

San Francisco Weekly

April 11, 2007

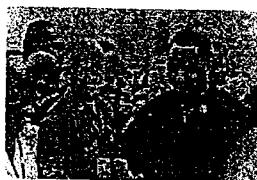
## Union Disunity

The secret deal worked out between SEIU bosses and nursing home owners denies union members the right to speak out, strike, or protect patients

By Matt Smith



Sal Rosselli, leader of United Healthcare Workers West, has taken a stand for union members' rights, to the apparent dismay of the SEIU leadership.



SEIU president Andy Stern photographed with civil rights leader Jesse Jackson.

*"With time, my loss of Cassie began to transform the way I approached life."*

—Andy Stern, *Getting America Back on Track: A Country That Works*, Simon & Schuster, 2006

*"It is as if he cant help conflating the fate of workers with the fate of his daughter."*

—Matt Bai, *New York Times Magazine*, Jan. 30, 2005

*"When she died it broke my heart," he says. "It just gave me the strength to say, 'Speak out; don't be afraid.'"*

*"One brave thing he's done is pursue a partnership with corporate America."*

—Leslie Stahl, CBS News, May 14, 2006

In the above excerpted narrative, repeated ad nauseam in Service Employees International Union (SEIU) press materials, union president Andy Stern emerged from a personal catastrophe differently than others who face crisis in middle age.

Stern did not turn to sports cars, young girlfriends, adventure athletics, or otherwise immerse himself in narcissism after his 13-year-old daughter died from surgery complications, his wife later divorced him, and he took to dining alone in bars.

Instead, Stern has said in his book and to newspaper and magazine writers; the 2002 personal tragedy caused him to become something of a combined Steve Jobs and Martin Luther King, a futuristic innovator applying his genius to empowering disenfranchised workers in his 1.8-million-member SEIU, where Stern became president in 1996.

The union left the umbrella of the AFL-CIO in 2005, based on the idea that the old trades federation was a stodgy, backward-looking organization not focused enough on growth.

Key to Stern's characterization of himself as a new, different type of labor leader is his assertion that the SEIU is leaving behind the old class-struggle-style unionism pitting employees against bosses. In its place is a modern template where workers and employers seek to advance interests they hold in common.

"Employees and employers need organizations that solve problems, not create them," Stern wrote in *A Country That Works*. "Nursing home owners and SEIU leaders are formulating a new national labor-management committee and new state-based relationships to promote quality and employer economic stability. In California, the industry and union worked with the legislature on a plan to enhance quality in nursing homes, stabilize the work force, and provide more resources for direct patient care."

However, there's another trove of literature describing the recent history of Stern's SEIU, one that's quite different than the Cassie-focused genre popular in newsstands and on bookshelves. It's contained in secret for-top-union-officials-eyes-only contracts, memos, lobbying agreements, and analysis reports obtained from various sources by *SF Weekly*. They illustrate the details of a sweetheart deal between the SEIU and California nursing home companies that impair, rather than empower, workers and patients, while inflating dues-paying union ranks.

These documents suggest Stern's post-Cassie leadership of the SEIU shares little in common with Martin Luther King, and doesn't involve much real innovation. Instead, it's merely a re-hash of the sort of sweetheart company-union labor deals that have marred the reputation of trade unionism throughout history. It has involved trading away workers' free-speech rights, selling

out their ability to improve working conditions, and relinquishing their capability to improve pay and benefits, in order to expand the SEIU's and Stern's own power.

As testament to how little interest Stern's SEIU has in explaining to the public, or to union workers, the inner workings of its modern, employer-friendly style of leadership, 10 requests for interviews to officials at Stern's Washington headquarters, and to union officials in Northern and Southern California, went unanswered.

In spite of the official silence, union memos obtained by *SF Weekly* also point to a serious rift between Stern and Sal Rosselli, president of SEIU United Healthcare Workers West, an Oakland-based 140,000-member local representing workers in California hospitals, nursing homes, and other health facilities. The fight is over whether the union should continue its current, Stern-backed strategy of expanding membership by giving up workers' rights, and the rights of patients they serve, through "partnerships with corporate America" such as the nursing home pact mentioned in *A Country That Works*.

Or should the union seek to expand the old-fashioned way, through recruitment, political pressure, picketing and other protests, lawsuits, alliances with advocacy groups, and pointing out corporate abuses to the press?

Officials with Sal Rosselli's UHW-West have apparently taken a strong stand saying corporate-friendly alliances aren't the panacea Stern makes them out to be.

