

LETTER TO A YOUNG PUBLIC INTEREST ATTORNEY

Alice Garfield

A balmy Southern California morning, about 25-years ago, two attorneys and a Spanish language translator—all employees of the National Labor Relations Board (NLRB)—were driving north on Highway 99 toward Bakersfield, to investigate a charge filed by employees against a privately owned company that baked and distributed tortillas to grocery stores and restaurants throughout the Southland. After the company's employees had demanded higher wages and better working conditions, they had been laid-off summarily, and told that their work was being subcontracted to another bakery in East Los Angeles. In effect, the employees believed that in response to their protected-concerted conduct, the company had closed its doors and ceased production. If true, such conduct constituted an arguable unfair labor practice. But wait, I am getting ahead of myself here; the outcome of the Bakersfield tortilla investigation comes later. Please be patient while I recount my professional journey to you.

The NLRB is an independent federal agency, established in 1935 as part of the New Deal legislation, which enforces the National Labor Relations Act (the statute). NLRB attorneys investigate and prosecute unfair labor practice charges. In our role as civil prosecutors representing the NLRB's general counsel, we seek to effectuate the purposes of the statute, which grants employees the right to engage in concerted activity for their mutual aid and protection. Such activity often involves unionization, but may alternatively consist simply of a group of employees acting together to improve their working conditions, as was the case of the Bakersfield tortilla workers. In addition, the NLRB is empowered to make determinations and conduct elections among groups of employees in questions concerning representation. Our cases begin rather modestly in regional offices located throughout the United States, work their way through the administrative process to the courts, and potentially end up before the United States Supreme Court. The statute is recognized as the foundation (or granddaddy) of various state and federal employment legislation, and model for developing nations' labor-related statutory enactments.

I have worked for the NLRB for more than 30 years. Currently, I am a senior trial lawyer. I have few bad days or sleepless nights, and although strictly speaking, I am not sure I practice public interest law, I am absolutely certain and very serious about my obligation to serve the public. Most important, after all this time, I remain passionate about my work, which for me is still tremendously challenging and rewarding. What makes it so is the regular contact I have with America's working men and women, their stories (successes and failures), and the effect my work has on their daily lives. After all, one's work is a cornerstone of one's life.

My connection to working people and the statute began long before I became an attorney. In fact, it percolated when I was a college student working evenings as a server at the rooftop restaurants, overlooking the Potomac River, in the John F. Kennedy Center for the Performing Arts in Washington, D.C. Under contract with the Kennedy Center, my employer, a nationwide company, provided food and beverage service to three restaurants as well as upscale catering services for private parties and events. The foodservice company employed between 150 to 200 employees at any given time, and was non-union, and intent upon keeping it that way.

However, the Hotel Employees and Restaurant Employees Union (the union), was equally intent upon organizing the restaurants' employees. Year after year, the union would conduct an organizing campaign among the workers; whereupon, the workplace would become highly polarized—a mini civil war between employee factions—with the employer and union propagandizing extensively. I attended company meetings, where the evils of unionization were described by the corporate vice president, who delivered scripted speeches, all of which concluded with the message, “VOTE NO.” And, I also attended a few union meetings and received information from the union detailing the benefits of unionization and attempting to persuade us that, if we acted together, we would receive fairer treatment and increased wages.

Of course, the union's leaflets ended with the words, “VOTE YES.” Each campaign cycle would culminate in a secret-ballot election conducted by the NLRB. For four consecutive years, the union lost each election. Tenacious to the end, the union's fifth organizational attempt was victorious. Thereafter, the food service company for which I was employed did not renew its contract; instead, a competitor came in, which to this day profitably operates the rooftop restaurants at the Kennedy Center, and has had successive collective bargaining agreements with the union.

During the latter union campaigns, I had worked closely with the company's attorneys, and shortly after the restaurants unionized, I listened to their provident counsel and decided to go to law school. Remarkably, I had a clear-cut career path and goal. I wanted to be an NLRB attorney. Ironically, in law school, I took a very forgettable course in labor law; however, I was fortunate to clerk for the NLRB's Division of Administrative Law Judges in San Francisco.

