



Centre on Migration, Policy and Society

**Working Paper No. 21,
University of Oxford, 2005**

**Deserving of Decent Work:
The Complications of Organizing
Irregular Workers Without
Legal Rights**

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WP-05-21

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Abstract:

This paper aims to address if it is possible to support irregular workers in their present situation (e.g. irregular status), limit their exploitation but still maintain the competitive advantage that provides them employment. The United States construction industry and its need for flexible labour provides a perfect background for addressing this question.

Based heavily on subcontracting, this industry increasingly relies on undocumented migrant workers, whose competitive advantage hinges on their irregular status. I will present two examples (one successful and one not so successful) of a trade union's attempt to organize a part of this labour force and subsequently provide recommendations for how organized labour can better protect the rights of workers in flexible employment.

Keywords: Irregular workers, migrants, trades unions, workers' rights, US construction industry

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Deserving of Decent Work: The Complications of Organizing Irregular Workers Without Legal Rights

We are moving into a new era where the informal labour market is perceived as a considerable threat to the job security of the formal workforce. The informal labour markets of industrialized countries are increasingly comprised of undocumented workers, migrants from developing countries who enter an industrialized country, often illegally, to work irregularly to send remittances home to their families. These migrant workers usually perform tasks that formal workers (citizens, permit holders and residents) are reluctant to do, at wages they would not accept. As they are providing a service to the economy of their host country, while concurrently earning a salary that they would not receive in their home country, they are also victimized by exploitative conditions. The International Labour Organization reports that migrant workers are

“[s]ubjected to exploitation in recruitment and employment, to forced labour, to exclusion from social insurance and to the denial of their human rights. These include foreign women in the prostitution traffic, domestic workers deprived of their travel documents, bonded labour in plantations, construction workers in unsafe work and housed in deplorable and unsanitary conditions, and various sorts of undocumented foreign workers in clandestine and grossly underpaid jobs” (ILO 2000, p.19).

However, on some level these undocumented migrants are benefiting from their irregular status in a way that would be compromised with formal recognition, as they have a competitive advantage as an expendable labour force, operating outside of the realm of labour standards. Furthermore, their vulnerability has encouraged them to create extensive support networks that can be quite fruitful in securing employment, even in times of high unemployment in their host countries.

This paper aims to evaluate the following question, whether it is possible to support irregular migrant workers in their present situation with

their informal status, and limit their exploitation but still maintain the competitive advantage that provides them employment? In analysing this question, it is important to take into consideration notions of citizenship and how various stakeholders, such as the industrialized country's government, the private sector, NGOs, trade unions and other formal institutions and even the workers themselves, conceptualize the rights of irregular migrant workers. In examining this topic, this paper will be divided into five parts. I will first discuss the literature around migration and human rights entitlements and consider whether it is morally justifiable for undocumented workers to consciously give up their human rights, and work in deplorable conditions, in exchange to hopefully improve their lives and the lives of their families in their home countries. Secondly, I will discuss how the state and legal institutions react to undocumented migrants' claims for rights. I will also examine the assets undocumented workers possess as well as the elaborate networks they create to meet their needs. In the third part, I will consider the formal strategies NGOs and trade unions utilize in their aim to protect undocumented migrants' rights. Using a case study from the New England Regional Council of Carpenters (NERCC), a U.S. construction industry trade union, I will examine two attempts to organise Latin American construction workers. Next, I will consider whether formal institutions are truly committed to protecting undocumented workers. I will demonstrate the flaws in the argument that undocumented workers' competitive advantage threatens formal work. The conclusion will argue that unless formal institutions recognize the existence of irregular migrant workers, these workers will continue to sacrifice their human rights to maintain their competitive advantage.

This research offers two main contributions to the discourse on undocumented workers. The first is a discussion of whether it is possible to develop a general strategy of migrant community organizing. Current research focuses on specific cases of worker abuse, for example in a factory, and does not address broad strategies organizations such as NGOs and trade unions can take to advocate for overall undocumented migrant worker rights protection. Additionally, this paper offers an analysis of organized labour's

response to the changes undocumented workers bring to the construction industry. To date, there has not been extensive investigation on how unions in the Northeast region of the United States are adapting to the changes undocumented workers bring to this sector. The studies that have been written on the impact of undocumented labour usually focus on West Coast states such as California, since it has been assumed that most undocumented workers from Latin America settle in that area. However, recently, construction subcontractors have relied on mobile workforces and have been moving their employees across the country revealing a need to examine the competitive advantage this mobile workforce has and how it is affecting the traditional workers in this industry.

Migration Theory and Human Rights Entitlements

In understanding the exploitation undocumented workers face it is first important to review the literature on migration and citizenship. After 1970 the growing movement of workers from poorer countries to industrialized countries spurred the debate over more rigid definitions of eligibility of citizenship and stricter immigration policies. Movements for more liberal policies to extend citizenship rights to long-term residents were countered with xenophobic nationalist movements to expel foreign workers. A stronger division was reinforced between foreigners and citizens, which affected the rights entitlements of both groups (Brubaker 1989). Foreign workers began to be seen as mobile, temporarily residing in a country and not entitled to most of the rights citizens enjoy including oftentimes the protection of their basic human rights. Citizens were relatively immobile and entitled to the rights of the state. If a conflict were to occur between these two groups, the citizens' needs would take precedent (Harris 1995).

The move for stricter migration policies created a new category of migrant, the undocumented, whose entry into the host country was now defined as illegal. Vulnerable to deportation, this group was without the legal documentation necessary to enable them to reside in the host country

(Milkman 2000). Because of the difficulty of formalizing migration status and the risks involved to enter a country illegally most of these undocumented workers' host countries were developing countries and they would travel to a developed country in hopes of finding work. Labour shortages in certain sectors of the economy, like those characterized by low wages, intermittent or seasonal work, low prestige, unpleasant or dangerous working conditions are the areas in which the undocumented population was usually employed (Brubaker 1989). This paper will focus on undocumented workers operating in the low end of the labour market in the U.S.

The relationship between the more and the less developed country can be defined as the core (citizens) and periphery (migrants) where the periphery supplements the labour of the core. Usually this core-periphery relationship stems from a population surplus in the periphery that can fulfil the labour needs in the core. However, the reality is that population is not necessarily the only reason why the core employs the periphery.

“Externally procured labour thus tends not only to be cheap, as conditions in the periphery induce its population to sell their labour in the core below the going wage there, but also to be composed of a culturally distinct group, generally considered inferior” (Zolberg 1983, p.7).

