

Volume 19 | Issue 2

Summer 2016

Demanding a Race to the Top: The 2015 Strike Against MFY Legal Services in Context

Jota Borgmann

National Organization of Legal Services Workers

Brian Sullivan

National Organization of Legal Services Workers

Follow this and additional works at: <https://academicworks.cuny.edu/clr>

 Part of the [Law Commons](#)

Recommended Citation

Jota Borgmann & Brian Sullivan, *Demanding a Race to the Top: The 2015 Strike Against MFY Legal Services in Context*, 19 CUNY L. Rev. 195 (2016).

Available at: <https://academicworks.cuny.edu/clr/vol19/iss2/2>

The CUNY Law Review is published by the Office of Library Services at the City University of New York. For more information please contact cunylr@law.cuny.edu.

Demanding a Race to the Top: The 2015 Strike Against MFY Legal Services in Context

Acknowledgements

Brian would like to thank his partner Erica Chutuape and his daughters Maya and Cece. Jota thanks Becky and James Borgmann for their support and the MFY shop for its hard work, enthusiasm, and determination throughout the 2015 contract campaign. Both authors offer a heartfelt thank you to Jessica Cepin, who served with us on the bargaining team and provided feedback on an early draft of the article, and to Anamaria Segura and David Urena, who provided crucial leadership during the strike and assistance with this article. ¹ MFY provides free legal assistance to residents of New York City

DEMANDING A RACE TO THE TOP: THE 2015 STRIKE AGAINST MFY LEGAL SERVICES IN CONTEXT

Jota Borgmann and Brian Sullivan†

| | |
|---|-----|
| I. SOCIAL SERVICES AND THE RISE OF NEOLIBERAL NEW YORK | 198 |
| A. <i>The 1960s and the Early Days of Mobilization for Youth</i> | 198 |
| B. <i>The Fiscal Crisis and the Dawn of Neoliberal New York</i> | 201 |
| C. <i>Deepening Austerity and the New Social Services Landscape</i> | 203 |
| II. THE FIGHT FOR A FAIR CONTRACT AT MFY LEGAL SERVICES | 208 |
| A. <i>Formulating Our Demands</i> | 208 |
| B. <i>Starting Negotiations</i> | 211 |
| C. <i>“Don’t get mad, get organized”: The Members Show Their Strength</i> | 213 |
| D. <i>Ready to Strike at MFY</i> | 217 |
| E. <i>Taking the Fight Forward</i> | 220 |

In the subzero temperatures of February 2015, the unionized employees of MFY Legal Services¹ (MFY) waged a three-and-a-half-week strike against their employer.² At issue in this labor dispute were securing pay equity for the organization’s lowest paid

† Brian J. Sullivan and Jota Borgmann are members of the National Organization of Legal Services Workers, UAW Local 2320, and were on the union bargaining team during the strike discussed in this article. Brian would like to thank his partner Erica Chutuape and his daughters Maya and Cece. Jota thanks Becky and James Borgmann for their support and the MFY shop for its hard work, enthusiasm, and determination throughout the 2015 contract campaign. Both authors offer a heartfelt thank you to Jessica Cepin, who served with us on the bargaining team and provided feedback on an early draft of the article, and to Anamaria Segura and David Ureña, who provided crucial leadership during the strike and assistance with this article.

¹ MFY provides free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. See *About MFY*, MFY, <http://www.mfy.org/about/about-mfy/> [<https://perma.cc/HYE2-HMWC>].

² See *MFY Legal Services Employees on Strike*, UAW LOCAL 2320 (Feb. 1, 2015), http://www.nolsw.org/index.cfm?zone=/unionactive/view_article.cfm&homeID=467929 [<https://perma.cc/KU2V-LCKF>] (discussing MFY’s unionized employees’ overwhelming 90% vote to go on strike following their rejection of management’s contract proposal).

employees, parental leave for all employees, and ensuring that the organization offered a benefits package that would retain a long-term, experienced, and diverse staff.³ Together, these demands would improve labor conditions at MFY and, consequently, would improve the quality of services delivered to the organization's clients.

Some observers wonder why legal services workers, especially lawyers, would require a union and why they would need to strike for better working conditions. Why wouldn't the interests of a nonprofit organization with a social justice mission be aligned with those of its workers? The answer lies in the devastating cuts to social services in New York City and the U.S. over the past several decades. These cuts have imperiled New York City's low-income population and undermined the economic position of working New Yorkers. While nonprofit organizations have stepped in to deliver services to compensate for an inadequate safety net, the competitive, market-like bidding for public and private grants has led to a "race to the bottom" style of administration in the nonprofit sector.

In this article, two members of the union's negotiation team will discuss the political and economic context of the 2015 strike and why this strike was and is important for the future not only of MFY's clients and workers, but for legal services generally. In Part I of this article, we will briefly describe New York City's turn towards neoliberalism⁴ and the effect this turn had on social services generally, and legal services in particular. We will analyze how New York City, New York State, and federal social service policy changed between the late 1960s through the present day, and how legal services in general, and MFY in particular, reacted to these changes. This analysis will help to explain why MFY's workers found themselves in a contentious contract negotiation with MFY's management at a time of unprecedented growth and prosperity for the organization. In Part II, we will describe the concrete details of

³ See *Why MFY Is on Strike*, UAW LOCAL 2320 (Feb. 5, 2015), http://www.nolsw.org/index.cfm?zone=/unionactive/view_article.cfm&homeID=468433 [<https://perma.cc/KL5G-NX9B>].

⁴ KIM MOODY, *FROM WELFARE STATE TO REAL ESTATE* 18 (2007) ("[Neoliberalism is a] restraint on social spending, privatization, deregulation, and, most importantly, the reassertion of class power by the nation's capitalist class."); DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* 2 (2005) ("[Neoliberalism is a] theory of political economic practices that propose that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade.").

the contract campaign and resulting strike, explaining how both were organized and executed. This section walks through the campaign chronologically, from the formulation of our demands, through negotiations at the bargaining table, to the strike itself. We conclude with some reflections on how the victories we won in our strike and recent changes in the legal services funding landscape will affect MFY workers and our clients going forward.

Between the 1930s and 1960s, New York City benefited from relatively healthy social democratic spending at the City, State, and federal levels.⁵ Towards the end of this period, MFY was both a leader in providing Civil Legal Services (CLS) and was also involved in ambitious political agitation, such as Frances Fox Piven's successful welfare reform campaign.⁶

Unfortunately, the 1970s saw a major rightward shift in City politics. Especially after the New York City fiscal crisis in 1975, social spending was sharply curtailed and the City's social democratic policy was cut back.⁷ We will trace this neoliberal shift through the 1980s, including President Reagan's attempt to defund legal services at the federal level through the elimination of the Legal Services Corporation.⁸ This trend continued in New York City under mayors Dinkins, Giuliani, and Bloomberg, during which time multiple non-union CLS providers were established,⁹ and competitive battles for funding drove working conditions down.¹⁰

Looking at the immediate lead-up to our strike, we will analyze changes in the CLS landscape, social spending in the Bloomberg years, and the massive infusion of state money that resulted from the advocacy of Chief Judge Jonathan Lippman of the Court of Appeals.¹¹ Of particular importance to our strike was the 2013

⁵ MOODY, *supra* note 4, at 16-17.

⁶ Tyler Kasperek Somes, *The Legal Services NYC Strike: Neoliberalism, Austerity and Resistance*, 71 NAT'L LAW. GUILD REV. 1, 12 (2014).

⁷ Kim Phillips-Fein, *The Legacy of the 1970s Fiscal Crisis*, NATION (Apr. 16, 2013), <http://www.thenation.com/article/legacy-1970s-fiscal-crisis/> [https://perma.cc/PZ78-3M3Q].

⁸ Stuart Taylor, Jr., *Legal Aid for the Poor: Reagan's Longest Brawl*, N.Y. TIMES (June 8, 1984), <http://www.nytimes.com/1984/06/08/us/legal-aid-for-the-poor-reagan-s-longest-brawl.html>.

⁹ For instance, the New York Legal Assistance Group was founded in 1990. See *About Us*, N.Y. LEGAL ASSISTANCE GRP., <http://nylag.org/about-us> [https://perma.cc/J3CK-KA2M].

¹⁰ MOODY, *supra* note 4, at 162 (discussing the Bloomberg administration's cuts to social service contracts in the early years).

