Labor & Employment Law

Worker Centers: Charities or Labor Organizations Masquerading as Charities?—and the Impact of an IRS Decision on the Question

*By Heidi Abegg**

Note from the Editor:

This article is a discussion about worker centers and their status under labor law. As always, the Federalist Society takes no position on particular legal or public policy initiatives. Any expressions of opinion are those of the author. The Federalist Society seeks to further discussion about the worker centers and other labor law issues. To this end, we offer links below to different perspectives on the issue, and we invite responses from our audience. To join this debate, please email us at info@fed-soc.org.

Related Links:

- Benjamin Sachs, *Worker Centers and the "Labor Organization" Question*, onLabor (Sept. 1, 2013), http://onlabor.org/2013/09/01/worker-centers-and-the-labor-organization-question/
- Letter from Barry J. Kearney, Associate General Counsel, National Labor Relations Board, to Celeste Mattina, Regional Director Region 2, National Labor Relations Board (Nov. 30, 2006): http://mynlrb.nlrb.gov/link/document.aspx/09031d4580010c5a
- Steve Greenhouse, *Advocates for Workers Raise the Ire of Business*, N.Y. Times, Jan. 16, 2014: http://www.nytimes.com/2014/01/17/business/as-worker-advocacy-groups-gain-momentum-businesses-fight-back.html?_r=1
- Rebecca J. Livengood, *Organizing for Structural Change: The Potential and Promise of Worker Centers*, 48 Harv. C.R.-C.L. L. Rev. 325 (2013): http://harvardcrcl.org/wp-content/uploads/2013/04/Livengood_325-356.pdf

Introduction

Worker centers are typically non-profit organizations funded by membership fees, grants from government and foundations, and unions. Worker centers engage in a variety of activities, including education and research, legal services, advocacy (including lobbying), training, hiring halls, collective action such as public demonstrations, and dealing with employers over wages and working conditions. While some worker centers engage in activities similar to that of § 501(c)(3) organizations, others are actively engaged in what would seem to be traditional labor union activities.

Worker centers are potentially subject to several different statutory schemes. Centers that obtain tax exempt status under the Internal Revenue Code are typically exempt under either § 501(c)(3), § 501(c)(4), or § 501(c)(5). Worker centers must also be mindful of the National Labor Relations Act (NLRA) and the Labor Management Reporting and Disclosure Act (LMRDA), which restrict certain types of activity against employers and require labor organizations to adhere to democratic practices and file financial disclosure reports. While decisions of the Internal Revenue Service (IRS), the Department of Labor (DOL), or the National Labor Relations Board (NLRB) are not binding on the other agencies, this paper will demonstrate that a finding of labor organization status by DOL or the NLRB should, in most cases, also result in a denial or revocation of tax exempt status under § 501(c)(3) by the IRS. Short of such a finding, worker centers could still lose their § 501(c)(3) status based on their actual activities.

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I. The Tax Exempt Status of Worker Centers

Worker centers desire exempt status under § 501(c)(3) for several reasons. First, contributions are tax deductible, thus making it possible to receive contributions from other § 501(c)(3) organizations and private foundations, from employers,[1] and from those motivated to give for the purpose of taking a deduction. Second, a worker center exempt under § 501(c)(3) is not required to file an annual financial statement with the Department of Labor.[2] Third, maintaining § 501(c)(3) status helps keep them exempt under the NLRA and LMRDA.[3] Fourth, at least one worker center organizer believes such status is required in order to permit it to invest in a worker-owned restaurant.[4]

To qualify for exempt status under Internal Revenue Code § 501(c)(3), an organization must be organized and operated exclusively for religious, charitable, scientific, literary or educational purposes.[5] The term "charitable" includes, but is not limited to, relief of the poor and distressed or of the underprivileged, advancement of education, elimination of prejudice and discrimination, and the defense of human and civil rights secured by law.[6] The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under § 501(c)(3) so long as it is not an action organization.[7]

