

Guide to Strategic Planning *for* Legislation on Contingent Work

NORTH AMERICAN ALLIANCE FOR FAIR EMPLOYMENT

STRATEGY SERIES • WORKING PAPER TWO

SEPTEMBER 2002

The North American Alliance for Fair Employment (NAFFE) is a network of grassroots organizations, labor unions, advocates, and academics organized to link those demanding fairness for contingent workers. This report is one of a series of working papers on strategy NAFFE is preparing for its member groups and others challenging the abuse of contingent workers.

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Introduction

This NAFFE GUIDE looks at ways to address contingent work through legislation at the state and local level.¹

NAFFE's dozens of member groups and their leaders possess a great deal of experience in dealing with legislation and legislatures; much of what is in this guide is based on their experience and will be familiar to them. For such veterans, this guide provides a schematic outline of the process of planning a legislative campaign and a checklist of the elements that need to be considered.

More important, for those who have not been involved in such efforts before, this guide provides an introduction to the strategic planning process. We hope it will be a vehicle that NAFFE member groups and others can use to develop a participatory planning process in which a significant part of their membership can participate.

Contingent workers are among the most disempowered groups in our society. They generally lack bargaining power in the market; they are legally denied many of the rights available to other workers; they are geographically and culturally dispersed; they rarely form a concentrated political bloc. Winning victories for them almost always requires sophisticated strategies for involving those affected, mobilizing allies, and appealing to public opinion. This is particularly true in the case of legislative struggles.

Creating an effective strategy is a complex task. This guide does not pretend to offer *a*, let alone *the*, appropriate strategy for addressing contingent work. Nor could it, for what constitutes an effective strategy depends on the particular goals you are pursuing and the concrete situation in which you find yourself. The purpose of this guide is to suggest questions you need to answer in order to construct an effective strategy and to suggest ways to go about answering those questions.

This guide will walk you through the process of defining goals, developing a plan, organizing a campaign, and dealing with the consequences of victory or defeat. It is designed to be used in several ways:

- 1) It provides a rough overview of what is involved in a campaign for legislation, the benefits, problems, and key decisions. You can use it to decide early on whether such a campaign is something worth your while even to think about, and to identify key questions you will need to answer and decisions you will need to make before you start to develop a detailed plan.

¹ The focus of this guide is strategy; it does not attempt to present a general review of legislative proposals. That is done extremely well in the work of the National Employment Law Project. This Guide is designed not to replace but to be used in conjunction with Maurice Emsellem and Catherine Ruckelshaus, *Organizing for Workplace Equity: Model State Legislation for "Nonstandard" Workers* (New York: NELP, November 2000), its updates, and other NELP material.

2) It will guide you in the research and decision making necessary for a detailed plan. Only such a plan can serve as the basis for deciding whether a campaign is really worth the effort it will take.

3) It will help your organization's constituents participate in the process of identifying questions, seeking answers, and shaping the decisions. It is a vehicle for the membership of your organization to "get up to speed" on what is needed for the research and decision making process and what a legislative campaign will mean for your organization and its members.

4) It provides a framework for discussion with allies. Once you have developed a strategy in your organization, you will probably need allies to implement it. This guide provides a way of explaining to potential allies the problems that you are responding to and the approach you have developed to respond to them. It may also help encourage them to grapple with the problems themselves and try to ensure that whatever suggestions they come up with also address those problems.

This guide does not address the details of drafting legislation. For help with that, including details on relevant bills in other states, we encourage you to contact the NAFFE office.

Historical Background & Context

The growing significance of contingent work

Contingent work is often referred to as "nonstandard" work – and for good reason. While regular jobs have certain common characteristics like a full-time work day and work week, regular vacations and benefits, and standard pay rates and job ladders, contingent jobs come in all kinds: part-time, seasonal, casual, contract, subcontract, temporary, leased, and many other variations. Any strategy for addressing contingent work must take these variations into account.

Contingent work in itself is neither good nor bad. For some workers, nonstandard work fits their needs and lifestyles better than conventional jobs. For example, many people, especially women, value part-time work as a means of balancing work and family time; many students seek nonstandard work as a way to support themselves while going to school; some people engaged in creative avocations appreciate nonstandard work as a way to pay for other activities. Many such workers would oppose a program that simply aimed to eliminate all nonstandard jobs.

The majority of contingent workers however, are not contingent by choice. Studies show that most would prefer regular full-time jobs.² Any strategy to address the needs of contingent workers must take into account both sets of people: those whose goal is to have *better* contingent jobs and those whose goal is to *escape* them.

² Ken Hudson, "No shortage of 'Nonstandard' Jobs," Economic Policy Institute Briefing Paper, 1999.

Sometimes employers offer nonstandard jobs because of genuine variation in staffing needs due to causes like seasonal climate fluctuations. But the huge increase in contingent jobs in recent years is not the result of greater variations in the weather. Rather, it results primarily from a deliberate attempt to cut employment costs by replacing standard jobs with contingent ones that systematically provide lower pay, fewer benefits, limited or no on-the-job training, and reduced expectations of employment security.

At the core of most strategies lies the idea of eliminating such discrimination against nonstandard workers. Equalizing pay, benefits, and other conditions for contingent workers will directly improve the lives of contingent workers. But, perhaps equally important, it will reduce the incentive for employers to replace regular jobs with contingent ones.

Who is affected by contingent work

In developing strategy around issues of contingent work, it is important to remember that there are at least three constituencies that contingent work affects:

- 1) Most obviously, contingent work affects contingent workers themselves. It means that they live with less income, fewer benefits, less opportunity for advancement, and massive insecurity.
- 2) Less obviously, contingent work affects other workers. Regular employees are put in actual or implicit competition with contingent workers. They face the threat that their employers may lay them off and replace them with contingent workers. This threat reduces their bargaining power, undermines their unions, drives down their wages, and imposes on them an insecurity approaching that of some contingent workers.
- 3) The growth in contingent work also affects society as a whole. It helps turn the United States into a country of haves and have-nots, with fewer and fewer in the middle. It creates widespread insecurity for families and communities. It also undermines the stability of the patterns and institutions within which people live.

The broad impacts of contingent work make possible alliances that go far beyond contingent workers themselves. How to construct and utilize such alliances is central to most strategies for changing the patterns of contingent work.

Organizations concerned with contingent work

Very different kinds of organizations are concerned with contingent work. They include:

Contingent worker organizations While the obstacles to organizing contingent workers are notorious, scores of organizations of contingent workers have sprung up in the past few years. Most are local organizations that focus on one or another type of contingent worker, such as temps, adjunct faculty, or day laborers. Some include a broad spectrum of contingent workers and address the problems of contingent workers as a whole. Dozens of these organizations are joined together in NAFPE.

