



May 22, 2007

Dear Mayor Mallory,

We've come to you tonight to share our concerns about the problems that Day Labor Agencies are creating for our neighborhoods.

We hope that you'll listen to the thoughts and hopes of the day labor workers and their community supporters.

We also hope to hear your input on the issue.

More importantly we hope to have your help. We'd like to have you help us coordinate a meeting with representatives from the following interested parties and offices:

- 1) the City Manager's office,
- 2) the sponsoring council members,
- 3) the solicitor's office; and
- 4) the ordinance's community supporters.

The goal of this meeting will be to bring the relative knowledge and expertise to bear on the problem. This way we can create enforceable day labor regulation that is also a good fit for the city.

Sincerely,

Day Labor Organizing Project

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COMMUNITY ENDORSERS

The Church of Our Saviour
The Pastoral Leadership Caucus of the AMOS Project
Change to Win.org
Intercommunity Justice and Peace Center (IJPC)
Great Cincinnati Coalition for the Homeless
Drop Inn Center
Over the Rhine Housing Network
Over the Rhine Community Council
Ohio Justice and Policy Center
Interfaith Hospitality Network
Cincinnati Health Network
Healing Connections
Acorn Cincinnati
Caracole, Inc.
Power Inspires Progress
Aids Volunteers of Cincinnati (AVOC)
Justice for Janitors
Interfaith Business Builders
Homeless Alliance of Western New York
The Faith Community Alliance of Greater Cincinnati
Our Daily Bread
St. Francis/St. Joseph Catholic Worker House
Cincinnati Interfaith Workers' Center
Franciscan Haircuts from the Heart
St. Francis Seraph Ministries
Mercy Neighborhood Ministries
Cathy R. Cook - Attorney at Law
Elm Street Diner
Saigon Market
Dean's Mediterranean Imports
Carriemages
Tapei
Praise Factory Images



Life on \$33.00 a day. WHO PICKS UP THE TAB?

City residents; that's who.

Day Laborers work long days and get low wages. But they are not the only ones who pay. Let's do the math. Following deductions for taxes, transportation, safety equipment, and check cashing fees, the take-home pay for a day's work is \$33.00 a day or \$660.00 per month. Meanwhile, market rate for housing in Hamilton Co. is \$427.00 for an efficiency apartment. This means housing must be provided through federally subsidized sources like a \$175.00 efficiency from a local housing non-profit. Even with the subsidy, that leaves only \$485.00 a month, or \$121.00 a week, for food and all other needs. The end result is a job that doesn't pay and a city that picks up the tab through its charities and its social services allocations.

Day Labor For Sale. WHO IS BUYING?

Fortune 500 Companies; that's who.

The temporary hiring hall industry is NOT a quaint inner city cottage business. In many cases, the establishments fit into their surroundings looking as poor and desperate as their neighbors. However, the Day Labor Market is not a bunch of "mom n pop" operations. In fact, of the 13 area Agencies, all but two are owned or operated by large national chains.

The changing landscape of the employer/employee relationship over the past 2 decades has left us with outdated and inapplicable labor laws with respect to temporary hiring. In addition the industry has grown rapidly; some 90 % of US companies use temporary labor. The end result is a threat to our community.

Consider: "Labor Ready Inc.'s annual revenues rose from a modest \$6 million during the early '90s to its current \$976 million. Branch locations spread like wildfire during this decade, going from eight offices in 1991 to a high of over 800 in 2001,"¹

Here in Cincinnati, the clients (or third-party employers) are local companies like Proctor and Gamble; Schwan's; The Cincinnati Reds, Club Chef, Rumpke, The Cincinnati Bengals, University of Cincinnati, and Airbourne/DHL. In other words, these are companies that should be industry leaders. They that have no excuse for paying poverty wages. The exploitive situation for workers IS bad - and it is and will get worse unless we take steps to ensure just and fair treatment of our working citizens.



WHY SHOULD THE CITY ACT?

Cincinnati should be a town that rewards hard work.

The Day Labor Agencies are making offers to workers who are not in a position to negotiate. Their subsistence living leaves them with no recourse but to accept the wages and terms as offered. They do so because they have no choice. Furthermore, because this deal is so bad and the conditions so demeaning, it drives many workers away from these putatively "legitimate" work opportunities. The result is a labor market that drives workers into less laudable ways to make ends meet, such as panhandling. Cincinnati should be a city that rewards work.

When DLOP goes to the neighborhoods where agencies thrive, the streets are full of people who simply refuse to work the agencies. But given the growth of the Agencies, they are the gatekeepers to more and more of the city's jobs. With this responsibility, comes more accountability. Cincinnati should not foster an environment for the city's poor where they are damned if they work, and damned if they don't.

WHAT HAPPENS WHEN GOOD PEOPLE LOOK THE OTHER WAY?

