BLOOD, SWEAT, AND FEAR

Workers' Rights in U.S. Meat and Poultry Plants

Human Rights Watch

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violation of those rights. Governmental authorities must enforce more effectively existing labor laws protecting workers' organizing rights. Moreover, federal labor law reform is needed to bring the United States into compliance with international standards on workers' freedom of association. Such reform should start with enactment of the Employee Free Choice Act (EFCA), which would allow workers to join unions and bargain collectively free of employer threats and intimidation and create stronger remedies for violations of workers' rights.

- For immigrant workers, new laws and policies are needed to ensure that their basic human rights, including rights as workers, are respected whatever their immigration status. Law and policy must also provide the same workplace protections as those applied to non-immigrants, including coverage under fair labor standards and other labor laws, access to the labor law enforcement system, and remedies when their rights are violated.

Scope and Methodology of the Report

This report covers workers' rights in the U.S. meat and poultry industry in three broad areas of human rights concern: worker health and safety and related rights to compensation for workplace injuries, freedom of association, and the status of immigrant workers. It follows *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards*, a Human Rights Watch report published in 2000.[4] Based on an examination of a dozen industrial and service sectors of the U.S. economy in as many states, *Unfair Advantage* documented widespread violations of workers' organizing rights and severe deficiencies in the content of U.S. labor law and in the labor law enforcement system.

In *Blood, Sweat, and Fear* we focus on workers' rights violations in the beef, pork, and poultry slaughtering and processing industry. The report concentrates on workplace health and safety, workers' compensation, workers' organizing rights, and the status of immigrant workers because our research uncovered systemic violations in these areas.

The report draws from research, interviews, and visits in 2003 and 2004 to three geographic centers of the industry: Omaha, Nebraska for beef; Tar Heel, North Carolina for pork; and Northwest Arkansas for poultry. It also draws from research undertaken during 1999-2000

[4] The report is available on Human Rights Watch website at www.hrw.org/reports/2000/uslabor. *Unfair Advantage* was republished by Cornell University Press in 2004 with a new introduction and conclusion; information available online at: http://www.cornellpress.cornell.edu/cup_catalog.taf?_function=detail&Title_ID=4256&_UserReference=E21681E42CBB2735419A8A18, accessed on November 16, 2004.

for *Unfair Advantage*. Although major areas of beef, pork, and poultry production exist in other parts of the United States, these three locations were selected for the geographic diversity among them and their reflection of each of the three major product segments in the industry.

Human Rights Watch researchers conducted in-person interviews with dozens of meat and poultry workers and telephone interviews with several others. Most current employees did not want to be identified, fearing retaliation by their employer if their names appeared in the report. Workers who agreed to the use of their names are identified in the report. The report also draws on interviews with community organization and union representatives, workers' compensation attorneys, ergonomics experts, government officials, and other professionals with relevant experience and expertise.

Human Rights Watch also conducted a lengthy telephone interview with representatives of Tyson Foods at company headquarters in Springdale, Arkansas. Officials of Smithfield Foods chose to respond to inquiries in writing rather than in an oral interview. Human Rights Watch appreciates these companies' willingness to respond to questions and to affirmatively state their policies and views. Officials of Nebraska Beef did not respond to telephoned, mailed, and e-mailed requests for an interview.

Finally, Human Rights Watch researchers examined legal pleadings, rulings, and transcripts of proceedings; injury reports, Occupational Safety and Health Administration (OSHA) and workers' compensation records, company memoranda, government and academic studies, books on the meat and poultry industry and on working conditions in the industry, and relevant newspaper and magazine articles.

Omaha, Nebraska and Nebraska Beef

From its founding as a territory in 1854 until the late twentieth century, Nebraska was mostly populated by white Americans of European origin, joined by a minority of African-Americans. Omaha was always an important meatpacking center because of its proximity to livestock and feedlots. Immigrant workers from southern and eastern Europe made up most of the meatpacking labor force in the early twentieth century. In the 1940s and 50s, the children of these immigrants, along with African-American coworkers in key roles, formed strong local unions of the United Packinghouse Workers. As happened in the industry generally, in the 1980s and 1990s, many meatpacking businesses closed plants that provided with good wages and benefits. Following closures, company owners often relocated plants to rural areas. In Omaha, some companies later reopened closed factories employing low wage, new immigrant workforces without trade union representation.

Immigrants currently constitute more than 10 percent of Nebraska's population and 25 to 30 percent of the population in Omaha and urban areas. Most of the immigrants come from Mexico and Central America, but many have also come from Laos, Vietnam, Sudan, Somalia, and Iraq. Tens of thousands of these immigrants work in meatpacking plants. Others work in hotels and restaurants, in construction and roofing, and other fields.

In 1995, investors purchased an abandoned, decaying, half-century-old meatpacking plant, one of many that dot the mixed-use neighborhood of South Omaha. The renovated plant became the home of Nebraska Beef Ltd., the seventh-largest beef packing company in the United States. Today, the smell of thousands of live cattle awaiting slaughter, and the stench of blood and offal from dead cattle, permeates the low-rise apartment buildings, modest homes, and small commercial shops in the area.

Nebraska Beef Ltd. is a privately-held firm which does not file annual reports with the U.S. federal Securities and Exchange Commission. Nebraska Beef was founded in 1995 by a group of investors led by company president William Hughes in alliance with Day Lee Inc., the U.S. arm of Nippon Ham of Japan. Eighteen investment groups and individuals invested more than $12 million in the new enterprise. Hughes had earlier been executive vice president of another Omaha beef processing plant called BeefAmerica, which was closed in October 1993, eliminating nine hundred jobs. When it opened, Nebraska Beef got $7.5 million in state tax credits under Nebraska's "Quality Jobs" initiative granting such credits to firms that create new jobs.

Nebraska Beef has annual sales of more than $800 million and capacity for slaughtering three thousand head of beef per day. The company employs 1,100 workers, none of whom are union-represented.[5]

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[5] See "Nebraska Beef," summary information, *Omaha World-Herald*, March 23, 2003, p. 23B; John Taylor, "Nebraska Beef Investor Wants Answers," *Omaha World-Herald*, December 16, 2000, p. Business 20; John Taylor, "Operating in

Tar Heel, North Carolina and Smithfield Foods

Well into the twentieth century North Carolina was a state dominated by two main industries, textile manufacturing and agriculture. The population and labor force were almost entirely Anglo-American and African-American. In the last half of the twentieth century, the state's economy diversified in important ways. High-tech development clustered around universities in the Research Triangle of the Raleigh-Durham-Chapel Hill area. Multinational electrical, auto, and machinery producers opened new factories while many of the textile mills closed. Raising chickens and hogs supplanted traditional farming in many areas as companies such as Tyson Foods, Perdue, and Smithfield Foods opened slaughtering and processing facilities around the state. North Carolina farmers now raise $1.3 billion worth of chickens and $1.4 billion worth of hogs per year.[6]

Like many states of the South and Midwest that twenty years ago had a negligible immigrant population, North Carolina has seen dramatic increases in foreign workers. About half a million of North Carolina's eight-and-a-half million residents are immigrants, but the state had the single highest rate of immigrant population increase among all fifty states during the 1990-2000 decade: a 274 percent increase from 115,000 to 430,000 in 2000 (and more than 500,000 today). Arkansas was fourth with a 196 percent increase.[7] When Smithfield opened its Tar Heel plant in 1993, fewer than 10 percent of the hourly employees were immigrants. Today an estimated half of the plant's workers are Hispanic immigrants. African-Americans make up about 40 percent of the workforce.[8]

Dominating the flat, sparsely populated terrain around it, where tobacco and sweet potato farms are giving way to hog growing, Smithfield Foods' incongruously immense hog-processing plant draws some five thousand workers each day from the eastern half of the state. Smithfield is the largest pork producer in the United States. Its Tar Heel plant is the largest hog-killing facility in the country. Workers there slaughter, cut, pack, and ship more than twenty-five thousand hogs a day.

Headquartered in Smithfield, Virginia and incorporated there, Smithfield Foods is the largest hog producer and pork processor in the world, with $7 billion in annual sales under its own name and the names of acquired companies including John Morrell & Co. and Patrick Cudahy, Inc. In 2002 Smithfield diversified into beef production, acquiring Packerland Holdings, Inc. and Moyer Packing Co.

Obscurity, Nebraska Beef Shrouds Identity of Owners," *Omaha World-Herald*, December 10, 2000, p. Business 1 (noting that "the identities of the current owners are shrouded in mystery"); John Taylor, "Surprises Mark Plant's First Year: Beef Firm Spars with Neighbors," *Omaha World-Herald*, August 11, 1996, p. Business 1.

[6] See Kristin Collins, "What is the future of the family farm?" *Raleigh News & Observer*, January 25, 2004, p. A21.

[7] See Sandra Yin, "Home and Away," *American Demographics*, March 1, 2004, p. 2.

[8] These proportions are estimates by researchers from the United Food and Commercial Workers union, which maintains an organizing office near the Tar Heel plant and carefully tracks employee demographics. See also Greg Barnes, "Bladen links up with hogs' fortunes," *Fayetteville Observer*, December 18, 2003, p.1.

Smithfield Foods employs more than thirty thousand workers in the United States in twelve plants in ten states. Approximately seventeen thousand employees in U.S. locations are not union-represented.

Smithfield plants in the Southeast and Midwest slaughter and process eighty thousand hogs per day. Following the acquisitions of Packerland Holdings, Inc. and Moyer Packing Co., Smithfield became the fifth largest fresh beef producer in the United States; five beef slaughtering plants process eight thousand cattle per day.

Smithfield Foods is a multinational corporation with operations in Canada, Mexico, China and several European countries and has more than $1 billion in international sales.[9]

Northwest Arkansas Poultry and Tyson Foods

Tucked between the Ozark National Forest and the borders with Oklahoma and Missouri, the northwest corner of Arkansas is the center of the poultry industry in Arkansas, the state's largest private sector employer. The beautiful green hills and valleys belie the environmental degradation of area watersheds polluted by a tsunami of waste from one billion defecating chickens raised and slaughtered each year in Arkansas.[10]

Dozens of poultry processing plants are spread among the shopping centers, modest homes and residential apartments of Bentonville, Rogers, Springdale, Fayetteville, Forth Smith and other towns off Interstate I-540 in Northwest Arkansas. The smell of dead chickens permeates the atmosphere. Poultry plants are mostly nondescript, windowless facilities set back from the grid of roads and highways in the area.

In the past decade, immigrant workers from Mexico and Central America have supplanted many rural white and African-American workers in Northwest Arkansas poultry plants, a demographic phenomenon characterizing the poultry industry nationwide.[11] Between 1990 and 2000, the foreign-born population of the two largest counties in the area increased more than 600 percent. Nearly all the increase was related to poultry industry employment. In Rogers and Springdale,

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[9] See *Smithfield Foods Annual 10K Report* for fiscal year ending April 27, 2003, U.S. Securities and Exchange Commission, file no. 1-15321.

[10] According to the U.S. Department of Agriculture, 1.18 billion chickens were slaughtered in Arkansas in 2002. See Tom Darin Liskey, "Pilgrim's Pride Feathers Its Arkansas Nest," *Arkansas Democrat-Gazette*, November 16, 2003, p. 73. On what becomes of the chicken waste, see M. Nelson, K. White, and T. Soerens, "Illinois River Phosphorus Sampling Results and Mass Balance Computation," in *Proceedings* of Arkansas Water Resources Center Annual Research Conference, Arkansas Water Resources Center, Fayetteville, Arkansas (2000); T. Soerens, E. Fite, and J. Hipp, "Water Quality in the Illinois River: Conflict and Cooperation Between Oklahoma and Arkansas," *Diffuse Pollution Conference Paper* (2003). The Illinois River runs through northwest Arkansas into Oklahoma.

[11] See Jesse Katz, "1,000 Miles of Hope, Heartache: Aspiring Factory Workers Abandon Desperate Lives to Enter Human Pipeline from Mexican Border to Poultry Jobs in Middle America," *Los Angeles Times*, November 10, 1996, p. 1.

centers of the poultry processing industry in the area, immigrants are more than 20 percent of the population.[12]

Headquartered in Springdale, Arkansas and incorporated in Delaware, Tyson Foods is the biggest meat and poultry company in the world with $25 billion in annual sales in chicken, beef, pork, prepared foods and related products. In the past fifteen years, Tyson acquired Holly Farms and Hudson Foods, two of the country's largest poultry companies after Tyson. In 2001 Tyson acquired IBP, Inc., the country's then-biggest beef producer. Tyson Foods employs 120,000 workers in more than 120 plants and distribution centers in twenty-seven states. Approximately 30,000 employees in thirty-three locations are union-represented.

Tyson runs sixty poultry processing plants engaged in slaughtering, dressing, cutting, packaging, de-boning and further processing fifty million chickens per week. Tyson's fourteen beef production facilities slaughter, disassemble, and process 250,000 head of cattle per week. Eight pork production facilities slaughter and process 400,000 head per week. In the company's prepared foods operations, Tyson produces fifty million pounds per week of pizza toppings, processed meats, appetizers, hors d'oeuvres, desserts, ethnic foods, soups, sauces, side dishes, and pizza crusts, flour and corn tortilla products and specialty pasta and meat dishes.

At its website, Tyson proclaims: "Today, Tyson is the largest provider of protein products on the planet, the world leader in producing and marketing beef, pork, and chicken. . . . We are committed to producing the high-quality food products America has come to depend upon, while we recognize our responsibility to be good corporate citizens in the communities in which we work, live, and play."[13]

Tyson Foods is a multinational corporation with operations in Russia, China, Mexico, Argentina, Brazil, India, Indonesia, Japan, the Philippines, Spain, Britain, Venezuela and Holland.[14]

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[12] See Matthew Walker, "Poultry, Construction Jobs Draw Hispanics," *Arkansas Democrat-Gazette*, November 16, 2003, p. 71.

[13] Available online at: http://www.tysonfoodsinc.com/corporate/info/today.asp, accessed on November 16, 2004.

[14] See Tyson Foods Annual 10K Report for fiscal year ending September 27, 2003, U.S. Securities and Exchange Commission, file no. 0-3400.

II. Historical Background

Meat

Killing and cutting up the animals we eat has always been bloody, hard and dangerous work. Concentrated in the nation's large cities, especially in the Midwest, meatpacking plants at the turn of the twentieth century were more than sweatshops. They were blood shops, and not only for animal slaughter. The industry operated with low wages, long hours, brutal treatment, and sometimes deadly exploitation of mostly immigrant workers. Meatpacking companies had equal contempt for public health.

Upton Sinclair's classic 1906 novel *The Jungle* exposed real-life conditions in meatpacking plants to a horrified public. But what most shocked the popular conscience was Sinclair's portrayal of vermin, animal feces, human blood and body parts going into meat people ate, and the deceptive practices used to sell such adulterated products. Sinclair's exposé led directly to rapid passage of the Pure Food and Drug Act and the Federal Meat Inspection Act of 1906.[15]

The American public paid little attention to the treatment of the central character of Sinclair's novel, a Lithuanian immigrant named Jurgis Rudkus who worked in the meatpacking plants. Sinclair reportedly lamented, "I aimed at the public's heart, and I hit it in the stomach."[16] Inside the plants, workers faced constant wage cuts, production line speedup, injuries and disease, and instant dismissal and blacklisting if they protested conditions. Outside, they lived with no medical care, no education, and no decent housing. Rudkus and his coworkers were "aliens" both legally and culturally: not citizens, unable to speak good English, ignorant of their rights, and afraid to turn to governmental authorities for help. A century later, abusive working conditions and treatment still torment a mostly immigrant labor force in the American meatpacking industry.

Gaining Ground

In the early twentieth century, addressing wages, hours, and working conditions for meatpacking employees took more than an electrifying novel. It took the large-scale trade union organizing drives of the 1930s by the newly-formed Congress of Industrial

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[15] See James Harvey Young, *Pure food: securing the Federal Food and Drugs Act of 1906* (Princeton: Princeton University Press, 1989).

[16] See Cecilia Rasmussen, "Muckraker's Own Life as Compelling as His Writing," *Los Angeles Times*, May 11, 2003, p. Metro 4.

Organizations (CIO) and passage of the National Labor Relations Act in 1935. CIO organizing was best known in the auto, steel, electrical, and rubber industries, but industrial organization reached meatpacking factories, too. Workers formed the United Packinghouse Workers of America (UPWA) and bargained collectively with Wilson, Swift, Armour, and other large beef and pork processing firms. As one of the CIO's progressive unions that stressed class consciousness and racial and ethnic solidarity, the UPWA was known for its internal democracy and openness to African-American and immigrant workers as well as women's participation and leadership in the union.[17]

For about forty years in the middle of the twentieth century, from the 1930s to the 1970s, meatpacking workers' pay and conditions improved. Master contracts covering the industry raised wages and safety standards. In the 1960s and 1970s, meatpacking workers' pay and conditions approximated those of auto, steel, and other industrial laborers who worked hard in their plants and through their unions to attain steady jobs with good wages and benefits. Meatpackers' wages remained substantially higher than the average manufacturing sector wage—15 percent higher in 1960, 19 percent higher in 1970, 17 percent higher in 1980.[18]

Sliding Back

The 1980s saw the destruction of good jobs in the meatpacking industry.[19] Many companies relocated from decades-old, multi-story urban factories to single-floor layouts in rural areas closer to cattle and hog feedlots. New companies became industry powerhouses, especially Iowa Beef Processors (IBP). IBP overtook old-line producers by automating more of the process, squeezing skills out of the job. IBP reduced every stage in the process to mindless, repetitive cutting with the same hand and arm motion in what the industry calls a disassembly-line process. IBP and its copycat producers stepped up line speed and cut wages to levels far underneath union-negotiated standards. In 1983, meatpacking workers' pay fell

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[17] For profiles of the UPWA, see Rick Halpern, *Down on the Killing Floor: Black and White Workers in Chicago's Packinghouses, 1904-54* (Champaign: University of Illinois Press, 1997); Roger Horowitz, *Negro and White, Unite and Fight! A Social History of Industrial Unionism in Meatpacking, 1930-90* (Champaign: University of Illinois Press, 1997); Rick Halpern and Roger Horowitz, Meatpackers*: An Oral History of Black Packinghouse Workers and Their Struggle for Racial and Economic Equality* (New York: Monthly Review Press, 1996); Cheri Register, *Packinghouse Daughter* (Perennial Publishers, 2001).

[18] See U.S. Department of Labor, Bureau of Labor Statistics, *Industry Wage Surveys,* 1960-2002.

[19] See Michael J. Broadway, "From City to Countryside: Recent Changes in the Structure and Location of the Meat- and Fish-Processing Industries," in Donald D. Stull, Michael J. Broadway and David Griffith, *Any Way You Cut It: Meat Processing and Small-Town America* (Lawrence: University Press of Kansas 1995).

below the average U.S. manufacturing wage for the first time. Since then, the decline has accelerated—15 percent lower in 1985, 18 percent lower in 1990, 24 percent lower in 2002.[20]

Employers transformed the sector during the 1980s from one in which workers had secure organizations bargaining on their behalf to one where self-organization is a high-risk gauntlet for workers. Where they did not relocate, many companies shut down their plants, dismissed their long-time organized workers, then reopened with a nonunion immigrant workforce. An early business profile of the new reality of meatpacking industry labor described the dynamic this way:

> [Iowa Beef Processors] rewrote the rules for killing, chilling, and shipping beef. . . . The company has fought tenaciously to hold down labor costs. Though some of its plants are unionized, it refused to pay the wages called for in the United Food & Commercial Workers' [UFCW] expensive master agreement, which the elders of the industry have been tied to for 40 years. Iowa Beef's wages and benefits average half those of less hard-nosed competitors. . . . If a company chooses to hang tough in slaughter, there's only one way to go—imitate Iowa Beef and become a low-cost producer. SIPCO is pressing hard into the boxed-beef business and has launched a frontal assault on labor costs. . . . Esmark shut down three slaughterhouses and paid the necessary severance and closing costs; then SIPCO reopened the plants. That ploy allowed the company to wriggle out of the UFCW's master agreement and hire workers who would toil at reduced wages and benefits.[21]

Employers fiercely resisted organizing efforts by workers in the new plants and in the reopened plants. Firing key leaders and threatening to close plants where workers tried to form new unions were common tactics. Threats were all the more credible in the wake of companies' widespread closures of union-represented plants in urban centers. Where workers in new plants succeeded in organizing, they often had to endure long, bitter strikes to win contracts with marginal improvements.

As the traditional structure of the industry and its labor relations fragmented, employers drove many workers' wages down to a fraction of what they had been, with parallel

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[20] See U.S. Department of Labor, Bureau of Labor Statistics, *Industry Wage Surveys* 1960-2002, wage data by industry available online at: http://stats.bls.gov/ces/home.htm, accessed on November 17, 2004.

[21] See Alexander Stuart, "Meatpackers in Stampede," *Fortune*, June 29, 1981, p. 67.

worsening of benefits and working conditions. The frequency of meatpacking workplace injuries soared. Injury rates had been in line with other manufacturing sectors with trade union representation, but since the breakdown of national bargaining agreements meatpacking has become the most dangerous factory job in America, with injury rates more than twice the national average.[22]

From Little Chicken to Big Chicken

The trajectory of the poultry industry was different, but it has ended at the same place today. Until the second half of the century, killing and cutting up chickens for human consumption was undertaken primarily by small enterprises operating locally. The poultry processing industry was based mainly in the South, thanks to a chicken-raising tradition, cheap land, low heating and cooling costs for raising large numbers of birds in enclosed conditions, and low wages for unorganized workers.

In the 1930s, a Northwest Arkansas farmer named John Tyson saw opportunity in shipping chickens to St. Louis and Chicago for next-day sale in markets there. After three decades developing egg and chicken processing operations in Arkansas, Tyson Foods acquired nineteen other businesses in the late 1960s and was on its way to becoming the largest chicken processor in the world. The company did not stop there.

In the last half of the twentieth century, attracted by price, convenience and health claims, Americans tripled their per-capita consumption of chicken. Tyson Foods rode America's gastronomical revolution to the top of the food processing business. Getting millions of processed chickens to supermarket shelves every day became a gigantic business, not only for Tyson but for other major chicken producers like Perdue, Pilgrim's Pride, Holly Farms, and Hudson Foods. Success in the marketplace depended on achieving expanded operations with economies of scale, low costs, and accelerated production speeds. The industry stayed based in the South; poultry plants in Southern states employ nearly three hundred thousand workers and supply nearly 90 percent of the nation's broilers.

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[22] In 2001, the overall rate of workplace injuries and illnesses per one hundred workers in private industry was 5.7, according to the Bureau of Labor Statistics (BLS). In the manufacturing sector, it was 8.1 injuries and illnesses per one hundred workers. In the meatpacking industry, it was twenty injuries and illnesses per one hundred workers. See U.S. Department of Labor, Bureau of Labor Statistics, "Incidence rates of nonfatal occupational injuries and illnesses by industry and selected case types, 2001" (2002). A methodological change in BLS recordkeeping substantially reduced the reported "incidence rate" for 2002. See further discussion below, footnotes 149-150 and related text.

Meat and Chicken Combined

As the tiny chicken gradually overtook the mighty steer and hog on America's dinner tables, Tyson's growth in poultry portended its ultimate emergence as the world's largest processor and marketer of chicken, beef, and pork combined. The company bought out Holly Farms and Hudson Foods in the 1990s. During the 1990s, IBP, Inc. had consolidated its own position as the biggest meat and pork producer in the United States. In 2001, Tyson Foods swallowed up IBP in an acquisition. In 2003, Tyson announced the end of the IBP brand in connection with a unified marketing strategy under the Tyson name.[23]

In Upton Sinclair's day, five meatpacking companies made up the fabled Chicago-based Beef Trust that dominated the American red meat market. Today a like number of firms, such as Tyson, Perdue, and Pilgrim's Pride in chicken; Tyson, Excel, and Swift in beef; and Tyson and Smithfield in pork, bestride the meat and poultry sectors in the United States. Smaller processors like Farmland Foods, Hormel Foods, Sara Lee Meats, and others fill product niches and regional markets. Tyson by itself is twice as big by any measure—pounds or head of production, number of plants, or number of employees—as the next largest meatpacking or poultry processing firm.[24]

Bringing in the Third World

Large quantities of meat are heavy and bulky to ship long distances by air or sea, and the perishable nature of these products usually requires that high volume, mass-market production take place within quick reach of retail outlets. International trade in meat products is usually specialized in premium and niche product lines. Chickens are easier to transport and can be exported in large quantities with sufficient economies of scale. For example, in normal times more than 5 percent of U.S. chicken production is exported to Russia.[25] An avian flu outbreak in early 2004 cut back on U.S. chicken exports, but the market was expected to return.[26]

Unlike workers in many U.S. manufacturing sectors, most meat and poultry workers do not face employers' threats to move their plants to other countries where wages and workers are

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[23] See Jerry Perkins, "Tyson Foods retires IBP brand and logo; Meatpacker's record goes down in history," *Des Moines Register*, May 2, 2003, p. 1D.

[24] See "Corporate Blockbusters: The 25th Annual Top 50," *Meat&Poultry* Magazine, July 2003, p. 30.

[25] See Carl Weiser, "Russia moves to lift ban on U.S. chicken," *Gannett News Service*, April 1, 2002.

[26] See Christopher Leonard, "Nations ban U.S. poultry imports; Flu spooks EU, Mexico, S. Korea," *Arkansas Democrat-Gazette*, February 25, 2004, p. 1; Meredith Cohn, "Bird flu yet to hurt industry; Impact on consumer is not discernible; Exports are affected; Tests negative in area near Maryland farm," *Baltimore Sun*, March 9, 2004, p. 1D.

suppressed.[27] Some analysts argue, however, that this fact has not blocked a "Third World" strategy by the U.S. meat and poultry industry. They contend that instead of exporting production to developing countries for low labor costs, lax health, safety and environmental enforcement, and vulnerable, exploited workers, U.S. meat and poultry companies essentially are reproducing developing country employment conditions here.[28]

As the twentieth century turned into the twenty-first, the meatpacking industry was returning to the jungle. A new best-selling book, this time nonfiction, caught the public's imagination. Author Eric Schlosser used the astonishing growth of McDonald's and other fast-food restaurants as the "hook" to expose, as he put it, "what really lurks between those sesame seed buns." With its engrossing portrayal of firms cutting food safety corners, putting workers' lives and limbs at risk, exploiting immigrants and other abuses that recall Chicago packing plants a century ago, Schlosser's *Fast Food Nation* is as shocking as Sinclair's *Jungle*.[29] The stories told by meat and poultry industry workers interviewed for this report echo Schlosser's account.

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[27] See Kate L. Bronfenbrenner, "Uneasy Terrain: the Impact of Capital Mobility on Workers, Wages, and Union Organizing" (Washington, D.C.: U.S. Trade Deficit Review Commission, 2000).

[28] See Lourdes Gouveia, "Global Strategies and Local Linkages: The Case of the U.S. Meatpacking Industry," in Bonnanno et.al., eds., *From Columbus to ConAgra: The Globalization of Agriculture and Food* (Lawrence: University Press of Kansas, 1994).

[29] See Eric Schlosser, *Fast Food Nation* (New York: Houghton Mifflin, 2001).

III. International Law: Workers' Human Rights, Government Obligations, and Corporate Responsibility

Over the past fifty years, a comprehensive body of international law has developed affirming a range of rights to which all workers are entitled. As discussed in subsequent chapters, however, many meat and poultry workers in the United States are not afforded those rights.

In some instances, employers' treatment of workers violates international human rights standards as well as U.S. law reflecting those standards. Ineffective enforcement by U.S. labor law authorities compounds the violations by failing to remedy the abuses. In other cases, U.S. law itself fails to meet international norms. The U.S. Congress should reform federal law to bring it into compliance with international norms. Even in the absence of appropriate federal law, however, employers and government agencies are still obligated under international human rights law to comply with international standards.

Human Rights Instruments and U.S. Obligations

The *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* recognize that economic and social rights must accompany civil and political liberties for full protection of human rights.[30] Regarding the subject matter of this report, these United Nations international instruments establish the following worker rights, which apply to all workers in a country, including non-citizens with or without governmental permission to work:

- a safe and healthful workplace,
- compensation for workplace injuries and illnesses,
- freedom of association and the right to form trade unions and bargain collectively,
- equality of conditions and rights for immigrant workers.[31]

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[30] See Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. Doc. A/810, at 71 (1948); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 49, U.N. Doc. A/6316 (1966); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966); Convention on the Rights of All Migrant Workers and Members of Their Families, U.N. Doc. A/Res./45/158 (1990).

[31] See appendices B, C, and D for specific provisions of these human rights instruments. The language of all treaties cited grant these rights to "everyone" or to "all workers," phrases which include non-citizen workers. Furthermore, as a

The United States government has committed itself to protecting these rights. It was a principal author, sponsor, and signer of the Universal Declaration; it has signed and ratified the ICCPR; and it has signed the ICESCR.[32]

In addition to these United Nations human rights instruments, the International Labor Organization (ILO) has defined workers' human rights through a series of specific conventions. Founded in 1919 in the belief that creating international fair labor standards would contribute to world peace, the ILO is a uniquely tripartite entity among international organizations. Under this tripartite arrangement, representatives of governments, business, and labor set consensus international standards. Tripartite agreement gives ILO norms authoritativeness in the international labor rights field. The United States is a member of the ILO and its Governing Body, and U.S. government, business, and labor delegations play key roles in ILO affairs.[33]

Among its 185 international labor standards called "conventions," the ILO has adopted specific conventions on workplace health and safety, workers' compensation, workers' organizing rights, and migrant workers' rights.[34] ILO health and safety standards call for government laws and regulations to identify and minimize or prevent workplace hazards, which create risks of occupational injury or illness, with strong enforcement systems to back up the law.[35]

Recognizing that workplace injuries and illnesses will occur despite best efforts at prevention, ILO standards on workers' compensation call for law and regulations providing fully-paid medical care and rehabilitation treatment for workers disabled by on-the-job injury or illness, wage replacement during periods of disability at levels that will prevent undue

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highly-developed industrialized country, the United States does not qualify for the allowance contained in article 2 of the ICESCR for "developing countries" to determine to what extent they would guarantee economic social and cultural rights to non-nationals.

[32] Although the United States has not ratified the ICESCR, well-settled international law obliges it to respect the terms and purpose of the Covenant and to do nothing to damage them. A treaty does not become law in the United States until it has been both signed by the president and ratified by the U.S. Senate.

[33] See Elizabeth McKeon, *Worker Rights in the Global Economy*, briefing book (New York: United Nations Association of the United States, 1999).

[34] Complete texts available online at: http://webfusion.ilo.org/public/db/standards/normes/index.cfm?lang=EN, accessed on November 16, 2004.

[35] See, for example, Convention No. 155: Occupational Safety and Health (1981); Convention No. 161: Occupational Health Services (1985); Protocol 155 to the Occupational Safety and Health Convention (2002).

economic harm to the worker and the worker's family, and, in the case of occupational fatalities, substantial death benefits payable to workers' dependents.[36]

The ILO treats workers' freedom of association as the bedrock right on which all others rest. This right includes workers' efforts at organization and association in the workplace and in the larger society through democratic participation in civic affairs. It includes the right to bargain collectively with employers and the right to strike.[37]

ILO conventions on workplace health and safety, workers' compensation, and workers' organizing rights protect both authorized and unauthorized non-citizen workers.[38] However, because some of these conventions allow countries to exempt narrowly defined categories of workers from their protections, and because governments have increasingly recognized the particular vulnerability of non-citizen workers, the ILO has adopted a series of conventions that protect migrant workers' rights. The ILO's migrant worker conventions emphasize a general principle of non-discrimination against immigrants and their families, with specific reference to equality of treatment in all aspects of employment—pay, benefits, working conditions, labor standards enforcement, and other workplace rights and benefits.[39]

ILO Norms, the 1998 Core Labor Standards Declaration, and U.S. Obligations

In 1975, the ILO's Committee on Freedom of Association determined that member countries are "bound to respect a certain number of general rules which have been established for the common good . . . among these principles, freedom of association has become *a customary rule above the Conventions*."[40] Though it has so far not ratified Conventions 87 and 98 addressing freedom of association and the right to organize, the United States has

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[36] See Convention No. 121: Employment Injury Benefits (1964); Convention No. 130: Medical Care and Sickness Benefits (1969).

[37] See Convention No. 87: Freedom of Association and Protection of the Right to Organize (1948); Convention No. 98: Right to Organize and Collective Bargaining (1949).

[38] See, e.g. Convention No. 87: Freedom of Association and Protection of the Right to Organize (1948) (establishing that "[w]orkers and employers, without distinction whatsoever, shall have the right to establish and . . . join organisations of their own choosing"); Convention No. 98: Right to Organize and Collective Bargaining (1949) (requiring that "[w]orkers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment"); Convention No. 121: Employment Injury Benefits (1964) (requiring that "[n]ational legislation concerning employment injury benefits shall protect all employees); Convention No. 155: Occupational Safety and Health (1981) (defining the term "workers" as covering "all employed persons, including public employees"); Convention No. 161: Occupational Health Services (1985) (requiring that "[e]ach Member undertakes to develop progressively occupational health services for all workers. . .in all branches of economic activity and all undertakings").

[39] See Convention No. 97: Migration for Employment (1949); Convention No. 143: Migrant Workers (Supplementary Provisions) (1975).

[40] See Fact Finding and Conciliation Commission on Chile, International Labor Organization, Geneva, Switzerland (1975), para. 466 (emphasis added).

accepted jurisdiction and review by the ILO Committee on Freedom of Association (CFA) of complaints filed against it under these conventions.

Responding to requests from the World Trade Organization (WTO), the Organization for Economic Cooperation and Development (OECD) and other international bodies to identify "core" labor standards among its more than 180 conventions, the ILO in 1998 adopted the landmark *Declaration of Fundamental Principles and Rights at Work*. The declaration covers freedom of association, forced labor, child labor, and discrimination. The declaration says expressly:

> All members, *even if they have not ratified the Conventions in question*, have an obligation arising from the very fact of membership in the Organization, to respect, to promote, and to realize, in good faith and in accordance with the [ILO] Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; . . .(d) "the elimination of discrimination in respect of employment and occupation.[41]

The United States championed adoption of the 1998 declaration. It has not ratified some of the conventions related to the declaration's principles and rights, but as a member of the ILO the United States is obligated to ensure that its laws and policies protect these fundamental rights.

U.S. Commitments on Labor Rights and Trade

U.S. trade laws and labor rights clauses in international trade agreements promoted and signed by the United States and its trade partners articulate workers' rights. These statutes and trade agreements define "internationally recognized worker rights" to include, in the language of the statutes:

- the Right of Association,
- the Right to Organize and Bargain Collectively,

[41]The text of the *Declaration of Fundamental Principles and Rights at Work* is available online at: http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=DECLARATIONTEXT, accessed on November 17, 2004 (emphasis added).

- Acceptable Conditions of Work with Respect to Minimum Wages, Hours of Work, and Occupational Safety and Health.[42]

For example, U.S. trade agreements with Jordan, Chile, Singapore and Australia, among other countries, contain the following obligation:

> The Parties reaffirm their obligations as members of the International Labor Organization ("ILO") and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Parties shall strive to ensure that such labor principles and the internationally recognized labor rights . . . are recognized and protected by domestic law.[43]

The most extensive subject matter treatment of workers' rights in trade agreements is contained in the *North American Agreement on Labor Cooperation* (NAALC), the supplemental labor accord to the *North American Free Trade Agreement* (NAFTA). Going beyond the ILO's core standards formulation, the NAALC sets forth eleven "Labor Principles" that the three signatory countries (Canada, Mexico, and the United States) commit themselves to promote. Each of these principles applies to "workers" (including non-citizens), and among the principles is a commitment to ensure that migrant workers receive the same legal protection as nationals in respect to working conditions. The NAALC Labor Principles include:

- freedom of association and protection of the right to organize,
- the right to bargain collectively,
- the right to strike,
- non-discrimination,
- occupational safety and health,
- workers' compensation,
- migrant worker protection.[44]

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[42] See, for example, the GSP [Generalized System of Preferences] Renewal Act of 1984, Pub. L. No. 98-573, 98 Stat. 3019 (1984). Labor rights clauses in U.S. trade laws also proscribe forced labor and child labor.