Unions In the early 20th century, unions like the Amalgamated Clothing Workers and the Industrial Workers of the World were centered on contingent workers. But today, only a

small proportion of contingent workers have union representation even though the issue is critical to many unions.³ Unions need to improve conditions of contingent workers, and reduce involuntary contingent jobs, in order to improve conditions of regular workers. Some of the most important labor struggles of the past decade, notably the UPS strike of 1997, involved regular workers fighting for better conditions and regularized jobs for contingent workers.⁴

Advocacy groups Because of the social effects of contingent work, many organizations whose members are not primarily contingent workers are involved with issues of contingent work. Some represent women, people of color, immigrants, or other groups likely to be heavily impacted by the downsides of contingency. Others are rooted in religious or political concerns. Some focus specifically on the issue of contingent work; others include it among an array of issues they address.

Networks and coalitions A large proportion of action around contingent work is conducted not by individual organizations operating in isolation but by networks and coalitions that include diverse types of organizations. This reflects two facts: few of the groups are powerful enough to achieve their objectives on their own; an interest in improving the conditions of those in contingent jobs reaches broad constituencies represented in diverse kinds of organizations.

Laws regulating work

Laws governing labor go back to colonial times: A Massachusetts Bay Colony law passed in 1633 regulated the hours of labor and the Hartford General Court in 1641 declared that various trades were “to work eleven hours in the day, in the summer-time, besides that which is spent in eating or sleeping, and nine hours in the winter.”⁵

In the 19th century, a regular working day of 8 or 10 hours became a demand of labor not only in the United States but worldwide. But, notwithstanding Colonial precedents, US courts came to hold that laws providing such regulations of labor were an interference with the “right of free contract.” For example, in 1905 the US Supreme Court declared a New York law limiting hours of work for bakers unconstitutional.⁶ Union efforts to impose similar controls on labor practices were often declared “conspiracies in restraint of trade.”

Legal principles changed radically in the 1930s. The Supreme Court upheld as constitutional the National Labor Relations Act (Wagner Act), which provided workers the right to organize and bargain collectively, and the Fair Labor Standards Act, which set minimum wages, a standard workweek, and premium pay for overtime. During World War II, the Federal government’s War Labor Board went even further to standardize conditions of labor, establishing throughout industry what came to be thought of as a “regular job” -- a norm that continued long after World War II.

³ See NAFFE strategy guide on workers centers for further discussion of contingent workers and unions.

⁴ For the 1997 UPS strike see Jeremy Brecher, *Strike!* Revised and Updated Edition (Cambridge, Mass.: South End Press, 1997) pp.358-362.

⁵ Edward G. Baird, “New Deal Laws in Colonial Days,” *Connecticut Bar Journal*, June, 1935, V.9, No. 3, p. 195.

⁶ *Lochner v. New York*. Richard B. Morris, *Encyclopedia of American History* (New York: Harper, 1953) p. 470.

Since World War II, Federal legislation providing protection for workers has included:

- Title VII of the Civil Rights Act, prohibiting discrimination against employees on the basis of race, ethnicity, sex, and religion.
- WARN Act, protecting workers from layoff without 60-day notice in employers with 100 or more employees.
- Family and Medical Leave Act, providing for unpaid leave of up to twelve weeks for workers with their own serious medical condition and for workers whose close family members have a serious medical condition.
- Age Discrimination in Employment Act, prohibiting discrimination in employment for workers 40 years old or older.
- Americans with Disabilities Act, prohibiting discrimination in employment for workers with disabilities or perceived disabilities.
- Occupational Safety and Health Act, providing workers with the right to a safe and healthy workplace.
- Employee Retirement Income Security Act, prohibiting discrimination against employees in benefit and pension plans.

At the state level, a wide range of laws has provided protections for workers.⁷

Two programs that do not protect workers on the job but rather in job-related conditions are Workers Compensation for workplace injury and Unemployment Compensation for job loss.

Unfortunately, many of these laws were originally drawn up in ways that excluded contingent workers from protection, and employer campaigns have led to further weakening through amendment and court interpretation.⁸ Much of the legislation currently proposed to improve the condition of contingent workers is designed to close exclusions and loopholes in existing laws.

Role of legislation in addressing problems of contingent work

While legislation and organizing are sometimes portrayed as alternative strategies, historically both have usually been interdependent. Organizing on the ground has usually been necessary to get laws passed and enforced. But laws have often been crucial for overcoming obstacles to organizing.

⁷ See George Gonos, "The Contest Over 'Employer' Status in the Postwar United States: The Case of the Temporary Help Firms," 31 *Law & Society Review* 81 (1997)

⁸ For an overview of these gaps at the Federal level, see "Statement on Changes to Current Labor Laws Necessary to Address the Critical Needs of the Contingent Workforce," October 7, 1994, available on NELP website.

Because of the obstacles to effective collective bargaining for contingent workers, legislation to protect their rights is even more essential than it is for regular workers. Ultimately, comprehensive laws may be the most effective way to achieve the objectives of contingent workers and others affected by contingent work. In Europe and many other parts of the world, government regulation has long put strict limits on all forms of nonstandard work, effectively preventing the kind of mass contingency that has developed in the United States. Employers have recently conducted a major campaign to break down those regulations, with the result that contingent work in Europe is now soaring.

Even where they cannot win immediate victories, campaigns for legislation have the potential to bring together diverse groups of people around a common community of interest in ways that other types of organizing do not. Different kinds of contingent workers have no obvious community of interest. But their exclusion from legal protections is something they *do* have in common. Therefore legislation to provide such protections can be the basis for a cross-occupation class fight.

Campaigns for legislation can also help to define issues for the public. They can allow you to draw out opponents and sharpen the social discourse around an issue.

Pitfalls of legislative campaigns

In addition to benefits, however, there can be negative effects and pitfalls to legislative campaigns:

- They can distract people from other important forms of work.
- They can degenerate into lobbying and inside politics.
- They can turn over leadership of campaigns to politicians who are not committed to social justice, rather than the movement itself being in control.
- They can lead to divisions in the movement over strategy and objectives, especially if proposals help some but harm other potential constituents and allies.
- They can lead to legislative “successes” that provide an inadequate band-aid that solves little but pushes the problems into the background of public awareness.
- Poorly thought out legislation can have unintended consequences, failing to ameliorate the problem at hand or displacing it into a different form or onto a different group of workers.

This guide tries to call attention to such potential pitfalls.