¹¹ William Glaberson, *Judge's Budget Will Seek Big Expansion of Legal Aid to the Poor in Civil Cases*, N.Y. TIMES, Nov. 28, 2010, at A21.

strike at Legal Services of New York City (LSNYC), a labor struggle from which we learned many lessons.

It was in this larger context that we embarked on our contract campaign in the final months of 2014. Despite the significant cuts in social spending that have been a central component of neoliberal New York, MFY as an organization was fiscally healthy in 2014 (in part because of past concessions that the union had made). The unionized staff was also particularly well-organized and militant. Thus, both objective and subjective conditions made 2014 a good time to mount an ambitious contract campaign. We will describe how we organized ourselves, took inspiration from the history of labor resistance, and accomplished the strike itself. Ultimately, the strike was highly successful. Though we had to make some tough concessions, we achieved all of our central goals. Therefore, our strike must be viewed not only in light of the steady push towards austerity that has characterized social services policy for the past fifty years, but also in light of labor's tradition of resistance to neoliberalism.¹²

I. SOCIAL SERVICES AND THE RISE OF NEOLIBERAL NEW YORK

*Many persons seem to cringe at the thought of the federal government financing litigation against state and local governments—especially if the result is to raise the local tax bite to support the poor.*¹³

A. *The 1960s and the Early Days of Mobilization for Youth*

Mobilization For Youth, the precursor organization to the formation of MFY Legal Services in 1968, was founded in 1961 with federal grants offered by the Kennedy administration.¹⁴ Mobilization For Youth offered a broad range of social services, including welfare advocacy, legal services, services for low-income youth, and a host of other human services.¹⁵ At the time, civil legal services were only a small part of Mobilization For Youth's work. In addition to social services, Mobilization For Youth "conducted aggressive community organizing campaigns that included rent strikes against negligent slum owners, education boycotts against school

¹² See *infra* Part I(C).

¹³ STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE* 1, 191 (2d ed. 2004) (citing Fred P. Graham, *Lawyers for the Poor Take on City Hall*, N.Y. TIMES, Dec. 28, 1969, at 137).

¹⁴ DOLORES SCHAEFER, *MFY LEGAL SERVICES, INC.: MOBILIZING FOR JUSTICE SINCE 1963*, at 2 (2013), <http://www.mfy.org/wp-content/uploads/MFY-History-50th-Anniversary1.pdf> [<https://perma.cc/CW96-9QXC>]; *About MFY*, *supra* note 1.

¹⁵ SCHAEFER, *supra* note 14, at 3.

segregation, and demonstrations at construction sites demanding jobs for people of color.”¹⁶

Most famously, in the mid-1960s, Mobilization For Youth waged a pitched battle against New York City political and economic elites to secure welfare rights for the City’s poor and working class residents.¹⁷ This broad-based social struggle provided the groundwork for some of MFY’s most enduring legal achievements. MFY paralegal Una Perkins represented John Kelly when he was denied welfare benefits based on alleged fraud.¹⁸ At the time, welfare recipients were not afforded any due process rights prior to termination of their benefits.¹⁹ Acting on behalf of all New Yorkers denied benefits without due process, Mr. Kelly challenged the City’s summary denial of his benefits. The case was ultimately decided by the United States Supreme Court in the landmark decision *Goldberg v. Kelly*.²⁰

In its combined strategy of social organizing and legal advocacy, MFY embraced a robust practice of poverty law.²¹ However, MFY’s most ambitious years of social organizing were cut short when political winds began to shift in the mid to late 1960s. At the federal level, President Richard Nixon was inaugurated in 1969, and the coded racism of his national election strategy—which ultimately paved the way for Ronald Reagan’s attack on the welfare system and racialized references to the “welfare queen”²²—would

¹⁶ Somes, *supra* note 6, at 11-12.

¹⁷ Tamar W. Carroll, “To Help People Learn To Fight”: *New York City’s Mobilization for Youth and the Origins of the Community Action Programs of the War on Poverty*, GOTHAM BLOG (Oct. 8 2015), http://www.gothamcenter.org/blog/to-help-people-learn-to-fight-new-york-citys-mobilization-for-youth-and-the-origins-of-the-community-action-programs-of-the-war-on-poverty#_edn2 [https://perma.cc/3XX7-6263].

¹⁸ *Una Perkins: 40 Years at MFY and Going Strong*, MFY FYI (MFY Legal Servs., New York, N.Y.), Spring-Summer 2009, at 4, <http://www.mfy.org/wp-content/uploads/fyi/FYI-Spring-Summer-2009.pdf> [https://perma.cc/E6GA-GMVA].

¹⁹ Charles A. Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 YALE L.J. 1245, 1252 (1965).

²⁰ *Goldberg v. Kelly*, 397 U.S. 254 (1970) (holding that, under the Fourteenth Amendment, a recipient of certain government benefits must be granted an evidentiary hearing prior to termination of such benefits).

²¹ In a fundamental sense, poverty law refers to the new form of legal practice that emerged during the ‘War on Poverty’ of the 1960s, a form of practice that transcended the traditional legal-aid model of providing individual representation in unconnected and usually private-law matters, and instead sought to enlist the law in a systemic effort to achieve social and structural changes that might alleviate poverty itself.

Stephen Loffredo, *Poverty, Inequality, and Class in the Structural Constitutional Law Course*, 34 FORDHAM URB. L.J. 1239, 1240-41 (2006).

²² See Kathryn J. Edin & H. Luke Shaefer, *Ronald Reagan’s “Welfare Queen” Myth: How the Gipper Kickstarted the War on the Working Poor*, SALON (Sept. 27, 2015), <http://>

significantly affect the public services landscape in New York City. The specter of the urban malingerer became a potent tool in a bipartisan effort to roll back the gains of the past decades.²³

Reflecting these changing political and economic conditions, in the mid-1960s, Mobilization For Youth found itself in a battle for its existence. Because of its involvement in the welfare rights movement, the organization came under the scrutiny of the New York City Police Department and City Council President Paul Screvane, who withheld the organization's funding in 1964.²⁴ Mobilization For Youth was accused of inciting racial violence in Harlem and of being "a suspected Red honeycomb for leftists."²⁵ The organization ultimately survived this leftist witch-hunt, but in 1968, MFY Legal Services split apart from the broader organization to focus on litigation and individual representation.²⁶ While this move was a reaction to a hostile political environment, it did pave the way for the organization's staff to ultimately unionize into the Legal Services Staff Association (LSSA). This happened in 1972, when LSSA formed as a wall-to-wall union.²⁷ This organizational form would prove to be of crucial significance throughout LSSA's history, and particularly in MFY's 2015 strike.

www.salon.com/2015/09/27/ronald_reagans_welfare_queen_myth_how_the_gipper_kickstarted_the_war_on_the_working_poor/ [<https://perma.cc/94FC-K3DA>] ("Although negative racial stereotypes had plagued welfare throughout its existence, the emphasis on race was more widespread and virulent after Reagan turned his focus to the system. His welfare queen soon became deeply ingrained in American culture. She was black, decked out in furs, and driving her Cadillac to the welfare office to pick up her check. None of these stereotypes even came close to reflecting reality, particularly in regard to race."). See generally Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J.L. & SOC. JUST. 233 (2014); KE-ANGA-YAMAHTTA TAYLOR, *FROM #BLACKLIVESMATTER TO BLACK LIBERATION* (2016) (analyzing how the neoliberal assault on welfare and social spending was particularly devastating to African Americans).

²³ See generally Michele Estrin Gilman, *The Return of the Welfare Queen*, 22 AM. U. J. GENDER SOC. POL'Y & L. 247, 247 (2014) (detailing the use of the welfare queen rhetoric by courts and politicians all the way up to 2012's presidential race where "Governor Romney was able to trigger the stereotypes underlying the welfare queen, through his welfare attack ads in order to seek an advantage among white voters").

²⁴ Homer Bigart, *City Hunts Reds in Youth Project on East Side*, N.Y. TIMES (Aug. 17, 1964), http://www.nytimes.com/1964/08/17/city-hunts-reds-in-youth-project-on-the-east-side.html?_r=0.

²⁵ *Id.*

²⁶ *Somes*, *supra* note 6, at 14.

²⁷ A "wall-to-wall" union is one in which all staff, not just professionals or certain workers, are joined together in a single union. See *Union History*, LSSA 2320, <http://lssa2320.org/members/union-history/> [<https://perma.cc/5SA5-854W>].

