

January 2006

The Immigrant Workers Project of the AFL-CIO

Rosanna M. Kreychman
New York Law School

Heather H. Volik
New York Law School

Follow this and additional works at: https://digitalcommons.nyls.edu/nyls_law_review



Part of the [Business Organizations Law Commons](#), [Immigration Law Commons](#), [Labor and Employment Law Commons](#), [Law and Economics Commons](#), and the [Organizations Law Commons](#)

Recommended Citation

Rosanna M. Kreychman & Heather H. Volik, *The Immigrant Workers Project of the AFL-CIO*, 50 N.Y.L. SCH. L. REV. (2005-2006).

This Article is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Law Review by an authorized editor of DigitalCommons@NYLS.

THE IMMIGRANT WORKERS PROJECT OF THE AFL-CIO

ROSANNA M. KREYCHMAN & HEATHER H. VOLIK*

Lisa Liu came to the United States from China to find a better life. What she found instead was work as a seamstress earning a paltry salary and inhumane working conditions.¹ When Liu was interviewed in 2000 she had been working in the garment industry for ten years, ten-to-twelve-hours a day, six-to-seven-days a week, without health insurance or sick days.² She was paid per unit produced, which often amounted to a mere \$40 a day. The work was physically demanding, requiring Liu to sit at a sewing machine for hours.³

Immigrant workers like Liu represent nearly 14% of the general working population,⁴ yet they constitute 20% of all low-wage workers.⁵ They often perform dangerous jobs for low wages.⁶ They receive lower hourly wages than native workers⁷, and many work for

* J.D. Candidates, New York Law School, 2006.

1. David Bacon, *Making Sense: The Story of a Garment Worker*, DOLLARS & SENSE, Sept. 1, 2000, at 11.

2. *Id.*

3. *Id.*

4. RANDOLPH CAPPS, ET AL., UNRBAN INST., A PROFILE OF THE LOW-WAGE IMMIGRANT WORKFORCE (Oct. 27, 2003) (noting that immigrants comprise 11% of all U.S. residents). The study examined data from the March 2002 Supplement to the Current Population Survey. *Id.* The Institute defined workers as “people ages 18 to 64 who: are in the civilian workforce; report positive wage and salary earnings for 2001; and have worked at least 25 weeks (i.e., at least some hours over the course of 6 months) or 700 hours (i.e., full-time equivalent for 20 weeks) during 2001.” *Id.* The researchers’ goal was to define the workforce “as broadly as possible but exclude students and other part-time casual workers.” *Id.*

5. Ana L. Avendaño Denier, A Blueprint for Mobilizing, Organizing and Representing Immigrant Workers (Sept. 2004) [hereinafter Avendaño Denier, Blueprint] (on file with the New York Law School Law Review). “Economists predict that between 2016 and 2035, the working age population growth will be attributable *entirely* to immigrants assuming the current immigration levels remain constant.” *Id.*; see also AFL-CIO, Facts & Stats, <http://www.aflcio.org/issues/factsstats/index.cfm#immigration> (last visited Jan. 21, 2006) (providing additional facts and statistics on immigrant workers).

6. Avendaño Denier, Blueprint, *supra* note 5.

7. The term “native worker” is used to describe U.S.-born non-immigrant workers. The term “immigrant workers” is used to describe workers who have immigrated to

pay that is significantly less than the prevailing minimum wage.⁸ The law, however, has failed to protect them against abuses in the workplace.

To remedy the stark disparities between wages and working conditions of native workers and immigrant workers, the AFL-CIO initiated the Immigrant Workers Project (the Project).⁹ The Project has primarily focused its efforts on educating immigrant workers about labor unions in an attempt to incorporate them into the organized labor force.¹⁰ In the process, the Project developed into one of the largest information resources in the country for both the organizations serving the immigrant communities and labor union organizers alike.

Initially, the AFL-CIO was not sensitive to the struggles of the immigrant worker. Instead, in its early days, the American Federation of Labor exploited race and immigrant status to exclude non-white workers from the unions and recruit white workers.¹¹ Immi-

the United States, either with documentation ("documented workers") or without documentation ("undocumented workers").

8. Avendaño Denier, *Blueprint*, *supra* note 5 (stating that nearly one-half of immigrant workers earn salaries 200% below the market).