There, my interest in labor law and working for the agency were reaffirmed. I attended unfair labor practice hearings, worked on extensive research projects and helped draft decisions. Most memorably, I interacted on both professional and personal levels with several dedicated and extremely scholarly administrative law judges, who encouraged me to pursue my dream of working for the NLRB. Among the guidance I received, one salient piece of advice from a deputy chief administrative judge has always stayed with me, and still stands out in its insight: outsiders assume that a legal career in government service is bureaucratic and requires great conformity. In practice, however, it is quite the opposite. Government service offers unsurpassed professional opportunities to excel individually and to make a difference. While accomplished

government lawyers must be hardworking, for the most part, they are liberated from the chains of billable hours and demands of the partner track.

I remember my interview at the NLRB regional office as if it were yesterday: we discussed my passion for the field, my previous exposure to the NLRB and the workplace, and perhaps most of all, my Spanish language skills, all of which appeared to serve me well. I was hired and thoroughly overjoyed! But, this was 1981, the year in which then President Ronald Reagan decided to implement a government-wide hiring freeze. Three days before I was about to begin working for the NLRB, I received a call informing me that I no longer had a job. "Sorry." As Scottish poet Robert Burns wrote, "In proving foresight may be vain: the best laid schemes of mice and men go often awry. And leave us nothing but grief and pain, for promised joy!"

Suddenly unemployed, I scrambled for work. I was fortunate to be offered a position as an associate by a large management-side labor and employment firm in San Jose. The people there were fantastic, but the work was not what I wanted to be doing at all. I really struggled; sometimes I wanted to abandon the practice of law completely. Tower Records was hiring. When I applied (thinking I would work nights), the store manager incredulously shook his head and told me I was overqualified.

One year later, the NLRB renewed its offer of employment and assured me that there would be no further budget cuts. I said farewell to the lawyers and staff at the firm and began my fulfilling career at the NLRB. Within six months of being hired by the NLRB, I was trying cases! While I made some mistakes, the nature of government practice required me to learn quickly. Without the luxuries and support that law firms typically provide, I had to do it all by myself as I opposed lawyers from top-notch law firms, armed with little more than my knowledge of the facts, preparation of and rapport with my witnesses, and an idealistic but fundamental notion of the pursuit of justice.

And with that fundamental notion in mind, I return to the beginning of this letter where I was headed to Bakersfield to investigate unfair labor practice charges with another NLRB attorney and a translator. Remember, the employer had represented to its workers that it had ceased operation. We get to Tina's house. She is one of the laid-off workers. Several workers are there waiting to tell their stories to us, hoping we will be able to help them. Their families are depending on their wages. Tina's house is small and dingy. I am claustrophobic. I tell my colleague, you stay in the house with the translator, I will take affidavits across the street in the park, and so we proceed. (NLRB agents must be prepared to take affidavits anywhere and anytime.)

I think I was interviewing my second witness when I started, with great urgency, to walk back to the house, only to meet my colleague in the middle of the street. Simultaneously, we had figured out that the employer was allowing certain people to work secretly. My witness said she knew where the secret-workers lived. I told her to get in my car (in government-speak, "POV" or

privately-owned vehicle) and together we drove off, the witness in the passenger seat. She directed me to a makeshift hovel with a dozen plywood doors. She pointed, I knocked, but nobody answered until the last door, when a woman with a child in her arms peaked out. In Spanish, I asked her where her husband was, and she said he had gone to pick up his co-worker and that they were going to work at the tortilla factory. The witness and I zoomed off. I had no time to lose because once the secret-workers entered the factory, there was little chance that I would get their testimony.