Local, state, national, and global

The major laws governing American workplaces are at the Federal level. Of those that provide protections for workers, some exclude contingent workers while others are seriously

inadequate in their protections. Reforms to national laws, while much needed, have been well addressed elsewhere and are beyond the scope of this guide.⁹

Historically, state legislation has been a vehicle both for filling gaps in Federal law and for social experiments that go beyond what can currently be passed at the Federal level. States have a long tradition of regulating many issues affecting contingent work. The balance of forces in many states makes conceivable the passage of laws that would not stand a chance in Washington. And the scale of effort required to pass a state law is far more commensurate with the current mobilizing capacities of our organizations.

Living wage campaigns and other initiatives have recently shown the value of efforts at a town and county level as well. Local campaigns may focus on the role of contingent work in job creation programs, subsidies to projects, government jobs and services, and living wage campaigns.

Employers have long tried to play off localities, states, and more recently whole countries against each other. The result is a “race to the bottom” in which each jurisdiction expands subsidies and reduces environmental and social protections and wages to attract or keep footloose capital. In resisting such a race to the bottom, local and state struggles are intimately linked with national and even global ones. Higher-level rules are necessary to block the race to the bottom and protect rights and standards at the local level. (Indeed, Federal labor laws were explicitly justified in the 1930s as a way to forestall a “race to the bottom,” just as global rights and standards are advocated for the same reason today.) At the transnational level, there is currently an intense struggle in the EU over rules governing contingent work and the UN’s International Labor Organization is developing new standards for contingent work worldwide.

In the final analysis, preventing discrimination against contingent workers and providing enough regular and nonstandard jobs for all who need them are local, state, national, and indeed global issues. Ultimately we need laws at all levels to address them.

⁹ For an introduction to Federal laws affecting contingent workers, see references in footnotes 3 and 4, pp. 3-4, of *Organizing for Workplace Equity*.

Part I: Understanding the Strategic Context

In considering a possible legislative initiative, it is essential not just to think about the legislation itself, but about its relation to the needs of your organization, your constituency, your allies, and the broader social movement. You need to begin with your ends in mind.

Developing strategy is a process. You need to decide at the outset whom should be involved in that process and make sure they are included.

You need to evaluate early on whether a legislative campaign is a viable and worthwhile option for your organization and/or network. This depends on the answers to many questions:

- Can you identify a problem that affects a group of people large enough to make legislation an appropriate solution?
- Can you come up with a solution that can be implemented by legislation?
- Can you identify allies who also have an interest in addressing the problem and who can support the same solution?
- Is there a realistic possibility of getting wide public acceptance and support for your position?
- Can you develop mobilizing strategies that will utilize a legislative campaign to build your organization, encourage social movement, and bring in new people, rather than diffusing people in the quagmire of lobbying politics?
- Do you and/or your allies have the capacity to do the things that are necessary to run an effective campaign, from issue research to legislative drafting to generating public support?
- Do you have and are you willing to commit the time and resources needed to develop a strategy and mount an effective campaign? Will you have to cut back on other activities, and if so, is it worth doing so? What level of effort is really justified for such a campaign?
- Is there some other organization that is more appropriate to lead such an effort?

You may decide a legislative campaign is worth the effort or you may decide it is not. But there are other alternatives, too. You can recruit someone else to take the lead on it. Alternatively, you can start laying the groundwork *now* for a full-blown campaign at some point in the *future*.

In addition to research, you can conduct tests to answer some of these questions. You can pass out a questionnaire to your constituents, for example, or see if necessary allies and/or

legislators will sign on to a newspaper advertisement or letter to the editor endorsing the principles you want enacted into law.

What You Need to Know

Designing a strategy requires research and “power analysis.” Knowing yourself, your constituents, your friends, your opponents, and the social terrain in which you act is crucial to constructing an effective strategy.

- Know Yourself
- Know Your Constituency
- Know Your Friends
- Know Your Opponents
- Know the Terrain

Know Yourself

Organization and action generally start from a problem. In response to that problem, people come together to form organizations, develop goals, and formulate strategies and action plans. But over time, the structure and composition of organizations, their understanding of the problems they are addressing, their goals, and their strategies are likely to evolve. Strategy starts with an organization that has a structure, a constituency, and goals, but strategy also involves adjusting them to meet the needs of action.

For starters, know yourself. Try to make an honest evaluation of your organization. You may already have clear answers to the following questions, or you may not be able to fully answer them, but reflecting on them may help clarify whether you really want to engage in a legislative campaign and, if so, how you can make it most effective for your purposes.

- What are the key problems you are addressing?
- What basic changes do you seek to ameliorate the problems you are addressing? For example, if the problem is day labor, is your goal to create better conditions for day laborers or to abolish the day labor industry? If the problem you are addressing is temp labor, is your goal to establish better conditions for temps, or to replace temporary jobs with permanent ones? (The NAFFE Code of Conduct provides a guide to basic changes that are needed in the structure of contingent work.¹⁰)
- What is your current strategy for achieving the changes you seek? How is it working? What are the roadblocks you are running into?
- What is the real structure of your organization, and how does it relate to the formal structure? Are you a membership organization, a coalition, or a network? Who are the leaders, what role does staff play, what are your strengths and weaknesses, what are your current and potential resources?
- If your goal is organizing, who are you trying to organize?
- If your goal is to build your organization, what kind of organization are you trying to create? What does that mean concretely? More members? More power? A higher public profile? Better funding?
- If your goal is to influence public opinion about contingent work, who are the most important segments of the public for you to reach? What do you want to persuade them of? Who are the current and potential intermediaries for that process? Religious congregations? Unions? Mass media? Street corner passersby?
- If your goal is to stop abuses against contingent workers, what abuses are most important? Which ones are most easily remedied? Which are easiest to organize around? Which evoke most public outrage?

¹⁰ *Contingent Workers Fight for Fairness*, p. 29.

- If your goal is creating good jobs, what kind of jobs? For whom and where?
- Do your goals include building a wider movement with longer-range objectives? If so, how does your immediate strategy fit into that task?
- How are different goals, say building an organization, fixing particular abuses, and creating alliances, interrelated?

Next, consider how one or another kind of legislative campaign might help advance your goals. If your goal is to stop particular abuses, can legislation realistically affect them? If your purpose is to organize a particular type of contingent workers, will a legislative campaign aid that effort or will it draw off energy from other kinds of organizing? If you are trying to develop a community of allies, will a narrow piece of legislation or a broad one be more helpful? What issues will be most effective in reaching your target public?