9. See American Federation of Labor and Congress of Industrial Organizations, *Encyclopedia.com*, <http://www.encyclopedia.com/html/a/amerflll-clilo1.asp> (last visited Nov. 21, 2005), providing:

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), a federation of autonomous labor unions in the United States, Canada, Mexico, Panama, and U.S. dependencies, formed in 1955 by the merger of the American Federation of Labor (AFL) and the Congress of Industrial Organizations (CIO). Heavily involved in politics, the AFL-CIO's primary function is to lobby on behalf of organized labor and mediate disputes between its member unions.

10. Telephone Interview with Ana Avendaño Denier, Dir. Immigrant Worker Project (Nov. 11, 2004) [hereinafter Interview with Avendaño Denier]. See Yvonne Wingett, *Union Leaders On Mission To Recruit More Hispanics*, *THE ARIZONA REPUBLIC*, Sept. 6, 2004, reporting: "The strongest uptick is among immigrant workers,' said Stewart Acuff, national organizing director of the AFL-CIO in Washington, D.C. 'We're organizing more Latino construction workers in Arizona than almost anywhere else. Other construction unions are now beginning to organize more in Arizona, including the ironworkers and the painters.'"

11. See Marion Crain & Ken Matheny, *Labor's Identity Crisis*, 89 *CAL. L. REV.* 1767, 1776 (2001), stating:

Exclusionary racial practices were central to the creation and maintenance of [white] working class solidarity. For example, AFL unions in Seattle used boycotts of firms owned by Japanese immigrants or by whites who employed Asian Americans to reinforce trade union solidarity: white work-

grant workers competing for the same jobs as native workers presented a real threat to the success of labor unions in negotiating favorable contracts and in recruiting new union members. Even after the merger of the AFL and CIO, these anti-immigrant sentiments continued. The AFL-CIO ardently lobbied for the 1986 Immigration Reform and Control Act (the 1986 Immigrant Reform Act) that imposed sanctions on employers who hired immigrants, specifically, those who hired undocumented workers.¹² The legislation, in the form that it was passed, had a minimal effect on the illegal hiring practices of employers. The sanctions against employers were nominal, and over time it was clear that the major penalties fell on the undocumented worker.¹³ With little fear of the sanctions, and new fear of the undocumented workers, employers were able to exploit the undocumented worker on a larger scale.

By 2001, there was explosive growth in the number of immigrant workers employed in areas traditionally dominated by unions. At the same time, the number of workers who belonged to unions declined.¹⁴ The AFL-CIO realized that the growing number of immigrants working in the United States made it virtually impossible to protect American workers without addressing the problems also facing immigrant workers. Abuse of the immigrant labor force seriously undermined the efforts of native workers to obtain and retain their rights, as well as their efforts to equalize the balance of power between employers and employees in the workplace.¹⁵ If employers

ers' sense of racial solidarity was used to construct a class identity and to mobilize the white working class.

12. *Id.* at 1828. See David Bacon, *Union Turns to Immigrants to Revive Movement*, IPS-INTER PRESS SERVICE, May 11, 2001 (on file with the New York Law School Law Review), stating: "The law requires employers to keep records of workers' immigration status, and imposes fines — which are low and rarely collected — on those who hire the undocumented. The real impact of the law is on the workers, making it illegal for them to hold a job."

13. See Bacon, *supra* note 12.

14. See Crain & Matheny, *supra* note 11, at 1828, stating:

Projections of increasing diversity of the workforce attributable to immigration leave labor little choice but to organize immigrants, particularly Latino/as. In 1998, Latino/as constituted 10.4% of the labor force, and they are projected to make up 17.2% of the workforce by 2025. Immigrants are also heavily concentrated in areas of labor market growth, specifically the light manufacturing and service sector areas of the economy.

15. *Immigration Policy Threatening U.S. Economy, says study*, AFX NEWS LTD., May 4, 2004, available in LEXIS News database. "We know that our workplace rights, our eco-

could obtain uninsured, low-wage workers who tolerated unsafe working conditions for the sake of securing a job, there was no market incentive to remedy working conditions or increase wages for any employees. As a result, the AFL-CIO began to organize and educate both immigrant and native workers as a unified force and commenced a political initiative designed to change current laws affecting immigrant workers.¹⁶ By including immigrant workers under the AFL-CIO umbrella, all workers would benefit by strengthening their position in negotiations and enforcing their rights through litigation and other means.¹⁷

The AFL-CIO's effort to organize immigrant workers has resulted in a substantial increase in the number of immigrant workers who belong to labor unions.¹⁸ The Project is one example of how the AFL-CIO has evolved to include immigrant workers as part of the organized workforce.