For this reason, workers who are part of the periphery have a competitive advantage over the core They are willing to work for lower wages and under more oppressive conditions. From a Marxist analysis, the periphery is the reserve army of labour with the core representing the labour aristocracy (Marx 1987). This reserve army of immigrant labour acts as a deterrent for citizens and legal residents to demand high labour standards. The periphery provides a constant threat to the core that if their demands are too high they will not be employed.

“The incentive to use immigrant labour also increases when indigenous labour succeeds in increasing its share of total income by way of

collective bargaining, favourable legislation or regime change. On the basis of economic considerations, immigrants tend to be viewed by employees as a welcome addition to the labour pool and by certain sectors of indigenous labour as unwelcome competition" (Zolberg 1983, p.3).

At a Trade Union Congress (TUC) conference in London on migrant workers' rights, Patrick Taran of the International Labour Organization (ILO) argued that the jobs that illegal workers perform can be categorized as 3D work, i.e. dirty, degrading and dangerous jobs (Taran 2003). It is generally accepted that the jobs and the conditions in which they are performed would be unacceptable to citizen workers, even in times of unemployment. This argument is regularly offered by private industry to justify their use of immigrant labour (Harris 1995).

Many citizens fear the competitive advantage migrants have, a feeling that can be justified on some level, as the International Labour Organization has determined that the developing world will have to generate an additional 600 to 700 million jobs in the next 20 years to absorb the rapid growth in its labour force from immigration and to keep its unemployment rate from increasing (Teitelbaum and Weiner 1997). Brian Caffary of the Immigration and Nationality Policy Directorate (UK Home Office) addressed this issue at the TUC conference and argued that undocumented immigrant workers cannot be afforded the same rights as legal resident workers since then they would be even more encouraged to enter the UK illegally (Caffary 2003). In response, many citizens and politicians use warlike metaphors to describe how to manage the immigrant issue. For example, they need "to be driven out," as they are "invading" (Zolberg 1983).

Thus a moral dilemma exists because while these immigrants are needed for certain industries and are benefiting from better salaries, they are restricted and unable to rise above a certain precarious situation. If immigrants are permitted to enter the country and to work and free the citizens from hard and unpleasant labour then the state is like a family with live-in servants. While the work that these migrants provide in a society frees

citizens from strenuous work and contributes to the economy, it is important to reconcile the full protection of their rights (Harris 1995). Migrant workers, both undocumented and documented, should have a moral claim to rights of any society in which they are participating members, since they still usually pay taxes, contribute to the economy through their consumption and interact with citizens, regardless of their immigration status. States that prevent members from enjoying certain rights act wrongly (Carens 1989). A solution to this moral dilemma would be to recognize these migrants' rights and protect them while still enabling them to perform these necessary occupations.

“Democratic citizens, then, have a choice: if they want to bring in new workers, they must be prepared to enlarge their own membership; if they are unwilling to accept new members they must find ways within the limits of the domestic labour market to get socially necessary work done” (Walzer 1983, p.57).

Yet, the state operates according to popular opinion and its policy decisions are to protect its indigenous labour market. In doing so, the state plays both an active and a passive role. Actively, it restricts non-citizen access to work as partial and conditional (Teitelbaum and Weiner 1997). A completely open labour market would induce immigration on a vast scale and drive out many citizens and legal residents from certain industries (Brubaker 1989). Passively, the state turns a blind eye to the social and cultural rights abuses of migrants at the hands of private industry, as it is seen on some level their punishment for entering the state illegally and using resources (Zolberg 1983). Further, their precarious employment situation and exploitation is justified by the argument that they come from a culturally inferior and poorer society where they do not have as many opportunities as they currently do in their host country. This belief creates a dynamic where their labour is worth less than that of citizens or legal residents (Teitelbaum and Weiner 1997).

Legal, Institutional and Informal Responses on Rights for Undocumented Workers

Regardless of individuals migration status the ILO argues that there are certain rights and protections that are inalienable. In response to a widespread concern that social justice should accompany economic growth, the ILO in the International Labour Conference of June 1998 adopted the Declaration on Fundamental Principles and Rights at Work. The declaration is a pledge by all Members to *respect, promote and realize* in good faith the principles and rights relating to:

- freedom of association and the effective recognition of the right to collective bargaining
- the elimination of all forms of forced or compulsory labour
- the effective abolition of child labour
- the elimination of discrimination in respect of employment and occupation

In the United States, undocumented workers have been covered under labour legislation. The National Labor Relations Act (NLRA) guarantees that workers have a right to organize and their employability will not be affected by doing so. The Act reads

“employees shall have the right to self-organize, to form, join, or assist labour organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection” (NLRA 2003).

The Act elaborates on unfair labour practices as constituting “discharging or otherwise discriminating against an employee because he or she has filed charges or given testimony” (Delgado 1993, p. 109).

This Act empowered undocumented workers to organize, as discussed in Delgado's research on the Camagua Mattress campaign in Los Angeles in the 1980s. Undocumented workers orchestrated this organizing drive, which ultimately led to a contract for the factory. The success of this campaign hinged on the labour law that protected undocumented workers from being fired for union activity. In organizing undocumented workers it is important to educate them that they have legal rights and encourage them to claim those rights. "The assurance that they were protected by the country's labour laws, despite their undocumented status, served to calm fears and encourage workers to demand their rights" (Delgado 1993, p.108).

Since this campaign, efforts to tighten restrictions on immigration and renewed initiatives to deport the undocumented have altered the political climate (Milkman 2000). Fear of the competitive advantage immigrants have over their legal resident and citizen counterparts coupled with business pressure to allow exploitation in hopes of using immigrant labour to boost the economy have spurred some recent legal changes. Recently, the U.S. Supreme Court lessened the protection illegal migrant workers can claim, supporting the notion that they are not entitled to the same protections under labour law as legal workers. In the case of *Hoffman Plastic Compound v. National Labor Relations Board* No. 00-1595 (S. Ct.), the National Labor Relations Board lacked authority to order back pay to an undocumented worker who was laid off from his job because of his involvement in organizing a trade union in his workplace. In this case, the situation was that Jose Castro was fired after he supported efforts to unionise the factory. However, in securing his job Castro had illegally used a friend's identification card. The U.S. Supreme Court ruled that because Castro had acquired his job through illegal means obligating the company to pay back pay would conflict with policies under U.S. immigration laws. Therefore, Castro was not entitled to the same benefits he would have if he were a legal employee, which would have been the return of his job and the payment of his lost salary (Lewis 2002).

Yet, on some level undocumented migrants are still entitled to protection of their rights through other government agencies. For example,

this Supreme Court decision does not affect the laws that the Department of Labor enforces that provide core labour protections for vulnerable workers, such as the Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The FLSA requires employers to pay employees a minimum wage and, in general, one and a half times an employee's regular rate of pay for overtime hours. The MSPA requires employers and farm Labour contractors to pay the wages owed to migrant or seasonal agricultural workers when the payments are due (US Department of Labor 2003).