The term "educational" means the instruction or training of the individual for the purpose of improving or developing his capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community.[8] In determining when the advocacy of a particular viewpoint

or position is educational for § 501(c)(3) purposes, the IRS focuses on the method the organization uses to communicate to others, not the content of its communication.[9] The method of communication is not educational "if it fails to provide a development from the relevant facts that would materially aid a listener or reader in a learning process."[10]

An organization is not organized or operated exclusively for one or more of the recognized purposes unless it also serves a public rather than a private interest.[11] One court has defined private benefit as "nonincidental benefits conferred on disinterested persons that serve private interests."[12] An organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.[13] A private benefit can involve benefits to anyone other than the intended recipients of the benefits conferred by the organization's exempt activities.[14] Intended recipients would be the poor, sick, elderly, students, the general public, or other group constituting a charitable class.[15] Intended recipients would not include insiders, such as officers or directors, or even unrelated third-parties, such as members or employees.[16] A benefit that is a necessary part of the exempt purpose of the organization does not serve a private interest.[17] However, anything flowing from an organization's activities that are not public, charitable benefits may serve private interests.[18] In other words, any private benefit arising from a particular activity must be a side effect of activities that advance an exempt purpose, and the private benefit must be reasonable in proportion to the public benefit.[19] Further, if a private benefit is conferred directly and intentionally, it violates the private benefit doctrine, even if the benefit to the private party is relatively insignificant.[20]

Traditional labor organization activities generally do not qualify as charitable because they are intended to benefit the employees in the union or bargaining unit as opposed to the general public. For example, representing workers in collective bargaining, handling worker grievances, and operating hiring halls, benefit only certain workers and not the public at large. Similarly, an organization is serving private interests rather than the public if its charitable activities are open only to a particular group of workers, such as employees of a particular employer. Operating for the benefit of private parties constitutes a substantial nonexempt purpose.[21] Some of the private benefits conferred by worker centers appear to be direct and intentional, as will be shown below, and not a side effect of charitable activities, and therefore violate the private benefit doctrine without regard to the substantiality of the benefit. Other worker center benefits appear to be disproportionate to its public benefit, and therefore violate the private benefit doctrine despite a public, charitable exempt purpose.[22]

II. A Finding That A Worker Center Meets the Definition of a Labor Organization Under the NLRA or LMRDA and its Corresponding Impact on its Tax Exempt Status under § 501(c)(3)

As of the date of this Paper, neither DOL or the NLRB[23] has found any worker center to be a labor organization under the LMRDA or NLRA.[24] Were it to do so, what effect would that have on a worker center's § 501(c)(3) classification?

Section 2(5) of the NLRA defines a labor organization as an organization in which employees participate and that exists for the purpose, at least in part, of "dealing with employers" over grievances, labor disputes, or terms and conditions of employment.[25] The NLRB and the courts have taken an expansive view of what constitutes a labor organization.[26] The "dealing with" requirement has been defined broadly, and an organization may satisfy this requirement without formally negotiating for a collective-bargaining agreement.[27]

If a worker center meets both parts of the NLRA's definition of labor organization, there is a strong likelihood the worker center cannot qualify for exemption under § 501(c)(3). The first part of the definition of a labor organization requires employee participation. A finding of employee participation is evidence that the worker center does not serve the public, but rather, a small group of employees. A worker center that meets this part of the definition of labor organization will have difficulty demonstrating it serves the public's interest, as required under § 501(c)(3) of the Internal Revenue Code, because benefits accrue to its members, rather than to the general public.

One worker center organization's characterization of its approach is consistent with a finding of private interest under the Internal Revenue Code. Saru Jayaraman, head of the Restaurant Opportunities Center, describes showing up at an employer's workplace with a few vocal, dissatisfied workers to protest a minor labor violation as "minority unionism."[28] If, in fact, a worker center is only helping a minority of employees, the private benefit is more likely to be substantial.[29] Therefore, a worker center dedicated to helping workers of just a few employers is likely not serving the public interest.