To combat employers' practices of employing undocumented workers whom they can pay substandard wages, the Project has joined the initiative to repeal the 1986 Immigration Reform Act. The Project contends that the 1986 Immigration Reform Act, with its penalties directed primarily at the undocumented worker rather than the employer, is ineffective in deterring and penalizing the

conomic security, our future are linked to [that] of immigrant workers,' said AFL-CIO President John Sweeney." *Id.*

16. See Steven Greenhouse, *Immigrants Rally in City, Seeking Rights*, N.Y. TIMES, Oct. 5, 2003, at 33. AFL-CIO President John Sweeney explained that "[t]he struggle of immigrant workers is our struggle We believe, as Dr. Martin Luther King Jr. believed, that injustice anywhere is a threat to justice everywhere." *Id.*

17. See *Labor's Return; Unions See a Flurry of Organizing Effort*, THE PROGRESSIVE, Aug. 1, 1999, at 8, stating:

There are several reasons for labor's comeback: 1) concerted organizing drives by the big unions, brought on, in part, by the change in leadership at the AFL-CIO back in October 1995 when John Sweeney was elected president; 2) an influx of immigrant workers who are less reflexively hostile to union organizing than many of their North American counterparts; 3) the realization that corporations are grabbing more and more power; and 4) the recognition that unions are the best vehicle for workers to defend their rights.

18. *U.S.-Mexican Relations: the Unfinished Agenda: Hearing before the Subcommittee on Western Hemisphere, Peace Corps and Narcotics Affairs of the Committee of Foreign Relations, 107th Cong. 45 (2002)* (Statement of Barbara Shailor, Director, International Affairs Department, AFL-CIO) ("Last year, 10 percent of all union members were foreign born, roughly mirroring immigrants' share of the population overall.").

illegal employment practices of employers.¹⁹ Instead, the Project argued that the 1986 Immigrant Reform Act should be reformed to institute penalties for employers who violate labor laws by employing undocumented workers.²⁰

Currently, employers are regulated by the I-9 system, which prohibits “knowingly” hiring undocumented workers.²¹ The I-9 system requires that employers verify the eligibility of the worker by reviewing documents of citizenship such as passports.²² In its present form, this system is vulnerable and easily manipulated.²³ The Project has been lobbying for the implementation of a new system that would more directly target employers who knowingly recruit undocumented workers and participate in document fraud.²⁴

19. Mike Nixon, *Construction Industry Eyes Immigrants as Workers*, ST. LOUIS DAILY RECORD/ST. LOUIS COUNTIAN, Jan. 23, 2004 (News) (noting that the AFL-CIO supports “changes to immigration laws, including stiffer penalties for employers that take advantage of immigrant workers and streamlining the naturalization process so laborers entering the country through proper channels can get legitimate jobs”).

20. See Press Release, AFL-CIO, AFL-CIO Principles on Immigration: Ensuring Worker Rights And A Better Life For All Working Families (Dec. 19, 2002) (on file with the New York Law School Review).

21. *Id.* See also 8 C.F.R. § 274a.2 (2005).

22. See 8 C.F.R. § 274a.2.

23. See Press Release, AFL-CIO, *supra* note 20 (noting that the fines are small compared to the financial benefit of underpaying a worker, also the employer has to have “knowingly hired” and undocumented worker.)

An employer found to have knowingly hired, recruited or referred for a fee, or continued to employ, an unauthorized alien for employment in the United States shall be subject to an order to cease and desist from the unlawful behavior and to pay a civil fine. An employer can be fined \$250 - \$2,000 per unauthorized alien with respect to whom the FIRST OFFENSE occurred before September 29, 1999, and not less than \$275 and not exceeding \$2,200, for each unauthorized alien with respect to whom the offense occurred on or after September 29, 1999. An employer can be fined from \$2,000 - \$5,000 per unauthorized alien for a SECOND OFFENSE that occurred before September 29, 1999, and between \$2,200 - \$5,500 if occurred on or after September 29, 1999. An employer can be fined from \$3,000 - \$10,000 per unauthorized alien for each THIRD or SUBSEQUENT OFFENSE that occurred before September 29, 1999, and between \$3,300 - \$11,000 if occurred on or after September 29, 1999.

U.S. Dep’t of Homeland Security, U.S. Citizenship and Immigration Services Employer Information Bulletin 111 (Mar. 16, 2005), available at <http://uscis.gov/graphics/services/employerinfo/EIB111.pdf>. See generally 8 C.F.R. §274a.10 (listing penalties associated with violation of the regulations).