B. *The Fiscal Crisis and the Dawn of Neoliberal New York*

While the late 1960s and early 1970s were turbulent political times, the New York City fiscal crisis of 1975 ushered in a dramatic neoliberal reorganization of the City. As demonstrated by scholars such as Kim Moody and Robert Fitch, the 1970s saw New York City's political and economic elites embrace the neoliberal project.²⁸ As David Harvey has commented, New York City's case was "iconic," and the "management of the New York fiscal crisis pioneered the way for neoliberal practices both domestically under Reagan and internationally through the IMF (international monetary fund)"²⁹ Through management of the crisis, City elites "emphasized that the role of government was to create a good business climate rather than look to the needs and well-being of the population at large."³⁰

Thus, while government at both the local and federal level responded to the urban unrest of the 1960s with greater social spending and an expansion of welfare benefits, by the 1970s this response had been replaced by a program of harsh austerity. As Kim Moody explains in his history of New York City, *From Welfare State to Real Estate*, the worldwide recession of the mid-1970s hit New York City particularly hard. The global recession "affected America's other ailing cities . . . causing widespread fiscal distress, but given New York's central place in the world economy, [it] hit New York harder and at a sharper angle."³¹

This fiscal crisis gave the City's elites their long-awaited opportunity to significantly cut social spending. These cuts did not come to fruition until the Koch administration several years later, but, as one business executive commented in 1973, "If we don't take action now, we will see our own demise. We will evolve into another social democracy."³² Ultimately, cuts to social spending were a crucial component of New York City's shift to neoliberalism.³³ "Restraint on social spending, privatization, deregulation, and, most importantly, the reassertion of class power by the nation's capitalist class are at the center of the neoliberal project."³⁴

The administration of Mayor Ed Koch, spanning three terms

²⁸ See ROBERT FITCH, *THE ASSASSINATION OF NEW YORK* 145-84 (1993); MOODY, *supra* note 4, at 18.

²⁹ HARVEY, *supra* note 4, at 48.

³⁰ *Id.*

³¹ MOODY, *supra* note 4, at 16.

³² *Id.* at 18.

³³ *See id.*

³⁴ *Id.*

between 1978 and 1989, would cement many of the neoliberal changes being imposed on the City, and would set the mold for social services in the decades to come.³⁵ Koch employed a clever strategy in instituting austerity in social services: at the same time that he significantly cut social spending, he poured money into the nonprofit sector, making the professionals who ran nonprofit organizations “think twice about advocacy actions that might annoy the mayor.”³⁶ Thus, there was a paradoxical quality to Koch’s policy: he dedicated significant resources to the NGO sector but undermined grassroots political action and encouraged an overall deterioration of conditions for working class and poor New Yorkers.³⁷ His neoliberal social policy expressed itself in New York City’s surging homeless population, the introduction of tuition at formerly free CUNY campuses, subway fare hikes, layoffs of City workers, and hospital closures.³⁸

Federal policy would follow a similar course. In 1974, Congress passed legislation creating the Legal Services Corporation (LSC), a private nonprofit corporation that distributes funding for legal services for poor people.³⁹ While the LSC represented a large source of reliable funds for legal services, it also limited the terrain on which poverty law could be practiced. In the 1980s and 1990s, the federal government would place sharp restrictions on the law practices of those organizations that accepted LSC money.⁴⁰

During this period, New York City’s public sector unions, particularly District 1199, grew dramatically.⁴¹ Despite this numeric growth, most workers in the City saw a slow but steady decline in wages and working conditions. It was in this climate that LSSA went on strike in 1977 and 1979. While the 1977 strike was fast, lasting only one week, the strike in 1979 lasted eleven weeks, stretching out through the winter. In both actions the union fought off givebacks pertaining to control over staff working conditions, and

³⁵ See Samuel Zipp, *Burning Down the House: On Ed Koch*, NATION (Nov. 3, 2010), <http://www.thenation.com/article/burning-down-house-ed-koch/> [https://perma.cc/3VQW-LKE2].

³⁶ MOODY, *supra* note 4, at 65.

³⁷ See *id.* at 66-80.

³⁸ See *id.* at 39, 73-74, 80; see generally JONATHAN SOFFER, ED KOCH AND THE REBUILDING OF NEW YORK CITY (2011).

³⁹ Joshua D. Blank & Eric A. Zachs, *Dismissing the Class: A Practical Approach to the Class Action Restriction on the Legal Services Corporation*, 110 PENN ST. L. REV. 1, 4 (2005).

⁴⁰ See Michael Serrill, *Law: An Organization at War with Itself*, TIME, Oct. 3, 1983.

⁴¹ See Michelle Chen, *How Did New York Become the Most Unionized State in the Country?*, NATION (Sept. 3, 2014), <http://www.thenation.com/article/how-did-new-york-become-most-unionized-state-country/> [https://perma.cc/5TN8-8CL6].

won important victories such as wage increases and retirement benefits.⁴²

However, things did not improve for all legal services workers in the 1980s. Immediately after taking office, President Ronald Reagan sought to eliminate the LSC,⁴³ a move which, if successful, would have effectively destroyed legal services. Reagan's position was a piece of his larger strategy to slash welfare and other social services.⁴⁴ Having recently affiliated with the United Auto Workers (UAW), the unionized employees of LSSA fought these spending reductions tooth and nail, ultimately prevailing when Reagan's draconian cutbacks were rejected.⁴⁵

New York City, meanwhile, gave considerable tax breaks and other subsidies to large developers.⁴⁶ Mayor Koch continued the path he commenced at the beginning of his term, overseeing a glut in commercial and residential development and devoting fewer resources to improving the lives of working class and poor New Yorkers.

C. *Deepening Austerity and the New Social Services Landscape*

The 1990s saw local and national policy attacks against legal services that accompanied larger policy attacks against poor people. Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the so-called "welfare reform" legislation that created work requirements for recipients of public assistance⁴⁷ and a five-year lifetime limit on benefits.⁴⁸ Almost twenty years after its passage, the country saw a sharp increase in the number of families living in deep poverty, *i.e.*, at incomes below half of the poverty line.⁴⁹ In the same year, Congress passed new restrictions on LSC funding, prohibiting representation of undocumented immigrants and litigants participating in class action law-

⁴² See *Union History*, *supra* note 27.

⁴³ Taylor, *supra* note 8.

⁴⁴ *Somes*, *supra* note 6, at 14.

⁴⁵ See Stuart Taylor, Jr., *Plan Gains to Raise Funds to Pay for Legal Services for Poor*, N.Y. TIMES, Nov. 13, 1984, at 1; *Union History*, *supra* note 27.

⁴⁶ FITCH, *supra* note 28, at 146.

⁴⁷ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 824, 110 Stat. 2105 (1996).

⁴⁸ See *id.* § 408(a)(7).

⁴⁹ CTR. ON BUDGET AND POL'Y PRIORITIES, POLICY BASICS: AN INTRODUCTION TO TANF 6 (June 15, 2015), <http://www.cbpp.org/sites/default/files/atoms/files/7-22-10tanf2.pdf> [<https://perma.cc/D8EA-SSSL>] ("[T]he number of families in deep poverty rose between 1996 and 2013, from 2.7 million to 3 million.").

suits.⁵⁰ State and federal budget cuts at this time also forced MFY to close its neighborhood storefront offices and consolidate to one location.⁵¹

In New York City, these cutbacks were paired with policy shifts favoring elites. Mayor David Dinkins bolstered the already-powerful real estate industry, continuing Koch's policies of privatization and subsidies for the super wealthy, accompanied by feeble attempts to expand the City's safety net.⁵² It was early in the Dinkins administration that LSSA would fight, and win, one of its most important strikes. For sixteen grueling weeks in 1991, LSSA waged a pitched battle against Legal Services of New York City (LSNYC). The victories of that strike, including "rationaliz[ing] wage scales on the basis of seniority, obtain[ing] unprecedented wage increases, eliminat[ing] discretionary raises, [winning] a strong policy against sexual harassment, [and winning] retroactive pension contributions for our long-time members,"⁵³ put in place the basic framework under which legal services workers labor today. The 1991 strike made legal services a viable long-term career option for attorneys, paralegals, and administrative staff.

In 1993, Dinkins was replaced as mayor by Rudolph Giuliani, whose racist policing tactics,⁵⁴ disregard for all but the wealthiest New Yorkers,⁵⁵ and dedication to austerity⁵⁶ no matter the human costs would make him a symbol of all that had gone wrong for the City's most vulnerable. For legal services workers, the Giuliani administration would prove to be a powerful adversary.⁵⁷ Mayor Giuliani attacked unionized legal services, threatening lawyers striking at Legal Aid Society with the loss of their jobs,⁵⁸ and forcing them to accept a contract without pay increases after the union and man-

⁵⁰ Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, §504(a)(7), (11), 110 Stat. 1321 (1996).

