

New Labor Organizing in a New Industry: Cannabis

By Gregory DeFreitas

Cannabis is one of the most rapidly growing new industries across the country today. Nineteen states so far have legalized adult recreational cannabis use and 37 states have legalized its medicinal use. Only three states lack any public cannabis access program.¹ Estimates number its workforce nationwide as already between 220,000 to 300,000.² One labor union, the United Food and Commercial Workers Union (UFCW), recognized early the opportunity to help shape a legitimate, worker-friendly new industry to include labor protections in new state legislation. In 2011 in California, it opened a national organizing campaign that pushed for new laws protecting cannabis worker rights and sparked more enforcement by the National Labor Relations Board (NLRB).³

In New York, Local 338 of RWDSU/UFCW has played a major role organizing the cannabis workforce and mobilizing broad support for two key laws passed by the state legislature. In 2014, it passed the Compassionate Care Act (CCA) to authorize 10 retailers of medical marijuana approved so far by the state. Then, in 2021, Gov. Kathy Hochul signed into law the Marijuana Regulation and Taxation Act (MRTA) to decriminalize adult cannabis use and set regulations for the adult-use market. Local 338 has now successfully organized nine of the 10 licensed cannabis companies and has negotiated first contracts with most of them that raise wages and benefits significantly.

Saul Guerrero is the Director of Cannabis Services for Local 338, headquartered in Long Island. Born in Manhattan of Peruvian/Ecuadorian parents, he was educated in business administration at LaGuardia Community College (CUNY), while he pursued an early career in retail clothing. Starting at The Gap in 1997, over 10 years he rose into the managerial ranks. That experience sparked rising concern over the working conditions of retail employees, which led him into a now 16-year career in the union movement. Local 338, his home for the past half-decade, supported his enrollment in the Labor Studies Programs of Hofstra and Cornell. On Sept. 26th, he spoke with one of his former professors, Gregory DeFreitas.

Q: What was your background before joining the labor movement? Were you from a union household?

SG: Not really. My father was from Peru and put himself through college here to become an engineer. But he was also a musician. My mother is from Ecuador and was a dancer when she met my dad. I studied business at first in college, as I worked at The Gap. I went up the ranks pretty quickly. In the first couple of years I became a floor supervisor, then an assistant manager, and then what The Gap called an associate store manager. When the manager wasn't there, the associate store manager was the one running the show. And I also did a lot of the schedules, hiring, stuff like that. And then, after seven years of The Gap, I did a few years with Nine West.

Q: How do you transition from that to the union side?

SG: I got very tired of retail, and of how I saw my workers get exploited. I was always arguing with corporate to give people more raises, and to be more lenient when it came to time off and the blackout periods. And I was always arguing with Cor, where, and especially at nine West, when I was a little more seasoned as a manager. I always believed in treating people well, and then they would work harder for you, anyway, because they felt that comradery. Whenever there was a tough day, I would roll up my sleeves, and I was in the back stock when you breaking down boxes and doing anything that I asked anybody to do, cleaning bathrooms, stuff like that. That's the way my father taught me: to lead by example.

But I think that would really bothered me the most is that corporate had this structure of merit pay increases. But if you would get a top rating of 4, you would only get a quarter (added to your hourly wage). If you had a 3 you'd get 20 cents; if you got a 2, you got 15 cents. Every time that I would try to get people a little bit more by rating them a 4, corporate. But we always send them back to me, saying, No, nobody can be a 4. And I said, like: "Dude, if you don't believe that nobody can be a 4, why do we even have a 4! You have people grasping for things that are not even there. It's just kind of like dangling that carrot, right?"

In December of 2006, I met the Vice President of another local, and we had a great conversation on the sales floor, because she saw how well I got along with my workers. She said: "Your workers really seem to like to work for you."

And I said: "Well, I'm always fighting for them, and you know, fighting corporate." I kind of just mentioned it like in passing. I really didn't think anything would come of it. Little did I know that it would change my life! I got her attention, apparently, and we started just talking about business and about how I ran it, and she said: "Well, it sounds like you should be doing what I do. I'm the vice president of a union local on Long Island." So they recruited me, and in January 2007, I came over to work for the labor movement. And it was the best thing I've ever done

Q: Before cannabis organizing, what were some of the major drives you were on.

SG: I've participated in so many, but one of those that really stick is when my local, organized the first union hotel on Long Island. The Hilton on Route 110. Then, with that same energy, we organized another Hilton at Stony Brook University. I was also on the team with our International Union that organized car washes in the five boroughs. It was definitely a great campaign, and it also empowered a lot of these workers that had no voice. So I was definitely passionate about that kind of thing. When we got there, we found out that there were workers making \$4 an hour! The employers would claim that was OK because they were tip workers. But \$4 was below the legal minimum for even tip workers back then. So our International Union filed lawsuits and we got a lot of workers back pay.