24. See Avendaño Denier, *Blueprint*, *supra* note 5.

In addition to introducing new plans and programs, and lobbying for those programs, the Project also actively campaigns against bills and legislation that would curtail the rights and liberties of immigrant workers. For example, the Project launched a nationwide initiative in opposition to the Clear Law Enforcement for Criminal Alien Removal Act (CLEAR), which would delegate the power to enforce immigration laws to local law enforcement agencies.²⁵ Local law enforcement's involvement in immigration enforcement will diminish the protections available to members of the immigrant communities.²⁶ For example, immigrants may be reluctant to contact the local police force because they fear deportation.²⁷ In addition, CLEAR would replace current civil remedies for immigration violations by making it a criminal offense to work without appropriate labor authorization and documentation.²⁸ This change in the law and the role of local law enforcement may lead to distrust and fear in immigrant communities and will undermine the AFL-CIO's efforts to educate and empower immigrant workers.

Immigrant workers often face complex legal problems involving their immigration status, and this can deter an immigrant worker from bringing a valid legal claim against her employer for abuse, back pay, or any other employment-related claim. The practice of immigration-labor law is new, unique, and is still in its formative stages; there are few lawyers who have the necessary expertise in both immigration and labor law to effectively further the interests and defend the rights of immigrant workers.²⁹ Among immigrant workers, the lack of understanding of American immigration laws is a substantial problem. The Project recently created a program that

25. See *id.* See The Clear Law Enforcement for Criminal Alien Removal Act (CLEAR), H.R. 2671, 108th Cong. (2003). CLEAR was introduced in the house again in 2005, see H.R. 2671, 109th Cong. (2005).

26. See Avendaño Denier, *Blueprint*, *supra* note 5.

27. Recently New Hampshire police have tried to use local law to combat immigration, but have thus far been told it is not in their powers. See Matt Murphy, *Judge Puts End to N.H. Immigrant Crackdown*, LOWELL SUN (Lowell, Mass.), Aug. 13, 2005, available at <http://www.newsdesk.org/archives/000278.php>.

28. *Id.*

29. Interview with Avendaño Denier, *supra* note 10. Ms. Avendaño Denier has been with the Immigrant Worker Project since December 2003 and has been directly involved in all aspects of the Project. *Id.*

addresses the absence of qualified attorneys and provides various legal services to immigrant workers and their families.³⁰

Beyond campaigning for legislation and providing legal services to individual immigrant workers, the AFL-CIO will sometimes assist in trials. For example, in *Hoffman Plastic Compounds, Inc. v. NLRB*,³¹ the union took an active role by advising the attorneys handling the case and by filing an amicus curiae brief with the U.S. Supreme Court.³² The union also coordinated the writing and filing process of amicus curiae briefs prepared by other organizations.³³ The issue in *Hoffman Plastic* was whether an undocumented alien could receive back pay.³⁴ The National Labor Relations Board (NLRB) originally determined that the plaintiff was fired for illegal reasons, unionizing, and that he was entitled to back pay.³⁵ The Supreme Court held that the award was “foreclosed by federal immigration policy.”³⁶ In its review of the case, the Court stated that deference should normally be given to the findings of the NLRB, but indicated that the present case was an exception.³⁷ Even though the Court did not rule in favor of the union, the AFL-CIO, by taking an active role, demonstrated its commitment to protecting and developing the rights of all immigrant workers.

The Project works with grassroots and immigrant support groups that assist immigrant communities.³⁸ It reaches out to com-

30. See Press Release, AFL-CIO, *supra* note 20.

31. 535 U.S. 137 (2002).

32. Brief for NLRB as Amici Curiae Supporting Respondents, *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002) (No. 00-1595).

33. See *e.g.*, *id.*

34. 535 U.S. at 140.

35. See *id.* at 140-41, stating:

[R]espondent Board found that Hoffman unlawfully selected four employees, including Castro, for layoff ‘in order to rid itself of known union supporters’ in violation of § 8(a)(3) of the National Labor Relations Act (NLRA) (citation omitted). To remedy this violation, the Board ordered that Hoffman (1) cease and desist from further violations of the NLRA, (2) post a detailed notice to its employees regarding the remedial order, and (3) offer reinstatement and backpay to the four affected employees (citation omitted). Hoffman entered into a stipulation with the Board’s General Counsel and agreed to abide by the Board’s order.

36. *Id.* at 140 (noting that Congress’s immigration policy was made clear “in the Immigration Reform and Control Act of 1986 (IRCA)”).

37. *Id.* at 142-43.