Know Your Constituents

- Who are your current constituents? Are they contingent workers of a particular kind, such as temps or day laborers? Contingent workers generally? Organizations that include or represent contingent workers? Advocacy groups?
- Who do you want your constituents to be? Is it different from your current membership? If so, why?
- What are the demographics of your constituency? Occupations? Work arrangements? Gender? Ethnicity? Race? Citizenship?
- What is the geography of your constituency? Is your focus a neighborhood, a city, a region, or a state? Do you want to expand or limit your focus? What is the relation between where your constituents live and where they work? Where do they meet, talk, and interact?
- How do your constituents see their problems? It is not always the same way organizers see them! Many groups have used questionnaires as a way of getting a better understanding of this question. At the least, a lot of informal discussion and attentive listening are needed to get answers.
- How do your constituents see the solutions to their problems? Do they want to improve their conditions as contingent workers? Or is their goal to get a permanent, fulltime job?
- Do your constituents have an individual strategy for achieving the solution to their problems? For example, do they seek temp jobs that might lead to permanent ones? Are they seeking education or work experience that will allow them to change their work arrangements?
- What kind of non-contingent jobs would meet the needs of your constituents? Could these jobs be created out of existing contingent ones?
- Do your constituents have informal collective strategies for addressing their problems? For example, do they informally boycott certain jobs or agents? Do they exchange information that allows them to increase their informal bargaining power?
- What are your constituents' family and community networks and arrangements? What are their responsibilities? Their informal and formal social support systems? How do those arrangements affect their goals and their ability to take action?

This information will help you think about such questions as, what kind of legislation is likely to improve immediate conditions for your constituents? What will help them achieve their long-term goals? What do they feel would be important objectives for legislation? What kinds of action are they likely to feel comfortable participating in or instead find alienating?

Know Your Friends

In order to work effectively with allies in a legislative campaign, you need to understand their problems, constituents, goals, organizational forms, strategies, and experience. These factors form the basis for drawing them into a campaign and getting them to cooperate effectively.

- Who have been your allies in the past?
- Who do you want to have as allies in the future?
- What regular workers are currently or potentially threatened by the expansion of contingent work? What is their current attitude about contingent work and workers? For example, is their attitude “keep the scabs out of here, these people are undercutting us and we want to drive them out of business”? Do they favor turning contingent jobs into regular ones? Are they open to seeing contingent workers as allies? Are there racial, ethnic, and/or gender affinities and/or antagonisms that overlay or cut across differences in work arrangements?
- What are the interests of the various unions whose industries are affected by contingent work? What strategies have they pursued in the past? Have their strategies been effective? Are they considering changes to them? What are their attitudes about working with other organizations? What are the elements of cooperation and conflict on the part of the unions in your area?
- What groups, such as organizations of women and minorities, have members who are particularly affected by contingent work?
- What groups in your area are concerned with human rights and social justice issues? How do they see issues of contingent work?
- What other organizations have substantial numbers of contingent workers in their membership? Congregations? Unions? Community organizations? Ethnic associations? Are they potential allies?
- For each of your potential allies, what strategies and demands would draw them into your campaign? What strategies and demands would leave them indifferent or hostile?
- Are you entering into arenas that other groups consider their “turf”? If so, how will you give recognition to their claims, win over their support, or neutralize their resistance?
- Do your alliances reach out to a wide enough geographical area to support a legislative campaign? If not, can you develop allies in other areas?

This information will allow you to address such questions as, what kind of legislation will draw in allies you consider crucial, for example unions or social justice organizations? What legislative proposals might alienate important allies? Are you in a position to initiate a statewide campaign, or do you need to focus on a more local arena?

Know Your Adversaries

- Who currently benefits from the abuse of contingent workers in your area?
- Who represents the purveyors and employers of contingent workers in the media and the political arena? Trade associations? Lobbyists?
- What is their relationship to broader business organizations like Chambers of Commerce?
- Who are their political allies? Were or are legislators friendly to them employers of temps themselves? Who contributes to their campaigns? Can you find newspaper articles about their ties to the employers?
- Are there think tanks or other organizations that serve as mouthpieces for their views?
- What has been their role in past legislative struggles? What arguments have they used? What strategies?
- What is their pattern of campaign contributions?
- Are there possibilities of cooperation with some sectors of employers? Are there some “good” agencies or employers who would like to differentiate themselves from their competitors by supporting better practices? Are there conflicts of interest between labor agencies and ultimate employers that you can utilize? Are there segments of the industry that would like to eliminate the worst “bad apples”? Are there segments of the industry who would like you to force the “bad apples” out to raise their standards? Can you bargain with any of these groups? Is there a danger of getting co-opted if you do so? What are the implications for your broader movement building objectives?

This information will allow you to address such questions as, what is a realistic estimate of the likely balance of forces in a legislative battle? How is such a battle likely to unfold? What forces do you need to prepare to counter?

Know the Terrain

You need to figure out realistically what the impact of any proposed legislation will be. To do so you need to understand the labor markets it will affect.

The secret of the market is what Adam Smith called the “hidden hand.” Each transaction is shaped not just by the particular buyer and seller, but by a whole system of exchanges that influence each other. In labor markets, for example, if lots of employers in a particular market need clerical workers, the demand for their labor goes up, as does its price. If a lot of new workers enter the day labor market, the supply of day labor increases and the bargaining power of each worker will decrease.

Here are some questions you can use to define the contingent labor market with which you are dealing:

- What is the geography? Where do workers come from? How far do people work from where they live? Do they cross neighborhood, community, town, or state borders? What are the routes of vans that pick people up for work? Does the geography of the labor market change when the demand for labor increases or decreases?¹¹
- Who are the workers? How do they get connected with employers? How wide is the range of jobs they do? Do they always work in the same work arrangements? What kinds of jobs could they do if other jobs were available? How far would they travel for better jobs?
- Who are the ultimate employers drawing on the same pool of workers? How important is labor in their overall cost structure? How do they get connected with potential workers? What are their staffing strategies? How do they decide what arrangements/workforces to use? Why are they using particular types of people and particular types of staffing arrangements now? To reduce costs? Increase flexibility? Get rid of benefits? Hire and fire at will? Reduce head counts for financial reasons or to utilize legal loopholes for small companies?¹²
- What different kinds of work arrangements compete? Do companies employ temps, free-lancers, and regular employees for the same work? Part-time and full-time employees? Day laborers and leased workers? Are the requirements for the job the same for part-time, temporary, and regular employees.
- Who are the labor agencies and other intermediaries between workers and ultimate employers? Are they individuals, local companies, or big chains? How much investment do they have? How do they recruit workers? How do they sell their “services” to companies? How do they make their money? What are their problems? Their goals? Their fears? Do they operate in various labor markets or just one? Who is their competition? How powerful are they? What they can and cannot influence?

¹¹ For an in-depth analysis of the geography of contingent work, see Jamie Peck, *Work Place: The Social Regulation of Labor Markets* (New York: The Guilford Press, 1996).

¹² NAFPE can help you research particular company and industry strategies.