And documents I've obtained suggest that regardless of the image crafted by his own brilliant public relations, Stern has tread a route common among men who've suffered crippling late-life personal setbacks. He's become ornery in his old age.

Sal Rosselli won't answer questions when I call him on his cellphone. And judging from the wall of silence I've received from some other officials in his local, he's apparently instructed the rest of his staff to do the same.

Notwithstanding, secret SEIU documents I've obtained have made me come to respect Rosselli's style of union leadership. Leaked SEIU contracts, memos, and reports, as well as off-the-record interviews with some union insiders, suggest Rosselli has been engaged in a showdown with Stern over the rights of unionized health care workers, and of the patients they care for.

According to a recent report prepared by UHW-West, Stern's brand of corporate collaboration has done little for the SEIU besides inflating the membership rolls with workers who've received hardly any benefit from union membership.

At issue is a 2003 agreement between the SEIU and a group of California nursing home chains. According to this pact, its terms would be kept secret, and otherwise "be held in confidence to the full extent allowed by law." Notwithstanding, I received two copies of the misleadingly named "Agreement to Advance the Future of Nursing Home Care in California," from different

sources last month. I have also obtained a copy of a similar agreement recently negotiated between the SEIU and nursing home chains in Washington state, which involves similar tradeoffs between the SEIU and nursing home chains.

The California agreement was set to expire at the end of last year; the union and the nursing homes are currently negotiating a possible extension. Whether, or how, the agreement will be extended may have been thrown in doubt thanks to complaints about the current agreement coming from Rosselli's UHW-West.

On the SEIU's side of the 2003 bargain, the union agreed to use its clout with Democratic legislators in Sacramento to accomplish three goals of interest to nursing home owners:

The SEIU pledged to use its lobbying muscle to pass a 2004 bill increasing MediCal subsidies to nursing homes by more than \$2 billion over four years, according to patient advocates. The bill passed, creating a windfall for nursing home owners.

The union also agreed to attempt to pass tort reform legislation that would have limited patients' right to sue in the event they were neglected, raped, abused, or killed. (The union's tort reform lobbying efforts were put on hold, however, after a 2004 *SF Weekly* story led union members and advocacy groups to complain.)

The SEIU also pledged in the 2003 pact to staunch any efforts by patient advocates to push for legislation or regulations requiring nursing homes to provide enough staff to keep patients safe and healthy, unless the nursing home companies agree to such reforms in advance. The SEIU will "oppose any long-term-care-specific staffing and reimbursement legislation or regulation that fails to meet mutually agreed objectives," the agreement states.

According to lobbyists for nursing home patients, the union has indeed been successful in repressing efforts by nursing home advocates to pass legislation that would have tied increases in state nursing home subsidies to improvements in the quality of care.

In return, the nursing home chain owners agreed to allow the SEIU to recruit workers into their union. Under ordinary circumstances, nursing home owners vigorously resist union organizing drives by occasionally intimidating and firing union-sympathetic workers, and by attempting to convince them that union membership isn't in their interest. Under the lobbying agreement, however, the nursing home chains would refrain from these tactics in a certain number of facilities if the union helped to pass the 2004 funding bill, and in more facilities if the union got tort reform legislation passed.

So far, workers in some 42 nursing homes have joined the SEIU in this way, according to a union report.

This membership gain has allowed the union to publicly characterize the lobbying deal as a means to improve the quality of care for nursing home patients, while improving wages, benefits, and working conditions for people who care for the aged and infirm.

This is the new era of worker-employer collaboration touted in Stern's book, and in articles that characterize him as a bold modernizer. Journalists, however, appear to have been so caught up in Stern's tactic of getting weepy about his deceased daughter during interviews that they've failed to find out exactly what it is he's talking about.

If they had, they would have discovered a monumental catch: workers who joined the union specifically as part of the 2003 agreement with nursing home chains, an agreement that is supposed to be a national model for corporate collaboration, get a severely stripped-down version of union representation. In important ways, the agreement causes workers to lose rights rather than gain them.

Under the 2003 lobbying pact, all nursing home workers entering the union under the auspices of the agreement would work under uniform, employer-friendly labor contracts called "template agreements."

These agreements specify that the union is not allowed to report health care violations to state regulators, to other public officials, or to journalists, except in cases where the employees are required by law to report egregious cases of neglect and abuse to the state. The agreements also prohibit the unionized workers from picketing, and negotiating improvements in health care or other benefits. They prohibit the workers from having a say in their job conditions.