38. Interview with Avendaño Denier, *supra* note 10.

munity organizations such as the Workplace Project and Make the Road by Walking, as well as various garment workers' and taxi workers' groups, to build coalitions and offer support.³⁹ The Project also works with many community immigrant workers centers on organizing initiatives and on individual and class-action litigations.⁴⁰

To publicize immigration issues, the AFL-CIO sponsored the Immigrant Workers Freedom Ride (Freedom Ride), which was modeled after the Civil Rights freedom ride.⁴¹ The Freedom Ride was partly a response to the anti-immigrant atmosphere in the aftermath of the September 11th attacks.⁴² Freedom Ride buses carried immigrant workers from Boston, Los Angeles, Chicago, Minneapolis, Seattle, and Miami to Washington, D.C.⁴³ When the Freedom Ride reached the capitol, the immigrant workers lobbied members of Congress for immigration reform.⁴⁴ Through the Freedom Ride, the AFL-CIO fostered strong working relationships and created networking opportunities between the union and various community groups that work directly with immigrant workers, including religious, civil rights, and immigrant rights organizations.⁴⁵

39. *Id.* See Emily Stein, Organizational Profile, *The Workplace Project*, 50 N.Y.L. SCH. REV. 607 (2005-2006).

40. Interview with Avendaño Denier, *supra* note 10.

41. See JAMES PARK, AFL-CIO, IMMIGRANT WORKERS FREEDOM RIDE, http://www.aflcio.org/aboutaflcio/magazine/0903_iwfr.cfm (last visited Jan. 21, 2006). See also Francis Calpotura, *Riding With the Wind; Immigrant Rights Activists Travel the Deep South To Learn From the Civil Rights Movement*, COLORLINES, Spring 2004, at 5-7 (“[Thirty-eight] years later, 90 immigrants and their supporters, part of the Immigrant Worker Freedom Rides, reenacted the Pettus Bridge march, this time singing ‘We Shall Overcome’ and ‘Las Mananitas de los Inmigrantes’ and chanting ‘Somos Uno/We are One.’”).

42. See PARK, *supra* note 41. See also Calpotura, *supra* note at 41, stating:

“Sept. 11 created a crisis in immigrant communities,” says [Maria Elena] Durazo [president of HERE Local 11] in an interview. “Thousands of people lost their jobs and immigrants were branded as enemies. We wanted to provide a spark to promote unity between workers, and to make sure that no one gets left behind.”

43. See PARK, *supra* note 41.

44. *Id.* (noting that the lobbying efforts targeted immigrants’ rights to join a union, good working conditions, gain legal status, and access to health care).

45. See *id.*, noting:

In Houston, the local central labor council reached out to several immigrant and community organizations. As a result, “we are building ties with groups that have never had a relationship with the union movement before,” says Richard Shaw, secretary-treasurer of the Harris County (Texas) Central Labor Council. Throughout Maryland and Washington,

The Freedom Ride also raised awareness about pressing labor-immigration related issues such as education reform and motor vehicle laws that would restrict the issuance of driver licenses to immigrant workers.⁴⁶ The Freedom Ride presented a unique opportunity for both documented and undocumented immigrant workers to take an active part in the American democratic process.⁴⁷ The participants, having a personal stake in making their concerns known, played an active role in capturing the spotlight in the national political and social arena.

Looking forward, the Project will continue to work with union leaders and immigrant workers towards improving working conditions for documented and undocumented immigrant workers. The Project plans to continue its focus on those workers that most need support in their everyday labor struggles.⁴⁸ By attacking the problems of immigrant workers on multiple fronts, the Project attempts to improve on the lives of immigrant workers like Lucy Liu.

D.C., the new Freedom Ride served as a catalyst for a Labor in the Pulpits program at 125 religious services emphasizing immigrant rights over Labor Day.

46. See *id.* Andrea Cecil, *Support Rebuilds for Illegal Immigrant Tuition Bill*, THE DAILY RECORD, Oct. 1, 2003 (News); Oscar Avila, *Rough Ride on Licenses is Ahead; State debates immigrant bill*, CHI. TRIB., Nov. 5, 2003, at 1 (noting that a proposal to give licenses to undocumented immigrants, remains at “the top of the pro-immigrant agenda and was mentioned at nearly every stop of the Immigrant Workers Freedom Ride in October”).

47. See PARK, *supra* note 41, Laborers President Terence O’Sullivan stating: “The Immigrant Workers Freedom Ride is about standing beside each other and standing up for the founding principles of our country — that what matters isn’t where you’re from but where you’re striving to go, and that exploiting any group of workers is an attack on the living standards of all workers.”

48. See *id.*