The situation of the workers' illegality creates a power differential and undocumented migrants feel a sense of fear that ultimately prohibits them from claiming their rights, even when they are legally allowed to do so.

"The fact that immigrant workers are aliens usually means that they can be denied many of the political and social rights of natives; and prevailing cultural judgements legitimate such practices. Their lack of rights renders them more vulnerable and as a vulnerable group they tend to be more docile. Thus the alien status of immigrant workers affords additional advantages to capitalists in the receiving country during the immigrants' period of residence" (Zolberg 1983, p.7).

However, if they are fearful of advocating their rights, private industry has more of an opportunity to use their competitive advantage to exploit them. Many formal institutions, NGOs and labour unions, have begun to address this abuse, in hopes of offering protection for these workers. However, these institutions usually operate on a situation-by-situation basis offering assistance once a rights violation has occurred. As they neglect to address the competitive advantage migrant labour has, they fail in solving the overall problem of recurring abuse. What usually occurs is that the formal institution will intervene in the exploitation that transpires in one specific labour situation and perhaps the migrant or group will be removed temporarily from the workforce while resolving these issues. However, they will ultimately return to the labour pool to continue to be victimized because the pull to find work is too great. The competitive advantage they have and their ultimate

willingness to tolerate the exploitation for what they perceive is a good salary is too strong an incentive (Jordan and Duvell 2002).

The work of NGOs and undocumented workers has been expertly discussed in the research of Jordan and Duvell (2002) in their studies with UK rights organizations working with Turkish and Brazilian illegal female workers. This research discusses how NGOs have failed in their ability to conceptualise the undocumented worker issue as part of a labour market problem. Unfortunately for the scope of this paper it is not possible to elaborate more fully on this argument. However, the situation of how trade unions grapple with this issue will be discussed in the next section with a case study.

Along with formal institutions, many informal migrant networks have been created to meet the role that the state is not fulfilling. The preference system describes the attractiveness of various places and goals for the migrant along with the resources of time and money available for those goals (Herr 1990). Most migrants have as their goal sending money home to their families. The World Bank reports that Latin America is the world's largest recipient of remittances and in 2002 workers abroad sent home \$25 billion dollars (World Bank 2003). As illegal immigrants are non-existent in the state's eyes, they have needed to develop extensive networks of protection and methods to secure themselves employment. Migration networks are any type of socio-economic link that enables a migrant to move from his/her country of origin to a contemplated destination. They lower the cost of migrating and ensure the migrant some semblance of stability and comfort upon their arrival and can reduce the risk of being deported, assisting the migrant to negotiate within the nuances of the new country (Zahniser 1999).

Workers are usually recruited from their hometowns through elaborate networks. They are not aware of their rights and depend on these networks for their livelihoods (Brubaker 1989). Many times their employers exercise a controlling force over them as they are subject to constant insecurity that limits their ability to maintain personal relationships with citizens or legal residents for fear of being discovered (Anderson 2000).

In Latin America, one type of these networks is arranged through *coyotes* (smuggles), who facilitate the border crossing, offer secure housing for migrants once in the host country and assist them in finding work (Delgado 1993). Usually beginning in the host country as undocumented workers themselves, these *coyotes* had worked their way up to these higher positions (Milkman and Wong 2000). *Coyotes* usually charge exorbitant rates, thus migrants incur debt to pay these fees. As they are responsible for recruiting and managing the undocumented workers, *coyotes* receive a lump sum from businesses in which to pay for housing and salaries. To maximize their profits, they oftentimes pay migrants sub-standard salaries and house them in deplorable conditions. As a migrant's primary concern is to find work, they usually accept the standards set by the *coyotes*. The success of migration networks parallel the interpersonal relationships created with the people in them. Sometimes these experiences are positive, but more often than not they are wrought with abuse where the *coyote* capitalizes on migrants' lack of English skills and knowledge of the rights they are entitled to in their host countries (Zahniser 1999). Oftentimes the *coyotes* work with the workers in the businesses, to receive even more of a salary, and also act as a translator for the workers and watch over them to ensure that they feel continuously vulnerable and do not dare to claim their rights (Sherman and Voss 2000).

Coyotes usually straddle both the formal and informal sectors and provide an opportunity for businesses to save labour costs, utilizing these informal workers as "self-employed" consultants in the formal sector. Legally, the notion of self-employment assumes autonomy over income generating activities. There is a distinction between wage labourer and self-employment with the former representing someone who works for another and receives a wage and the later representing someone who works for him/herself and draws money from net profit. Undocumented workers are not self-employed, but heavily dependent on their employer for many different aspects of their livelihoods. There are three conditions, which rarely exist in the situations of undocumented workers, that must be met for workers to be considered self employed. They are

“judicial ownership of the business assets; direct appropriation of the profits of the enterprise; and control of the decision-making process which arise out of production.... This situation can be contrasted with the situation of the wage labourer whose dependence as a producer is manifested in his non-ownership of the means of production, non-participation in the decision-making structure and the rigid controls over his work performance” (MacEwen Scott 1979, p.106)

As these workers are considered self-employed, they are technically able to set their own labour situations which further provide them with a competitive advantage, even though they readily settle for precarious working conditions. For this reason, one issue unions have encountered in attempts at mobilizing informal sector workers is that they do not identify that they share a common interest, each worker is considered with his/her individual employment situation (Sanyal 1991). In organizing a group with the goal of integrating that group into a pre-established organization such as a union, it is important to identify a common interest among the group members to serve as a rallying point (Commons 1950). Many times formal institutions make normative assumptions about workers values and needs.

“The prevalence of professional, managerial, and entrepreneurial activities among immigrants implies that many can move ahead without the benefits that union jobs provide; that the size of this more highly skilled population varies considerably among the major immigrant streams reduces the likelihood that immigrant status as such will have a singular, unvarying effect on employment in a union job” (Bottomore and Marshall 1992, p.55).

The following case study will provide a detailed account of the working conditions undocumented workers suffer and the push-pull relationship that exists during attempts to organize them.

NERCC Case Study

“At the end of the twentieth century, the challenge of recruiting immigrant workers into union ranks has become increasingly central to the larger project of rebuilding the United States labour movement, which has been in a downward spiral for decades. Today only about one in ten private sector workers, and only 15 percent of the workforce as a whole are union members” (Milkman 2000, p.1).

Organized labour in the United States has been losing strength since the 1950s. By the mid-1990s union density was less than half of what it was in the 1950s (Nissen 2002).