[43] These agreements and their labor chapters are all available on the website of the U.S. Trade Representative, www.ustr.gov. Among them, only the U.S.-Jordan Free Trade Agreement makes labor rights guarantees binding and enforceable through trade measures. The others lack an effective enforcement mechanism.

[44] These are the labor principles related to the subjects addressed in this report; the other principles cover prohibitions on forced labor and on child labor, minimum wage, and other minimum employment standards, and equal pay for women and

The NAALC signers pledged to effectively enforce their national labor laws in these subject areas, and adopted six "Obligations" for effective labor law enforcement to fulfill the principles. These obligations include:

- a general duty to provide high labor standards;
- effective enforcement of labor laws;
- access to administrative and judicial forums for workers whose rights are violated;
- due process, transparency, speed, and effective remedies in labor law proceedings;
- public availability of labor laws and regulations, and opportunity for "interested persons" to comment on proposed changes;
- promoting public awareness of labor law and workers' rights.

In sum, the United States has acknowledged its international responsibility to honor workers' rights by signing and ratifying human rights instruments, by accepting obligations under ILO standards in connection with instruments it has not ratified, and by committing itself in trade agreements with labor protections to effectively enforce U.S. laws protecting workers' rights. Nevertheless, as this report details, the United States is failing to meet its human rights and labor rights responsibilities to workers in the meat and poultry industry.

Corporations and Human Rights

Human rights obligations under international law extend beyond governments to private corporations in positions of power over workers and communities.[45] Corporations have a duty to avoid complicity in human rights violations or to take advantage from human rights violations. Moreover, where governments fail to adopt and enforce laws to halt violations, corporations that benefit from the failure of governmental action are complicit in human rights violations. A company's obligation, then, is two-fold: not to itself violate workers' rights, and not to exploit the failure of government to protect workers' rights.

As the United Nations *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (*Norms*) notes, governments have primary responsibility

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men. *The North American Agreement on Labor Cooperation* entered into force on January 1, 1994, the full text of the NAALC is available online at: http://www.worldtradelaw.net/nafta/naalc.pdf, accessed on November 17, 2004.

[45] For an overview, see Beth Stephens, "The Amorality of Profit: Transnational Corporations and Human Rights," 20 *Berkeley Journal of International Law* 45 (2002); Stephen R. Ratner, "Corporations and Human Rights: A Theory of Legal Responsibility," 111 *Yale Law Journal* 443 (2001); Jordan J. Paust, "Human Rights Responsibilities of Private Corporations," 35 *Vanderbilt Journal of Transnational Law* 801 (2002).

for "ensuring that transnational corporations and other business enterprises respect human rights."[46] Nevertheless, corporations are not free to violate rights until a government stops them. The United Nations *Norms* affirm that:

- Corporations have the obligation to promote, secure the fulfillment of, respect, ensure respect of, and protect human rights recognized in international as well as national law.
- Corporations shall provide a safe and healthy working environment as set forth in relevant international instruments and national legislation as well as in international human rights and humanitarian law.
- Corporations shall ensure freedom of association and effective recognition of the right to collective bargaining.

The OECD's *Guidelines for Multinational Enterprises* constrains corporations to respect workers' fundamental rights, among them:

- respect the human rights of those affected by their activities;
- respect the right of their employees to be represented by trade unions;
- take adequate steps to ensure occupational health and safety in their operations.[47]

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[46] See United Nations, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003).

[47] See OECD, *Guidelines for Multinational Enterprises*, DAFFE/IME/WPG(2000)15/FINAL, October 31, 2001.

IV. Worker Health and Safety in the Meat and Poultry Industry

The line is so fast there is no time to sharpen the knife. The knife gets dull and you have to cut harder. That's when it really starts to hurt, and that's when you cut yourself.

—Nebraska Beef meatpacking line worker, Omaha, Nebraska, December 2003

Nearly every worker interviewed for this report bore physical signs of a serious injury suffered from working in a meat or poultry plant. Their accounts of life in the factories graphically explain those injuries. Automated lines carrying dead animals and their parts for disassembly move too fast for worker safety. Repeating thousands of cutting motions during each work shift puts enormous traumatic stress on workers' hands, wrists, arms, shoulders and backs. They often work in close quarters creating additional dangers for themselves and coworkers. They often receive little training and are not always given the safety equipment they need. They are often forced to work long overtime hours under pain of dismissal if they refuse.

Meat and poultry industry employers set up the workplaces and practices that create these dangers, but they treat the resulting mayhem as a normal, natural part of the production process, not as what it is—repeated violations of international human rights standards. In addition to employer responsibility, however, some workplace health and safety laws and regulations fall short of international standards. Federal authorities regulate line speed, for example, only in light of two considerations: avoiding adulterated meat and poultry products and not hindering companies' productivity and profits. Workers' safety is a non-factor. This is not to suggest that there are specific international standards on line speed, training, or safety equipment in meat and poultry plants; the point is that U.S. law fails to ensure that employers meet international standards of "just and favorable conditions," "safe and healthy working conditions," and "standards to minimize the causes of occupational injuries and illnesses," among others.

Other U.S. safety and health standards that may comport with international norms, such as the "general duty" specified in U.S. law to provide a safe and healthy workplace, are ineffectively enforced. These features of the U.S. occupational health and safety system thus implicate the government in failure to comply with international human rights standards.

International Human Rights Standards and U.S. Law

Workplace health and safety was the subject of the first international labor rights treaty, a 1906 accord among European countries banning manufacture and export of white phosphorus matches deadly to workers who produced them.[48] Since then, authoritative international human rights instruments include workplace health and safety as a fundamental right of all workers, including non-citizens.[49] The *Universal Declaration of Human Rights* calls for "just and favourable conditions of work."[50] The *United Nations' International Covenant on Economic, Social and Cultural Rights* specifies "the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular . . . safe and healthy working conditions."[51]

The International Labor Organization's Convention No. 155 on occupational safety and health calls for national policies "to prevent accidents and injuries to health . . . by minimizing . . . the causes of hazards inherent in the working environment." In the NAFTA labor agreement, the United States and its trading partners committed themselves to "prevention of occupational injuries and illnesses" by "prescribing and implementing standards to minimize the causes of occupational injuries and illnesses."

The human rights standard for workplace safety and health centers on the principle that workers have a right to work in an environment reasonably free from predictable, preventable, serious risks. This does not mean that all countries must immediately adopt the same state-of-the-art technology and safety standards, or go beyond that to eliminate all risk, however major or minor. It does mean that workers in every country have a right to expect that when they go to work and do what they are told to do, that they will be able to leave the workplace at the end of the day with life and limb intact. The UN's Committee on Economic, Social and Cultural Rights invoked "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights," and insisted that such core obligations are "non-derogable."[52]

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[48] See Steve Charnovitz, "Fair Labor Standards and International Trade," 20 *Journal of World Trade Law* 62 (1986).

[49] See Appendix B for a comprehensive statement of international human rights standards on workplace health and safety.

[50] Universal Declaration of Human Rights, Dec. 10, 1948, art. 23 (1), GA resolution 217 A (III), full text available online at: http://www.un.org/Overview/rights.html, accessed on November 17, 2004.

[51] International Covenant on Economic, Social, and Cultural Rights, art. 7, *entered into force* Jan. 3 1976, full text available online at: http://www.unhchr.ch/html/menu3/b/a_cescr.htm, accessed on November 17, 2004.

[52] See Committee on Economic, Social and Cultural Rights, General Comment No. 3, UN ESCOR, 1990, UN Doc. E/1991/23, para. 10

Congress also allowed states to adopt "state plans" by which state agencies, rather than the federal OSHA, enforce national standards. This "state plan" or "state OSHA" system was based on the policy assumption that state officials are closer to the ground and can respond more quickly to health and safety problems. But state officials also can be subject to more pressure from large, powerful employers than can federal authorities, who have more insulation from such pressures.[57]

The OSH Act's "general duty clause" states: "Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm."[58] But critical issues of implementation still remain. Five thousand workers die on the job each year in the United States, and five million are hurt on the job; many of these are preventable at reasonable cost.[59]

Workers' concern for health and safety on the job is grounded in history. In the infamous 1911 Triangle Shirtwaist Fire in New York City, 146 young women workers perished in a conflagration. They burned alive or jumped to death on the street below because their employer locked the factory exit doors on suspicion they were taking fabric home from work.[60]

Such tragedies are not limited to the pre-OSHA period. In 1991, more than twenty years after the adoption of OSHA, twenty-five workers died in a fire at the Imperial Poultry plant in Hamlet, North Carolina. One reason for the high death toll was that their employer had locked the doors on suspicion they were taking chicken parts home from work.[61]

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[57] Thus, for example, as detailed below in footnotes 66-71 and accompanying text, Smithfield Foods faced a fine of $4,323 from North Carolina state OSHA in connection with the November 2003 death of Glen Birdsong in the Tar Heel hog slaughtering plant, while Tyson Foods faced a federal OSHA fine of $436,000 in the October 2003 death of Jason Kelly under similar circumstances in Tyson's Texarkana, Texas plant. Smithfield paid the fine; Tyson announced it would contest the fine.

[58] See 29 U.S.C. §651-678, Sec. 5.

[59] See U.S. Department of Labor, Bureau of Labor Statistics, *Survey of Occupational Injuries and Illnesses* (2002). For a comprehensive, solidly researched and source-cited review of the status of workers' health and safety in the United States from labor's perspective, see AFL-CIO, "Death on the Job: The Toll of Neglect; A National and State-by-State Profile of Worker Safety and Health in the United States," 13th edition, April 2004.

[60] See David Von Drehle, *Triangle: The Fire That Changed America* (New York: Atlantic Monthly Press, 2003); see also a detailed website on the Triangle Shirtwaist Fire at Cornell University's Catherwood Library, available online at: http://www.ilr.cornell.edu/trianglefire/default.html, accessed on November 16, 2004.

[61] See Associated Press, "Food plant fire kills 25; exits blocked; disaster: chicken workers in North Carolina are trapped in a facility that had never been inspected for safety," *Los Angeles Times*, September 4, 1991, p. A4; Scott Bronstein, "'They treated us like dogs,' say workers at plant where 25 died; Bitter employees say conditions at poultry facility were

The disaster was attributed in part to lax enforcement by state authorities of their OSHA "state plan" program. The director of the North Carolina state plan said his agency was understaffed and that in the eleven years the plant operated, the department never inspected the plant's fire exits, alarms, and sprinkler systems.[62] The effects were still felt a decade later:

> It can seem, at times, like the town of Hamlet is still afire. In the aftermath came bankruptcies, addiction to painkillers, suicide, murder. All the bullets that followed seemed to backtrack through the smoke, into the building, through the fire. For some, it was fire, then off to the hospital, and not long after the physical healing, right into the small rooms over at the mental ward in Pinehurst.[63]

This is not meant to suggest that all state plans are weak or that federal safety and health enforcement is always strong. OSHA staffing and budget levels fall far below what would be needed to carry out its responsibilities effectively. Given its limited staff and the number of workplace sites it covers, OSHA inspects less than one percent of U.S. workplaces annually and can inspect any single workplace only once in a century.[64]

OSHA is empowered to refer cases of willful employer violations causing worker fatalities to the Justice Department for criminal prosecutions. However, it rarely exercises this power, even when employers repeat the violations and cause more deaths. Moreover, a willful violation causing death is no more than a misdemeanor with a maximum six-month jail term.

A 2003 investigative report in the *New York Times* found that in the past twenty years, OSHA made criminal referrals to the Justice Department in just 7 percent of more than a thousand workplace death cases due to willful employer violations. The agency shrinks from prosecution by re-labeling violations as "unclassified" rather than "willful."[65]

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unsafe," *Atlanta Journal and Constitution*, September 5, 1991, p. 6; "Plant safety largely ignored, report says; Company, government agencies blamed for fatal N.C. fire," *Atlanta Journal and Constitution*, December 4, 1991, p. 3.

[62] See Ronald Smothers, "North Carolina Plant Is Fined $808,150 in Fatal Fire," *New York Times*, December 31, 1991, p. A12.

[63] See Wil Haygood, "Still Burning; After a Deadly Fire, a Town's Losses Were Just Beginning," *Washington Post*, November 10, 2002, p. F1, detailing the scope of the human and community tragedy in the wake of the Imperial Poultry fire.

[64] Specifically, once every 115 years. See Center for American Progress, "The Bush Administration and the Dismantling of Public Safeguards" (May 2004), p. 78, available online at: http://www.americanprogress.org/atf/cf/%7BE9245FE4-9A2B-43C7-A521-5D6FF2E06E03%7D/SISPECIALINTERESTS.PDF, accessed on November 16, 2004.

[65] See David Barstow, "When Workers Die: U.S. Rarely Seeks Charges for Deaths in Workplace – A Culture of Reluctance," *New York Times*, December 22, 2003, p. A1.

Meat and Poultry Industry Dangers

Working in the meatpacking or poultry processing industry is notoriously dangerous. Almost every worker interviewed by Human Rights Watch for this report began with the story of a serious injury he or she suffered in a meat or poultry plant, injuries reflected in their scars, swellings, rashes, amputations, blindness, or other afflictions. At least they survived.

On October 9, 2003, thirty-one-year-old Jason Kelly was repairing leaks in "hydrolizer" equipment used to process chicken feathers to make a pet-food additive at Tyson Foods' River Valley animal feed plant in Texarkana, Texas. The hydrolizer was leaking hydrogen sulfide, a poisonous gas created by decaying organic matter. According to an OSHA investigator's report, Tyson did not give Kelly respiratory gear to guard against inhalation of the poison, failed to label hazardous chemicals, and failed to train workers how to detect those chemicals in case of a leak.

Kelly died of asphyxiation, according to a coroner's report, due to "acute hydrogen sulfide intoxication." Tyson is contesting an OSHA citation and fine in connection with Kelly's death, arguing that the cause of death has not been conclusively determined.[66]

Five weeks after Kelly's death, on the morning of November 20, 2003, twenty-five-year-old Glen Birdsong was working alone cleaning a holding tank near the loading dock at the Smithfield Foods hog processing plant in Tar Heel, North Carolina. The tank held Mucosa mixed with sodium bisulfite intended for use as a clotting medicine ingredient.[67] The hose Birdsong was using got caught in the tank. Birdsong climbed down a ladder to free the hose. Coworkers later found him at the bottom of the ladder unconscious and not breathing. Attempts to resuscitate him failed. He died overcome by fumes inside the tank.[68] "They didn't tell him about the dangers, and they didn't give him a safety belt to get pulled out of there in case he fell in," coworkers told Human Rights Watch.[69]

On March 10, 2004, the North Carolina Division of Occupational Safety and Health, which is authorized under OSHA "state plan" provisions to administer the federal safety law, cited

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[66] See Christopher Leonard, "$436,000 Citation Disputed by Tyson," *Arkansas Democrat-Gazette*, April 27, 2004, p. Business 1.

[67] Mucosa is mucous membrane material taken from a hog's stomach, intestines and other innards. For a picture of Mucosa, see: http://www.teeuwissen.nl/newsite/site/page41.php3?id=330&pgs=all_in_groups, accessed on November 16, 2004.

[68] See Jefferson Weaver, "Man dies in Smithfield mishap," *Bladen Journal*, November 21, 2003, p. 1; Matt Leclercq, "Officials investigate Smithfield Packing death," *Fayetteville Observer*, November 23, 2003, p. 1.

[69] Human Rights Watch interviews, St. Pauls, North Carolina, December 9, 2003.

Smithfield for a "serious" violation, namely: "the employer did not inform exposed employees, by posting danger signs or by any other equally effective means, that the tanker was a permit-required confined space and of the danger imposed."[70] On April 19, the state agency fined the company $4,323 for the violation. The fine was reduced after applying a 25 percent discount for the company's "basic" health and safety program and a 10 percent discount for "minimal employer disruption" of the state's inspection of the site of Birdsong's death.[71]

Anecdotal evidence of the dangers in meat and poultry plants is backed up by hard numbers. The industry has the highest rate of injury and illness in the manufacturing sector. As one Nebraska expert explains:

> Despite the hardhats, goggles, earplugs, stainless-steel mesh gloves, plastic forearm guards, chain-mail aprons and chaps, leather weightlifting belts, even baseball catcher's shin guards and hockey masks . . . the reported injury and illness rate for meatpacking was a staggering 20 per hundred full-time workers in 2001. This is two-and-a-half times greater than the average manufacturing rate of 8.1 and almost four times more than the overall rate for private industry of 7.4.[72]

A special investigative report in 2003 by the *Omaha World-Herald* documented death, lost limbs, and other serious injuries in Nebraska meatpacking industry plants since 1999.[73] Much of the evidence involved night shift cleaners, most of them undocumented workers. OSHA documents dryly recorded what happened:

- "Cleaner killed when hog-splitting saw is activated."
- "Cleaner dies when he is pulled into a conveyer and crushed."
- "Cleaner loses legs when a worker activates the grinder in which he is standing."
- "Cleaner loses hand when he reaches under a boning table to hose meat from chain."

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[70] See North Carolina Department of Labor, Division of Occupational Safety and Health, "Citation and Notification of Penalty," March 10, 2004, on file with Human Rights Watch.

[71] See North Carolina Department of Labor, "Fully Executed Settlement Agreement," file no. 307215731, April 19, 2004.

[72] See Donald D. Stull, "Testimony against Nebraska Legislative Bills 586 and 725," February 24, 2003. (Supported by employers, these bills would reduce workers' coverage and benefits under Nebraska's workers' compensation statute).

[73] See Jeremy Olson and Steve Jordon, "Special Report: The Job of Last Resort," *Omaha World-Herald*, October 12, 2003, p. 1A; see also Laurie Kelliher, "A Meat Story, Well Done: How the Omaha World-Herald Inspected a Tough Local Industry," *Columbia Journalism Review*, January 2004, p. 14.

- "Hand crushed in rollers when worker tries to catch a scrubbing pad that he dropped."

In all, the report concluded, nearly one hundred night shift cleaning workers in the state meatpacking industry suffered amputations and crushings of body parts in the period (1999-2003) reviewed by the investigative team. These severe injuries are just the tip of an iceberg of thousands of lacerations, contusions, burns, fractures, punctures and other forms of what the medical profession calls traumatic injuries, distinct from the endemic phenomenon in the industry of repetitive stress or musculoskeletal injury.

Eric Schlosser documented a similarly gruesome string of deaths in the mid-1990s:

> At the Monfort plant in Grand Island, Nebraska, Richard Skala was beheaded by a dehiding machine. Carlos Vincente . . . was pulled into the cogs of a conveyer belt at an Excel plant in Fort Morgan, Colorado, and torn apart. Lorenzo Marin, Sr. fell from the top of a skinning machine . . . struck his head on the concrete floor of an IBP plant in Columbus Junction, Iowa, and died. . . . Salvador Hernandez-Gonzalez had his head crushed by a pork-loin processing machine at an IBP plant in Madison, Nebraska. At a National Beef plant in Liberal, Kansas, Homer Stull climbed into a blood collection tank to clean it, a filthy tank thirty feet high. Stull was overcome by hydrogen sulfide fumes. Two coworkers climbed into the tank and tried to rescue him. All three men died.[74]

Part of the Operating System

Slaughtering and carving up animals is inherently dangerous work, but the dangers are accentuated by company operational choices. Profit margins per chicken or per cut of meat are very low, often a few pennies a pound, so competitive advantage rests on squeezing out the highest volume of production in the shortest possible time.

Greater margins exist further along the production and marketing chain where value is added in specialty foods and prepared foods. However, in the basic slaughtering and early-stage processing plants, the employer's focus on the bottom line all too often sacrifices worker safety and health. As one industry expert says, "The impact of narrow [profit] margins on

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[74] See Schlosser, *Fast Food Nation*, p. 178.

working conditions for hourly employees at meat and poultry plants is palpable. In the meat and poultry industry, the search for faster and better ways to slaughter and process meat and livestock is relentless."[75]

Putting workers at greater risk is sometimes a conscious calculation. In a revealing exchange in a 2003 trial involving an alleged scheme by Tyson Foods to smuggle undocumented immigrant workers into its plants, a Tyson manager described the company's decision to eliminate a "mid-shift wash down" by dropping room temperature from the high sixties to fifty degrees.[76]

The wash down was a brief, intensive cleaning operation that allowed workers a short rest while microbe buildup in work areas was eliminated. In the new system, the room was chilled to reduce microbes. The manager testified that Tyson eliminated the wash down and the workers' brief respite so that "more production can be achieved."[77] He said that upper management rejected his recommendation for freezer suits, better gloves, and other more protective equipment for workers in the new, colder environment.

The impact on the workers was predictable. As the manager testified:

> It's so hard on them, they were complaining of bursitis, arthritis, and increased musculoskeletal problems. And, also, we depended upon our current workers, naturally, to refer us incoming workers, and that stopped because nobody was—people weren't going home and saying Tyson is a good place to work, they were going home saying we're freezing.[78]

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[75] See Steve Bjerklie, "On the Horns of a Dilemma: The U.S. Meat and Poultry Industry," in Stull, Broadway and Griffith, eds., *Any Way You Cut It: Meat Processing and Small-Town America* (Lawrence: University Press of Kansas, 1995). Bjerklie was editor of *Meat&Poultry*, the business journal of the meat and poultry industry in North America.

[76] See Trial Transcript, *United States v. Tyson Foods et. al.*, U.S. District Court, Eastern District Tennessee, Case No. CR-4-01-61 (February 13, 2003), p. 1063 ff (Tyson Trial Transcript). The trial involved charges that Tyson Foods and some of its executives were involved in a scheme to smuggle undocumented immigrants into Tyson plants. A jury acquitted the company and the company officials, agreeing with their defense that the scheme was the work of a few rogue managers and did not reflect company policy or responsibility. The full exchange between the federal prosecutor and the Tyson manager is contained in Appendix E.

[77] Ibid.

[78] Ibid.

Why Is It So Dangerous?

Key features of meat and poultry industry labor make it rife with hazards to life, limb, and health. Here are the chief dangers:

Line Speed

Meatpackers try to maximize the volume of animals that go through the plant by increasing the speed at which animals are processed. The speed of the processing line is thus directly related to profits. However, the fact that line speed is also directly related to injuries has not prompted federal or state regulators to set line speed standards based on health and safety considerations.

The sheer volume and speed of slaughtering operations in the meat and poultry industry create enormous danger. Workers labor amid high-speed automated machinery moving chickens and carcasses past them at a hard to imagine velocity: four hundred head of beef per hour, one thousand hogs per hour, thousands of broilers per hour, all the time workers pulling and cutting with sharp hooks, knives, and other implements.[79]

Meat and poultry workers interviewed by Human Rights Watch and by other researchers consistently cite the speed of the lines as the main source of danger. "The chain goes so fast that it doesn't give the animals enough time to die," said one beef plant worker.[80] Another told of life under her foreman on the line: "'Speed, Ruth, work for speed!' he shouted as he stood over me. 'One cut! One cut! One cut for the skin; one cut for the meat. Get those pieces through!'"[81]

Another beef slaughterhouse worker described what went on in his plant: "When I started working, there were fifteen chuck boners on each line . . . 380 chain speed [cattle per hour] was considered fast; you had to have sixteen or seventeen chuck boners for that. . . . [later] they were doing 400 an hour, with thirteen or fourteen chuck boners."[82]

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[79] On line speed and working conditions generally, see Donald D. Stull and Michael J. Broadway, *Slaughterhouse Blues: The Meat and Poultry Industry of North America* (New York: Wadsworth Publishers, 2003); Schlosser, *Fast Food Nation*, p. 169 ff.; Gail A. Eisnitz, *Slaughterhouse: The Shocking Story of Greed, Neglect, and Inhumane Treatment Inside the U.S. Meat Industry* (Amherst, NY: Prometheus Books, 1997); Joby Warrick, "They Die Piece by Piece," *Washington Post*, April 10, 2001, p. A1; Marc Linder, "I Gave My Employer a Chicken that Had No Bone: Joint Firm-State Responsibility for Line-Speed-Related Occupational Injuries," 46 *Case Western Reserve Law Review* 33 (Fall 1995).

[80] Quoted in Karen Olsson, "The Shame of Meatpacking," *The Nation*, September 16, 2002, p. 11.

[81] See Deborah Fink, *Cutting Into the Meatpacking Line: Workers and Change in the Rural Midwest* (Chapel Hill: University of North Carolina Press, 1998), p. 24-25.

[82] Quoted in Olsson, "The Shame of Meatpacking," p. 11.

A 2002 investigative report in the *Denver Post* described the experience of workers at a Swift & Co. meatpacking plant in Greeley, Colorado who "can barely move" at the end of their shift, "exhausted from working on a line that turns live animals into processed meat as fast as six times a minute."[83]

Workers told the reporter that "supervisors apply constant pressure to keep the line moving" and described:

> [A] world in which they are driven, sometimes insulted and humiliated, to keep the plant's production up. "From the time you enter, you're told that if the plant stops 10 minutes, the company will lose I don't know how many millions of dollars," said Maria Lilia Almaraz, who earns $10.60 an hours cutting bones from cuts of meat with a razor-sharp blade. "It's always, faster, faster," she said.[84]

In July 2000, Jesus Soto Carbajal was cutting rounds of beef from hindquarters coming down the line at him every six seconds near the end of his shift at Excel Corp.'s meatpacking plant in Schuyler, Nebraska. He was working alone on the line; a coworker had left early. An investigative reporter tells what happened:

> No one witnessed the exact moment. Maybe the cuts were taking just that much too long because Soto couldn't pause to sharpen his knife. Maybe the next slab whacked Soto's hand as he turned a beat late.
>
> The wound didn't look that bad. Martin Contreras, still a high-level worker at the plant, had seen gashes gush far more blood. This man will survive, he thought, standing above Soto.
>
> The knife had punctured Soto's chest just above the protective mesh. Above the left collar bone where the jugular vein returns blood from the head to the heart. Within minutes, Soto went from yelling in pain to dazed silence.

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[83] See Michael Riley, "Woes at Swift blamed on pace, Speed valued above all else, workers say," *Denver Post*, November 26, 2002, p. A1.

[84] Ibid.

> Contreras sped behind the ambulance in a manager's car past cornfields and the Last Chance steakhouse to the medical clinic. It turned out there was no need to rush.[85]

The Associated Press report further noted that:

> Excel was not fined for Soto's death because no federal safety standards covered the circumstances that killed him, according to the Occupational Safety and Health Administration. . . . A spokesman for Excel, owned by Minneapolis-based Cargill Inc., said the company has outfitted workers with extended safety tunics.[86]

The speed at which hogs are moved through a pork processing plant was described by a Smithfield manager in testimony at an unfair labor practice trial in 1998-1999. (See Appendix A for a complete description of the production process.) The manager testified that at the Tar Heel plant it took "between five and ten minutes" from the instant a hog is first slain to the completion of draining, cleaning, cleaving, kidney-popping, fat-pulling, snap-chilling, and other steps before disassembly.[87]

One interviewed worker from Smithfield Foods' Tar Heel plant told Human Rights Watch:

> The line is so fast there is no time to sharpen the knife. The knife gets dull and you have to cut harder. That's when it really starts to hurt, and that's when you cut yourself. I cut my hand at the end of my shift, around 10:30 at night. . . . I went to the clinic the next day at 11:00 a.m. They gave me stitches and told me to come back at 2:30 before the start of my shift to check on the stitches. They told me to go back to work at 3:00. I never stopped working.[88]

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[85] See Justin Pritchard, "Worker's death in a Midwest town transformed by immigrant laborers," Associated Press wire story, March 13, 2004.

[86] Ibid.

[87] Tyson Trial Transcript, p. 1112 ff.

[88] Human Rights Watch interview, Red Springs, North Carolina, December 9, 2003. In interviews excerpted in this subsection, workers asked not to be identified. Where dates of hire and/or termination, or precise descriptions of their injuries, might tend to identify them, the dates are not included, and the injury is characterized in a more general manner.

Poultry processing is even more frenzied. Line workers make more than 20,000 repetitive hard cuts in a day's work. A Mexican woman poultry worker in Northwest Arkansas said:

> I came to Arkansas from California in 1994. I started working in chicken lines in 1995. At that time we did thirty-two birds a minute. I took off a year in 1998 when I had a baby. After I came back the line was forty-two birds a minute. People can't take it, always harder, harder, harder [*mas duro, mas duro, mas duro*].[89]

Another woman poultry worker said, "The lines are too fast. The speed is for machines, not for people. Maybe we could do it if every cut was easy, but a lot of the chickens are hard to cut. You have to work the knife too hard. That's when injuries happen."[90]

A male worker with swollen hands apparently fixed in claw-like position said:

> I hung the live birds on the line. Grab, reach, lift, jerk. Without stopping for hours every day. Only young, strong guys can do it. But after a time, you see what happens. Your arms stick out and your hands are frozen. Look at me now. I'm twenty-two years old, and I feel like an old man.[91]

A business journalist summed up poultry labor this way:

> It's difficult, dirty and dangerous. Tasks involve repetitive movements (workers sometimes perform the same motion 30,000 times a shift), and knife-wielding employees work perilously close together as they struggle to keep up with the production line. [OSHA] statistics for 2000 reveal that one out of every seven poultry workers was injured on the job, more than double the average for all private industries. Poultry workers are also 14 times more likely to suffer debilitating injuries stemming from repetitive trauma—like "claw hand" (in which the injured fingers lock in a curled position) and ganglionic cysts (fluid deposits under the skin).[92]

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[89] Human Rights Watch interview, Rogers, Arkansas, August 15, 2003.

[90] Human Rights Watch interview, Bentonville, Arkansas, August 15, 2003.

[91] Human Rights Watch interview, Rogers, Arkansas, August 14, 2003.

[92] See Nicholas Stein, "Son of a Chicken Man: As he struggles to remake his family's poultry business into a $24 billion meat behemoth, John Tyson must prove he has more to offer than the family name," *Fortune*, May 13, 2002, p. 136.

Senior Tyson Foods officials said that the pace of work in poultry processing plants was consistent with federal regulations. In an interview with Human Rights Watch, they said:

> Line speed varies depending on the type of product. Line speed mainly regards evisceration lines, and that is regulated by the USDA. The historical standard was 70 per minute, but it has increased with automation to 120 per minute. It's all automated now; there is much less hand work. We are constantly trying to automate.[93]

As the Tyson statement indicates, the federal government is complicit in increasing risks to workers. The U.S. Department of Agriculture (USDA) assesses permissible line speeds, but solely in terms of food safety considerations, not worker safety. OSHA is responsible for worker safety, but OSHA has not set standards for line speed to protect workers.

As long as USDA inspectors can certify that the product is uncontaminated, line speed can increase with no concern for effects on worker safety. Indeed, sometimes USDA itself encourages faster production. USDA-sponsored time and motion studies found, for example, that "reducing the time required to 'reach for the next bird' enabled a worker to remove the oil gland of 36.8 birds per minute rather than a mere 33.0." USDA time-motion studies also found that "a slicing cut with a six-inch knife enabled one worker to make an opening cut on 45 birds per minute or 2,700 per hour in contrast with only 28.7 birds per minute or 1,722 per hour with a stabbing cut."[94]

One investigative reporter interviewed USDA inspectors "squawking about a change in their procedures, ordered by USDA, to speed up the flow of fowl." According to the report:

> Watching the birds go by . . . some are complaining about an assembly line affliction called "line hypnosis." They lose awareness and concentration, the birds become just a blurred yellow vision, they say, and some bad ones may slip through. . . The inspectors who oppose the new system argue that public health is being endangered.
>
> Agriculture officials counter that the speedup—as much as 30 percent higher

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[93] Human Rights Watch telephone interview with three senior Tyson Foods managers in Springdale, Arkansas: Ken Kimbro, senior vice president, Human Resources; Archie Shaffer, sr. vice president, Government Affairs/Public Relations; LaDonna Bornhoft, sr. vice president, Risk Management, December 17, 2003.

[94] See Linder, "I Gave My Employer a Chicken that Had No Bone," p. 70.

> in some cases—was a long-needed effort to improve government efficiency. They say USDA inspectors were actually a drag on an industry churning out one of today's rare supermarket bargains . . . "The way the industry is growing, if they kept the old system, they'd have to add thousands of inspectors to the federal payroll," said William P. Reonigk of the National Broiler Council, which represents the industry. . . "We just don't want to be the cap on productivity," said Dr. Donald Houston, a top food safety official with the USDA.
>
> To poultry producers, an extra bird-per-minute or two can mean a difference of hundreds of thousands, or even millions (for the largest plants) of dollars in profits. "A penny a pound to us means $1.6 million a year," said Edward Covell, president of Bayshore Foods. . . For the inspectors and all the others who toil in chicken land, however, the conveyor belt rolls on inexorably, under the ultimate imperative of the business, as Covell put it, "sell 'em or smell 'em."[95]

Close-Quarters Cutting

Workers use sharp hooks and knives in close quarters. The height of most disassembly lines and work surfaces, and the space between workers, is usually one-size-fits-all. Workers who are taller or shorter or stouter must make extra efforts, bringing extra risks to them and their coworkers. One worker explained,

> We come in all different sizes, but the hooks and the cutting table are the same for everybody. The short ones have to reach more, and they hurt their backs and shoulders. The tall ones have to stoop down more, so they hurt their backs and shoulders. Everybody walks out of the plant hurting at the end of the shift.[96]

The force and direction of stabs, cuts, jerks and yanks are unpredictable. "Sometimes it's like butter, sometimes it's like leather," explained one Northwest Arkansas poultry worker interviewed by Human Rights Watch, displaying scars on her hands. "Sometimes the only way to make the cut is toward yourself. Everybody is on top of each other, so a lot of people

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[95] See Kathy Sawyer, "On the Chicken Line; Trying to Catch the Bad Ones, Quickly; Slaughter Inspectors Fight the Blur of Production Line . . . While Checking Chickens," *Washington Post*, September 2, 1979, p. A1.

[96] Human Rights Watch interview, Rogers, Arkansas, August 13, 2003.

get cut, especially their hands. Or they stick themselves with injection needles [for marinade injection]. Blood and flesh fall into the meat. The birds just keep going."[97]

Heavy Lifting

Despite advances in automation, many jobs in meatpacking involve lifting, shoving, and turning of heavy animals and animal parts, or of saws and other equipment. In poultry, "live hangers" constantly and rapidly lift bunches of chickens from the ground to overhead hooks to begin the slaughtering and disassembly process. Here is how one analyst described live hang labor:

> Chicken processing is a dirty business, but no job in a poultry plant is more dreaded than "live hang." Here, workers known as "chicken hangers" grab birds by their feet and sling them on to fast-moving metal hooks. This is the first—and dirtiest—stage of poultry processing. The birds, weighing approximately five pounds each, fight back by pecking, biting, and scratching the hangers, who wear plastic cones around their forearms to shield off chicken attacks. Then, as workers finally hoist the birds onto the hooks, the chickens urinate and defecate out of desperation, often hitting the workers below. [98]

Appendix A contains a Smithfield plant manager's lengthy description of hog processing operations at the Tar Heel, North Carolina plant, where workers kill and cut up twenty-five thousand hogs a day. Among other characteristics of the job, the manager said:

> Sometimes some of those hogs will go onto the floor, and a hog may need to be pulled to a location where they can be hoisted back onto the line. . . . There is a lot of heavy lifting and repetitive work you know in that environment depending on the weather because it's right there by the livestock area. . . . There are people that tend the scald tub and there are times when hogs become unshackled under the water and the only way to get them out of there is with a long steel hook and pull them to one end and

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[97] Human Rights Watch interview, Bentonville, Arkansas, August 14, 2003. Meat adulteration and safety are not direct subjects of this report, which focuses on workers' rights. For more information on food safety, see the website of the U.S. Department of Agriculture's Food Safety & Inspection Service at http://www.fsis.usda.gov. For information from a non-governmental organization, see the Consumer Federation of America's food safety web site at: http://www.consumerfed.org/backpage/fsafety.cfm.