⁵¹ *Chinatown MFY Office Shuts*, TENANTNET, <http://www.tenant.net/tengroup/Metcounc/Mar96/mfy.html> [<https://perma.cc/Y83N-C6XK>]; Andrew Jacobs, *Neighborhood Report: Chinatown; Legal Lifeline for Asian Poor Gets Budget Ax*, N.Y. TIMES (Nov. 5, 1995), <http://www.nytimes.com/1995/11/05/nyregion/neighborhood-report-chinatown-legal-lifeline-for-asian-poor-gets-budget-ax.html>.

⁵² MOODY, *supra* note 4, at 119-21.

⁵³ *Union History*, *supra* note 27.

⁵⁴ TAYLOR, *supra* note 22, at 124.

⁵⁵ MOODY, *supra* note 4, at 133.

⁵⁶ Jonathan P. Hicks, *To Black Audience in Brooklyn, Mayor Promotes Austerity Plan*, N.Y. TIMES (Nov. 14, 1994), <http://www.nytimes.com/1994/11/14/nyregion/to-black-audience-in-brooklyn-mayor-promotes-austerity-plan.html>.

⁵⁷ See Alison Mitchell, *Mayor Moves to Cut Role of Legal Aid*, N.Y. TIMES (Oct. 6, 1994), <http://www.nytimes.com/1994/10/06/nyregion/mayor-moves-to-cut-role-of-legal-aid.html>.

⁵⁸ Alison Mitchell, *Giuliani and Striking Lawyers: Sending a Message*, N.Y. TIMES (Oct.

agement had reached a tentative agreement that included modest bonuses.⁵⁹ Giuliani immediately sought out alternative providers of indigent criminal defense to scale back funding for Legal Aid Society.⁶⁰ By 1998, the City had established contracts with several non-unionized organizations including Bronx Defenders and Brooklyn Defender Services.⁶¹ A report that year by the Indigent Oversight Panel of the Appellate Division, First Department, found that Legal Aid Society lawyers were overworked, handling an average of 650 cases each, and that the overall quality of indigent legal defense had declined.⁶²

In 2002, MFY dissociated itself from LSNYC (then LSNY), with the most experienced advocates remaining in LSNY's Manhattan office and the newer staff splitting off with MFY.⁶³ Right away, MFY's management issued a layoff notice to a member of the support staff, which the shop⁶⁴ successfully fought. In the first round of contract negotiations after the split, management demanded significant givebacks in health care, sick and vacation leave, and family medical leave.⁶⁵ In October 2003, the nineteen-member shop went on strike for nine weeks and successfully fought off many of management's demands.⁶⁶ As one of the MFY strikers described it, "[s]hop members came back from the strike unified and support-

5, 1994), <http://www.nytimes.com/1994/10/05/nyregion/giuliani-and-striking-lawyers-sending-a-message.html>.

⁵⁹ See Mitchell, *supra* note 57.

⁶⁰ *Id.*

⁶¹ David Rohde, *Decline Is Seen in Legal Help for City's Poor*, N.Y. TIMES (Aug. 26, 1998), <http://www.nytimes.com/1998/08/26/nyregion/decline-is-seen-in-legal-help-for-city-s-poor.html>.

⁶² *Id.*

⁶³ See *Union History*, *supra* note 27.

⁶⁴ "A 'union shop' is an establishment in which the employer by agreement is free to hire nonmembers as well as members of the union but retains nonmembers on the payroll only on condition of their becoming members of the union within a specified time." 41 CAL. JUR. 3d *Labor* § 236 (2016).

⁶⁵ See *Union History*, *supra* note 27 ("MFY began raiding other legal service programs' funding and did its best to drive a wedge between its employees and the rest of LSSA, while setting out at the same time to bust the union at MFY with disastrous giveback demands and complete intransigence in bargaining. In an oft-quoted exchange, the MFY project director gave staff five minutes to decide whether they would accept her offer, whereupon staff replied, 'We don't need five minutes.'").

⁶⁶ Lisa Belkin, *Paycheck Goes, and the Dominoes Fall*, N.Y. TIMES (Nov. 23, 2003), <http://www.nytimes.com/2003/11/23/jobs/life-s-work-paycheck-goes-and-the-dominoes-fall.html> ("The MFY office went on strike the week of Halloween. It is a small workplace, 19 people in all, including the lawyers and support staff."); *Union History*, *supra* note 27 ("It was actively supported by the rest of LSSA, garnered widespread support, and ultimately produced a contract much closer to the union's initial position than to management's.").

ive. We started having lunch together every day and we had each other's back."⁶⁷

One year before the 2003 strike, the New York City mayoralty passed to billionaire Michael Bloomberg. His administration continued social policies and a budget that emphasized tax abatements for the rich, development of luxury housing, and impairment of public education, all at the expense of remedial social policies for poor and working class New Yorkers.⁶⁸ Half way through the administration's five-year plan to reduce homelessness, the City saw the greatest rise in homelessness since 1982, when it first began counting the number of people in the City's shelters.⁶⁹ The financial crisis that began in 2008 dramatically increased evictions as funding for rent subsidies decreased.⁷⁰

As mayor, Bloomberg honed some of the tactics pioneered in the Koch years.

Ed Koch had skillfully used city contracts with nonprofit social agencies to buy, not so much loyalty, as acceptance and lack of resistance to his economic policies. Bloomberg also appeared to employ city contracts as a way of gaining widespread goodwill. In fact, the number of city contracts exploded from 6,849 valued at \$9.9 billion in [fiscal year] 2000 to 17,402 worth only \$7.5 billion in [fiscal year] 2006.⁷¹

It was within this context of nonprofits being pushed to do more with a shrinking budget that MFY management felt justified in rejecting LSSA's demands in order to stay "competitive" in bidding for City and other contracts, thus paving the way for the 2015 MFY strike.

In 2013, a decade after MFY's 2003 strike, LSSA again found itself on the picket line, this time battling savage cutbacks at LSNYC. Claiming impending fiscal catastrophe, LSNYC's management demanded a series of exceptional givebacks that would have "interrupted physical therapy and mental health treatments mid-stream" and would have "removed fertility procedures as an affordable treatment option; imposing a heteronormative condition on gay, lesbian, transgender and gender non-conforming couples

⁶⁷ Email from an LSSA member who participated in the 2003 strike (Oct. 2013) (on file with authors).

⁶⁸ MOODY, *supra* note 4, at 158.

⁶⁹ Leslie Kaufman, *City Vows to Improve Aid to Homeless Families*, N.Y. TIMES (Mar. 19, 2007), <http://www.nytimes.com/2007/03/19/nyregion/19homeless.html>.

⁷⁰ Alan Feuer, *Homeless Families, Cloaked in Normality*, N.Y. TIMES (Feb. 3, 2012), <http://www.nytimes.com/2012/02/05/nyregion/ordinary-families-cloaked-in-a-veil-of-homelessness.html>.

⁷¹ MOODY, *supra* note 4, at 162.

which had not existed previously.”⁷² In reality, while years of austerity had harmed LSNYC’s budget, the organization’s fiscal problems were not as severe as its management claimed. To the extent LSNYC had fiscal problems, they were sharply exacerbated by the organization’s top-heavy management structure.

LSSA mounted a courageous and successful counter-attack, striking for forty days in the summer of 2013.⁷³ Building rank-and-file power and involvement through a series of escalating actions, LSSA mobilized broad support both within and outside its membership. The union drew critical attention to the outsized role of LSNYC’s corporate board in setting the organization’s labor policy and broader strategy.⁷⁴ The union succeeded in both fighting off the most draconian givebacks and in articulating a rich vision for legal services, one in which low-income New Yorkers would receive ambitious services provided by experienced advocates.

Shortly after LSSA’s strike ended, CLS received an infusion of new funding it had not seen in decades.⁷⁵ Chief Judge Lippman of the New York State Court of Appeals had begun calling for significant increases in funding for legal services in the state budget and for a right to counsel for civil litigants, particularly those facing eviction.⁷⁶ At the same time, he promoted volunteerism amongst the bar in a relatively soft job market as it continued to recover from the 2008 financial crisis.⁷⁷ It was in this context, and drawing on the hard lessons learned by labor over the past several decades, that the unionized staff of MFY embarked on its 2015 contract campaign.