Inhumane treatment.

This winter an elderly woman was recruited from a Cincinnati homeless shelter by a day labor agency. The agency then placed her at a job roughly 50 minutes from downtown. The agency took her there in a bus full of workers and presented her to the agency's client. The client is an international company and "industry leader" with facilities all around the world. The client company then gave her some training and set her to work. After about an hour or so, the client company removed her from the work line. Apparently she made too many mistakes. She was then told to get back on the bus and wait. Which she did . . . in the cold . . . for hours. At the end of a long day she returned to the day labor agency with the rest of the workers. As promised, she was paid the same day. Her check reflected her pay for the "hours worked" minus the deductions for transportation. Her total pay for the day was \$3.83. **THREE DOLLARS & EIGHTY THREE CENTS!** These are the types of abuses that take place when those who traffic in human beings are not held accountable for their actions.

Conclusion: In a situation where unionization is unlikely the only hope these folks have is informed political leadership that cares enough to intervene and is smart enough to know that a city that rewards work is a city that works. The day labor agency is a problem that's unique to cities. Cities can't wait around for the state and federal government to act. Cities must lead the way.



Brief Description of Proposed Day Labor Regulation

Purpose. Day Labor Ordinances are designed to:

- 1) eliminate unconscionable fees assessed against Day Laborers;
- 2) ensure that existing laws are adhered to in the Day Labor context; and
- 3) create much needed transparency among the parties involved in a Day Labor transaction.

Definitions. *Day Labor* is temporary, non-clerical labor arranged through a for-profit intermediary, the *Day Labor Agency*, and provided to an off-site client, the *Third-party Employer*.

Labor Market & Neighborhood Context. For a variety of reasons, Day Labor has become an increasingly vital part of the mainstream labor market. The upshot is that existing employment law - such as the FLSA which presupposes a long-term employment relationship - provides less and less protection for more and more employees. Day Labor Agencies and their clients have been operating in and exploiting this gap for years. The result is a context that is ripe for abuse. For individual employees this context creates bad outcomes. And in the aggregate, these bad outcomes increase the strain on both social service agencies and the low income neighborhoods where the Day Labor Agencies thrive.

To date, five states -- Arizona, Florida, Georgia, Illinois and Texas -- have adopted legislation affecting the labor rights of day laborers. Other cities with day labor regulations ordinances include Kansas City, Atlanta and Chicago.

Specific Provisions.

Licensing:

- 1) All Day Labor Agencies must apply for a license. Application requirements include: no felonies within ten years, no minors. Application fee: \$250.00. Annual license fee: \$250.00.

Deductions:

- 1) **Transportation.** Deductions for transportation to and from the Third-party Employer's site are capped at the prevailing rate for public transportation.

- 2) **Safety Equipment.** Deductions for all safety equipment required by law are prohibited. No fee can be charged for other, “returnable” equipment. Fees for any unreturned equipment cannot exceed market price.

Notice & Disclosure Requirements:

- 1) **Notice.** Agencies must provide notice of the available employment opportunities. Notice must include all relevant terms of the job offer, i.e: wages, duration, any potentially hazardous conditions, Third-party Employer/work-site contact information, whether meal is offered and its cost, as well as any transportation and equipment fees.
- 2) **Work-Ticket.** Agencies must provide day laborers with a “work-ticket” that details the wages, duration, any potentially hazardous conditions, Third-party Employer / work-site contact information, whether meal is offered and its cost, as well as any transportation and equipment fees.

Work Restrictions:

- 1) **** Four Hour Minimum.** Any time a Third-party Employer “contracts for” but does not “utilize” a day laborer, the day laborer must be paid a minimum of four hours at the agreed upon rate.
- 2) **** Offers of Permanent Employment.** The agency shall not interfere with offers of permanent employment from a Third-party Employer to a Day Labor through such tactics as the imposing prohibitive “placement fees” on either the Third-party employer or the Day Laborer.

Recordkeeping

- 1) **Records.** Agency shall create an accurate record of each transaction by which a day laborer was sent to a Third-party Employer. The record shall include all items listed under **Work Ticket** (see above) and the hourly rate of pay to the day laborer; the compensation payable by the Third-party Employer to the agency; the number of hours worked by the day laborer; any specific qualifications or attributes of a day laborer, requested by the Third-party Employer; detail of all deductions made from day laborer’s compensation.
- 2) **Review of Records.** Upon request, required records must be made available both to the city administrators designated to enforce the ordinances and to any individual worker.

Enforcement

- 1) **Penalties.** The current draft stipulates that violations will result “in a fine of not less than \$200 and not more than \$500 for each offense. . . . Each day’s continuation of a violation shall be deemed a separate violation that is subject to the additional fine of \$100 per day.”
- 2) **** Private Right of Action.** Various statutory schemes, such as The Illinois Day Labor Services Act, include a private right of action for day laborers aggrieved by violations of the act. Whether an ordinance can contain a similar provision presents an interesting question. Similar provisions have been upheld in states with Home Rule schemes similar to Ohio’s.