Two recent IRS Private Letter Rulings (PLRs) are illustrative of the principle that providing benefits to members or a group of employees, is not a charitable activity. In PLR 200809038 (Feb. 29, 2008), 2008 WL 544023, the IRS held that an association of teachers who were employed by the school system was not exempt under § 501(c)(3), but qualified under § 501(c)(5). The IRS ruled that bettering working conditions of members, negotiating wages, providing legal representation to settle disputes with an employer, and providing other similar benefits for its members are not charitable activities. In particular, the IRS noted that the organization bargained collectively and processed grievances on behalf of its members and had as its object the betterment of the conditions of those engaged in labor. Its sponsoring of seminars and courses demonstrated the development of a higher degree of efficiency in the teaching profession, while its monthly newsletter furthered both objects. The organization's goal was to better the working conditions of those educating students by training, holding seminars, collective bargaining for raises beneficial to the members, and promoting the general interest of all members. As the IRS explained, "[t]his contradicts the purpose of exemption under IRC 501(c)(3). Benefits from an organization recognized under IRC 501(c)(3) must accrue to the general public rather than individual members of an organization."[30]

In PLR 201120036 (May 20, 2011), 2011 WL 1915710,

the IRS ruled that an employee caucus group, formally recognized by the employer, whose mission was to offer support and visibility within the company and to its members, and to provide an official point of contact between its membership and the company, as well as with other gay, lesbian, bisexual, and transgender organizations external to the company, did not qualify for exemption under § 501(c)(3). While the group did present information and conduct educational activities, the IRS noted that the information and educational activities were for the benefit of its members and the company, and not the general public, and did not constitute its primary purpose. In addition, the IRS noted that while the membership of the group was open to those outside the company, the group was primarily focused on assisting those who were members and employees of the company. Thus, its activities served a private interest.

The definition of labor organization under the NLRA also requires that the organization exist for the purpose of "dealing with employers." The courts have not required that an organization formally bargain, but only "deal" with an employer.[31] A finding by the NLRB or the courts that a worker center exists for the purpose of dealing with employers is evidence that that the worker center is not primarily engaged in charitable activities and/or serving the public interest. Generally, the relief sought by worker centers when dealing with employers is private relief—reinstatement of discharged employees, change of an employer's policies, increase in the minimum wage of particular employees, or the improvement of hours or other terms and conditions of employment. Therefore, even if a worker center has many activities which further exempt purposes, if the private benefit is substantial, the exemption must be denied or revoked.[32]

In addition, a finding by the NLRB that a worker center deals with employers necessarily requires interaction with "an employer." It is difficult then to demonstrate that this activity benefits the public, rather than a few employees or even employees of a few employers. In fact, such activity fits precisely within the definition under § 501(c)(5) of the Internal Revenue Code.[33] It appears that this type of activity is quite prevalent among worker centers, causing one legal scholar, in describing immigrant worker centers, to note that "[a]ll occasionally advocate with employers on behalf of individual workers."[34]

Many worker centers operate hiring halls, which has been a traditional labor union activity.[35] Hiring halls play an intermediary role between employers and workers and "regulate the day-labor market" by establishing rules governing the search for work and the hiring of laborers.[36] The NLRB might find the worker center to be "dealing with employers" because it dispatches employees on the conditions established by the hiring hall. Such dealing may lead to a finding that the group is a labor organization.[37] Were a worker center to operate a hiring hall, such activity would not be considered a charitable activity under § 501(c)(3). If the worker center is organized and operated primarily as a hiring hall, it will not qualify under § 501(c)(3).[38]

The IRS has previously found that a nonprofit organization, controlled and funded jointly by a labor union and an employer association, that operated a dispatch hall to allocate work assignments among union members and engages in other activities appropriate to a labor union qualified for exemption as a labor organization under § 501(c)(5).[39] The Service has also ruled that an association of professional private duty nurses and practical nurses which supported and operated a nurses' registry to afford greater employment opportunities for its members was not entitled to exemption under § 501(c)(3) of the Code.[40] Although the public received some benefit from this registry, the primary benefit was to the organization's members. The underpinning of these rulings is that dispatch halls, registries, and the like, serve a private rather than a public interest.[41] Therefore, if a worker center's operation of a hiring hall is more than an insubstantial activity, it cannot qualify under § 501(c)(3).