- What other players affect the labor market? Do unions play any role?
- What are the laws and government policies that currently affect the market? What are their effects? Is workfare a factor?
- What are the informal rules, customs, and past practices of the labor market? How are they maintained?
- Are there changes in the local economy, technology, government policy, population or other factors on the horizon that are likely to change labor market patterns?

Knowing the answers to these questions will help you design legislation that will actually have the effects you want.

Part II: Designing strategy

The Process

When you start planning a campaign for legislation, the first question is, who should be in on the discussions and decisions? It is easy to get off on the wrong foot if the people you need are absent at the beginning. This may cause you to make decisions that adversely affect them, or you alienate them just because they were not consulted. So first, call a meeting with the people you think should be there at the start to get their input.

Try to make a preliminary estimate of the *kind* of legislation you have in mind and the *scale* of the campaign it will require. That will help you figure out whether to make the campaign the work of a single organization, or of one group serving as lead organization, or of a coalition or network.

Look for technical assistance. NELP publishes large amounts of material on contingent worker legislation, most of which is available on their website. NAFFE provides consultation for its member groups. When the Massachusetts Campaign on Contingent Work decided to propose legislation, it got a class at a law school to help draw it up. Many legislatures have staff people, either with the committees or with a legislative drafting agency, whose job is to help draft bills. Do not reinvent the wheel if you do not have to: look at as many related bills that other people have designed as you can and plagiarize, plagiarize, plagiarize!

Evaluating the Balance of Forces

What kind of legislation will best help realize your goals depends on the balance of forces at the present and whether they are likely to shift – or whether you can shift them – in the future. Some legislative proposals may be popular but cost your opponents little, and therefore be relatively easy to pass. Some may be critical to your constituents but unify your opponents against you. Some, by targeting unpopular abuses, may allow you to isolate opponents from their potential allies. Some may have slim chance of passage but be effective for clarifying the common interests of a broad network of allies.

You need to decide at an early point whether there is a realistic possibility of getting any particular kind of legislation passed given the existing balance of forces. If there is, it makes sense to organize a campaign designed to pass it. If not, it may still make sense to organize a campaign, but its purpose will be to focus publicity on the issue, or to unify a coalition, or to change the balance of forces, or some other objective other than passing current legislation. For example, the National Coalition for the Homeless recently launched a campaign for national legislation on day labor. They know that given the present balance of forces it is unlikely to pass. But they also know that it is an effective way to get publicity and educate the public on the fact that a very high proportion of homeless people are actually day laborers. And that in turn may strengthen support for a wide range of other initiatives.

All at Once or Bit-by-bit: The Potentials & Perils of Small Reforms

The most obvious strategy is to pick an objective you can win. This can gain something concrete for constituents and provide a boost in morale and support for an organization. It may pave the way for further gains.

There are two potential pitfalls to keep in mind with such an approach:

1) It is easy to displace the problem rather than fix it. For example, legislation that solely protects part-time workers may lead employers to get rid of their part-time workers and replace them with temps. As a group of organizations that advocate for contingent workers warned,

“Any one fix, standing alone, simply encourages the development of new forms of contingent status. Mandating fair treatment for employees – whether full or part-time, seasonal or casual – by way of equal wage and benefit opportunities gives employers a reason not to directly hire ‘employees,’ but instead to hire ‘temps,’ ‘lease’ workers or engage ‘independent contractors’ for whom they have no responsibility.”¹³

2) While a step-by-step approach based on passing one piece of legislation each session seems logical, it does not reflect the way legislatures actually behave. Legislatures rarely provide help for the same constituency session after session. Instead they tend to say, “We did something for them last year; we are not going to do something for them this year.”

This does not mean that incremental efforts are wrong. But it does mean that any legislative campaign needs to be considered in the context of its impact on overall legislative strategy. Do not allow yourself to lose by winning!

Conversely, proposing comprehensive legislation, such as a “bill of rights,” that cannot be passed given the existing balance of forces does not provide legislative victories. But it can contribute to defining issues, building alliances, and educating the public. Sometimes you can win by losing!

¹³ “Statement on Changes to Current Labor Laws” p. 2.

Part III: What Kind of Legislation?

Anyone drafting legislation on contingent work should be sure to consult NELP's *Organizing for Workplace Equity: Model State Legislation for "Nonstandard" Workers*,¹⁴ which provides summaries of scores of legislative proposals categorized by the various types of work arrangements they are designed to affect. Rather than repeat that information here, we lay out the main kinds of strategies for affecting conditions that are used in such legislation.

Studies: Mandates to study contingent work in general or particular issues or sectors. The purpose is to raise public awareness, clarify issues and solutions, and/or lay the groundwork for future legislative action.

Disclosure: Requirements that workers, government, and/or the public receive information from employers and labor agencies regarding terms and conditions of employment. Such requirements may include wages, hours, working conditions, fees, hazards, whether a labor dispute is under way, and the like. Such information eliminates a common abuse of contingent workers, allowing them to escape misleading promises and make appropriate personal decisions about what jobs to accept or reject. Such information, if shared, also improves the bargaining power of workers, allowing them to insist on at least the "going rate." It also provides government a means to enforce other laws and regulations.

Extending existing laws to contingent workers: Many laws that protect workers in general exclude many contingent workers explicitly or in practice. They may, for example, define "employee" in a way that excludes many contingent workers by allowing them to be classified as "independent contractors." Such an exception can be eliminated by changing the law's test of who is an employee, for example by applying the simple definition based on "economic dependence" used in the Fair Labor Standards Act.¹⁵

Extending existing laws to employers of contingent labor: Some laws explicitly exclude some employers of contingent labor. For example, some state laws excuse labor agencies that get a fee from employers from licensing requirements. Closing such loopholes can correct many abuses.

Defining who is an employer: Some laws allow either a labor agency or an ultimate employer to escape their responsibilities by claiming that the other is the "real" employer. Groups representing the interest of contingent workers generally seek legal changes that define the company that actually uses the workers' labor as the employer -- or that hold that company and any intermediaries as "joint employers" and therefore all covered by laws governing employers.

¹⁴ November 2000 edition. See also the November 2001 update, "State Legislation Regulating 'Nonstandard' Workers: Developments in the Year 2001."

¹⁵ For extensive discussion of this question, see Catherine K. Ruckelshaus and Bruce Goldstein, "The Legal Landscape for Contingent Workers in the United States," available on the NELP website. Note that the ILO goes even further, maintaining that every worker, even if genuinely self-employed, should have rights to basic social protections and collective action.

Outlawing discrimination. A basic problem both for contingent and for regular workers who must compete with them is that contingent workers are often provided lower wages and benefits. Some proposed laws outlaw such discrimination.