Placement fee limitation, four hour minimum & private right of action not included in “November Draft.”

Day laborers sue over hours they wait

April 19, 2007

By Kevin Eigelbach

An advocate for poor workers hopes that a lawsuit involving a Florence plant will become a test case for the rights of day laborers.

Two weeks ago, 16 day laborers who work at pizza-maker Schwan's Global Supply Chain sued the company as well as the firm that actually employs them, Labor Works-Cincinnati LLC.

Their situation isn't unlike those of many in the day labor market, Cincinnati Interfaith Workers Center Director Don Sherman said.

Labor Works supplies the Schwan's factory and other tri-state employers with temporary workers.

It's not unusual for them to report for work in Cincinnati about 11 a.m. and not return from Schwan's until 1 the next morning, Sherman said. But they're paid only for eight hours of work, and typically bring home \$32 to \$35 a day after deductions.

Many are homeless and are being exploited by their employers, he said.

Schwan's spokesman Bill McCormack said from its home office in Marshall,

Minn., that the claims are unfounded and the company would defend itself against the action. "We treat our employees very fairly, and pride ourselves on the working conditions in our facilities."

Craig Trapp, who manages the Cincinnati Labor Works office, said he could not comment on the lawsuit.

The lawsuit, filed in U.S. District Court in Cincinnati, alleges that Schwan's and Labor Works have violated federal wage and hour laws by not paying employees for their time and by not paying them overtime.

Workers are paid \$6 an hour to work at Schwan's through Labor Works. They are required to report to the Labor Works office on Gilbert Avenue in Cincinnati's Walnut Hills neighborhood and wait for their names to be called, sometimes hours later, the suit said, and they are not paid for waiting.

According to the lawsuit:

Labor Works requires them to ride its own buses to the Schwan's factory and back to Cincinnati, and charges

them \$7 for the round trip bus ride, which is deducted from their paychecks. They are not paid for the time they spend riding the bus.

At the factory, they wait an hour or more in the cafeteria before Schwan's supervisors assign them a job. They don't get paid for their time waiting or if the company doesn't need them that day.

Once their shift ends, they must wait, often for hours, for the bus to take them back to Labor Works. They're not paid for that waiting time, either.

The system keeps them as a captive labor pool to meet Schwan's temporary labor needs, "for its convenience and economic benefit," the lawsuit says.

It's a way for Schwan's and Labor Works to avoid fully paying the employees for their time, it says.

Because of all the waiting, the employees end up working more than 40 hours a week, but they're not getting paid overtime, as required by federal law.

The Florence plant makes more than 2 million frozen pizzas daily for best-selling brands including Tony's, Red Baron and Freschetta.

It also supplies products to Schwan's Home Service, which operates a fleet of trucks that delivers frozen food to more than 5 million customers.

Labor Works touts its dispatch and transportation services as

selling points to businesses interested in contracting with Labor Works for temporary employees.

"Due to the fact that we dispatch our employee in person and not by telephone, we are able to screen for attitude, cleanliness, proper work apparel and safety equipment, and sobriety," its Web site says.

The company also gives a mandatory breath alcohol

test for industrial workers.

The site notes that the company provides transportation to and from the work site, guaranteeing the full number of employees arrives on time.

"Likewise, since the temps rely on us for transportation, they are less likely to be 'walk-offs' during the scheduled shift," the site states.



Exploitation or Opportunity?

Lawsuit claims day laborers shortchanged

April 21, 2007

By Margo Pierce

What would you be willing to do for \$33 a day? How about starting work at 2:50 p.m. and being on your feet working until you clock out at 11 p.m.? Add in that your supervisor can't be bothered to give you breaks, so you have to pretend to be going to the bathroom in order to grab something to eat or get off your feet for a few minutes.

Then there's a mandatory \$7 transportation fee -- you're not allowed to take the bus at \$3 per round trip -- and all this after getting up at 7 a.m. to wait around to get the job

that started that afternoon.

You might decide that's not worth \$33. But if the only alternative is selling drugs or some other illegal activity, you suck it up and take your \$33. Or do you?

Sixteen day laborers in Cincinnati are challenging that kind of treatment. A lawsuit in federal court accuses Labor Works in Cincinnati and Schwan's Food in Florence of violating the Fair Labor Standards Act. The laborers seek back pay, damages and attorney fees.

"I've been with Labor Works since '96, so I know how it works," says Damon Pearson, a day laborer and plaintiff. "You gotta go in early just to get your name on the list, and then you wait. If you worked the previous day, you're likely to work that day, but there is a little bit of favoritism.