III. Worker Center Activities That May Jeopardize Tax Exempt Status Under § 501(c)(3)

Even short of a finding by the NLRB that a worker center is a labor organization, the activities of many worker centers do not appear to be charitable activities under § 501(c)(3).

As discussed above, a worker center that limits its services to its members will not qualify under § 501(c)(3).[42] While the amount of such private benefit may be difficult for an outsider to quantify, there is adequate evidence that worker centers engage in the provision of services to members.

The Restaurant Opportunities Center of New York ("ROC") provides several examples of service to its members and/or activities that constitute a private benefit:

- The winning of $1,100 in back wages for one worker at a Greenwich Village restaurant
- Forcing the Park Avenue Country Club to sign an agreement to pay $45,000 to a group of six workers, provide paychecks on time, pay overtime, and treat the workers with respect
- Getting restaurant owners to promise they will not fire any workers without first discussing the issue with ROC.[43]

ROC is not unique. There is also substantial evidence that many worker centers routinely provide services to only one or a small group of employees. For example, the Korean Immigrant Workers Alliance ("KIWA"), a membership organization, has engaged in a campaign to obtain voluntary wage agreements with private employers.[44] The Chicago Interfaith Rights Center encourages its volunteers to work out settlements on behalf of each worker that comes into the center.[45] A 2012 article details the efforts of Voces de la Frontera, a membership based immigrant and worker rights center, to address the workplace issues of just one employee.[46]

If a worker center's operations serve a substantial private interest, its exemption must be denied or revoked. This is true even if the worker center also serves the public interest. For example, the mission of some worker centers is to win improved working conditions for certain groups of workers. ROC's mission statement itself suggests that ROC's activities serve the private interests of the workers whose conditions are improved (a private benefit for purposes of § 501(c)(3)).[47] In Note 1 to its Financial Statements, available with its Form 990 on Guidestar, www.guidestar.org, ROC states that it fulfills its mission in part

by "organizing workers in exploitative restaurant corporations" and "organizing restaurant workers for better working conditions." As proof of fulfillment of this mission, ROC's website lists its campaign against a restaurant group to improve working conditions at the restaurant group's restaurants.[48]

The activities of another § 501(c)(3) worker center, the Coalition of Immokalee Workers ("CIW'), also appear to serve a substantial private interest.[49] CIW created the Fair Food Program, "a unique partnership among farmworkers, Florida tomato growers, and participating buyers."[50] Several of the six elements of the program do not appear to constitute charitable activities.[51] For example, the first element of the program is a pay increase for farmworkers, supported by participating buyers who pay a "penny per pound" premium which tomato growers pass onto workers as a line-item bonus on their regular paychecks.[52] As a result of CIW's efforts, over $10 million has been paid into the program.[53] This element clearly serves the private interests of individual farmworkers rather than the general public.

The CIW also maintains a "worker-triggered complaint resolution mechanism leading to complaint investigation, corrective action plans, and, if necessary, suspension of a farm's Participating Grower stats, and thereby its ability to sell to Participating Buyers."[54] This complaint resolution mechanism appears to serve the private interests of individual workers, rather than the general public.

To monitor the implementation of the Fair Food Program, a separate § 501(c)(3) organization, the Fair Foods Standards Council ("FFSC"), "was created with the sole function of overseeing the Program."[55] FFSC's listed activities—financial and systems audit of participating farms and retailers, staffing of a 24-hour toll-free complaint line, investigating and resolving complaints, help growers and corporate buyers comply with the Program—also appear to serve private interests[56] and are typical § 501(c)(5) or § 501(c)(6) activities.

Worker centers have also been active in efforts to enact favorable laws.[57] While the Internal Revenue Code permits some lobbying by § 501(c)(3) organizations, it cannot constitute a substantial part of its activities,[58] nor can it be lobbying to serve a private interest. Therefore, if a worker center exempt under § 501(c)(3) engages in more than an insubstantial amount of lobbying, either direct and/or grassroots, it may jeopardize its tax exempt status. However, it can be difficult to determine whether an organization has engaged in an insubstantial amount of lobbying. Organizations may expressly engage in activities which appear to meet the definitions of lobbying or grassroots lobbying (e.g., the ROC activities listed above, or expressly stating future lobbying plans[59]), yet report no lobbying activity on their Form 990.[60] Even if not lobbying, however, the activity may serve a private interest, thereby disqualifying the organization from § 501(c)(3) status.

