforcement and has improved the collection rate dramatically, collecting over \$8.25

⁶⁷ S.F., CAL., ADMIN. CODE § 12R.7(c)(3) (2003).

⁶⁸ KOONSE ET AL. *supra* note 2, at 11.

⁶⁹ Miranda Dietz, Donna Levitt & Ellen Love, *Enforcement of Labor Standards*, in WHEN MANDATES WORK: RAISING LABOR STANDARDS AT THE LOCAL LEVEL 229 (Michael Reich, Ken Jacobs & Miranda Dietz eds., 2014).

⁷⁰ See WAGE JUSTICE, wagejustice.org (last visited Nov. 16, 2017).

⁷¹ EUNICE CHO, TIA KOONSE & ANTHONY MISCHER, HOLLOW VICTORIES: THE CRISIS IN COLLECTING UNPAID WAGES FOR CALIFORNIA’S WORKERS (2013).

million on behalf of 5,500 workers over several years.⁷² WJC, which has a huge case load and too few staff for the number of cases they are asked to handle, often prioritizes cases that will support an organizing campaign. It frequently partners with community-based worker centers so that its enforcement work supports a larger organizing campaign, such as the campaign of truck drivers at the ports of Los Angeles and Long Beach to win employee status and fair pay.⁷³

Commissioner Su credits community partners for the increased strategic enforcement now possible with co-enforcement. For example, in the past, the DLSE used the yellow pages and internet searches to select employers for random sweeps.⁷⁴ Now, community organizations' relationships with vulnerable workers yield reliable information about where violations are occurring.⁷⁵

DLSE also uses community partnerships to identify workers for complaints and communicate with workers more effectively. For example, the DLSE partnered with the powerful Community Labor Environmental Action Network (CLEAN) in Los Angeles to enforce labor laws among the city's carwashes, which are notorious for "harsh treatment by employers, illegally low pay, and dangerous working conditions."⁷⁶ Whereas in the past, DLSE declined to work with local advocates, Su's co-enforcement program benefits positive relationships with community organizations that in turn improve communications with workers: "when DLSE wants to identify more workers for a complaint, it is willing to give CLEAN the list of names and addresses to reach out to. . . . They do follow-up interviews with workers at the worker center, take CLEAN's assistance on payroll reconstructions and wage calculations, and keep the organization informed about the progress of cases."⁷⁷ Such practices increase the efficient utilization of DLSE's limited resources and build trust in vulnerable communities. In focus groups after the CLEAN co-enforcement campaign, carwash employees spoke favorably of DLSE's new approach.⁷⁸ "Many said they had never seen a labor investigator until the campaign began but had had repeat visits over the past four years. "We didn't know what our rights were," one worker said, "but now we do."⁷⁹

DLSE's partnership with community and labor organizations, however, is even more significant in terms of its potential to support organizing, and it is that on which we focus.

B. Co-Enforcement that Supports Organizing Beyond Enforcement

⁷² See WAGE JUSTICE, wagejustice.org (last visited Nov. 16, 2017).

⁷³ Natalie Kitroeff, *Drivers Win \$5 million Settlement in Latest Victory Against Trucking Companies*, L.A. TIMES (July 14, 2016, 4:04 PM), <http://www.latimes.com/business/la-fi-port-trucker-settlement-20160714-snap-story.html>; Brett Murphy, *Rigged. Forced Into Debt. Worked Past Exhaustion. Left with Nothing*, USA TODAY (June 16, 2017), <https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/>.

⁷⁴ Fine & Lyon, *supra* note 8, at 441.

⁷⁵ *Id.*

⁷⁶ Fine, *supra* note 8, at 372, 374.

⁷⁷ *Id.* at 374.

⁷⁸ *Id.* at 375.