"Then from 11:30 to 1:00, you're just waiting around on the driver. Driver's got an attitude. On top of that, you have to pay for transportation, whether or not you work. Shifts begin at 2:50 or 3:20. We're sitting in the (Schwan's) cafeteria until

a shift starts and not getting paid."

All that waiting is an integral part of the job and ought to be compensated, according to Kelly Lundrigan, one of two attorneys who filed the lawsuit. He says the day laborers aren't free to go do something else and the employer benefits from having the workers ready to go the moment a shift begins. Because of the transportation arrangements, the Labor Works employees are "held captive" and not being paid, Lundrigan says. That's why the lawsuit claims back pay is owed.

'A lot of abuse'

If the assembly line at Schwan's breaks down, Pearson says, the workers can be left standing around with nothing to do or simply sent back to Cincinnati and don't receive any pay in either instance. Additionally, time in excess of 40 hours a week isn't paid at the legally required overtime rate, according to the lawsuit.

Another issue is mandatory fees the employees pay for transportation. The Labor Works Web site boasts "the elimination of 'no-shows.'" This is accomplished by requiring day laborers to ride the company's bus for \$7 a day. The Web site neglects to include that piece of information.

"We provide transportation to and from your job site," the

Web site says. "This allows us to guarantee that the number of temporary workers you ordered arrive in our company vans on time and in an organized fashion. Likewise, since the temps rely on us for transportation, they are less likely to be 'walk-offs' during the scheduled shift."

Pearson says the bus has inadequate heating, frequently breaks down and arrival/departure times are unreliable. He also questions the reason for the fee.

"That's \$7 times 15 people times two buses," he says. "What are they doing with all that money?"

That's \$210 per day paid to Labor Works by its temporary workers.

"The fact that they're required to use the transportation required by Labor Works is a system designed by Labor Works to benefit the employer," Lundrigan says. "It's an abusive practice."

But it's a common practice by day-labor companies, as is charging rent for such safety gear as protective goggles or clothing required by the employer, according to Curt Braymen. A board member for the Day Labor Organizing Project, Braymen and others are helping identify individuals who might want to join the lawsuit.

"There's a lot of abuse," he says. "This isn't a unique experience -- it happens in at least six or seven day labor halls every day. We're going after Labor Works because the workers came to us."

Sean Fore, CEO of Labor Works, headquartered in Louisville, Ky., disputes the allegations but declines to answer questions.

"We don't think there's any merit to the lawsuit," he says. "We're going to let our lawyers make those responses in the proper venue."

The laborers, the Day Labor Organizing Project and the attorneys say they aren't looking for special treatment; they want to be treated fairly according to existing law.

"The Fair Labor Standards Act is a very fact-specific analysis to have to engage in under that statute," Lundrigan says. "There are lots and lots of legal exceptions and qualification to the law, and it's a very fact-intensive analysis to determine when somebody has to be paid for what type of activity. In this specific case, based on these facts, we believe these employers are legally required to pay these employees for the time that they are spending -- the time they're waiting to get to Schwan's, the time spent waiting in the Schwan's cafeteria. All that time, we believe they're entitled to be compensated for."

'Give us some respect'
Lundrigan calls the group of 16 plaintiffs "courageous" because of their willingness to speak out.

"The unfair illegal business practices, we think, are designed to prey upon the most vulnerable people in our community," he says. "They're people who want to work but are having a hard time making ends meet. Lawsuits can definitely be agents of change, as they have been in the past. I think this lawsuit in particular definitely has the capacity to change behavior."

Trying to get businesses to accept responsibility for practices that perpetuate unfair and illegal activity is difficult. A system of

subcontracting allows large companies, such as Schwan's Foods, to ignore their culpability, Braymen says. He sees this as an increasing problem in this country.

"You go to Schwan's, they say, 'That doesn't have anything to do with us -- that's Labor Works.' Why would Schwan's use as many as 50 temporary people a day?" Braymen asks. "It isn't a case of supply and demand. It's becoming a trend in this country."

Lundrigan agrees.

"There's an economic incentive to do this," he says. "Economic efficiency is great. But this kind of abusive behavior should not be tolerated."

Schwan's Plant Manager Randy Ingolia didn't respond to a request for an interview, and Bill McCormack in the corporate office was unavailable for comment.

Based on his experience, Pearson doesn't think Schwan's Foods is racist - they just look down on and abuse workers who are poor.

"I'm not perfect here," Pearson says. "But we're putting in our time and effort into working. It's hard and they treat us like crap. Give us some respect. We got people who want to work, who don't want to sell drugs or work in strip clubs. In Cincinnati we're cryin' for more jobs." ©

THE ENQUIRER

Tire shredder critically injures worker Investigation begins at Rumpke recycling

April 28, 2007

By Jennifer Baker & Katie Wedell

ST. CLAIR TWP. - A temporary worker at the Rumpke Tire Recycling Center who was caught in a tire shredder Thursday was fighting for his life Friday.