[98] See Russell Cobb, "The Chicken Hangers," *In The Fray* (online publication), February 2, 2004, available online at: http://www.thelaborers.net/NEWS/poultry_workers/default.htm, accessed on November 16, 2004.

> reshackle them back to the line again. That's a difficult job. Heavy lifting, and that is you know always in a hot work environment. . . . When the hog comes out on the other side it comes onto a conveyor belt type table. At that point again another tough job is that the person that works on that gam table depending on how that hog comes out of there is going to have to flip dead weight, flip that hog from one side to the other if he doesn't come out with his feet to the right.[99]

Sullied Work Conditions

Whatever protective equipment they are furnished, workers inevitably come into contact with blood, grease, animal feces, ingesta (food from the animal's digestive system), and other detritus from the animals they slaughter. A review by Human Rights Watch of a sample of USDA reports on the failure of Nebraska Beef to meet sanitary production standards from 2001 and 2002 showed unsanitary conditions in the plant dangerous to both workers and consumers:

- "visible ingesta on the brisket areas of carcass sides;"
- "visible fecal material on the neck, armpit, underneath the foreshanks, and underneath the brisket area of two carcass sides;"
- "a carcass was observed with an 11½ x 1" fecal contamination smear above the shoulder;"
- "several pieces of a greenish fecal matter in the belly area;"
- "a closed rat trap contained a decomposed mouse . . . a backed up floor drain with a grayish and black residue buildup on floor . . . black splattering on boxes of edible product . . . smelled of sewage . . . no rodent windup trap checks during pest control inspection;"
- "visible yellow ingesta behind the stainless steel shield . . . repetitive drips of water from an overhead inedible auger adjacent to the product."[100]

Many workers have painful reactions to conditions, but they do not act for fear of losing their jobs. "I am sick at work with a cold and breathing problems, and my arms are always sore," a Smithfield worker said. "I have red rashes on my arms and hands, and the skin

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[99] See *In the Matter of Smithfield Packing Company, Inc.-Tar Heel Division and United Food and Commercial Workers Union Local 204, AFL-CIO* (February 16, 1999) (Smithfield Hearing Transcript), p. 3826-3850.

[100] See USDA *Noncompliance Reports* (on file with Human Rights Watch).

between my fingers is dry and cracked. I think I have an allergic reaction to the hogs. But I am afraid to say anything about this because I'm afraid they will fire me."[101]

Said another, "Two or three times a year I get infections under my fingernails. I think it's from the dirty water getting into my gloves. When I go to the clinic they freeze my fingertips and cut out the pus. They don't write anything down about that or do anything to change it."[102]

Slipping and falling in meat and poultry plants' wet conditions are another commonplace hazard and source of injury. However, workers consistently said that management is indifferent to the problem. Said one Smithfield employee:

> In 2002 I slipped on remnants on the floor. I hurt my back, my hips and my leg. My knee turned black and blue and was swollen. I could hardly walk. The company doctor told me I was OK and to go back to work. But I couldn't stand the pain. I went out on sick leave. The company fired me for missing time. They said they would take me back but only as a new employee on probation with no benefits.[103]

Here is what former Smithfield worker Melvin Grady told Human Rights Watch in an interview:

> I started working at Smithfield on the Kill Floor in July 1993. I worked there for eighteen months, then I went to a knife sharpening job and stayed in knife sharp after that.
>
> I was working second shift in September 2002 when I went upstairs to my lunch at 6:30. When I was coming back, I slipped on the greasy steps and fell to the bottom. I felt a rubber band kind of pop in my leg. I couldn't feel my toes.

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[101] Human Rights Watch interview with a worker from Chiapas, Mexico, Red Springs, North Carolina, December 17, 2003.

[102] Human Rights Watch interview with a Smithfield worker, Lumberton, North Carolina, January 14, 2004.

[103] Human Rights Watch interview with a Smithfield worker, St. Pauls, North Carolina, October 25, 2003.

> I went to the clinic and told the nurse what happened. I told her I need to see a doctor right away. She said, "I don't see any blood, so I can't send you to a doctor." She didn't write anything down, she just told me to go back to knife sharp.
>
> I went back and told my supervisor I was going to see a doctor. I limped out to the parking lot and drove home to change. I put an Ace bandage on my ankle and went to the emergency room. They took an x-ray and the nurse said to me, "How did you even get here? Your Achilles tendon is torn. They should have brought you here right away."[104]

A health care provider serving poultry industry workers at a medical clinic in Northwest Arkansas summed up the many dangers of working in a plant:

> The line speeds are punishing. I see lots of repetitive stress injuries in the neck and upper back, a lot of carpal tunnel in hands and arms. It's mostly working on the lines and they have to stand up and stretch and hold and pull and cut all day long. That's a terrible strain from the waist up. But I see leg and knee injuries too from people slipping on the wet surface, fighting to keep their balance. I see cold room syndrome too, people whose hands and joints are affected by working in constant cold.[105]

Long Hours

Time demands on workers are another factor in health and safety. According to one expert, prolonged work shifts are "clearly less safe for workers than shorter ones," increasing the risk of accidents. The risk increases at an accelerating rate, so that, according to the same expert, it more than doubles at the end of a twelve-hour shift from what it would be at the end of an eight-hour shift.[106]

"The last hour of a regular shift is hard," said a Smithfield worker. "You're tired and it's hard to concentrate. Then they tell you to work two hours overtime. That's when it gets

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[104] Human Rights Watch telephone interview with Melvin Grady (who is from Fayetteville, North Carolina), February 13, 2004.

[105] Human Rights Watch interview, Northwest Arkansas, August 15, 2003.

[106] See Bureau of National Affairs, "Potential for Accidents Increased by Prolonged Work Shifts, Researcher Says," *Daily Labor Report*, May 3, 2004, p. C1 (citing presentation and research by Prof. Simon Folkard).

downright dangerous." At the same time, the same worker conceded: "I want the overtime. People want the overtime. We need the money."[107]

U.S. labor law permits employers to require mandatory overtime on pain of dismissal if workers decline, with no limit on the amount of forced overtime. In contrast, most other countries' laws limit, on a daily or weekly basis, how much overtime can be required of workers without their consent.[108] Although overtime must be paid at 150 percent of workers' regular salary, often called "time-and-a-half" in the United States, most employers prefer to demand overtime to cover staffing shortages and surges in production demands. Using workers already hired and at the worksite on overtime relieves employers of the extra cost of insurance and other benefits for newly-hired employees, training costs, and, in the meat and poultry industry, costs associated with high turnover rates among new employees.

A health care provider serving poultry industry workers at a medical clinic in Northwest Arkansas told Human Rights Watch:

> I see a lot of problems related to heavy mandatory overtime in the poultry plants. Patients tell me they have to work ten to twelve hours a day, six days a week. I see lots of psychological problems along with injuries. That relentless overtime causes fatigue and depression in a lot of patients. A lot of them feel guilty because they don't think they are taking good care of their children. And they're right. But they have to live with the mandatory overtime or they get fired. Then the kids have problems. What's really going on here is that the company gets cheap labor, they maximize production, and all the social costs get passed on to the community.[109]

Inadequate Training and Equipment

Numerous workers told Human Rights Watch that they received minimal training before being put on the job and that the companies were stingy with protective equipment. Company officials however, insist they provide appropriate training. According to three senior Tyson Foods officials: "We give a three to four day orientation and training to new employees, and when they go on the line it's with a 'buddy system' to help them. . . . On

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[107] Human Rights Watch telephone interview, Red Springs, Arkansas, April 29, 2004.

[108] See, for example, Donald C. Dowling, Jr., "From the Social Charter to the Social Action Program 1995-1997: European Union Employment Law Comes Alive," 29 *Cornell International Law Journal* 43 (1996).

[109] Human Rights Watch interview, Northwest Arkansas, August 15, 2003.

muscular-skeletal disorders (MSDs), we make sure employees get it in their language. They may not have been aware of the risks."[110]

Responding in writing to questions from Human Rights Watch, Smithfield officials said:

> Various training programs are conducted in both English and Spanish, to include:
>
> - New Hire Orientation—provided a general overview of our safety rules, OSHA programs, accident reporting, workers compensation and our on-site medical team for treatment.
> - On the Job Training—this includes understanding the proper usage of tools and equipment, personal protective equipment required for specific jobs and emergency evacuation routes.
> - Monthly Safety Topics—each month using a "train the trainer" approach, all production employees hear about an OSHA topic and/or a company safety process/rule/expectations.[111]

Many workers told Human Rights Watch their training was scant: "They showed us a video and then told us to do what the person next to us is doing," was a common description of training programs in all three meat businesses. Many experienced workers said that they were not given time or opportunity to train new colleagues, and that employers do not offer any additional pay for taking responsibility for training new workers. Some variant of a statement such as "production is everything" was the common refrain.

Measures on personal safety equipment are applied inconsistently in different plants, workers told Human Rights Watch. Some companies make workers pay for equipment through wage deductions. Others supply equipment initially, but then make workers pay for replacements. The industry has resisted, so far successfully, proposals to require them to provide personal protective equipment (PPE) at no cost to employees. OSHA proposed a rule containing

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[110] Human Rights Watch telephone interview with Tyson Foods managers, December 17, 2003.

[111] See "Company Position on Unions and Organizing Drive," a written reply to Human Rights Watch from Smithfield Foods management, January 30, 2004 (on file with Human Rights Watch). Smithfield's responses were furnished to Human Rights Watch by Jerry Hostetter, vice president, Investor Relations and Corporate Communications.

such a requirement in 1999, but the Bush administration froze action on the proposal after taking office, and nothing has been done to adopt the new PPE standard.[112]

In one instance related by a worker at Smithfield Foods' hog processing plant in Tar Heel, North Carolina, the company refused to provide equipment the employee said was needed for personal protection:

> I pull ribs with my fingers on the packing ribs line. My fingers and nails are in constant pain because the company won't give us hooks to pull the ribs, and they won't let us bring our own hooks. We need hooks to pull the meat more easily and to avoid injuries. But they say that meat gets lost using hooks, and using fingers pulls more meat, so no hooks. The line after us gets to use hooks, but the workers have to buy their own hooks—the company won't provide them.[113]

Cleaning workers who use hazardous chemicals in a variety of plants in the Northwest Arkansas chicken processing industry told OSHA investigators:

- The company gives me gloves and goggles. I have to buy my own boots. I don't know what the chemicals are that we use. I have not received any training on how to use the chemicals for cleaning the machines. I have not seen any videos to learn about dangers in my work.
- The company has never given me orientation on where the emergency exits are. They just gave me a pair of gloves on the first day and send me to work.
- We saw a video on how to do the cleaning but it did not have any information on how to protect ourselves with the use of chemical products or any protection in general. I know the chemicals are dangerous because I saw a coworker lose his sight when the

[112] See Bureau of National Affairs, "Unions, Congressional Hispanic Caucus Call on Chao to Issue Rulemaking on PPE," *Daily Labor Report*, April 14, 2003, p. A5.

[113] Human Rights Watch interview with a Smithfield Foods worker, Lumberton, North Carolina, December 13, 2003.

> chemicals sprayed in his eye, not because my supervisors told me of the dangers.[114]

One worker, when asked if, prior to handling chemicals, she had read Material Safety Data Sheets (MSDS), forms which U.S. employers are required by law to furnish to all employees informing them of potentially hazardous substances in their work, replied: "I don't know the names of the chemicals. My supervisors mix them for us. I have no idea what an MSDS is. I have never seen one. Nobody has explained to me about the chemicals we use in our work. I don't know what they are."[115]

Corporate practices can increase or reduce the dangers workers face. Employers can enhance or limit the ability of workers to protect themselves. Workers interviewed by Human Rights Watch consistently expressed the view that the companies care more about the condition of the animals being slaughtered than of the workers doing the slaughtering. Our research reveals an industry where pressure to maximize production brings widespread injury, and where government agencies themselves give production priority over worker safety.

In an interview with Human Rights Watch, three senior Tyson Foods officials gave this account of the company's approach to health and safety:

> We have ongoing training and safety committees. We devote a lot of resources to health and safety. We have forty health and safety specialists who go out to the plants, do walk-throughs, interview employees, sometimes one-on-one confidentially . . . sit down with operations managers, write safety plans, put the plans in place, set goals etc. We have a toll-free number for health and safety problems.[116]

Responding in writing to questions from Human Rights Watch, Smithfield officials said:

> The Company ensures that all employees are provided a healthy and safe work environment. We have established a safety culture that influences safe

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[114] See affidavits signed by workers for presentation to OSHA investigators, May 2003, on file with Human Rights Watch. Names are not given here for workers' security concerns.

[115] Ibid.

[116] Human Rights Watch telephone interview with Tyson Foods managers, December 17, 2003.

> behavior through shared beliefs, practices and attitudes. Education, training and accountability are the key ingredients to our programs.[117]

Workers' views contrasted sharply with those of employers. A Smithfield worker interviewed by health and safety researchers said, "Management puts all the blame on employees when they get hurt. When I got hurt, my supervisor kept asking me what I did wrong. They don't get to the root of the problem, the conditions in the plant. They are more interested in covering up accidents than helping people who get hurt."[118]

A Nebraska Beef worker told Human Rights Watch:

> The company had a safety committee but it was a joke. It was all supervisors plus a couple of workers who are their relatives. They didn't pay any attention to what we said. They had no respect for the worker. Once the company got fined for safety violations and the manager told us: "Be careful or we'll have to pay more fines"—not be careful because you might get hurt.[119]

The Struggle over an Ergonomics Standard

Physically demanding work does not in and of itself raise human rights alarm. But alarm sounds when the following elements come into play:

- hazards associated with such work are proven by scientific study;
- employers and government know the hazards;
- the hazards are preventable with economically feasible health and safety precautions and practices;
- employers and the government refuse to take such measures, and injuries or death result.

The force required for sawing, cutting, slicing, lifting, pulling, and other physical efforts thousands of times each day is the major source of musculoskeletal disorders (MSDs)

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[117] See "Company Position on Unions and Organizing Drive," a written reply to Human Rights Watch from Smithfield Foods management, January 30, 2004 (on file with Human Rights Watch).

[118] This worker suffered a serious injury in early 2003. Human Rights Watch interview, October 22, 2003.

[119] Human Rights Watch interview, Omaha, Nebraska, July 15, 2003.

prevalent in many industries and endemic in the meat and poultry industry. More than a million workers suffer injuries from repetitive motions at their work stations each year in the United States.[120] Meat packing plants have the highest rate of MSDs, seven times the average incidence rate in manufacturing.[121]

Relying on studies by the National Academy of Sciences and other scientific sources, OSHA found that hazards in the meat and poultry industry and other sectors marked by labor intensive, repetitive work constitute "material harm" and "significant risk" to workers. The resulting disorders cause "persistent and severe pain" and "where preventive action . . . is not provided, these disorders can result in permanent damage to musculoskeletal tissues, causing such disabilities as the inability to use one's hands to perform even the minimal tasks of daily life, permanent scarring, and arthritis."[122] New evidence suggests that repetitive stress causes permanent bone and tissue damage.[123]

After years of study, OSHA proposed an "ergonomics" standard to be incorporated into U.S. workplace safety regulations. The word comes from two Greek words: ergos, meaning work, and nomos, meaning laws. In simple language this means fitting the job to the people who have to do it, through the design of equipment and procedures. Ergonomics may also be referred to as biotechnology, human engineering, and human factors engineering.[124] The ergonomics standard was intended to cover a range of industries identified as rife with ergonomic hazards, including the meat and poultry industry, nursing homes, construction, warehouses, and others.

The OSHA standard summarized evidence and set out detailed steps employers must take to reduce MSD hazards.[125] OSHA's standard called for enhanced information and training for workers, employee involvement in prevention programs, improvements in engineering and

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[120] See National Academy of Sciences, *Musculoskeletal Disorders and the Workplace* (Washington, D.C.: National Academies Press, 2001).

[121] See Bureau of Labor Statistics, "Meatpacking plants have the highest rate of repeated-trauma disorders," *Monthly Labor Report*, August 5, 1999.

[122] See OSHA ergonomics standard, Final Rule, Federal Register, vol. 65, no. 220 (November 14, 2000), 68752-68760 (OSHA ergonomics standard).

[123] See Bureau of National Affairs, "Study Finds Highly Repetitive Work Tasks Can Cause Bone Damage, Early Symptoms," *Daily Labor Report*, November 17, 2003, p. A-6, citing a study by Temple University researchers finding a direct relationship between repetitive, low force movement and the inflammation of muscles, bone, nerves, and connective tissue. The study, titled "Repetitive, Negligible Force Reaching in Rats Induces Pathological Overloading of Upper Extremity Bones," is in vol. 18, no. 11 of the *Journal of Bone and Mineral Research* (November 11, 2003).

[124] For further definition and discussion, see the Cornell University environmental health and safety website, available at: http://www.ehs.cornell.edu/ochs/Ergonomics.htm.

[125] See OSHA ergonomics standard, 68752-68760.

work station design, and measures like job rotation, slower work pace, and more frequent rest breaks for workers at risk.

The Clinton administration adopted the OSHA ergonomics standard in January 2001, but the incoming Bush administration and the new Congress immediately eliminated it, responding to fierce employer opposition to mandatory OSHA ergonomic regulations.[126] Supporters of the repeal called instead for voluntary guidelines, not binding rules, arguing that voluntary measures would adequately protect workers.[127]

The controversy reflects typical policy tensions between regulation and deregulation, between enforceable legal standards and voluntary guidelines. But it also raises a fundamental human rights issue: whether government will establish and apply rules to afford workers their recognized international human right to a safe and healthy workplace, or whether it will shrink from this responsibility and leave work conditions to the discretion of employers. Such government abdication of its responsibility is particularly troubling when the record clearly demonstrates that employers are not willing to meet their own human rights responsibility to ensure workers' safety and health.

Smithfield Foods management described its approach to ergonomics as follows in a written statement to Human Rights Watch:

> Ergonomics—This is an on-going process within the organization. We teach new hires the basic principles of ergonomics. The location Safety Manager in conjunction with the Director of Safety, Maintenance, Engineering and Plant Management perform periodic Ergonomic assessments on jobs throughout the facility. Ergonomic job assessments may be chosen randomly or from injury records to take a pro-active approach to reducing cumulative trauma disorders. To this end, in the event of a CTD [cumulative trauma disorder] injury the medical staff makes recommendations to both the employee and management team to reduce future injuries and risks.[128]

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[126] See Rachel Smolkin, "Bush Signs Repeal of Clinton's Workplace Safety Rules," *Pittsburgh Post-Gazette*, March 21, 2001, p. A14.

[127] See Steven Greenhouse, "Rules' Repeal Heightens Workplace Safety Battle," *The New York Times*, March 12, 2001, p. 12.

[128] Smithfield Foods response to Human Rights Watch inquiry, received as e-mail attachment, January 30, 2004.

Despite overwhelming scientific evidence of the hazards to workers in meat and poultry processing and other repetitive, stress-based labor, corporations frequently dismiss MSD cases as "anecdotes" and attribute the problem to workers' lifestyle and "confounding factors" like housework, vitamin consumption, sports activities, and working on cars at home.[129] In its comments on the proposed OSHA ergonomics standard, Tyson Foods said that many of its recorded injuries arise from "subjective complaints of aches and pain."[130] The company went on to say:

> There are no magic fixes for repetitive jobs . . . as long as employees continue to perform repetitive manual tasks, some employees will develop OSHA recordable cases. As employees age, become pregnant, or engage in non-work-related personal hobbies, some employees will simply be more prone to MSD symptoms despite our best efforts.[131]

OSHA responded that:

> The testimony of injured workers . . . is particularly probative in demonstrating how MSDs significantly affect people's lives. For this, statistics, epidemiological data, and other evidence are not alone sufficient. The testimony of these workers puts a human face on the pain and suffering experienced every day by workers who suffer from these injuries. It also convincingly demonstrates that MSDs are not everyday "aches and pains" experienced by all, but serious, disabling conditions.[132]

In contrast to OSHA's findings, a business-sponsored research institute at George Mason University articulated employers' concerns, putting the corporate view in sharp relief:

> [E]mployee rotation, slower work pace, or increased rest breaks … is intended to impose costs on employers rather than employees … it reduces employee incentives to take responsibility for their own safety and creates further incentives for spurious claims of injury … Without regard to the

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[129] See promotional materials of the business coalition opposed to an ergonomics standard, the National Coalition on Ergonomics, at www.ncergo.org (listing Tyson Foods as one of forty-five named corporate endorsers joined by more than 250 organizations nationwide).

[130] See OSHA proposed ergonomics standard, Comment of Tyson Foods, Inc., Docket No. S-777, Ex. 30-4137, 2.

[131] Ibid.

[132] See OSHA ergonomics standard, 68753.

> impacts of such measures on productivity or profitability, achieving compliance with the rule [i.e. the proposed OSHA standard] could shackle a company.[133]

Reflecting the same view, the Bush administration issued its voluntary ergonomics guidelines in 2002.[134] According to one news report on the guidelines, the administration insisted that they "are advisory in nature, that they don't impose any new legal requirements, and that there is no obligation to follow them. And, just to be sure, it adds that they 'are not a new standard or regulation.'"[135] The administration established a new Advisory Committee and called for more research on a subject already exhaustively studied with consistently conclusive results.

Scientists, who had carried out the massive research relied on by OSHA in issuing the 2000 standard, organized a boycott of the advisory committee and termed the administration's call for more research a stalling tactic. "We were invited to participate in a symposium that isn't necessary," said the dean of the School of Health and Environment at the University of Massachusetts. "It's called paralysis by analysis," said a University of Michigan industrial engineer who has studied ergonomics for thirty years. "By and large, everyone on the committee was selected because of their opposition to the ergonomic standard," said a University of California bioengineer (including, for example, a hand surgeon who regularly testifies for employers in workers' compensation cases and argues that musculoskeletal pain is caused by depression). "It's a political show, not a scientific meeting," said another university researcher who declined to identify himself for fear of losing federal grant support.[136]

In an interview with Human Rights Watch, Dr. Barbara Silverstein, a former OSHA official now with the State of Washington's Department of Labor and Industry and a leading U.S. expert on workplace injuries in the meatpacking industry, said:

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[133] See "Comment" of the Regulatory Studies Program of the Mercatus Center at George Mason University on the draft ergonomics standard (undated), available online at: http://www.mercatus.org/pdf/materials/114.pdf, accessed on November 16, 2004.

[134] See Elizabeth Shogren, "White House Will Leave Job Safety to Employers," *Los Angeles Times*, April 6, 2002, p. A1; Matthew Miller, "Rules for Job Safety Will Be Voluntary," *Newsday*, April 6, 2002, p. A7; Caroline E. Mayer, "Guidelines, Not Rules, on Ergonomics," *Washington Post*, April 6, 2002, p. E1.

[135] See Cindy Skrzycki, "Alarm Over a Sheepish Non-rule," *Washington Post*, October 29, 2002, p. E1.

[136] See David Kohn, "Ergonomic experts boycott conference; Leading scientists accuse government of distorting science for political ends," *The Baltimore Sun*, January 26, 2004, p. 3A.

> The politics of ergonomics are such that opponents of a standard that will actually help the situation push psycho-social components, saying it's the person, not the job. But you can't separate psycho-social components from the workload. The way work is organized, the quality of the tools, the force and repetition in the job along with line speed, these are the main factors. There is just not enough recovery time between motions. . . . There is enough information out there for action. This is a total stall tactic.[137]

Underreporting of Injuries

OSHA administrators and independent researchers have found a common corporate practice of underreporting injuries of all kinds. One recent estimate puts the undercount of nonfatal occupational injuries across industrial sectors as high as 69 percent.[138] Findings by OSHA-supported research in preparing the ergonomics standards confirmed assertions by many workers and advocates interviewed by Human Rights Watch that there is substantial underreporting of MSD injuries. According to OSHA, the reported data from the Bureau of Labor Statistics (BLS):

> [S]eriously understate the true risk . . . the data only capture those MSD injuries reported by employers as lost workday injuries. MSDs that force an employee to be temporarily assigned to alternate duty, as well as those MSDs not reported to employers by employees or not recorded by employers, are not included in those risk estimates. . . . The actual risks attributable to occupational exposure to ergonomic risk factors may be much higher than is indicated by BLS statistics. Many peer-reviewed studies have been published in the scientific literature in the last 18 years that document the underreporting of MSDs on OSHA Logs . . . These studies document extensive and widespread underreporting on the OSHA Log of occupational injuries and illnesses in general.[139]

In interviews with Human Rights Watch, Nebraska Beef workers suggested reasons for the extent of injury underreporting in meatpacking plants. "The company hates to report an injury to OSHA or to workers' comp," explained one worker,

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[137] Human Rights Watch telephone interview with Dr. Barbara Silverstein, February 10, 2004.

[138] See J. Paul Leigh, Ph.D., James P. Marcin, M.D., M.P.H. and Ted R. Miller, Ph.D., "An Estimate of the U.S. Government's Undercount of Nonfatal Occupational Injuries," *Journal of Occupational and Environmental Medicine*, vol. 46, no. 1, January 2004.

[139] See OSHA ergonomics standard, Final Rule, Federal Register, vol. 65, No. 220, November 14, 2000, 68752-68760.

> They love you if you're healthy and you work like a dog, but if you get hurt you are trash. If you get hurt, watch out. They will look for a way to get rid of you before they report it. They will find a reason to fire you, or put you on a worse job like in the cold room, or change your shift so you quit. So a lot of people don't report their injuries. They just work with the pain.[140]

Another worker reported: "There's a lot of macho too. The young guys especially don't like to admit they got hurt. They want to show they're tough so they keep working. They don't want to get teased, 'you just wanted to get light duty.'"[141]

Many companies tie injury reporting rates to management bonuses. Eric Schlosser in *Fast Food Nation* noted that "the annual bonuses of plant foremen and supervisors are often based on the injury rate of their workers. Instead of creating a safer workplace, these bonus schemes encourage slaughterhouse managers to make sure that accidents and injuries go unreported."[142]

Tyson Foods officials told Human Rights Watch:

> Health and safety is part of the management "scorecard" for ratings and bonuses. We manage injury claims through internal experience-rating, allocating costs back to individual plants, and we educate management on insurance premiums and their effect on profit and loss, and on managers' bonuses.[143]

Smithfield Foods management told Human Rights Watch that when a worker is hurt, "the company requests that the employee fill out an injury/accident investigation report."[144] That is, it is up to the worker to initiate the reporting process. But some workers cannot read the form. Many workers are not comfortable filling out a form that they believe the company will be angry at them about. As one worker interviewed by Human Rights Watch said:

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[140] Human Rights Watch interview with a Nebraska Beef worker, Omaha, Nebraska, July 16, 2003.

[141] Human Rights Watch interview with another Nebraska Beef worker, Omaha, Nebraska, July 16, 2003.

[142] See Schlosser, *Fast Food Nation*, p. 175.

[143] Human Rights Watch telephone interview with Tyson foods managers, December 17, 2003.

[144] Smithfield response to Human Rights Watch inquiry, received as e-mail attachment, January 30, 2004

> We had safety problems all the time. Every three or four days someone got hurt real bad. The company just fired people when they got hurt, even for small injuries or if you got sick. Most people just shut up. They didn't report injuries and they came to work sick. They know there are always new people who want jobs.[145]

Smithfield officials went on to say, "This report is then reviewed by the safety department … the medical department completes all required paperwork indicating, by OSHA standards, whether the injury is First Aid only or a Recordable injury. . . . We assess all claims to ensure they are truly work related."[146]

Many meat and poultry companies maintain health personnel, usually nurses and physicians' assistants, in plant clinics. Smithfield describes its groups as a "Medical Management Team—this is a team of trained medical professionals to assist both in medical management and treatment and risk/injury avoidance."[147] Many interviewed workers, however, saw the plant clinics as an arm of management. They claim that the clinics fail to take injuries seriously and seem to be more interested in ensuring that workers do not have "an excuse" to stop working.

Workers described Smithfield's clinic as part of the company's personnel office administering its "point" system for attendance. Under the system, employees accumulate points for "occurrences"—absences and late arrivals. Having twelve occurrences in a rolling twelve-month period results in termination. One worker explained,

> I work on the cut floor. My job is throwing waste fat into a combo. I have intense pain in my neck, shoulder, and arm. The supervisor won't move me. Some days I cry the whole time, it hurts so bad. I use muscle cream but the pain continues. I want to have x-rays but I'm afraid the insurance won't pay for it. I am still getting hospital bills from an earlier injury. I'm afraid to miss work to recover because they will fire me for absenteeism [because she would accumulate points under the company's attendance policy]. I have to work to support my three children.[148]

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[145] Human Rights Watch interview, St. Pauls, North Carolina, December 10, 2003.

[146] Smithfield response to Human Rights Watch inquiry, received as e-mail attachment, January 30, 2004

[147] Ibid.

[148] Human Rights Watch interview with a Smithfield worker, Red Springs, North Carolina, December 14, 2003. The company's attendance policy states: "When an employee, due to their own illness, misses two (2) or more consecutive

Government Records and Industry Manipulation of Injury Reports

Underreporting of meat and poultry industry injuries has been exacerbated since 2002 by another government action. In 2002, OSHA scrapped the more detailed "200 form" in use for many years to report workplace injuries and replaced it with a new "300 form." The earlier form required specific reporting on MSD-type injuries; the new form eliminated that column. This change and other methodological changes suddenly and dramatically lowered the "incidence rate" of injuries per hundred workers in the meat and poultry industry.

The meat and poultry industry exploited this change to falsely boast of improved safety results. Here is how a January 14, 2004 press release from the American Meat Institute characterized the new data:

> New figures just released from the Bureau of Labor Statistics reveal a continuing and dramatic decline in accidents and injury rates in the nation's meat and poultry processing facilities, according to data updating BLS year-end 2002 statistics.
>
> The industry's overall rate of what BLS data identify as "Nonfatal Occupational Injuries and Illnesses" has declined to 11.5 incidents per 100 workers per year, compared with a rate of 21.5 in 1996. For example, in 1996 a meat industry worker had slightly worse than a one-in-five chance of incurring an injury significant enough to be recorded. At the end of 2002, those odds had improved to nearly one in 10.
>
> "These data show clearly that our efforts to improve worker and workplace safety in the industry continue to bear fruit," said Dan McCausland, AMI director of worker safety and human resources. "In fact, when the current data are compared with those from seven years earlier, the rate of recordable safety incidents has been reduced by nearly one-half."[149]

This meat industry press release misleadingly used 1996 as a base year. It cited an incidence rate of 21.5 per hundred workers in 1996 and claimed a nearly 50 percent drop in injury rates, to 11.5 per hundred workers, in a six-year period ending in 2002. But the injury rate in

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scheduled work days . . . the employee will be considered as having one (1) occurrence." See "Attendance Policy, Tar Heel Division" (undated, underlined in original) (on file with Human Rights Watch).

[149] See American Meat Institute, "Latest Labor Department data show industry's safety record continued to improve," AMI press release, January 14, 2004 (available in "archives" at AMI website, www.meatami.com).

2001—the year before—was twenty per hundred workers, nearly equal to the 21.5 figure of 1996. Only the change in BLS methods for calculating the incidence rate cut the rate in half. A 50 percent drop in meat and poultry industry injury rates in a single year would be implausible, but reaching back six years creates an impressive but fictitious improvement in plant safety. The industry's press release also failed to mention the disclaimer that BLS put in a highlighted box on the front page of its 2002 report, namely:

> **Revisions to the Survey of Occupational Injuries and Illnesses**
>
> Effective January 1, 2002, the Occupational Safety and Health Administration (OSHA) revised its requirements for recording occupational injuries and illnesses. The BLS Survey of Occupational Injuries and Illnesses, the primary source for the estimates of occupational injuries and illnesses in this release, is based on employers' records of injuries and illnesses. Due to the revised recordkeeping rule, *the estimates from the 2002 survey are not comparable with those from previous years.*[150]

[150] See U.S. Department of Labor, Bureau of Labor Statistics, "Workplace Injuries and Illnesses in 2002" (December 18, 2003), available online at: http://www.bls.gov/news.release/osh.toc.htm, accessed on November 17, 2004 (emphasis added).

V. Workers' Compensation in the Meat and Poultry Industry

I kept having pain in my back. My supervisor wouldn't let me go to the clinic. He said there was too much work and I couldn't leave the line. I woke up the next day and couldn't move. When I went to the clinic, they told me I got hurt at home. They said that the regular insurance would pay my medical bills if I agreed that I got hurt at home. They asked me to sign a paper but it was in English and I didn't understand it, so I didn't sign it. I quit because the pain was so bad. Nobody paid my medical bills, neither the company insurance nor workers' comp.

—Smithfield Foods worker, October 2003

Workers' compensation for workplace injuries and illnesses is an integral part of the international human rights standards for workers. This report finds that companies in the U.S. meat and poultry industry administer their workers' compensation programs by systematically failing to recognize and report claims, delaying claims, denying claims, and threatening and taking reprisals against workers who file claims for compensation for workplace injuries.

For their part, state government authorities (workers' compensation is a states-based system not governed by federal labor law) do not sufficiently inform workers of their rights, do not effectively enforce workers' rights under compensation statutes, and do not effectively enforce anti-retaliation provisions meant to protect workers against dismissal for exercising their rights under workers' compensation laws.

International Human Rights Standards and U.S. Law

Workers' compensation, the insurance system for job-related injuries and illnesses, is not usually analyzed in light of international human rights standards. But human rights instruments recognize the importance of such protection for all workers, including non-citizens.[151] The *Universal Declaration of Human Rights* underscores everyone's right to "just and favorable conditions of work . . . and the right to security in the event of unemployment, disability . . . or other lack of livelihood in circumstances beyond his control."[152] The ICESCR repeats the call for "just and favorable conditions of work" and "the right of everyone to social security, including social insurance."[153]

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[151] See text accompanying footnote 283 for a more detailed discussion of the applicability of human rights standards to non-citizen workers.

[152] Universal Declaration of Human Rights, art. 2.

[153] ICESCR, art. 7.

ILO Convention No. 121 prescribes workers' compensation for all employees, including medical care, salary replacement, rehabilitation services, or death benefits to survivors of workers who die. The United States and its trading partners in the North American Agreement on Labor Cooperation committed themselves to "the establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring in the course of employment."[154]

Human Rights Watch's research for this report found widespread failure of the workers' compensation system to protect meat and poultry industry employees. The human rights dimension arises not with the arguably low level of benefits or restrictive eligibility rules, but with the systematic denial of workers' claim to compensation at all. Employer pressure, worker fear, and lax enforcement by government officials combine to deny many workers the right to this basic labor protection.

Workers' compensation is a legal regime dating to the early twentieth century. At that time, maimed workers (and killed workers' survivors) often failed to win lawsuits against their employers because of common law defenses, like "assumption of risk" and "contributory negligence," which blame workers for their injuries. Workers and their families became dependent on charity and public assistance. At the same time, some workers or their families occasionally won victories before sympathetic juries yielding large awards for compensatory damages, pain and suffering, punitive damages, and other common law redress. Those awards softened employer opposition to reform efforts. The combination swung state legislators into action replacing dice-rolling common law tort suits with a predictable statutory system.

Workers' compensation generally is supposed to provide injured workers with full medical insurance coverage, rehabilitation costs, and two-thirds of regular weekly pay during disability caused by a workplace injury (or a specified death benefit in case of fatality) without regard to "fault" of workers or employers. The trade-off is that workers' compensation is the exclusive remedy for such injuries. Injured workers cannot sue their employers under common law seeking large damage awards for workplace injuries even when injuries are caused by employers' negligence.[155]

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[154] See Appendix B for full text of international standards on workplace health and safety, including workers' compensation.

[155] For a comprehensive history and analysis, see Emily A. Spieler, "Perpetuating Risk? Workers' Compensation and the Persistence of Occupational Injuries," 31 *Houston Law Review* 119 (1994) ("Perpetuating Risk?").