Unlike § 501(c)(5) organizations, § 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Certain activities, such as partisan voter guides, get-out-the-vote, and voter education are prohibited political activity. Section 501(c)(3) worker centers would risk loss of tax exempt status were they to engage in these activities.

Finally, it is conceivable that a worker center's activities could enable a labor union to increase its membership and dues, and therefore, benefit a third party in more than an incidental way.[61] A worker center need not give funds to the union or be motivated to benefit the union for its activities to serve the private interests of the union. Providing services that the union would have otherwise had to provide or purchase is sufficient.[62] A worker center serving the union's private interest, rather than the public's interest, will not qualify for exemption under § 501(c)(3).

Some worker centers work with unions to achieve certain goals. For example, in 2004, ROC stated that it met weekly with a local labor union to share strategies for developing workers' power in the restaurant industry and "to think strategically, collaborate on research and policy issues, and think about specific restaurant corporation campaigns."[63] Its founder explained that ROC and the labor union "complement each other," and while the union represents only large "table cloth restaurants," ROC organizes and provides services to workers from restaurants of all sizes."[64] In 2004, ROC laid out its efforts to identify strategic targets for union organizing drives.[65] Its founder was quoted as saying, "Working with HERE 100, we identified the major conglomerate restaurant owners in the city. We've chosen one corporate empire that the union might be able to organize in a couple of years. The idea is to go after conglomerates that are in competition with restaurants that are already union-organized. We want the industry to feel threatened by the union or by us."[66] The founder acknowledged that some of ROC's campaigns may lay the groundwork for the local labor union to unionize those restaurants.[67]

Another § 501(c)(3) worker center, KIWA, attempted to organize an independent union among the workers of Koreatown's seven major grocery stores.[68] The former organizing director of KIWA described their efforts as "a community based union idea" that was originally a KIWA campaign, but that later became an independent organization that circulated authorization cards for an NLRB election.[69]

The absence of a union does not prevent some worker centers from engaging in union organizing activity. Where there is no union, the Chicago Interfaith Worker Rights Center assists workers in determining whether there is a good prospect for a union organizing drive, and assists these workers in contacting a union and working with the union to support the organizing.[70]

The organization of a union is not a charitable activity, and also serves a private interest. A worker center that engages in more than an insubstantial amount of such activities will not qualify for exempt status under § 501(c)(3).

Conclusion

It is difficult to conceive how a worker center could continue to qualify under § 501(c)(3) were the NLRB to find it to be a labor organization. As a result, such a finding should lead the IRS to revoke § 501(c)(3) status.[71] Absent such a finding by the NLRB, the Department of Labor, or the courts, there may still exist adequate grounds for the IRS to revoke exempt status based on the current activities of worker centers, if such

activities are undertaken to benefit specific workers or unions rather than the public.

Based on the recent activities of worker centers, the IRS might decide, as it did with the credit counseling industry, tax-exempt hospitals, and tax-exempt colleges and universities, to undertake a compliance check project to determine if worker centers have moved away from their approved tax-exempt purpose. This would permit the IRS to identify common areas of abuse and non-compliance by worker centers.

Endnotes

1 Alan Hyde, *New Institutions for Worker Representation in the United States: Theoretical Issues*, 50 N.Y.L. Sch. L. Rev. 385, n. 88 (2005-2006) (noting that some of the worker centers discussed in the article receive employer financial support); David Rosenfeld, *Worker Centers: Emerging Labor Organizations – Until They Confront the National Labor Relations Act*, 27 Berkeley J. Emp. & Lab. L. 469, n.33 (2006) (noting that one worker center depended substantially on foundation support).