Shortly thereafter, I observed two men on foot approaching a blue low-rider. My witness signaled that they were the secret-workers, but they took off like lightning, upon seeing me in my silk dress and pumps. In that singular professional moment, without any hesitancy, I ran after them shouting, “Yo no soy de la migra.” (I am not from immigration.) There we were, atop a remote cul-de-sac, somewhere in Spanish-speaking Bakersfield, the NLRB agent and the two secret-workers. To this day, I am not certain which one of us was in the more precarious position, but I do know what happened next: we walked down the hill together, and after my desperate appeals to their sense of justice and the virtue of supporting their fellow workers, I pulled out paper and pen, and wrote out their statements (using the low-rider’s hood as my desk), which they signed before they drove off to work. The witness and I got back in my car and returned to Tina’s house where my colleague inquired, with a smile, “Did you get it?”

We returned to Los Angeles that evening feeling pretty good about the case and the evidence we had obtained. Now I do not want to be mean-spirited, but neither do I want to portray government service as free from bureaucratic frustrations: the next morning my supervisor reprimanded me for taking the witness in my POV and for not having considered the potential liabilities. Oh well, the tortilla factory case went to trial; we won, the factory re-opened, and Tina and the other workers were reinstated and made whole. Ever since, I have received annual holiday cards from Tina and her crew. And, I never regretted putting the witness in my POV or running up the hill. In fact, I never gave it a second thought. Rather, I remember only the gratitude and joy of those workers who looked to us with flimsy hope and great expectation as they participated in the process that makes my work meaningful, and concomitantly makes this nation a beacon of liberty for all.

Over the years, I have had many rewarding opportunities to help workers, to litigate important cases, to educate unions and management, and to resolve labor disputes. Occasionally, I have had the pleasant experience of thwarting unnecessary bureaucracy. Most important, I have had a great time practicing law and remain passionate about my work. I teach the labor law survey course at Southwestern Law School, where in addition to the lessons found in the casebook, I try mightily to convey my excitement about the subject matter to my students.

And so, I segue to the advice portion of this letter where I get to impart wisdom—only we all know that it doesn’t quite work that way, for each of us must find his or her way. Still, if I were you, I would follow my passion;. What really, really interests you? What do you care about? If

you are lucky enough to discover your passion, cling to it as best as you can. While you may not know exactly what you want to do, once you figure it out, do not be deterred. If you pursue public interest law or public service, there will be constant rewards in your work, which will not be reflected in your pay check or stock portfolio. Often times, to gain professional fulfillment, you must be willing to compromise professional prestige. From my experience, this has been a worthwhile bargain.

Experience life beyond law school, beyond the law, beyond the books - not everything can be found in the books. Common sense is invaluable. Bringing contentious parties together is not something one learns in law school or solely from a firm's senior partners, or a federal agency's supervisors. Rather, one has to be willing to engage, to listen, and to learn from everyone and anyone. Workers have taught me more than my law professors, and almost as much as my supervisors and colleagues.

Find a mentor, someone who is trustworthy, bright, and likable. Throughout my professional journey, I have had the good fortune of being guided by wise and decent people who shared their insight and experiences with me. Moreover, I believe that each of my mentors derived considerable satisfaction in imparting a valuable legacy to me.

Bring empathy to work with you every day. Be flexible and open to others' ideas. Think out of the box - experiment. Try another approach to the issue, whether it is a difficult witness or legal theory. Look at the big picture. Reaching out to people on a human level is essential for effective public service. And always, act ethically. At the end of the day, one's reputation is an incomparable but incredibly fragile asset. A government lawyer who loses the public's trust is one sad and disgraceful individual.

Avoid cynicism as much as possible. Everyone lies and everyone tells the truth. Credibility is an amalgam of perception. Avoid generalizing and pre-judging people or their positions. In the practice of labor law, the management Bar is hardly the "dark side." So too, the labor Bar is hardly an angelic assembly. Each side has its job to do, and as a public servant, my job is to be fair, to follow the rule of law, and above all, to protect workers in the exercise of their freedom of association.

Try not to become complacent or too certain of what you know. Listen to Springsteen a lot.

Wishing you the best of luck and great professional satisfaction,

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