Workers' compensation is a states-based system in the United States, really fifty-one different systems in the states and the District of Columbia. The United States is one of only three countries in the world with a sub-national workers' compensation system.[156] The states' compensation plans have many common features but also many differences in amount and duration of benefits and rules on eligibility for benefits. For example, at the extremes, in 2003 Iowa and New Hampshire provided maximum weekly benefits of slightly more than one thousand dollars, while Mississippi and Arizona capped maximum benefits at less than four hundred dollars. The maximum amounts for Arkansas, Nebraska, and North Carolina respectively were $440, $542, and $674 per week. Again, these are maximums; average benefits are in the $300 to 400 range.[157] In sixteen states, average workers' compensation weekly benefits leave injured workers below the state's poverty line.[158]

The majority of state workers' compensation laws cover non-citizens in their definitions of employees entitled to benefits. In addition, some state courts have specifically found that undocumented workers are entitled to workers' compensation.[159]

Congress has never adopted recommendations by a 1972 blue-ribbon commission of experts on workers' compensation to establish uniform national standards with continued state administration.[160] Because workers' compensation remains a matter of state law, states often compete with each other in a "race to the bottom," cutting benefits and making eligibility rules stricter in efforts to attract and retain businesses. One analyst notes:

> From the late 1980s through the 1990s, the majority of states enacted comprehensive reform legislation that has had the effect of reducing disability benefits (especially for permanent injuries), restricting or

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[156] Australia and Canada are the others.

[157] See AFL-CIO, "Workers' Compensation under State Laws, January 1, 2003," available online at: www.aflcio.org, accessed on November 17, 2004.

[158] See Allan Hunt, *Adequacy of Earnings Replacement in Workers' Compensation Programs* (National Academy of Social Research Paper), (Kalamazoo: Upjohn Institute for Employment Research, 2004). Nebraska is one of the sixteen.

[159] See "Focus on Worker Health and Safety: Equal Access to Workers' Compensation Benefits," in National Employment Law Project, *Low Pay High Risk: State Models for Advancing Immigrant Workers' Rights*, (November 2003), available online at: http://www.nelp.org/docUploads/Low%20Pay%20High%20Risk%20120903%2Epdf, accessed on November 17, 2004.

[160] See Terry Thomason, Timothy P. Schmidle, and John F. Burton, *Workers' Compensation: Benefits, Costs, and Safety under Alternative Insurance Arrangements* (Kalamazoo: Upjohn Institute, 2001).

> eliminating compensation for certain types of injuries, and reducing procedural protections for claimants whose claims are denied.[161]

State workers' compensation laws are administered by what is usually called the "workers' comp commission" in each state, appointed by the governor. The commission decides disputed cases when employers contest workers' claims that their injuries are work-related and deserving of compensation. Administrative law judges hear evidence in disputed cases, and their decisions can be appealed to the state commission for review.

The "race to the bottom" effect apparently can touch commissions, too. In one widely publicized Arkansas case, an administrative law judge sued the Arkansas workers' compensation commission for wrongful dismissal after the commission fired her. The judge said her firing was a response to pressure from business because of her decisions favoring workers.[162] In 2001, the state government paid her $125,000 to settle the case before trial.[163] One legislator who investigated the case said,

> You have a commission that is saying that you will decide a case not impartially, but you will decide it with a bias toward business and insurance companies. If you don't, you're gone. … You damn sure don't know whether you're going to get an honest judge because of the influence of management and the governor's office on the commission.[164]

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[161] See Martha T. McCluskey, "Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State," 78 Indiana Law Journal 783 (Summer 2003).

[162] Ruling against a motion to dismiss the suit and ordering the case against the commission to trial, the federal judge hearing the case pointed to "further evidence, according to deposition testimony, that some management attorneys and lobbyists had been working directly and through the Governor's office to get the Commission to terminate plaintiff because they found her unfriendly to employer interests in the cases before her (or unduly sympathetic or 'liberal' toward claimants)."See *Harrison v. Coffman*, 111 F.Supp. 2d 1130 (2000).

[163] See Seth Blomeley, "Lawmakers want details on settlement of firing case," Arkansas Democrat-Gazette, January 24, 2001, p. B2; Seth Blomeley, "Legislators question judge's firing; State paid $125,000 to settle case brought by Workers' Comp hearing officer, "Arkansas Democrat-Gazette, January 31, 2001, p. A10.

[164] See Seth Blomeley, "Everett fears workers won't get 'honest judge,'" *Arkansas Democrat-Gazette*, February 1, 2001, p. A8.

Failures of the Workers' Compensation System in the Meat and Poultry Industry

The Difference between Workers' Compensation and Regular Medical Insurance

Understanding the difference between workers' compensation and regular medical insurance is critically important for understanding why violations of workers' right to compensation occur so often. Workers' compensation for work-related injuries and illnesses is much more favorable coverage for workers than regular medical insurance. "Workers' comp" pays for 100 percent of medical expenses and rehabilitation services. The employee is relieved of any co-payments or other out-of-pocket expenses that are usually required under regular medical insurance. Workers' compensation also provides weekly income, usually between two-thirds and three-fourths of an injured worker's regular pay, during the period of disability from work. Such disability can be of long duration in cases of serious injury.

Regular medical insurance involves premium payments, co-payments, deductibles and other costs to employees; caps on benefits and other limitations; and no salary replacement during disability. Some companies maintain a short-term disability (STD) program providing 50 to 60 percent of pay during disability from non-work-related injuries or illnesses. However, most STD plans stop paying weekly benefits after a maximum thirteen-week period. An employee still unable to return to work is then liable to dismissal for absenteeism. It is at the sole discretion of the employer whether to let a worker whose STD benefits have ended return to work with doctor-recommended restrictions, also called "light duty."

Meat and poultry industry workers interviewed by Human Rights Watch consistently said that employers routinely deny that injuries are work-related when the injury is not obvious to the naked eye. Instead, management insists that workers take regular medical insurance to cover treatment and short-term disability pay if they have to miss work. Many workers succumb to this pressure, knowing that if they persist in making a workers' compensation claim for a job injury, employers' denial that the injury is work-related will force them into an administrative and judicial machinery requiring lawyers, hearings before an administrative judge on evidence of the injury, conflicting doctors' reports, appeals to commissions and courts, and other long, involved legal processes.

Daunted by this prospect, many workers fail to pursue their rights under workers' compensation laws. Emily Spieler, a workers' compensation scholar (now Dean of the Northeastern University School of Law) who also served for several years as chair of a state workers' compensation commission, notes that "the design of the [workers' compensation]

program encourages employers to attempt to prevent workers' compensation costs by reducing the filing of claims instead of the occurrence of injuries." Spieler notes tactics such as discouraging workers from reporting claims, refusing to complete injury reports when requested, and delaying claims processing so that workers turn to other sources of income such as short-term disability insurance, which quickly expires and leaves employers without further liability and workers without jobs.[165]

Dozens of workers interviewed by Human Rights Watch and other researchers offer a dismaying picture of the failure of company managers, state agencies, and insurance administrators to enforce workers' rights to compensation for workplace injuries. For example, a Nebraska Beef worker told Human Rights Watch:

> The company can't get out of workers' comp if we cut off a finger or get caught in a machine or something everybody can see. But if it's a back injury or wrist pain or something like that, they can say we didn't get hurt at work, we got hurt at home. So then a lot of people hurt in the plant just go on regular medical insurance because they don't want to get into a long fight with the company lawyers and wait two years for their benefits.[166]

An Arkansas health care provider who treats poultry workers echoed this account: "The companies always fight workers' compensation claimed for these types of injuries [musculoskeletal as distinct from traumatic and visible]. If it's not a cut or a mangled hand or something obvious with witnesses, they say it's not a job-related injury and they make the workers go through hell with a workers' compensation claim."[167]

North Carolina workers, even those whose claims are not challenged by employers, face the longest delay in weekly benefit payment in any of twelve states included in the Workers Compensation Research Institute's permanent study group. An average of seventy-eight days pass between the date of a North Carolina employee's injury and the date that the first benefit check arrives.[168] Many workers have no other income during this time. Many other workers, generally aware of this long wait, accede to employers' blandishments to take

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[165] See Spieler, "Perpetuating Risk?" p. 127, 234.

[166] Human Rights Watch interview with a Nebraska Beef worker, Omaha, Nebraska, July 16, 2003.

[167] Human Rights Watch interview, Northwest Arkansas, August 15, 2003.

[168] See Testimony of H. Allan Hunt, Ph.D., Hearing before the Subcommittee on Workforce Protections, Committee on House Education and the Workforce, May 13, 2004 (citing Telles, Wang and Tanabe, CompScope Benchmarks: Multistate Comparisons, 4th ed. (Workers Compensation Research Institute, 2004).)

regular medical insurance or short term disability instead of workers' compensation. They gain the benefit of a check arriving sooner, but risk the loss of continued medical insurance and rehabilitation coverage, long-term weekly benefits, and the right to come back to their jobs when they recover.

The Role of On-Site Medical Clinics

Many workers reported problems getting promptly to company medical clinics when injured and getting appropriate diagnoses once at the clinics. In a written statement to Human Rights Watch, Smithfield management described its procedure this way: "The employee is asked to report all injuries and near misses to their immediate supervisor. If the employee requires medical attention, they are immediately referred to the Employee Health department located on-site."[169]

Smithfield workers interviewed by Human Rights Watch and by union health and safety researchers consistently gave accounts sharply at odds with management's stated policy. First, as indicated in the Smithfield policy, the supervisor has the initial power to decide "if the employee requires medical attention." If the injury is traumatic and visible, most typically a serious open wound, supervisors grant such permission. But if the injury is perceived as a minor cut or a below-surface condition not apparent to the naked eye, supervisors frequently treat workers like malingerers and tell them to finish their shift.

Because they share rides or are picked up after work, or because they have to get children at day care centers or meet other family obligations, many workers must go home when their shift ends, without time to visit the clinic. If they go straight to the clinic the following day and complain of injury, the medical staff tells them it was not work-related. As one Smithfield worker described:

> I kept having pain in my back from the heavy lifting. My supervisor wouldn't let me go to the clinic. He said there was too much work and I couldn't leave the line. I woke up the next day and couldn't move. When I went to the clinic, they told me I got hurt at home. They said that the regular insurance would pay my medical bills if I agreed that I got hurt at home. They asked me to sign a paper but it was in English and I didn't understand it, so I didn't

[169] Smithfield response to Human Rights Watch inquiry, received as e-mail attachment, January 30, 2004.

> sign it. I quit because the pain was so bad. Nobody paid my medical bills, neither the company insurance nor workers' comp.[170]

Smithfield officials described the plant's medical clinic and its procedures as follows:

> This department is managed by Physicians Assistants, RN's, LPN's and EMT personnel. Medical treatment is provided by the team, in the event they are unqualified and/or it is a life threatening event, outside medical attention is sought. As for recordkeeping—the company requests that the employee fill out an injury/accident investigation report. This report is then reviewed by the safety department to assess ways to prevent future occurrence. The medical department completes all required paperwork indicating, by OSHA standards, whether the injury is First Aid only or a Recordable injury.[171]

Workers at Smithfield and other companies interviewed for this report often described company clinics as a disciplinary arm of management, denying claims and benefits and often failing to report injuries. They said that employers generally acknowledge and apply workers' compensation to obvious, witnessed, on-the-job accidents causing visible injuries. However, workers told researchers that employers routinely deny workers' claims for compensation for pain and for below-surface MSDs. The clinics tell them that such injuries are not work-related and should be covered by regular medical insurance, not workers' compensation.

Attorney Terry M. Kilbride has represented hundreds of meatpacking and poultry processing plant employees in workers' compensation cases in North Carolina for many years. In an interview with Human Rights Watch, Kilbride declined to discuss specific cases involving Smithfield or other companies currently in dispute before the North Carolina Industrial Commission. However, he identified what he called "common themes" in workers' compensation cases based on a decade's experience. One such theme involves plant clinics:

> Company medical clinics are notorious for failing to take a description from the employee about how the injury occurred. That often causes problems later when we are faced with the task of proving when and how the injury occurred in court. Companies don't fill out the OSHA 200's [forms supposed

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[170] This worker from Mexico was interviewed by union health and safety researchers in Fayetteville, North Carolina, October 28, 2003.

[171] Smithfield response to Human Rights Watch inquiry, received as e-mail attachment, January 30, 2004.

> to be filed under OSHA reporting requirements, now called OSHA 300's], then they say the employee never reported the injury. The plant clinic is also very, very reluctant to refer employees for outside medical care. Management always send people to the clinic so they don't see a real doctor. They simply tell the employee that there is nothing wrong, and keep stringing things along until the situation becomes intolerable. By making the process take long, cases get more and more difficult to prove. The longer the lapse between the injury date and the filing of the claim, the more difficult the claim is to prove.[172]

Employees described various company rationales to deny workers' compensation, such as accusing workers of calling the rescue squad without calling the company first; of waiting to report an injury; of "lying" to a doctor about a work-related injury when the company's injury report, written by the clinic staff, said the injury happened at home; of waiting a day to report an injury to avoid a drug test; of going to the hospital emergency room without permission, etc. Here are some of their accounts:[173]

- I just couldn't take the pain anymore. Three times I slipped and fell on the greasy floor. The first time I went to the clinic, and they told me I just hurt my pride and to go back to work. The last time I fell, the clinic sent me back to work again. A few days later I woke up in the middle of the night and I couldn't move. I called the rescue squad and they took me to the hospital. The doctor there took x-rays and told me I had a herniated disc. I was out for two weeks. When I tried to get workers' comp from Smithfield, they told me I couldn't get it because I called the rescue squad without calling the company first. The supervisors don't do anything about injuries, they get angry at workers who get injured.[174]

- My work was always bending and turning and lifting. The pain was low at first, but then it got to the point where I could hardly walk. I went out on medical. The doctors told me I have a bulging and

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[172] Human Rights Watch telephone interview with Terry M. Kilbride, February 10, 2004.

[173] These interviews were conducted and contemporaneously written by health and safety specialists employed by the United Food and Commercial Workers (UFCW), October to December 2003. Dates and other identifying information are approximated to address workers' security concerns. Full survey results are contained in Appendix F.

[174] This worker was employed by Smithfield for three years. UFCW interview, Fairmont, North Carolina, October 22, 2003.

degenerative disc in my lower back. When I called my supervisor about a workers' comp claim, she told me it was useless because I didn't report an injury at work when it happened. She told me I would lose the case. So I didn't claim workers' comp because I'm afraid they will fire me and cut off my medical insurance.[175]

- I cut my finger cleaning a knife in 2003. It was just a small cut so I didn't report it. A few days later it was swollen and infected. When I went to the workers' comp office at the plant, the manager told me that because I didn't report it on the day it happened, she was going to write up that I hurt it at home. I went to the hospital and told the doctor there that I hurt my finger at work. He told me to take off three days. When I went back to the plant the supervisor sent me to Human Resources. The manager there accused me of lying and said the report said I cut my finger at home. I told them I had witnesses but they said they didn't want to hear any witnesses. They said I was fired for lying. They didn't pay any doctor bills.[176]

Self-Insurance

Problems in the workers' compensation reporting and claims system can be compounded when companies self-insure for workers' compensation, as do Smithfield and many other meat and poultry companies. These companies have a bottom-line incentive to deny claims or to steer workers toward the regular medical insurance program, since every dollar saved in workers' compensation payout is saved by the company. As one industry journal explains:

> The basic concept of an individual workers' comp self-insured program is one in which the employer assumes the risk for providing benefits to its employees. So, instead of paying a set premium to an insurance carrier or to a state-sponsored workers' comp fund, they pay for each claim as it incurs out of their own pocket.[177]

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[175] This Smithfield worker had been out of work since early 2003 with an injury; UFCW interview, Lumberton, North Carolina October 24, 2003.

[176] UFCW interview with a Smithfield employee, White Oak, North Carolina, October 31, 2003.

[177] See "Trusting in Workers' Compensation Self-Insurance Programs," *Insurance Journal*, March 22, 2004. Smithfield and Tyson also self-insure for regular medical insurance, as indicated by their 10-Q quarterly SEC reports, but regular medical insurance benefits do not include disability pay, which is substantially lower than workers' compensation disability pay and which terminates after thirteen weeks.

The Self-Insurance Institute of America explains the system this way:

> Employers typically choose to self-insure their workers' compensation plans because it gives them more opportunities to control costs . . . Under a self-insured arrangement, employers pay claims as they are incurred as opposed to paying costs up front in the form of a commercial insurance or state fund policy. This "pay as you go" approach serves to maximize cash flow.[178]

Companies that self-insure use third-party claims administrators (TPAs) to manage the compensation program. As the industry trade journal explains:

> One challenge is more administrative work because in essence, the employer becomes the insurance company. The employer will be required to administer claims in-house or subcontract the duties to a third party administrator (TPA). In most cases, employers running these programs use a variety of service providers to help them. TPAs often set up and operate plans in addition to coordinating excess insurance coverage. Controlling claims is also necessary as it can more directly affect the net income, which can require additional financial and managerial resources.[179]

The key in the company-TPA relationship is that management controls the information that goes to the administrators. As Smithfield management explained:

> If a workers' compensation claim is to be opened all appropriate paperwork is completed by the medical department and sent to the company's Third Party Administrator to open the claim so that medical and/or indemnity payments can be authorized. With the assistance of our TPA we assess all claims to ensure they are truly work related. If they are, they are processed, if it appears they are not work related, the company will challenge the claim.[180]

Here is Attorney Kilbride's account of how workers' compensation operates when a company self-insures:

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[178] See "About Self-Insurance" at the Institute's website at www.siia.org.

[179] "Trusting in Workers' Compensation Self-Insurance Programs."

[180] Smithfield response to Human Rights Watch inquiry, received as e-mail attachment, January 30, 2004.

One difficulty in handling these cases requires some understanding of the usual process in workers' compensation claims. To start with, many companies are self-insured, so avoiding claims is a high priority for their bottom line. They use a third-party administrator as a buffer, but the companies control what goes to the administrator. In any case, the administrator is not going to pay a nickel unless and until the claim is reported. So companies almost never report the injuries to the administrator unless the injury is so obvious, in front of witnesses inside the plant, that they can't *not* report it.

There is almost nothing that a lawyer can do to force an employer to comply with the terms of its own insurance policy. This makes the early part of the process proceed far more slowly than it does in other cases. Moreover, the more slowly the wheels of justice turn, the more desperate my clients become. Most cases settle for less than workers are rightfully due because they are desperate for income and employers have the economic power to outlast them.[181]

Injured Worker Surveys

Interviews and data compiled in late 2003 and early 2004 by a team of safety and health specialists from the United Food and Commercial Workers, the union assisting Tar Heel workers' organizing efforts, confirmed the lack of workers' compensation for many injured workers. The researchers interviewed sixty-three Smithfield workers injured at work. Slightly more than half of the workers were identified from OSHA report logs.[182] Others were referred by union organizers based on house visits, and some were referred by interviewed workers themselves.[183]

Of the sixty-three injured workers, only fifteen (24 percent) received workers' compensation. Among Latino workers the rate is even more startling: just one of nineteen Latino workers interviewed received workers' compensation. English-speaking American workers fared better. Of forty-four such workers, fourteen (32 percent) received workers' compensation.

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[181] Interview with Kilbride, February 10, 2004.

[182] OSHA report logs are legally-required and publicly available records that all companies must maintain providing details of each work-related accident or injury requiring some form of medical attention.

[183] The interviews have no pro- or anti-union bias. Union organizers visited workers' homes based on name and address information they had obtained without knowing the workers' sentiments about the union. Workers referred to injured coworkers without regard to union sympathies.

Thirty-eight workers identified their injuries as caused by sudden accidents resulting in visible physical damage. Of these, twelve, or about one-third, received workers' compensation. Thirty workers identified their injuries as musculoskeletal disorders (MSDs), skin disease or other ailments from repetitive motion or exposure to substances in the plant.[184] Only three of these, or one-tenth, received workers' compensation.

Workers' Compensation and Short-Term Disability (STD)

In a written reply to questions from Human Rights Watch about the relationship between workers' compensation and the company's insurance and STD programs, Smithfield officials said:

> The company carries out the appropriate investigation regarding any accident or injury to determine whether it is work related and follows the procedures set forth under the workers compensation laws in North Carolina if it is work related. . . .
>
> Where the injury by accident is compensable under North Carolina law, the employee receives benefits as prescribed under the worker's comp statute. Otherwise, the employee receives benefits pursuant to the company's medical plan if the injuries or events are covered by the plan. . . . The company has a light duty program; if appropriate, we may place an individual into this program. This is managed on a case by case basis.[185]

Management's description of a smooth, fair, efficient system does not correspond with workers' stories of their often failed efforts to claim their right to compensation for on-the-job injuries. Many workers' accounts described companies maneuvering to put as many injuries as possible on regular medical insurance plans or short-term disability rather than workers' compensation. A Smithfield worker explained:

> I worked as a stunner on the Kill Floor starting in 2000. I got hurt in 2003 when a hog I stunned rolled into my left knee. My knee was swollen and painful. I went to the plant clinic. They wrapped it with an ace bandage and told me to go back to work. I finished the day and then had the weekend off.

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[184] Five workers reported both categories of injury.

[185] Smithfield response to Human Rights Watch inquiry, received as e-mail attachment, February 27, 2004.

> On Monday morning I could hardly walk. I went to the emergency room. I put it on the company insurance card. They took an x-ray and gave me a note for the plant. The company put me on medical leave. When I called about benefits, the company insurance office told me they denied workers' comp and wouldn't pay the emergency room because I went there without permission. I went into the office to see what was going on. They told me I would get a letter from Smithfield headquarters in Virginia. They sent me a letter that said I had to sign a waiver of any workers' comp claim if I wanted to get medical insurance or short term disability. I signed it but it was under pressure because I had not gotten any income for weeks. Then I got $109 a week for thirteen weeks.[186]

Former Smithfield worker Melvin Grady also experienced the company's resistance to covering workplace injuries under workers' compensation and instead forcing them onto the regular medical insurance plan and short-term disability. As recounted earlier, Grady suffered a torn Achilles tendon when he slipped and fell on a greasy stairway at the plant in September 2002. The clinic nurse sent him back to the shop, but he told his supervisor he had to go to the hospital. Grady told Human Rights Watch that at the hospital emergency room:

> They took an x-ray and the nurse said to me, "How did you even get here? Your Achilles tendon is torn. They should have brought you here right away." She asked me, "Is this workers' comp?" I said, "I think so. It happened at work. I don't know."
>
> I had an operation right after that. Then for one month I was in a cast from my knee to my toes. I started getting STD [short term disability] from Smithfield after about three weeks. It was for $227 a week, but with deductions I got about $170 a week. I called the clinic and said I thought I should get more out of workers' comp. They told me, "Your case is not workers' comp. It is not work-related." I didn't know anything about workers' comp law and I figured they knew, so I let it go.
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> At the end of December 2002 I got an STD check with a notice saying "This is your last check." I went to Smithfield with a doctor's note saying I could

[186] Under workers' compensation, this worker would have received approximately $380 a week for the entire period of disability. Human Rights Watch interview with a Smithfield worker, Red Springs, North Carolina, January 21, 2004.

> work, but with "no prolonged standing or climbing up and down stairs." I could have done it because I could sit down in knife sharp a lot of the time, and I could just bring my lunch. I didn't have to climb the stairs.
>
> Management told me to go back and get a doctor's note with no restrictions, or I was out of a job. My doctor wouldn't give it to me. Smithfield told me I was terminated. I asked them could I get unemployment comp and they said no, I couldn't apply for unemployment because it was my fault I was out of work.
>
> I started doing temp jobs in the area, and that's what I have been doing for the past year. At Smithfield I made eleven dollars an hour with a fair amount of overtime. The temp jobs are six dollars an hour, that's what I make now. I was bringing home $500 a week from Smithfield. Now it's $150 or $175 a week.
>
> I didn't want to hire a lawyer or anything because I figured Smithfield knows what the law is about workers' comp or unemployment comp. But when the bank foreclosed on my house in January I called up the union and they got me a lawyer. He is helping with my case now. I hope he can do something because I am filing for Chapter 13 bankruptcy.[187]

Fear of Job Loss

Many workers are fearful of losing their job if they press for compensation for a workplace injury. Such retaliation is unlawful in every state (except Alabama, which allows employers to fire workers for filing compensation claims). But workers' compensation expert Emily Spieler found that:

> Factors extrinsic to the workers' compensation system itself play an important role in influencing workers' claims filing behavior . . . [A] primary risk is that of actual job loss, or of other retaliation by the employer . . . for seeking benefits. . . . "Good" workers become those employees who do not file claims, even when they meet the eligibility requirements. . . . Prospects for successful reinstatement . . . are notoriously bleak. Retaliatory discharge

[187] Human Rights Watch telephone interview, Fayetteville, North Carolina, February 13, 2004.

> lawsuits are a useful tool primarily for professionals, managerial, and other upper income workers.[188]

In a written reply to questions from Human Rights Watch about employees' fears of termination, Smithfield management said:

> Employees should not fear retaliation of any sort from the company for reporting actual injuries or accidents or for making good faith claims relative to injuries they may have sustained. The company will not tolerate retaliation by supervisors or anyone else against employees making good faith reports or claims.[189]

Many workers see the situation differently. In the union researchers' survey of injured workers, fifteen of the sixty-three individuals in the database were dismissed by Smithfield after their injury. One former Smithfield employee said:

> I worked on the spiral hams line in the conversion department. In 2002 the side of my face got a nerve reaction. It felt like it was paralyzed. The nerve specialist told me it was a reaction to the cold work area and gave me a note saying I should move to a warmer area. When I went to Human Resources they told me I was a high risk and I was terminated. I never got paid for the time I was out, and I never got workers' compensation. My unemployment compensation has run out and I have no income at this time.[190]

Another worker had this to say:

> I worked in casing for five years pulling guts. . . . In 2003 I was pulling hard when I felt a sharp pain in my shoulder. I went to the plant clinic. They gave me a heating pad and a muscle rub. I went off the line for two days on light duty, picking up meat off the floor in the department. It wasn't getting any better so I went to the office and asked for time off to let it heal. They told me it was not work-related and I couldn't have time off. I just worked with

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[188] See Spieler, "Perpetuating Risk?" p. 219, 230.

[189] Smithfield response to Human Rights Watch inquiry, received as e-mail attachment, February 27, 2004.

[190] This Smithfield worker was interviewed in St. Pauls, North Carolina, December 9, 2003.

> the pain because I couldn't afford to take off and they would fire me for absenteeism.[191]

Spieler's study of workers' compensation systems concludes:

> The employer's ability to affect claims filing behavior is directly tied to the inequality of the employment relationship. . . . [Unorganized] employees rarely pursue litigation against employers while they remain employed . . . Workers' compensation forces the pursuit of litigation during the existence of this relationship . . . the more workers perceive loss of trust or of job as one possible outcome of pursuing compensation claims, the lower the likelihood they will pursue claims.[192]

Company-Selected Doctors

Poultry workers interviewed by Human Rights Watch for this report described another recurring problem related to a common feature of workers' compensation systems: the power of employers to require workers to see a doctor chosen by the company. By itself, such a practice does not violate workers' rights. Most states permit employers to have a worker claiming compensation see a company-chosen physician in addition to the employee's own physician, with provisions for a third opinion in case of a dispute between physicians. But in Northwest Arkansas, where many workers are immigrants without drivers' licenses and cars, transportation to company-assigned doctors located hours away presents a major barrier to claiming their right to compensation.

In one interview, a Central American worker from a local poultry processing firm with his fingers frozen in a permanent, disfigured curl said:

> I worked in a processing plant for four months. I was on a bagging machine when the bags got stuck. The only way to fix it is with the machine still running. My hand got caught in the machine. Four fingers got torn up. The foreman took me to the Harrison Hospital for treatment.[193] The hospital is two hours away but they make us go there because that's where the company doctors are. They just do what the company tells them.

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[191] Human Rights Watch interview with worker, January 14, 2004.

[192] See Spieler, "Perpetuating Risk?" p. 233.

[193] North Arkansas Regional Medical Center, Harrison, Arkansas.

> I was there until 3:00. My hand was killing me, but the doctor said I could work. They made me sign a form saying I could not get my own medical records without company permission.
>
> The foreman told me to come back to work that night using one hand. I tried it for a few days but the pain was intense. I went to the company nurse. The nurse told me to get Tylenol out of the Tylenol vending machine and go back to work.
>
> I was afraid of gangrene, working in the cold room. I couldn't stand the pain. After a week a friend of mine told the supervisor he should give me some time off. The next day the personnel manager called me in and told me I was fired because of my bad hand.
>
> I applied for workers' compensation. The company said I had to see their doctor at the Harrison Hospital two hours away to keep checking on me. But I didn't have a car, I couldn't always get there, so the company said I was negligent and they won't pay for any therapy by my doctor here in town.
>
> My hand is useless. I can't grip, so I can't work. All the work is hard work, even light duty. Not just chicken work. Any work. I'm still trying to get workers' compensation. In the meantime, my wife is supporting me. If she gets hurt I don't know what I'll do.[194]

Another chicken processing worker described in detail a serious, permanent, disfiguring injury that was plain to see. However, Human Rights Watch must relate this interview in non-specific terms because the nature of the injury would likely identify the worker:

> The injury happened on the night shift. The manager took me to the emergency room where I got initial treatment. He told me to see the nurse the next day. The nurse is only on duty for the day shift. The next day, the nurse told me to see the personnel manager. The personnel manager told me I will have to go to the company doctor at a hospital in Okalahoma. It's about four hours away. I couldn't drive, and my spouse doesn't drive. There is no interpreter there. So I missed appointments and now they are fighting my workers' compensation claim because of that.[195]

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[194] Human Rights Watch interview, Rogers, Arkansas, August 13, 2003.

[195] Human Rights Watch interview, Bentonville, Arkansas, August 13, 2003.

VI. Freedom of Association in the Meat and Poultry Industry

I don't mind talking with you now because I am in a union job and I know I have protection. That's what they need in meatpacking.

—Former Nebraska Beef worker active in an organizing campaign, July 2003

Fire the bitch.

—Smithfield Foods attorney instructing a supervisor to dismiss a union activist, 1997 election campaign, Tar Heel, North Carolina

These are union sympathizers who we really don't want.

—Tyson Foods manager explaining why certain workers were not hired at a Tyson poultry plant, February 2003

This report finds that employers in the U.S. meat and poultry industry carry out systematic interference with workers' freedom of association and right to organize trade unions. Some employer conduct falls within the bounds of legality under U.S. labor law, which grants them wide latitude to aggressively campaign against employees' self-organization in violation of international standards. For example, U.S. labor law lets employers hold mandatory "captive audience" meetings to inveigh against workers' self-organizing and to make "predictions" of workplace closure if workers choose union representation as long as they are not "threats" of closure. U.S. law allows permanent replacement of workers who exercise the right to strike, in violation of international standards on the right to strike.

But meat and poultry companies also have crossed the line to widespread violations of U.S. law on workers' organizing rights. In case studies outlined below, federal labor law agencies found many egregiously unfair labor practices by employers. But here failings in the labor law enforcement system come to the fore. Enforcement is so lax, remedies are so weak, and delays are so prolonged that many employers become labor scofflaws who see action by labor law authorities as a routine cost of doing business, worth it to destroy workers' self-organizing efforts. In one of the cases studied here, repeated use of police violence against workers adds a disturbing element of state power used to repress workers.

International Human Rights Standards and U.S. Law

In 2000, Human Rights Watch documented the crisis of workers' freedom of association in the United States in a book-length report titled *Unfair Advantage*. Drawing on case studies from different industries in every part of the country (including Smithfield Foods' Tar Heel, North Carolina plant, a site of egregious violations of workers' organizing rights), the report found that "freedom of association is a right under severe, often buckling pressure when workers in the United States try to exercise it . . . a culture of near-impunity has taken shape in much of U.S. labor law and practice."[196]

International human rights law is unambiguous about workers' right to freedom of association.[197] The *Universal Declaration of Human Rights* declares that, "Everyone has the right to freedom of peaceful assembly and association . . . and the right to form and to join trade unions for the protection of his interests."[198] The two UN covenants repeat these protections.

The ILO's bedrock conventions on freedom of association elaborate these rights, guaranteeing workers "the right to establish and to join organizations of their own choosing without previous authorization" and requiring governments "to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize." The ILO goes on to declare that "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment."[199]

In the North American Agreement on Labor Cooperation, the United States and its partners assumed obligations to "promote compliance with and effectively enforce its labor law through appropriate government action" and to "promote, to the maximum extent possible," the labor principles set out in Annex I:

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[196] See Human Rights Watch, *Unfair Advantage* (2000), p. 7, 10; also available online at: www.hrw.org/reports/2000/uslabor, accessed on November 15, 2004. Cornell University Press has published a 2004 edition with a new introduction and conclusion updating case studies.

[197] These standards also cover non-citizen workers, irrespective of their immigration status; see text accompanying footnotes 287-88 below.

[198] Universal Declaration of Human Rights, art. 20(1), 23(4).

[199] ILO, text of fundamental conventions relative to freedom of association are available online at: http://www.ilo.org/public/english/standards/norm/whatare/fundam/, accessed on November 17, 2004.

- freedom of association and protection of the right to organize: the right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests;
- the right to bargain collectively: the protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment;
- the right to strike: the protection of the right of workers to strike in order to defend their collective interests.[200]

Human Rights Watch's 2000 *Unfair Advantage* report found the following features of U.S. labor law and practice in violation of international human rights standards for workers:

- wholesale exclusion of broad categories of workers—farm workers, household domestic workers, independent contractors who are really dependent employees, low-level supervisors, public employees and others—from protection of the right to organize and bargain collectively;
- widespread firings and other forms of discrimination against workers seeking to exercise rights of association;
- widespread use of threats, spying, harassment, and other intimidation tactics against workers;
- effective nullification of the right to strike by employers' use of permanent replacements taking the jobs of workers seeking to exercise this right;
- debilitating delays in the labor law enforcement process making dead letters of many elements of law that are supposed to protect workers;
- toothless remedies at the end of the enforcement process.

Workers' Freedom of Association in the Poultry Industry

Historically, worker organizing has rarely taken hold in the U.S. poultry industry. Where unions existed, employers often destroyed them. In the 1970s, for example, Perdue Farms purchased several union-represented plants in the Delmarva peninsula, shut them down, fired union workers, and re-opened them as non-union facilities. "We simply preferred to

[200] North American Agreement on Labor Cooperation, Annex I, p. 21-22, available online at: http://www.worldtradelaw.net/nafta/naalc.pdf, accessed on November 17, 2004.

remain nonunion, and that's our prerogative in America," said company president Frank Perdue.[201]

In a 1995 organizing effort among workers at a Dothan, Alabama Perdue plant, workers reported a KKK-style cross burning at the plant, with the cross bearing a union T-shirt.[202] In that campaign, the National Labor Relations Board (NLRB) found company management guilty of interrogating employees about their union sympathies, confiscating materials from workers supporting the union as they entered the plant, threatening to close the plant if workers chose union representation, and eliminating the attendance bonus to discriminate against workers for union activity.[203]

In a 1996 campaign in Lewiston, North Carolina, Perdue managers told workers that if they formed a union, the company would close the plant and put in an airport; that workers would be fired if they wore union T-shirts; that workers would lose their eligibility for seniority pay if they chose union representation; and that Perdue would close the plant and move it to South Carolina if the union came in. The NLRB found that the company violated workers' organizing rights and ordered a new election.[204]

In 1993, the NLRB found Tyson Foods guilty of unlawfully directing and controlling a union expulsion at its Dardanelle, Arkansas plant. The company interrogated workers about their union sympathies and illegally promised wage increases, bonuses, and other benefits if workers voted to get rid of the union.[205]

In 1995, Tyson was found guilty of illegally eliminating a union chosen by Holly Farms workers when Tyson purchased Holly Farms operations in 1989. Tyson management coercively interrogated workers about their union sympathies, threatened to arrest workers exercising their lawful right to distribute written materials in non-work areas on non-work time, threatened union supporters with firing if they remained loyal to the union, and indeed

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[201] See Ben A. Franklin, "Union Battling 'Tough Man' to Organize Perdue Chicken Pluckers," *The New York Times*, December 22, 1980, p. 22, cited in Robert Bussel, "Taking on 'Big Chicken:' The Delmarva Poultry Justice Alliance," 28 *Labor Studies Journal* 1 (Summer 2003).