That was one of the kind of things that I loved because of the migrant workers that were there. They reminded me of my dad or my uncle, or any of my many family members when they first came over.

But, I'm also a union representative; I represent workers on a daily basis besides organizing. I represent the workers in almost every industry, in food, service and food retail. Like with my old union, I represented workers at H & M, Zara and Modell's, mostly in New York City. So, I've done a lot of that in retail. Actually, that's why my previous local hired me, because of my retail background. With my current local, 338, I represent cannabis workers, have represented supermarket workers, home health aides, bus drivers, supers, porters, and many more.

Q: When you say you represent workers, do you mean that you act as what some unions call a business agent?

SG: Unlike some other unions, we don't use the word business agent because it literally is conflicting to use the word business. We call ourselves union representatives because we represent the union, which is the members, right?

Q: Your union was one of the first, if not the first unions, to get involved with cannabis organizing. When did it start in the local area?

SG: My current local got involved in cannabis 10 years ago in 2012, when the union found out that the people in Albany were serious about passing the Compassionate Care Act. The idea of getting involved was because people here in the leadership knew that people should have access to medical cannabis and workers should be able to organize freely.

So they reached out to the folks in Albany, the state senators and assembly members. They wanted to make it strategic for organizing. Here's one of our key components: when the union got involved in the legislation, they were able to get what's called the Labor Peace Agreement (LPA) tied into the licensing of all of these companies. So, as companies came in, they had to sign a labor peace agreement. And we've made ourselves that union that is doing that now across the State. We signed nine of ten of the first companies that started with medical cannabis. Those are still the only ten that exist right now. We represent nine of those ten companies,

Q: Can they sign with any union that they want?

SG: The law just said that you have to sign it with a *bona fide* union. The purpose is to make sure that the employer just doesn't make a union, and say: "Oh, here's a union." A bona fide union should be affiliated with a large body and should

have a good track record, amongst other requirements. Which we have -- I mean, we've been around for 97 years at this point. We will strive to organize and improve the cannabis industry and, with the labor peace agreement, it's a lot easier.



Saul Guerrero

You know, when I talk to workers these days, I especially highlight the fights in Amazon and Starbucks that they see. I'll say to a worker: do you imagine how much easier it is going to be for you to make a decision when I'm sitting here in your break room talking to you? Because the employer had to allow me in because we have the labor peace agreement? That gives you that door to just have a conversation, and just hear what we've been doing in this movement.

Because I do call it a movement. What we're doing in cannabis is not just organizing cannabis workers. It's a movement that we've created over the last ten years to make sure that we had a way into the industry, to make sure that we make it the best industry possible. And right now I can boast that our contracts are literally the best contracts in the country. Every local is doing the best that they can in other states. But I think that we have raised that bar, and now many are using our contract as templates to start to organize in other places.

Q: Since starting in the in the medical side, now that recreational use is legal in New York, are you going to growers? Are you going to all retail outlets?

SG: Well, not yet, because there is no retail outlet that is legal yet. The State is not cracking down on them for obvious reasons. One is that most of them are owned by minorities, and those people have already been hurt enough by the prohibition. So the state just sends them a nice letter, saying: "Hey, you! You got to stop selling like this because you don't have a license yet." But they're not doing what they will do if you had a liquor store and you were selling without a license. They would come and shut it down immediately, right? So the State is not doing that yet because, you know,

nobody wants to see the state closing down small shops. But we are signing labor peace agreements almost daily with new entrepreneurs and new companies that are looking to come into New York once the legal market is ready to go. Right now, the OCM (Office of Cannabis Management) is still working on the regulations as to how the adult use market is going to work.⁴

They only started on August 25th with the applications for the CAURD applicants (Conditional Adult Use Retail Dispensary). Those are the people that have been affected by the War on Drugs and have nonviolent cannabis convictions. They are able to now apply to be owners. And the State is actually going to subsidize your dispensary. So if you are a winner of a CAURD application, the state would actually build you a dispensary, and when it's done they'll just give you the keys and be like: this is yours, and you can run it! However, it is going to be like a franchise, for lack of a better term. The state is going to make them all the same and you get one wall to make your own, to give your own touch. But the State is giving it to you free,

As you know, one of the biggest failures of every other state when it comes down to social equity is the fact that, yeah, they allow people to apply. But most people don't have the resources to start that process. So by doing this, I think that New York is doing a great job, and really doing it right. They've studied what other states have done wrong, and they're doing it right. Yes, people might say that only 150 people is not a lot. But it's 150 more than any other state has.

