WE MAKE THE ROAD BY WALKING: IMMIGRANT WORKERS, THE WORKPLACE PROJECT, AND THE STRUGGLE FOR SOCIAL CHANGE

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Maria Luisa Paz, an undocumented1 woman who worked in a factory in her native Columbia, is employed by a commercial laundry, Sparrow Linens, together with 300 other workers from El Salvador, the Dominican Republic, and other Latin American countries. Their work consists of disinfecting, washing, pressing, and folding mounds of hospital linens. Paz’s job is to fold the sheets that come off of the presses. Although these damp sheets are scalding hot, she is rarely given anything to protect her hands. After a recent OSHA inspection, the company handed out a few pairs of thin, uninsulated gloves. In the room where she works, the temperature hovers at 100 degrees.

After a few weeks at this station, Paz’s gloves have holes burned in every finger and her fingers are covered with large watery blisters. Her shirt is splattered with blood from frequent heat-related nosebleeds, and her arms and legs are flecked with white chemical stains from her days in the washrooms. She is not alone in her injuries: in the past three months at Sparrow Linens, a man lost half of a finger in a washer door; another man was severely burned on the chest by chemical-filled water that had boiled over; and a woman fainted on the job from the heat and fumes.2

Efrain Sandoval, a farmer from Guatemala, is one of four dishwashers at the Starburst Diner. While he, the other dishwashers, the busboys, and the three prep and salad cooks are all Latino men, the people who fill the higher-paying jobs of head cook and waiter and waitress are all white and U.S. citizens. The dishwashers’ schedule is grueling: 11:00 a.m.

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1 This phrase is taken from the title of a book by Paulo Freire and Myles Horton, We Make the Road by Walking (1990), whose popular education theories are explained infra note 85.


1 In using the term “undocumented” instead of the pejorative term “illegal,” I refer to immigrants who are in the United States without permission to be here or who work without governmental authorization.

2 “Maria Luisa Paz” is a pseudonym for a worker who came to the Workplace Project for assistance. Although Paz’s country of origin and her employer’s name have been changed, all of the facts relating to her story are true. The experiences of “Efrain Sandoval” and “Raul Melendez” are composites, based on the stories of dozens of restaurant and landscape workers who have come to the Workplace Project.
to 12:30 a.m., seven days a week, with only a half-hour break—uncompensated—in each thirteen-and-a-half-hour shift. For this 91-hour workweek, they are paid $150 in cash and get no share of the tips, leaving them with an hourly salary of $1.65. On top of this, the head cook is endlessly abusive to the workers, shouting obscenities and threats whenever things heat up in the kitchen.

When Sandoval started working for Starburst four years ago, he was undocumented. After applying for political asylum two years ago, he received work authorization from the Immigration and Naturalization Service. Upon receiving his authorization, he brought his social security card and work permit to his boss and asked to be put on the books. His boss refused, saying, “There’s the door, if you don’t like it. I know a lot of people who would be interested in your job.” Over the past two years, Efrain has repeatedly asked to work under his valid social security number. However, after watching his boss fire other laborers who are authorized to work and hire more undocumented workers, Efrain has little hope that this is an option.

Raul Melendez, a university teacher in his native El Salvador, waits for work on the street corner in Franklin Square, Long Island every morning during the landscaping season, which runs from March through late November. In mid-summer, he arrives by 6:00 a.m. and joins sixty to seventy other Latino men sitting and standing along the curb. Some of them will find jobs that last the whole season; many more return each day in the hope of finding that day's work. On this day, when the first truck pulls up, “Nick’s Lawn and Garden” painted on its side, it is swarmed by twenty workers who stand in the middle of the busy street, jostling to convince the driver that they should be among the two or three picked for the job. Over the ensuing tumult, the wage negotiation can be heard: the driver starts at $50 for a day’s work but quickly goes down to $45 and then $40 when he realizes the demand. Even at the lowered rate, competition is fierce.

By 8:00 a.m., a third of the men have gotten work. The rest will wait until 11:00 or later, but few trucks pass by in the heat of day. Melendez—lucky this time—was hired for a few days of work trimming trees and cutting lawns in Great Neck, a wealthy town. His employer, TrimGreen Contractors, never asks whether he is authorized to work. The job with TrimGreen stretches to a week, and then two. Melendez begins to relax into the pace of the work, waiting for his first paycheck and hoping that the job will take him through the summer.

On the Friday of his second week, he is cleaning the grass out of the blades of a jammed mower. Suddenly free of the clog, the blades begin to spin, badly cutting his hand and severing his middle finger above the knuckle. His employer drives him to the hospital and leaves him at the
door, promising to return once he parks the truck. He never does. Melendez—still not paid for any of his work, and badly in need of workers' compensation for his injury—does not know the name of the man who employed him, the license plate number of his truck, or the company's address. TrimGreen is not listed in the phone book and has not registered with the Chamber of Commerce.

In the current hostile political climate, with immigrants as the chosen scapegoats for our country's economic and social woes, 3 public opposition to the exploitation of immigrants in the workplace is minimal. As the executive director of the Workplace Project (the Project), 4 an independent workers center in a Latino community on Long Island, New York, I work with people like Maria Luisa Paz, Efrain Sandoval, and Raul Melendez. Together, we are developing an organization of workers to challenge the dynamic of workplace exploitation faced by too many Latino immigrants. 5

This Article addresses the problems faced by immigrant workers on Long Island. Part I briefly examines the transition on Long Island from an economy based on manufacturing to one based on services, as well as the growth of the underground economy. Part II addresses the failure of government agencies, legal services centers, and unions to confront the problems faced by immigrant workers in this period of economic transition. Part III presents the Workplace Project model as an alternative to those institutions. Part IV offers a critique of the Project, focusing on the

3 All over the country today, immigrants are under siege. On the federal level, proposals to declare English the official and only language of the United States (Language of Government Act, S. 356, 104th Cong., 1st Sess. (1995)) and to make legal immigrants ineligible for public benefits, such as prenatal care, school lunches, and other social welfare programs (Personal Responsibility Act, H.R. 4, 104th Cong., 1st Sess. (1995)) are taken more seriously than ever before. On the state level, California passed Proposition 187 in November 1994. If permitted by the courts to take effect, Proposition 187 will ban undocumented children from public schools and prohibit undocumented immigrants from receiving state-funded social services. As of March 1995, New York, Virginia, Florida, Arizona, and Missouri have similar proposals pending in their state legislatures. Currently, undocumented immigrants cannot receive any federal benefits; state rules vary about which services they can receive.

Long Island is not immune to this trend. In 1994, Suffolk County passed a law entitled "America First," which attempted to eliminate non-citizens from all public benefits programs. Although the State Department of Social Services rejected the measure, the Workplace Project anticipates that it will be reintroduced in a slightly different form during 1995. Villages and towns on Long Island also have waged their own anti-immigrant campaigns. See, e.g., Diana Jean Schmoo, In Recession, Illegal Aliens Find a Cold Reception on L.I., N.Y. Times, Feb. 14, 1992, at B1; Letta Tayler, Melting Pot Rage: On Long Island, Simmering Anger over Undocumented Hispanics, NEWSDAY, Sept. 17, 1993, at 5.

4 See infra part III (describing the Project).

5 This Article will focus on the working conditions faced by Latino immigrants on Long Island. However, abuses similar to the ones detailed here are rampant among low-income working-class people of all races and ethnic backgrounds.
conflict between providing individual legal representation and organizing a community of workers. Finally, Part V articulates a practice-based theory of social change which may provide workers with methods to transform their own lives.

I. Context: The Transformation of a Sub/Exurban Economy and the Growth of the Underground Economy

Given its reputation as a white, homogeneous bedroom community for commuters to New York City, many people are surprised that Long Island is home to a center for immigrant workers. In fact, many parts of Long Island are racially and socioeconomically diverse. Long Island is host to a suburban—and, in places, exurban or "satellite"—economy that invites the participation of immigrant workers even as it exploits them.

In the popular imagination, especially that of the urban New Yorker, Long Island is a cultural wasteland of neat suburban lawns and tract housing, each holding a white family whose breadwinner commutes to Manhattan. The reality is quite different. Increasingly, many of Long Island's over 250 "hamlets" and "villages" are home to large communities of people of color, including Latinos, African Americans, and Asian Americans, many of whom also work on Long Island.

According to the U.S. Census, Long Island's white population declined by four percent between 1980 and 1990.7 In contrast, the number of Latino residents grew by 78.8% in Nassau County and 49.7% in Suffolk County, making Long Island home to more than 165,000 Latino residents, 6.3% of its total population.8 Community agencies estimate the total number of Latino immigrants living on the Island to be much higher, at approximately 250,000. These community agencies contend that cen-
sus-takers undercount Latinos as a result of language barriers and the undocumented immigrants' fear of having contact with the government.9

Many Latino immigrants on Long Island are from Central America, particularly El Salvador. The numbers of Salvadoreans swelled in the 1980s, as they were pushed to the United States by violent civil wars and pulled by the promise of service and manufacturing jobs. Relative to New York City, Long Island is safe and less expensive, making it an attractive option for these new immigrants.10 Long Island has become a center for Central Americans in the New York metropolitan area, and is home to more of them than New York City or any other nearby urban area.11

During the same period that Long Island's population became mul-
ticultural, it shifted rapidly from an economy with a strong manufacturing sector—based primarily on employment by major defense contractors such as the Grumman Corporation—to one based mostly on services.12 Due largely to the recession and cutbacks in military spending, Long Island lost more than 50,000 manufacturing jobs between 1985 and 1992.13 When Long Island began to emerge from the recession, gains in the

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9 See Beth Whitehouse, The New Long Islanders, NEWSDAY, July 12, 1994, at A7 (estimating the number of Latinos to be 250,000); see also Lenny Savino, English Classes Help Immigrants Settle In, N.Y. TIMES, Nov. 7, 1993, § 13LI, at 14 (mentioning that a public official estimates that the actual number of Hispanics living in Nassau County is 65% greater than the 77,386 figure noted in census data); Taylor, supra note 3, at 5 (reporting that Hispanic immigrant groups estimated that the 1990 census would under-
count people of Hispanic origin by close to 30%).

10 See Murray Polner, Immigrants Grab Toehold of American Dream, N.Y. TIMES, Nov. 15, 1992, § 13LI, at 1 (explaining that many immigrants say that they came to Long Island "because a family member or friend has passed the word that there is far less violence . . . and that jobs, as poorly paid domestic, factory and restaurant workers and gardeners, are readily available."); see also Mahler, supra note 6, at 21 (describing additional job-creation factors on Long Island: "The escalation of real estate values during the 1980s increased seniors' wealth while driving their children away. As a result, fewer children could or would provide services to their aging parents, so immigrants found work as homecare workers, companions, cleaners and groundskeepers. Second, as groups which controlled certain sectors of local economies aged and retired, new niches opened for immigrants. For example, the Long Island landscaping industry, dominated by two waves of Italian immigrants for most of this century, struggled to find enough workers in the late 1980s and resorted to hiring thousands of undocumented Salvadoreans.").


12 See H.J. Summings, LI Jobs Forecast: Slow Growth Planners: Most New Posts to be in Services, NEWSDAY, June 18, 1993, at 4; James MacCrate, Nassau and Suffolk County Outlook for Years Ahead, REAL EST. WKLY., July 20, 1994, at S2; McQuiston, supra note 7; Judy Temes, Next Generation Long Island's Technology Firms Build on Defense Work Brainpower, CRAIN'S N.Y. BUS., June 27, 1994, at 21; Ronald Weinger, The Route to LI Poverty, NEWSDAY, Oct. 23, 1994, at 44.

13 ABLI Economist: 'Hang on till June', REAL EST. WKLY., Feb. 10, 1993, at 6B. Long Island lost more than 40,000 defense industry-related jobs between 1985 and 1994, making reductions in defense spending during this period the primary catalyst for the shift from
service industry led the economic recovery, adding more than 10,000 jobs in 1993 alone. The many Long Island residents who work in New York City create a demand for low-cost workers who can take care of suburban lawns, homes, and children.

In our experience, the vast majority of Latino immigrants on Long Island work in five trades: landscape and small construction contracting; restaurant work; domestic service; building cleaning and maintenance work; and light manufacturing. As with much work done by immigrants around the country, these jobs belong, in varying degrees, to the underground economy. They are "underground" in the sense that they often take place outside the realm of the law. Employers are rarely registered with the appropriate authorities; many of them neither comply with labor laws nor pay taxes to the government; and often, they fail to participate in a manufacturing-based economy to one based on service. James Bernstein, The LI Brain Drain: Study: Little Aid to Laid-Off Defense Workers, NEWSDAY, Dec. 21, 1994, at A7.