A decline of market-share, erosion of bargaining strength and decrease in membership has caused many unions recently to re-examine their approach. What unions realized is that the problems they continue to encounter in the functional areas of union affairs such as collective bargaining, grievance handling, arbitration, political action, etc. are derived from the same source: the inability to organize the unorganised worker and to sustain membership (Grabelsky and Hurd 1994).

Traditionally, unions have focussed their approach on maintaining a labour aristocracy, securing rights and benefits for their current members and excluding the general working class from the same privileges. Further, unionists have depended on a culture of nepotism to increase membership. Unionists would recruit from their own communities (Nissen and Grenier 2002). However, communities are changing and the relationships unions have depended on in the past to recruit members are not as strong as they previously were and they now need to embrace the plight of non-traditional workers. (Johnston 2002).

It is estimated that in the past decade the labour market in the United States has increased by 11 million undocumented workers (Sum 2001). These workers have been steadily entering the construction industry, which has seen a dramatic loss of skilled workers and is now scrambling to seek out a new pool of potential labour (Wells 2001). Undocumented workers provide

a flexible and cheap labour source to meet this need and therefore directly compete with union members. The following case study will discuss how the New England Regional Council of Carpenters (NERCC) developed organizing campaigns to reach out to undocumented workers from Latin America, working for two construction companies in Massachusetts. NERCC is a regional division of the international union, the United Brotherhood of Carpenters and Joiners of America and has jurisdiction over New England, a region of 6 northern American states.

The Structure of a U.S. Union

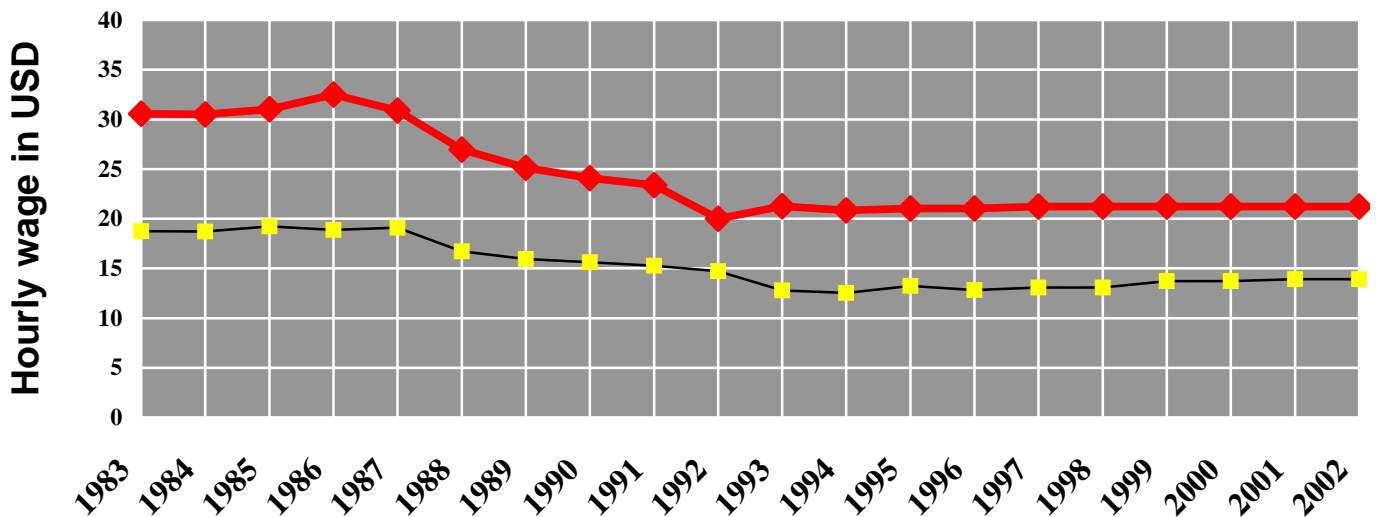
As most United States unions, NERCC has two areas of focus in trying to secure rights for their members. One is the monopoly angle, whose goal is to dominate an industry and control wages within a given market, and a collective voice/ institutional response angle, which corresponds with their ability to organize workers (Freeman and Mendoff 1984). The monopoly angle uses a series of collective bargaining agreements (CBAs) with union member companies (Freeman and Medoff 1984). This approach is referred to as top-down and the goal is to encourage business leaders/company owners to sign CBAs so that the union can subsequently increase the roster of companies that are union shops in which their members can find jobs. The strategies unions employ to encourage companies to sign these agreements are varied and will not be examined in this paper. However, it is important to note that usually a combination of top-down and bottom-up approaches is used. An extensive research department, whose purpose is to investigate areas that the unions can exploit to convince a company that it is in its best interest to sign a CBA, usually handles the top-down approach. The bottom-up approach is mainly, through industrial action, handled by the rank and file, such as strikes and picketing a jobsites (Lange and Mills 1979).

Once a company signs a CBA with a union it becomes a member company and usually it can only employ union members and the union usually acts as a labour broker, sending members out to different jobsites. These workers must all be paid the union wage, which is detailed in the CBA along with other benefits such as a pension, healthcare, etc. (Murray 1998).

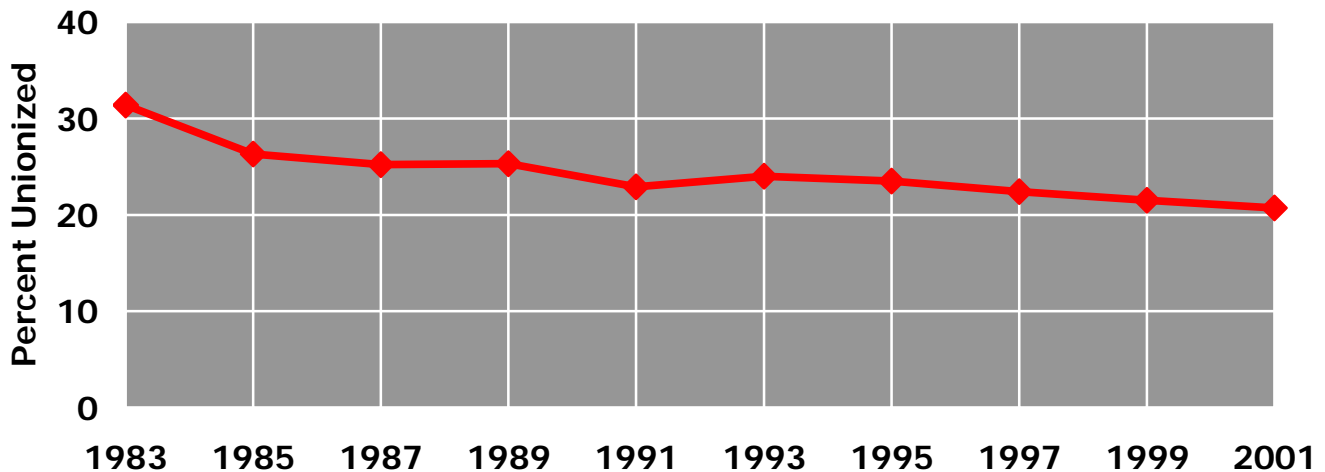
The agreements differ from region to region and also vary according to the experience of the worker and their specialization, but the union wage is always significantly higher than the national minimum wage (Finkel 1997). For example, in 2002 the average UBC wage for a carpenter was \$21.22, significantly higher than the \$5.15 minimum wage (NERCC 2003). In trying to maintain this monopoly unions have strict rules that prohibit their members from taking jobs with companies that have not signed a CBA. The decline in construction union density directly relates to the decline in overall wages for carpenters (Figures 1 and 2) graphs 4.3 and 4.4)

