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GUESTWORKERS: THE NEXT WAVE OF IMMIGRANTS?

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On September 29, 1987, members of the International Ladies Garment Union (ILGWU) staged a protest outside a Los Angeles hotel where employers were learning to apply for guestworkers. Guestworkers are foreign workers who are legally brought to this country on temporary contracts to alleviate labor shortages. Guestworkers programs have been used for over two decades in East Coast agriculture. Agricultural employers have often used guestworkers to undermine wages and working conditions and to prevent union organizing. The increased interest in guestworker programs, particularly in industries other than agriculture, is another way in which recent changes in U.S. immigration policy pose a threat to all U.S. workers (see also LCR 230).

Many thought the passage of the Immigration Reform and Control Act of 1986 (IRCA) would attack the low wages and poor working conditions of those jobs traditionally held by new immigrants. It was assumed that restricting the supply of undocumented immigrants would force employers to seek new domestic sources of labor.

In fact, IRCA has not reduced the supply of immigrant workers. Instead, employers are learning they can use guestworker programs to ensure a continuing supply of immigrant workers for low-wage jobs. Thus, rather than having to hire local workers who might protest the wages and working conditions, these employers can obtain guestworkers who are legally restricted to certain jobs and certain wages. In essence what

IRCA has done is to give employers more control over the supply process and more control over immigrant workers.

The H-2 Guestworkers Program

The U.S. has several guestworker programs. The H-2 worker program is the basic program which allows employers in any industry to obtain foreign workers legally if they can demonstrate a labor shortage.

H-2 workers are paid a wage determined by the Department of Labor. This wage is supposed to be a prevailing wage which will not adversely affect domestic workers. However, this wage is an average wage and is often lower than that paid unionized workers in the same industry. In California, the H-2 wage is based on the Employment Development Department's (EDD) wage surveys. As a result, the H-2 wage is generally the previous year's average wage and does not reflect any increases that may have been gained since then. A law allowing employers to use lower paid foreign workers provides an incentive for some employers to create the appearance of a labor shortage.

The basic requirement for the H-2 worker program is that employers must demonstrate a shortage of qualified workers. This means that the Employment Development Department (EDD) must be unable to find workers willing to work in these jobs at the H-2 wage. In the past, agricultural employers have artificially created labor shortages by increasing requirements for the jobs, for example by demanding resumes, experience and the ability to pass agility tests for entry level jobs harvesting crops.

If EDD certifies that there is a labor shortage the employer can then recruit workers. The guestworkers are permitted to come to the United States and work for a period of up to one year. In agriculture, many workers come every year to the same jobs and return home for only a short period of time. Guestworkers cannot bring their families with them, and generally try to send home as much money as possible. No matter how many years H-2 workers work in the United States, they are not considered U.S. residents and do not have the rights of U.S. residents.

Employers have more control over H-2 workers than they do over domestic workers. H-2 workers can be restricted to a single employer and are often asked back by name from year to year, depending on the whims of the employer. H-2 workers can be procured when necessary and laid off when needed. They are sent back to their home countries when not needed.

H-2 workers who become "problems" can be sent home or not asked back. Past experience has shown that these workers' rights are often violated by employers who send back or do not rehire workers who complain about their jobs or who show signs of union sympathy.

Employers who use H-2 workers find them a docile, reliable labor source, and often come to depend on them. Guestworkers are often hard working and accepting of their job conditions because they know how vulnerable they are.

The Impact of IRCA on the Demand for Guestworkers

Prior to IRCA, guestworkers were used mainly in East Coast agriculture. Since the passage of IRCA, increasing numbers of Western agricultural employers have become interested in guestworkers. In addition, other industries whose labor supply was cut by IRCA are taking a new look at guestworker programs. Recently, H-2 workers arrived in Los Angeles and began working in the garment industry. Employers in the hotel and restaurant industries are also considering guestworkers.

Since the passage of IRCA, some employers have been trying to prove that there is a sufficient labor shortage to allow them to apply for guestworkers. In many cases these employers rely on an abundant oversupply of workers to keep wages down and ensure worker availability. Any reduction of this oversupply indicates a labor shortage. Growers in several Western states spent most of the summer trying to convince the Department of Labor that there was a shortage of agricultural workers. Employers in other industries have also tried to demonstrate a labor shortage. In most cases, EDD has been able to find workers for these employers and they have not been permitted to import guestworkers.

Ironically, in many areas there is an abundant supply of workers who are unable to work because of the new immigration

law. Many undocumented immigrants residing in the United States do not qualify for amnesty. Employers could be fined if they hired these workers. So instead of using these workers, employers hire guestworker recruiters to bring in new workers from overseas. Because the H-2 program requires workers to be in their home country to pick up their visas, it cannot be used to provide jobs for those workers already in this country who do not qualify for amnesty.

Some growers who have previously used H-2 workers are trying to prevent their workers from applying for legalization. The Florida sugar cane industry is an example. IRCA allows workers in most perishable crops to apply for amnesty. Sugar cane growers urged the USDA to declare that sugar cane is *not* a perishable crop. (On the other hand, Christmas tree growers were able to have their trees declared perishable crops under IRCA.) Sugar cane growers want their workers to remain guestworkers, because then they are more vulnerable than they would be if they became legalized U.S. residents.

Unions rightly see the importation of guestworkers as an assault on the wages and working conditions of their members. Rather than restricting the supply of workers for low wage industries, immigration reform allows employers to obtain new low-wage workers from guestworker programs. Thus, employers have no incentive to upgrade the wages and working conditions of the jobs previously held by undocumented immigrants. Organizing these new workers will be difficult if not impossible given the history of employer intimidation in guestworker programs.

The International Ladies Garment Workers Union and the United Farm Workers are already fighting the guestworker threat to their members. Workers in other industries need to be aware of what is happening. Bringing in guestworkers, who do not have their full civil rights and who cannot fully bargain with their employers over their wages and working conditions, weakens the bargaining power of all workers.