[202] See Ronald Smothers, "Unions Try to Push Past Workers' Fears to Sign Up Poultry Plants in South," *The New York Times*, January 30, 1996, p. A10.

[203] See NLRB Decision, Order, and Direction of Second election, *Cooking Good Division of Perdue Farms, Inc. and LIUNA*, 323 NLRB 345 (1997).

[204] See "Decision and Direction of the NLRB," *Perdue Farms, Inc. and UFCW*, 328 NLRB 909 (1999).

[205] See NLRB Decision and Order, *Tyson Foods, Inc. and UFCW Local 425*, 311 NLRB 552 (1993).

did fire fifty-one workers for supporting the union.[206] In 2000, Tyson Foods agreed to pay $18,000 to three workers fired at its Vienna, Georgia plant during a worker organizing effort in 1999.[207]

Asked about exercising rights of self-organization, a Tyson worker in Northwest Arkansas interviewed by Human Rights Watch for this report said, "People don't talk about it. Most people are too scared. The company would fire anybody who tried to start a union, and they would blacklist you with the other companies."[208]

An Insight into Employers' View of Workers' Association

A glimpse into Tyson's view of workers' rights came during a trial over an alleged unlawful scheme by the company to recruit undocumented Hispanic workers into its plants. A former human resources manager at a Tyson poultry plant described his role in hiring workers at a time when the company faced staffing shortages and wanted as many American (as distinct from immigrant) workers as possible in full-time rather than temporary positions to deflect attention from its growing use of immigrant workers in full-time jobs. This human resources manager testified that a supervisor asked him, "Why do we have Americans on the temp roll?"

"And I responded, 'Gerald, these are people that are either union sympathizers who we really don't want or people who will cause us trouble or these are people that cannot pass a drug test."[209]

At another point in his testimony, explaining the supposed benefits of having temporary employees supplied by an outside labor contracting agency rather than working directly as Tyson employees, the manager said: "Members of USA Staffing [the temporary employment

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[206] See NLRB Decision and Order, *Holly Farms Corporation and its Successor, Tyson Foods, Inc. and Teamsters*, 311 NLRB 273 (1993); upheld in *Holly Farms; Tyson Foods v. NLRB*, 48 F. 3d 1360 (Fourth Circuit Court of Appeals, 1995).

[207] See Thomas W. Krause, "Union Dispute with Vienna, Ga. Tysons Food Plant Ends with Settlement," *The Macon Telegraph*, August 4, 2000, p. A1. As part of the settlement, Tyson Foods did not admit to unlawful conduct.

[208] Human Rights Watch interview, Rogers, Arkansas, August 13, 2003. Several interviewed workers referred to their belief that companies in the area maintained a blacklist of union supporters or workers who protested conditions. Human Rights Watch could not independently verify this claim, but fear of a blacklist has a chilling effect on workers' exercise of associational rights.

[209] Tyson Trial Transcript, p. 1341. Tyson Foods and company executives were acquitted of smuggling charges by a jury in the case, successfully defending on the grounds that the recruitment scheme was the work of individual company managers, not a corporate-wide plan. However, the testimony contained here on "union sympathizers" and "weakening union participation" was part of the development of the factual background in the case; it was not challenged or refuted on cross-examination or in other testimony.

agency], since they didn't work for the facility could not file a grievance, therefore, the higher the number of USA Staffing temp members that came into the plant, naturally, we can weaken union participation."[210]

A Tyson worker explained:

> Tyson always gets rid of workers who protest or who speak up for others. When they jumped from thirty-two chickens a minute to forty-two, a lot of people protested. The company came right out and asked who the leaders were. Then they fired them. They told us "If you don't like it, there's the door. There's another eight hundred applicants waiting to take your job." They are the biggest company so what they do goes for the rest.[211]

Indeed, an example of management views of workers' organizing rights in one of "the rest;" that is, other poultry companies, came to light through an original document obtained by Human Rights Watch. The following memorandum was issued by a manager at the Peterson Farms poultry processing plant in Rogers, Arkansas:

> To: Sanitation Crew
>
> From: [Company manager][212]
>
> Date: 8/11/03
>
> Re: Rumors
>
> I have been hearing that some of you are talking about striking, because we have asked you to do some extra things to fill the time that we pay you. You have the right to make your own decisions but I am telling you that if you do try this you will no longer be employed here. If myself or any of the other management team members hear you say this or another employee tells us about this and it can be backed up, you will no longer work here. I want all of you to stay with us but I will not put up with this kind of behavior. I want every employee on third shift sanitation to sign this to acknowledge you understand.

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[210] Ibid., 1063 ff.

[211] Human Rights Watch interview, Rogers, Arkansas, August 13, 2003.

[212] The manager's name is in the original document, but Human Rights Watch does not include it here because this is a report about systematic abuses of workers' rights distinct from the actions of individuals.

This instruction to employees on its face violates workers rights under section 7 of the National Labor Relations Act (NLRA) to "engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection." This right extends to associational activities generally; there is no requirement that workers be engaged in trade union formation. In this instance, there was no union on the scene and no union organizing aspects to these workers' spontaneous communication with one another. The memo is also unlawful under section 8(a)(1) of the NLRA, which states, "It shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." Section 7 rights include the right to talk with each other about working conditions and about collective action.[213] This memo says that workers who exercise this right "will no longer work here."

When asked about the circumstances of the memorandum and whether it reflected current company policy, a Peterson Farms official responded:

> This was certainly an isolated incident of which no member of Upper Management was aware of and definitely does not support.
>
> We have never had such a policy in place nor will we ever have a policy of this type. We will conduct a through investigation of the matter and take appropriate measures.[214]

Workers' Freedom of Association in Tyson Meat Plants

Jefferson, Wisconsin

Tyson's efforts to keep unions out of its plants extend not just to its poultry plants but to meat processing plants as well. Another Tyson thrust against workers' freedom of association took place in Jefferson, Wisconsin in 2003 when the company hired permanent replacements to break a strike at its factory producing pepperoni and other sausage products. Workers' exercise of the right to strike is recognized in international law as integral to their freedom of association. However, under what is called the Mackay doctrine, U.S. labor law permits permanent replacement of striking workers, and Tyson used the Mackay doctrine to

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[213] Full text of the National Labor Relations Act is available online at: http://www.nlrb.gov/nlrb/legal/manuals/rules/act.asp, accessed on November 17, 2004.

[214] E-mail communication from Janet Wilkerson, vice president of Human Resources, Peterson Farms, Inc., to Human Rights Watch, November 12, 2004 in response to Human Rights Watch's November 11, 2004 request for comment.

do so.[215] The ILO's Committee on Freedom of Association has condemned this legal doctrine as a violation of freedom of association.[216]

The strike by 470 Tyson workers in Jefferson was wrenched at the start when the local union's president, Gary Gilbertson, died of a heart attack as the strike began at the end of February 2003. Gilbertson had characterized the looming dispute as "union busting and corporate greed at its worst . . . They're trying to flex their muscle, just like Wal-Mart, trying to take over everything and destroying good family-supporting jobs in the process."[217]

Tyson demanded a four-year freeze on workers' wages, cutting starting salaries by more than $2 per hour, cutting overtime and holiday pay, cutting sick leave in half, cutting vacations and holidays, cutting health insurance for retirees, and increasing the employee-paid premium for family medical insurance from $9 to $40 per week. Company management acknowledged that the plant was profitable, but said that workers' $25,000-30,000 annual salaries and benefits made the Jefferson plant "in a luxurious position from our perspective. It's just a case of being an outlier. . . .The cost in Jefferson is out of line and we have to make adjustments."[218]

"It was a good job," said Sharon Guttenberg, a striking worker. "We weren't getting rich, but we were making a living."[219] A labor economist explained, "[Tyson wants] to make their wages and benefits in Wisconsin more or less equal to what they have in the non-union chicken processing plants in Mississippi."[220]

On April 4, 2003, Tyson announced it would hire permanent replacement workers to take the jobs of workers exercising their right to strike.[221] The replacement move sparked anger

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[215] See *NLRB v. Mackay Radio & Telegraph Co*., 304 U.S. 333 (1938).

[216] See International Labor Organization, Committee on Freedom of Association, *Complaint against the Government of the United States presented by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO),* Report No. 278, Case No. 1543 (1991).

[217] See Mike Ivey and Aaron Nathans, "Strikers Lose Their President; He Dies as Walkout Starts," *Madison Capital Times*, March 1, 2003, p. 3A.

[218] See Steven Greenhouse, "Unions Finding That Employers Want More Concessions," *The New York Times*, July 11, 2003, p. A12.

[219] See Lisa Schuetz, "Tyson Standoff Grinds On; Neither Side Budges; Jefferson Feels Pinch," *Wisconsin State Journa*l, August 3, 2003, p. A1.

[220] Economist Frank Emspak of the University of Wisconsin, in "Strike continues at pepperoni and sausage plant in southern Wisconsin," *Morning Edition* (National Public Radio, July 15, 2003).

[221] See Bureau of National Affairs, "Tyson to Hire Permanent Replacements For Striking Workers at Plant in Wisconsin," *Daily Labor Report*, April 14, 2003, p. A-4.

and resentment in the community. "The community is being torn apart, both emotionally and economically," said a retired employee.[222] Local communities and the University of Wisconsin responded by withdrawing Tyson products from markets and from campus food services,[223] but sales to national pizza chains sustained the company's operation in Jefferson.

In an Open Letter posted on its website, Tyson's Jefferson Plant manager explained:

> The plant's current average hourly rate of almost $14.00 is already among the highest average wage rates of any of Tyson's almost 300 facilities in twenty-eight states, from Pennsylvania to Washington. . . .
>
> Changes in the health plan: It is no secret that health costs have skyrocketed. Everyone in America today is affected by this. . . . In light of astronomical increases in costs, which have affected almost everyone in the United States, we believe this is a fair proposal. . . .
>
> Because we have customers who might go elsewhere with their business if we cease supplying them, we have continued to operate the plant. In order to meet this customer demand, it has been necessary for us to hire permanent replacement workers.[224]

It was not necessary for Tyson to hire permanent replacement workers. The company could have hired temporary replacement workers to meet customer demand, as many companies more respectful of workers' rights choose to do to maintain decent relations with their regular employees, many of whom have decades of service with a firm, after a strike ends.

In January 2004, faced with the prospect of a decertification vote by replacement workers, union members voted to accept the company's offer cutting pay and benefits and raising health insurance premium costs.[225] However, union members could not return to work. In violation of international labor standards, they had been permanently replaced. They must

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[222] See Schuetz, "Tyson Standoff Grinds On," p. A1.

[223] See Joe Potente, "UW Bans Tyson Products Till Strike Over," *Capital Times* (Madison, WI), August 23, 2003, p. 3A.

[224] See "Open Letter to the Community Regarding Terms of the Proposed Contract, available online at: http://www.tysonfoodsinc.com/corporate/news/viewNews.asp?article=1291, accessed on November 17, 2004.

[225] See Bill Novak, "Concessions end Tyson plant strike; New hires to Get $2.10 an hour less," *Capital Times* (Madison, WI), January 30, 2004, p. 3A.

wait until replacement workers vacate positions before any who exercised the right to strike may return to their jobs.[226]

Six months after the strike ended, fewer than half of the strikers had returned to work. One still waiting, elevator operator Ron Zimmerman, said, "My wife keeps asking me why I want to go back, and I don't know why. I put in 19 years there. I want to have some closure, I guess. I want to leave on my own terms. I don't know if I'll stay."[227]

A local plumber whose family-based business had done contracting work inside the plant for fifty years, and who respected the workers' picket line during the strike, lost his Tyson work after the strike ended. "None of the contractors has been asked to come back in," he said. "You're taking a serious amount of money out of the economy of Southeastern Wisconsin."[228]

Strike returnees reported a high level of tension in the plant with striker replacements. Jim Weissmann, who returned to the plant in March 2004, said, "I don't know anybody who talks to the replacement workers, period. I know there's one at my end and I don't see anyone talk to him besides other replacements."[229]

Pasco, Washington

Following events at the Jefferson plant, Tyson management interfered with workers' rights of association at its Pasco, Washington beef plant, a former Iowa Beef Processor facility. A disgruntled former local union leader, who lost an election to a reform slate in the 1500-employee plant, reacted to his defeat by gathering signatures on a petition for an NLRB decertification vote to get rid of the union. After the former leader obtained signatures of the legally-required level of 30 percent of bargaining unit employees, the NLRB scheduled a decertification election. Tyson then promoted the former leader to a supervisory position.

The company took the occasion of the NLRB vote to unleash an aggressive campaign to get rid of the union. The company "supports a vote to decertify the union," a manager said.[230]

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[226] See Joel Dresang and Tom Daykin, "Tyson workers battled against all odds, and lost; Strike outcome shows how companies gain upper hand, experts say," *Milwaukee Journal Sentinel*, February 8, 2004, p. 1D.

[227] See Madeleine Baran, "Almost Six Months Later, Aftershock of Strike Still Felt in Small Town," *The New Standard* (web-based news service at www.newstandardnews.net), July 6, 2004.

[228] Ibid.

[229] Ibid.

[230] See Jeff St. John, "Workers Rally Before Vote at Tyson Foods," *Tri-City Herald*, April 9, 2004, p. 1.

Tyson moved several managers into the plant from other company locations to hold captive audience meetings with groups of workers and one-on-one pressure meetings with individual workers to pressure them to vote against the union.

"We've had meetings with workers, posted information on bulletin boards, distributed flyers and sent mailing to their homes," a company manager acknowledged. "Our message is that many Tyson plants across the country are 'union-free' and enjoy equal or better wages, benefits, retirement, job security and advancement opportunities than the company's unionized facilities—without the burden of paying union dues."[231]

The union filed unfair labor practice charges against Tyson alleging illegal management involvement with and support for employee promoters of the decertification drive, but the NLRB has not yet decided if company actions crossed the line into unlawfulness under U.S. labor law. It is undisputed that the company openly and aggressively interfered with workers' efforts to maintain their union. Whether the company's conduct was *unlawful* interference under U.S. law is as yet undetermined, but it clearly breached international human rights standards calling for respect and protection of workers' rights of association.

In the end, the company's campaign fell short. Despite massive pressure by management, Tyson workers at the Pasco plant voted 708-657 to keep their union.[232] Instead of accepting the result, however, Tyson management filed objections to the election resulting in more delays and denial of workers' bargaining rights while hearings took place. The NLRB regional office dismissed the company's objections, but Tyson appealed that decision to the full NLRB in Washington.[233]

Worker Organizing at Nebraska Beef

Nebraska Beef workers interviewed by Human Rights Watch in 2003 said that line speeds, injuries, mistreatment by managers, and other abuses compelled them to seek to form a union two years earlier. In June 2001, Nebraska Beef workers filed for an election with the NLRB seeking representation by the United Food and Commercial Workers (UFCW). The UFCW is the nation's principal union for meatpacking workers. It was formed by earlier

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[231] See Jeff St. John, "Union Accuses Tyson Officials of Using Unfair Labor Practices," *Tri-City Herald*, April 7, 2004, p. 1.

[232] See Bureau of National Affairs "Teamsters Survive Decertification Vote at Tyson Foods Plant in Washington State," *Daily Labor Report*, April 13, 2004, p. A5.

[233] See NLRB Region 19, Hearing Officer's Report and Recommendation on Objections, *Tyson Fresh Meats, Inc. and Teamsters Local 556*, Case No. 19-RD-3576 (June 18, 2004).

mergers including, among others, the United Packinghouse Workers. The election took place on August 16, 2001. Employees described events in weeks before the election. Said one:

> The main plant manager is Mexican. He knows who are the undocumented workers. He called them in one-by-one to his office and told them that if they voted for the union they would be deported. People were scared the company would find out how they voted. In Mexico the vote is not secret. They thought it was like that here. The documented ones, he told them they would get a 25 cent raise for voting "no."[234]

Another worker said, "The company made workers in favor of the union take off UFCW buttons and stickers where we showed support for the union inside the plant. But they let workers opposed to the union put up all the signs they wanted."[235]

Another described a scare tactic with a powerful effect on the mostly immigrant workforce:

> Our supervisor called us in one-by-one. He told everybody that if the union came in, the contract would not let us go home to Mexico for important family events. For us family is everything. If my grandmother dies or my sister gets married I have to go home. It's harder after September eleventh, but we have to do it. The company would let us go and this was supremely important to us. When they told us the union contract would not let us go home, that frightened a lot of people who supported the union.[236]

There is nothing about a union contract that would prevent policies permitting workers to take short leaves for family reasons. Indeed, many union contracts in plants with large numbers of immigrant workers contain provisions guaranteeing this privilege. With this thrust, managers were playing on workers' lack of knowledge of labor law and collective bargaining.

Ex-employee Juan Jose Robles described captive audience meetings—mandatory workplace assemblies where managers state their opposition to worker organizing and do not allow

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[234] Human Rights Watch interview with a Nebraska Beef worker, Omaha, Nebraska, July 16, 2003.

[235] Human Rights Watch interview with another Nebraska Beef worker, Omaha, Nebraska, July 16, 2003.

[236] Human Rights Watch interview with a Nebraska Beef worker, Omaha, Nebraska, July 16, 2003.

union supporters to speak up or ask questions—that Nebraska Beef employees were forced to attend:

> Management called us all into meetings where they made speeches against the union. They showed videos with closed factories, and they blamed the closings on the union. They told us the union would pull us out on strike and the company would bring in new people to permanently replace us. They told us a union contract would not allow them to hire employees' relatives and friends any more.[237]

These management moves exemplify the coercive nature of employer campaign tactics that are permitted under U.S. labor law in violation of international standards on workers' freedom of association. The statements are speculative and prejudicial, but as long as they do not constitute direct threats they are allowed under U.S. law.

"We still thought we were going to win the election," said pro-union worker Juan Jose Robles. "A lot of people were saying yes, yes, I'm going to vote for the union."[238] In the August 16, 2001 NLRB election, 345 Nebraska Beef workers voted in favor of union representation, and 452 voted against representation.

In fact, Nebraska Beef management did cross the line to unlawful threats and discrimination under U.S. labor law. On December 20, following a hearing on the evidence with workers and the company represented by attorneys, the NLRB found management guilty of multiple violations of workers' rights in connection with the election:

- interrogating employees about their union sympathies and telling an employee he would be fired because he was going to vote for the union;
- forcing pro-union workers to remove union stickers and buttons from hats and clothing, while allowing anti-union workers to continue such displays;
- telling workers that if the union came in, the company would stop its policy of allowing workers to return to Mexico for family matters and return to their job at Nebraska Beef; instead they would have to start over at the bottom of the pay scale;

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[237] Human Rights Watch interview, Omaha, Nebraska, July 16, 2003. Similarly, nothing inherent in a union contract would preclude the maintenance of such hiring practices.

[238] See John Taylor, "Nebraska Beef Vote Also Seen as Test of Partnership with OTOC," *Omaha World-Herald*, August 16, 2001, p. 25.

- telling workers that if the union came in, the company would stop its policy of allowing workers to take an unpaid sick day without a doctor's excuse;
- deliberately omitting zip codes from the list of eligible employee voters' names and addresses, a list that the company was legally obligated to give to the union. (The NLRB said, "The employer's deliberate deletion of zip codes from the list is evidence of a bad faith effort to impede the union's access to voters.")[239]

The NLRB ordered that a new election be held. However, according to workers interviewed for this report in 2003, the effects of the company's 2001 anti-union campaign multiplied the effects of a 2000 INS raid, and organizing efforts have stalled.[240] "People are still scared," said one worker. "A lot of people think that [the plant manager] knows how they voted."[241] The request by all interviewed workers still employed at Nebraska Beef not to use their names in this report reflects that fear.

"Over time the company got rid of a lot of the leaders," said Juan Jose Robles, who said he was one of them. "I had to take my wife to the hospital at three o'clock in the morning one day in early 2002, and I got to work late. They fired me for absenteeism. I won my case for unemployment compensation for unfair discharge, but they didn't care. They just wanted to get rid of me." Robles finished by saying, "I don't mind talking with you now because I am in a union job [in the construction industry] and I know I have protection. That's what they need in meatpacking."[242]

Worker Organizing at Smithfield Foods

An Election in 1997 and its Aftermath

Smithfield workers have sought union representation from UFCW since soon after the plant opened in 1992. In the *Unfair Advantage* case study of the Tar Heel plant, Human Rights Watch found "not only abuses of workers' rights by management but also troubling actions by state and local authorities … state power was used to interfere with workers' freedom of association in violation of international human rights norms."[243]

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[239] See "Hearing Officer's Report on Objections," *Nebraska Beef, Ltd. and UFCW*, Case No. 17-RC-11993 (December 20, 2001).

[240] The INS raid at Nebraska Beef is discussed below in Chapter VII at footnotes 311 ff and accompanying text.

[241] Human Rights Watch interview, Omaha, Nebraska, July 15, 2003.

[242] Human Rights Watch interview, Omaha, Nebraska, July 16, 2003.

[243] See Human Rights Watch, *Unfair Advantage*, p. 99.

"We respect the rights of employees to choose whether they wish to be represented by a union," Smithfield management told Human Rights Watch in a 2004 written reply to questions about events at the Tar Heel plant.[244] But new field research for this report found continuing violations of workers' rights.

The company is quite clear about its continued opposition to unionization of the Tar Heel plant. In a written statement to Human Rights Watch it said:

> We do not believe a union is necessary or would be helpful to our employees at our Tar Heel, North Carolina plant. . . . If this location undergoes a union organizing drive or general activity, the company will continue to educate its employees on the value and success we have created together and the drawbacks of union organization for themselves, the company and our customers. . . . On occasion, the company has sought to utilize professional partners in the field of labor relations to assist with the education of labor issues to both the management and employee teams.[245]

In 1997, the union lost an election at the Tar Heel plant after a campaign marked by unlawful intimidation, coercion, and violence. Over a ten-month period in 1998 and 1999, an NLRB judge presided over a trial on the union's charges of unfair labor practices and unfair election conduct by Smithfield in the election. The trial followed issuance of what is called a "complaint" in the NLRB system. The NLRB issues complaints when investigations of charges show reasonable cause to believe that workers' rights have been violated. The board then sets the case for trial before an Administrative Law Judge (ALJ).

The judge in the Smithfield case reviewed documents and heard testimony from all parties and evaluated the credibility of company and union witnesses. All witnesses faced challenging cross-examination by lawyers from the other side. In a 442-page single-spaced decision issued in 2000, the judge made detailed findings of massive abuse against workers trying to exercise their freedom of association. Based on the evidence, the judge found that Smithfield illegally:

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[244] See "Company Position on Union's [sic] and Organizing Drive," a written reply to Human Rights Watch from Smithfield Foods management, January 30, 2004 (on file with Human Rights Watch).

[245] Ibid.

- threatened to discharge union supporters and to close the plant if workers chose union representation;
- threatened to call the INS to report immigrant workers if workers chose union representation;
- threatened the use of violence against workers engaged in organizing activities;
- threatened to blacklist workers who supported the union;
- harassed, intimidated, and coerced workers who supported the union;
- disciplined, suspended, and fired many workers because of their support for the union;
- spied on workers engaged in lawful union activities;
- asked workers to spy on other workers' union activity;
- grilled workers about other workers' union activities;
- suppressed workers' right to freely discuss the union in non-work areas on non-work time and to demonstrate support for the union at work by wearing unobtrusive union insignia;
- confiscated lawful union literature being lawfully distributed by workers;
- applied a gag rule against union supporters while giving union opponents free rein;
- applied work rules strictly against union supporters but not against union opponents.[246]

The judge concluded that the widespread company violations made the election un-free and unfair and ordered a new election in a neutral site. The new election has not taken place. The new election has still not occurred because the company is determined to exhaust all its appeals—a process that can be exceedingly lengthy.[247] As this report is written, Smithfield's appeal is still pending at the five-member NLRB in Washington, D.C. six years after the unfair election was held, and three years after the appeal was filed. The Board's ultimate decision can be appealed to a federal appeals court, meaning that several more years might pass before a final decision in the case.

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[246] See *Decision* of ALJ John H. West, JD-158-00, *Smithfield Foods, Inc. and UFCW*, Case Nos. 11-CA-15522 et. al. (December 15, 2000) (ALJ Decision).

[247] See Kevin Sack, "Judge Finds Labor Law Broken at Meat-Packing Plant," *The New York Times*, January 4, 2001, p. A18, reporting that "a spokesman for Smithfield Foods . . . said today that it would appeal the judge's findings to the full National Labor Relations Board, and that if it failed there, it would appeal to the federal courts."

A Supervisor Speaks Out

During the trial, Sherri Bufkin, a supervisor in Smithfield's laundry department in 1997, testified that company officials and consultants instructed her to probe the union sentiments of employees under her and report her findings to management.[248] In 2002, a U.S. Senate committee held hearings to examine obstacles to workers' exercise of their right to organize. Bufkin testified before the committee, telling senators that

> [T]he company brought in attorneys to tell us what to do and how to react . . . the company told us that the attorneys were there to make sure that the union did not get in . . . the lawyers told us what to say to workers to keep the union out . . . Management hired a special outside consultant from California to run the anti-union campaign in Spanish for the Latinos.[249]

At the NLRB unfair labor practice trial in 1999, Bufkin testified that management's outside attorneys told supervisors to apply disciplinary rules harshly against union supporters but not against union opponents and to deny overtime to union supporters but grant it to union opponents. "We were told that we were no longer to give the leniency and leeway that we had given previously and to make sure employees knew that if the Union came in we would not do the things that we had done previously to help them such as being late and excusing it without writeups, things of that nature," she said.[250]

Bufkin's account to the committee of what happened to Margo McMillan, a laundry room attendant under Bufkin's supervision, is a stark example of Smithfield's deliberate interference with workers' rights. According to Bufkin, when the chief company attorney learned of McMillan's support for the union, "He then looked me in the face and told me, 'Fire the bitch. I'll beat anything she or they throw at me in Court.'"[251]

According to Bufkin's testimony,

> I told him we could not do that. There was no disciplinary action in her file. I mean there was no grounds for it . . . Margo worked for me for years. I knew

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[248] See Smithfield Hearing Transcript, p. 85.

[249] See testimony of Sherri Bufkin, former supervisor, Smithfield Packing Company, Tar Hell, North Carolina, before U.S. Senate Health, Education, Labor and Pensions Committee hearing on "Workers' Freedom of Association: Obstacles to Forming Unions," Washington, D.C., June 20, 2002 (Bufkin Testimony).

[250] Smithfield Hearing Transcript, p. 22.

[251] Smithfield Hearing Transcript, p. 34.

> Margo. I knew her as an employee. I knew from dealing with her that she had family problems. She's got kids. She's got bills she's got to pay and I begged [management] not to do it.[252]

Nevertheless, management did it. In his 2000 decision in the case, the judge specifically noted that that Sherri Bufkin was truthful and that Smithfield illegally fired Margo McMillan. But the judge had more to say in the matter. He found that a company attorney "intentionally lied under oath at the trial" about an affidavit signed by Bufkin under pressure from management. The affidavit did not correspond to the lawyer's notes of the interview with Bufkin, indicating that the affidavit was concocted by Smithfield attorneys to justify the firing of Margo McMillan. The judge said that a second Smithfield attorney "left himself some 'wiggle' room" in connection with the affidavit matter, but "I do not credit [the second attorney's] testimony," said the judge. He recommended that the NLRB refer the attorneys' conduct to the NLRB's General Counsel to possibly seek disciplinary action on the grounds that "there is a question of whether [the attorneys] suborned perjury or otherwise violated federal statutes involving criminal penalties."[253]

Pressure Continues

Using outside consultants to pressure workers not to exercise their rights of association has continued at Smithfield's Tar Heel plant. A Central American worker told Human Rights Watch:

> In March [2003] the company called all the Latino workers into a meeting. A man from California was up in front. He asked "Who is from Mexico?" "Who is from Guatemala?" "Who is from El Salvador?" and so on. He said he was going to tell us about unions, that unions started in the 19th century to get the eight-hour day but that today they don't solve anything. All they do is create problems. They can't do anything about the supervisors or about line speed or about wages. If a union comes in you can lose what you have because everything starts from zero. If you strike you will lose insurance and you cannot get unemployment compensation and the company can hire permanent replacements to take your job. Strikes can last for months. If the union knocks at your door, call the police on them.[254]

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[252] Smithfield Hearing Transcript, p. 35-36.

[253] ALJ Decision, p. 419-420, 423.

[254] Human Rights Watch interview with a Central American worker, St. Pauls, North Carolina, December 9, 2003.

Under U.S. law, employers can force workers to attend such captive-audience meetings on work time. Employers can fire workers for not attending the meetings. They can impose a "no questions or comments" rule at a captive-audience meeting and discipline any worker who speaks up. Most often, these meetings include exhortations by top managers that are carefully scripted to fall within the wide latitude afforded employers under U.S. law—allowing "predictions" but not "threats" of workplace closings to deter workers from choosing union representation.

The only limitation on captive-audience meetings is an NLRB rule prohibiting such meetings within twenty-four hours of the election. The board has ruled that the "mass psychology" and "unwholesome and unsettling effect" of captive-audience meetings tend to "interfere with that sober and thoughtful choice which a free election is designed to reflect."[255] It is not clear from NLRB doctrine why twenty-four hours is an appropriate number, or why the same concerns do not apply when management holds repeated captive-audience meetings up to the twenty-four-hour deadline with no opportunity for union advocates to have equal access to communicate with workers during work hours.

Smithfield management followed the 2003 captive audience meetings with what organizing specialists call "one-on-one's," meetings between a supervisor and a single employee. Typically, companies hire consultants to instruct supervisors on how to exploit their personal relationships with workers to disparage the organizing effort.[256] The Central American worker quoted above told Human Rights Watch:

> [T]he supervisors went around talking to people individually, giving speeches against the union and asking people: "What do you think the union will do for you?" and telling them "The union can't do anything." My supervisor said if we sign a union card the company will find out and fire us. After the 1997 election the company fired a lot of strong union people. Ninety percent of the people want a union but they are afraid of getting fired.[257]

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[255] See *Peerless Plywood Co.*, 107 NLRB 427 (1953).

[256] For a discussion of "one-on-one's" and other consultants' tactics, see Martin Jay Levitt, *Confessions of a Union Buster* (New York: Crown Publishers, 1993).

[257] Human Rights Watch interview, December 9, 2003.

Smithfield's Use of Police

During the 1997 union representation election campaign, Smithfield orchestrated the deployment of local police forces and company-employed security officials to intimidate employees and, beyond that, to assault and arrest union supporters on the day of the election.[258] Three years later, Smithfield established its own special police force under North Carolina law. There are troubling indications that Smithfield police, both before and after the formation of the "special police" force, are used to create an atmosphere of fear and intimidation to chill workers' organizing efforts.

The 1997 Election

During the 1997 organizing campaign, Smithfield's director of security, Daniel Priest, also held a position as a local deputy sheriff exercising police authority. At the Tar Heel plant, Priest supervised a contingent of twenty-four full-time security guards. He testified in the 1999 unfair labor practice trial that resulted in the NLRB judge's 2000 decision that he had power both to "handle all law enforcement type functions at the plant and to direct the activities of local police."[259] In another legal proceeding arising from events at the election, a federal court described Priest's dual role on the day of the election this way:

> He had a deputy sheriff badge clipped to his belt, a sheriff's department radio, handcuffs, pepper spray, and a gun. And he testified that he told [a worker]: "Sheriff's Department, you are under arrest" . . . All this was the natural result of Priest's official role within Bladen County, in which he was expected to perform law enforcement functions at the Tar Heel plant on behalf of the Sheriff's Department.[260]

In addition, according to union organizer Milton Jones, local police and sheriffs (as distinct from Smithfield's security police) "turned up in force" during the pre-election campaign when union advocates attempted to distribute flyers to workers driving into the plant.[261]

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[258] ALJ Decision.

[259] Smithfield Hearing Transcript, p. 5188.

[260] See *John Rene Rodriguez; Rayshawn Ward v. Smithfield Packing Company; Daniel M. Priest*, 2003 U.S. App. Lexis 15065 (4th Cir., July 30, 2003), p. 13. The case was brought by two workers who were assaulted by Smithfield personnel on the election day. After trial, a jury convicted Smithfield and Priest of federal civil rights violations, on the theory that Priest was acting under color of state law as deputy sheriff and that he was simultaneously a delegated "policymaker" for Smithfield. The appellate court ruled that when he made the arrests Priest was acting as a deputy sheriff—not the company's security chief—so Smithfield did not have any liability for his actions. Moreover, since Priest was acting as a deputy sheriff, the plaintiffs' release of claims against the sheriff's department also covered him.

[261] Human Rights Watch interview, Wilson, North Carolina, July 13, 1999.

Priest testified to the NLRB that police officers were "patrolling around the plant, up and down 87 [the main road in front of the plant], which they would have been all week" prior to the election.[262]

"It was hard seeing police cars lined up there every day when we went into the plant," one worker told Human Rights Watch. "It scared a lot of people against the union, especially the Mexican workers."[263]

In his 2000 decision, the judge found specifically,

> [T]here was no reason supplied by the Company for why the Sheriff's Deputies were present . . . the Respondent's [Smithfield's] use of the Sheriff's Deputies during the handbilling . . . was an intimidation tactic meant to instill fear in the Respondent's employees. . . . [H]aving up to 10 Sheriff's Deputies in the Respondent's management parking lot . . . doing nothing, except having one deputy come into the plant to inspect a bag, was an intimidation tactic.[264]

The judge found that the top company manager:

> [N]ot only knew that they were there, [he] was responsible for them being there. [He] wanted to make a point that the Tar Heel plant was his plant, the Union was going to pay a price for its attempt to organize the employees who worked there, and employees who supported the union would have an old-fashioned example of what can occur when they try to bring in a Union.[265]

The same company manager told a union representative, "I want to make sure you're there for a real ass-whipping. We're going to beat you . . . And we've got something special in mind for you."[266]

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[262] Smithfield Hearing Transcript, p. 5172.

[263] Human Rights Watch telephone interview, White Oak, North Carolina, October 12, 1999.

[264] ALJ Decision, p. 358-359, 382.

[265] Ibid., p. 266

[266] Ibid., p. 371.

The manager's "something special" was an orchestrated assault on and arrest of union supporters. Several dozen Smithfield managers and supervisors packed the small cafeteria where NLRB agents counted the ballots. When it became clear that the union was going to lose the election, these company officials began taunting the union election observers and supporters with racial epithets.[267] When final results were announced, the large management contingent, joined by security guards and by local police officers, began pushing union supporters toward the door out of the cafeteria. Police beat, maced, handcuffed and arrested supporters of the organizing campaign. The assault occurred "on his [the manager's] cue," the judge concluded. It was "done intentionally" and "planned in advance of the vote count."[268]

In devising a remedy for the company's violations, the judge made the extraordinary decision that

> Where, as here, an employer initiates physical violence at or near the polling place just after the election results are announced, and it engages in egregious and pervasive unfair labor practices and objectionable conduct, the reasons for favoring conducting a new election on the Respondent's premises have been substantially undermined. A new election should be conducted off premises at a neutral site.[269]

Now: Special Police Status

In 2000, Smithfield secured "special police agency" status for its security force under North Carolina state law, the Company Police Act of 1991.[270] The Act empowers private entities to employ security officers with public police powers. The North Carolina Attorney General's office is supposed to oversee these company police. They are empowered to carry weapons, make arrests, and pursue "suspects" off company property as long as an incident began on company property.

Asked by Human Rights Watch to describe the rationale for acquiring police powers for its security personnel, Smithfield officials responded:

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[267] Ibid., p. 370. Among other slurs, "The union is full of niggers" was cited by union witnesses. Management witnesses denied using racial slurs.

[268] Ibid., p. 382.

[269] Ibid., p. 429-430.

[270] See N.C. statutes, 1991 (Reg. Sess., 1992), c. 1043, s. 1.