According to the template contract, employers have the "exclusive right to manage the business."

This means the owners set pay rates, pay increases, and incentive plans. They hire, lay off, demote, discipline, and determine benefits for workers without union input. The employers may outsource work performed by union members, and speed up, reassign, or eliminate jobs at will. The employer may eliminate vacations, or any other time off, as the employer sees fit.

The agreement also guarantees that workers' wages will not put an employer at an "economic disadvantage," either through employee pay, benefits, or through staff-per-patient ratios.

To advocates for health care consumers, contract language guaranteeing the union will refrain from reporting poor nursing home conditions to state regulators is particularly appalling.

"This is a sector where caregivers are the eyes and the ears and the witnesses when there is abuse. To tie their hands and to tie their tongues is to let people die. That's immoral and a terrible thing for a nursing home worker to have to live with," says Jamie Court, president of the Foundation for Taxpayer and Consumer Rights, and author of *Corporate Power Steals Your Personal Freedom*. "I've never seen a labor union except for the SEIU enter into a top-down, industry-friendly agreement that binds the hands of the workers."

The agreement doesn't merely prohibit workers from attempting to complain about their lot once they've signed a union contract. It also puts a halt on any traditional unionizing drive in other

nursing homes owned by a chain that is party to the lobbying agreement — even in cases where workers have expressed interest in joining the SEIU.

"There's a struggle going on at the SEIU, and the struggle is, what kind of unionism is being advanced? Are these agreements that lay the ground for voluntary recognition? Or are they in fact straightjackets?" said Bill Fletcher, a visiting professor at City University of New York, who formerly held the SEIU position of assistant to the president for the East and South.

It's from studying that internal SEIU struggle that I've discovered new respect for UHW-West under Rosselli's leadership.

That union local recently issued a report analyzing the 2003 lobbying pact from the workers' perspective.

The report, titled "The California Alliance Agreement: Lessons Learned in Moving Forward," suggests that the agreement resulted in subsidies that fattened nursing home profits, and handcuffed workers, while inhibiting the union's chances at ever negotiating legitimate labor contracts that truly enhanced workers' lives.

"Alliance-based template agreements do not allow workers to empower themselves," the UHW-West analysis report says. "Is it any wonder that we have often heard from these workers that 'the boss brought us the union?'"

The report can be read as a repudiation of Stern's brave new path, coming out of the biggest health care workers' union local in the western U.S.

"Clearly this is an internal polemic against the direction coming out of Washington," Fletcher notes.

Indeed, the UHW-West report comes near calling the 2003 agreement a sellout.

For one thing, the union might have been able to expand, while obtaining greater benefits for workers, without any agreement at all. "Many workers at Alliance nursing homes throughout California were precluded from organizing," the UHW-West report says.

Those workers who were assimilated into the SEIU through the lobbying deal were introduced to a paltry version of trade unionism, the report says.

"If the nature of the labor agreement defined in the current Alliance templates — which restrict members' rights and ability to be empowered — is allowed to continue, what effect will this have on the fundamental nature of a union organization? What ultimately happens if we give up the right to strike as the means for workers to level the playing field with employers when needed?" the report says. "We would argue that it would adversely affect our mission and goal to advance

and defend the interests of our members, and in fact, may come close to becoming close to what have historically been called 'company' unions."

According to the "Lessons Learned" report, the UHW surveyed 1,600 members who were under these Alliance template contracts. The workers' No. 1 complaint: Short staffing at these nursing homes hampered their ability to provide quality care for patients.

Indeed, short staffing is cited in news stories, in lawsuit complaints, and by public health advocates as the primary cause behind cases of neglect where patients develop bedsores, are left covered in their own feces, or die needlessly of festering illnesses or injuries.

Ironically, the SEIU's 2003 MediCal subsidy bill was touted as a way to help nursing homes afford to hire enough caregivers to adequately provide for patients.

Instead, the Lessons Learned report claims, the nursing home chains used an inordinate amount of the increased state subsidies to fatten profits, rather than increase staffing levels.

According to the UHW-West analysis, nursing homes organized under the agreement received \$119 million in added MediCal subsidies during the '06-07 funding year thanks to the 2005 nursing home funding bill the SEIU led the effort to pass. But those same employers will only spend \$21 million of that money on personnel in those facilities.

"Did we sell ourselves short?" the UHW-West study asks, leaving the answer implicit: absolutely.

In what some view as payback for UHW-West's role in speaking up for the rights of nursing home workers and patients, the union's Washington headquarters has moved to strip the local of its ability to represent nursing home workers.