Q: I know that your local is now organizing farm workers. How are you going to try to get growers?

SG: Yes, we have organized three farms on Long Island. A different team from mine is working very hard with the farm workers. It's two different tracks, because farm workers are under agricultural law, and have to go through card checks.

With cultivators right now, we have hemp processors or cultivators that are now turning into cannabis cultivators. So they're getting what is called Conditional Cultivation Licenses. They have x amount of time to apply for a full license. They've been signing LPAs with us. However, these are very small operations right now. I mean you can have 15 acres and have like eight people working there. We're not going to go organize eight people when four of them are the father, the son, and the wife, and maybe a cousin, and you know, maybe they have two or three actual workers. They're not ready to be organized yet. We might put them against the ropes when we ask for different things that their business can't sustain yet.

But we are signing LPAs with everybody. It doesn't matter what size you are. You can have three employees, and you can have 30 employees. These conditional cultivators that are growing cannabis, they can't really sell it yet because the regulations are not finished yet. There's going to be rules as to who they can sell to, and how much they can sell, and all these other pieces. So yes, right now we are signing LPAs for conditional cultivators, for provisional dispensaries, for conditional processors, which are also going to be another type of license. Those are people that now buy, maybe wholesale flower, and then they process it into different things, like edibles and vapes and tints, or whatever.

Q: What's the main motivation for a cultivator or a retailer to sign an LPA?

SG: The motivation is that they have to, because it's the law. So just like what we did for the Compassionate Care Act back in 2012-2013, we did the same thing now. We were lobbying for years also for the adult-use piece, and part of the fight for the MRTA was making sure that the legislation tied every type of license to an LPA.

So whether they sign it with us, which is our hope, or with anybody else, they have to sign an LPA with a union that is *bona fide*.

Now don't get me wrong: you could get a conditional cultivator, a conditional processor's license now, but it's kind of like when you get a driver's permit first, before your driver's license. That's all they have now; you still have to get a license. I think that they have 12 months to get a full license. So those people are still reaching out to us.

Q: But the union still has to fight to get the workers, even with an LPA. You have to have a card check or something, yes?.

SG: We do, but it makes it a lot easier because they have to open their doors. They have to allow us access. Let me get into exactly what the LPA is, and what it isn't. What it is: it's just a neutrality agreement between both parties. The Union promises not to do any labor disruption right, whether to picket, strike whatever. And the company promises to be neutral:

it promises that not one of their managers, not one of their higher-ups will come in and say: "Oh, a union's a bad idea." They will stay totally neutral. So when they're asked by the worker, the company literally says: "Listen, this is your decision. You have to listen to them, and then make a decision that's best for you." That's it.

Only one company ever did something against us. We filed charges against them, and we won at the Board (National Labor Relations Board) And the LPA gives us teeth, more teeth than the NLRB alone does.

One of the bigger companies tried to fight us. They tried to do things that were anti-union. But, you know, at the beginning many of these companies were very apprehensive about being organized -- because most of them are unorganized in other states. I'll give you a clear example. In one company here, our workers make a minimum of 18 bucks an hour. The same company operates in New Jersey, and we know for a fact that its workers there make 14 bucks an hour. That's why we organize workers. Don't get me wrong, these companies were also paying barely above minimum wage when we first came in, and offered horrible health care.

But to finish up with the LPAs, ours have a little bit more teeth because they also push for a card check instead of going to the NLRB, which makes it a lot easier on the worker. Because they don't have to go through the stress of the union campaigning and the company campaigning. Because when we go to the NLRB, both parties have the right to campaign.

So by doing this it gives the workers peace of mind to feel more protected, and then it's a lot easier for them to make a choice. As you can see now, nine out of ten have chosen to join us. And we hope to continue the same ideal as we go into the adult use. Once these licenses really start to operate, then we'll start to invoke our rights under these labor peace agreements to go into these new dispensaries and new cultivation places. And of course, we're gonna do our homework.

We understand that, like I said, a farmer with 15 acres and three employees, is not going to be able to do the same thing as a multi-state operator that has acres and acres in many states, and hundreds of employees. There is a huge difference there. We're conscious of that difference.

And then, once we're there, our goal on adult use is to do what we did in the medical field, which is bring the floor up. You know the old saying: "A rising tide lifts all boats." That's what we believe. We've been able to bring the floor up. Whereas before these companies paid barely above minimum wage and very crappy PTO and healthcare benefits, we've been able to change all of that. All of our workers make a minimum of \$18 and up now. Most of them start around 19 to 20, depending on the job description. And we've been able to increase their PTO., so that they have a better work-life balance; increase the number of paid holidays; increase premium pay, if you come in on a holiday.