Scott Johnson, 56, of Cincinnati, underwent surgery and was listed in

critical condition at Miami Valley Hospital in Dayton, a nursing supervisor said.

The St. Clair Township Fire Department was called to the business in the 3800 block of South Street at 4:10 p.m. Thursday.

Johnson lost his left arm and suffered multiple cut and injuries on his head, torso and legs, said Detective Monte Mayer, spokesman for the Butler County Sheriff's Office.

He was standing next to the tire shredder when it jammed, a preliminary sheriff's investigation has found. Johnson tried to

clear the shredder when he either fell or was pulled in, Mayer said.

Johnson had been working at the recycling facility for nearly two months as a subcontracted worker, according to Amanda Pratt, a Rumpke spokeswoman. She said Johnson took part in all necessary training sessions to operate the shredder and appeared to have been wearing all his safety equipment at the time of the accident.

It is unclear whether he was following proper procedures to fix the jammed shredder.

Rumpke safety investigators were on

scene Friday along with representatives from the Occupational Safety and Health Administration.

Pratt said OSHA may take up to six months to issue its findings.

Rumpke shreds 2 million tires a year at the site in New Miami. This is the first serious accident to occur with a shredder there.

Shredder accidents are fairly rare. But when they happen, employers can face fines.

A search of OSHA records indicates that a Louisiana-based contractor was fined \$180,000 in 2006 after a teenage worker lost both his legs while

repairing a shredding machine in Texas.

Rumpke's most recent fine for a workplace accident was in 2002. Rumpke Recycling Inc. was fined a total of \$2,925 on seven violations after an electrical shock accident at a Circleville, Ohio, site, according to OSHA records.

Operations at the New Miami tire-shredding facility were shut down Friday. It had not been decided whether work would resume Monday.

Pratt said Johnson, his family and immediate co-workers are in everyone at Rumpke's thoughts and prayers



ColorLines, Fall 2002

Hard labor: one company's exploits in day labor reveal what's wrong with the temp industry

Gordon Hurd, senior writer

It's 5 A.M. on a downtown street in a metropolitan city. There is very little hustle and much less bustle; the buses are only just starting to trek down the main boulevards. Yet,

some men begin to gather outside a storefront this early in the morning. They slowly filter through a swinging glass door and into a room with cold concrete floors. They sit

down on plastic chairs, talk, and drink coffee. Many wear well-used clothes and broken-in boots and sneakers. Most are African American or Latino, some poor, some

homeless. They all jot their names on a signup sheet. They gather here to put to the test the slogan displayed so prominently in this office: "Work Today. Paid Today."

This scene of urban labor plays out in hundreds of cities and towns across the United States, Canada, Puerto Rico, and the United Kingdom. The daily routine recycles hundreds of thousands of individuals who line up before dawn to enlist the services of a company called Labor Ready. According to its own promotional material, Labor Ready provides "dependable temporary labor" to construction companies, manufacturers, retailers, and scores of other customers. With over 750 offices nationwide and in the United Kingdom, Canada, and Puerto Rico, Labor Ready is the premier intermediary, marketer, manager, and profiteer in the world of light industrial manual labor.

Despite its loud fanfare about putting people to work, Labor Ready makes millions of dollars by passing costs and risks

along to the people it claims to be uplifting. In effect, the company exchanges cash for the low-wage and dangerous servitude of largely ignored and underrepresented classes of people: people of color, the homeless, the urban poor. Companies like Labor Ready take advantage of a large and continuously replaceable workforce, using to their advantage legislative and judicial loopholes and ultimately the need of its customers for quick production turnarounds and short-term profits.

Questionable Practices

On the surface, the list of Labor Ready's questionable practices is predictably long and convoluted, and has been the stuff of headlines since the company began. Its business practices have inspired a number of press investigations. Also, the AFL-CIO has launched an active campaign against the company, releasing a steady barrage of press releases, research summaries, and analyses pointing to the unsavory nature of Labor Ready's bread and butter.

What this wide and varied coverage has ultimately revealed boils down to a deceptively simple pattern. Labor Ready's profits can generally be tied to a four-tiered modus operandi: maintain easy access to a vulnerable labor pool; draw quick bucks from nibbles at workers' paychecks; enlist divide-and-conquer tactics among workers; and take full advantage of regulatory negligence concerning costly safety programs and insurance requirements.