15 The lives of immigrant workers do not lend themselves to easy documentation. Undocumented immigrants and other newcomers are notoriously under-represented in the Census count and in other survey attempts. See supra note 9 and accompanying text. In addition, statistical information about the industries that employ immigrants has not, to my knowledge, been collected or analyzed with the level of specificity needed to discuss, for example, the five industries that employ most Latino immigrants on Long Island. I have based my analysis on the Workplace Project's experience with over 750 immigrant workers, combined with census and other available data.

16 Landscape and small construction contracting include mowing lawns, trimming trees, mixing cement, paving driveways, and building pools. Restaurant workers include busboys, prep cooks, and dishwashers. Those who work in domestic service include live-in and daytime housecleaners and in-home childcare workers.

in mandatory insurance programs such as workers’ compensation or disability benefits.\(^{18}\)

Undocumented workers are the employees of choice in this sector and abuses run high.\(^{19}\) Few workers are unionized, and those that are frequently complain that their unions do nothing for them.\(^{20}\) Non-unionized workers have neither job security\(^{21}\) nor health benefits; their wages—when they are paid—are extremely low and their hours are long and irregular. Health and safety laws are violated with impunity, leading to high rates of injury and occupational disease.

Undocumented workers are further disadvantaged when they have only recently arrived in the United States, have rural backgrounds, and/or are illiterate.\(^{22}\) These factors, in combination with their fear of deportation and the terrifying repression that many immigrant workers have witnessed in their home countries,\(^{23}\) make it even harder for them to demand that they be treated with respect. As a result, the vast majority of jobs for immigrants in the underground economy are dead ends,\(^{24}\) rather than stepping stones to the American Dream.\(^{25}\)

\(^{18}\) "Membership" in the informal sector is not an all-or-nothing proposition. Many employers comply with some laws but not all, or have some but not all workers on the books. Likewise, the unstable nature of the underground economy means that immigrant workers often move in and out of different sectors, spending time working two or three jobs—one or more of which may be in the above-ground economy—followed by periods of under- and unemployment.

\(^{19}\) Documented immigrants also participate in the underground economy, but at a price—they must agree before they are hired to work off the books, or, ironically, to use a false name and a fake work permit. See MAHLER, supra note 17.

\(^{20}\) See infra part II.C.

\(^{21}\) Generally, an employer can fire an at-will employee "for good reason, bad reason or for a reason morally wrong, without incurring any liability." Payne v. Western & Atl. R.R., 81 Tenn. 507, 519–20 (1884), rev’d on other grounds, 179 S.W. 134 (Tenn. 1915). New York is one of few states that adheres to strict at-will doctrine. Thus, a nonunionized worker, who has had perfect attendance for 17 years, can be fired for requesting a sick day due to a 104° fever. An employer may also fire an employee (including a U.S. citizen or a legal permanent resident) who works off the books, simply because she asks to be put on the books. No broad common law cause of action for wrongful discharge exists in New York. Weider v. Skala, 609 N.E.2d 105 (N.Y. 1992) (defining a narrow public policy exception to the strict rule of at-will employment).

\(^{22}\) See MAHLER, supra note 17, at 23–26.

\(^{23}\) Many immigrant workers on Long Island are from Central America. See supra note 11.

\(^{24}\) See Foo, supra note 17, at 2209 ("There is no trade-off in job training, experience, improvement of English skills, or the possibility of future advancement, that might justify low wages or deplorable working conditions. Rather, sweatshops represent a life-long dehumanizing exploitation of people of color in the United States for the profit of brand-name manufacturers, restaurateurs, high-technology companies, and the meat and agricultural industries.").

\(^{25}\) But see Sontag, supra note 17, at 42 (quoting Mitchell Moss, Director of the Urban Research Center at New York University: "Is the underground economy good? I think it’s essential. It provides entry-level work through natural networks, families and countrymen, and teaches people to be entrepreneurial and capitalist on a small scale. Once they become
The globalization of the economy in the second half of this century has spurred growth of the underground economy. Strong international competition has caused economic restructuring on a national level, including a massive decline in large-scale manufacturing. The global economy is accompanied by "whipsawing"—when employers reduce wages by playing workers in a geographic area off workers in another area who are willing to work for less—and a rise in smaller enterprises and services, many functioning through extensive subcontracting. The economic factors underlying the growth of the underground economy are reinforced by lax government enforcement of already weak labor laws,\textsuperscript{26} the passage of laws such as the employer sanctions provisions of the Immigration Reform and Control Act (IRCA) of 1986, which encourage a two-tier labor system of "legal" and "illegal" workers,\textsuperscript{27} the availability of a cheap and often desperate labor pool, and the legitimization of anti-immigrant and racist sentiment in the current political climate. Taken together, these elements provide fertile soil for a mainstay of the underground economy: the small,

\textsuperscript{26} See infra part II.A.

\textsuperscript{27} Employer sanctions, codified in 8 U.S.C. § 1324a (1988), technically are directed at employers who hire undocumented workers. All employers must ask their employees to fill out an I-9 form, on which the employee lists the documents necessary to prove identity and authorization to work. Employers who violate these regulations are subject to civil fines that range from $100 to $1000 per individual for a paperwork violation, \textit{id.} § 1324a(e)(5), to $250 to $10,000 per undocumented employee, depending upon the number of repeat offenses. \textit{id.} § 1324a(e)(4). A "pattern or practice" of violations can result in criminal penalties as well. \textit{id.} § 1324a(f).

The real burden of employer sanctions, however, is not borne by employers. In practice, employer sanctions empower employers to terrorize their workers. Frequently, employers in the underground economy ignore sanctions or accept false documents when they hire their workers. Later, when immigrants attempt to organize or otherwise defend their rights, employers suddenly "realize" that they must comply with employer sanctions, and fire anyone who cannot provide valid documents to fill out an I-9 form. If the immigrants press matters any further, employers often threaten to turn them in to the Immigration and Naturalization Service. Thus, these sanctions have enabled employers to maintain an intimidated workforce and cheap labor pool whose members never complain to the authorities about mistreatment.

Employer sanctions also have resulted in significant discrimination against legal permanent residents, other legal immigrants, and United States citizens who look or sound foreign. See U.S. General Accounting Office, Immigration Reform: Employer Sanctions and the Question of Discrimination, GAO/GGD–90–62 (1990) (finding that "an estimated 891,000 employers (19\%) of the 4.6 million in the population reported beginning discriminatory practices because of the [employer sanctions] law" and concluding that employer sanctions have caused a "serious pattern of discrimination"). Other state and local studies, both governmental and privately funded, have come to the same conclusion. Carlos Holguín & Peter A. Schey, Employer Sanctions: The Volstead Act Revisited: A Call to Repeal Immigrant Employment Penalties (Center for Human Rights and Constitutional Law, Los Angeles, Cal.) (1989) (listing studies of discrimination due to employer sanctions law).
low-overhead shop or business that makes its profits on the backs of low-paid immigrant workers.

II. Inadequate Institutional Responses to Exploitation in the Underground Economy: Government, Legal Services, Unions

. A. Government Agencies

1. Overview

Prior to the passage of IRCA in 1986, immigrants, even those who were undocumented, and U.S. citizens enjoyed the same basic legal protection under labor laws.\(^{28}\) It is now unclear whether courts will continue to interpret those laws to protect undocumented immigrants.\(^{29}\) However, undocumented workers are still protected by the Fair Labor Standards Act, which includes minimum wage and overtime laws,\(^{30}\) and they have the

\(^{28}\) See, e.g., Sure-Tan Inc. v. NLRB, 467 U.S. 883 (1984) (undocumented workers who are not to be deported are entitled to full rights under National Labor Relations Act). But see Zapata v. Levine, 375 N.Y.S.2d 424 (3d Dep't 1975) (holding that undocumented immigrants may not collect unemployment insurance benefits; they are unable to meet the “available for employment” requirement because they do not have valid working papers).

\(^{29}\) See Del Rey Tortilleria, Inc. v. NLRB, 976 F.2d 1115 (7th Cir. 1992) (holding that undocumented workers terminated prior to passage of IRCA are not entitled to back pay under NLRA); EEOC v. Hacienda Hotel, 881 F.2d 1504, 1517 n.11 (7th Cir. 1992) (“[I]t may well be that [IRCA] changes the mix of policy considerations underlying the case law which supports our conclusion that undocumented employees may recover back pay in a Title VII action.”).


right to organize and unionize under the National Labor Relations Act.\textsuperscript{31} Undocumented workers can also bring employment discrimination suits if they are mistreated at work on the basis of gender, race, age, national origin, or other status categories in Title VII.\textsuperscript{32} Finally, undocumented immigrants have the right to collect workers' compensation if they are injured on the job.\textsuperscript{33}

Legislators and judges support these protections for undocumented workers partly because they believe that U.S. citizens would be seriously disadvantaged without them.\textsuperscript{34} A set of labor laws that did not cover undocumented workers would create a two-tiered system of "protected" and "unprotected" workers. The benefits of hiring undocumented workers not covered by overtime and minimum wage laws would far outweigh the cost, even if employer sanctions were enforced vigorously. Government agencies would have no right to inspect workplaces, and unions would have no right to organize workers. Under such circumstances, the underground economy would thrive.

Unfortunately, these protections have done little to weaken the existing underground economy. Federal, state, and local governments have no

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31 See NLRB v. Ashkenazy Property Management Co., 817 F.2d 74 (9th Cir. 1987), cert. denied, 501 U.S. 1217 (1991) (following Felbro, undocumented workers not found deportable by the INS are entitled to backpay when their rights under NLRA are violated); Local 512 Warehouse and Office Worker's Union v. NLRB (Felbro) 795 F.2d 705 (9th Cir. 1986). But see Del Rey Tortilleria, Inc., supra at note 29.

32 See Hacienda Hotel, supra at note 29 (following Felbro, supra at note 31); Rios v. Enterprise Association Steamfitters Local 638, 860 F.2d 1168 (2d Cir. 1988); EEOC v. Tortilleria (La Mejor) 758 F. Supp. 585 (E.D. Cal. 1991).

33 See Rivera v. United Masonry, Inc., 948 F.2d 774 (D.C. Cir. 1991); In Re Aguiar, 742 P.2d 709 (Or. 1987). In New York, workers' compensation is available to "all workers," including those who are undocumented. Interview with John J. Fanning, director of Workers' Compensation Outreach Services for the State of New York (Feb. 5, 1993 and Mar. 7, 1995).

34 IRCA's legislative history states:

It is not the intention of the Committee that the employer sanctions provisions of the bill be used to undermine or diminish in any way labor protections in existing law, or to limit the powers of federal or state labor relations boards, labor standards agencies, or labor arbitrators to remedy unfair practices committed against undocumented employees for exercising their rights . . . . As the Supreme Court observed in Sure-Tan, Inc. v. NLRB, 467 U.S. 833 (1984), application of the NLRA "helps to assure that the wages and employment conditions of lawful residents are not adversely affected by the competition of illegal alien employees who are not subject to standard terms of employment." 467 U.S. at 893.H.R. Rep. No. 682(I), 99th Cong., 2d Sess. 58 (1986).

coherent strategy for enforcing the rights of workers who participate in the underground economy,\textsuperscript{35} and they lack the political will to create one. Government agencies responsible for enforcing protective labor laws are sorely underfunded and may become even poorer in the years to come.\textsuperscript{36} Moreover, following recent regulatory changes and legal decisions, their enforcement power has plummeted.\textsuperscript{37}

Finally, several laws passed in the last decade, including employer sanctions on a national level and Proposition 187 in California,\textsuperscript{38} actively promote the creation of an immigrant workforce whose fear of losing its jobs and being deported are easily exploitable.\textsuperscript{39} This is no accident. Many in big business view the existence of a cheap, exploitable labor force as an economic necessity.\textsuperscript{40} Undoubtedly, this sector would oppose a crackdown on labor violations against immigrant workers.

In reviewing the Project's experience with local offices of government agencies, it is important to note the point just made: national and state governments have failed to enforce labor laws protecting immigrant workers. This overall failure should not be attributed to office-specific factors, such as slow processing or the attitudes of particular investigators,\textsuperscript{32}

\textsuperscript{35}See, e.g., Sontag, supra note 17, at 42 ("[C]ritics of the underground economy say that . . . [the] illegal market for . . . low-cost labor . . . is created by working parents who unintentionally devalue the job of child care. If the salary and conditions were better, Americans would gladly work in their homes, they say.").