All of these things that these companies were very meager on, we've been able to enhance -- which hopefully makes it better for the worker to want to stay there for the long run. And ultimately it also helps the employer with the retention of skilled workers.

And then one of the other big pieces that we do is medical insurance. They have great medical, the deductible as low as \$10 and no worker cost-share -- our members pay nothing out of pocket. Yeah, that's been a huge success.

I like to say there are three legs of the stool. One is the increased wages, plus paid time off, and holidays, and all that stuff --- for both full- and part-time. None of these employers offered anything to part-timers before us. Now these part-timers have everything that full-timers, have. Of course, it's on a pro-rata basis, because they work less hours. Then there's the second leg: Medical, which many members didn't take before because it was cost-prohibitive.

But then the third leg of the stool is what we always talk about, which is just-cause. Once these workers have passed their probation, they're no longer at-will employees. And that's a huge piece too, because we fought these companies left and right to make sure what the culture is once you're a union shop. They need to understand that you can't write up somebody just because of an opinion.

A lot of these companies were used to saying: "Well, the manager, they don't like how this person spoke to them, so we're gonna give them a writeup." Well, no, unless that person was like doing something that was egregious, like they cursed you out in the middle of a sales meeting or something, that's a different story. But if they just spoke their minds respectfully, and you just didn't like it -- too bad!. But a lot of these managers come from these nonunion backgrounds with an attitude like: "You can't talk to me like that, because I'm the manager, and I told you to do this!"

Q: So it's an education process too? They all need to learn about grievance procedures?

SG: Yes, we have actually educated all of the HR managers in these companies. We've educated them as to how to be a union employer, as to how we can be a partner if you choose to be. Or we could be an adversary. It's up to you. We prefer to be partners, and we prefer to talk things out and listen. If you really feel strongly about a termination, and I feel strongly about it, we could find the middle ground,

Because maybe some person did something that was bad, but not enough to be terminated. But maybe something that deserves like a final notice for that kind of action, that they shouldn't do again. But some of these employers are learning how to work with us and negotiate, even when it comes down to corrective action. So we save jobs by not getting them terminated, but urge them (the member) to really correct that. Whereas before they would have been fired onto the street.

Q: What's it been like getting first contracts. Has the LPA helped with speeding up first contracts?

SG: That's a difficult one, because our contract negotiations have ranged so much. Some have taken us two months, some have taken eight months. So, it depends, However, there is a factor in the LPA that does help: we have the right to take these companies for arbitration, if we don't get to a contract.

QL What do you see as immediate challenges going forward, in terms of companies or the workers?

SG: Well, the challenge is that the companies have gotten more and more savvy at how to make our negotiations longer. As we got into the process, every company has become more difficult at negotiations. It's because they have a Cannabis Association and I'm sure that they're talking with each other and trying to see how they can make it harder.

Another of the biggest challenges are the logistics. We are organizing the whole State and sometimes us people from either Long Island or the boroughs, when we think of upstate, we only think about Westchester, we think about Yonkers. But when you're in Utica, you're just in Central New York, and then you have Plattsburg and Buffalo. We organize everywhere, so logistically sometimes we're driving for hours because we have a meeting with workers in Syracuse to kind of keep the flame going. Then we have to go meet people in Chestertown after work at five, but it takes three hours just to get there.

We have hired new organizing reps upstate and they're coming with me on Wednesday. We hired them there purposely, so that we could have more access to our members. But you know, they are new organizers. So right now we're going through the motions of training them, and it's going to be a couple more months before they're on their own. But once we have that, then we have a full team of four organizers that will be chugging around the upstate area. And as we continue to grow (no pun intended with cannabis) we hope to have several thousand workers in the upstate area. And we might have to add even more reps!

Gregory DeFreitas is the Augustus Weller Professor of Economics and Director, Center for Study of Labor & Democracy at Hofstra University.

REGIONAL LABOR REVIEW, vol. 25, no. 1 (Fall 2022).

© 2022 Center for the Study of Labor and Democracy, Hofstra University.

¹ "State Medical Cannabis Laws," National Conference of State Legislatures (2/03/2022): www.ncsl.org/research.

² "Booming US cannabis industry seen as fertile ground for union expansion," *Guardian* (7/31/2022).

³ For analysis of the large wage advantage of unionized workers in cannabis today and discussion of national policy proposals, see: "Ensuring the High Road in Cannabis," *EPI Report*, by Cooper, David & Sebastian Hickey (9/22/2021): www.epi.org.

⁴ For state licensing updates, see the NYS Office of Cannabis Management: <https://cannabis.ny.gov>.