⁷⁹ *Id.*

DLSE has partnered with community groups by encouraging inspectors in its Bureau of Field Enforcement (BOFE) to work with community groups to target the worst wage theft offenders in the industries with the highest rates of wage theft. An innovative three-year pilot program is a partnership among DLSE/BOFE, the California affiliate of the National Employment Law Project, and local worker organizations. It is funded by a grant from the Irvine Foundation. The program has provided grants to several community organizations in San Francisco and Los Angeles, and two in rural Ventura County.⁸⁰ It is the responsibility of each of the community organizations to identify cases and to bring them to BOFE for enforcement action. BOFE takes the lead on enforcement, but works with the community partner every step of the way. In that respect, it is similar to the San Francisco OLSE model.

An interesting innovation in the California DLSE model is the involvement of NELP as a facilitator of the co-enforcement relationship. Unlike in San Francisco, which has OLSE in direct partnership with a handful of community organizations and worker centers, at the state-wide level, DLSE/BOFE partners with NELP and with community organizations. NELP lawyer Nayantara Mehta works with the community groups to identify wage theft cases, which the community group then presents to BOFE. BOFE then takes over prosecuting the case but relies on the community group for assistance with identifying witnesses, gathering documentary evidence about wage practices, building trust among the workers (many of whom are undocumented and distrustful of government agencies), and ensuring that the workers understand, participate in, benefit from, and are not retaliated against because of, the enforcement activity. The program has provided annual retreats for BOFE staff and investigators to meet with worker activists to learn about wage and labor practices in the low wage economy.

NELP's commitment is to facilitate relations between the community partners and BOFE, to help identify and solve problems that community partners may be having in generating cases and performing their contract obligations, and to embed the commitment to co-enforcement within a large state bureaucracy. Lawyers involved both at OLSE and DLSE identify the recruitment and training of agency staff as of crucial importance – the agency staff must, as one lawyer put it, care about the workers' experience.

Another difference between the California and San Francisco models is in the source of funding. Co-enforcement at DLSE is funded as a pilot project by the Irvine Foundation. The private funding gives greater flexibility in how community groups can integrate outreach on labor standards with other outreach that the community group does. In other words, the pursuit of

⁸⁰ The groups include: (1) Chinese Progressive Association in San Francisco, which has strong representation of workers in the restaurant sector; (2) Young Workers United in San Francisco, also strong in the restaurant sector; (3) Asian Americans Advancing Justice-Asian Law Caucus in San Francisco (again, restaurants); (4) the Filipino Worker Center in Los Angeles (home care workers); (5) Asian Americans Advancing Justice in Los Angeles (Advancing Justice-LA); (6) the Maintenance Cooperative Trust Fund in Los Angeles (janitorial service); (6) Restaurant Opportunities Center-Los Angeles (restaurants); and two organizations in Ventura County working with farmworkers, the Mixteco/Indígena Community Organizing Project (MICOP) and California Rural Legal Assistance (CRLA).

numerically defined deliverables need not be the primary driver of strategy. Lawyer-activists at both OLSE and NELP explain that building worker power (what labor organizers used to call organizing) cannot always be quantified (especially without a dues model driving the organization); rather, it helps to allow organizing goals to be paramount and the pursuit of deliverables (the number of cases referred or resolved, number of trainings conducted, number of worker meetings held) to arise organically from organizing rather than organizing happening as a result of the pursuit of deliverables.

V. Conclusion

One can boil down the major transformations in minimum standards enforcement described in this paper to three. First, co-enforcement has provided worker groups some funding, legitimacy, and a direct connection to enforcement agencies that are important, if not always strictly necessary, for a worker group to have real power as an organization. This matters enormously to worker centers and other groups that lack what made organized labor strong in its mid-twentieth century hey day: the dues model of funding, the collective bargaining relationship that confers legitimacy, and the budget to hire lobbyists and lawyers who will ensure a direct connection to government power.