Figure 1 The Decline of Real Hourly Earnings for U.S. Carpenters 1983-2001

Chart in 2001 US Dollars (union wage top red line, non-union lower yellow dotted line)
(NERCC 2003)



**Figure 2 United Brotherhood of Carpenters and Joiners of America:
Union Density 1983-2001**
(NERCC 2003)



With fewer members joining, it is not advantageous for companies to sign CBAs and be obligated to pay union wages. (See figures 3 and 4, which show how the growth in the construction sector relates to the decline in union density.) In signing a CBA, companies oftentimes lose their competitive advantage in bidding for projects. Since construction projects are awarded through a bid process; companies submit their proposals for completing a job in secret (Finkel 1997). Union shops generally have higher bid prices because of their cost of labour. Union response to this problem has often been to institute a system of market recovery whereby the union supplements the member companies in the bid process, offering them the opportunity to quote a lower wage price in the bid and then the union will make up the difference in the pay checks of the workers (Faria 2003). However, this approach does not necessarily make business sense long-term, if unions must supplement every bid. For this reason, unions like NERCC have decided to re-evaluate their approach and concentrate more on organizing. As Mark Erlich, Director of Organizing for NERCC reported, "The goal is organizing the industry. With increased union membership we succeed because we can dictate industry terms" (Erlich 2003).

While construction jobs continue to rise, a decrease in union density negatively affects the demands unions can make of their member companies (Joyce 2003). Along with a growing informal construction sector, unions are facing the problem that these jobs are no longer passed down through the generations, as they had been previously (Freeman and Mendoff 1984).

Figure 3 Construction Employment 1950-2001
(NERCC Convention 2002)

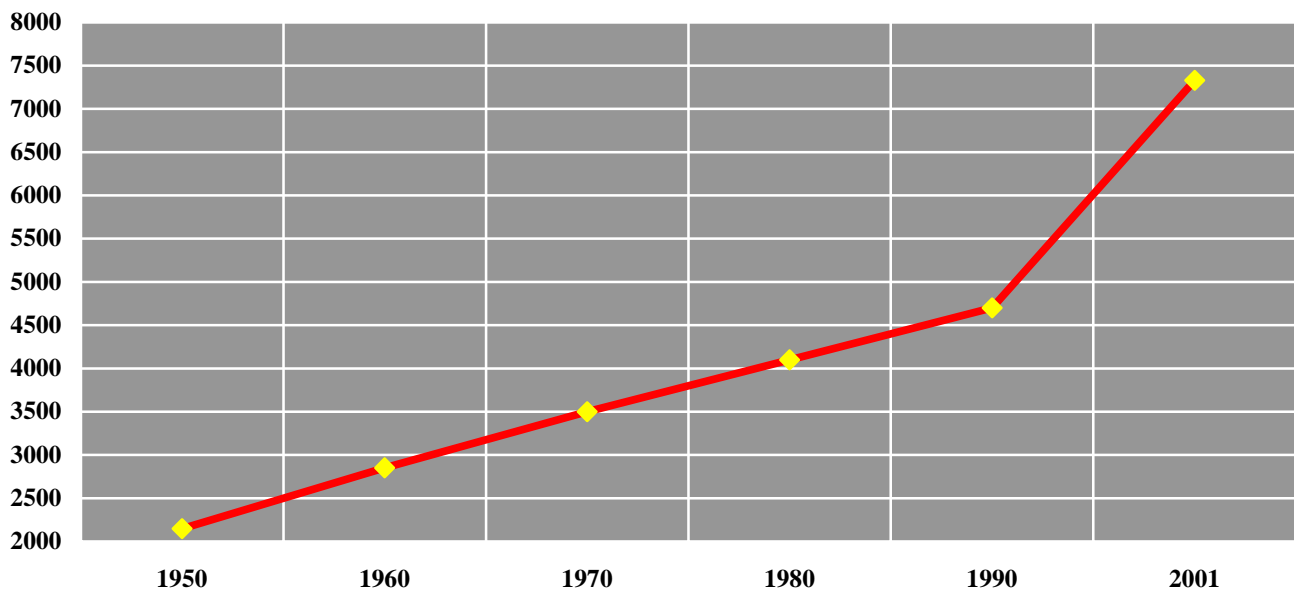
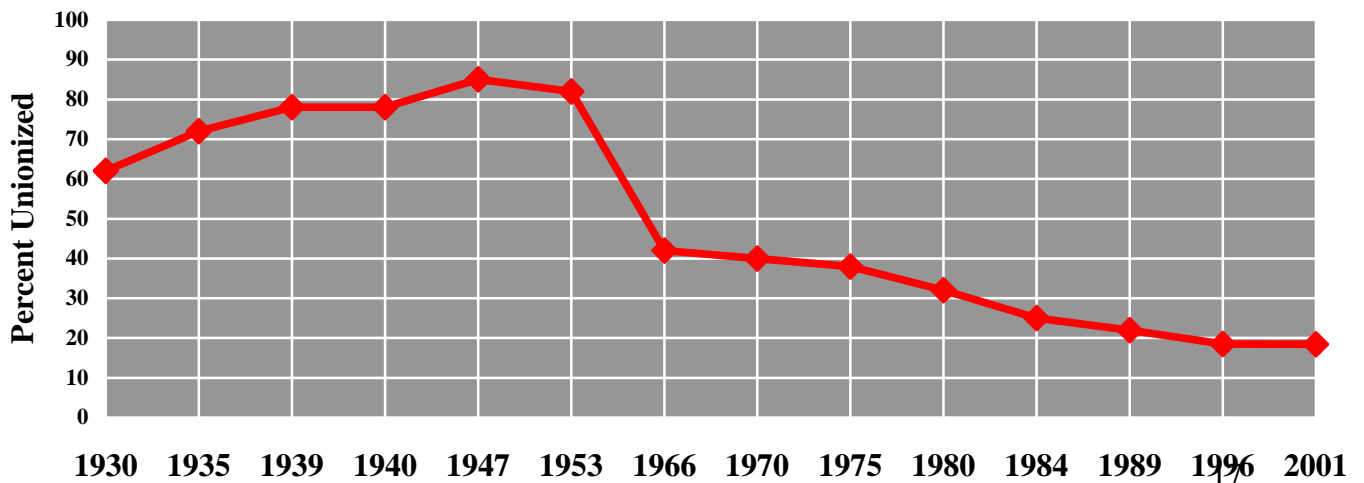