> The safety of all our employees is of paramount importance to the company and the need for police related security is therefore apparent. The plant facility also houses an extraordinary amount of valuable equipment and machinery. Given the fact the plant is in a rural area, both the local governmental authorities and the company believed it necessary to ensure that the limited security force on hand had adequate authority to respond to and deal effectively with threats to employee and plant safety.[271]

Workers interviewed by Human Rights Watch suggest that the "threat" of employee organizing activity is equally a company concern. On November 14-15, 2003, a group of workers on Smithfield's night shift cleaning crew supervised by a contractor named QSI, Inc. spontaneously walked out of the plant to protest the dismissal of coworkers.[272] Roberto Muñoz Guerrero told Human Rights Watch about events leading up to the protest, and what happened:

> I started working at Smithfield in June. I came from California. I have been in the United States five years. Some of my relatives were working at Smithfield and they told me there were jobs here.
>
> On November 15 we went on strike because management fired the supervisors who backed us up.[273] One manager threatened to call Immigration if we didn't go back right away. The police were out there. When some of us didn't go back, the police told us to leave. I said my car keys were in my locker, I had to go in and get them. The first policeman I talked to said OK, but then his boss said no, and he arrested me. He took me to the jail and wrote up papers for about an hour, then let me go.[274]

The arrest warrant for Muñoz Guerrero says that he:

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[271] "Company Position on Unions and Organizing Drive," a written reply to Human Rights Watch from Smithfield Foods management, January 30, 2004 (on file with Human Rights Watch).

[272] The workers were technically employed by an outside contractor called QSI. Contracting out night shift cleaning work, some of the most dangerous and demanding work in the meatpacking industry, is a common practice by major producers, who insulate themselves from scrutiny about the status of immigrant workers who make up a majority of night shift cleaners in the industry throughout the United States.

[273] "Los supervisores," as interviewed Hispanic workers call them, are also Hispanic and appear to be "group leaders" or "line leaders" rather than management. Human Rights Watch is unaware of whether any court has ruled on the status of such individuals as workers or management for labor law and other purposes.

[274] Human Rights Watch interview with Roberto Muñoz Guerrero, Red Springs, North Carolina, December 9, 2003.

> [U]nlawfully and willfully did resist, delay and obstruct D. SHAW, a public officer holding the office of SMITHFIELD FOODS SPECIAL POLICE, by NOT LEAVING THE SCENE. At the time, the officer was discharging and attempting to discharge a duty of his office, INVESTIGATING A DISTURBANCE AT THE PLANT.[275]

Muñoz Guerrero told Human Rights Watch, "Everybody is scared now to stick together or to take a stand because they are afraid of getting arrested by the company police."[276] When his trial date came up in February 2004, the police failed to appear for the trial. All charges against Muñoz Guerrero were dismissed.[277]

The NLRB regional office investigated workers' charges that their rights were violated because such action is "protected concerted activity" under the National Labor Relations Act, and cannot be cause for reprisals against workers who undertook the stoppage. The board's investigation found that Smithfield "interfered with, restrained, and coerced its employees in the exercise of rights," and the regional director issued a July 2004 complaint setting the case for trial before an ALJ in September 2004.[278]

Specifically, the board's investigation found merit in charges that the Smithfield and its contractor unlawfully:

- fired eight named employees and several more unnamed;
- caused employees to be falsely arrested;
- threatened employees with bodily harm;
- refused to pay employees for work performed;
- refused to pay employees their vacation benefits;

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[275] See Warrant for Arrest, State of North Carolina, Bladen County, In the General Court of Justice, District Court Division, November 15, 2003 (on file with Human Rights Watch); capital letters in original.

[276] Human Rights Watch interview with Guerrero, December 9, 2003.

[277] Human Rights Watch interview with UFCW representative, March 11, 2004.

[278] See NLRB Region 11, Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing, *QSI, Inc. and UFCW*, Case Nos. 11-CA-20240, 11-CA-20317; Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing, *Smithfield Packing Co., Inc., Tar Heel Division and UFCW*, Case Nos. 11-CA 20241, 11-CA 20281 (July 30, 2004).

- threatened employees that they could lose their jobs if they selected the Union as their bargaining representative.[279]

The NLRB was equally specific on violations by Smithfield's Special Police, finding merit in charges that "Smithfield Packing Co., Inc. Police and Guards," namely "Danny Priest and other security employees," unlawfully:

- physically assaulted employees exercising their rights;
- threatened employees with arrest by federal immigration authorities;
- falsely arrested employees exercising their rights.[280]

This incident suggests the conflict of interest that can arise when company employees can exercise state police powers while responding to the employer's directives and interests. The potential for a misuse of the police powers in the context of workers' exercising their rights is particularly acute if the company police have not been carefully trained in the technicalities of labor law as well as in regular criminal law and police procedures.

In late 2003 and early 2004 Smithfield posted armed police throughout the Tar Heel plant after reporting telephoned bomb threats. On the heightened presence of police agents inside the plant, a worker told Human Rights Watch:

> The company says there is drug dealing and they are getting bomb threats but they did that just so they could fill the plant up with armed police and with plainclothes detectives posing as workers who just walk around and never do any work. It's all part of the anti-union campaign to intimidate us and turn the plant into an armed camp. For those of us from Central America it is especially frightening because where we come from the police shoot trade unionists.[281]

Asked by Human Rights Watch about police training, about recourse available to employees in case of police abuse, and about the potential for conflict of interest between protecting

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[279] Ibid.

[280] Ibid.

[281] Human Rights Watch interview, St. Pauls, North Carolina, December 9, 2003.

interests of their employer while protecting individual rights, Smithfield Foods provided this written response:

> With regards to training, our police force receives training from many sources to include the Chief of Police of the force.
>
> Employees are informed that any type of complaint can be filed with any member of management, the HR department and/or in this case the Chief of Police.
>
> Certainly the police personnel stationed at the company facility could be subject to the same or similar issues and conflicts which affect police stationed at other locations. However, the company does not believe that the individuals involved have allowed any such issues to interfere with their adherence to duty in accordance with publicly acceptable standards applicable to law enforcement officers. [282]

[282] "Company Position on Unions and Organizing Drive," a written reply to Human Rights Watch from Smithfield Foods management, January 30, 2004 (on file with Human Rights Watch).

VII. Immigrant Workers in the Meat and Poultry Industry

They have us under threat [bajo amenaza] *all the time. They know most of us are undocumented—probably two-thirds. All they care about is getting bodies into the plant. My supervisor said they say they'll call the INS if we make trouble.*

—Northwest Arkansas poultry plant worker

International Human Rights Standards and U.S. Law

All the workers' rights covered so far in this report meet at a fault line in U.S. human rights and labor rights policy. On the edge of this fault, millions of fearful, vulnerable non-citizens work in our nation's most dangerous, dirty and demanding conditions. All the abuses described in this report—failure to prevent serious workplace injury and illness, denial of compensation to injured workers, interference with workers' freedom of association—are directly linked to the vulnerable immigration status of most workers in the industry and the willingness of employers to take advantage of that vulnerability. Although international human rights law mandates that all workers have basic rights that should be protected, including undocumented as well as documented workers, immigrant workers find that while their work is accepted, their rights are not.

As noted above, the protections of the *Universal Declaration of Human Rights*, the ICCPR, and the ICESCR apply to "all persons" including immigrant workers regardless of legal status. Beyond these basic principles, the UN's *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990) calls for "treatment not less favorable than that which applies to nationals of the State of employment" in pay, working conditions, and legal protections including rights to organize and bargain collectively.[283]

The Convention emphasizes that:

> States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall

[283] See the full text of relevant international human rights instruments on migrant workers in Appendix D.

> not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.[284]

In two conventions dealing with migrant workers, the ILO proclaims the same principle of "treatment no less favorable than that which it applies to its own nationals" in the workplace, and the obligation "to respect the basic human rights of all migrant workers."[285]

Federal agencies involved in workplace standards have taken some steps to ensure that workplace rights are taken into account in immigration enforcement. The Department of Labor's Employment Standards Administration (DOL) has signed a memorandum of understanding with the federal immigration agency preventing DOL from making any inquiry into the immigration status of workers.

Operating instructions to immigration agency field staff dating from December 1996 require them to refrain from involving the federal immigration agency in labor disputes. Agents are instructed to determine whether information about unauthorized employment is being provided to the agency to interfere with the labor, health, and safety and other rights of documented or undocumented employees or to retaliate against employees for seeking to vindicate those rights. However, similar obligations do not exist for all federal agencies involved in enforcing workplace labor, health, and safety standards. Given the changes in the structure of federal immigration agencies and the nearly ten-year interval since the passage of those field instructions, training on the continued responsibilities of immigration authorities under these regulations should be reinvigorated.

The immigrant workers discussed in this report hold a variety of legal statuses, including some statuses conferring employment authorization. In this research, Human Rights Watch found that, in different contexts, the single term "immigrant" could be used to refer to:

- non-citizens without permission to work who became undocumented because they have overstayed a visa;
- undocumented workers without employment authorization because they entered the U.S. without permission;

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[284] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 25.3, GA Res 45/158, Dec. 18, 1990, available online at: http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm, accessed on November 17, 2004.

[285] ILO Conventions are available online at: http://www.ilo.org/public/english/standards/index.htm, accessed on November 17, 2004.

- undocumented non-citizens married to U.S. citizens or to green card holders who may not yet have adjusted their status to one that would allow them to work legally (which is their right);
- refugees or asylees who are granted permission to work and to remain in the U.S. indefinitely;
- temporarily protected persons, a designation that carries with it an automatic right to request work authorization;[286] or
- green card holders with express permission to work in the United States.

Despite the fact that all of these immigrants are covered by national and international workplace rights standards and that many have permission to work in the United States, they often remain extremely vulnerable to employer coercion. Many documented workers cannot speak fluent English and are hesitant or afraid to navigate what they see as complex, costly procedures to vindicate their rights. A federal OSHA official said, "'[Immigrant workers] just don't know that they have rights and responsibilities,' including the ability to complain against employers."[287]

Many legal immigrants have family or other personal relationships with undocumented relatives or friends whom they want to protect. Many work alongside undocumented coworkers and do not want to get them in trouble or be caught up in circumstances in which authorities might not carefully distinguish among them. Thus, immigrant workers lawfully working in the U.S. may be as reluctant or as unable to vindicate their rights as undocumented workers

Of course, vulnerability is more acute for undocumented workers who come into the United States without work authorization and are liable to immediate deportation if they are found out. Undocumented workers shrink from exercising rights of association or from seeking legal redress when their workplace rights are violated for fear of having their legal status discovered and being deported. For the same reason, they rarely testify in legal proceedings even when their testimony is essential to another worker or group of workers seeking legal remedies. Fully aware of workers' fear and sure that they will not complain to labor law

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[286] See *Adjustment Of Status To That Of Person Admitted For Permanent Residence*, 8 CFR § 245 (1997).

[287] See Justin Pritchard, The Associated Press, "Mexican worker deaths rise sharply," March 14, 2004 (appearing in dozens of newspaper around the country; see, for example, *Chattanooga Times Free Press*, p. G1).

authorities or testify to back up a claim, employers have little incentive against violating their rights.[288]

Immigration status is directly related to health and safety on the job. An Associated Press investigative report published in March 2004 revealed that Mexican workers in the United States are 80 percent more likely to die in the workplace than U.S.-born workers, and nearly twice as likely as the rest of the immigrant population to die at work.[289] Moreover, the rate of Mexican workers' deaths at work is increasing dramatically. Just ten years ago, Mexican workers were 30 percent more likely to die on the job than U.S.-born workers, about the same as other immigrants.

A 2003 independent report by the U.S. inspector general's office found that OSHA has no comprehensive plan for dealing with the epidemic of immigrant worker fatalities. Among the report's findings were these:

- OSHA's inspection priorities, reporting requirement, and fatality investigations do not distinguish between immigrant and non-immigrant workers . . . many of the compliance safety and health officers we interviewed noted that when a fatality involves non-English speaking employees, language barriers created problems.
- OSHA was unable to provide the data needed to determine resources allocated to immigrant fatalities.
- Because OSHA does not specifically target industries that primarily employ immigrants, it was unable to provide the information needed to determine the resources allocated to those industries.
- OSHA's training provisions do not address the different languages and literacy levels of immigrant workers. Further, we found that OSHA is not consistently evaluating its outreach efforts and has not developed a comprehensive strategy for reaching all non-English speaking employees, including undocumented immigrants.

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[288] For voluminous information on such abuses, see websites of the National Employment Law Project at www.nelp.org and the National Immigration Law Center at www.nilc.org.

[289] See Pritchard, "Mexican Worker Deaths Rise Sharply."

- Current penalty options available to OSHA may not serve as an effective deterrent to employers who have a willful disregard for employees' safety and health.[290]

Violations of immigrant workers' rights is a national problem requiring a national policy response. The meat and poultry industry is not alone in its use of immigrant employees, nor should the industry be expected to unilaterally solve the problem. At the same time, however, the meat and poultry industry, like others, benefits from immigrant workers' labor.[291] The industry should do everything in the domain of its ample power to ensure that immigrant workers enjoy the same rights and benefits as those who are citizens.

Increasing Immigration in Meat and Poultry Plants

Millions of immigrant workers have entered the U.S. labor force in recent years. According to the most recent reports of the U.S. Census Bureau, about 12 percent of the U.S. population is foreign-born, more than thirty-three million people, compared with 8 percent of the population in 1990. More than half were from Latin America, and of these more than two-thirds came from Mexico and Central America.[292]

Among the fifty states, North Carolina, Arkansas, and Nebraska, the sites of field research for this report, ranked first, fourth, and seventh in the percent increase in immigrant residents between the 1990 and the 2000 census. North Carolina went from about one hundred thousand immigrants in 1990 to half a million today. Arkansas and Nebraska nearly tripled their immigrant populations.[293]

Latino workers are a majority in many meat and poultry plants. A university-based researcher who found work in a Tyson Foods poultry plant in Northwest Arkansas described the scene in a Tyson plant hiring office this way:

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[290] See Office of the Inspector General, "Evaluation of OSHA's Handling of Immigrant Fatalities in the Workplace," Report No. 21-03-023-10-001 (September 30, 2003).

[291] See David Barboza, "Meatpackers' Profits Hinge on Pool of Immigrant Labor," *New York Times*, December 21, 2001, p. A26 ("Until 15 or 20 years ago, meatpacking plants in the United States were staffed by highly paid, unionized employees who earned about $18 an hour, adjusted for inflation. Today, the processing and packing plants are largely staffed by low-paid, non-union workers from places like Mexico and Guatemala. Many of them start at $6 an hour.

[292] See U.S. Department of Commerce, U.S. Census Bureau, "The Foreign-Born Population in the United States: 2003" (August 2004), available online at: http://www.census.gov/prod/2004pubs/p20-551.pdf, accessed on November 17, 2004.

[293] See U.S. Census Bureau, "1990 Census of Population and Housing" and "Census 2000"; both available online at: http://www.census.gov/index.html, accessed on November 17, 2004.

> I arrive at Tyson's Northwest Arkansas Job Center in Springdale at 10 in the morning. . . . Signs surrounding the secretary's desk say [in Spanish]: "Do not leave children unattended" and another warns: "Thank you for your interest in our company, Tyson Foods, but please bring your own interpreter."
>
> As I turn to take a seat, I begin to understand her confusion. The secretary and I are the only Americans, the only white folk, and the only English speakers in the room. Spanish predominates, but is not the only foreign language. Lao is heard from a couple in the corner, and a threesome from the Marshall Islands are speaking a Polynesian language. Within less than two decades, the poultry industry has become a key site for "workers of the world" to come together in a region of the U.S.—the South—that received few foreign immigrants during the 20th century. Attracted by employment opportunities in the poultry industry, Latin Americans first began to enter northwest Arkansas in the late 1980s. Today, about three-quarters of plant labor forces are Latin American, with Southeast Asians and Marshallese accounting for a large percentage of the remaining workers. U.S.-born workers are few and far between.[294]

As noted above, workers in the meatpacking industry hold a variety of immigration statuses, though many are undocumented and without permission to work. Estimates put the number of undocumented workers in the United States at more than eight million.[295] Nearly 60 percent of them are migrant workers from Mexico.[296] Many have been in the country for years working long hours for low pay in demanding, dirty, and dangerous jobs. They pay taxes, including Social Security taxes, from which they will never benefit. They are setting down roots and having children who are U.S. citizens. However, because of their vulnerable immigration status, they live in shadow and fear, unable and afraid to seek protection of their human rights and their rights as workers.

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[294] See Steve Striffler, "Inside a poultry processing plant: an ethnographic portrait; Notes and Documents," *Labor History*, vol. 43, no. 3 (August 2002), p. 305.

[295] Unofficial estimates of the number of undocumented workers range from as low as five to as high as twelve million. The U.S. Census Bureau approximated the figure at eight million for the 2000 census. See Kevin E. Deardorff and Lisa M. Blumerman, "Appendix A: Estimates of the Foreign-Born Population by Migrant Status: 2000" in J. Gregory Robinson, *ESCAP II: Demographic Analysis Results*, U.S. Census Bureau, October 13, 2001. Using differing assumptions, the Census Bureau fixed the estimated number of unauthorized migrants at 8,490.491 (p. A-10), 7,662,488 (p. A-11) and 8,835,450 (p. A-11). The census report is available online at: http://www.census.gov/dmd/www/pdf/Report1.PDF, accessed on November 17, 2004.

[296] B. Lindsay Lowell and Roberto Suro, "How many undocumented: The numbers behind the U.S.-Mexico migrations talks," (The Pew Hispanic Center, March 31, 2002), available online at: http://www.pewhispanic.org/site/docs/pdf/howmanyundocumented.pdf, accessed on November 17, 2004.

Undocumented immigrants have come to the United States in massive numbers despite the 1986 Immigration Reform and Control Act (IRCA). IRCA granted amnesty to earlier arrivals but also authorized measures to stop the flow of new, undocumented immigrants by tightening border controls and adopting "employer sanctions" making it illegal for employers to hire undocumented workers.

To prevent discrimination against legal workers who "look foreign" or who "don't speak English," IRCA law requires employers to do no more than examine documents such as: a U.S. passport, certificate of U.S. citizenship, alien registration receipt card with photograph (commonly known as a "green card"), certificate of naturalization, unexpired employment authorization card, unexpired reentry permit, or unexpired refugee travel document. If the documents appear genuine on their face, employers can offer employment and must not request additional documentary proof of the applicant's immigration status. Some of these documents are easy to reproduce to appear genuine in appearance. The result is that undocumented workers find jobs, and employers find needed workers without facing sanctions.

Looked at in one light, the results are benign. Immigrant workers find jobs paying much more than they could ever expect in their home country. U.S. employers find workers eager to do dirty, dangerous, and difficult labor. Consumers enjoy resulting low prices for food and other products and services in sectors where immigrant workers make up much of the labor force.

Looked at in another light, however, the results are different. Immigrant workers suffer violations of their rights but are afraid to challenge them. Employers reap added profits from low-paid, easily exploitable labor. U.S. citizens and legal foreign-born workers in low wage occupations suffer downward pressure on their own wages and working conditions from the influx of immigrant workers who are too fearful to exercise workplace rights to organize and bargain for higher wages.[297]

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[297] See George J. Borjas, Richard B. Freeman, and Lawrence F. Katz, "How Much Do Immigration and Trade Affect Labor Market Outcomes?" Brookings Papers on Economic Activity, No. 1 (1997); David Card. "Falling Union Membership and Rising Wage Inequality: What's The Connection?" National Bureau of Economic Research, Working Paper No. 6520 (April 1998). Persistent violations of immigrant workers' organizing rights prompted the AFL-CIO in 2000 to reverse a longstanding policy against employment of immigrants and to support immigrant workers' rights in U.S. workplaces. See Steven Greenhouse, "Labor Urges Amnesty for Illegal Immigrants," *New York Times*, February 17, 2000, p. A26; William Claiborne, "AFL-CIO Changes Tune on Immigrant Workers," *Washington Post*, June 4, 2000, p. A3.

The meat and poultry industry reflects the dynamic of swelling immigration into low-wage, hazardous-work labor markets. Meat and poultry processing plants have to contend with rapid turnover in their workforces.[298] Many new employees leave in the first days or weeks on the job, unable to cope with the pace and conditions of meat and poultry slaughtering work.

Employers need a constant stream of new applicants. "The company pays us a bounty of two hundred dollars for a worker we recommend who stays at least three months," said one worker.[299] The three-month condition reflects a fact of meatpacking life: most of the high turnover phenomenon in the industry occurs in the first weeks of employment when workers react with their feet to the shock of working conditions in a plant, and decide to look for jobs in housekeeping, restaurants, or construction.

The same university researcher quoted above who worked for Tyson described the hiring process this way:

> Tyson processes job applicants like it processes poultry. The emphasis is on quantity not quality. No one at the Job Center spends more than a minute looking at my application, and no single person takes the time to review the whole thing. … Efficiency rules. Bob begins and ends my "interview" with: "What can I do for ya?" I tell him I want a job at a processing plant, he makes a quick call, and in less than five minutes I have a job on the line. My references, which someone has already called, check out, and I pass both the drug test and the physical. I am Tyson material.
>
> I arrive at the plant the following Tuesday ready for work. It is massive and its exterior is put together much like the Job Center—quickly, cheaply, and piece by piece. At 3 p.m. sharp, Javier, my orientation leader, gathers up the new recruits and escorts us into a small classroom that contains a prominently displayed sign. "Democracies depend on the political

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[298] Company officials interviewed by Human Rights Watch did not give firm turnover figures. This appears to be a practice. See, for example, Mark Kawar, "Tyson, Freddie Mac help workers to buy homes," *Omaha World-Herald*, February 14, 2004, p. 1D ("Employee turnover has been high in the meatpacking industry for decades. Some plants routinely have turnover rates of more than 100 percent every year. Figures on Tyson's turnover rates were not available."); "Q&A: Eric Schlosser," *Columbia Journalism Review*, July/August 2001, p. 12 ("ConAgra . . . a giant meatpacking company . . . refused to tell me about the employee turnover rate in their slaughterhouses").

[299] Human Rights Watch interview, Omaha, Nebraska, July 16, 2003.

> participation of its citizens, but not in the workplace." Written in both English and Spanish, the message is clear in any language.[300]

Meat and poultry companies often find workers through what researchers call "ethnic network recruitment."[301] For example, some workers at Nebraska Beef came to Nebraska from West Coast agricultural labor centers after hearing about job openings from friends and relatives already in the Midwest. Others came directly from Mexico after getting word about jobs from friends or relatives from their village who were working at Nebraska Beef. According to one interviewed worker, most of the cleanup crew is from the same village in Nayarit state.[302]

One worker told Human Rights Watch how he came to work at Nebraska Beef:

> I crossed the border and went to Wenatchee in August 1999 to pick apples. In January 2000 I saw the flyer in a laundromat and called the number. The guy told me to wait until he had fifteen people signed up, then he would send us to Nebraska on a Greyhound bus. When we got fifteen guys, he met with us to have us sign work contracts and give us bus tickets. A couple of guys said they didn't have any documentation. The recruiter said, "It doesn't matter, the important thing is that you work."
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> We rode fifty-four hours to Omaha. They gave us a $100 loan to get through the first few days, but we had to repay it from payroll deductions after we started working. When we went to the office to start work, they had us fill out more papers and talked to us for thirty minutes. Then they sent us out on the line. There was no training. They told us, "Do what the person next to you is doing."[303]

Meat and poultry company officials deny they deliberately seek to hire undocumented workers or to exploit documented immigrant employees. In an interview with Human Rights Watch, Tyson Foods officials said,

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[300] See Striffler, "Inside a poultry processing plant," p. 305.

[301] See Lourdes Gouveia and Rogelio Saenz, "Global Forces and Latino Population Growth in the Midwest: A Regional and Subregional Analysis," 10 *Great Plains Research* 305 (Fall 2000); see also Jeremy Olson, "Migrant pipeline fills meatpackers' needs," *Omaha World-Herald*, August 4, 2003, p. 1A.

[302] Human Rights Watch interview, Omaha, Nebraska, July 16, 2003.

[303] Human Rights Watch interview, Omaha, Nebraska, July 16, 2003.

> To comply with immigration law we have pumped up our hiring protocols. No one person hires any one person. We have been working with the Basic Pilot program since 1997.[304] We have hired a third party to review our protocols, recommend changes, and audit for compliance.
>
> It is a myth that we are trying to bring in Hispanic employees at the expense of local workers, that we want Hispanic workers so we can exploit or mistreat them. That is absolutely untrue, total nonsense. The increase of Hispanic workers in our plants is a result of us needing workers and Hispanic workers needing jobs.
>
> Hispanic workers' presence depends on location. There are some Arkansas counties where there are no Hispanic workers. Overall for the company about one-third of our line force is Hispanic. In poultry it's about 25 percent.[305]

Tyson workers interviewed by Human Rights Watch in Rogers, Springdale, and other Northwest Arkansas plants suggested much higher levels of immigrant labor in their plants, usually a majority. Tyson officials insisted that the company does not knowingly employ any undocumented workers. Nonetheless, Tyson employees and other poultry company workers in Northwest Arkansas interviewed by Human Rights Watch interviews said that they and many coworkers are not working with genuine authorization documents.

Effects on Workers' Rights

The real-life consequences of workers' immigration status spilled into every area investigated by Human Rights Watch for this report—health and safety, workers' compensation, and workers' organizing rights. One Smithfield Foods worker told Human Rights Watch, "In the packing department everything is fast, fast [*rapido, rapido*]. I was sick a lot from the cold and

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[304] The Basic Pilot Program is a program begun in 1996 by the then-Immigration and Naturalization Service (INS, now part of the Department of Homeland Security, DHS) to allow employers to search government databases to check on workers' employment eligibility. Participation in the program is voluntary, and participating employers are granted a legal presumption that they have not violated immigration law regarding employment of undocumented workers. For more on the Basic Pilot Program, see National Immigration Law Center, "Basic Information Brief: DHS Basic Pilot Program," available online at: http://www.nilc.org/immsemplymnt/IWR_Material/Attorney/BIB_Pilot_Programs.pdf, accessed on November 17, 2004.

[305] Human Rights Watch telephone interview with Tyson Foods managers, December 17, 2003.

the damp. I never wanted to make a claim against the company because they fire people and they might call Immigration."[306]

An Arkansas poultry worker told Human Rights Watch "They have us under threat [*bajo amenaza*] all the time. They know most of us are undocumented—probably two-thirds. All they care about is getting bodies into the plant. My supervisor said they say they'll call the INS if we make trouble."[307]

A worker at Nebraska Beef said, "[The top personnel manager] is a Mexican. He knows who is undocumented and who isn't, and he holds that over us. He says 'I know how you got here' and 'I know you don't have papers but I'm going to take care of you.' That just makes people afraid of crossing him."[308]

Workers' vulnerable immigration status often frustrates their right to workers' compensation. Employees who file workers' comp claims in contested cases (where the company claims an injury is not work-related) know they have a long battle ahead of them. Still, many are not prepared for the obstacles that arise. One Nebraska Beef worker recounted his perception:

> If you hurt your back or your shoulder, something they can't see, you go see the nurse. She tells you there's nothing wrong and gives you Tylenol and says go back to work. If you're still hurting they send you to the company doctor. He says you didn't hurt yourself in the plant, go back to work.
>
> Then you go see a lawyer to file a claim. On the paper it says you have to sign your real name and swear to it. A lot of people stop right there. Their work name is not their real name. Then the word gets back into the plant, "they make you tell your real name." So nobody wants to file even if they obviously get hurt in the plant.
>
> Then you go to a hearing in front of a judge. The company lawyers ask you how you got the job, are you here legally. People are afraid to answer. [309]

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[306] Human Rights Watch interview, St. Pauls, North Carolina, December 10, 2003.

[307] Human Rights Watch interview, Springdale, Arkansas, August 13, 2003.

[308] Human Rights Watch interview, Omaha, Nebraska, July 16, 2003.

[309] Human Rights Watch interview, Omaha, Nebraska, July 15, 2003.

In any workplace injury or labor rights proceedings, questions about immigration status have no bearing on the merits of the workers' claims and serve no legitimate purpose. For example, regardless of immigration status, workers are eligible for workers' compensation for workplace injuries. Inquiry into immigration status during the proceeding serves only to transfer attention to possible wrongdoing by the worker (being in the country illegally) when the focus of the proceeding should be solely on whether the worker has rights as a worker that have been violated.

The possibility of an inquiry into workers' documentation during a proceeding adjudicating their claims creates a dilemma for them. The questions are intimidating—and designed to be so. They force workers to choose between seeking legal recourse for wage and hour violations, health and safety violations, job discrimination, workplace injuries and illnesses, reprisals for union activity and other violations, on one hand, or exposing themselves, on the other hand, to dismissal and deportation by responding to such inquiries when they seek such recourse.

Not surprisingly, they have a chilling effect on workers' willingness to file claims. Because many workers in the meat and poultry packing industry fear being faced with such questions, they refrain from pursuing legitimate claims and thus do not receive the medical care, rehabilitation support, and weekly income benefits that are due to them.

A workers' compensation attorney in North Carolina said:

> Companies know that their employees are unsophisticated, often illiterate, and often are not in this country legally. Many are simply too scared to report their injuries. Others are duped, sometimes purposefully and sometimes not, into signing documents, going to medical appointments with company-selected providers, submitting statements and the like when they have almost no idea why these things are happening.[310]

Immigrant Workers and Organizing at Nebraska Beef

One of the most telling accounts of the relationship between immigration status and workers' rights came from Nebraska Beef workers interviewed by Human Rights Watch. A workers' organizing effort was underway at Nebraska Beef in December 2000 when the

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[310] Human Rights Watch interview with Kilbride, February 10, 2004.

then-Immigration and Naturalization Service (INS) raided the Nebraska Beef plant.[311] The raid was part of its "Operation Vanguard," the name given to 1999-2000 INS sweeps through Midwest meatpacking facilities to round up and deport undocumented workers.[312]

The raid on Nebraska Beef was undertaken with no effort by the INS to communicate with the UFCW, which had told the INS of its organizing efforts in June 2000. Such failure to consult the union violated INS guidelines requiring agents to make "a reasonable attempt" to determine if a labor dispute (defined to include an organizing campaign) is underway before conducting any raids. The "Operating Instruction" also required the INS to take steps to avoid interference with workers' freedom of association.[313]

This instruction came about after years of protest by workers and unions that the INS was being used as a union-busting device to break up organizing efforts. "We have operating instructions that very clearly say when a lead comes in, the local INS office needs to search out whether there is a potential to be misused," said a top INS official.[314]

A worker still employed at Nebraska Beef told what happened during the raid:

> It was early morning when they stopped the lines. The supervisors told us all to go upstairs because the INS was here to check on people's immigration status. There was a feeling of panic because so many of us are undocumented. We couldn't get out; the doors were blocked. A bunch of us hid in the coolers for more than two hours. We were freezing in there. Some other people hid in other places in the plant. We were the lucky ones. They deported more than two hundred workers.

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[311] On March 1, 2003, the Immigration and Naturalization Service (INS) was transferred from the United States Department of Justice to the Department of Homeland Security (DHS). Under DHS, the INS was then divided into three bureaus: the Bureau of Customs and Border Protection; the Bureau of Immigration and Customs Enforcement (ICE); and the Bureau of Citizenship and Immigration Services (CIS). ICE is responsible for the investigative and enforcement functions of the former INS, while CIS is responsible for the benefits granting and petition adjudication functions.

[312] See Mike Sherry, "INS Says Vanguard Part of Policy Shift," *Omaha World-Herald*, July 2, 1999, p. 1.

[313] See INS Operating Instruction 287.3; see also John Taylor, "Union Says INS Is Terrorizing Meat Workers," *Omaha World-Herald*, December 6, 2000, p. 2.

[314] See Nancy Cleeland, "Unionizing Is Catch-22 for Illegal Immigrants: Undocumented status makes them vulnerable to workplace retaliation—federal agencies seek to sidestep labor conflicts, but activists push for change in laws," *Los Angeles Times*, January 16, 2000, p. A1.

> Seven of the employees detained in the Nebraska Beef raid were minors who used false documents showing they were older than 18. U.S. child labor laws prohibit work in meatpacking plants by anyone younger than 18. "They were obviously kids too young for the plant," said an interviewed worker, "but the company didn't care. They constantly needed bodies. Everything was production, production. Nothing else mattered."[315]

Another worker told what happened in the days following the raid:

> The next day the company had us back at work with the lines going the same speed as before the raid. But we were missing more than two hundred workers on the lines. They said they'd fire us if we didn't keep up. A bunch of us went up to the office and told the plant manager, either slow down the line or pay us more money. They gave us fifty cents more an hour and told us to get back to work. Then over the next week or two they fired the five people who spoke up for us at the meeting.[316]

The December 2000 INS raid at Nebraska Beef resulted in more than two hundred workers being deported. Federal prosecutors indicted three top company managers in human resources, personnel and production departments for criminal conspiracy in a scheme to recruit and transport undocumented workers from Texas and Mexico and for providing them false documents for work at Nebraska Beef. "We haven't seen this type of scheme before," said a federal government spokesperson, "not on this level."[317]

The prosecutors' case collapsed in 2002 when a federal judge dismissed the indictment because the witnesses needed for both prosecution and defense in the case had all been deported. Without the testimony of workers actually caught up in the alleged labor smuggling scheme, prosecutors could not present sufficient evidence for a trial on the merits.[318]

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[315] Human Rights Watch interview, Omaha, Nebraska, July 16, 2003.

[316] Human Rights Watch interview, Omaha, Nebraska, July 15, 2003.

[317] See Deborah Alexander, "Six Officials of Beef Plant Are Indicted," *Omaha World-Herald*, December 15, 2000, p. 21.

[318] See Cindy Gonzalez, "Judge Rejects Beef-Plant Indictments: INS acted in bad faith in immigrant hiring case, ruling says," *Omaha World–Herald*, April 10, 2002, p. 1A; for the full decision in the case, see *U.S. v. Nebraska Beef, Ltd.*, 194 F. Supp. 2d 949 (2002).

Immigrant Workers and Organizing at Smithfield Foods

The status of immigrant workers was also a key factor in workers' organizing efforts at Smithfield Foods' North Carolina hog processing plant. At the time of the union election in the Tar Heel plant in 1997, UFCW organizers estimated that 20 percent of the workers were immigrant Hispanic workers. "We never asked, and we tried to tell them it didn't matter, but the truth is that most of them were probably undocumented," said union representative Jeff Greene.[319]

Both UFCW staff organizers and workers interviewed by Human Rights Watch said that reaching out to Latino workers in the plants was "practically impossible" despite union efforts to involve Spanish-speaking organizers and attorneys to help in the campaign. "They just want to keep their heads down and not get noticed," said Greene. "This is North Carolina; it's not southern California or New York City where they have some community support."[320]

Anti-union consultants told Latino workers that the union was dominated by black workers and that the organizing drive was really an effort by African-Americans—the majority of employees at the plant—to get rid of Latino workers and take all the jobs for black people. They told the reverse to black workers.

Smithfield supervisor Sherri Bufkin confirmed the systematic use of such tactics in connection with the earlier election in the Tar Heel plant. She told a congressional committee looking into organizing abuses:

> Smithfield keeps Black and Latino employees virtually separated in the plant with the Black workers on the kill floor and the Latinos in the cut and conversion departments. Management hired a special outside consultant from California to run the anti-union campaign in Spanish for the Latinos who were seen as easy targets of manipulation because they could be threatened with immigration issues. The word was that black workers were going to be replaced with Latino workers because blacks were more favorable toward unions.[321]

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[319] Human Rights Watch interview with Jeff Greene, union representative, Wilson, North Carolina, July 14, 1999.

[320] Ibid.

[321] See Bufkin Testimony.