\textsuperscript{36}For example, during the Carter administration, the federal Department of Labor had 1600 wage and hour inspectors. The Reagan administration cut this to 700 nationwide.Foo, supra note 17, at 2204. There are currently only 804 inspectors around the country. Alan Finder, Despite Tough Laws, Sweatshops Flourish, N.Y. TIMES, Feb. 6, 1995, at A1.

\textsuperscript{37}See infra part II.A.2.b.

\textsuperscript{38}Employer sanctions promote the creation of a secondary labor force by dividing workers into "documented" and "undocumented" tiers. Because it is illegal to hire undocumented workers, an employer can manipulate their status in order to create an intimidated and compliant workforce. An employer of undocumented workers can ignore their status until they assert their legal rights, at which time he can conveniently "discover" that they are undocumented and fire them. See supra note 27. Laws like Proposition 187, supra note 3, also contribute to the creation of a frightened secondary labor force. Scapegoated as the cause of America's economic problems, and excluded from public benefits, schooling, and health care, immigrants are treated as pariahs in the United States. For this reason, and because of their fear of deportation, immigrants are terrified to request the government for help with employment problems and thus rarely complain about exploitation at work.

\textsuperscript{39}See supra note 3.

\textsuperscript{40}For example, the Wall Street Journal has a long-standing policy in favor of open borders. The Simpson Curtain, WALL ST. J., Feb. 1, 1990, at A8 ("Our view is, borders should be open.").

Some conservative think tanks, such as Jack Kemp and William Bennett's Empower America, have also come to endorse a pro-immigrant view, with the basic tenet "immigrants yes, welfare no." Similarly, the libertarian Cato Institute lists the economic advantages of immigrants to the United States, including the immigrants' hard working nature, the high likelihood that they will start new businesses, and the fact that they tend to come to the United States in their "prime working years." The Cato Handbook for Congress 146-47 (Howard H. Crane et al. eds., Cato Institute 1995).
and excused by other factors, such as underfunding or employee burnout. These are merely symptoms of a larger problem.

With this overall framework in mind, the remainder of this section reviews some of the problems that the Workplace Project has had with local offices of government agencies.

2. Problems with Local Offices of Government Agencies

a. Slow Processing

Slow processing is a critical problem. For example, the New York State Division of Human Rights, the state agency charged with enforcing anti-discrimination laws, takes up to five years to investigate and decide discrimination cases. The U.S. Equal Employment Opportunity Commission ("EEOC") is more efficient, but it routinely sends New York cases back to the State Division of Human Rights under a work-sharing agreement between the two agencies. The State Department of Labor's office in Long Island is equally slow. The Department recently reported that a wage claim filed with them will not be investigated for eighteen months.

Such sluggish processing destroys any real possibility of enforcement. By the time the agency investigates the claim, the employer who is responsible for the violation may be out of business; evidence may have been lost; and memories may have faded.

b. Agencies Have Limited Enforcement Powers

Regulations and laws—some recent, some long-standing—have drastically reduced agencies' enforcement power. The restrictions imposed on the Occupational Safety and Health Administration ("OSHA") illustrate this point.

Paz asks Sparrow Laundry and the union to address her health and safety concerns. Her requests meet a stone wall. When she complains to the laundry owner and requests a transfer, the owner responds: "We

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41 This has been the experience of the Workplace Project and the New York office of Nine to Five. Nine to Five is a national organization that combats problems primarily affecting working women. Interview with Sharon Hoashing, executive director of Nine to Five, in New York, N.Y. (Mar. 12, 1995).


43 Letter from New York State Department of Labor, to Workplace Project client (May 25, 1994) (on file with author) ("[Y]our claim is awaiting assignment to an investigator since your employer has contested our collection letter. Due to the high volume of claims received, our current backlog for such assignment is approximately 18 months from the date a claim is filed.")
didn’t do anything wrong. Those health problems are your fault. OSHA inspected us and we hardly had to pay any fines.” Suddenly, she is asked to produce work authorization, and is fired when she cannot. When Paz contacts OSHA about filing a discrimination complaint based on a health and safety matter, the OSHA investigator strongly discourages her from going ahead, “because we can’t do much for an illegal like you.”

In contrast to other agencies, OSHA on Long Island has made a positive effort to reach out to immigrant workers through the Workplace Project. The organization has invited me to speak to its inspectors, and it frequently sends a Latina health inspector to our office to talk to workers in Spanish about health and safety.

However, despite its good will, OSHA’s enforcement powers are limited. On Long Island, OSHA has one inspector for every 4572 private sector workplaces. Moreover, fines are minimal and can often be “abated” if the condition is fixed before a certain date. Thus, employers have no incentive to maintain health and safety standards in the absence of an OSHA order to do so. Paying OSHA fines and penalties is often cheaper for an employer than complying with the law.

The office of the U.S. Department of Labor (“DOL”) suffers from similar problems. While somewhat swifter in its processing than the State Department of Labor, the U.S. Department of Labor is hampered by regulations that make it an impractical partner in the effort to combat abusive working conditions for immigrant labor. Reports to DOL about non-payment of wages could trigger a raid in addition to a wage inspection at a particular workplace, resulting in the deportation of the workers who stood up for their rights. Because of the risks that attend involving

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44The Occupational Safety and Health Act’s section 11(c) protects workers from retaliation when they exercise their health and safety rights. 29 U.S.C. § 660(c) (1988). Unfortunately, in practice 11(c) is rarely useful. The process of bringing an 11(c) claim is lengthy, the burden of proof on the worker is high, and claims are rarely decided for the worker. Less than 20% of the 11(c) cases filed have been resolved or prosecuted. New York Committee for Occupational Safety and Health, Tip of the Iceberg: Top OSHA Violators New York City, Long Island and Lower New York State, Special Report 14 (1993) [hereinafter NYCOSH Report]. Of 51 11(c) cases filed with the New York City office in 1991, not one was resolved in favor of the worker. Id. at 9.

45NYCOSH Report, id. at 3 (describing OSHA staffing as of 1993).

46See Michael Yates, Power on the Job: The Legal Rights of Working People 248–49 (1994) (explaining that employers have 15 days to appeal the citations, and that OSHA often meets with employers before hearing an appeal to try to reach a compromise: “OSHA fines have been pitifully small, and throughout the past decade, OSHA has favored a policy of ‘forced consultation,’ in which it has put its main focus upon discussions of health and safety violations with employers but limited fines.”).

47Federal regulations require employers to inspect “I-9” forms in order to verify each employee’s right to work and to report to the Immigration and Naturalization Service (“INS”) any irregularities with the forms or any suspicions they have about the presence of undocumented immigrants in the workplace. 8 CFR 274a.2(b)(ii) (1994).
DOL inspectors, the Workplace Project usually do not work with the U.S. DOL. 48

c. Bureaucratic Meddling

Finally, bureaucratic meddling poses a severe problem for immigrant workers, often making their contact with courts or government agencies a fruitless and frustrating experience. Agency workers often systematically block claims made by immigrants, effectively preventing these claims from being addressed by the proper authorities. While the attitudes of these individual workers do not necessarily reflect those of the agency as a whole, their front line jobs allow them to act as keepers of the gates, turning personal animosity against immigrants into policy. The following true stories illustrate this problem.

Efrain Sandoval goes from the Starburst Diner to the New York State Department of Labor to report his sub-minimum wages. There, he meets an investigator who speaks no Spanish and who tells him to come back “every other Friday” to find a translator. When Sandoval returns, he is told that he does not have adequate “proof” of his problem because he worked off the books; that he should have paid taxes and will be penalized for not having paid them (“think about it—maybe what you’ll owe the IRS is more than you’ll get from us”); and that the Department of Labor’s backlog for investigating cases such as his is eighteen months long. Discouraged, he leaves without filing.

This intake procedure at the Hempstead office of the New York State Department of Labor seems designed to discourage immigrants from filing claims for nonpayment of wages. 49 A Spanish-speaking interviewer is only

48 The EEOC is also hampered by a series of legal cases requiring an increasingly burdensome standard of proof for plaintiffs who wish to prevail in discrimination cases. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981) (holding that defendant bears only the burden of explaining clearly the nondiscriminatory reasons for its actions if the plaintiff in a Title VII case has proved a prima facie case of employment discrimination); McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) (holding that complainant charging racial discrimination in a Title VII employment claim has the burden of proving by the preponderance of the evidence a prima facie case); see also Washington v. Davis, 426 U.S. 229 (1976) (finding that facially neutral laws are not unconstitutional solely because they have a racially disproportionate impact. “[L]aw[s] claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose.”); cf. Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) (“[W]hen a plaintiff in a Title VII case proves that her gender played a part in an employment decision, the defendant may avoid a finding of liability by proving by a preponderance of the evidence that it would have made the same decision even if it had not taken the plaintiff’s gender into account.”).

49 We have no evidence to show that this attitude is particular to immigrants. It is possible that, because of the way that performance reviews are done—for example, by
available for three hours once every two weeks. Moreover, because no one who answers the phone—if it is answered at all—speaks Spanish, it is impossible for Spanish-speaking workers to learn the hours of the Spanish-speaking interviewer. The principal interviewer always asks a worker who comes in to file a complaint if she has paid her taxes. If the answer is no, he tells the worker that it is not worthwhile to pursue her claim because she will owe as much in taxes as she will receive in back wages. He also strongly discourages workers who have worked off the books, including all domestic workers and most landscapers, from filing claims. He requires letters from witnesses who worked alongside the claimant in all cases, making it impossible for almost any domestic worker in a private home to file. Finally, he often requests proof of authorization to work, even though the Department of Labor's official policy is to accept cases from undocumented workers. Through such “enforcement” procedures, the state Department of Labor effectively turns a blind eye to the entire underground economy, the arena of the greatest labor abuses.

Immigrants have experienced similar problems with the Nassau County Commission on Human Rights, the local agency that accepts discrimination claims.

After learning that a case filed with the EEOC or the New York State Human Rights Commission would take three to five years to be heard, Diomedes Sanchez brought his case of race and age discrimination to the Nassau County Human Rights Commission in August, 1994. When he arrived, no one was available to help him file his complaint in English. The friend who accompanied him and helped to file the complaint failed to document the extent of the abuse and discrimination Diomedes suffered, noting only that Diomedes had been denied vacations because he was Mexican. In addition to suffering discrimination while he was working, Diomedes had been fired from his job, treatment which he attributed to his age and his nationality. Six months later, he was called to the Human Rights Commission for an “investigative conference.” He was told that the Commission would not provide him with an interpreter and that he had to bring his own. When he did, the interpreter was forbidden from providing simultaneous interpretation of the proceedings. Instead, she was permitted to summarize briefly at the end of the employer’s testimony, and was directed not to translate the investigator’s questions to the employer or certain things that the employer had said.

taking into account numbers of cases successfully closed—or for some other reason, the inspectors are reluctant to take a case from any claimant, immigrant or U.S.-born, that they do not see as easy to win. On the other hand, racism and anti-immigrant sentiment may play a significant part in inspectors’ snap decisions about how to treat individual claimants.

50 “Diomedes Sanchez” is a pseudonym for a real worker.
We later learned that the Commission has interpreters, but that this particular investigator had arbitrarily denied Sanchez access to one.51

B. Legal Services

When government agencies fail to fulfill their obligations, legal services centers are often the first, and sometimes the only, organizations to challenge them. However, this is rarely the case in the area of immigrant workers’ rights. The law prohibits the Legal Services Corporation from assisting immigrants who are not in the country legally,52 and yet not surprisingly, undocumented workers face the most frequent and the most serious problems. Moreover, legal services offices, most funded by the federal government, have not made employment law a primary area of focus.53 While some legal services offices in New York City offer assistance in one or two employment areas, few, if any, have units devoted to enforcement of workplace rights.54 Nassau and Suffolk Legal Services, the only Legal Services Corporation office on Long Island, does not offer assistance with labor or employment problems.55 Finally, immigrants who labor in suburban and exurban settings often fall between the cracks of

51 We have experienced frequent “bureaucratic disentitlement,” Gary L. Blasi, What’s a Theory For?: Notes on Reconstructing Poverty Law Scholarship, U. MIAMI L. REV. (forthcoming 1995) (manuscript at 9–10), in Small Claims Court in Hempstead as well. We are in constant conflict with the head window clerk, who has told us that he sees it as his mission to “keep people like you from manipulating the system.” Judges, too, have taken it upon themselves to tell an undocumented worker represented by our office that she has no right to bring a claim, or that they will report her to the Immigration and Naturalization Service if she does not settle. (Confidential client records on file with author.)