Following this prescribed formula, Labor Ready has had an eventful history in terms of its treatment of workers. Its most flagrant and self-serving actions deal with fleecing its workers of their wages through excessive fees for "services." Labor Ready has generated millions to its bottom line by charging its massive workforce a few dollars here and there, including fees for the use of protective and often legally required gear like boots and gloves, "conveniences" such as check cashing, and overcrowded and often dangerous transportation to worksites. Add to that

combination a documented lack of proper safety training for its workers. A laborer under the charge of the company has a one in four chance of being injured on the job, according to OSHA, and a high likelihood of raking home less than minimum wage for that risk.

Labor Ready has the luxury of exploiting its workers without ramifications simply because they fly under the radar of mainstream media and regulatory agencies. Over half of Labor Ready's workforce is homeless. And nearly every Labor Ready branch office in the United States is within 2.5 miles of major urban areas where more than a third of the population are people of color and nearly 15 percent live in poverty.

Political Contract

How does a company so notorious come to be? And how is it allowed to exist unrestrained? To understand this, one has to go back to the time when Labor Ready first broke ground. Founder and former burger franchise entrepreneur Glenn Welstad started

Labor Ready when temporary labor was already a well-recognized and increasingly popular item on the business menu. What he concocted was a new and winning combo: a temporary employment agency fused with the street-corner day labor market, all to meet the needs of an increasingly competitive and demanding manual labor sector.

The rise and riches of Welstad's Labor Ready benefited greatly from the political atmosphere of the late '80s and early '90s. Anti-immigration and welfare reform policies coincided with Labor Ready's dramatic growth. America's political dialogue in the mid-1990s spoke fiercely to accountability and regulation over welfare and illegal immigration. The "welfare queen" needed to get to work. The rising tide of immigrants needed to get off the streets. Who better to be the unseen fodder for Welstad's chain of day labor hiring halls than vilified immigrant day laborers and underemployed welfare recipients?

In general, this period was fruitful for day labor and temp agencies, an economic era characterized by privatization and devolution in the social services arena. The government trend of ditching responsibility for the public safety net allowed temp companies like Maximus to capture profitable government contracts to move people off the welfare rolls, largely into low-wage temporary jobs. Labor Ready's annual revenues rose from a modest \$6 million during the early '90s to its current \$976 million. Branch locations spread like wildfire during this decade, going from eight offices in 1991 to a high of over 800 in 2001.

Legislative Green Light

The temp labor sector is the fastest rising portion of labor, from white-collar office workers, to the folks who serve beer at baseball games, to construction workers and dean up crews. According to a General Accounting Office study, temp jobs in all their various forms and fashions rose 577 percent between 1982 and 1998. Nearly 90 percent of U.S. companies use temp labor

in some capacity. The National Alliance for Fair Employment reports that three in ten workers are neither full-time nor permanent employees. The most recent Department of Labor statistics show that the majority of job creation and growth in the U.S. is in the form of temporary employment. Despite this massive growth and expansion, the federal government has done very little to regulate or protect temp workers.

In fact, the National Labor Relations Board in 1990 allowed companies to refuse temporary employees the right to unionize alongside "regular" employees. The decision was recently reversed, probably not unrelated to increased national attention to the plight of the temp, albeit the high-tech, white-collar variety-notably, Microsoft's highly publicized battle with its cadre of temp employees.

Judicial action toward immigrants, as well, has offered incentive for companies to continue to exploit undocumented workers. With the Supreme Court's 2002 Hoffman decision,

undocumented immigrant laborers have no legal standing to sue for back pay when fired for attempting to unionize. In effect, our nation's highest judicial branch has given out a free pass for companies to hire and fire at will a silent, disarmed pool of laborers.

Danger on the Job

The fact that immigrant workers are most likely to be injured or killed in the workplace hasn't inspired much action from federal agencies either. According to a recent series of articles in Newsday, immigrant workplace deaths are not investigated actively and occur at a much higher rate than non-immigrant incidents, especially in areas such as construction and manufacturing. In states with high percentages of foreign-born workers, injuries and fatalities of immigrant workers occur at an alarming rate. Nearly a third of workplace deaths in New York were of immigrant workers, even though the immigrant share of the state's workforce is just over 20 percent. The Occupational Safety and Health Administration has

been excessively slow and impotent in investigating labor injuries and fatalities. To its credit, OSHA has recently announced plans to begin collecting more and better data about immigrant worker fatalities.

How have companies like Labor Ready responded to these findings? In silence, it seems. In its most recent 10-K report to the Securities and Exchange Commission, Labor Ready failed to offer even bare details about its safety record, facts they have traditionally revealed. Very little has moved Labor Ready to improve or prevent the dangerous conditions to which its workforce is subjected. The company maintains a 31 percent rate of injuries and illnesses, nearly four times higher than the eight percent average of the entire construction industry. OSHA's list of investigations into Labor Ready reveals a high incidence of penalties for lacking proper safety programs such as training and other preventative measures.