During a 2006 statewide reorganization of SEIU locals, in which California union locals merged along industry lines, Stern's representatives recommended that all the state's nursing home workers be reassigned to a new bargaining unit run out of Los Angeles by a Stern ally named Tyrone Freeman.

Freeman is reportedly more amenable than Rosselli to the "collaborate-with-corporate-America" style of worker organizing alluded to in *A Country That Works*. Freeman did not return calls requesting comment.

"I would be likely to offer up my Southern California buildings first, because the Southern California union reps are simply more pleasant, more cooperative, and more pragmatic," said Greg Stapley, spokesman for California's fifth-largest nursing home chain, the Ensign Group.

Though Ensign is not currently part of the agreement with the SEIU, Stapley has been sitting in on negotiation meetings with a thought to joining.

Indeed, according to a Jan. 13 memo to UHW-West board members from the local's director for nursing home organizing, Freeman's local "literally said that the union should have *no* say on things like what shifts the workers should work."

This attitude has earned the favor of nursing home owners, the memo said.

"The operators indicated very strongly that they do not want SEIU to 'run' their facilities and that their position on any new agreement meant that the current 'template' contract would remain intact."

Rosselli's UHW, meanwhile, has said in negotiations that "the template must go, that workers as health care providers need a voice and rights on the job," the memo said.

Rosselli has so far struggled to resist efforts by the national union to dilute his power. A recent Stern memo, however, suggests the possibility exists that nursing home workers currently represented by UHW-West could eventually be moved to the Long Term Care Workers' local run by Freeman.

Stern's "corporate collaboration" rhetoric aside, the facts of the California Alliance agreement demonstrate that workers and employers don't have the same interests.

"You can get a condominium of interests that includes the union, but excludes the union member. He doesn't get self-determination, doesn't get the full market value that strong collective bargaining would give him. He doesn't get the right to be a citizen, and be able to complain about a situation where they aren't treating clients properly," says Robert Fitch, author of *Solidarity for Sale: How Corruption Destroyed the Labor Movement and Undermined America's Promise*.

Somehow, though, Stern has managed to get journalists to look past possible downsides of his new labor paradigm by offering up a compelling story line, where a labor leader is impelled by the death of his daughter to become courageous, and to make a real stamp on the world.

Though American newspapers, magazines, radio stations, and television stations don't employ labor reporters anymore, they've got plenty of business writers. And if those journalists know anything, it's that there's truth in numbers. The union's membership numbers are up every year — "1.8 million members and growing" is [www.seiu.org](http://www.seiu.org)'s homepage tagline.

Making Stern's ideas even more attractive, the man is constantly doing things that are just plain *newsy*. In February he appeared with the head of Wal-Mart giving lip service to the idea of universal health care. Before that, he was meeting with leaders of China's government-controlled national labor union — the one with the reputation for worker suppression. And in 2004 he was quoted saying that his union might be better off if George Bush beat John Kerry. And then there's the intriguing underlying story line: the anti-intuitive idea that workers and the boss are actually on the same team. For story-hungry hacks, what's not to like about all that?

Stern "does things that are very provocative. Unless you dig into it, you say, hey, the guy is full of good ideas," says Fletcher, the former SEIU organizer who teaches at CUNY. "The fact is, workers and employers are going to clash. And they have contradictory interests. Andy obscures that question, and that helps explain the attraction he has for *Fortune*, for *Business Week*."

Buoyed by a cushion of flattering press, the SEIU and nursing home owners are now in talks to extend the cynically named "Agreement to Advance the Future of Nursing Home Care in California."

If the pact is extended as a result of current negotiations, the SEIU would lobby for a new piece of California legislation adding hundreds of millions of dollars of enhanced state Medical subsidies to nursing home companies. In return, the SEIU would be allowed to gain members in additional nursing homes, according to a version of the agreement currently under discussion.

However, a Bay Area union local that's party to those negotiations has pointed out that the reality behind SEIU's policy of joining hands with corporate America is far worse than the hype.

I urge UHW-West leader Sal Rosselli, along with any other SEIU members with a conscience, to work toward the next logical step. It's time to scuttle this pact before it causes the waste of more tax dollars, diminishes the rights of more workers, and helps endanger the lives of more elderly and disabled nursing home patients.

Somehow, I believe Cassie might have wanted it that way.

To read the report from the United Healthcare Workers West on the agreement between nursing home owners and the SEIU, click [here](#).