Second, co-enforcement offers a way to educate and connect enforcement agencies to the underground and low-wage economy and the marginalized workers who are so often beyond the reach of conventional enforcement efforts. Cash-strapped government agencies often do not invest in the professional development of their investigators and staff, yet that professional development training is absolutely essential to keep enforcement officials motivated and sophisticated about their work. And co-enforcement offers a way to embed a worker-oriented commitment throughout a bureaucracy so that enforcement is less subject to the vicissitudes of political swings in the executive branch.

Third, co-enforcement is not just a win-win, but a win-win-win for workers, for community organizations, and for government seeking an effective and efficient way to enforce laws in the low-wage sectors. Workers win because co-enforcement works better than any other method in sectors where noncompliance is rampant and workers lack the knowledge, confidence, connections, and resources to force their employer to comply or the government to enforce the laws on the books. Workers also win because co-enforcement dovetails enforcement with the kind of organizing that will eradicate wage theft in the future. Community organizations win because they gain resources to support their organizing and they get a direct connection to the government agencies that are supposed to enforce the law. And government wins by having a direct connection to the people whom they are to serve and they gain relationships with the people whose cooperation is necessary to enforce the law.

Perhaps the most important lesson to derive from the San Francisco and California co-enforcement stories is that while laws and enforcement are critical, laws that protect low-wage workers are only born because a group of workers organized and then fought for those laws.⁸¹

⁸¹ See, e.g., Marion Crain & Ken Matheny, *Beyond Unions, Notwithstanding Labor Law*, 4 U.C. IRVINE L. REV. 561, 596 (“Union support was critical to the enactment of antidiscrimination laws, wage and hour laws, unemployment

When we strategize about how other municipalities can pass co-enforcement measures similar to those in San Francisco, California, and beyond, we should not forget that a legislature passed the law—or voters adopted one by ballot initiative—only because community organizations organized low-wage workers, collaborated closely with organized labor (labor unions), imagined the legislation, engaged in political organizing to support the measure(s), and lobbied their elected officials to even consider such an such laws. In San Francisco, it was the worker centers that pinned wage theft onto the proverbial political map which in turn pushed the City to support building worker power. Likewise community organizations and partners on the ground—the ones that are closest to the very workers that these laws seek to benefit—must be integral partners in the work of co-enforcement. These community organizations are, figuratively and literally, the C.O./“co” in co-enforcement at all.

And there is even more beauty in the San Francisco and California stories. They illustrate the full circle of the ongoing task of building worker power. Co-enforcement works because it provides more than a win-win for low-wage workers and the Agency that seeks to protect them; it also helps to sustain the very base-building organizations like CPA that are so deeply committed in the long run to this work. This is how true government for the people is supposed to work. And through it all, as the success of co-enforcement in San Francisco illustrates, no one in the co-enforcement ecosystem is more important than the workers themselves.

insurance, workplace safety and health legislation, protections for pensions and health benefits, and family leave legislation.”); Alison D. Morantz, *Coal Mine Safety: Do Unions Make a Difference?*, 66 ILR REV. 88, 89 (2013) (organized labor instrumental to passing Mining Safety and Health Act of 1969); Jenn Hagedorn et al., *The Role of Labor Unions in Creating Working Conditions that Promote Public Health*, 106 AM. J. OF PUB. HEALTH 989 (2016) (“Unions have historically been involved in creating healthy and safe workplaces, advocating regulations that are monitored and enforced by public health entities such as the Occupational Safety and Health Administration.”); Judith A. Scott, *Why a Union Voice Makes a Real Difference for Women Workers: Then and Now*, 21 YALE J. OF L. & FEMINISM 233, 235 (2009) (“the UAW joined numerous other unions, civil rights groups, and women’s groups in the legislative effort to win passage of the [Pregnancy Discrimination Act.]”); Robert Whaples, *Winning the Eight-Hour Day, 1909-1919*, 50 J. ECON. HIST. 393, 394 (1990) (most important factors causing the rapid reduction in hours of work between 1900 and 1920 were rapid expansion of economy, reduction in immigration, growth in power of organized labor due to tight labor market and federal government’s wartime labor policy, federal and state legislation, and electrification of manufacturing).