



# Organizing upsurge wins pro-union NLRB ruling

By Steve Gillis  
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In a headline-grabbing move on Aug. 25, the National Labor Relations Board (NLRB) issued a ruling hailed by some labor lawyers and union organizers as a potential game-changer. The “Cemex Construction Materials Pacific, LLC and International Brotherhood of Teamsters” decision takes place in today’s climate of rampant and ubiquitous corporate union busting.

The NLRB ruling opens with a description of union-busting tactics used by Cemex, one of the world’s largest cement and construction companies, when a majority of 366 truck drivers at “batch plants” in Las Vegas and southern California presented the company with signed Teamsters union cards.

According to the Labor Board, Cemex “violated Section 8(a)(1) of the [National Labor Relations] Act more than two dozen times, including by threatening employees with plant closures, job loss, and other reprisals if they selected the Union, surveilling employees and interrogating them about their union activity, prohibiting employees from talking with union organizers or displaying pro-union paraphernalia and hiring security guards in order to intimidate employees immediately before the election.” (nlrb.gov)

Cemex also fired union organizer Diana Ornelas, a bilingual truck driver and fearless union advocate who openly translated union material for other Spanish-speaking workers. The company spent a whopping \$1.1 million on union-avoidance firm Jackson Lewis P.C.



**Diana Ornelas on the job before Cemex fired her.**

to defeat a union election by 13 votes. (yahoo! news, Jan. 24, 2022)

It’s a scenario that millions of workers nationwide will recognize as what happened to them in recent years at global giants like Starbucks, Amazon, Trader Joe’s and “mom and pop” coffee shops and other smaller employers.

## **Some of Joy Silk restored**

The NLRB Cemex ruling throws out the ill-gotten election — born of blatant lies, fearmongering and intimidation — and orders Cemex to recognize and bargain with the Teamsters. Ornelas is to be reinstated with full back pay and benefits, upholding a previous judge’s order.

The decision also overturns corporate-backed NLRB decisions which had systematically negated the 1935 National Labor Relations Act’s (NLRA) original intention and practice. The Labor Board’s

1949 “Joy Silk doctrine” required that, in order to be recognized, unions show by a signed card check-off that a majority of workers wish to join the union. The burden of demonstrating the need for an election was put on the employer.

Joy Silk had resulted in huge numbers of U.S. workers at the time — from restaurant workers to truck drivers, autoworkers, nurses, miners, teachers and other government civil servants — readily signing up to form unions to defend themselves from capitalist greed and exploitation. The NLRB-sponsored union election, where workers are subjected to a barrage of intimidation and misleading corporate propaganda leading up to it, only became the norm after a 1969 ruling by the Supreme Court of the United States (SCOTUS).

“The way Cemex conducted itself when its workers sought to organize five years ago was on par with the way elections are undertaken in a tinpot dictatorship,” said Teamsters International Vice President At-Large and President of Teamsters Joint Council 42 Chris Griswold. “This company fired union supporters, intimidated them, harassed them, and broke nearly every other rule under the sun. If any good came out of this company’s scorched-earth thuggery, it’s that now employers will think twice before they break the law to break the union.” (Teamsters.org, Aug. 28)

## **Trader Joe’s United comes out swinging**

Inspired by the COVID-19 pandemic era wave of rank-and-file driven union organizing, exemplified by the Amazon Labor Union in Staten Island, New York, and



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*Continued from other side*

Starbucks Workers United in Buffalo, New York, in 2021, Trader Joe's workers made history in June 2022. Workers at the Hadley, Massachusetts, site 512 store voted overwhelmingly to unionize as Trader Joe's United Local 1. ([workers.org/2023/08/73021](https://workers.org/2023/08/73021))

Trader Joe's site 512's initial success in turn inspired union organizing campaigns at other sites across the U.S., including at the Essex Crossing store in New York City. Workers there immediately came under a barrage of Cemex-like attacks, including the firing of a lead union activist. This led to a tie vote (76-76) in the NLRB election, legally a union loss.

While the Teamsters were still celebrating their vindication by the NLRB, which is retroactive for six months, on Aug. 27, Trader Joe's United filed the first post-Cemex-ruling charge at the NLRB. It demanded that the tainted Essex Crossing election be thrown out and that the NLRB order Trader Joe's to immediately recognize the union and begin contract bargaining.

Trader Joe's United and its attorney, Seth Goldstein, called Cemex a "groundbreaking decision" which applies directly to the Essex Crossing case of "threats, coercion, interrogation, and blatant misinformation," creating grounds for ordering the grocery chain to immediately recognize and bargain with the union. "[Goldstein's] message to management-side attorneys who are upset with these board decisions is to 'go take a yoga class'." ([law360.com](https://law360.com), Aug. 29)

## **An offensive of street solidarity needed in this class war**

Corporations like Cemex, Trader Joe's, Starbucks and Amazon have utilized a multibillion dollar union-busting apparatus that includes lawyers, thuggish supervisors, "union avoidance"

specialists, cops of all jurisdictions and paid politicians who seat judges and stack the NLRB. They have waged a war of attrition against the blossoming, youthful and anti-capitalist new labor movement, which was born in the anti-racist street battles following George Floyd's lynching and during the depredations of the pandemic.

Not one of these companies has yet to seriously sit down and bargain with a union, while all of them continue to violate the law daily with impunity.

During this period, the Biden administration, its secretaries of labor and Democratic politicians in general have at best given lip service to the workers' organizing campaigns, through toothless NLRB rulings regarding illegal corporate activity. At worst they've smashed strikes by executive order, such as legally stopping the national rail strike last year and siccing cops on striking baristas in Boston when their historic 64-day occupation of a Starbucks storefront threatened to birth a united mass movement.

The Cemex ruling may rightfully give heart and some modicum of legal backing to the courageous workers taking on these behemoths of capital. But it is solidarity and concerted, collective action by the broad, multinational and multigendered U.S. working class — in unions and those who are unorganized, community-based and socialist-minded — which will win more battles on the job and in the political arena.

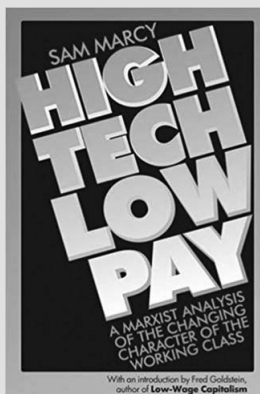
The NLRA (Wagner Act) was passed in 1935 and upheld in 1937 by that era's SCOTUS in the context of the society-wide class battles of the 1930s — such as the militant 1932 veterans' Bonus March, the Minneapolis 1934 Teamster rebellion and general strike, and hundreds of militant sit-down strikes, including by autoworkers in Flint, Michigan. Our grandparents' actions resulted in the organizing of millions of workers.

Likewise, today's prolabor NLRB rulings are happening during what the Sept. 3 New York Times characterizes as a historic "Summer of Strikes," most notably Hollywood's shutdown by writers and actors. It is this momentum that the ruling class is conniving to curtail.

All out for the Starbucks Workers United "National Day of Action" on Sept. 14 (@StarbucksWorkersUnited, X) and every other picket line, rally, boycott, fundraiser, petition, strike and occupation that will be necessary to beat back and win against capital's ultra-organized, infinitely funded criminality.

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