Figure 4 Construction Union Density 1930-1950
(NERCC Convention 2002)



Initially, union leadership felt threatened that by extending their membership to undocumented workers they would assist what they viewed as the enemy. However, they soon realized that this is the new population of workers (Milkman and Wong 2000). "Effective organizing raises density, rising density strengthens bargaining, organizing thus helps bargaining" (NERCC 2002). While undocumented workers are traditionally in the country illegally, the union's position is that they do not ask for proof of legal residency. If the workers insist that they are legally able to work in the country, the union does not research their status (Joyce 2003).

The Successful Organizing Drive

In the last five years in New England many non-union large general contractors have successfully been awarded projects because of their increasing use of inexpensive subcontractors, whose labour force is primarily undocumented workers from Latin America. In their outreach efforts on various construction jobsites, union organizers began talking to workers about their labour situation. What they found was that the workers were a travelling workforce, moved from state to state through false promises of higher salaries, better work environments and free housing (Sherman and Voss 2000).

As a research specialist with NERCC from 2002-2003, I became aware of the union's organizing campaign targeting Santos, a construction company that focuses on the housing market. Through this campaign, I met Freddy, an undocumented worker from Ecuador, whose story is not unique to experiences in the industry. For various projects, I interviewed Freddy, who was uncomfortable revealing his last name because of his illegal status. He had arrived from Ecuador seven years ago with some other men from his same town. They were encouraged to seek work at Santos by a friend, who they had witnessed was doing well in his job in the U.S. This friend, who was later discovered to be a *coyote*, assisted Freddy and the others, as he was bilingual and had lived in the U.S. for a number of years. Freddy had been living in Texas where the work was steady and he was able to send money from his pay check home to his family in Ecuador. From Texas, since he was

part of a travelling workforce, he was moved to New Jersey to work on various housing projects and then subsequently encouraged to move to Massachusetts.

Initially, he was apprehensive about moving again to another state. He was regularly employed in New Jersey and had found a community of other workers in which he felt comfortable. His English skills are very limited and his comfort level in New Jersey was important to him. However, the *coyote* encouraged him to take the work in Massachusetts and he was promised one and a half times the salary he was currently receiving along with housing. When he arrived to Massachusetts he realized that the *coyote* had not been completely honest about the work conditions and he was trapped in an abusive work situation.

Firstly, the living arrangements he was promised were completely different than the reality he experienced. Instead of receiving free housing, he was charged for it a percentage of his salary. The housing was also located in a suburb and he and the other workers were not given any means of transportation for leaving the house if they needed to satisfy their basic needs such as purchase groceries. The *coyote* would drive a van and pick him and the other workers up at 5am and return them at 8pm. As the house he was living in was in a relatively affluent community, he was threatened that if he left the house the neighbours would call the immigration authorities. Since he was not familiar with the U.S. laws and he still trusted the *coyote*, he abided by the limitations imposed but the conditions in which he was living were uncomfortable. He states. "The situation was that the house they were renting for us was not designed to accommodate 30 people living there. There were only two bathrooms, the hot water ran out and we would have to take showers in freezing cold water. In the bedrooms we just laid blankets down and slept on the floor with 8 people per room" (Freddy 2002).

These workers were living in deplorable conditions as described by Bob Corriveau a union organizer. "In the living quarters of the workers the carpets were wet with mildew. There was no refrigeration for food and because there was no means for them to clean the dishes, the pots and pans

were dirty. There were, no facilities to use rest room and asbestos from the ceiling was falling down in living quarters" (Corriveau 2002).

Furthermore, instead of Santos paying the workers the promised salary, one and a half times what they were earning in New Jersey, they were paid half of their weekly salary and continuously promised the rest, as Freddy explained. "They didn't pay us, they only gave us half of our weekly salary. When we came here we did so because we needed money to support our families. Our families are counting on us, we could not wait for them to pay us when they wanted to."

In their drives around construction sites NERCC organizers saw the conditions that Freddy and the other Ecuadorian workers were enduring. They brought in bilingual organizers and began the process of building trust. At first the workers were apprehensive, and the organisers encountered difficulties speaking with them if the labour broker was nearby intimidating them. So, the union organizers investigated and discovered the house the workers were staying in and began to visit them there. After a series of weeks, the union earned their trust and created a plan for when the workers felt ready, they would call the organizers from a pay phone and they would drive to the jobsite to pick them up. Through various social service organizations, the union was able to secure them housing in a Latin American dominated neighbourhood near a construction site where a member company was working. John O'Connor, one of the organizers on the campaign, stated. "When we offered them jobs with steady pay they just packed into our van" (O'Connor 2002). The workers received training at the union apprenticeship facilities and are now working for member companies. The union also signed Santos construction as a member company.

Unfortunately once Santos signed a CBA, the company ceased its New England operations and returned to working in the New Jersey area. However, NERCC organizers encountered Pentel, another housing construction subcontractor who was rumoured to be operating under a similar structure as Santos. Upon further research, the union learned that Pentel was owned by Santos and had been established so that Santos could operate in the same industry without the CBA signed with NERCC. This

observation spurred legal action and to avoid further lawsuits the company's owners signed a CBA with Pentel along with an additional clause that any other future entity would be covered under a CBA (Erllich 2003).

A Less Successful Organizing Attempt

In my work at NERCC I encountered a similar situation where the union attempted to organize a population of undocumented workers. However, this project did not function as well as the Santos initiative and the union ultimately lost contact with the workers. Before the workers abandoned the union, I had the opportunity to speak with them about their situation and discovered the following.