⁷² *Somes*, *supra* note 6, at 15.

⁷³ Erik Forman, *In a Blow Against Austerity, Legal Services Strikers Win Contract*, IN THESE TIMES (June 28, 2013, 10:40 AM), http://inthesetimes.com/working/entry/15200/strike_victory_at_legal_services_nyc_neoliberalism [<https://perma.cc/BLY3-ZZTM>]; *Legal Services NYC Strike Ends After 40 Days*, LSSA 2320, <http://lssa2320.org/legal-services-nyc-strike-ends-after-40-days-as-employees-ratify-contract-that-maintains-benefits-adds-job-security-assurances/> [<https://perma.cc/7XUA-WLE7>].

⁷⁴ *Striking Workers Confront LSNYC Board of Directors*, LSSA 2320, <http://lssa2320.org/striking-workers-confront-lsny-board-of-directors/> [<https://perma.cc/MZY2-XU4S>].

⁷⁵ Carey R. Dunne, *City Bar President Applauds Increase in Civil Legal Services Funding in Judiciary Budget*, N.Y.C. BAR: 44TH STREET BLOG (Nov. 30, 2012, 2:27 PM), <http://www.nycbar.org/44th-street-blog/2012/11/30/city-bar-president-on-judiciary-budget/> [<https://perma.cc/2RHL-T3MY>].

⁷⁶ Terry Carter, *Judges’ Efforts to Pursue Funding for Unmet Civil Legal Needs Garner Applause at LSC Conference*, ABA J. (Sept. 17, 2014), http://www.abajournal.com/mobile/article/lsc_40th_anniversary [<https://perma.cc/6XNX-36PF>].

⁷⁷ Joel Stashenko, *Lippman Proposes Student Pro Bono Program*, N.Y.L.J. (Feb. 13, 2014), <http://www.newyorklawjournal.com/id=1202642530145/Lippman-Proposes-Student-Pro-Bono-Program> [<https://perma.cc/6TKY-SGMJ>].

II. THE FIGHT FOR A FAIR CONTRACT AT MFY LEGAL SERVICES

We are unstoppable! A fair contract is possible.

—A popular chant by the MFY Shop
on the picket line in February 2015

Our campaign for a fair contract in 2015 started months before we sat down across the table from the MFY management negotiation team. We went into contract negotiations knowing that a negotiation team's power is not based on clever and articulate arguments, or on force of will, but on the strength and resolve of the members of the union. With this in mind, our shop had taken pains to build the contract campaign from the ground up. We involved as many people as possible in the process, made efforts to touch base with members individually, and did our best to ensure that all voices were heard in the planning and strategizing process. This openness not only ensured that rank-and-file members were invested in the process, but also developed trust in the union negotiation team.

MFY's unionized staff grew quickly and significantly during this time—by approximately 29% in the six months prior to the strike.⁷⁸ This presented a number of organizing challenges. New members would have to be brought up to speed quickly, incorporated into the union's culture, and convinced that it was worth making significant sacrifices for the future of an organization they had only just joined. This rapid growth also resulted in some bad working conditions, such as overcrowding and lack of adequate supervision.⁷⁹ It is a testament to both new and experienced staff that all of these goals were accomplished so quickly and that new members understood the stakes of the contract negotiation with such clarity.

A. *Formulating Our Demands*

MFY's shop turned out to be well prepared and organized to educate and bring brand new staff members into the bargaining process. The shop formed a committee to poll shop members about what they wanted out of our collective bargaining agreement (CBA). We then met on multiple occasions to discuss the results of the poll and refine our demands. We formed a pre-bargaining

⁷⁸ See Brian Sullivan, *Ready to Strike at MFY*, SOCIALISTWORKER.ORG (Jan. 27, 2015), <http://socialistworker.org/2015/01/27/ready-to-strike-at-mfy> [https://perma.cc/JRR9-WCWV].

⁷⁹ See *MFY Legal Services Employees on Strike*, *supra* note 2.

committee to take the lead in this work, and members of that committee took responsibility for various projects and tasks such as researching the Affordable Care Act, creating surveys and polls, and analyzing MFY's budget.

In formulating our bargaining demands and broader strategy, we took significant efforts to uncover how women and people of color were affected by working conditions at MFY and potential contract terms. As a result, for example, we placed particular significance on our demands for pay equity for administrative support staff.⁸⁰ For the past decade, the vast majority of the administrative staff at MFY has been women of color. They are also the lowest paid staff in the organization and endure the most challenging working conditions. A variety of factors affect support staff's treatment within the organization as a whole and, consequently, their engagement with the union. They include elitism, classism, racism, and, practically speaking, greater oversight by and contact with managers that make support staff vulnerable to discipline. Unfortunately, economic and social denigration are part of life for people of color in the neoliberal United States,⁸¹ and this reality is reflected in our organization. It is noteworthy that, for the past decade, no support staff member has been promoted to an advocate or paralegal position. We therefore demanded pay equity for these employees and a commitment to hire additional administrative staff to alleviate their untenable workloads. And it was critical that an administrative staff member sit on our negotiation team.

After significant organizing and discussion, we finalized a five-page bargaining demand in which we listed a series of concrete demands, each accompanied with a brief explanation of the principles underlying them. The demands were organized under three major goals: improve the quality of MFY's services, make MFY a family-friendly workplace, and ensure that MFY hired and retained a staff that reflects the communities we serve. Each category is explained in more detail below, but underlying all our demands was the principle of solidarity. We made sure that the lowest paid workers, the most vulnerable, and the most in need would receive significant gains in negotiations, that better working conditions for staff meant better services for our clients, and that the staff would not be divided by age, experience, or parental status.

Taking each major area of principle in turn, we first wanted to ensure that our clients would be served by an experienced, knowl-

⁸⁰ See Sullivan, *supra* note 78.

⁸¹ See TAYLOR, *supra* note 22.

edgeable, and truly diverse staff. The working conditions of MFY's staff have a direct impact on the services we provide and the work we are able to do.⁸² Even though there is sharp debate about whether the nonprofit sector can accomplish the sort of far-reaching reforms that poor and working class people need,⁸³ it is beyond serious dispute that, given the current economic climate, low-income people are in desperate need of the sort of services MFY provides. Although management often speaks as if staff demands pit us against our clients, the exact opposite is true. The better our working conditions, the more diverse we remain as a staff, the longer we practice, the more experience we gain, then the better we serve our clients. In light of this solidarity between our staff and our clients, we fought to ensure that staff receive a compensation package that would be competitive and appealing. Concretely, this meant an increase in retirement contributions, no health care givebacks, and fair raises. We also demanded greater transparency and accountability for decisions about our working conditions, more resources for training and professional development, and a commitment to a truly welcoming workplace by holding an annual anti-oppression training for all staff.

Second, we wanted to win pay equity for MFY's lowest paid staff. Administrative staff at MFY are not only paid less than any other classification of workers, but also receive smaller wage increases for each year of experience they gain. For example, while an attorney received a 3.6% raise upon her second anniversary of employment, and a 6.6% raise on her third, administrative staff only received 2.3% and 2.5%, respectively. The experience and dedication of administrative staff was literally less valued. Especially in light of the fact that the administrative staff is currently and has historically been made up of mostly women of color, this discrepancy was an unacceptable injustice in our CBA. We also had to address an oversight in the prior contract negotiation that resulted in the loss of funds that had been predominately used by our administrative staff to pay for college education and other training. Management had refused to contribute to these funds after the CBA provision sunset, so the benefit had to be won again.

⁸² See generally Ian MacDonald, *Beyond the Labour of Sisyphus: Unions and the City*, 50 SOCIALIST REG. 247 (2014) (arguing for meaningful engagement between the labor movement and the communities that workers serve).

⁸³ See THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 9-13 (INCITE! Women of Color Against Violence ed., 2009) (questioning whether the nonprofit sector can accomplish the sort of movement building and far-reaching reforms that the poor and working class need).