Bill of rights. Many contingent worker organizations, including NAFFE, have embodied basic principles that should govern contingent work a “bill of rights.” Some of these cover all contingent work, others particular work arrangements such as temp work or day labor. Some legislation aims to incorporate such principles in law.

Licensing or registering employers and/or labor agents. Licensing and registration requirements provide a way that employers of contingent labor and labor agencies can be made subject to government oversight and made to meet minimum standards. They can often serve as part of the system by which legal requirements are enforced.

Regulating fees charged workers. Contingent workers are often charged fees for meals, equipment, transportation, check cashing, and the like. Laws recently passed and/or proposed forbid such fees, cap their amount, or require that they not exceed the actual cost or market value of the goods or services provided.

Regulating fees charged clients. Some recent legislation has aimed to cap, or at least force disclosure, of fees that labor agencies charge their employers.

Anti-fraud measures. Contingent workers are often subject to lies and misinformation about such matters as their wages, working conditions, and job hazards. Some proposed laws make it a crime to provide such fraudulent information.

Minimum wage/benefits. Some proposals require minimum wages and/or benefits for contingent workers. These are usually aimed at particular sectors, such as government contractors or particular industries. Such provisions not only benefit contingent workers; they also take some of the extra profit out of converting from regular to contingent jobs.

Right to job security. Recent laws have provided that if an ultimate employer changes labor agencies, or if a labor agency goes bankrupt, workers supplied by an agency have a claim on jobs they are already holding.

Obligations to pay wages. Contingent workers, especially day laborers, have frequently been promised wages, completed the work, and then been left unpaid by unscrupulous operators who skipped town, changed the names of their companies, or simply lied about their obligations. Recent laws in several states have made this a serious crime, punishable in some cases by prison terms.

Provisions for specific industries. A number of laws have been passed recently providing rights and protections for workers in specific industries, such as construction, textile, and garment. These may respond to specific abuses in these industries, or address problems resulting from uncontrolled competition.

Provisions for public sector: Certain kinds of regulation may be easier to establish in the public than the private sector. One bill, for example, would cap the percentage of contingent workers used by state agencies.

Restructuring labor markets: Legislation can completely change the structure of work arrangements. A California law, for example, allowed counties to establish companies that would become the employers of publicly funded home care workers. Many counties did so, allowing hundreds of thousands of such workers to move from the status of independent contractors to employees, with all the benefits and protections that entails, including the right to collective bargaining. Municipal ordinances establishing day labor hiring halls to replace street-corner hiring provides another example of labor market restructuring.

Reforming unemployment compensation and workers compensation: Many state unemployment compensation and workers compensation rules discriminate against contingent workers. For example, some states require a worker laid-off from a part-time job to accept full-time work or be declared ineligible because they refused to accept “suitable” employment. Various legislative initiatives have aimed to correct such abuses.

Reforming “welfare reform”: Many welfare reform programs force workers into “workfare” or other forms of contingent work under abusive conditions, harming both those subject to such provisions and those forced to compete with them. Welfare reform rules are an appropriate target for contingent worker legislation.

Living wages: Groups across the country, usually working at the municipal level, have fought for and won laws providing that government contractors and/or those receiving government subsidies must provide wages and benefits at a level substantially higher than the minimum wage. Such legislation can and sometimes does require non-discrimination and other protections for contingent workers. It can also include appropriate requirements for the use of standard rather than contingent employment.

Subsidy requirements: Many local and state governments provide contracts and subsidies to employers in part to encourage jobs and economic development. While such arrangements are often promoted on the basis of the number of jobs they promise to provide, attention has increasingly focused on the often-low quality of such jobs. Requirements for a high proportion of standard jobs, and for high quality of contingent jobs, can be made part of any such programs.

Right to organize: The National Labor Relations Act excludes “independent contractors” from the right to organize, and it has been interpreted to define independent contractors very broadly. This denial violates basic principles of international labor rights as defined by the ILO. State laws could assert the right of independent contractors to organize. It would then be up to the courts to decide whether or not such an action was preempted by the NLRA.

Enforcement: Many existing laws protect contingent workers in theory, but in fact are enforced inadequately or not at all. Adequate budgets for enforcement agencies, and legislative hearings and other spotlighting of agencies that are not doing their jobs, can help improve enforcement.

Many bills include a combination of such approaches.

It is usually easier to sell an idea that has been around for a while and that has been successfully implemented elsewhere. But if you have a new idea for legislation to address a problem you are dealing with, do not be afraid to at least explore it.

Part IV: What is in a Bill?

For your bill to be effective in realizing your goals, you need to think through the following key elements:

Who Will be Held Responsible as the Employer?

Most legislation for the benefit of contingent workers creates responsibilities for “employers.” But who is the employer? The entire labor market for contingent workers is rife with scams that displace employers’ legal responsibilities to workers onto labor agencies and other intermediaries. But those intermediaries are often weak and marginal players unable to meet those responsibilities. For that reason, advocates for contingent workers generally recommend that any legislation place responsibility for meeting employer requirements on the employer for whom the work is actually performed. It is also desirable that any intermediary who supplies workers, such as a temp or leasing agency, also be considered an employer and held jointly accountable.¹⁶

Who Will be Covered?

Employers frequently try to evade their legal responsibilities by claiming that those who work for them are not really employees but “independent contractors.” Therefore laws to protect contingent workers need to define “employees” as broadly as possible. The goal should be to make all rights available to all workers, regardless of employment status. As the ILO maintains, even groups like web designers and programmers who may genuinely be independent contractors should have such protections.

In some cases, legislation covering only the public sector may be appropriate. (Be sure you are not creating an incentive to shift public work to subcontractors, however!) For example, it is easier to set limits on the acceptable number and proportion of contingent workers for the government than for private employers.

Some legislation includes exemptions for small employers in order to reduce opposition. Such exemptions need to be examined realistically. If only a small proportion of workers are excluded, such a provision may be acceptable. But if a significant proportion of companies in your market fall below the limit, such a provision may make your legislation meaningless. Companies may even restructure themselves to take advantage of your loophole!

How Will it be Enforced?

Laws that are not or cannot be enforced are of limited value. Elements of enforcement can include:

- Action by a government agency, such as the state department of labor.

¹⁶ See “Statement on Changes to Current Labor Laws.” Such an approach was crucial to the ability of unions and reformers to put limits on the sweatshop system in the late 19th and early 20th centuries. See Bruce Goldstein and Catherine K. Ruckelshaus, “Lessons For Reforming 21st Century Labor Subcontracting: How 19th Century Reformers Attacked ‘The Sweating System,’” available on the NELP website.