Miguel Sandoval and Carlos Ramirez were also members of a travelling workforce of undocumented workers from Mexico who had initially begun their work in Texas. However, when the construction company fired them because of their illegal status and refused to pay them their monthly salary and also stole their tools, they decided to follow Carlos's cousin to work in Massachusetts. Through a *coyote*, they found work with BP Drywall, a commercial drywall company and began to build a school. To ensure that the company was abiding by labour standards, the public works department issued a random check at the jobsite. To escape a hefty fine, when the *coyote* learned of this check, he fired the undocumented workers. At that time, Miguel and Carlos had not been paid their monthly salary and returned the next day to claim their wages. Unfortunately, the *coyote* was not on the site and the construction manager told them that they would not be receiving their salaries. They then complained to one of the school related officials, who suggested that they speak to NERCC (Sandoval and Ramirez 2002).

NERCC filed a complaint with the State Attorney General's office to reclaim their wages, but due to governmental bureaucracy their complaint would not be handled immediately. In the meanwhile, Miguel and Carlos did become union members and received a new opportunity to work on the construction of an apartment building. Yet, they joined this project almost at its completion and they were shortly unemployed again. As they were not immediately offered another union job, they decided to return to the non-

union informal sector. The union lost track of them and while their claims were eventually processed by the State Attorney General's office, they were not accessible to receive the monies they were owed.

Analysis and Policy Implications

The success of the Santos campaign hinged on the fact that the workers felt it benefited them to stay in the union, since there was enough work at the time for them to remain employed. In Miguel and Carlos's case their primary needs were not satisfied with the union, which is why they reconnected with the informal sector, even though the organization did eventually secure the wages they were owed from their previous company. With a lack of familiarity with the English language, the American culture, and their rights, undocumented workers find it difficult to disconnect with the informal networks they have depended on to enter the host country, especially when organized labour is negligent at finding them continued work.

The contemporary union movement remains committed to the labour aristocracy model, where all non-union workers and non-member companies are viewed as a direct threat to the existence of the organization. In response to declining membership, unions have taken an increasingly aggressive approach to organising. Employing an *Organize or Die* strategy, unions limit workers' and companies' autonomy and flexibility, holding them to strict union rules (Sherman and Voss 2000). In my experience with NERCC, I witnessed firsthand that unions that have adopted *Organize or Die* have a no-tolerance policy towards member companies that flout CBAs, which explains NERCC's decision to take legal action against Pentel, a subsidiary of Santos that was established to operate outside of the limitations of the CBA. In terms of their membership, this policy has influenced the union's establishment of a system of tribunals, which punish members with heavy financial penalties if discovered to be operating in the informal sector.

However, this approach is not realistic as flexibility now dominates many industries, through the increasing use of subcontractors with travelling

workforces. For this reason migrants are less likely to join a union than previous generations. Milkman writes that “Recent immigrants (those arriving in 1990 or later) are the least likely to be unionised, whereas those who have been in the United States the longest (arriving before 1980) have unionisation levels roughly double those of newcomers” (Milkman 2000, p.13).

For unions to consider adopting a more flexible approach they must undergo a process of institutional analysis to unpack their prejudices against non-traditional workers (Grabelsky and Hurd 1994). They need to re-invent themselves as an institution committed to protecting the rights of all workers, regardless of their ethnicity or migration status and whether they are employed in the formal or informal sector.

In relating the unions’ approach to the human rights framework, it can be argued that the decision to organize workers does not stem from a true concern for their rights. Rather unions have an aggressive desire to eliminate the competitive advantage they have over their traditional members. For example, there is still a two-tiered system in union membership, between traditional members and the new undocumented worker members. In organizing these workers, deep-rooted prejudices in the organization began to surface, especially when there were limited union jobs available (Needleman 1998). Erlich explains: “When there is full employment it is easy to be generous and not as easy to be xenophobic. It took a while for it to sink in that this is the construction workforce” (Erlich 2003).

Monitoring the Informal Sector for Safety and Misclassification

The informal sector is not a threat to unionised labour, rather it is an opportunity for the union to embrace a new type of workers. While unions are able to organize non-traditional workers within their current system, as in the situation of Freddy and the other workers from Santos, the increasing informal sector lends more common to the situation of Miguel and Carlos of BP Drywall, where the union has insufficient resources to keep their undocumented worker members fully employed. Until unions have secured

sufficient member companies to guarantee full employment in a flexible market to undocumented workers, it is imperative that they permit workers the flexibility to work with the union when they can and also work in the informal sector. For example, they could allow members the ability to negotiate their own wages on certain projects, so that if companies were interested in employing union workers for a specific job, but could not afford the union wage, they would still be able to do so (Finkel 1997). This approach could be beneficial to their member companies in securing additional bids, without the union needing to occupy the market recovery approach discussed earlier.

Accepting the reality that the industry has become more flexible and formally recognize that their union members and member companies operate in the informal sector, unions would be better situated to influence labour standards industry-wide. This attitude affects areas of the industry such as safety. Safety equipment adds an additional cost to construction projects, companies that employ undocumented workers regularly do not comply with these laws because these workers are far less likely to object to blatant safety violations and exercise their rights to safe conditions. The Occupational Health and Safety Administration (OSHA) of the U.S. government legally obliges companies to abide by certain safety standards (Finkel 1997). Specifically in construction, companies must alert their employees to these standards as discussed in section 1903.2(a)(1) of the OSHA Construction Safety Act of 1970.

“Each employer shall post and keep posted a notice or notices, to be furnished by the Occupational Safety and Health Administration, U.S. Department of Labor, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest office of the Department of Labor” (OSHA 1970).

The issue of safety is directly linked to the misclassification of wage labourers as self-employed. As independent contractors they are responsible for providing safety equipment on construction sites, rather than the construction company providing the apparatuses. In their efforts to combat the competitive advantage of the informal sector, some unions like NERCC have established a compliance department that tracks these cases and brings them to the attention of the Attorney General. The state is concerned about these practices as companies that engage in this process avoid paying taxes on their employees that results in lost government revenue. Misclassification accounts for annual federal income tax losses of over \$1.2 billion, social security tax losses of \$727 million and unemployment tax receipt losses of approximately \$165 million (Silverman 2002). In combating this issue undocumented workers are seen as pariahs, straining the welfare system and unnecessarily consuming public goods (Zolberg 1983).

Additional Services Unions Can Offer Undocumented Worker Members

We can now discuss additional services unions can offer undocumented workers that would be helpful in encouraging them to maintain a connection with the union. From my interviews with the undocumented workers from both Santos and BP Drywall, it became clear that the benefits they would have in joining the union are outside of the conception of their needs. Health insurance is not a main priority since as undocumented workers are cognizant of their illegal status they are apprehensive about utilizing services of formal institutions for fear of being discovered. As they are hoping to reside in the host country for a set period of time, they are unlikely to claim a pension.