Finally, we wanted to win real parental leave for all employees. Prior to the strike, MFY offered only unpaid parental leave, a completely untenable option for the majority of employees. Instead of dedicated paid parental leave, new parents had to cobble together sick and vacation days. More than one shop member was threatened with loss of health benefits when they tried to extend their time with a new child by taking unpaid leave, a burden which fell particularly hard on female shop members. This retrograde policy left the organization far behind the curve, given that MFY was the only legal services organization of its size providing no paid parental leave.⁸⁴

Of course, underlying all of these areas and at issue in almost any labor campaign is respect for the workers. For our shop, management's lack of respect manifested itself in various ways. For example, we were excluded from decisions that affected our day-to-day working conditions, such as how to configure our limited workspace to ensure that we are productive. Management further engaged in infantilizing practices, such as demonstrating an unwillingness to allow staff to work from home despite a shortage of workspace. Most importantly, management's lack of respect was exemplified by their failure to hire the additional administrative staff necessary to adequately support our rapidly increasing case-handling staff.

B. Starting Negotiations

After several months of preparation, we delivered our demands to management in late October 2015 and proposed a schedule of negotiation sessions by topic, starting with items that would have the least economic impact.

We knew we were in for a fight when we received management's response to our demands. Their response, and overall strategy, reflected the language of neoliberal austerity. They refused to agree to discuss topics in any particular order. Claiming inade-

⁸⁴ *MFY Legal Services Staff Declare One-Day Strike in Protest*, LSSA2320, <http://lssa2320.org/mfy-legal-services-staff-declare-one-day-strike-protest/> [<https://perma.cc/AQ3V-NWLG>]; COLLECTIVE BARGAINING AGREEMENT BETWEEN THE LEGAL SERVICES STAFF ASSOCIATION NATIONAL ORGANIZATION OF LEGAL SERVICES WORKERS INTERNATIONAL UNION UAW, LOCAL 2320, AFL-CIO & LEGAL SERVICES NYC (July 1, 2012 – July 31, 2014), <http://lssa2320.org/wp-content/uploads/2013/10/CBA-with-New-Index-w-MOA-July-2012-July-2014.pdf> [<https://perma.cc/ZL9E-BJTM>]; ALAA CONTRACT 2013-2014: COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ASSOCIATION OF LEGAL AID ATTORNEYS, UAW 2325 (AFL-CIO) & THE LEGAL AID SOCIETY (NYC) (Mar. 31, 2014), <https://alaa2325.files.wordpress.com/2014/08/final-2013-2014-alaa-contract.pdf> [<https://perma.cc/C3XX-AXNA>].

quate fiscal resources and uncertain times on the horizon, they demanded significant givebacks, including cuts to our health care, job security, and an effective pay cut.⁸⁵ Their opening offer included a considerably less generous economic package than the prior contract negotiations despite the fact that MFY's finances and general economic conditions were much better. Most shockingly, management demanded to limit the accrual of sick leave so that they would not have to pay for long-term care for employees who became terminally ill.⁸⁶ They also demanded limitations on health coverage for staff members' children and for unmarried same-sex domestic partners.

In addition to their false claims of MFY's fiscal insecurity—the organization had consistently seen annual budget surpluses, and its fiscal reserves had increased by about \$1.5 million (as adjusted for inflation) over the prior seven years—management offered a number of rationales for their draconian demands.⁸⁷ They pointed to contracts that Mayor de Blasio's administration had recently negotiated with a number of municipal unions, which contained low raises and significant givebacks.⁸⁸ They also claimed that MFY already offered a compensation package that was too rich and would not allow the organization to competitively bid against other nonprofits for public and private grants. We discuss this race-to-the-bottom mentality further below. The overall message was that workers at MFY would have to live with worse benefits, lower pay, and inferior working conditions. Implicit in this message, though never acknowledged by management, was that our clients would have to live with an inferior organization staffed by less experienced advocates. This message is not unique to MFY's management:

Despite knowing that our organizations are only as good as our staff, for too many years legal services organizations have sat still as our salaries became lower and lower in comparison to other legal positions. The cost of law school has soared over the past decades and the amount of debt that new lawyers have taken on

⁸⁵ *LSNYC & MFY Units Set Strike Deadline*, LSSA 2320, <http://lssa2320.org/lsnyc-mfy-units-set-strike-deadline/> [<https://perma.cc/X526-N7C5>].

⁸⁶ See *MFY Legal Services Staff Declare One-Day Strike in Protest*, *supra* note 84.

⁸⁷ See Sullivan, *supra* note 78 (“Changes in civil legal services funding at the state and city level have led to an influx in cash. This influx resulted in massive hiring at MFY—35 percent of the staff of the organization started in October 2014 or later.”).

⁸⁸ Will Bredderman, *De Blasio Cuts Contract Deal with NYCHA Teamsters Union for Raises, Cost Cuts*, *OBSERVER* (May 18, 2015, 5:00 PM), <http://observer.com/2015/05/de-blasio-cuts-contract-deal-with-nycha-teamsters-union-for-raises-cost-cuts/> [<https://perma.cc/X54L-LFCM>].

is staggering. This has caused chronic difficulties in recruiting and retaining the best staff. Yet our community gave minimal raises and pointed fingers at others. We were quick to look to law schools and government programs and funders and suggest that they needed to step in to help our low-paid, highly indebted attorneys but slow to look at our own role in underpaying staff and creating conditions that both hurt them and our programs.⁸⁹

At this point it became clear that we were going to do more than fend off management's bankrupt demands for givebacks—we were going to ask for more. We were not going to be happy to inch along, exchanging away our rights for a few paltry scraps. The staff of MFY works incredibly hard to ameliorate the harshest conditions that the neoliberalization of New York City has forced on our clients. We deserved better. More importantly, our clients deserved better. Improved pay and working conditions make legal services a more tenable and attractive long-term career, and we were going to win a contract that included them.

C. *“Don't get mad, get organized”: The Members Show Their Strength*

The old labor adage “the boss is the best organizer” proved true for us. After management delivered their unacceptable demand, our already organized and militant union got fired up and ready for a fight. The staff implemented a series of escalating actions to highlight our concerns, respond to the disrespect regularly communicated to us at the bargaining table, and make clear to management how serious we were about our demands. When particular staff members experienced mistreatment or retaliation, dozens of shop members would file into our executive director's office to present a letter outlining our concerns. After one negotiation session, staff members formed a “gauntlet” by lining both sides of the hallway and staring down management's negotiation team and then cheering us as we walked out.⁹⁰ We organized a picket and action at the December meeting of the organization's board of directors.⁹¹ The unionized staff of LSNYC came out in force to show their solidarity, and three shop members addressed the board directly about the ways in which the entire staff felt disrespected by management's demands.

Later that month, the staff boycotted the annual holiday party

⁸⁹ Kelly Carmody et al., *Creating the Legal Services Organizations Our Clients Deserve: Salaries and Beyond*, 45 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 329, 329 (2011).

⁹⁰ See Sullivan, *supra* note 78.

⁹¹ *Id.*

usually held every December, resulting in its cancellation for the first time in recent memory.⁹² Instead we held our own party off-site that only enhanced our solidarity. In December we also began lunchtime pickets, a great way to channel anger at the disrespect we faced in the workplace and to build solidarity. When management failed to acknowledge in negotiations the numerous contributions and personal sacrifices the staff makes to ensure MFY's and its clients' successes, we implemented a work-to rule, where staff members consistently worked exactly thirty-five hours per week, the weekly work hours set forth in our CBA.⁹³ We picketed outside the executive director's home and flyered her neighbors and local businesses. When there was still no meaningful movement by management to accept some of our demands or retract their more despicable ones, we held a one-day strike on January 12, 2015.⁹⁴

It would be wrong, however, to give all credit for these inspiring and brave actions to the boss. While management's unscrupulous approach to bargaining no doubt fueled the anger underlying our militant actions, actually organizing that anger and deploying it strategically took significant effort on behalf of the rank-and-file leaders in the union.

First, the negotiation team made it a point to communicate regularly and thoroughly with the entire shop through constant email updates and weekly (or sometimes more frequent) in-person meetings. Shop delegates facilitated communication between shop members and the negotiation team and identified shop member concerns before they became divisive. The consistent feedback given to the negotiation team and the team's regular and transparent communication back to the shop ensured that we were able to maintain trust and have honest discussions that were key to our shop's solidarity.

The seriousness with which the negotiation team approached regular meetings with members was mirrored in the high level of participation from the rank and file. The majority of shop members attended meetings, debated seriously options on the table, posed challenging questions to the team and to each other, and maintained discipline even when there were disagreements about

⁹² *Id.*

⁹³ COLLECTIVE BARGAINING AGREEMENT BETWEEN THE LEGAL SERVICES STAFF ASSOCIATION NATIONAL ORGANIZATION OF LEGAL SERVICES WORKERS INTERNATIONAL UNION UAW, LOCAL 2320, AFL-CIO & MFY LEGAL SERVICES, INC. 15 (Jan. 1, 2012 – Dec. 31, 2015), http://lssa2320.org/wp-content/uploads/2013/10/MFY_CBA_2012to2014-FINAL.pdf [<https://perma.cc/FH42-B9BT>].