2 Every labor organization subject to the LMRDA must file Form LM-2, LM-3, or LM-4. Labor organizations with total annual receipts of $250,000 file Form LM-2, while labor organizations with total annual receipts of less than $250,000 file an LM-3 or LM-4.

3 *See* Memorandum from Barry J. Kearney, Assoc. Gen. Counsel, NLRB, to Celeste Mattina, Reg'l Dir., Region 2, NLRB, regarding Restaurant Opportunities Center of New York, Cases 2-CP-1067, 2-CP-1071, 2-CB-20705, 2-CP-1073, 2-CB-20787, at 4 (Nov. 30, 2006) ("Significantly, this conclusion is consistent with determinations of the United States Department of Labor (DOL) and the Internal Revenue Service, both of which consider ROCNY to be a charitable organizations, not a labor organization.").

4 Hyde, *supra* note 1, at 393.

5 26 U.S.C. § 501(c)(3).

6 Reg. § 1.501(c)(3)-1(d)(2). This phrase includes statutory as well as constitutional rights. *See* GCM 38468 (Aug. 12, 1980), GCM 38638 (Feb. 20, 1981), 1984 EO CPE Text, Litigation by IRC 501(c)(3) Organizations at 3.

7 *Id*.

8 Reg. § 1.501(c)(3)-1(d)(3)(a)-(b).

9 Rev. Proc. 86-43, 1986-2 C.B. 729.

10 *Id*.

11 Reg. § 1.501(c)(3)-1(d)(ii); *see also* American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989) (court holding that an organization is not primarily engaged in activities that accomplish educational purposes where they benefit private interests to more than an insubstantial extent).

12 *American Campaign Academy*, 92 T.C. at 1069.

13 Reg. § 1.501(c)(3)-1(d)(ii).

14 2001 EO CPE Text, Private Benefit under IRC 501(c)(3) at 139.

15 *Id*.

16 See *id*.; *American Campaign Academy*, 92 T.C. at 1069.

17 2001 EO CPE Text, Private Benefit under IRC 501(c)(3) at 139.

18 *Id*.

19 Barbara Rhomberg, *A Revisionist History of Housing Pioneers: The Expanding Reach of Private Benefit Doctrine*, J. Affordable Housing & Community Dev. L., Summer 2000, at 3.

20 *Id*.; *see also* Gen. Couns. Mem. 39,876 (Aug. 10, 1992).

21 Old Dominion Box Co. v. United States, 477 F.2d 340 (4th Cir. 1973).

22 In Rev. Rul. 76-206, 1976-1 C.B. 154, the Service denied exemption to an organization formed to promote classical music programming (a charitable activity) because it found that the activities encouraged support of a classical music radio station and resulted in an excess benefit to the private radio station.

23 The focus of this paper is on a finding by the NLRB because that is the most likely way that an organization will be found to be a labor organization, and NLRB determinations are afforded some deference by reviewing courts. Chevron U.S.A., Inc. v. National Resources Defense Council, Inc., 467 U.S. 837 (1984). A determination could also be made by the Department of Labor or the courts. It is also possible that the issue could arise through an enforcement action brought by worker center members or the public under the LMRDA.

24 In a letter dated July 23, 2013, Labor Secretary Thomas Perez was asked by Rep. John Kline, Chairman of the House Committee on Education and the Workforce, and Rep. David P. Roe, Chairman of the Subcommittee on Health, Employment, Labor, and Pensions, to provide an official determination as to the LMRDA filing requirements of "worker centers" and all documents and communications used to reach such determination. Letter from John Kline, Chairman, House Committe on Education and the Workforce, to Thomas E. Perez, U.S. Sec'y of Labor (July 23, 2013), *available at* http://edworkforce.house.gov/uploadedfiles/07-23-13_letter_dol_worker_centers.pdf. The Department of Labor responded that the Department of Labor's Office of Labor-Management Standards had twice concluded that the Restaurant Opportunities Center was not a labor organization because, among other things, it did not represent employees as their exclusive bargaining representative, had not signed any collective bargaining agreements or organized employees for such purposes, and did not negotiate terms and conditions of employment with employers. Sean Higgins, *Congress, Labor Department spar over definition of 'worker center'*, Wash. Examiner, Sept. 23, 2013, http://washingtonexaminer.com/congress-labor-department-spar-over-definition-of-worker-center/article/2536270 (last visited Oct. 2, 2013). In response, Rep. Kline and Rep. Roe have requested documents and communications relating to this determination. Letter from John Kline, Chairman, House Committe on Education and the Workforce, to Thomas E. Perez, U.S. Sec'y of Labor (Sept. 19,, 2013), *available at* http://www.workforcefreedom.com/sites/default/files/09-19-13-DOL-Worker%20Center%20Follow-up%20with%20Enclosure.pdf.