- Petition to a government enforcement agency by an affected individual or group or their agent.
- Right to sue in court for an affected individual or group or their agent.
- Empowerment of worker action. For example, the Federal Occupational Safety and Health Act (OSHA) protects the formation of health and safety committees and establishes a right of workers to refuse to work under severely hazardous conditions.

In designing enforcement procedures, keep in mind that such procedures can provide greater or lesser opportunities for organizing. Procedures that provide opportunities for participation in enforcement, for example through the right to petition or to form committees, can help provide workers more general empowerment.

Evaluating Impacts

Legislation often has effects that are very different from what its originators intended. When considering possible legislation, you need to make the most realistic assessment you can of what its actual impact will be.

- How will the industry respond? Develop scenarios of what various kinds of employers are likely to do if a piece of legislation is passed. For example, if fees charged day laborers are banned or capped, will employers reclassify their day laborers as independent contractors? If companies are required to provide equal pay and benefits to part-time workers, will they fire them and replace them with temps? Will companies relocate across a city or state border to escape a law? Will they cut their labor needs by introducing new technology? Will they outsource to workers in distant areas or countries?
- Legislation is often opposed on the grounds that it will put companies out of business. You need to make a realistic evaluation of how much this will be the case. Will legislation put companies out of business? How many? Will jobs be lost, or will they simply be shifted to some other agency or work arrangement? You do not want to drive away real jobs, but driving out bad companies won't necessarily reduce jobs or hurt workers, especially in high-turnover situations. Indeed, labor agencies rarely if ever create jobs that wouldn't exist without them.
- Given the ways employers will respond, what will be the real impact of proposed legislation on your constituents? For example, will a bill banning lower pay and benefits for contingent workers than for regular workers have a clear enough basis for comparison to actually make a difference? Can it simply require equal pay for the same work, or does it need some kind of "comparable worth" provisions to be effective? If a bill requires free transportation, will it actually benefit your constituents, or will the transportation fee just be taken out of their wages? Can you include provisions that forbid cutting wages to pay for improvements in conditions?
- What will be the impact on your organization? Will the campaign – and the legislation you hope to pass -- activate and energize your members? Or will it

demobilize them by funneling them into institutional channels? Can it help you build coalitions across geography, sectors, types of workers, and different kinds of organizations?

- What will be the effect on other workers? Some laws may benefit some and hurt other workers, even other contingent workers. For example, a bill affecting part-time work may inadvertently lead companies to shift jobs to full-time temps, reducing the jobs available to people who need and want part-time work. Conversely, many laws will benefit not only the contingent workers they protect but also the regular workers who would otherwise have to compete with them on a non-level playing field.

Part V: Designing Campaigns

Power and Politics

People are told over and over that we live in a democracy where government is “of, by, and for the people.” But we know that this civics-textbook view of politics has little relation to reality. We know that politics is often controlled not by the public but by special interests, especially those with money. We know that just because a majority of the people supports a law does not mean that legislatures will pass it. This knowledge can lead to a paralyzing cynicism about any effort to affect government.

But in fact legislatures do from time to time pass laws in the popular interest over the opposition of powerful special interests. So we need to recognize both the unequal distribution of power and the vulnerability of politicians to pressure from the people.

Politicians need some things besides money, some of which you control. They need votes in their local districts; they need people who will work actively for them; they need networks that connect them with sources of power and support; they need favorable publicity; they need to avoid being tarred as the puppets of special interests.

You do not have to think of politics as either “getting people elected” or “lining up your friends and lobbying to get your bills passed.” You can say to government, whoever is in office, we want these laws passed. You can look at it like any other target that you mobilize to affect and then negotiate with.

Lawmaking is largely a power struggle between coalitions of forces. Your coalition can have a bargaining relationship with the lawmaking institutions and the adversarial coalition.

Do not get lost in the legislative process. Always keep in mind that a legislative campaign is only a means to your more basic goals, whether they are changing public perceptions, correcting specific injustices, building your organization, or unifying a broad coalition.

Two questions that will need to be answered at an early stage are:

- Who will control the campaign? How will decisions be made?
- How will credit be allocated?

Timing

Passing legislation usually take a long time. Even a bill with broad support usually takes months to go through the legislative process. A new bill incorporating new ideas usually takes several sessions – and therefore several years -- even to get serious consideration. In general, broad, complex bills take longer than highly specific ones.

Do not go in before you are ready. If you are not prepared with your facts, arguments, and supporters, you will make an easy target for your opponents to shoot down.

Research the legislative schedule long in advance. Many legislatures have deadlines for submission of bills, passage through various committees, and votes on the floor. Opponents only have to delay your bill enough to make you miss one of these deadlines – which is easy to do if you do not even know what they are.

It often makes sense to “test the waters.” For example, you can start with a “study bill” that will not require a major fight. Or you can submit a bill and hold hearings in one session without making a serious push to pass it. Just be careful not to get bogged down in efforts that are not advancing your underlying goals.

Once your bill is launched, it is almost impossible to anticipate the timing of legislative action. You need to identify the various possible scenarios in advance and prepare for what you will do in each case.

Making the Case—and Answering the Critics

You need to frame your legislation in a way that maximizes its appeal and minimizes the appeal of its opponents. Start by writing a simple explanation that makes clear:

- The problem to which the law responds.
- How the law will help solve the problem.
- How the law will benefit the groups you hope will support it.
- How the law realizes widely shared values and perceptions.
- What arguments the bill’s opponents will make and how you would answer them.

To prepare for the struggle ahead, you need to take your opponents’ case very seriously. Write the best critique you can of your bill. Then try to answer it. Figure out how to minimize opponents’ ability to reframe your effort negatively. Do the research to invalidate their claims.

Produce and/or instigate research and publications that support your bill. Such materials can help persuade the public and opinion leaders, undermine your opponents’ arguments, and keep your issue in the public eye.

The Inside Campaign

The Legislative Process

Every legislative body is governed by rules and traditions that are often arcane, baffling, frustrating, outdated, and at times senseless. It is often hard to know what is actually going on with your bill, let alone what is necessary to get it over the often-concealed hurdles it faces.

Make sure you know the formal procedures necessary to pass a law. They often involve formal sponsorship, multiple committees, several votes, and signature by the governor. Organizations like the League of Women Voters and the legislature itself generally make available publications with titles like “How a Bill Becomes Law.”

To find out the “real” rules and practices, there is no substitute for consulting experienced public interest lobbyists. They have been through the process dozens of times and know how it really works. If you are just looking for information, rather than actual lobbying, they may well advise you without charge.

You need to be able to function skillfully on the inside. But do not let yourself get sucked into a purely inside strategy. Do not let lobbyists take over and shape the campaign. Never forget that your real source of power is your ability to affect the real world outside.