The only instances in which federal or state authorities have displayed any interest in going after

Labor Ready and its ilk are in cases where the government has been cheated of its slice of the fiscal pie, particularly in the realm of workers' compensation insurance. The state of Washington recently fined Labor Ready nearly \$1 million for underpaying workers' compensation insurance. Obviously, Labor Ready's creative misclassifications of its workers cut right into the states' coffers. And truth is, government financial interests seem to far outweigh the obligations of ensuring the livelihood, safety, and rights of the people whom Labor Ready employs.

Work for Tomorrow

The National Campaign for Jobs and Income Support recently released a report entitled Permanent Struggle, Temporary Solution: Contracting out America, describing the contingent labor industry as an "informal economy." One could argue that the ill-defined nature of Labor Ready's business provides the necessary cover and context to continue unbound by any traditional regulations or guidelines.

However, for many years, grassroots organizers and advocacy groups have confronted that exploitation head-on. Through community organizing, establishing alternative hiring halls, and focusing on public policy, groups and individuals are acting to improve the lot of day laborers across the country. Yet questions remain about how best to organize and what the ultimate goals should be. Are unions the answer?

By the late 1990s, trade unions like the AFL-CIO saw proof that the growth of Labor Ready and the many back-alley operations that sprung up to reap similar bounty could no longer be ignored. These companies undermined the union's ability to not only recruit and organize, but also to put its current members to work. "The percentages of [Labor Ready] workers that are in construction run between 25 and 30 percent, says Will Collette of the Building and Construction Trades department of the AFL-CIO. "We came to realize that Labor Ready is the single largest construction employer in the United States."

To come up with a widespread solution against the Labor Ready giant, organized labor and grassroots groups have had to merge efforts. Up until about two years ago, though, immigrant day labor was seen as a threat by traditional avenues of labor protection and empowerment. "At local levels, the trades were against immigrant labor," says German Martinez, co-founder of the San Francisco Day Labor Project. "Back in 1991, they were attacking day labor organizations.

By the time Labor Ready went public and began to expand its operations across the U.S. and beyond, it was due time for unions to realize that day laborers themselves were not enemies and were, in fact, allies, potentially in the millions. "Ultimately, I believe, within the next five years, there will be a national membership organization of day laborers in this country," Collette says. "It may or may not be part of the AFL-CIO. I hope it is."

Whether the cooperative effort will lead to concrete change depends on the

ability of organizers to gain the attention of unsympathetic political forces and an uninformed general public. New legislation may nor be the key, as laws are already in the books that offer protections to day laborers, though they are threatened with each new administration.

If organizing day laborers is the key to ending exploitation in the contingent labor world, then the challenge is a worthy one. Many groups simply don't have the capacity to tackle long-term strategies. Far more important for many is the task of "focusing on the day-to-day job of organizing a very fluid, changing workforce," as Mary Ochs of the Center for Community Change describes it.

But it's important to realize that exploitative companies do not gain their stranglehold accidentally. Neither will the struggle for rectification be accidental. It will require extensive energy and formidable resolve to eliminate the political xenophobia and economic opportunism that allow Labor Ready to still be listed on some

analysts' lists of stocks to watch.

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A. Suggested Revisions to Current Draft

1) In Sec. 830-11 subsection (c) states that “a day labor agency shall pay a day laborer for each hour the laborer works, or for each hour...” that language potentially limits the day laborer’s rights under federal Fair Labor Standards Act, which requires workers to be compensated for time spent “engaged to wait” for work, in addition to time spent actually working. Because the FLSA sets a floor (minimum standards), local and state provisions cannot limit it, and maybe if you just state that, it will clarify that the ordinance is not intended to limit any rights under federal law. An alternative is to say that the agency will pay the day laborer for all compensable hours as defined by federal or state law.

2) In Sec. 830-11 (d) (e), (f) of that same section, regarding deductions, have the potential to have a similar effect. The federal FLSA only permits deductions to the extent that they don’t bring a worker’s pay below the minimum wage. It’s not clear that the ordinance prohibits deductions that would bring the worker’s pay below the minimum wage. Again, a “savings clause” saying that this ordinance is not intended to limit any rights under federal or state law will solve this potential problem.

3) Sec. 830-11 subsection (d). The final sentence provides that day laborers “shall not be required to use the provided transportation.” This last sentence should be stricken. Because of the subjective nature of the “requirement” it seems impossible to enforce. Besides, this rule may short-circuit the day laborers attempt to seek compensation under federal or state law for “required” travel time.

4) In Sec. 830-11 (l) of the same section isn’t clear: it says “a day laborer who is contracted but not utilized by a third party...” Contracted by whom? The agency? The third party employer?

5) In Sec. 830-15 on the “Work Ticket.” There is a typo. The second and third sentences of that section list the items required on the various tickets, and do so by reference to items listed in § 830-13, e.g. “(a), (b), and (m)” but there is no sub-section (m) in § 830-13. Apparently some revisions to § 830-13 were made without incorporating those changes into § 830-15.