⁹⁴ *MFY Legal Services Staff Declare One-Day Strike in Protest*, *supra* note 84.

particular actions. This resulted in wide and enthusiastic participation in each action, even by members who were hesitant to join some of the more radical actions. When we did strike, not a single member crossed the picket line.

The underlying point here is that while members placed great trust in the negotiation team, the contract campaign was ultimately propelled forward by the rank and file. While many examples illustrate this fact, here we will briefly discuss two.

First, at the very outset of bargaining, we told management that whatever offer was on the table on January 15, 2015 would be the offer we would vote on one week later. In years past, management had attempted to continue negotiating until the eleventh hour, delivering a final offer sometimes hours before the union is set to vote. This tactic denies staff an opportunity to seriously debate and consider an offer. Building a two-week buffer ensures that the union has time to carefully weigh the final offer. In this round of contract negotiations, MFY filed an Unfair Labor Practice complaint against LSSA for using this tactic.⁹⁵ Nervous about how this meritless claim might affect the bargaining process, the LSSA negotiation team considered scheduling extra negotiating sessions with management to appease them. At a special shop meeting called to discuss the matter, the negotiation team was told unequivocally not to take such action. Our spines suitably stiffened, we returned to the table, inspired by the shop's courage to stick to our original plan.

The second example involves an all-staff meeting we held in December 2014, approximately one month before the deadline. In that meeting we discussed what was on the table, what we wanted to be sure to get out of bargaining, and how we were going to get there. Members discussed and debated the merits of the union and management offers, and ultimately hammered out the plan of escalating actions described above. People brainstormed ideas, discussed logistics, and debated larger questions. The meeting ultimately resulted in a concrete plan that was ratified at a subsequent meeting. Without this rank-and-file-driven planning meeting, we would not have succeeded in our goals.

Arriving at this point meant debating some difficult questions. One question that staff asked throughout negotiations and the strike, a question that it was crucial to answer clearly, was why? Why

⁹⁵ Charge, MFY Legal Servs., Inc. v. Legal Servs. Staff Ass'n, NLRB Case No. 02-CB-144397 (filed Jan. 14, 2015) (on file with authors). The charge was later withdrawn when the parties reached a final agreement.

was MFY's management attacking our health care and sick leave? Why were they refusing to pay non-attorneys equitably, or to agree that in the twenty-first century, workers should be entitled to parental leave? MFY's management is made up mostly of life-long public servants, people who have dedicated their careers to serving low-income New Yorkers. So answering this question was key to understanding the basic dynamics of our dispute with management.

The answer to this question lies not in some moral failing on the part of MFY's management, but in the political and economic context of our negotiations and the structure of legal services organizations. MFY is funded by City, State, federal, and private contracts, and must bid for these contracts in a market where the organization competes against other legal services organizations. In this competition there are real pressures to offer services at cheaper rates. As we discussed above, this competitive market for funding has been effectively used by both the Koch and Bloomberg administration to quell radical politics.

This situation makes it easy for management to embrace a race-to-the-bottom mentality. The organization must constantly win new contracts to survive and must make competitive bids for those contracts. Management is ill-equipped to resist the downward pressure of this dynamic. Unionized staff, on the other hand, is well situated to resist this downward pressure. As front-line, case-handling staff, we directly observe how the deterioration of our working conditions leads to inferior client services. We also feel the pain of the race to the bottom in our pocketbooks. Finally, we are members of a union, one of the greatest vehicles for fighting working class oppression in world history.

To further complicate the matter, there is (at least potentially) a divide between the management of a modern legal services organization and that organization's board of directors.⁹⁶ In his book, *The Politics of Rights*, Stuart Scheingold discusses what he calls the "activist bar"—those lawyers who "are interested in serving the cause of change," including its prospects and its opposition.⁹⁷ He notes that lawyers of private law firms, while setting up *pro bono* programs to attract new graduates, cannot be dedicated to the ac-

⁹⁶ Jeanette Zelhof, Exec. Dir., MFY Legal Servs., Address at MFY 50th Anniversary Alumni Reunion, at 7:45-9:40 (2013), http://www.mfy.org/wp-content/uploads/MFY-50th_small.mp3 ("[H]ousing in this richest city in the nation is effectively unaffordable to those people who are our clients; workers are exploited as never before; and financial institutions are engaged in the greatest theft from the poor and working poor not seen in most of our lifetimes.").

⁹⁷ SCHEINGOLD, *supra* note 13, at 190.

tivist bar in the long term.⁹⁸ MFY's board, while requiring a certain number of clients or former clients in its membership, is overwhelmingly comprised of partners and associates from large corporate firms. Regardless of board members' political leanings, opposition to the activist bar "can be shaped and deflected by cautious and conventional action programs."⁹⁹ Thus, legal services programs are subjected to "pressures that can be effectively mounted against both law reform and movement building—in short, against the most promising signs of innovation."¹⁰⁰ This was evident in the board's concerns about framing gentrification as a negative force affecting MFY's clients in recent discussions of the organization's strategic plan. Some questioned whether MFY could attract new board members serving certain industries if MFY explicitly set a goal to combat gentrification.

D. Ready to Strike at MFY

After long months of negotiating, debating, and demonstrating our resolve, on January 30, 2015, the time finally came to vote on management's final offer. The week before, the negotiation team had informed the staff that we would not be recommending management's offer. Crucially, management refused to offer pay equity to non-attorneys, a benefits package that it acknowledged it could afford, or an adequate parental leave policy. The union met off-site at UAW offices in midtown Manhattan. After a brief discussion, we voted. With nearly 100% of the shop participating, 90% voted in favor of striking.¹⁰¹

Though we could not have known that MFY's management would ultimately make such an unacceptable offer, preparation for the strike had commenced weeks before the vote. Indeed, members would not have felt so confident to vote in favor of striking if we had not been preparing in advance. In the preceding weeks we had organized ourselves into several different committees, each handling a different aspect of the strike. One committee prepared press releases, contacted politicians, and drafted other external statements. Another committee (perhaps the most popular) organized food for all of our meetings. The benefits committee ensured that members were receiving strike benefits from the UAW or,

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 191.

¹⁰¹ See *MFY Legal Services Employees on Strike*, *supra* note 2 (discussing MFY's unionized employees' overwhelming 90% vote to go on strike following their rejection of management's contract proposal).

where possible, from City and State agencies. The hardship committee managed LSSA's strike fund, providing financial assistance to ensure that nobody would miss a rent payment or go hungry. Crucial to giving our picket lines a vibrant and energetic feel was the art committee, which wrote new slogans and emblazoned them on signs that members would wear or hold up.

The committees ensured that every member was cared for during the strike, that we were tightly organized, and that we had a clear line of communication with the press and politicians. By organizing ourselves into committees, we also ensured that the strike would be run in a bottom-up fashion. Each committee operated independently, making important decisions and fulfilling its function without extensive oversight from any central body. Simultaneously, the committees offered regular reports and updates to the bargaining team and the shop as a whole. This well-oiled operation allowed us to be flexible and created an environment in which the entire membership could have productive strategy discussions.

Prior to the strike, our shop focused on organizing internally and taking direct action targeting the board and management. After the strike began, our actions turned more outward to focus on reaching out to political allies and honing our message in the press. These actions were immensely successful. We received overwhelmingly positive media coverage, including in *The New York Law Journal* and on Democracy Now's newscast.¹⁰² Community based organizations and student groups also sent letters supporting the union's efforts, some of which were published in *The New York Law Journal*.¹⁰³

During the strike, LSSA members received indispensable support from the UAW. The international union provided members with a weekly stipend, or strike pay. Because MFY cut our health

¹⁰² See Letter of support from CUNY Law Labor Coal. for Workers Rights and Econ. Justice et al., *Prolonged Bargaining Hurts MFY Clients, Staff*, N.Y.L.J. (Feb. 19, 2015), <http://www.newyorklawjournal.com/id=1202718260649/Prolonged-Bargaining-Hurts-MFY-Clients-Staff?slreturn=20160124181638>; *Workers at NYC Legal Nonprofit Strike over Pay, Family Leave*, DEMOCRACY NOW! (Feb. 3, 2015), http://www.democracynow.org/2015/2/3/headlines/workers_at_nyc_legal_nonprofit_strike_over_pay_family_leave [<https://perma.cc/MN24-Q388>].