Fear among Legal Workers

Not only undocumented workers are vulnerable and fearful. Many Nebraska Beef workers from Central America hold "temporary protected status" (TPS) based on immigration policies flowing from wars and natural disasters in their countries. TPS does not confer legal immigrant status or permanent residency, but it does allow TPS holders to obtain employment authorization and to extend that work authorization for the duration of the country's designation as one whose citizens are entitled to TPS status, as well as during the pendency of a deportation or exclusion proceeding.[322] Some of these immigrants entered the United States without proper documentation, but are allowed to remain while the situation in their home countries is in turmoil. Since their work authorization is linked to their country of origin's designation under TPS, they are worried that such temporary protection could end at any moment.[323]

A Nebraska Beef worker from Nicaragua told Human Rights Watch, "Since I got TPS I was able to come out in the open, get a license, open a bank account. I can use my real name, and so can my wife and my kids. But the government knows who I am and where I am. They could end TPS any time. Suddenly I'm illegal and they can deport me."[324]

Other immigrant workers, including some at Nebraska Beef, have obtained or are seeking legal residency under a variety of immigration provisions. Most of those interviewed by Human Rights Watch are proceeding under a section of U.S. immigration law called 245(i), which allows persons who entered the country without proper authorization to obtain legal permanent residence if they are a close family member of a U.S. citizen. For example, an immigrant who entered without documentation or who overstayed a visa, who later married a citizen, can legalize his or her status under 245(i) by paying a $1,000 application fee rather than having to return home for ten years before being allowed to re-enter the United States, which is otherwise the requirement.[325]

To obtain 245(i) residency, immigrants cannot have traveled back to their home country and returned again to the United States. But most immigrant workers have done this at one time

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[322] See *Temporary Protected Status For Nationals Of Designated States*, 8 C.F.R. § 244.12 (1997).

[323] See Mary Beth Sheridan, "Salvadorans Granted 18-Month Residency Extension," *The Washington Post*, July 11, 2003, p. A4; Ana Mendieta, "Salvadorans' time running out to extend legal status," *Chicago Sun-Times*, August 21, 2003, p. 66.

[324] Human Rights Watch interview with a Nicaraguan worker, Omaha, Nebraska, July 16, 2003.

[325] For details on 245(i), see Andorra Bruno, "Immigration: Adjustment to Permanent Resident Status Under Section 245(i)," (Congressional Research Service, April 18, 2002), available online at: http://fpc.state.gov/documents/organization/10087.pdf, accessed on November 17, 2004.

or another. They risk permanent deportation if their trips are discovered. While labor organizing or labor law complaints are unrelated to the 245(i) application, these workers are generally afraid of doing anything that calls attention to themselves and that might jeopardize their applications. These workers are afraid to exercise their labor rights because immigration laws are unrealistic about the fact that many 245 (i) applicants do travel home, and therefore they are fearful because they already have one count against them.

One worker interviewed by Human Rights Watch said, "They ask us if we have ever done any anti-government activities in El Salvador or in the United States. In El Salvador union organizing is against the government because the government and the business owners are the same. A lot of workers think it's the same here. So people don't want to get involved in the union because it might mess up their 245."[326]

[326] Human Rights Watch interview, Omaha, Nebraska, July 16, 2003.

VIII. The Impact of *Hoffman Plastic* on Workers' Rights

Under international human rights and labor rights standards, all workers—whatever their immigration status—have the same basic rights to organize and to bargain collectively. Yet in 2002, the U.S. Supreme Court issued a decision in *Hoffman Plastic Compounds v. NLRB* that strips away from millions of undocumented workers in the United States their principal protection for and means of vindicating those rights.[327] The decision transformed a crisis in immigration policy into a human rights problem.

The Supreme Court's five-four ruling held that an undocumented worker, because of his immigration status, was not entitled to back pay for lost wages after he was illegally fired for union organizing.[328] The five-justice majority said that immigration policy and labor law were in conflict and that enforcing immigration law takes precedence over enforcing labor law. The four dissenting justices said there was not such a conflict and that the "backpay order will *not* interfere with the implementation of immigration policy. Rather, it reasonably helps to deter unlawful activity that *both* labor laws *and* immigration laws seek to prevent."[329]

The *Hoffman* decision and the continuing failure of the U. S. administration and Congress to enact legislation to correct such discrimination puts the United States squarely in violation of its obligations under the ILO's 1998 *Declaration on Fundamental Principles and Rights at Work* and under ILO Conventions 87 and 98.

Most undocumented workers are employed in workplaces with documented migrant workers and with U.S. citizens. Before the *Hoffman* decision, union representatives assisting workers in an organizing campaign could say to all of them, "we will defend your rights before the National Labor Relations Board and pursue back pay for lost wages if you are illegally dismissed." Now they must add: "except for undocumented workers—you have no protection." The resulting fear and division when a group of workers is deprived of their protection of the right to organize has adverse impact on *all* workers' right to freedom of association and right to organize and bargain collectively.

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[327] *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (2002).

[328] The Court's ruling overturned a decision by the National Labor Relations Board that had been upheld by a federal appeals court. See *Hoffman Plastic Compounds, Inc.*, 326 NLRB 1060 (1998); *Hoffman Plastic Compounds, Inc. v. NLRB*, 237 F.3d 639 (2001).

[329] Ibid., Breyer, J., dissenting; emphasis in original.

The *Hoffman* decision also promotes new and perverse forms of discrimination. It creates an incentive for employers to hire undocumented workers because of their new vulnerability in union organizing efforts, rather than hiring documented workers or citizens. As is universally the practice in the wink-and-nod world of employer recruitment of undocumented workers, the employer just takes a cursory look at work papers that appear valid on their face so that he has a defense against charges of "knowingly" hiring an unauthorized worker.

The resulting discrimination is two-fold: first, discrimination against documented workers and citizens who are not hired because of their status, followed by discrimination against undocumented workers who are hired because of their status. To stop an organizing campaign from even getting off the ground, employers can threaten to dismiss undocumented workers, telling them they have no protection under the NLRA. And then if workers do get a campaign off the ground, employers can carry out the threat, dismissing them with impunity.

With good reason, the *Hoffman* decision has exacerbated fears in immigrant workers' communities that they lack workplace rights and protections. Employers have made threats against workers, telling them of the decision and emphasizing that they can be dismissed for trade union organizing with no right to reinstatement or back pay. Workers have abandoned trade union organizing campaigns because of the fear instilled by the *Hoffman* decision. Employers have also sought to expand the scope of *Hoffman*, threatening workers with dismissal if they complain about minimum wage or overtime violations, health and safety violations, or any other claim before a government labor law enforcement agency.[330]

In the wake of the *Hoffman* decision, worker protection agencies such as the Department of Labor and the Equal Employment Opportunity Commission have reaffirmed their commitment to enforcing the laws under their jurisdiction without regard to immigration status.[331] But some courts are endorsing employer efforts to use the logic of *Hoffman* to deny undocumented workers a wide array of compensation or monetary damage awards that

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[330] See Alfredo Corchado and Lys Mendez, "Undocumented workers feel boxed in; They say they have no rights to damages from labor abuses," *Dallas Morning News*, July 14, 2002, p. 1J; Nancy Cleeland, "Employers Test Ruling on Immigrants; Labor: Some firms are trying to use Supreme Court decision as basis for avoiding claims over workplace violations," *Los Angeles Times*, April 22, 2002, at1; David G. Savage and Nancy Cleeland, "High Court Ruling Hurts Union Goals of Immigrants; Labor: An employer can fire an illegal worker trying to organize, the justices decide; Exploitation is feared," *Los Angeles Times*, March 28, 2002, p. 20.

[331] See U.S. Department of Labor Wage and Hour Division, *Fact Sheet #48,* "Application of U.S. Labor Laws to Immigrant Workers: Effect of *Hoffman Plastics* decision on laws enforced by the Wage and Hour Division," July 12, 2002, available online at: http://www.dol.gov/esa/regs/compliance/whd/whdfs48.htm, accessed on November 17, 2004; and EEOC press release, "EOOC Reaffirms Commitment to Protecting Undocumented Workers from Discrimination," June 28, 2002, available online at: http://www.eeoc.gov/press/6-28-02.html, accessed on November 17, 2004.

would otherwise be due them. In a pregnancy discrimination case in New Jersey, for example, a state court denied a victim her back pay, economic damages, damages for emotional distress and punitive damages, leaving her with nothing except a bill from her lawyer. "We agree that [*Hoffman*] bars plaintiff's economic damages . . . we see no basis for distinguishing her related non-economic damages and conclude that they, too, are barred."[332] An Illinois court denied back pay to a group of Chicago workers fired for filing an overtime pay claim, saying "The Supreme Court has made it clear that awarding back pay to undocumented aliens contravenes the policies embedded in [immigration law]."[333]

An Oklahoma court ruled that an undocumented worker injured on an Oklahoma job site was not entitled to vocational rehabilitation and medical treatment in the United States.[334] A California court ruled that under *Hoffman*, a worker fired when she told her employer she was going to have a cancer operation "may not recover for wrongful termination."[335] A New York court decided that an undocumented worker could not recover the $1,000 promised him for ten days' work by a landscaping employer, but could only obtain the minimum wage for his labor.[336]

Another New York court denied lost wages to an immigrant worker from Poland who brought a claim to recover damages for injuries sustained when he fell from a scaffold while installing siding. His claim was based on the defendants' alleged negligence and other labor law violations. The defendants asked the court to compel the immigrant to reveal his immigration status, and the court granted their request. The worker admitted that he did not have any of the required documents to establish his work authorization.

The court rejected the worker's argument that New York law specifically permits the recovery of lost wages by undocumented workers and that the *Hoffman* decision does not apply to his case because it was not intended to impact state laws. The judge said, "Although New York law has, in the past, permitted the recovery of lost wages for undocumented illegal aliens . . . the interpretation afforded to the Immigration Reform and Control Act (IRCA) by the United States Supreme Court in Hoffman would appear to require this court

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[332] See *Crespo v. Evergo Corp.*, N.J. Super. Ct. App. Div., No. A-3687-02T5 (February 9, 2004).

[333] See *Rentería v. Italia Foods Inc.*, N.D. Ill., No. 092-C-495 (August 21, 2003).

[334] See *Cherokee Industries, Inc. v. Alvarez*, Ok. Ct. App., No. 99173 (January 29, 2004).

[335] See *Morejon v. Terry Hinge and Hardware*, 2003 WL 22482036 (Cal. App, 2 Dist. 2003).

[336] See *Ulloa v. Al's All Tree Service, Inc.*, 2003 WL 22762710 (N.Y. Dist. Ct. 2003).

to conclude that plaintiff should not be permitted to recover for lost wages given his inability to prove he is legally authorized to work in this country."[337]

Not all the court cases have gone against worker plaintiffs. Undocumented workers generally remain covered under state workers' compensation laws (though this does not ease their reluctance to file claims for fear of deportation).[338] However, some state courts, citing *Hoffman*, have limited coverage to medical care while denying weekly wage replacement benefits.[339]

In a case involving allegations of illegal trafficking in persons and involuntary servitude, a judge in New York refused to allow defendants to conduct discovery into a worker's immigration status. The plaintiff sued her employers, alleging that they recruited her in India to come to the United States to perform domestic labor. On her arrival, they confiscated her passport and paid her the equivalent of 22 cents per hour during her first eight months of employment. For her remaining seventeen months of service, she was paid a total of $50. When defendants sought to show that their domestic servant was undocumented, the court issued a protective order prohibiting such inquiry, noting that:

> [A]llowing parties to inquire about the immigration status of other parties, when not relevant, would present a danger of intimidation [that] would inhibit plaintiffs in pursuing their rights … It is entirely likely that any undocumented [litigant] forced to produce documents related to his or her immigration status will withdraw from the suit rather than produce such documents and face … potential deportation.[340]

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[337] See *Stanislaw Majlinger v. Casino Contracting, et al.,* 2003 N.Y. Misc. LEXIS 1248 (Oct. 1, 2003).

[338] See, for example, *Ruiz v. Belk Masonry Co., et al.*, 559 S.E.2d 249, 2002 N.C. App. LEXIS 50 (N.C. App. 2002), where the North Carolina Supreme Court affirmed the right of undocumented workers to receive workers' compensation benefits.

[339] See, for example, *Sanchez et al. v. Eagle Alloy, Inc.*, 658 N.W.2d 510 (Jan. 7, 2003).

[340] See *Topo v. Dhir*, 210 F.R.D. 76 (S.D. N.Y. 2002). For a comprehensive report on human rights abuses against household domestic workers in the United States, see Human Rights Watch, *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States* (2001), available online at: http://www.hrw.org/reports/2001/usadom, accessed on November 17, 2004.

Tyson Foods and the Hoffman Plastic Defense

Tyson Foods unsuccessfully tried to avail itself of the *Hoffman* defense in a lawsuit brought by a chicken catcher on a Tyson contract farm who was injured when a Tyson employee ran into him with a forklift. The plaintiff, Gustavo Tovar Guzman, suffered spinal and nerve damage and endured a potentially paralyzing surgery to regain some limb movement. According to his testimony, his permanent physical handicap limits him to working in minimum-wage jobs.

Guzman sued Tyson for negligence. Tyson first argued that there was no negligence, but a jury found there was. Tyson did not require the chicken-catchers to wear reflective vests, even though these operations were conducted in the dark. Tyson also did not have any system of guidelines or procedures in place to prevent accidents such as the one involving Guzman.

Then Tyson argued that it had no control over Guzman's working conditions. An exchange between Tyson's attorney and Guzman's brother, Jose Ramiro Tovar, suggests the company's line of defense on this point:[341]

Q: When you were working in the chicken houses at eleven years old, you weren't working as a Tyson employee, were you?

A: I was working for Jerry Collum. Tyson I think.

Q: So you were working for Jerry Collum, is that right?

A: I was eleven years old. I didn't know who I was working for. I just know that Jerry give me my check.

Q: So you were working for Jerry Collum, not Tyson, right?

A: Tyson, yes.

Q: Who are you working for now? Jerry Collum?

A: Yes, sir.

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[341] This testimony also raises an issue of child labor. In another instance involving Smithfield Foods, a thirteen-year-old girl was hired in 2000 at the Tar Heel, North Carolina plant using false identity papers showing her age as eighteen. She worked full time as a second shift employee on a production line. Smithfield management attributed the hiring to failure to fully check her status at a time when "the company needed employees fast." The Labor Department inspector's report on the case said, "I told the employer that I realized the employee in question had presented false documents to obtain employment at Smithfield. However, I told [the Smithfield human resources manager] that I had seen and spoken to this person and it seemed rather obvious that this was a little girl who was not eighteen, but rather she appeared more like her real age of thirteen." See U.S. Department of Labor, Wage and Hour Division, "Compliance Action Report," Case No. 1075851 (August 23, 2000) (on file with Human Rights Watch). Human Rights Watch is unaware of evidence suggesting that such abuses, though they occur in the meat and poultry industry, are systemic in the industry, and child labor issues are not addressed in this report. For a report on systematic child labor violations in the United States outside the meat and poultry industry, see Human Rights Watch, *Fingers to the Bone: United States Failure to Protect Child Farmworkers* (2000), available online at: www.hrw.org/reports/2000/frmwkr, accessed on November 17, 2004.

Q: Are you working for the same person now that you were working for when you were eleven years old?

A: Yes, sir.

Q: So you were working for Jerry Collum when you were eleven years old, right?

A: Yes, sir.

However, the court determined that Tyson exercised control over the working conditions on Jerry Collum's farm and was therefore liable, consistent with the legal rule that, "One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care."

The jury awarded Guzman $745,496 in damages, which included damages for lost earning capacity. Tyson appealed the damage award, arguing that *Hoffman Plastic* "militates against any award of wages as damages to undocumented alien laborers."

The court rejected that argument and found that *Hoffman* "only applies to an undocumented alien worker's remedy for an employer's violation of the [National Labor Relations Act] and does not apply to common-law personal injury damages." The court further held that "Texas law does not require citizenship or the possession of immigration work authorization permits as a prerequisite to recovering damages for earning capacity."[342]

Employment law in the wake of *Hoffman Plastics* remains in flux, and immigrant workers' rights remain highly at risk. Many of the favorable decisions are on appeal to state and federal appeals courts, and might return to the U.S. Supreme Court for ultimate resolution. Employers appear resolute in their effort to extend the logic of *Hoffman* to defeat any meaningful relief for victims of discrimination who lack proper work authorization or who are afraid to have their immigration status become an issue.[343] While they are willing to employ these workers and benefit from their labor, they seek to exploit their vulnerability under *Hoffman* to deny them payments they would have to make to any other worker.

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[342] See *Tyson Foods, Inc. v. Guzman*, 116 S.W. 3d. 233 (2003).

[343] For consistent, updated reporting on post-*Hoffman* legal developments, see web sites of the National Employment Law Project at www.nelp.org, and of the National Immigration Law Clinic, www.nilc.org.

International Human Rights Rulings

Two authoritative international human rights bodies have examined the *Hoffman* ruling and concluded that conditioning remedies for freedom of association violations on immigration status violates workers' human rights. First, in September 2003, the Inter-American Court of Human Rights (IACHR) issued an advisory opinion in a case filed by Mexico in the wake of the *Hoffman* decision. The IACHR held that undocumented workers are entitled to the same labor rights, including wages owed, protection from discrimination, protection for health and safety on the job, and back pay, as are citizens and those working lawfully in a country. The IACHR said that despite their irregular status,

> If undocumented workers are contracted to work, they immediately are entitled to the same rights as all workers. … This is of maximum importance, since one of the major problems that come from lack of immigration status is that workers without work permits are hired in unfavorable conditions, compared to other workers.[344]

The IACHR specifically mentioned several workplace rights that it held must be guaranteed to migrant workers, regardless of their immigration status:

> In the case of migrant workers, there are certain rights that assume a fundamental importance and that nevertheless are frequently violated, including: the prohibition against forced labor, the prohibition and abolition of child labor, special attentions for women who work, rights that correspond to association and union freedom, collective bargaining, a just salary for work performed, social security, administrative and judicial guarantees, a reasonable workday length and adequate labor conditions (safety and hygiene), rest, and back pay.[345]

The IACHR held that, as part of its principal obligation to interpret the *Charter of the Organization of American States* (OAS Charter), it must integrate pertinent provisions of the *American Declaration of the Rights and Duties of Man*, and other international conventions on human rights in the American States. It further held that its consultative decision should be binding on all members of the Organization of American States (OAS), whether or not they

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[344] See Inter-American Court of Human Rights, Legal Condition and Rights of Undocumented Migrant Workers, Consultative Opinion OC-18/03 (September 17, 2003).

[345] Ibid.

have ratified certain of the Conventions that formed the basis of the opinion. It based its decision on the non-discrimination and equal protection provisions of the OAS Charter, the *American Declaration*, the ICCPR, the *American Convention on Human Rights* and the *Universal Declaration of Human Rights*.

In a second major international tribunal ruling in November 2003, the ILO's Committee on Freedom of Association issued a decision that the U.S. Supreme Court's *Hoffman* ruling violates international legal obligations to protect workers' organizing rights. The Committee concluded that "the remedial measures left to the NLRB in cases of illegal dismissals of undocumented workers are inadequate to ensure effective protection against acts of anti-union discrimination." The Committee recommended congressional action to bring U.S. law "into conformity with freedom of association principles, in full consultation with the social partners concerned, with the aim of ensuring effective protection for all workers against acts of anti-union discrimination in the wake of the Hoffman decision."[346]

[346] See ILO Committee on Freedom of Association, *Complaints against the Government of the United States* presented by the American Federation of Labor and the Congress of Industrial Organizations (AFL-CIO) and the Confederation of Mexican Workers (CTM), Case No. 2227: Report in which the committee requests to be kept informed of developments (November 20, 2003).

IX. Recommendations

To the Administration

- Adopt new regulations and standards through collaboration among OSHA, USDA and other relevant agencies to reduce line speed in meat and poultry processing plants to levels that do not endanger workers' health and safety.

- Adopt a strong, clear, enforceable OSHA ergonomics standard requiring equipment engineering improvements, job rotation, more frequent rest breaks, enhanced training in workers' languages, more accurate, and complete recording and reporting of injuries, and other measures to reverse the tide of musculoskeletal disorders and other injuries in the meat and poultry industry.

- Restore the "OSHA 200" form for reporting workplace injuries and illnesses, or otherwise make reporting requirements and related forms, whatever their name or number, more complete and comprehensive so as to fully demonstrate the amount and causes of workplace musculoskeletal disorders, and implement a rigorous auditing system to ensure full, accurate and timely reporting by employers, with effective penalties for failure to comply.

- Adopt the long-proposed but never implemented Occupational Safety and Health standard calling for employer-paid personal protective equipment for workers required to use such equipment on the job.

- Take more frequent and forceful action to refer fatality cases to the Department of Justice for criminal prosecution where willful violations of OSHA standards cause workers' deaths.

- Press for federal immigration reforms that reduce the incidence of serious abuse of immigrant workers' rights, including creating a meaningful process by which undocumented workers can adjust their status and/or reducing the involvement of employers in verifying immigrants' status, leaving the latter task to federal immigration authorities.

- Raise awareness in both the U.S. Department of Labor and the Immigration and Naturalization Service (current CIS) of their joint November 1998 Memorandum of Understanding that prevents the Labor Department from inquiring into the immigration status of workers during any investigation into labor standards violations, and press for the adoption of similar Memoranda between CIS and other federal agencies responsible for labor standards.

- Educate immigration agency field staff, workers, and employers about their responsibilities and obligations under Citizenship and Immigration Service (CIS) Operating Instruction 287.3A, which requires field agents to refrain from involving CIS in labor disputes by determining whether information about unauthorized employment is being provided to either interfere with the labor, health and safety rights of documented or undocumented employees or to retaliate against employees for seeking to vindicate those rights.

- Through publication in relevant languages, publicity, and training, provide non-citizen workers and their employers detailed information about their right (according to Section 274B of the Immigration and Nationality Act (INA)) to protection from: 1) discrimination on the basis of national origin; 2) retaliation in the hiring or firing of authorized non-citizen workers; and 3) a demand from employers for more or different identity documents than those required by law.

- Ensure that the INA is effectively enforced by adequately funding and staffing the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

To Congress

- Where the Administration fails to act on the foregoing recommendations, enact legislation compelling the accomplishment of those goals.

- Enact the Wrongful Death Accountability Act to strengthen criminal penalties for willful violations of the Occupational Safety and Health Act that cause worker fatalities. Currently, willful violations resulting in death are nothing more than misdemeanors with a maximum sentence of six months.

- Enact minimum federal standards for state workers' compensation laws to halt a "race to the bottom" among states on workers' compensation benefits and eligibility rules; and require states to create a rebuttable presumption in workers' compensation proceedings that meat and poultry industry workers' claims of musculoskeletal disorder are work-related.

- Enact the Employee Free Choice Act (EFCA) amending the National Labor Relations Act to provide stronger protection for workers' freedom of association and stronger remedies for violations. The EFCA provides for the determination of workers' choice of bargaining representatives by an orderly, non-adversarial process of signing cards to authorize union bargaining instead of the fear-filled and delay-ridden NLRB election process; a neutral arbitration system for first-contract bargaining impasses in newly-organized workplaces; stronger penalties for violations of the Act; and more vigorous use of injunctive remedies to have unfairly dismissed workers reinstated to their jobs quickly, instead of waiting years while employers appeal their cases.

- Enact legislation prohibiting the permanent replacement of workers who exercise the right to strike.

- Enact legislation prohibiting any inquiry into the immigration status of workers and enforce existing provisions against retaliatory referrals to immigration authorities of workers seeking legal recourse or otherwise involved in matters related to complaints, investigations, or claims regarding violations of workplace rights under federal law.

- Adopt immigration reforms that reduce the incidence of serious abuse of immigrant workers' rights, including by: creating a meaningful process by which undocumented workers can adjust their status and/or reducing the involvement of employers in verifying immigrants' status, leaving the latter task to federal immigration authorities.

- Enact legislation to specifically provide for temporary visas (similar to the T-visa program for trafficking victims) and cancellation of removal proceedings for immigrant workers whose participation or testimony is essential to the resolution of administrative or federal court proceedings relating to workplace rights.

- Enact legislation to ensure equality of remedies for all workers who suffer workplace violations or seek to enforce workers' rights, regardless of immigration status. The current proposal in the Safe, Orderly, Legal Visas and Enforcement (SOLVE) Act of 2004, for example, would ensure labor law remedies to immigrant workers unlawfully dismissed for union activity (rectifying the Supreme Court's decision in the *Hoffman Plastic* case).

- Through publication in relevant languages, publicity, and training, provide non-citizen workers and their employers detailed information about their right (according to Section 274B of the Immigration and Nationality Act (INA)) to protection from: 1) discrimination on the basis of national origin; 2) retaliation in the hiring or firing of authorized non-citizen workers; and 3) a demand from employers for more or different identity documents than those required by law.

- Ensure that the INA is effectively enforced by adequately funding and staffing the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

To the Administration and Congress

- Fashion a comprehensive new immigration policy to guarantee respect for all human and labor rights of non-citizen workers regardless of their immigration status.

To State Governments

- Ensure that state legislation provides adequate protection for workers' rights where federal legislation fails to accomplish this, such as measures to adopt an ergonomics standard under state law and to reduce line speed in meat and poultry plants.

- Enact state legislation prohibiting any inquiry into the immigration status or retaliatory referrals to immigration authorities of workers seeking legal recourse or otherwise involved in matters related to complaints, investigations, or claims for violations of workplace rights under state law.

- Replicate the precedent of the 1998 Memorandum of Understanding between the Labor Department and immigration authorities that prevents the Labor Department from inquiring into the immigration status of workers during any investigation into

labor standards violations by creating similar memoranda for all state agencies responsible for promoting labor standards and rights.

- Enact legislation that prevents state and local law enforcement agencies from gathering, investigating, or referring information about unauthorized employment to immigration authorities when that information is being provided to interfere with the labor, health, and safety rights of documented or undocumented employees or to retaliate against employees for seeking to vindicate those rights.

- Enact state legislation that makes meat and poultry companies legally responsible for compliance with state labor laws by all labor contractors, temporary labor supply firms, or other entities furnishing workers for meat and poultry labor, and by all subcontractors who work at company facilities, e.g. for cleaning, maintenance, or other on-site work.

- Establish a presumption in state workers' compensation law that meat and poultry workers' musculoskeletal disorders are work-related.

- Vigorously enforce state anti-retaliation laws meant to protect workers against dismissal for filing compensation claims for workplace injuries and illnesses.

- Create a "right to seek medical attention" prohibiting employers from denying workers the right to go to a workplace medical clinic or, where there is no such clinic, to seek medical attention for workplace injury or illness without fear of retaliation.

- Adopt regulations on the operations of workplace medical clinics to ensure prompt attention to employees' injuries and immediate and accurate reporting of injuries to insurers, to workers' compensation authorities, and to OSHA.

- Abolish state laws authorizing company-employed security forces to exercise police powers and ensure by state regulation that employer security operations may not be used to interfere with workers' exercise of the right to freedom of association or other rights.

- Within all areas of state jurisdiction and policy competence, adopt and implement policies to protect all human and labor rights of non-citizen workers regardless of their immigration status.

- In addition and complementary to the steps noted above, undertake a review of conditions in meat and poultry plants in the state in consultation with employers, unions, workers, community organizations, immigrants workers' advocacy groups, researchers, and other interested parties to fashion a comprehensive, cooperative plan for improving protection of meat and poultry workers' rights.[347]

To the Meat and Poultry Companies

- Reduce meatpacking and poultry production line speed to rates commensurate with worker safety and prevention of injury, including muscular-skeletal injuries.

- Reconstitute lines and work stations to ensure there is enough space between workers to avoid potential hazards.

- Customize (or make adjustable) work station dimensions, to the extent feasible, to account for workers' individual physical characteristics.

- Whether or not it is adopted by OSHA or state agencies, implement an ergonomics standard as company policy providing equipment engineering improvements, job rotation, more frequent rest breaks, enhanced training in workers' languages, more accurate and complete recording and reporting of injuries, and other measures to address musculoskeletal disorders in the industry.

- As company policy, without waiting for legislation, adopt and implement other recommendations to governments noted above.

- Assume responsibility for labor law compliance by subcontractors doing cleaning, maintenance, or other work on company property.

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[347] See Appendices G and H on the Nebraska Meatpacking Workers Bill of Rights for an example of a state initiative.

- Halt the use of captive-audience meetings with groups of workers, one-on-one meetings between management and individual workers, or other forms of interference with workers' exercise of freedom of association.

- Stop the use of permanent replacements against workers who exercise the right to strike.

- Halt the use of company security personnel or deputized police as a force for harassing, threatening, intimidating, or otherwise pressuring workers to shrink from exercising their rights.

- In addition and complementary to the steps noted above, work with relevant industry associations to achieve a comprehensive, industry-wide program for improving working conditions and respecting workers' rights.

Appendix A: The Production Process in Meat and Poultry Plants

Meat Plants

Industry experts can better describe what goes on inside meat and poultry slaughtering and processing operations than Human Rights Watch. Here is what one industry expert says about meatpacking:

> Packinghouses, even under the best conditions, are not pretty; the meat industry is not a photo opportunity for the documentation of American enterprise and commerce. It is an industry based upon the killing, evisceration, and disassembly of animals – most of them large. The industry acknowledges the gruesomeness of its task with its own nomenclature: the area of a packinghouse where animals are killed and eviscerated is the "kill floor"; on the kill floor, workers "stick" carcasses to bleed them; eviscerators "drop bungs," "pull sweetbreads," and perform "head workups." Even the animals have been made, in this argot, to seem less individual and thus less alive. Most foremen and supervisors working on kill floors refer to a single steer or carcass as "a cattle." Moving animals through production is called "getting blood on the kill floor." Because steers, as well as hogs and lambs, are large warm-blooded creatures, red-meat kill floors tend to be hot and humid. Moisture rises from the hot, fat outside coverings of carcasses like vapor from a swamp. The brownish air in slaughterhouses stinks of opened bellies, half-digested cud, and manure.[348]

More detail was provided by a hog slaughtering plant manager in testimony in an unfair labor practice trial before an administrative law judge (the process is essentially similar in beef processing), excerpted at length here:

> When the hogs come in there they're channeled one behind the other. They're stunned electrically and they slide down on to what is called the stick pit table. … At that point someone sticks them right in the vein in the neck and someone else will shackle them. They will put a noose type chain on one of their back legs and at that point they're hoisted up off of the table where gravity and the heart pumping pump the blood out of the hog into a trough where that blood is sent to the blood plasma room. . . .

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[348] See Bjerklie, "On the Horns of a Dilemma: The U.S. Meat and Poultry Industry," in *Any Way You Cut It.*

When I say chain it's like a railroad track type device that has the shackles that hang down below it that are constantly moving so as the hogs come down that person that is down there working the table, it's his responsibility to grab a shackle that is in a location where he can shackle him. Sometimes some of those hogs will go onto the floor, and a hog may need to be pulled to a location where they can be hoisted back onto the line. . . . There is a lot of heavy lifting and repetitive work you know in that environment depending on the weather because it's right there by the livestock area. It could be hot or it could be cold so certainly that's not an easy place to work.

[The hog] goes through a zig zagging type portion of the line where that time is given for it to completely drain. From there it goes through a rinse cabinet and into what is called the scald tub. The scald tub it's approximately a hundred yards long in the shape of what I would call a candy cane. It's maybe four feet high filled with hot water that the hog is submerged in and that is where the hide of the hog is softened to start to prepare for the dehairing process.

There are people that tend the scald tub and there are times when hogs become unshackled under the water and the only way to get them out of there is with a long steel hook and pull them to one end and reshackle them back to the line again. That's a difficult job. Heavy lifting, and that is you know always in a hot work environment. . . .

When it comes out of the scald tub it goes up high towards the ceiling on an incline. The shackle releases and it drops it on a slide into what is called the dehair. The dehair is basically like a big washing machine, it has paddles inside of it that take the hair off the hog.

When the hog comes out on the other side it comes onto a conveyor belt type table. At that point again another tough job is that the person that works on that gam table depending on how that hog comes out of there is going to have to flip dead weight, flip that hog from one side to the other if he doesn't come out with his feet to the right. . . .

After it's flipped over is where the heel strings are cut. Basically there are two cuts made side by side that expose the heel string where a gam can be

inserted . . . A gam is a stainless steel type hanger that is approximately a foot and a half long and it has a hook on each end of it that is pointed. You just take it and slide it. . . . It's not like you just have a pencil in your hand and you're just sliding it in there. I mean you're having to maneuver from the resistance of it being attached to a moving line putting it inside you know one side and then adjust it to put it into the other. Again, it's a pretty difficult job.

One side of the gam goes through one side and the other side through the other. At that point it is hoisted back up to continue the dehairing process where it goes through a singer and basically what that is is a cabinet that has the line run straight through it. It has propane operated fire that comes from each side to burn any excess hair off the hog at that point. It's maybe ten feet long.

[The hog] goes through a rinse cabinet where basically there is water sprayed on it to rinse off any loose hairs. It completes that process all in one straight line. It goes through a singeing cabinet again and then a rinse cabinet.

Once it comes out of the second rinse cabinet there are a couple of employees that work on a scaffold that shave any excess hair from between the legs, the body. Basically anywhere that they see hair so it's the final visual inspection for hair on at least the body anyway. There is also someone that works on the floor that rinses out the mouth of the hog with a hose.

At that point it comes around to the dry side of the kill floor. . . . The dry side is where it's opened up and really the dismantling of things begins. It starts with employees cutting the hair pocket out from between the hoofs on both the top or back and front feet and trimming the stick hole. Continues on to where the hog is dropped.

The person that drops heads operates a large hydraulic type pair of scissors. When they cut the neck it cuts all the way through and basically they do not cut one piece of skin so it still hangs from the body as far as that bone . . . It still hangs from the carcass.

At that point there are several people that trim the jowl that separate the head from the carcass. They put it in a loop and at that point the head goes to the head room. The carcass continues to go down the line where the bun gun operator drops the bun and basically what that is it looks like a big grease gun. It's about three inches in diameter. Basically what it does is it just cuts a circle around the rectum where it drops the rectal cavity down into the carcass without breaking it.

At that point it continues to go down the line where the chest is split open. It's done with a saw and basically the sternum is cut as well as the stomach or when I say the stomach I'm talking about the skin on the stomach area is cut where you don't cut any intestines. You're just cutting a layer, a thin layer of skin and a layer of fat where you're just basically opening—beginning to open the hog in preparation to remove the inside.

It's basically a circular type saw. It's electrical and it looks just like your circular saw at home. It has a handle on it like a chain saw where the folks that split chests or the sternum . . . there is another job further down the line called the back splitter. That person operates the same type of equipment.

At that point the hip bone is broken and that's again with a hydraulic scissor type device that looks a lot like what you would see in the hardware store that you cut thick branches with around your home. Basically, they separate the hips and at that point there is someone that takes a piece of stainless steel with a hook on each end that holds from carcass to carcass to carcass. They're hooked together where it opens up the chest area where somebody can get in there and pull out everything from the esophagus to the rectum basically one motion. It all comes out at the same time.

At that point the esophagus, the lungs, the heart, liver they're all separated as one piece from intestines and put on a hanger. The intestines, we pipe those. Somebody takes those intestines and runs them into a vacuum type system that depending on which pipe they put it in it will send it to either Casings, or it will send it to our chilling area.

The pancreas is something that is put in a vat at that point. Also, sometimes in the past we've sold uterus and that has been separated. . . . You've got

really three different portions of the line. You have a line that's in the middle with pans that hold the guts of the hog, and then you have another line that there is the carcass of the hog. And you still have the heads that are coming down that are being inspected. That's only one side of what's going on. All this that I've told you so far and there are two of all these things.

With the inspection of the heads the USDA checks those for tuberculosis and any other diseases. They will pull those off just like at any part of the process they can pull anything off. As far as the carcass continuing to go down the line basically it goes through the back being split and basically what that is is a saw operator with the same type of saw that I described earlier, a circular type saw, splits the back bone and again doesn't completely split the hog in half but there is still skin that holds the carcass together.

At that point the kidneys are still inside the carcass. They're inside a layer of fat that is cut open. The kidneys are turned out so the USDA can inspect them. That's called popping kidneys. Probably the easiest job on the kill floor is popping kidneys. Just turning them to the outside so inspectors can see them and cut them off after they've been inspected.

At that point if there is anything wrong with the hog because that is another USDA check point if the hog has bug bites, if it has any type of skin rash, if it has—if any part of it is contaminated it is pulled off. At that point there is corrective action taken prior to it being put back on the line so there are several people that work on the pull off stations.