52 45 CFR §§ 1626.3–.4 (1994). Legal services organizations that receive funds from the Legal Services Corporation are prohibited from organizing; consequently, these organizations are unable to make a real impact in labor situations. 45 CFR § 1610.1(g) (1995).


54 Only one legal services office in New York City, in Queens, consistently represents plaintiffs in hearings for unemployment benefits and workers’ compensation. Telephone Interview with Jackson Chin, legal director, Center for Immigrant Rights, N.Y. (Apr. 25, 1995).

the legal services system. The federal government is reducing its budget for legal services and state and private funds are limited. As a consequence, legal services offices in suburban and new exurban areas either do not exist or lack adequate staff.

C. Unions

After his failed visit to the Department of Labor, Sandoval and a few of his co-workers at the Starburst Diner decide to do something else about their abuse. Although they are afraid of being fired, they approach a friend who is part of a union at his job and make a contact with the union representative. That union is not interested in representing them, nor are either of the other two unions they subsequently contact. According to the union’s calculations, the “shop” is too small, the workers’ mixed immigration status too risky, the front- and back-of-the-shop jobs too divided by race and class to make an organizing drive worthwhile.

Unions and immigrant workers have a long and combative history. Although the U.S. labor movement was in many ways built by immigrants, it has often been anti-immigrant in its stated policy. In looking


57 See, e.g., Wayne Moore, Improving the Delivery of Legal Services for the Elderly: A Comprehensive Approach, 41 EMORY L.J. 805, 852 (1992) (reporting that due to funding cuts, legal services are consolidating rather than expanding their offices); Ronald H. Silverman, Conceiving a Lawyer’s Legal Duty to the Poor, 19 HOFSTRA L. REV. 885, 938 (1991); see also Committee to Improve the Availability of Legal Services, Final Report to the Chief Judge of the State of New York, 19 HOFSTRA L. REV. 755, 780 (1990) (explaining that the concentration of voluntary legal services in New York City does not meet needs in suburban and rural areas).


59 In the late 19th century, the leadership of the craft unions waged a series of notorious anti-immigrant campaigns. Beginning in 1870, and continuing through the early 1900s, they called repeatedly for a ban on Chinese immigration, supporting the Chinese Exclusion Acts and using Chinese workers as scapegoats in their publicity and organizing. For detailed histories of unions’ anti-Chinese stance, see PETER KWONG, CHINATOWN,
at the reasons why unions have largely failed to adapt to changes in the economy, however, it would be a mistake to focus only on their relations with immigrants.

Analysts, scholars and labor activists concur that unionism in the United States has declined drastically since its peak in the middle of this century. They propose many different explanations for this national downslide, including the decline of manufacturing and the rise of the service sector as the country's principal employer, the internationalization of the economy, and the weakening of the legal right to unionize. In the case of immigrant workers, these factors are exacerbated by language and

NEW YORK: LABOR & POLITICS, 1930–1950 (1979); MINK, supra note 58, at 71–112. In 1887, the American Federation of Labor (AFL) leadership actively supported the Lodge Bill, which called for a literacy test to be applied to all immigrants in order to screen out "undesirable" Southern and Eastern Europeans. See Gobel, supra note 58.

In recent years, the AFL-CIO leadership has supported sanctions against employers who hire undocumented immigrants. See, e.g., Thomas R. Donahue, U.S. Workers Should Have First Claim on American Jobs, 19 INTERFACE 6 (1990).

Widely credited with increasing discrimination against immigrants nationwide, employer sanctions ironically (and predictably) made union organizing a much more difficult task. Before employer sanctions, an employer had no legal reason to inquire into her employees' immigration status. Firings of undocumented workers who tried to organize, or who demanded minimum wage, were treated as the discriminatory and illegal acts that they were. Since sanctions were passed, unscrupulous employers have felt free to ignore the law as long as doing so served their purposes. See supra note 27.

Figures kept by the U.S. Department of Labor, Bureau of Labor Statistics, show that only 15.8% of workers in the United States were union members as of 1993, as compared to a high of 35.5% of workers unionized in 1945. DIVISION OF DEVELOPMENTS IN LABOR-MANAGEMENT STATISTICS, U.S. DEPARTMENT OF LABOR, UNION MEMBERSHIP DATA FROM THE NATIONAL DIRECTORY SERIES tbls. A, C (1994).

Unionization rates in the New York City metropolitan area are much higher than the national average, but much of this is due to the large number of unionized public employees. Statistics for the New York Metropolitan CMSA (including Long Island, northern New Jersey, and southwestern Connecticut) show an overall unionization rate of 26.8% in 1993—with 17.4% of the private sector employees belonging to unions—as compared with 70.2% of public sector employees. BARRY HIRSCH & DAVID MACPHERSON, UNION MEMBERSHIP AND EARNINGS DATA BOOK 1993: COMPILATIONS FROM THE CURRENT POPULATION SURVEY tbls. 9A, 9B (Bureau of National Affairs ed., 1994).

Because the National Labor Relations Board, the body in charge of overseeing union elections, works very slowly, employers can use the appeals process as an endless delaying tactic, buying time in which to identify and to fire union supporters and to intimidate workers who are on the fence. This subterfuge is possible because sanctions for firing union supporters are so weak. It is cheaper for a company to fire union supporters and to be found guilty of unfair labor practices than it is to recognize the union. At most, an employer who is found guilty has to reinstate the pro-union worker and pay back wages. However, because the NLRB process is so lengthy, it is likely that the unionization campaign will long be over by the time the worker is back on the job. PAUL WEILER, GOVERNING THE WORKPLACE: EMPLOYEE REPRESENTATION IN THE EYES OF THE LAW (1993); see also CHARLES B. CRAVER, THE POST-INDUSTRIAL AMERICAN LABOR MOVEMENT: CAN UNIONS SURVIVE? (1993); THOMAS GEGHEGAN, WHICH SIDE ARE YOU ON?: TRYING TO BE FOR LABOR WHEN IT'S FLAT ON ITS BACK (1991); MICHAEL H. LEROY, THE POST-INDUSTRIAL AMERICAN LABOR MOVEMENT: CAN UNIONS SURVIVE? THE REJUVENATION OF THE AMERICAN LABOR MOVEMENT, 62 GEO. WASH. L. REV. 486 (1994) (reviewing CRAVER, supra).
cultural barriers that most unions have been slow to bridge, widespread subcontracting in jobs held by immigrants, the undocumented status of many immigrant workers, and the exclusion of jobs held largely by immigrants (such as domestic and farm work) from NLRA coverage.

In addition to the factors listed above, the rise of "business unionism" also explains in part why unions have declined in the United States. In An Injury to All: The Decline of American Unionism, Kim Moody argues that business unionism is largely to blame for the labor movement's current woes. Unions were at their peak after World War II, having built a strong base through concentrated organizing efforts in the 1930s and 1940s. The social contract between unions and employers, which tied wage increases to profit gains, worked well during this period. Through the 1960s, the United States was the dominant world economic power and profits, as well as wages, rose regularly.

Lulled by the sense of security induced by this successful compact, and strongly influenced by the red-baiting McCarthyism of the period, unions gradually gave up their broader social vision and emphasis on


62 For example, in the garment industry, large and well-known companies such as Esprit, Jessica McClintock, the Gap, and Levi Strauss regularly farm out cutting and sewing jobs to sweatshops. Often, there are two or three links in this chain, with subcontractors themselves subcontracting to even smaller and more fly-by-night operations. The workers at the bottom of this chain are paid subminimum wages for long hours of work, if they are paid at all. Although the large manufacturers directly profit from the low wages that these workers earn, they have no legal liability. The extensive use of subcontracting makes identifying and organizing against the "real employer" very difficult. For descriptions of these practices, see Foo, supra note 17, at 2179, 2185–88; Laurie Udesky, Sweatshops Behind the Labels, NATION, May 16, 1994, at 665. For a description of a campaign against Jessica McClintock by Asian American women not paid for work that they performed for one of the company's subcontractors, see Gary Delgado, How the Empress Gets New Clothes: Asian Immigrant Women Advocates vs. Jessica McClintock, Inc. (1994) (paper, on file with author).

In the janitorial business, such arrangements are also common. Since the early 1980s, companies and governments have contracted out their cleaning contracts and hired the lowest bidder, rather than hiring an in-house cleaning staff; in-house staff would be considered employees of the company and, thus, eligible for the benefits that attend jobs at a large business such as Apple Computers, Inc. or in a government office. The resulting low-wage, low-skill work often is done by immigrants and African Americans. For a description of this industry in California's Silicon Valley, see Zlouniski, supra note 17, at 2311–22.

The Service Employees' International Union (SEIU) Justice for Janitors Campaign, uses aggressive organizing techniques, media campaigns, and community support in its efforts to organize such workers. See infra note 67.


organizing, and focused instead on consolidating their economic gains.\textsuperscript{65} This shift in focus was accompanied by increasing bureaucratization of the union structure, with members relying on paid business agents to defend them, rather than on mobilizing themselves as rank and file workers. Employers responded to the rise of global competition in the late 1960s by breaking the compact and going on the offensive against workers. The bureaucratized unions were not prepared to organize a response and their subsequent decline was rapid.\textsuperscript{66}

Unions today act as brokers of labor and sell workers at the best price. Several unions have successfully used creative organizing techniques in campaigns targeted at the industries in which immigrants work,\textsuperscript{67} but these techniques are used with the specific goal of winning a better contract. Unlike their predecessors in the early 1900s, unions no longer envision the creation of a broad working-class movement to achieve social justice. Instead, many unions concentrate on collaborating with management, in weak efforts to stem their declining leverage.\textsuperscript{68}

As the most recent wave of workers in need of an active labor movement, immigrants are badly hurt by the business unionism approach to labor organizing. One union’s indifference to the needs of its members is evident in a closer look at Maria Luisa Paz’s situation.

\textsuperscript{65}See, e.g., Sidney Lens, The Crisis of American Labor 211–12 (1959) quoted in Moody, supra note 64, at 60. Lens states that

\texttt{[t]he transformation of “social unionism” has been subtle but extensive. In both its moral overtones and its intrinsic philosophy it has tended to blend with the very forces of Big Business which it fights so steadily on the narrow economic front. Instead of remaining a maverick force within the social stream, as it has grown older, it has become “responsible,” sluggish toward new ideas, legalistic rather than militant, more conformist rather than anti-conformist.}

\textsuperscript{66}See Moody, supra note 64, at 17–146; Steve Downs, Why the Jobs Moved but the Unions Didn’t: Capital’s Restructuring and Labor’s Crisis, Solidarity, Jan. 1994, at 9.

\textsuperscript{67}For example, the Service Employees’ International Union’s Justice for Janitors Campaign has bypassed NLRB election procedures, winning recognition and contracts from employers through a multi-city campaign which included alliances with community groups and creative organizing techniques. Other immigrant workers have organized their own unions, without the assistance of a large international union. The largely undocumented immigrant drywallers in California staged a startlingly successful strike against the powerful California home construction industry without the backing of a major union, although other unions sent assistance once the strike began. José De Paz, Organizing Ourselves: Drywallers’ strike holds lessons for the future of labor organizing, 20 Lab. Res. Rev. 25 (1993).

\textsuperscript{68}The “Team Concept” and “Total Quality Management” are two names for such programs. For an extensive critique of such labor/management efforts and their negative effect on working conditions, see Labor Notes (a monthly magazine published in Detroit), and their series of publications analyzing such efforts and explaining how to fight them, including Working Smart: A Union Guide to Participation Programs and Reengineering, and Mike Parker & Jane Slaughter, Choosing Sides: Unions and the Team Concept (1988).
Sparrow Laundry is unionized, but Paz’s union representatives and shop stewards do not speak Spanish. The workers talk about the union being “vendida,” or paid off by the employer, and a look at the contract supports their claim. Starting wage is $4.35 an hour, ten cents more than the legal minimum. Raises are between twenty and thirty-five cents per year and have been waived by the employer and the union in past years. Contract protection of the workers’ health and safety is limited to a sentence which recites that workers are entitled to conditions that comply with the Occupational Safety and Health Act. When Paz brings the problems she is facing to the union’s attention, they blame her for being careless, and defend Sparrow’s owners as being “in compliance with health and safety laws.” After she is fired, they refuse to pursue her grievance.