B. Suggested Additions to Current Draft

Work Restrictions

1) ***Permanent Employment Offers.*** Day labor agencies often reassign day laborers from one client or “third party employer” to another in order to prevent day laborers from receiving offers of permanent employment. This is seen as a widespread practice and strikes us as profoundly anti-social conduct. This issue has been addressed in other jurisdictions (see appendix A). One way to do so is to permit the day laborer agencies to charge a reasonable placement fee for any of its workers who receive offers of full employment, but to also forbid an agency from otherwise interfering with such an offer.

The ordinance should state that the interference with an offer of permanent employment is a clear violation of public policy and the intent of the ordinances more generally to encourage workers to leave the day labor pool and enter the ordinary work force.

2) ***Four Hour Minimum.*** Any time a Third-party Employer “contracts for” but does not “utilize” a day laborer, the day laborer must be paid a minimum of four hours at the agreed upon rate. (See Appendix B)

Private Right of Action

We have previously stated our concern about the absence of a private right of action for day laborers whose rights under the act are violated. Similar provisions abound in the municipal code, and they are common features of employment regulations, particularly where vulnerable populations are involved. (For sample language see appendix B.)



Appendix A

Illinois Day Labor Services Act. 85 ILCS 175/40. **Work Restriction.**

§ 40. **Work Restriction.**

No day and temporary labor service agency shall restrict the right of a day or temporary laborer to accept a permanent position with a third party client to whom the day or temporary laborer has been referred for work or restrict the right of such third party client to offer such employment to a day or temporary laborer. A day and temporary labor service agency may charge a placement fee to a third party client for employing a day or temporary laborer for whom a contract for work was effected by the day and temporary labor service agency not to exceed the equivalent of the total daily commission rate the day and temporary labor service agency would have received over a 60-day period, reduced by the equivalent of the daily commission rate the day and temporary labor service agency would have received for each day the day or temporary laborer has performed work for the day and temporary labor service agency in the preceding 12 months. Days worked at a day and temporary labor service agency in the 12 months preceding the effective date of this amendatory Act of the 94th General Assembly shall be included for purposes of calculating the maximum placement fee described in this Section. However, placement of a day or temporary laborer who is contracted by a day and temporary labor service agency to provide skilled labor shall not be subject to any placement fee cap. For purposes of this Section, a day or temporary laborer who performs "skilled labor" shall apply only where the day and temporary labor service agency performs an advanced application process, a screening process, which may include processes such as advanced testing, and a job interview. No fee provided for under this Section may be assessed or collected by the day and temporary labor service agency when the day or temporary laborer is offered permanent work following the suspension or revocation of the day and temporary labor service agency's registration by the Department.



Appendix B

820 ILCS 175/30(g). **Wage Payment & Notice**

(g) A day or temporary laborer who is contracted by a day and temporary labor service agency to work at a third party client's worksite but is not utilized by the third party client shall be paid by the day and temporary labor service agency for a minimum of 4 hours of pay at the agreed upon rate of pay. However, in the event the day and temporary labor service agency contracts the day or temporary laborer to work at another location during the same shift, the day or temporary laborer shall be paid by the day and temporary labor service agency for a minimum of 2 hours of pay at the agreed upon rate of pay.



Appendix C

Illinois Day Labor Services Act. 85 ILCS 175/95. **Private Right of Action**

§ 95. **Private Right of Action.**

(a) A person aggrieved by a violation of this Act or any rule adopted under this Act by a day and temporary labor service agency or a third party client may file suit in circuit court of Illinois, in the county where the alleged offense occurred or where any day or temporary laborer who is party to the action resides, without regard to exhaustion of any alternative administrative remedies provided in this Act. Actions may be brought by one or more day or temporary laborers for and on behalf of themselves and other day or temporary laborers similarly situated. A day or temporary laborer whose rights have been violated under this Act by a day and temporary labor service agency or a third party client is entitled to collect:

- (1) in the case of a wage and hour violation, the amount of any wages, salary, employment benefits, or other compensation denied or lost to the day or temporary laborer by reason of the violation, plus an equal amount in liquidated damages;
- (2) in the case of a health and safety or notice violation, compensatory damages and an amount up to \$500 for the violation of each subpart of each Section;
- (3) in the case of unlawful retaliation, all legal or equitable relief as may be appropriate; and
- (4) attorney's fees and costs.

(b) The right of an aggrieved person to bring an action under this Section terminates upon the passing of 3 years from the final date of employment by the day and temporary labor agency or the third party client. This limitations period is tolled if a day labor employer has deterred a day or temporary laborer's exercise of rights under this Act by contacting or threatening to contact law enforcement agencies.