To increase migrant membership, unions should examine areas where they could provide services that would be within the migrants' conceptions of their needs. For example, as migrants' main concern is remitting their salary to their family the union could offer the ability to send money home without the high service fees many businesses charge. Money transfer companies charge at the minimum a 20% of the monies sent in a service fees, this is in addition to the funds lost in exchange rates (U.S. Department of State 2003).

This area could be one where the union could work on forming partnerships with banks in Latin America that would allow for a more affordable transfer of funding. NERCC in fact has a bank, First Union, which could be useful in this effort.

In addition unions could employ is form more links with local NGOs. Rather than adopting an aggressive approach, unions could increase links with other citizen and social movements and embrace undocumented workers into the broader social community (Johnston 2002).

“Labour movements converge, moreover with other citizenship movements that seek to develop public institutions that defend and rebuild local communities, in an increasingly globalized economic and public order. Practically speaking, this implies a new way of framing our claims and orienting our strategies: no longer is the fate of a particular bargaining unit at stake, but the status and future of a community” (Johnston 2002, p.241).

On one level, they have attempted this approach through working with NGOs to advocate for amnesty for undocumented workers, to eliminate the threat of deportation. As Erlich comments, “it is complicated to organize undocumented workers because of their legal status there is a fear of deportation. With this risk it is difficult for them to confront power especially with employers threats and intimidation” (Erlich 2003). The AFL-CIO, the umbrella organization for most U.S. unions, has established a policy that urges for assistance for both undocumented workers the end of legal sanctions against employers who hire undocumented workers. Currently, businesses that are discovered to employ undocumented workers can be heavily fined. This is the reason that Miguel and Carlos were fired from their jobs, as the company was attempting to protect itself against prosecution. The federation declared that it advocates for a new

“policy to reduce undocumented immigration and prevent employer abuse. Any new policy must meet the following principles: (1) it must seek to prevent employer discrimination against people who look or

sound foreign; (2) it must allow workers to pursue legal remedies, including supporting a union, regardless of immigration status; and (3) it must avoid unfairly targeting immigrant workers of a particular nationality" (Walker 2000)

However, as amnesty would only apply to current workers, the program would not solve the problem of exploitation of new undocumented workers. Furthermore, there would still be language and cultural difficulties where groups of workers would depend on others to manage their employment situations, which could lead to exploitation of workers with this newfound immigration status.

NGOs are currently pursuing programs to guarantee undocumented workers more rights. Labour unions could contribute their resources to these campaigns, which would ultimately assist them in organizing these workers. For example, in New England there is a campaign to facilitate immigrant access to securing a driving license. This program would provide them with a legal identification and the ability for mobility, which could enable them to seek better housing conditions. Local unions have been slow in supporting this campaign but are now recognizing that enabling their workforce to drive would provide them more freedom to seek better labour conditions and less dependency on *coyotes*. Charlie McFarland, business agent for NERCC, states: "One of the biggest problems for immigrant workers is the ability to get to jobs. The *coyote* usually provides transportation so once they are able to break free of that dependency they are more likely to succeed" (McFarland 2003)

The combination of securing employment and accommodation was key in organizing the Santos workers. As NGOs are dedicated to providing services to immigrant populations, unions should more regularly form partnerships with them in their campaigns. For example, Milkman and Wong (2000) write about a drywall organizing campaign in Los Angeles where the union secured strike funds for workers, through NGOs, to support them during their not having jobs, food was provided by church groups and local restaurateurs organized fundraisers. Associations between unions and NGOs

could be useful in tackling the issue of workers competitive advantage, as NGOs could offer continued support in assisting migrants to advocate for their rights. NGOs could also work with unions to advocate for more inclusive laws, which would recognize the commitment undocumented workers make and protect them from abuse. This area becomes somewhat muddled because it is precisely the fact that migrants operate outside of labour law that gives them a competitive advantage.

Conclusion

This paper has examined the possibility of supporting undocumented workers in their present situation (e.g. illegal status), limiting their exploitation and still maintaining their competitive advantage. By adopting a human rights framework to evaluate two different undocumented-worker organizing campaigns within NERCC, I have found that it is possible. However, several conditions must be in place for this support to occur.

First, the state can no longer exempt itself from the responsibility of resolving worker abuse, under the excuse that these workers must tolerate poor conditions since they have the opportunity to work for higher wages in the host country. To restrict their participation in the economy, many industrialized countries have adopted stringent border controls and legal restrictions on undocumented worker rights. However, as migrants are relieving citizens and legal residents from performing tasks that are often seen as degrading, dangerous and dirty by the host country population, they are entitled to protection of their basic human rights.

Second, NGOs and labour unions that are committed to advocating migrants rights must realize that to truly assist them, they need to develop programs to provide them with continued employment. The problem is that organizations, such as NERCC, do not work to protect migrants out of a moral obligation to eradicate worker abuse, but rather by their desire to eliminate the competitive advantage the informal sector has over traditional membership. These organizations need to resolve their deep-rooted

prejudices for this is one of the reasons for which migrants continue to depend on informal networks, where they often must forsake certain basic rights to secure stable jobs.

To further develop this research some limitations must be addressed. First, it is difficult to measure human rights abuses. Oftentimes, workers are living a precarious life in their home country, to work illegally in the host country. Thus the new conditions they endure could possibly be seen as better than the situations in their home country. For additional research, it may be useful to engage further with the question of universal human rights and how those apply to migrants, even though defining what constitutes basic human rights is notoriously difficult. Additionally, it could be useful to examine what the expectations are of undocumented workers of their experience in the host country. As well as, whether these expectations are fulfilled.

Furthermore, the issue of the state's restrictions on migrants' work needs to be more deeply explored to discuss the question of why if states increasingly have strong migration policies, policy makers have yet to develop an alternative if employing undocumented workers was suddenly no longer an option. In further exploring this question, there could be a comparative study examining how several governments handle migrants' issues. For example, it would be interesting to see if the same issues of undocumented workers competitive advantage are as strong in Europe, especially as the European Union further integrates politically and economically. Another aspect of the same argument that would be interesting to examine would be to what extent countries really benefit from undocumented worker labour, during a time of increasing unemployment. It could be more useful to better to enforce labour law and raise the standards of work for citizens and legal residents or is that not economically feasible?

To conclude in this paper I have illustrated that supporting the human rights of undocumented workers, while protecting their competitive advantage is possible. However, all of the stakeholders (the state, the private sector, the public sector, and the workers themselves) must be committed to protecting these rights. Unfortunately, because of each

individual group's interests, this coordination is often not possible. However, this research offers suggestions on how to best to accomplish this.

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