Sponsors

Finding a legislative sponsor or sponsors is often a critical task. It is an advantage to have a sponsor who is well-known, well-respected, powerful, and well-connected with the legislative leadership. But it is also necessary to have one who is genuinely committed to the bill, who will actually push it and make sure that it does not get lost in the legislative process. You need someone you can work with – indeed, your ability to coordinate inside and outside efforts can be one of your best weapons. You also need someone you can trust, not someone who will trade away your bill at the last minute for something else or allow changes in it that turn it into something you do not want. And you want someone who can understand and speak effectively for your proposal.

Make a list of possible sponsors and rate them in terms of these qualities. Then approach them in order and see who might be willing to play that role. If you already have a good relationship with a legislator, that is an advantage; otherwise try to approach them through someone who does.

It helps to know their needs and aspirations: Are they looking to run for higher office? If so, do they need support from some of your potential allies? Do they need volunteers in their next campaign? Is that something you are in a position to help with? Are they concerned with trying to burnish their public image? Can championing your bill help? If you know what they want and you are in a position to provide it, it strengthens your bargaining power with them.

Once you have your main sponsors, line up as many others as you can to co-sponsor your bill. But remember that one of the main things you have to offer legislators—and one of the resources you partially control—is credit. Make sure the players who are essential to your success can count on getting it. And be prepared to use your own credibility to deny credit to politicians who claim it but do not deserve it.

Committees

Usually bills must go through a series of committees. You need to work with your legislative sponsor to be sure yours does not get stuck along the way. You need to stay on top of this – do not just assume that they are taking responsibility for it.

Usually there is one key committee that deals with contingent work issues. This committee is likely to play a long-term role in shaping legislation that affects you, and it is where your first real battle is likely to be. Research the history of past struggles there and the personal background of its members. Try to build relationships with anyone likely to support you – or anyone you may at least be able to neutralize.

Hearings

Hearings are a form of political theater. They provide you with an opportunity to reach both the politicians and the public. Do not go in cold: have a prepared program. Bring workers and others directly affected by the problems your bill addresses. Bring in experts. Bring in religious and community leaders. Do things that will get you media coverage and capture the public's imagination.

Prepare for what your opponents will do at hearings. Think through what strategy you would follow if you were in their place. Prep your witnesses and supporters to answer hard questions they might ask. For example, know what you will say if they argue that your bill will lead employers to shut down or move away. Be prepared for them to bring in “ordinary people” who will testify that your bill will destroy their businesses or their lives.

Negotiating

Behind its formal system of committees and votes, a legislature is a huge network of negotiations. These negotiations involve not only legislators but party leaders, governors, lobbyists, and other players. Once your bill is launched, you become part of this web of negotiations. You need to prepare for your role in this process.

You need to decide who will be authorized to represent you in this process. Your organization or coalition needs to designate some specific group of people who can guide the process and tell legislators and other players what is and what is not acceptable to you. The key players in your coalition need to feel they are adequately represented in this process. Otherwise you will be subject to divisive charges of “selling out.”

The Outside Campaign

The campaign you wage on the outside is likely to be your most effective weapon for affecting what goes on in the inside. It is also the means for achieving many of your real objectives, such as organizing, organization-building, coalition-forging, and educating the public. Use the methods that draw on your strengths and contribute to achieving your real objectives without excessively draining your resources. Possibilities include:

- Fact sheets and other literature explaining and promoting the bill.
- Media strategies, such as press releases, press conferences, cultivation of reporters and editors, events, follow-up calls, and above all careful framing of issues.¹⁷

¹⁷ Reference some guides?

- Training spokespeople to give talks to unions, religious and community organizations, and community gatherings.
- House meetings that gather networks of friends and neighbors.
- Petitions.
- Tabling at events and/or on the street to distribute literature, talk to people, and get people to phone or write their legislators.
- Rallies, demonstrations, meetings, sit-ins, and other events.
- Lobby days with members or organizations supporting the legislation.

The Course of the Struggle

Mid-course Corrections

Sometimes unanticipated events will radically change your situation and require a major change of strategy. To take examples from the US Congress: The September 11, 2002 attacks put almost all progressive legislation on hold for months. The Enron exposures, on the other hand, made it possible to pass campaign finance reform legislation that had been stalled or defeated for years. Have a contingency plan to convene your coalition if you need to make a major change in strategy.

Compromise or Hang Tough?

When a bill has both supporters and opponents, legislative leaders will often propose a compromise. This may happen in committee, but it may also happen in some secret negotiation among high-level leaders. What you are offered may be the result not only of conflicting positions on your bill, but also trade-offs made on other issues that have no relation to it. After months of stalling, such developments can emerge extremely fast, sometimes in the closing days or even hours of a session.

Your coalition needs to discuss and decide in advance what its bottom line will be. You need to be prepared to take a position on a “compromise” that meets the needs of some of your constituents and/or allies but does nothing for others. You need to be prepared to quickly evaluate whether a compromise bill will actually solve the problem it is supposed to address, or whether it has been rendered toothless. You need to be alert to ways that it might simply displace the problem into another form or onto another group.

You need to have particular individuals authorized in advance to decide whether to support or oppose a compromise, and a clear idea of who else they need to consult with before they decide.

Finally, you have to be tough. Your constituents and allies need to prepare in advance for the possibility of an offer they will have to refuse. You have to be willing to oppose a bad bill, even though blocking it means large amounts of effort have produced no tangible result.

A united and principled rejection of a bad law can be far better than passage of legislation that divides constituents and allies against each other, that makes only cosmetic improvements, or that sweeps the problem under the rug.

Surviving Defeat

A legislative campaign is one battle, not the whole war. Your supporters need to be prepared in advance for the possibility of defeat, and to understand that defeat in one battle does not mean the war is lost. Indeed, a battle well fought, even if lost, can lay the basis for future victories.

Bring people who have been active in the campaign back together to commiserate – and to plan the next battle. If they are more committed, more unified, and wiser as a result of the battle, it will have been a success.

Make sure your sponsors, allies, and supporters get credit for fighting the good fight. Make sure the politicians, the media, and the public know who is responsible for this defeat of the public interest. And let them all know that you will be back next year with the same bill or an even more compelling one.

Capitalizing on Victory

Passing legislation is also only one battle, not the war. Make sure credit is allocated in a way that contributes to such basic goals as building your organization, creating a community of allies, and increasing social movement power. Take advantage of victory to broaden your support for the next battle.

Follow up on implementation. Organizing to force compliance and to ensure enforcement of a law you have passed can be great mobilizing tactics. Do not let your supporters feel “we’ve passed a law, now we can go home and forget about this issue.”

Be prepared for counterattacks. And if your opponents counter-attack, take advantage of it to build an even stronger force to protect the law you have won.