On Long Island, unions with thousands of Latino members frequently write their contracts only in English, and do not employ field personnel or organizers who speak Spanish. Union efforts to communicate with their immigrant members are often so limited that workers do not know which union they belong to or the name of their representative. Many cannot recall being told that they have a contract or how to enforce their rights if they are violated. Under these circumstances, it is nearly impossible for a worker who does not speak English to file a grievance with her union.

In the worst-case scenario, unions and employers work together to exclude immigrants entirely. For example, in 1993, undocumented Guatemalan workers from a candy factory on Long Island came to tell us that their employer required them to change names every six months or be fired. This rule arose from the union contract, which gave new workers the right to join the union after six months. The union looked the other way.

The rise of the underground economy and business unionism, coupled with a lack of government will to create or enforce protective labor laws, contributes to the exploitation of immigrant workers. Independent workers centers, developing around the country, are building a response to the attack on the multicultural working class, caught in a violent transformation of the economy with little institutional protection or organizational base. The following section describes the experiences of the Workplace Project, one such workers center.

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69 Cases on file with the Workplace Project.
III. The Workplace Project Model

A. Description

I began building the Workplace Project in 1992 as an organization through which Latino immigrant workers on Long Island could address the myriad problems that they face at their jobs and in their communities. The Project, also known as "Centro de Derechos Laborales," is now one of a small but growing number of workers centers around the country.

Workers centers are community-based membership organizations that organize workers to fight widespread labor exploitation. Workers centers

70I founded the Workplace Project with a grant from the Echoing Green Foundation. Since 1991, Echoing Green has given out two-year seed grants of $25,000 per year to law school graduates and others who want to start their own organizations or projects within existing organizations. These grants, as well as those given by Skadden, Arps, Slate, Meagher & Flom since 1989 and the National Association for Public Interest Law since 1992, have made creative lawyering for social change a viable possibility for many law school graduates.

From the mid-1980s through 1992, I worked with Central American and other immigrants in Massachusetts, Florida, and Texas. From 1985 to 1989, I worked at a nonprofit organization called Centro Presente in Cambridge, Massachusetts. Initially, my work focused on individual asylum cases. However, this approach soon frustrated me because it prevented us from confronting the multiple problems faced by Central American immigrants. In 1987, I began working with the same group as a legal advocate and organizer, addressing the aftereffects of the employer sanctions provisions of the Immigration Reform and Control Act of 1986 (IRCA). Through my work, I visited over 100 factories in an attempt to prevent employers from undertaking layoffs and to talk to their workers on the shop floor about their rights.

These experiences gave me insight into the otherwise hidden workworld of immigrants. In the chicken-plucking plants and casket-building factories, on pillow-stuffing assembly lines and at candy-making machines, I saw the low wages, backbreaking work, and endless abuse that immigrants suffer daily. Few organizations addressed these problems, and even fewer gave immigrants roles other than as passive recipients of legal or social services. Conversations with hundreds of immigrants between 1985 and 1992, in addition to my own experiences, convinced me that a workers organization in the Central American immigrant community would serve a desperate need.

71In formulating the plan for the Workplace Project, I was acutely aware of my own limitations as an "outsider" to the community that the Project would serve, as a result of my race, class, and cultural background. I saw myself as a person with a set of skills that included legal training, fundraising experience, fluency in English and Spanish, and past work with Central Americans in this country. In my view, these skills would help me lay the groundwork for an organization that could then be developed by people from the community.

My use of the single term "community" to describe Central Americans or immigrant workers on Long Island and the idea that I am an "outsider" to this "community" are in some ways too simple. Even within a very specific subset of people—such as male immigrants to the town of Glen Cove, Long Island, originally from Polorós, Department of La Unión, El Salvador—there are vast differences in political outlook, former occupation and class, and religion. Although these men may feel similarly about the town government of Glen Cove and its attempts to rid the town of Salvadorans, they may have very different views about participating in a strike for better wages. These differences make it impossible to talk honestly about "community" without reference to the purpose for which the community has developed.
organize at a grassroots level, across trades and industries, in communities of working-class people. In addition to confronting systematic exploitation in the workplace, the centers also focus their attention on the economic, social, and political concerns of their members. These centers are part of an effort to build a new labor movement, to lead the fight against exploitation of immigrants and other working-class people.72

Currently, the Project works in the Latino community. For the Project's first two years, we worked exclusively with Central Americans. As the Workplace Project grew, we expanded our work to the entire Latino community, because we realized that immigrants from many Latin American countries were working side by side all over Long Island; checking passports at our center's door would only reduce the potential for solidarity in the workplace. We chose not to work with all workers, because the Project gains strength from having deep roots in a single community, creating the potential for effective alliances with other communities. Additionally, we wanted to ensure that our ambition did not outstrip our resources.

The Project is located in the center of Hempstead, a poor and working-class town of about 50,000 people—mostly African American and Salvadoran—with a smattering of older white people and immigrants from other countries.73 Hempstead has one of the largest communities of Latino immigrants on Long Island.74 The Workplace Project office is in a three-story building behind the state district courthouse. The building sits

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72 When I began exploring ideas to develop the Workplace Project, I learned much from the model used by established workers centers such as the Chinese Staff and Workers' Association in New York's Chinatown and La Mujer Obrera in El Paso, Texas. These centers emphasize grassroots organizing in the context of a worker-led center.

Other workers centers around the country include: Asian Immigrant Women's Advocates and Korean Immigrant Worker Advocates in California (working with Korean and Chinese women); Southwest Florida Farmworker Project in Florida (working with Haitian, Guatemalan, and Mexican farmworkers); Immigrant Workers' Resource Center in Massachusetts (working with Haitian and Latino workers); Chinese Staff and Workers' Association, Cooperativa de Trabajadores Agricolas (working with Latino farmworkers), the Latino Workers Center, and Sakhi for South Asian Women in New York; Center for Women's Economic Alternatives (working with African American women from the chicken processing industry) in North Carolina; Centro del Obrero Fronterizo/La Mujer Obrera (working with Latina women on the U.S./Mexico border) in Texas; and Appalachian Women Empowered (working with white women) in Virginia.

In July 1994, these workers centers (including the Workplace Project) formed a national organization, the National Consortium of Independent Workers Centers. This Consortium has had two organizing meetings in September 1994 and in February 1995. The Consortium's goal is to support local centers and to promote the model nationally as part of an effort to build a new labor movement. Consortium of Independent Workers' Centers, Workers' Centers and the New Labor Movement (Feb. 1995) (position paper, on file with author).


74 Id. tbl. 8.
in the middle of a string of Salvadoran-owned businesses and is well-known to the Latino community. It is home to several lawyers that serve the community as well as the Central American Refugee Center (CARECEN), a nonprofit legal services center which sees approximately 8000 Central Americans with immigration questions each year.

For the Workplace Project's first year of operation, I was the sole staff person based in the office of CARECEN. During the second year, I raised sufficient funds to hire Omar Henriquez, a Salvadoran man and fifteen-year resident of Long Island, as a full-time organizer. By the end of the second year, we moved the Workplace Project to a new office and became an independent nonprofit corporation with a membership and board of directors made up entirely of immigrant workers. In this, our third year, the center will be hiring a second organizer to focus on the popular education of women workers.

During the first two years of its existence, we thought of the Workplace Project as housing three distinct programs: (1) a legal clinic for immigrants with labor problems; (2) a community outreach and education program on workers' rights; and (3) an organizing project. We have come to realize that this is not how we want the Project to function. Instead, we now see organizing immigrant workers as both our end goal and our core strategy. Our community education programs and legal clinic are part of this organizing effort. Both of these programs are designed to deepen workers' involvement in the Workplace Project and their analysis of the position of immigrants in the United States economy. As a whole, the programs support and train workers as they turn these analyses into strategies for change.

1. Labor and Community Organizing Program

The Project has two goals for its organizing program. The first is to build an active, grassroots organization that is run democratically by low-income immigrant workers. Because of this, the Project has an all-worker membership from which the board of directors is elected as well as several worker committees. We see this organizational development.

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75 We were very fortunate to be able to work with CARECEN during our first two years. With generosity and warmth, CARECEN initially included me and Omar Henriquez on their staff. At the same time, they supported the Workplace Project's eventual decision to move to separate offices and become financially independent.

76 As of September 1995, Rhina Ramos, a graduate of Hofstra Law School, will join the staff to start a worker training program called 'PODER' (meaning both "power" and "to be able" in Spanish). Her salary will be paid by a Philip M. Stern-NAPIL Fellowship. Five community volunteers currently supplement the paid staff. All staff and volunteers are bilingual in Spanish and English.

77 See infra part V.

78 While parts of "organizational development" and our other programs might also be referred to as "empowerment," I have never been fond of that word. It seems to imply
work as an essential component of our second goal, mobilizing workers for structural change.

As part of the organizational development work, we sponsor a central workers committee, C-POL (the "Committee for Labor Organizing" or "Comité Pro-Organización Laboral" in Spanish). This group was founded in order to promote the education and organization of other workers by workers attending our Workers Course. The C-POL has developed educational events for community members in churches and other gathering places. The members of C-POL also actively participate in the planning and execution of Workplace Project events such as marches, dances, and organizing campaigns.

Although we encouraged women to join C-POL from the beginning, few did. Those who came to meetings felt uncomfortable and soon dropped out. In the summer of 1994, a group of women who had recently graduated from the Workers Course formed a women workers committee, Fuerza Laboral Femenina (Women's Labor Force). The committee met several times, but was divided on whether or not to merge with C-POL or remain a separate group that would focus exclusively on the needs of women workers. They voted, in the end, to join C-POL. When the first joint C-POL/Fuerza meeting fizzled, Fuerza also disbanded as a regular committee.

In general, we have found that men are much more likely than women to participate in our organizing and educational efforts. We attribute this trend to a variety of factors. First, compared to men who tend to work either in large factories or as landscapers waiting on a crowded street corner for work, immigrant women often labor in isolation. For example, many women are domestic workers or sew piece-work at home. Their isolation makes outreach difficult. Second, women carry the double load of working outside the home and keeping the family together, leaving them too exhausted to take on other responsibilities. They may feel uncomfortable about bringing their children to a meeting. Husbands and boyfriends are often opposed to their wives' and girlfriends' participating in activities outside the family. Moreover, many women who neither drive nor have access to a car may feel unsafe waiting at a bus stop in Hempstead at night. Third, the immigration patterns in the Central American community also contribute to the predominance of men in organizing activities. Because men usually migrate first, their numbers far exceed those of the women. Because women face significant barriers to participating in organ-

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that power can be given by one person who has it to another who does not without reference to all of the structural impediments to poor people's use of that power. It has become fashionable recently to use the phrase "leadership development" instead of "empowerment," but this term also begs the question of which leaders are developed and for what purpose. See, e.g., Delgado, supra note 62, at 21.

79 See infra part III.A.2.b.

80 Mahler, supra note 6; MAHLER, supra note 17.
izing work, the Project has decided to create and fund a position for a woman to coordinate organizing, outreach, and education among Latina immigrant women.

We are at the early stages of meeting our second goal, mobilizing workers for significant change. To this end, we have focused largely on bringing together groups of workers to support efforts designed to shift the power between the worker and the employer in individual cases.

One of Raul Melendez's friends at the Franklin Square street corner, Miguel Alejandro Guevara, is not paid for nine days of work with Rossetti and Sons Landscapers. His boss, Joe Rossetti, tells Guevara that he was stifled by the owner of the house on which they were working, "and when I don't get paid, you don't get paid." Undeterred, Guevara talks with Henriquez and a group of workers on the street corner; they figure out where Rossetti is working on his next job and put together a plan. On Friday, Guevara, Henriquez, and fifteen of the workers from the corner pile into cars and go to the house where Rossetti is working. They confront him and demand that he pay the $450 that he owes. Disturbed by the noise, the owner of the home comes out to see what is happening and witnesses the confrontation. After a half an hour, Rossetti has agreed to pay the money—half this week and half next week. As Rossetti takes out the cash, the homeowner says to the workers: "If he doesn't pay you the rest like he promised, I won't be paying him what I promised either." The next week, the debt is paid in full.