25 The Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 et seq. contains a similar definition. 29 U.S.C. § 402(i) defines "Labor organization" as "a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body." Some states have adopted the NLRA definition or similar definition of labor organization. *See* Alaska Stat. § 23.40.030 (2005); Cal. Gov. Code § 12926(a).

26 *See* NLRB v. Cabot Carbon Co., 360 U.S. 203 (1959) (holding that employee committees established by the employer qualified as labor organizations even in the absence of bargaining, because committees had discussed proposals relating to terms and conditions of employment with management); Memorandum from Barry J. Kearney, Assoc. Gen. Counsel, NLRB, to Celeste Mattina, Reg'l Dir., Region 2, NLRB, regarding Restaurant Opportunities Center of New York, Cases 2-CP-1067, 2-CP-1071, 2-CB-20705, 2-CP-1073, 2-CB-20787, at 2 (Nov. 30, 2006) ("ROC-NY Advice Memo").

27 *Cabot Carbon*, 360 U.S. at 213-24.

28 Dan La Botz, Dollars & Sense, www.dollarsandsense.org/archives/2004/0104labotz.htm (last visited Sept. 12, 2013).

29 2001 EO CPE Text, Private Benefit Under IRC 501(c)(3), at 137.

30 PLR 200809038 (Feb. 29, 2008), 2008 WL 544023.

31 NLRB v. Cabot Carbon Co., 360 U.S. 203, 205 (1959).

32 Better Business Bureau of Washington, DC, Inc. v. United States, 326 U.S. 279 (1945).

33 Internal Revenue Code § 501(c)(5) provides for the exemption of labor, agricultural, or horticulture organizations, which have no net earnings inuring to the benefit of any member and have as their objects the betterment of the conditions of persons engage in the pursuits of labor, agriculture, or horticulture, the improvements of the grade of their products, and the development of a higher degree of efficiency in their respective occupations. A labor organization

has as its principal purpose the representation of employees in matters such as wages, hours of labor, working conditions and economic benefits, and the general fostering of matters affecting the working conditions of their members. Select Committee on Improper Activities in the Labor or Management Field (Senate), G.C.M. 31206, A-62940l (Apr. 28, 1959); Rev. Rul. 67-7, 1967-1 C.B. 137. A labor organization need not be a recognized union to qualify under § 501(c)(5). PLR 201120036 (May 20, 2011), 2001 WL 1915710.

34 Hyde, *supra* note 1,at 397.

35 Rebecca J. Livengood, *Organizing for Structural Change: The Potential and Promise of Worker Centers*, 48 Harv. C.R.-C.L. L. Rev. 325, 332 (2013).

36 Livengood, *supra* note 35, at 332-33.

37 *Id.* at 342 (Livengood concludes that worker centers likely cannot avoid the designation of labor organizations while striving to gain control over the labor supply by channeling hiring through center-run hiring halls).

38 Nonexempt activities may only be incidental and less than substantial. Sec. 1.501(c)(3)-1(c)(1); Bethel Conservative Mennonite Church v. Commissioner, 80 T.C. 352, 359 (1983), revd. on other grounds 746 F.2d 388 (7th Cir. 1984). A substantial nonexempt purpose will disqualify an organization from exemption under § 501(c)(3) regardless of the number or importance of its exempt purposes. Sec. 1.501(c)(3)-1(c)(1); Better Business Bureau v. United States, 326 U.S. 279, 283 (1945).