¹⁰³ See, e.g., Letter of support from CUNY Law Labor Coal., *supra* note 102; Letter from Deborah Glick, Assemblymember, New York Senate, Feb. 20, 2015, <http://lssa2320.org/wp-content/uploads/2015/02/New-York-State-Assemblymember-Deborah-Glick1.jpg> [<https://perma.cc/5MZA-CP4R>]; Letter from The Unionized Workers of Urban Justice Ctr. to Jeanette Zelhof, Exec. Dir., MFY Legal Servs. and Robert Harwood, Partner, Harwood Feffer, LLP (Feb. 3, 2013), <http://lssa2320.org/wp-content/uploads/2015/02/Union-members-of-Urban-Justice-Center1.jpg> [<https://perma.cc/R2W4-BRZK>].

insurance during the strike, the UAW insured all striking members. Region 9A also provided helpful press and political contacts.

The day-to-day of the strike was divided into three main activities: picketing, committee meetings and activities, and shop-wide meetings to strategize and discuss the latest developments at the bargaining table. In spite of the extreme cold, we picketed most days each week, sometimes dividing into smaller groups to hold rallies near a particular target's office or home. The frigid weather prevented us from holding all-day picket lines, but we managed to turn this potential disadvantage into a great strength. Shorter pickets meant more energetic pickets, and the enthusiasm of the shop's pickets was truly inspiring. Supporters who came out to pickets commented on how organized we were, down to every member knowing our chants. The democracy of the shop's operations was reflected in the chants themselves, which were led by a wide variety of members who constantly rotated and shared the role.

On top of our picketing schedule, we reported to union headquarters almost every weekday. At headquarters we would have committee meetings and shop-wide meetings, and would carry out other activities, such as contacting the press or other unions in order to raise our strike's visibility.

Key to the success of our picket lines was the support and solidarity we received. A wide range of groups, including ACT-UAW Local 7902, the Association of Legal Aid Attorneys Local 2325, Brandworkers International, CWA Local 1180, GSOC-UAW Local 2110, the IWW, National Writers Union-UAW Local 1981, the National Lawyers Guild NYC chapter, the NYC International Socialist Organization, NYSNA, the CUNY Professional Staff Congress, Central Labor Council, the Rude Mechanical Orchestra, State Senator Brad Hoylman, Assembly Member Dick Gottfried, Council Members Helen Rosenthal, Corey Johnson, and Stephen Levin, all came out to support us at various times. We punctuated our regular pickets with a few "all-out" pickets that lasted well into the freezing nights. These actions both energized the shop and demonstrated how our strike resonated across the city with workers who were tired of slowly deteriorating wages and working conditions.

Throughout the strike, we were also careful to maintain a clear and confident political message. Although it helped that we supported each of our bargaining demands with clear principles, it was nonetheless difficult at times. During negotiations, management's team suggested that our arguments regarding the racially problematic nature of their demands and strategy were inaccurate, divisive,

and made in bad faith. However, the management team ultimately advanced no substantive arguments that successfully rebutted our position. Therefore, despite pressure from our employer to soften our public arguments on this point, we carried forward. The seriousness of the racial problems at MFY required it.

In the first week of the strike, management's bargaining position did not change on any of the union's most important demands. After our sustained and effective efforts, however, we began to see progress. The crucial breakthrough came towards the end of the second week of the strike, when management finally agreed to our demands for pay equity for administrative staff. As with any contract negotiation, the union also made some hard concessions.

Finally, in a marathon session on February 23, 2015, management made an offer that satisfied LSSA's most important demands. The management and board were most resistant to increased retirement contributions because of the long-term financial commitment this demand represented. The irony that we were dedicating our careers to this work at a great financial sacrifice while the board held out on agreeing to a .5% increase in our retirement contributions was not lost on our shop.

Upon reaching a tentative deal at the bargaining table in the fourth week of the strike, the chair of MFY's board, Robert I. Harwood, told our negotiation team, "You guys did a good job for your people." A member of the union's negotiating team responded that she hoped the next time she saw him he would consider the staff "his people" as well. We can only assume that the board's general view of MFY's staff is summarized by Mr. Harwood's comment. His comment reflects the belief that the people who carry out MFY's mission, the people who serve the organization's clients on a daily basis, are separate and distinct from the organization's managers and board. It reflects the experience of our staff and explains why it was crucial that the staff demand respect, transparency, and accountability as part of its contract campaign.

E. Taking the Fight Forward

Our strike and fight for a fair contract was, in turns, exhilarating, exhausting, inspiring, and intense. It gave us an opportunity to work collaboratively and collectively with our co-workers, to witness their talents, bravery, and resolve, and to forge the kind of connections that can only be made in struggle for a just cause. Our strike also won benefits that will make MFY a leader in the legal services field, including forty days of paid parental leave, large pay in-

creases for non-attorneys, a benefits package that ensures our clients will be represented by experienced advocates, and measures that will ensure that MFY is a diverse, respectful workplace.

Aside from the contract provisions themselves, the success of this contract campaign and strike are readily apparent in our workplace. Our administrative staff is more engaged in our union, including support staff serving as shop delegates for the first time in many years. Several staff members have already taken advantage of paid parental leave without fighting for approval or worrying about gaps in health coverage. Some members of the union have taken the energy of the strike forward and formed an activism committee that connects our union to other struggles around the city. In order to more effectively fight the oppression and marginalization endemic to the neoliberal order, the unionized members of MFY and LSNYC have identified a set of political priorities, including the fight against racial injustice, gender and sexuality oppression, and gentrification, which we will continue to organize around in the future.

However, there are still goals of the contract campaign yet to be achieved. Although MFY has more than doubled in size, we have hired only one additional administrative support staff member in the past several years. Management's practices continue to reflect distrust of staff and a general style that is more about power and control than leadership that inspires and supports. Unfortunately, the disrespect and disregard for the four staff members providing administrative support to an organization of now nearly one-hundred people continues.

After we settled our contract at the end of February 2015, the administration of Mayor Bill de Blasio dramatically increased funding for civil legal services. The long-term impact of this infusion of City money remains to be seen, and it is clearly a welcome development for those of us in the field. However, this increase in funding does not change the basic environment in which legal services advocates operate—one of continued austerity for working class and poor New Yorkers.¹⁰⁴ Furthermore, legal services organizations will continue to bid for grant money in a competitive, market-like setting, ensuring that the managements of legal services organizations will continue to adopt race-to-the-bottom negotiating tactics. In

¹⁰⁴ In 2014, one year before de Blasio announced the new funding for legal services, Ian MacDonald predicted that municipal governments would couple large handouts to developers with social services projects intended to secure the legitimacy of the government and consent of the governed. *See* MacDonald, *supra* note 82.

other words, the basic political economic context for the provision of legal services has not changed.

A discussion of the sort of social movements that it would take to change the neoliberal context in which we operate is beyond the scope of this article. LSSA's experience in its 2015 strike, however, gives us a glimpse of what such movements might look like. They would need to be based on solidarity, on the basic principle that an injury to one of us is an injury to all of us. They will need to have the courage to expand our political horizons, to ask more of the City, State, and federal governments.

Focusing more narrowly on legal services, to the extent that our contract campaign represents a broader movement in the field, it represents the rejection of the race to the bottom.¹⁰⁵ Anti-poverty advocates could be significantly more effective in pressing for expanded funding if MFY's board and management formed a united front with the union to advocate for increased resources to ensure the highest quality of legal services. Instead, by forgoing such a position, MFY's management and board have taken a stance that relegates legal services to less and supports a trend of reliance on volunteerism and unbundled legal services.¹⁰⁶ LSSA, however, plans to continue to fight to improve our working conditions and the lives of our clients.

The 2015 strike against MFY will, however, stand out as a moment of raised expectations in legal services. It was a moment in which we dared to reject austerity and fight for more—more for ourselves and more for our clients. The struggle continues.

¹⁰⁵ See Carmody et al., *supra* note 89, at 329.

¹⁰⁶ See Fern Fisher-Brandveen & Rachel Klempner, *Unbundled Legal Services: Untying the Bundle in New York State*, 29 *FORDHAM URB. L.J.* 1107, 1107-14 (2002).