The Project has also begun the next stage, an organizing campaign focused on a particular industry. In the spring and summer of 1994, we began organizing with landscaping and small-scale construction day laborers on two of Long Island's street corners, helping them mobilize to demand a higher daily wage and enforce payment of wages earned. When the season began in April, Henriquez and C-POL members joined day laborers as they waited to be picked up by landscaping employers. After hours of watching, they began to understand the unwritten rules of each corner and to talk to the men about their working conditions. After several weeks of quiet observation of the daily routine, Henriquez and C-POL members began to work with the men through a united committee

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81 "Miguel Alejandro Guevara" is a pseudonym for a real worker.

82 We hope that such industry-wide campaigns later will include the targeting of industry-wide enforcement problems, such as the state Department of Labor's failure to aggressively pursue cases involving domestic workers. We also hope that these campaigns will focus on combating laws that have a negative impact on the industry—such as the exclusion of domestic workers from the NLRA and the FLSA—in addition to fighting against employers.
structure on each corner to enforce higher wages, better methods of insuring payment for work done, and safer working conditions.

As a result of his constant presence on street corners, Henriquez is able to help the workers mobilize when their livelihood is threatened.

In the spring of 1994, residents of Inwood, Long Island tried to remove workers from the corner where they waited for work, claiming that the workers disrupted the neighborhood. Workers were videotaped, verbally harassed, and physically threatened by townspeople, who eventually had the police blockade the street. At the request of a founding C-POL member, Henriquez, other C-POL members, and I joined the workers at a previously arranged meeting with the town. After that meeting, the workers asked Henriquez to help them defend their right to seek work. Backed by the Workplace Project and C-POL, the workers negotiated with the town for a better place to wait for work—one in a more visible commercial area where they would be protected from harassment and supported by the town government. Henriquez continued to visit the corner throughout the summer to ensure compliance with the agreement and to build on the successful negotiation by helping workers set wage standards for the corner.

2. Community Education and Worker Training

The Workplace Project's Community Education and Worker Training Program has two components: outreach in the Latino community to provide information about workers' rights and a Workers Course designed to develop legal knowledge, organizing skills, and leadership ability in its participants.

a. Community Outreach

The Project uses a variety of techniques to spread the word about rights on the job. To facilitate communication, Project staff, board and committee members, and volunteers regularly make educational presentations to local Latino churches, English as a Second Language classes, and community groups. Often these presentations are designed and implemented entirely by C-POL members with support from Project staff. In addition to descriptions of Workplace Project programs and information about basic workplace rights, these events usually include testimonials from workers who have had experience fighting problems in their workplaces; a brief talk by a lawyer; short plays written and put on by workers to illuminate or humorize a point about the mistreatment of immigrants on the job or about defending one's rights; live music; and a question-and-answer period.
Project staff and volunteers also develop and distribute material in Spanish designed to explain workers’ rights. For example, using grant funds given by the American Bar Association, the Project developed a comic book dealing with immigrant workers’ rights. This forty-page book, which will be published in the spring of 1995, describes the travails and triumphs of three immigrants—a domestic worker, a day laborer, and a factory worker—as they fight non-payment of wages, workplace injuries, and sexual harassment. Such material is left at local restaurants, bodegas, and laundromats. It is also distributed by workers and volunteers, who stand on street corners and frequent bus and train stations in the early-morning hours when immigrants travel to work.

Finally, the Project makes liberal use of the Spanish-language media. Long Island is home to several Spanish-language newspapers and radio stations, as well as a cable television network that broadcasts in Spanish. Assisted by the fact that Henriquez formerly worked as a free-lance journalist in the Spanish-language press on Long Island, the center has cultivated relationships with each of these media outlets. Stories about the Workplace Project’s activities and victories, interviews with Project staff, columns treating labor rights issues, and free advertisements for Project activities run frequently in all of these media.

This ongoing campaign to increase immigrant workers’ familiarity with their rights has two effects. First, it raises awareness that abuse does not have to be an unavoidable side-effect of a low-paying job. Second, it moves some workers to take action on their own against a problem at work and others to come into the Center to seek advice or support in order to act effectively.

\textit{b. Workers Course}

Once workers are drawn to the center through outreach and legal services, they are encouraged to continue learning about their rights through the more intensive Workers Course. The Project’s Workers Course is a focal point of the organization and increasingly draws even those workers without any current labor problems into the fold of the organization. The eight-week course, taught in Spanish three to four times each year, provides participants with information not only about legal rights on the job but also about labor and immigration history. The course also helps workers develop their analytical and organizing skills.\textsuperscript{83} Its

\textsuperscript{83} Although I initially designed the curriculum and taught this course, the process of course development has changed significantly. Each graduating class forms a committee to evaluate the class and to plan and help teach the next one. These committees have played a crucial role in the development of a creative curriculum. Graduating classes have written and produced a play about workers who picket their boss’s business because he refuses to pay them. They also have developed techniques to increase class participation based on
Lessons Based LONG LITERACY: PAULO HIGHLANDER e.g., the Tennessee, of translators) workers these problems, analyzing and investigating problems, and developing strategies to tackle complex issues. Throughout the course, we use popular education techniques pioneered in Latin America by Paulo Freire and in the United States by Myles Horton. Through these techniques, the participants use their own experiences as a text for analyzing the problems that their communities face.

Unlike the "know your rights" workshops that public-interest and legal-aid law offices often offer to the community and which are designed only to give people basic information about the law and how to use it, the Workers Course is set up to provide group opportunities for reflection that will lead to analysis and action. For example, a traditional "know your rights" workshop on health and safety might begin with a review of common health and safety hazards and be followed by a talk from a lawyer or an OSHA representative about "how to file a claim with OSHA."

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those used by "health promoters"—community members who are trained to teach others about health and hygiene—in El Salvador. During our class on organizing techniques, workers from the Chinese Staff and Workers' Association now come to talk (using translators) about their experiences. We also have developed a roster of guest speakers, including Latino lawyers, government officials, and activists, who come to teach classes in their areas of expertise.

As of March 1995, the Workers Course had trained 120 participants.

Both Paulo Freire, a Brazilian-born educator, and Myles Horton, the founder in 1932 of the Highlander Folk School (now the Highlander Research and Education Center) in Tennessee, independently developed similar methods of "education for social change." These popular education techniques, rooted in the teaching of literacy, bring together groups of poor and often illiterate people to reflect on their lives, analyze the causes of the problems that they face, and develop group strategies to combat those problems. See, e.g., FRANK ADAMS & MYLES HORTON, UNEARTHING SEEDS OF FIRE: THE IDEA OF HIGHLANDER (1975); PAULO FREIRE, EDUCATION FOR CRITICAL CONSCIOUSNESS (1981); PAULO FREIRE, PEDAGOGY OF THE OPRESSED (1970); PAULO FREIRE & DONALD MACEDO, LITERACY: READING THE WORD AND THE WORLD (1987); MYLES HORTON ET AL., THE LONG HAUL (1990); MYLES HORTON & PAULO FREIRE, WE MAKE THE ROAD BY WALKING (1990).

The use of these techniques, together with lawyering, as part of strategies for social change in South Africa and El Salvador, have been described by Richard F. Klawiter, ¡La Tierra es Nuestra! The Campesino Struggle in El Salvador and a Vision of Community-Based Lawyering, 42 STAN. L. REV. 1625 (1990) and Lucie E. White, To Learn and Teach: Lessons from Dreifontein on Lawyering and Power, 1988 WISC. L. REV. 699, 760–63 (1988).
In contrast, our first class about health and safety rights begins with a videotape called "Uvas No" ("No Grapes"), put out by the United Farm Workers. In graphic detail, the video demonstrates the effects of pesticides on the farmworkers and on their children, who are often stricken with cancers or born without limbs. The movie closes with a call for a boycott against grapes.

The video provides the starting point for a discussion about the dangers to health and safety that immigrant workers on Long Island face. Workers collaborate in drawing a mural of hazards at their workplaces, ranging from sharp blades used on machines where the safety guards have been removed to extended use of unmarked chemicals without gloves or goggles. Each participant then describes her drawing to the group.

Knowing that the law is supposed to protect their health and safety, the workers then discuss the reasons why such hazards are still so prevalent. Often this leads the group to focus on the government's failure to enforce the law, followed by a conversation about the simultaneous need for and perceived expendability of immigrant workers in the U.S. economy. Later, when OSHA representatives are invited to speak, they are met by a classroom full of people who have already begun to analyze the government's complicity in allowing health and safety violations to occur and who respond critically to OSHA's claims about the protections that the law offers.

At the end of the course, participants design an action plan for a health or safety problem that they face using their analysis of their own situation and the skills they have learned through the class. In one session, the class chose the lack of adequate heat in many workplaces as the focus of their action plan. This topic provided an interesting contrast to the traditional "know your rights" approach. Because there is no legal right to heat on the job in New York State—even in winter—the traditional legalistic approach would have proved inadequate for tackling this problem. By contrast, the methods that we used encouraged the class to develop a strategic plan for fighting this serious problem. This plan included a public information campaign, legislative work to change the law, and work slow-downs in response to individual employers' refusals to provide heat.

Students are charged for the course not in money but in time. Each graduate must put at least ten hours of her time back into the organization and the community in order to teach others what she has learned and to involve more workers in the fight for rights at work. As the class draws to a close, workers sign up to "pay" their ten hours by joining committees

86 Available from United Farm Workers, P.O. Box 62, Keene, CA 93531.
87 According to my knowledge, and according to OSHA and the New York State Health Department, there is no legal right to heating on the job.
which will continue meeting at the center after graduation. Workers can join the Workplace Project’s standing workers committee described earlier, C-POL. Alternatively, they can become members of ad hoc committees—such as the committee to plan and teach the next class, a committee to plan a Labor Day parade, or a committee to carry out educational events in churches. The ten hours that each worker puts into one of these committees builds a bridge between the classroom and the organization, bringing each class participant into the Project so that she begins to participate actively in the work of the center.

3. Worker Legal Defense and Advocacy Program

The Workplace Project provides legal services through our Monday legal clinic, which offers counseling, referrals, and representation to Latino workers with labor-related problems. The clinic is open every Monday, all day, on a walk-in basis. At first, the clinic was advertised in the local Spanish-language newspapers, and through fliers placed in restaurants, bodegas, laundromats, and bus stations. Word of mouth rapidly took over, and the clinic now sees hundreds of workers each year.

Until November 1994, the legal clinic operated like most legal services programs. Workers came in on Mondays and were seen by counselors who were law students or trained community volunteers. After the workers described their problems, the counselors informed them about their legal rights. If possible, their cases were taken; if not, they received self-help advice and referral information. Once a case was accepted through the legal clinic, the Workplace Project staff worked with the client to negotiate a solution. If negotiation failed, the staff would take the case to court or to the appropriate administrative agency.

The next section describes the conflict that we encountered between the legal clinic, as it is described here and as we initially had conceived it, and our overall organizing model. The next section also will describe in detail the clinic’s current form after it was reconfigured to address these problems.

IV. Analysis of the Workplace Project Model

A. Conflict Between Provision of Legal Services and Organizing

1. Dangers of Reliance on Legal Solutions

As I discussed earlier, my goal in founding the Workplace Project was to create an organization directed toward long-term struggle by building a base of support among workers who decided, as a result of our programs or their own analyses, to challenge their position in the U.S.
labor system. Although I had hoped originally to provide legal services for workers with labor problems in order to draw workers into our organizing efforts, it soon became clear that we needed a more complex vision of how the law could function to support organizing campaigns rather than simply attract people to them.

It soon became obvious that by providing legal services for individual workers, we were undermining our goal of organizing the community. My initial vision of legal services as a draw for our organizing work was a principal reason for this problem. In our eagerness to develop a good reputation in the community, we initially focused on providing effective legal representation, especially for those who had been denied their back wages. Because we promised free legal consultations every Monday, workers came to the clinic expecting to present their problem to a lawyer and to be advised on possible legal solutions and how to pursue them. Given this set-up, they were reluctant to discuss the larger circumstances surrounding their problem, its root causes, and creative ways to solve it. Our ideal Freirian process—beginning with problem identification and ending with collective action—stopped before it got started.

Furthermore, a successful experience with legal services taught the worker nothing more than reliance on legal services. The worker who benefits from the legal action has not learned the skills that she will need to fight back the next time she is exploited; instead, she has learned that she should seek out a lawyer to solve her problems. The entrenched societal belief that a lawyer, doctor, or accountant knows how to solve problems better than the layperson also encourages this response. Once a

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88 While this was the goal that I had in mind, I was less clear about how I hoped to achieve it. It was only through conversations with workers and staff at other workers centers, and with Henriquez and workers here, that we fully developed the model that we are using now.