39 Rev. Rul. 75-473, 1975-2 C.B. 213.

40 Rev. Rul. 61-170, 1961-2 C.B. 112.

41 *See also* PLR 201217020 (Feb. 1, 2012) (Service finding organization was not exempt under § 501(c)(3) because its purpose was to provide employment opportunities for its member umpires to officiate games and earn revenue).

42 *See* Rev. Rul. 59-6, 1959-1 CB 121 (ruling that a professional association was not exempt because its educational program was only an incidental part of activities that had as a principal purpose the professional advancement of its members as a group); Rev. Rul. 69-175, 1969-1 CB 149 (ruling that when a group of individuals associate to provide a service for themselves, they are serving a private rather than a public interest).

43 http://www.dollarsandsense.org/archives/2004/0104labotz.html (last visited Sept. 20, 2013).

44 Eli Naduris-Weissman, *The Worker Center Movement and Traditional Labor Law: A Contextual Analysis*, 30 Berkeley J. Emp. & Lab. L. 232, 247-48 (2009); *see also id.* at 248-49 (describing organizing campaigns of Young Workers United, a § 501(c)(3) worker center, directed at specific employers over nonpayment of wages and overtime, failure to pay the minimum wage, withholding of tips, and sexual harassment); Young Workers United, Five Year Report 2002-2007 21 (2009), http://www.youngworkersunited.org/downloads/YWUReport.pdf (last visited Sept. 20, 2013) (describing efforts to win back wages for one employee).

45 Rosenfeld, *supra* note 1, at 497; *id.* at 498 (In the case of the Workplace Project, "each time a worker came in with a problem, the Project sought to adjust that issue for that employee.").

46 Georgia Pabst, Group's efforts at Palermo's part of worker center movement, Milwaukee J. Sentinel, Nov. 19, 2012, http://www.jsonline.com/news/milwaukee/groups-efforts-at-palermos-part-of-worker-center-movement-c57m6ve-180066711.html (last visited Sept. 20, 2013).

47 *See*, *e.g.*, Part I, line 1, 2011 Form 990 of Restaurant Opportunities Center of New York (describing organization's mission or most significant activities as "to win improved working conditions for restaurant workers by raising public recognition of restaurant workers' contributions to the New York City's economy.").

48 *See* http://rocny.org/workplace-justice/ (last visited Sept. 20, 2013).

49 http://ciw-online.org/about/ (last visited Oct. 1, 2013).

50 *Id.*

51 http://ciw-online.org/fair-food-program/ (last visited Oct. 7, 2013).

52 *Id.*

53 http://ciw-online.org/about/

54 http://ciw-online.org/fair-food-program/

55 *Id.*

56 *Id.*

57 *See* Livengood, *supra* note 35, at 334-337 (describing support by worker centers of specific legislation); Schedule O of 2011 Form 990 of ROC (its Policy Committee "was heavily involved in the City Paid Sick Days campaign," participated in at least 8 mobilizations with policymakers, worked to create a bill to enforce wage and hour practices of businesses with a liquor license).

58 26 USC § 501(c)(3).

59 http://www.dollarsandsense.org/archives/2004/0104labotz.html ("The whole point" of the report is to help "launch a bill in the next state legislature around the restaurant industry."); *id.* ("We can also use our membership in the association to support the legislation we are proposing.").

60 *See* Part IV, line 4 of 2011 Form 990 of ROC.

61 *See* Rev. Rul. 76-206, 1976-1 C.B. 154.

62 *Id.*

63 http://www.dollarsandsense.org/archives/2004/0104labotz.html.

64 *Id.*

65 *Id.*

66 *Id.*

67 *Id.*

68 Naduris-Weissman, *supra* note 44, at 247-48 (author noting that KIWA played an essential role in the creation and development of the union).

69 *Id.* at 247.

70 Rosenfeld, *supra* note 1, at 497.

71 Although the Service has permitted reclassification during an audit, in a recent Private Letter Ruling, the Service stated that § 501(c)(3) status cannot be modified to another code section. PLR 200809038. Therefore, a worker center's status which has been revoked may be required to file Form 1024 to properly be classified under § 501(c)(5).