89 For example, Steve Bachmann, describes in a review of his work for ACORN—a grassroots organizing group—the role that law can play in achieving intermediate goals for an organizing effort. Steve Bachmann, Lawyers, Law and Social Change, 13 N.Y.U. REV. L. & SOC. CHANGE 1 (1984-1985). He describes how a lawsuit can galvanize a group of people, act as a back-up strategy, or function as an additional tool in the arsenal. See also White, supra note 85 passim.

90 Because I had been trained as a lawyer, I chose to make legal work the centerpiece of the Workplace Project's program during the first year. This choice precipitated the problems that we encountered in our second year when we started to organize.

91 The Latino Workers' Center encountered a parallel problem when it was founded in late 1992. It had spun off from the Chinese Staff and Workers' Association. The initial group of workers that it attracted had just been denied access to union-sponsored English classes. As a result, the Center chose to hold English as a Second Language classes with workers' rights as the core curriculum to draw workers to their center. They too became frustrated with their initial strategy. Later, they realized that English classes had attracted workers to their center who were interested in learning English, but not necessarily in building a workers' organization to struggle against labor abuse.
problem has been defined as part of the legal sphere, people are reluctant to take it back into their own hands.

We were also disturbed to find that the successful provision of legal services in the employment context often co-opts potential leaders. Going to a community labor-rights office such as ours entails risk-taking for an immigrant worker, who knows that other workers or her employer could easily become aware of the step that she has taken. Therefore, the workers who bring their workplace problems to our office tend to be the most motivated, the most active, and the most prone to taking chances.\(^\text{92}\) Naturally, these individuals make the best leaders for a future organizing campaign. Once we win their lawsuit and they get their money, these workers often leave the workplace. The rest of the workers, who would have benefited from their leadership had they stayed, are left to suffer. By “paying off” the bravest and most determined workers with a settlement or an award, the Workplace Project’s legal program plays the role of the employer who decapitates an organizing effort by making a deal with its leaders.\(^\text{93}\)

Even when we have been successful in brainstorming solutions with the worker or the group, workers often prefer litigation to carrying out these creative strategies involving group action. It is easy to understand why. Organizing as an immigrant worker is a frightening and risky proposition. For workers who come to us from El Salvador and have seen worker organizing result in brutal repression, traditional legal services may be the most appealing alternative.\(^\text{94}\) In the United States, the chances that the worker will lose her job as a result of organizing are high, the protections are low, and the payoff is unpredictable at best. Finding a

\(^{92}\) On the other hand, a good number of workers who come to us are simply the worst off. Because they have already been fired, their use of our legal services carries little risk.

\(^{93}\) An organizing effort that is not linked to a long-term struggle can have the same end. Workers who achieve a short-term goal, like getting their wages back through a day or a week of picketing (as in Miguel Alejandro Guevara’s case, supra note 81 and accompanying text), may still leave both the job and the broader efforts of the workers center behind once they have gotten what they were looking for.

\(^{94}\) In some circumstances, this cuts the other way. Immigrants from El Salvador and other countries with strong popular movements can be especially active participants in organizing efforts in the United States. They can contribute a wealth of experience and talent. Among the Workplace Project’s board members and the members of the workers committee, C-POL, we count veterans of an agricultural cooperative in Honduras, the teachers’ union ANDES in El Salvador, and the Salvadoran and Guatemalan student movements. C-POL also has several participants who are past members of the violent and repressive Salvadoran military, proof that “community” is a concept highly contingent on context.

However, most of the immigrant population from these countries did not come from this organized sector. Many, especially those from El Salvador, characterize their reasons for emigrating as a fear of both sides in the civil war. People who resisted participation in labor organizing efforts under such circumstances often witnessed brutal repression against unionists. As such, they are very reluctant to become involved in anything in the United States that they feel could endanger them.
lawyer to resolve the problem presents the least risk and the biggest possible benefit. If the worker wins her lawsuit, she reaps the reward; if she loses, at least she has not gone out on such a fragile limb. Finally, organizing takes a considerable commitment of time, time which most immigrants do not feel they have.  

2. Provision of Legal Services Is Not a Long-Term Solution

In our experience, lawsuits that are not backed by a strong group of workers often flounder because they are vulnerable to the pitfalls of the legal process. Legal procedure, bankruptcy laws, the slowness of court and administrative proceedings, and even the rules of legal ethics frequently interfere with the effective representation of immigrant workers. If employers change their policies in response to a complaint or lawsuit, they often do so in a way that is tailored only to avoid legal liability, leaving the core exploitative conditions intact. Even when employers settle a matter with a small group of workers, they frequently require the workers to sign a binding confidentiality agreement. This agreement enables the employer to avoid correcting the underlying problem by preventing other workers from knowing about it. In each of these instances, unless the lawsuit is part of an organizing strategy, there is no muscle behind the workers' legal demands.

An example from the Workplace Project's experience illustrates some of these problems:

After being turned away by the Department of Labor and turned down by the unions, Efrain Sandoval came into the center to describe his problem with underpayment of wages. Because Sandoval had been at the restaurant for four years, the amount of money owed to him was considerable. We told Sandoval that we would represent him, but that he should try to get as many other workers involved in the lawsuit as possible. After speaking to other busboys and dishwashers, Sandoval came back to report that he was the only worker still interested in going ahead.

I wrote a demand letter to the employer, which resulted in a series of negotiations between the two parties. A settlement was reached, granting Sandoval five thousand dollars in back pay. However, the employer made a confidentiality agreement a prerequisite of any settlement; Sandoval would be bound not to tell any other workers about his arrangement. I was unable to negotiate for a settlement which included the others because of my ethical obligations to Sandoval as an individual client.

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96 See infra note 97.
97 Many of the ethical rules that govern the conduct of attorneys have been developed
Although he would have preferred not to sign a confidentiality agreement, he wanted to get his money rather than scrap the settlement because of this demand. Because the employer saw no worker muscle behind his demands, the chances of the employer backing down were slim. Sandoval, previously the worker most vocal about mistreatment by the employer, took his money and left the restaurant. The remaining busboys and dishwashers continued to be paid at the below-minimum rate.

While some might argue that the Project would be more successful if we focused on impact litigation, our experience with labor law and the underground economy shows otherwise. The center might be able to win a case that would change the law and increase protections of immigrant workers. However, considering that in the underground economy existing labor laws are violated with impunity, a new law would have little, if any, practical effect.

Although the Workplace Project's legal clinic has achieved numerous victories for our individual clients, it leaves the vast majority of workplaces completely untouched. The underground economy is a transitory place. Factories and restaurants open and close with lightning speed, and unscrupulous employers treat losses in court merely as a transaction cost. The only significant improvement will come when immigrant workers mobilize themselves to shift the balance of power so that they can demand real change.

3. The Uses of Legal Services

Despite the conflict posed by legal services, the Workplace Project is reluctant to give up the legal clinic entirely. First, the clinic has assisted many people individually. In our first two and a half years, the clinic has represented more than 750 workers who wanted to recover their back
wages, receive unemployment benefits or get OSHA inspections at their workplace. In a poor community where money talks loudly, we have recovered over $120,000 in wages and pension benefits for more than a hundred workers since we began. Local Spanish-language newspapers often publicize our larger scale triumphs; the smaller ones are talked about around town. These successes have helped the Project establish a reputation on the street as a strong organization dedicated to serving the needs of the community.

Furthermore, in certain kinds of cases legal services are the swiftest and least costly way to vindicate a worker’s rights. Such cases include those where few workers are involved in the dispute or where the employer is invulnerable to low cost public pressure, such as pickets or a media campaign. In other cases, the problem may be most easily resolved through a direct legal solution as when a single worker does not get paid after being fired, a small group of workers is denied unemployment benefits, or a worker is injured on the job but does not receive workers’ compensation. In each of these cases, a letter from a lawyer and, if necessary, a lawsuit are almost always the fastest, if not the only, way to solve the problem. In addition, because we are the only source of legal services for immigrants with labor problems on all of Long Island, immigrant workers would have no legal recourse if we closed the clinic.

The clinic is also an effective means for bringing workers into the organization. It attracts new immigrants to the Project each week by demonstrating to them that the organization is willing to fight with them and on their behalf and that challenges to employers can succeed. The new cases that workers bring to the Project occasionally serve as a starting point for organizing by mobilizing workers to challenge their own problems. The flow of workers through the clinic also allows us to monitor what is happening in the community and in workplaces around Long Island. Through the clinic, we have accumulated a database of information about over 350 Long Island employers, many of whom are repeat offenders. Without the clinic, it would be very difficult to keep this invaluable information up to date.

Finally, the legal clinic provides financial sustenance to the organization. Through the clinic, the Project charges workers a nominal legal fee.\textsuperscript{98} We also receive funds through court-ordered attorneys’ fees and grants that we solicit from foundations that sponsor legal services organizations.

Beyond serving our financial needs, the legal program is an excellent way to recruit and incorporate volunteers, who are crucial to our long-term organizing efforts, into the Workplace Project. Our thriving pro-bono

\textsuperscript{98} We charge a $20 “retainer” to take a case. If the worker wins, we charge a fee that does not exceed seven percent of the total recovered amount.
and law student internship programs would be much harder, if not impossible, to maintain without the legal clinic and the cases that it generates.

4. The Legal Clinic as Part of a Strategy for Collective Action and Structural Change

In response to the concerns detailed in the sections above, the Project staff has restructured the legal services program. The "new" clinic's structure is based on two tenets. First, in the context of limited resources, legal assistance should go to workers who want to be active participants in our programs, rather than to those who expect to be the passive recipients of a service. Second, once a worker is committed to fighting for better working conditions, problems must be addressed through a team approach. This approach necessarily involves as many workers from the affected workplace as possible, an organizer, and when necessary, a lawyer or supervised legal advocate.

A worker who comes to the clinic with a problem—for example, a factory worker who has not been paid wages for a month—first meets with a Project organizer. The organizer explains that the Workplace Project is an organization of workers, not a legal services center. The organizer also explains that, although the Workplace Project will readily provide free legal counseling, for actual services the "client" must commit to giving back to the organization. The organizer then provides an overview of the Project's programs and gives examples of ways in which the worker can participate.

After the orientation, the worker meets with a counselor. If the problem is a simple question—for example, do I qualify for unemployment benefits or workers' compensation?—the counselor, in consultation with the Project's lawyer, helps the worker find the answer. If the problem is more complex, the counselor, joined by the organizer and often the lawyer, discusses the problem with the worker. Before discussing the rights of the worker, the group talks about general conditions at the workplace,

[99] Workers respond to this announcement in a variety of ways. While some accept it, others offer to pay us to take their cases, believing that we are asking them to participate in the organization because we think they cannot afford our services. Nevertheless, in the end, few workers balk at this commitment. By our estimates, only one in ten workers chooses the "counseling" alternative, rather than choosing to participate in the organization. There are several possible explanations for this trend. One possibility is that the requirements are not particularly onerous. Another possibility is that workers feel that they have no choice but to commit. Other workers may agree initially and then decide not to comply, if their case is finished by the time they are required to fulfill their responsibilities to the Project. Although it is too early in this experiment to offer definitive explanations for this trend, we hope that our experiences over time and frequent conversations between workers and staff will help us evaluate the situation.
the number of workers involved, and past efforts to improve conditions. The team also explains the relevant law to the worker.

At this point, the worker must decide if she is willing to fight collectively for better working conditions. The Project’s staff asks her to return later with other workers who have the same problem. This way, the group can strategize and decide whether and how they want to take action. When groups of workers are involved, a series of meetings may take place.

If at any point it becomes clear that legal services will be a part of the strategy, the worker or workers are asked to sign a contract. Through the contract, the Workplace Project commits to providing legal services on a particular issue. In exchange, in addition to paying our fee, the worker must participate actively in her own case and in the organization. As a condition for receiving legal services, the worker must agree either to join a workers committee, take the workers course, or participate in a campaign or event sponsored by the Project. Workers who do not make this commitment are offered counseling and referrals, but are not given legal representation.

Once a case is taken, the team which now includes the worker(s), an organizer, a counselor and, when necessary, a lawyer, begins work. For a worker with an individual problem—for example, a domestic worker who has not been paid—the first step is usually a confrontation or negotiation with her employer. Accompanied by the organizer, and often by other workers as a sign of support, the worker goes to the employer’s home or workplace to demand payment. If this is not successful, the team follows up with a letter. If the worker is still not able to secure the employer’s cooperation, the staff initiates a lawsuit and files a complaint with the Department of Labor and other appropriate agencies. For bigger cases, these legal tactics are part of a larger publicity campaign against the employer. This campaign is waged through the press, pickets, leaflets, and other conventional organizing techniques.

It is unclear whether our attempts to restructure the Workplace Project Legal Clinic will prove successful. Certainly, the new structure is open to criticism. Some may charge that we coerce workers to participate in the organization. Others may argue that we are picking and choosing our clients, working only with those who have the time, interest, and aptitude to become part of a larger struggle. Unquestionably, our contract imposes requirements on the people who come to us for help.

100 The worker’s participation in her own case can include gathering information, finding and interviewing witnesses, preparing cross examination questions, playing the role of the employer in mock negotiations or trials, and preparing the first draft of an affidavit or complaint.

101 Workplace Project contract on file with author.

102 This may be of particular concern given that some of our clients have come from
We respond to the coercion criticism in two ways. First, by rationing legal services based on an analysis of which clients are most likely to turn into participants and leaders, the Project hopes to be able to serve its long-term goals while preserving the usefulness of the legal clinic. Second, because we do not have the resources to represent everyone who comes to our door, it is imperative that we ration our legal services. Rather than make a "value-neutral" rationing decision, our determination of who will receive legal services coincides with our larger goals.

Looking at our restructuring from a different angle, the clinic can be criticized for changing too little and for putting too few requirements on the workers who come to us. By continuing to offer legal services to anyone who will sign the contract, perhaps we have done little more than create a facade of collective action. Instead, we should build an organization with a culture of organizing rather than a culture of legal services, to which workers could come when they were ready to fight for better working conditions. We know that genuine commitment to organizing comes not from a requirement on a piece of paper, but from a much deeper belief that organizing is necessary to achieve social change. Although the contractual requirement may increase participation in the short run, in the long term it will be a poor substitute for real commitment. Without such a culture, we risk becoming involved in legal cases on behalf of people who only go through the motions of participation and who will not become an active part of the struggle.

V. A Practice-Based Theory of Social Change

As the Workplace Project grows from a young, local organization into a broader movement of workers, we are trying to develop a theory of social change that fits the context in which we work. The problems that we have faced in our legal program and the tentative solutions that we have devised, are only one example of the larger issues before us.

In this effort, we have some guidance from history and from theoretical writers. Paolo Freire and Myles Horton's ideas offer descriptions of how daily reality can provide a text for the development of a program of action. The history of other social movements, both in the United States

countries where participation in organizations such as ours can bring severe repression. See supra note 94. Arguably, such workers might refuse to participate, not because they are lacking in interest or aptitude, but because their past experiences have taught them that they will be punished for such a choice. However, our experience has led us to believe that many of the workers who were most active in their home countries are also the ones with the most acute political analysis of the situation in the United States. Id. They quickly realize the difference in risk between being a part of the teachers union ANDES in El Salvador and taking a course at a small workers center in the United States.

103 See supra note 85.
and in other countries, has an enormous amount to teach us. However, we face an economic structure that is completely different from that of twenty-five years ago and a social and political picture governed by new rules and new actors. With so little time to reflect, it is difficult even to begin to sort through the available material.

Another possible course of guidance can be found in law review articles on "lawyering for social change." Unfortunately, authors largely focus on the dynamics of an individual lawyer-client relationship, and on the role of the lawyer in either empowering or subordinating the client.\(^{104}\) The articles that focus on larger social movements\(^{105}\) tend to do so in the context of an analysis and critique of the lawyer's role in those movements, rather than in an attempt to answer the larger question of how social change occurs.\(^{106}\)

By necessity, we have been working to create our own theory of social change, strategizing with the workers who constitute the Project and with other workers centers around the country. In a recent planning meeting, the Workplace Project developed the following revised mission statement:

The Workplace Project's mission is to build an independent movement of low-income workers to fight exploitation on the job (and, eventually, to lead a struggle for better lives for all working people).

Our current goal is to make the Workplace Project a strong center for Latino immigrant workers on Long Island. We are working to develop a broad and active membership of workers and a democratic way of making decisions. The project's focus is on worker leadership and organizing, with workers who come to us going through a process of learning about their rights,


\(^{106}\)Some would argue that this question of what makes for successful social change is not one that belongs in law review articles. I disagree. If lawyers and law professors are going to talk about the lawyer's role in organizing or even in "progressive" lawyer-client relations, it seems to me that this discussion of role must be preceded by a general theoretical dialogue concerning movements for social change. Professor Gary Blasi of UCLA Law School calls for just such a discussion. See Blasi, supra note 51.
analyzing their reality and the political reality of the United States, and developing and carrying out strategies to challenge the abuse that they face on the job. The Workplace Project supports them in this process through education, organizing back-up, and legal services.

This statement puts forth our current theory of social change. Organizing is not simply a matter of mobilization. It is a long-term process of analysis leading to action. Organizing workers goes far beyond a strike for a better contract. It must be the conscious development of a worker-led movement for better communities and better lives. The first step in achieving these goals must be to build centers of workers, who learn what it means to be leaders by participating in a democratic organizing process.

Concretely, the Project focuses on implementing this theory of social change in two areas. First, as I described above, we seek to build a strong, democratic organization, run by workers. We are trying to develop a long-term process through which workers define their goals, take ownership of the center, and develop and carry out strategies to confront both their immediate problems and the structural causes of those problems. We are developing this process because we believe that long-term change in the living and working conditions of working-class people can only be achieved through self-organization.

To move from the existence of a sound worker center structure to real worker leadership and democracy takes a lot of work. To develop an organization, we must work with individuals and small groups of workers to build skills, such as speaking in public, writing an agenda, leading a meeting, talking to funders, and setting long-term goals. We must also develop resources and training from outside of the organization when our own knowledge is insufficient.107 We must attract new workers interested in participating in the organization and keep the structure flexible, so that new members can take an active role, while maintaining a core vision that keeps us from changing direction like a weather vane with every new influx of workers.108 The task that is hardest to describe but most crucial,

107 To this end, we have an Advisory Committee made up of the type of people who ordinarily sit on a Committee of Directors: lawyers, accountants, foundation representatives, university professors, and other professionals. This Committee never meets, and has no vote or other power in the organization. Instead, the Committee members are available for consultation and support whenever we need them. Their assistance has been invaluable.

108 Such a goal also implies a flexible and changing role for me, as the Workplace Project's director. First, I had to learn to share decision-making power with other staff members. With the addition of the Board of Directors to our organization, I must learn how to cede power to the Board members. This has been hard not only for me, but for our Board as well. Their initial reaction as a group of workers collaborating with the person who founded the organization (a white lawyer) was to defer to me whenever
is the development of a constantly evolving group analysis of the context in which our organization is operating, with a parallel strategy for change that is linked to and results from this analysis.\textsuperscript{109}

A second way in which we are implementing our theory of social change is in the development of a concrete vision of the future structure of a workers' movement.

The men who formed C-POL first met to discuss problems facing landscaping workers in the coming season. However, when the proposal was made that the group be formed as a "landscapers association," it was voted down. Participants, one after another, described their varied work experiences, as landscapers in the landscape season and as factory workers, busboys, or office cleaners in the colder periods of the year. "We are all workers of one kind or another," one man said, "and we face the same problems on all our jobs, and if we exclude everyone but landscapers we'll never get anything done."

Based on the analysis of these workers, C-POL was formed as a general workers' association to support workers in all industries. Combined with the experiences of other workers centers and a sense of the history of cross-industry labor organizing,\textsuperscript{110} workers in C-POL led us to develop the blueprint of a structure of united committees.

\begin{footnotesize}
\textsuperscript{109}For examples of how this analysis might take place in the context of popular education, see supra note 85. Based on a variety of factors, including their social class in their country of origin, their level of education, and their experiences in the United States, workers bring to the center very different conceptions of what is happening around them politically, economically, and socially. In order to build an organization that has a coherent strategy for achieving social change, these different conceptions somehow have to be brought out into the open, and the group has to reach some conclusion about the root causes of the problems that immigrant workers face. This process is further complicated by the constant arrival of new workers, and the disengagement of others as work, family, or other obligations call them away from the center.

\textsuperscript{110}As the analysis of the C-POL members shows, the traditional union model of organizing workers in only one industry or with one skill has little applicability to the lives of most immigrant workers today. In our experience, Latino immigrants, especially new immigrants, often work in a variety of trades. Within the space of a year, a man may work in a restaurant, a factory, and a landscaping business. Similarly, a woman may take care of children in a private home and then move on to a job as an office-cleaner. Therefore, it is our belief that the strongest base for a workers organization is a cultural and geographic community, rather than a trade or industry. This approach has the added strength of bringing neighbors together, and promoting collaboration on efforts to change conditions that affect the entire community, such as lack of adequate housing or health care.

Workers centers are far from the first groups to realize this. In the first decades of the 20th century, the Industrial Workers of the World (IWW, or the "Wobblies") sought to
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The long-term plan of the Project is to build individual workplace committees in each industry—one at each restaurant, each street corner, and each cleaning company where workers are interested in organizing. These individual workplace committees would then collaborate on industry-wide committees, which in turn would send representatives to C-POL or another general workers committee that is part of the Workplace Project. We refer to this as a "united committee structure."

Our goal for the united committee structure in the landscaping industry, for example, is to create a committee on each street corner, elected by the men who wait for work there. In matters which affected only that corner—the threat of the police closing down the corner or a problem with a particular worker or group of workers, for example—the committee would make and enforce decisions and rules that would then be followed by the rest of the workers. Additionally, the committee would represent that corner on a larger committee of all street corners in charge of decision-making about, for example, the minimum wage to be accepted by day laborers on all Long Island street corners.

A multi-industry united committee structure would allow us to work on strengthening worker organizing in each industry, while we continue to build cross-trade solidarity among workers on issues that affect them all. It is essential that we build cross-industry organizing campaigns against the structural causes of the exploitation of immigrant workers, such as lax enforcement of labor laws, anti-immigrant policies, and employer sanctions. To do this well and to succeed in our ultimate goal, we must build a membership in which workers in one industry recognize that the problems of workers in other industries are their problems as well.\textsuperscript{111}

The Workplace Project still faces a series of questions in our attempts to fill out this nascent theory of change and to put it into practice.\textsuperscript{112}

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\textsuperscript{111} We have learned about the need for this, and seen how it can be done, by watching and talking to the Chinese Staff and Workers Association, who already work across industries. When they have a construction workers' picket, for example, it is supported by restaurant workers and garment workers, and vice versa.

\textsuperscript{112} Some of these questions are as follows. How concretely will we help workers, with varying levels of organizing experience in their home countries, develop the technical skills that they need to take on leadership roles in a new environment? Given time constraints and the desire and need of some workers to take whatever they can get economically, how do we build a stable and lasting group of workers committed to a long-term struggle against exploitation? What is the process to develop a collective analysis of the situation facing immigrant workers, and how do we maintain a consistent
Despite our lack of knowledge, time, and guidance, we are doing what we can to piece together a theory based on our daily work. It is a challenge that sometimes seems to have no end, yet it is accompanied by an urgent sense that the search is worth pursuing.

VI. Conclusion

We have a long way before we achieve our goal of organizing a broad-based movement of workers from different industries and communities in struggle against the vast array of social, economic, and political injustices that they face. Informed by the history of movements that came before us, armed with some understanding of the workings of our international economy, and bolstered by old ideas about change adapted to current circumstances, the Workplace Project and other workers centers will have to convert our daily experiences into a theory for future action. As we take our first steps, we are still trying to design a road map that will guide us. Nevertheless, we keep on walking.

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analysis in the face of new ideas and perspective with each new participant? How do we continue to build our organization given the tremendous constraints on our resources?

We also face a series of long-term questions of strategy: How do we link our community-based organizing efforts with the need for industry-based organizing? How do we bridge our efforts to national and international organizing efforts? How can workers centers ally with people fighting different but related battles, such as union reform or anti-poverty movements? How can these efforts be brought together in the form of a workers' party or some other kind of movement?

In building a movement for social change, we must address the racism and xenophobia that divides Latinos, African Americans, and low-income workers in other communities, often fostered by employers aiming to lower wages. We must also confront the racism that divides immigrants from different Latin American countries and divides further by skin color, class, geography, and past political alliances.