As the hog continues on down the line it finishes out on the kill floor. It's basically where all the interior fat which is on the inside of the ribs and basically inside of the carcass is manually pulled out. Again, one of the—a very tough job. A job that requires a lot of upper body strength you know to pull that fat out. It's pulled out by hand.

There are several people that pull fat out and some of them pull fat from fat. Some of them pull small fat that wasn't pulled out that would normally come out with the guts when they came out. The very last job on the kill floor prior to the fatometer is we have someone that scrapes out the spinal cord. It's just somebody uses a small spoon type device and just scrapes it out. At that

point it goes around to the fatometer which two people work there. The fatometer is where we monitor the hogs that have been processed. It's where we get a fat to lean reading on each hog. . . .

At that point it goes into the portion of the cooler that's called the snap chill. The snap chill is like a wind tunnel that is minus fifteen, minus twenty degrees. I've only been in there one time. It was so cold I haven't been back. Basically what happens is that when the hogs go into that they go down a long tunnel and at the end of the tunnel they turn around and come back and by the time they complete that process it's exactly what it sounds like, a snap chill. At least the outer layer of the carcasses is frozen or very cold anyway.

At that point it goes into the cooler bays where several people move hogs to one bay or another depending on what is going on that particular day. They stay in there overnight until the next day. The next day they go out onto the cut floor.

[Question]: Can you give an estimate of the amount of time it takes from the time a hog is first stuck in the stick area when the throat is cut to the point it gets to the cooler? Approximately how long does that entire process take?

It could vary but probably on average I'd say maybe ten minutes. It may be quicker than that but I'm just taking into consideration that normally coming out of the dehair there is hogs backed up. From the time that a hog comes out of the dehair and is actually put on the line we're only talking about a couple of minutes before it completes the whole process going all the way down the line into the cooler so between five and ten minutes depending on if it was backed up, or the speed of the line that day.

The cut floor is where we have two lines that run down the cut floor, two main lines. When the hog comes onto the cut floor it's separated where one half of the hog goes down one line. The other half goes down the other. Lines that run directly off of those two major lines process individual product.

Basically it starts with the hog being separated with the feet and the knuckles being cut off. From there there is a line for each one, each product.

Everything from hams to butts to picnics to loins to ribs to bellies to fatback. As that particular product is separated from the carcass it's put on the line that runs at a ninety degree angle from it where for the most part people that work on the cut floor trim that product. We don't do any deboning in that area but we do a lot of trimming and trimming to customers' specifications.

Some of that product is packaged there on the cut floor, and sent to our Shipping Department. Some of it is sent to our Conversion Department where we do some further processing, where we debone hams. We debone loins.

[Question]: How long is process from when a carcass gets to the start of the cut floor to the time it gets to the end of the cut floor? How long is that process approximately if you know?

Depending on which product it is we're not talking about a very long period of time. . . . It could be as quick as maybe five, six minutes. It could be quicker. It could be a bit longer, but it is a very fluent process.

Now most of the product is sent from one department to another on a conveyor belt. Both of those departments are between thirty and forty degrees cold in comparison to the kill floor.

Casings is a department where they take the intestines and they clean it. The first part of the process there is people whose job title is a puller. What they do is take the intestine and stretch it or straighten it out, untangle it. They're rinsed off. They're fed into a machine that cleans the inside of the intestines. They go into a vat of water to soak and then they're bundled, tied off. Tied off in bundles and packed in salt. They're used for making sausage. You know you see on some hot dogs that have a thin skin on the outside of it. That's what it is.

There is the head room and variety meats. Basically that department shares the same work area. The head room is basically where they take the head. They cut the jowls off, detach the skin, temples, jowl from the skull, trim any head meat. It's where they open the skull and pack brains. Variety meats is

> the separation of the lungs, the heart, the liver, and esophagus. Most of that is used for dog food so it's just basically separated.
>
> We have the Chittling Department where the intestines are piped from the kill floor. In the Chittling Department they take the intestines. They clean them. They pull the fat off of them. They wash them. They pack them in bags, sometimes buckets. Also in that room we used to pack stomachs, actual stomach itself.
>
> Basically all the waste or inedible product from any area of the Plant is either piped or carried to rendering. Rendering is a cooking type process that inedible waste is cooked into a dust almost like cremation, and it's used in dog food. It's used in fertilizer. It's used in animal feed. [349]

Poultry Plants

Poultry processing line workers typically make thousands of knife cuts per day in close quarters with one another using the same hand, arm and shoulder motion as birds pass their work station from forty to seventy per minute.

A poultry processing expert says:

> The processing plants themselves are organized so that birds enter one end of the plant and trucks carrying packaged and priced products leave from the other. In the receiving, or "live-hanging" area, workers wearing paper gas masks pull live birds from plastic crates. The rooms are dimly lit with blue light bulbs because the dark is thought to calm the birds. From here the birds are mechanically stunned, plucked, killed, and partially eviscerated. Entering the plant floor, workers and USDA inspectors further eviscerate and inspect the birds, usually standing on wet mesh platforms, wearing rubber boots, gloves, layers of clothing, and aprons. From this point on the plants get progressively cooler; the temperature drops from normal room temperature to freezing in the huge walk-in coolers where the birds are stacked for shipping. The floors follow the drop in temperature by becoming wetter and slipperier, coated with chicken fat, and constantly hosed down. As the birds

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[349] See Smithfield Hearing Transcript, p. 3826-3850. This portion of the transcript is edited to remove "you know," "basically" and other linguistic distractions.

> leave the eviscerators and inspector, they are routed to stations where quality-control personnel check them for imperfections and send the least bruised birds to a station that weighs, packs, and prices whole birds. Imperfect birds then enter the further-processing sections of the plant.[350]

More detail emerges from the testimony of a poultry plant manager responding to an attorney's questions in a 2003 trial:

> *I would like you to briefly describe, based on your experience at Tyson, what's involved with processing a bird all the way through the plant to chicken products that are produced for sale. Let me ask you some questions to sort of get you going.*
>
> Yes, sir.
>
> *Who provides the live chickens?*
>
> The grower.
>
> *And are those contractors or are those Tyson people?*
>
> At the facilities that I was at they were contract growers.
>
> *And who provides the eggs?*
>
> Tyson Foods.
>
> *Who provides the feed?*
>
> Tyson Foods.
>
> *After the chickens are grown, how do they get over to the plant?*

---

[350] See David Griffith, "*Hay Trabajo*: Poultry Processing, Rural Industrialization, and the Latinization of Low-Wage Labor," in Stull, Broadway and Griffith, eds., *Any Way You Cut It: Meat Processing and Small-Town America* (Lawrence: University Press of Kansas, 1995).

They are caught by what's termed a live haul receiving crew where the birds are collected by hand and put basically in a ten-per-cage slot, and then they are delivered to the plant.

And the folks that catch the chickens, based on your experience, are they Tyson employees?

Sometimes and sometimes not. Some of the live haul catchers were Tyson and some of the live haul catchers were contract employees.

And then—after they are caught, how do they get over to the plant?

They are loaded onto a cage and that tractor-trailer is driven to the facility where they are weighed and then put into the holding shed waiting to be sent to the receiving department.

After they get to the plant, the processing plant, what's the next step in the process?

They go to what's called the receiving department where the chickens are hung upside down to allow the blood to drain towards the head. Later the jugular vein is slit to allow the chickens to bleed out. It is stunned before that process. The chickens go through what's called a scaler to remove the feathers from the birds. Then they go through what's called a picker, and then through the final process, which is like through a flame to kind of singe off any remaining feathers that are on the bird. Usually by that time the heads and the necks and possibly the paws have already been removed.

For those of us who aren't familiar with chicken terminology, what are paws?

Paws are the same thing as feet. It's just the poultry term is paws. Then they go through an evisceration process where the viscera is removed.

What is viscera?

Viscera is the internal organs of the animal, of the bird, and they do this process to allow the USDA to determine which birds are quality standards, which birds may contain disease. After that, they are totally eviscerated, they are put into what's called a chiller where the temperature is lowered on the bird. Then the birds come out on the line again and are rehung. Then the birds go to what's called a halving wheel to be split into front halves and back halves. The back halves of the birds, which we call the saddle, which is

basically the drum sticks and the thighs, go to what's called a leg room. And the front halves go to a machine which basically harvests the wings and the breasts of the chicken.

What part of the chicken is the most profitable for Tyson?

The chicken tenders followed by the breasts.

And what's the least profitable chicken product, based on your experience?

The pet food products are.

And what part of the chicken becomes the pet food?

Mostly the—a lot of the viscera. When the viscera is removed we do harvest the gizzards and the livers. However, the viscera, the lungs, all of that goes into pet food, the blood, the feathers, and other parts are in the pet food, product that falls off and hits the floor that cannot be rewashed.

What happens with the carcass?

The carcass itself also goes into pet food. The breast shells after - - what I mean by that, that is the empty breast shells after the meat has been removed.

So do you try to remove the most amount of meat off the carcass?

Yes, we do.

Well, describe generally what the working conditions are like in the chicken plant. Let's start with the people who catch the chickens after they get to the plant, what's that called? What are those people called?

Those positions are live hangers because the chickens are alive and they are being hung upside down.

Is that pleasant work?

No, sir.

What is it like?

It is very cold. It is dusty. The chickens are alive and they are scratching and pecking. With the live birds defecation occurs on a random basis. Workers are encouraged to wear masks to protect fecal matters from getting into the facial areas.

And generally, what's it like on the plant floor?

The working conditions are very intense simply because you have got hard floors that usually contain an amount of water. It is very labor intensive due to line speeds.

Is it cold?

Yes, it is.

Is it smelly?

Yes, it is.

Is it generally an unpleasant place to work?

Yes, sir, it is.

Other than the live hangings, what are some of the other undesirable or least desirable jobs in the plant?

By far sanitation is because it's extremely hazardous.

What's hazardous about sanitation?

When you have got a cold plant most of the days and you put hot water on a cold plant you're going to generate steam. And when you're asking people to clean machinery that is not completely locked out and tagged out, it is—can cause fatalities. It's very dangerous on sanitation because the people cannot see.

When you say locked out and tagged out, what do you mean?

The machinery is supposed to be locked out and tagged out completely so the equipment can be cleaned, but in order to meet all USDA specifications and get the entire machine clean, people in the industry know the machine has got to run to meet that time schedule and to meet the cleanliness standards. So it is a very hazardous job because you cannot—visibility is reduced.[351]

[351] See Tyson Trial Transcript. p. 1112 ff. Tyson Foods and three corporate executives were acquitted by a jury in the case, successfully defending on the grounds that the recruitment scheme was the work of individual company managers, not a corporate-wide plan.

Appendix B: Human Rights Standards on Workers' Health and Safety, Workers' Compensation

Universal Declaration of Human Rights

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3

Everyone has the right to life, liberty and security of person.

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Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

International Covenant on Civil and Political Rights

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Economic, Social and Cultural Rights

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

***

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

***

(b) Safe and healthy working conditions;

***

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

***

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

ILO Convention No. 121: Employment Injury Benefits Convention (1964)

Article 4

1. National legislation concerning employment injury benefits shall protect all employees, including apprentices, in the public and private sectors, including co-operatives, and, in respect of the death of the breadwinner, prescribed categories of beneficiaries.

***

Article 6

The contingencies covered shall include the following where due to an employment injury:

(a) a morbid condition;

(b) incapacity for work resulting from such a condition and involving suspension of earnings, as defined by national legislation;

(c) total loss of earning capacity or partial loss thereof in excess of a prescribed degree, likely to be permanent, or corresponding loss of faculty; and

(d) the loss of support suffered as the result of the death of the breadwinner by prescribed categories of beneficiaries.

Article 9

1. Each Member shall secure to the persons protected, subject to prescribed conditions, the provision of the following benefits:

(a) medical care and allied benefits in respect of a morbid condition;

(b) cash benefits in respect of the contingencies specified in Article 6, clauses (b), (c) and (d).

2. Eligibility for benefits may not be made subject to the length of employment, to the duration of insurance or to the payment of contributions: Provided that a period of exposure may be prescribed for occupational diseases.

***

Article 23

1. Every claimant shall have a right of appeal in the case of refusal of the benefit or complaint as to its quality or quantity.

2. Where in the application of this Convention a government department responsible to a legislature is entrusted with the administration of medical care, the right of appeal provided for in paragraph 1 of this Article may be replaced by a right to have a complaint concerning the refusal of medical care or the quality of the care received investigated by the appropriate authority.

***

Article 25

Each Member shall accept general responsibility for the due provision of the benefits provided in compliance with this Convention and shall take all measures required for this purpose.

Article 26

1. Each Member shall, under prescribed conditions—

(a) take measures to prevent industrial accidents and occupational diseases;

(b) provide rehabilitation services which are designed to prepare a disabled person wherever possible for the resumption of his previous activity, or, if this is not possible, the most suitable alternative gainful activity, having regard to his aptitudes and capacity; and

(c) take measures to further the placement of disabled persons in suitable employment.

Article 27

Each Member shall within its territory assure to non-nationals equality of treatment with its own nationals as regards employment injury benefits.

ILO Convention No. 130: Medical Care and Sickness Benefits (1969)

Article 7

The contingencies covered shall include—

(a) need for medical care of a curative nature and, under prescribed conditions, need for medical care of a preventive nature;

(b) incapacity for work resulting from sickness and involving suspension of earnings, as defined by national legislation.

Article 8

Each Member shall secure to the persons protected, subject to prescribed conditions, the provision of medical care of a curative or preventive nature in respect of the contingency referred to in subparagraph (a) of Article 7.

Article 9

The medical care referred to in Article 8 shall be afforded with a view to maintaining, restoring or improving the health of the person protected and his ability to work and to attend to his personal needs.

ILO Convention No. 155: Occupational Safety and Health Convention (1981)

Article 4

1. Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.

2. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

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Article 9

1. The enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection.

2. The enforcement system shall provide for adequate penalties for violations of the laws and regulations.

ILO Protocol 155 Protocol to the Occupational Safety and Health Convention (2002)

Article 2

The competent authority shall, by laws or regulations or any other method consistent with national conditions and practice, and in consultation with the most representative organizations of employers and workers, establish and periodically review requirements and procedures for:

(a) the recording of occupational accidents, occupational diseases and, as appropriate, dangerous occurrences, commuting accidents and suspected cases of occupational diseases; and

(b) the notification of occupational accidents, occupational diseases and, as appropriate, dangerous occurrences, commuting accidents and suspected cases of occupational diseases.

ILO Convention No. 161: Occupational Health Services (1985)

Article 5

Without prejudice to the responsibility of each employer for the health and safety of the workers in his employment, and with due regard to the necessity for the workers to

participate in matters of occupational health and safety, occupational health services shall have such of the following functions as are adequate and appropriate to the occupational risks of the undertaking:

(a) identification and assessment of the risks from health hazards in the workplace;

(b) surveillance of the factors in the working environment and working practices which may affect workers' health, including sanitary installations, canteens and housing where these facilities are provided by the employer;

(c) advice on planning and organisation of work, including the design of workplaces, on the choice, maintenance and condition of machinery and other equipment and on substances used in work;

(d) participation in the development of programmes for the improvement of working practices as well as testing and evaluation of health aspects of new equipment;

(e) advice on occupational health, safety and hygiene and on ergonomics and individual and collective protective equipment;

(f) surveillance of workers' health in relation to work;

(g) promoting the adaptation of work to the worker;

***

Article 13

All workers shall be informed of health hazards involved in their work.

***

Article 15

Occupational health services shall be informed of occurrences of ill health amongst workers and absence from work for health reasons, in order to be able to identify whether there is any relation between the reasons for ill health or absence and any health hazards which may be present at the workplace. Personnel providing occupational health services shall not be required by the employer to verify the reasons for absence from work.

United States Commitments in North American Agreement on Labor Cooperation

The United States shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

The United States shall promote compliance with and effectively enforce its labor law through appropriate government action.

The objectives of this Agreement are to . . . promote, to the maximum extent possible, the labor principles set out in Annex I:

- prevention of occupational injuries and illnesses: prescribing and implementing standards to minimize the causes of occupational injuries and illnesses;
- compensation in cases of occupational injuries and illnesses: the establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring in the course of employment.

Appendix C: Human Rights Standards on Freedom of Association

Universal Declaration of Human Rights

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

***

Article 20

Everyone has the right to freedom of peaceful assembly and association.

***

Article 23

Everyone has the right to form and to join trade unions for the protection of his interests.

***

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

International Covenant on Civil and Political Rights

Article 21

The right of peaceful assembly shall be recognized.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

International Covenant on Economic, Social and Cultural Rights

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests.

ILO Convention No. 87: Freedom of Association and Protection of the Right to Organise (1948)

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

***

Article 8

The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

***

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

ILO Convention No. 98: Right to Organise and Collective Bargaining (1949)

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to--

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

***

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation

between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

United States Commitments in North American Agreement on Labor Cooperation

The United States shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

The United States shall promote compliance with and effectively enforce its labor law through appropriate government action.

The objectives of this Agreement are to . . . promote, to the maximum extent possible, the labor principles set out in Annex I:

- freedom of association and protection of the right to organize: the right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests;
- the right to bargain collectively: the protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment;
- the right to strike: the protection of the right of workers to strike in order to defend their collective interests.

Appendix D: Human Rights Standards on Migrant Workers

[NOTE: All the protections of the *Universal Declaration of Human Rights*, the ICCPR, and the ICESCR apply to "all persons" including immigrant workers.]

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Article 7

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

***

Article 24

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

Article 25

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;

(b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

Article 26

1. States Parties recognize the right of migrant workers and members of their families:

(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;
(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;
(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.
2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

Article 27

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

Article 28

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

ILO Convention No. 97: Migration for Employment Convention (1949)

Article 6

1. Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

(a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities—

(i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;

(ii) membership of trade unions and enjoyment of the benefits of collective bargaining;

(iii) accommodation;

(b) social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme),

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Article 10

In cases where the number of migrants going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Convention.

Article 11

1. For the purpose of this Convention the term *migrant for employment* means a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment.

2. This Convention does not apply to—

(a) frontier workers;

(b) short-term entry of members of the liberal professions and artistes; and

(c) seamen.

Annex I

Article 7

1. In cases where the number of migrants for employment going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Annex.

2. Where the members maintain a system of supervision over contracts of employment, such agreements shall indicate the methods by which the contractual obligations of the employers shall be enforced.

***

Article 13

Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties.

ILO Convention No. 143 Migrant Workers Convention (1975)

Article 1

Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers.

***

Article 8

1. On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit.

2. Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.

Article 9

1. Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

2. In case of dispute about the rights referred to in the preceding paragraph, the worker shall have the possibility of presenting his case to a competent body, either himself or through a representative.

***

4. Nothing in this Convention shall prevent Members from giving persons who are illegally residing or working within the country the right to stay and to take up legal employment.

***

Article 12

Each Member shall, by methods appropriate to national conditions and practice--

***

(g) guarantee equality of treatment, with regard to working conditions, for all migrant workers who perform the same activity whatever might be the particular conditions of their employment.

Article 13

1. A Member may take all necessary measures which fall within its competence and collaborate with other Members to facilitate the reunification of the families of all migrant workers legally residing in its territory.

2. The members of the family of the migrant worker to which this Article applies are the spouse and dependent children, father and mother.

Inter-American Court of Human Rights

The general obligation to respect and guarantee human rights binds States, independent of any circumstance or consideration, including the alien status of persons.

The migrant quality of a person cannot constitute justification to deprive him of the enjoyment and exercise of his human rights, among them labor rights. A migrant, at the moment of taking on a work relationship, acquires rights by being a worker, which must be recognized and guaranteed, independent of his regular or irregular situation in the State of employment. These rights are the consequence of a labor relationship.

The State has the obligation to respect and guarantee human labor rights of all workers, independent of their condition as nationals or foreigners, and to not tolerate situations of discrimination that prejudice them, in labor relationships that are established between private persons (employer-employee). The State must not permit that private employers violate the rights of workers, or that a contractual relationship weakens minimum international standards.

Workers, by being entitled to labor rights, must be able to count on all adequate means to exercise them. Undocumented migrant workers have the same labor rights that correspond to the rest of workers in the State of employment, and the State must take all necessary measures for this to be recognized and complied with in practice.

States cannot subordinate or condition the observation of the principal of equality before the law and non discrimination in consequence of the objectives of its public policies, whatever these may be, including those of migrant character.

ILO Committee on Freedom of Association

No person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment The basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed.[352]

The remedies now available to undocumented workers dismissed for attempting to exercise their trade union in no way sanction the act of anti-union discrimination already committed, but only act as possible deterrents for future acts. Such an approach is likely to afford little protection to undocumented workers who can be indiscriminately dismissed for exercising freedom of association rights without any direct penalty aimed at dissuading such action.[353]

United States Commitments in North American Agreement on Labor Cooperation

The United States shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

The United States shall promote compliance with and effectively enforce its labor law through appropriate government action.

The objectives of this Agreement are to . . . promote, to the maximum extent possible, the labor principles set out in Annex I:

- protection of migrant workers: providing migrant workers in a Party's territory with the same legal protection as the Party's nationals in respect of working conditions.

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[352] See ILO, *Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (1994), para. 739, 748.

[353] See ILO Committee on Freedom of Association, Case No. 2227, *Report on Complaints against the Government of the United States presented by the AFL-CIO and the Confederation of Mexican Workers* (CTM) (November 2003).

Appendix E: Tyson Trial Transcript

Here is the exchange between a U.S. attorney and a Tyson manager in a 2003 trial over an alleged immigrant worker smuggling scheme:

> *After you got to Glen Allen, were there any major processing changes that occurred in the plant while you were there?*
>
> Yes. We went to the 50 degrees, which eliminated washdown time. You didn't have to do a mid-shift washdown.
>
> *When you say we went to 50 degrees, I think you're going to have to explain that a little more.*
>
> We lowered—what we did was we lowered the temperature of the plant in order to eliminate a mid-shift washdown because by lowering the plant temperature, what you do is slow microbial growth, therefore, it eliminates a need for washdown, and, therefore, more production can be achieved.
>
> *What had the temperature in the plant been before that change?*
>
> Sixty plus degrees. High 60s.
>
> *Did Tyson just turn the thermostat down?*
>
> No, sir. It was a major expansion. And they had to install the HVAC machines, like massive air conditioners that would tunnel this air throughout that packing department in what was termed as a sock. It was a huge sock of air that would be placed on top, above the workers that would cool that entire department to make it the desired temperature to meet USDA specifications to avoid a washdown.
>
> *So, when you started they were, were they doing a mid-shift washdown?*
>
> When I started there was mid-shift washdown because we hadn't lowered the temperature in the plant.
>
> *What did that do to the production?*

Increased production.

What did the washdown do to production?

The washdown decreased production because you stopped the lines from running in order to wash down and to clean the equipment.

Was any personal protective equipment issued to the workers in the plant as a result of the change of the temperature?

No, sir.

Did you recommend that?

Yes, sir.

What did you recommend?

I recommended additional freezer suits for some of those women, additional protective, personal protective equipment, maybe some different type of gloves because these people are dealing with cold meat to begin with and standing in water, then when you lower the temperature, it made it a more undesirable work environment.

Did that change in plant temperature and working conditions have an adverse affect on staffing at the Glen Allen plant?

Yes, sir.

How?

It sure did, because what it was doing, it was taking our senior workers, what I mean by senior workers who had been there for quite a number of years, and it was making – it's so hard on them, they were complaining of bursitis, arthritis, and increased musculoskeletal problems. And, also, we depended upon our current workers, naturally, to refer us incoming workers, and that stopped because nobody was – people weren't going home and saying Tyson is a good place to work, they were going home saying we're freezing.

What about worker's compensation claims?

We didn't have to worry about worker's compensation claims with any of the USA Staffing personnel.[354]

What about the union relations?

The union relations, naturally, members of USA Staffing since they didn't work for the facility could not file a grievance, therefore, the higher the number of USA Staffing temp members that came into the plant, naturally, we can weaken union participation.

In your experience, did illegal aliens file claims for unemployment compensation?

No, sir, they did not.

Did they show up for work promptly?

Yes, sir, they did.

What about the concept of overstaffing?

Could you, please—

Overstaffing. Overstaffing a plant. Was that affected by the illegal aliens?

You could, you could, technically, you could reduce your staffing by using illegal aliens because you wouldn't have to overstaff with people not showing up to work that simply would not come on Mondays and Fridays because the illegal aliens, it didn't matter which day of the week it was to them, they would show up to work.

And production differences?

Yes. They had stronger work ethic than the people that we could acquire at the wages that we were offering.

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[354] The temporary employment agency that sent workers to the plant when Tyson could not recruit workers into the colder work environment.

Nursing staff?

The nursing staff liked the use of illegal aliens because it just meant less work they'd have to do, less pre-employment physicals they'd have to perform.

Did you need as many nurses when you were using a large number of temps?

No, we did not.

What were the nurses used for?

They were used for more safety committees and things like that.

During the hiring process, what were nurses used for?

To do pre-employment assessments, physicals, to do physicals, drug tests, and that type of thing.

And did they have to do that for the people that USA Staffing was providing?

USA Staffing, no, sir.[355]

[355] Tyson Trial Transcript, p. 1063 ff. The trial involved charges that Tyson Foods and some of its executives were involved in a scheme to smuggle undocumented immigrants into Tyson plants. A jury acquitted the company and the company officials, agreeing with their defense that the scheme was the work of a few rogue managers and did not reflect company policy or responsibility.

Appendix F: Injury Interviews and Data

In late 2003 and early 2004, a team of safety and health specialists from the United Food and Commercial Workers, the union assisting Tar Heel workers' organizing efforts, interviewed sixty-three Smithfield workers injured at work. Slightly more than half of the workers were identified from OSHA report logs. Others were referred by union organizers based on house visits, and some were referred by interviewed workers themselves.

There is no inherent pro or anti-union bias in these interviews. OSHA logs are neutral in that regard. Union organizers systematically visit workers' homes based on name and address information they obtain without knowing the workers' sentiments about the union. Workers referred to injured coworkers without regard to union sympathies. Here are the results of those interviews:

Analysis of Injuries and Workers Compensation from Interviews

Rate of workers who received workers compensation insurance for their injury or illness:

24% of interviewed injured workers received workers compensation.

- 63 workers total in database
- 15 workers got workers compensation

Rate of workers reported on injury log versus not reported on OSHA injury log:

44% of interviewed injured workers did not have their work related physical illnesses or injuries reported to OSHA.

- 35 workers reported on OSHA log
- 28 workers not reported OSHA injury log

The rate of Latino immigrants who received workers compensation insurance for their injury or illness:

95% of interviewed Latino immigrant injured workers did not receive workers compensation.

- 19 Latino immigrant workers in database
- 1 Latino immigrant worker received workers compensation

The rate of English speaking American workers who received workers compensation insurance for their injury or illness:

68% of interviewed English speaking American workers did not receive workers compensation.

- 44 American English speaking workers in database
- 14 American workers received workers compensation

Rate of American English speaking workers to Latino immigrant Spanish speaking workers in terms of injury log reports and unreported:

47% of interviewed Latino immigrant injured workers were not reported on the OSHA log.

- 11 Latino immigrant workers reported on injury log out of 19 injured Latino immigrant workers

45% of interviewed English-speaking American workers were not reported on the OSHA log

- 24 English speaking American workers reported on injury log out of 44 in the database

Rate of termination of workers whom were injured:[356]

24% of interviewed injured workers were terminated sometime after their injuries.

- 15 injured workers were terminated out of 63 in database.
- 8 of the terminated workers were not reported on injury log.

Accidents:

38 injuries on database were sudden accidents on the job.

- 50% of the accidents were hand and arm injuries resulting in cuts or broken bones: 19
- 26% of interviewed injured workers from sudden accidents were terminated from Smithfield: 10
- 66% of interviewed injured workers from sudden accidents did not receive workers compensation: 26

[356] According to the researchers, termination dates in relation to date of injury were not always known. In some cases, workers were terminated shortly after reporting an injury; in other cases, the worker may not have been terminated for a year or more subsequent to the injury. Therefore, this data cannot be interpreted as causal.

Pain, Illnesses, or Infections:

30 cited injuries resulted from skin infections, muscle pain, or illnesses stemming from repetitive motion or exposure to unsanitary working conditions.

- 3 of these cited injuries received workers compensation.
- 10 of the injuries were infections and skin related illnesses
- 11 of the injuries were hand swelling, hand pain, or arthritis.

Appendix G: Nebraska's Meatpacking Workers Bill of Rights

Nebraska's government authorities have made certain efforts to improve conditions for meatpacking workers in the state. One innovative step was the *Nebraska Meatpacking Industry Workers Bill of Rights* issued in June 2000 by Governor Michael Johanns of a The governor responded favorably to advocacy by worker and community labor rights supporters for a more forceful state government stance on the crisis of workers' rights in the meatpacking industry.[357] "I literally sat down with a legal pad and wrote it out myself," the governor proclaimed, "and then I posted it in meatpacking plants all across the state. Do you know why? Because it's the fair thing to do."[358]

Nebraska's meatpacking workers bill of rights asserts:

1) the right to organize,
2) the right to a safe workplace,
3) the right to adequate facilities and the opportunity to utilize them,
4) the right to adequate equipment,
5) the right to complete information,
6) the right to understand information provided,
7) the right to existing state and federal benefits and rights,
8) the right to be free from discrimination,
9) the right to continuing training including supervisor training,
10) the right to compensation for work performed, and
11) the right to seek state help. [359]

The Nebraska rights declaration is a voluntary instrument and its reach, while important, has been modest. Named by the governor to coordinate the bill of rights' implementation, Jose Santos of the state labor department told Human Rights Watch, "it's a long process and we still have a long way to go." In his annual report for 2002, Santos said he visited meatpacking plants at a dozen locations around the state, and noted that "employees expressed concerns over the chain-line speed, and the safety hazards that come with that speed. When line speeds are increased to meet high production demands, workers are forced to overexert, and

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[357] See David Hendee, "Work Rights for Packers Formalized; Johanns Signs Voluntary Standards for Meat Plants," *Omaha World-Herald*, June 29, 2000, p. 13.

[358] See Joe Dejka, "OTOC grills Johanns and Dean: the candidates for governor are pressed about meatpacking workers' right to organize," *Omaha World-Herald*, October 21, 2002, p. 3b.

[359] The complete text of the declaration is contained in Appendix B.

are place under stressful conditions that increase the potential to cause serious injuries."[360] Why not put this line speed info in the safety section above re line speed?

The first recommendation of Santos' report was "Enforce labor laws more effectively and improve access to the justice system." Santos said most progress has come in terms of communication among meatpacking employers, workers and community advocates especially in the area of education. "Several employers are supporting ESL [English as a second language] programs for employees," he said.

"We can only do so much," Santos cautioned. "So many of the problems and issues are related to workers' immigration status, and that takes federal action because it's a federal responsibility."[361]

Nebraska has taken a portion of the bill of rights and elevated it to a statutory level. In 2003, the state legislature adopted the *Non-English-Speaking Workers Protection Act*.[362] The new law requires employers with significant numbers of immigrant workers not fluent in English to ensure that bilingual speakers are available to employees inside the workplace and to provide statements written in the employees' own language of terms and conditions of employment, including potential health and safety risks. The Act also makes permanent the post of coordinator of implementation of the bill of rights, with duties defined as "to inspect and review the practices and procedures of meatpacking operations in the State of Nebraska as they relate to the provisions of the Governor's Nebraska Meatpacking Industry Workers Bill of Rights."

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[360] See Jose A. Santos, Meatpacking Industry Worker Rights Coordinator, Worker's Bill of Rights *Report*, December 1, 2002, p. 3.

[361] Human Rights Watch telephone interview, December 1, 2003.

[362] The text of the Act is contained in Appendix H.

Appendix H: Nebraska Non-English Speaking Workers Protection Act

Effective date August 31, 2003.

48-2207 Act, how cited. Sections 48-2207 to 48-2214 shall be known and may be cited as the

48-2208. Terms, defined. For purposes of the **Non-English-Speaking Workers Protection Act**, unless the context otherwise requires:

(1) Actively recruit means any affirmative act, as defined by the department, done by or on behalf of an employer for the purpose of recruitment or hiring of non-English-speaking employees who reside more than five hundred miles from the place of employment;

(2) Commissioner means the Commissioner of Labor;

(3) Coordinator means the meatpacking industry worker rights coordinator appointed pursuant to section 48-2213;

(4) Department means the Department of Labor;

(5) Employ means to permit to work;

(6) Employee means any individual employed by any employer but does not include:

(a) Any individual employed in agriculture; or

(b) Any individual employed as a child care provider in or for a private home;

(7) Employer means any individual, partnership, limited liability company, association, corporation, business trust, legal representative, or organized group of persons employing one hundred or more employees at any one time, except for seasonal employment of not more than twenty weeks in any calendar year, or person acting directly or indirectly in the interest of an employer in relation to an employee but does not include the United States, the state, or any political subdivision thereof;

(8) Meatpacking operation means a business in which slaughtering, butchering, meat canning, meat packing, meat manufacturing, poultry canning, poultry packing, poultry manufacturing, pet food manufacturing, processing of meatpacking products, or rendering is carried on;

(9) Meatpacking products includes livestock products and poultry products as such terms are defined in section 54-1902; and

(10) Non-English-speaking employee means an employee who does not speak, read, or understand English to the degree necessary for comprehension of the terms, conditions, and daily responsibilities of employment.

48-2209. Recruitment of non-English-speaking persons; employer; duties. If an employer or a representative of an employer actively recruits any non-English-speaking persons for employment in this state and if more than ten percent of the employees of an employer are non-English-speaking employees and speak the same non-English language, the employer shall provide a bilingual employee who is conversant in the identified non-English language and available at the worksite for each shift during which a non-English-speaking employee is employed to (1) explain and respond to questions regarding the terms, conditions, and daily responsibilities of employment and (2) serve as a referral agent to community services for the non-English-speaking employees.

48-2210. Written statement required; when; contents; employer provide transportation; when. (1) An employer or a representative of an employer who actively recruits any non-English-speaking persons for employment in this state and whose work force is more than ten percent non-English-speaking employees who speak the same non-English language shall file with the commissioner a written statement signed by the employer and each such employee which provides relevant information regarding the position of employment, including:

(a) The minimum number of hours the employee can expect to work on a weekly basis;

(b) The hourly wages of the position of employment including the starting hourly wage;

(c) A description of the responsibilities and tasks of the position of employment;

(d) A description of the transportation and housing to be provided, if any, including any costs to be charged for housing or transportation, the length of time such housing is to be provided, and whether or not such housing is in compliance with all applicable state and local housing standards; and

(e) Any occupational physical demands and hazards of the position of employment which are known to the employer. The statement shall be written in English and in the identified language of the non-English-speaking employee, and the employer or the representative shall explain in detail the contents of the statement prior to obtaining the employee's signature. A copy of the statement shall be given to the employee. It is a violation of this subsection if an employer or representative knowingly and willfully provides false or misleading information on the statement or regarding the contents of the statement.

(2) An employer shall provide transportation for a recruited employee, at no cost to the employee, to the location from which the employee was recruited if the employee:

(a) Resigns from employment within four weeks after the initial date of employment; and

(b) Requests transportation within not more than three days after the employee's last day of employment with the employer which recruited the employee.

48-2211. Violations; penalty. Any employer who violates section 48-2209 or 48-2210 or the rules and regulations adopted and promulgated pursuant thereto is guilty of a Class IV misdemeanor.

48-2212. Civil action; injunctive relief; authorized. Any person aggrieved as a result of a violation of section 48-2209 or 48-2210 or the rules and regulations adopted and promulgated pursuant thereto may file suit in any district court of this state. If the court finds that the respondent has intentionally violated section 48-2209 or 48-2210 or the rules and regulations adopted and promulgated pursuant thereto, the court may award damages up to and including an amount equal to the original damages and provide injunctive relief.

48-2213. Meatpacking industry worker rights coordinator; established; powers and duties.

(1) The position of meatpacking industry worker rights coordinator is established within the department. The coordinator shall be appointed by the Governor.

(2) The duties of the coordinator shall be to inspect and review the practices and procedures of meatpacking operations in the State of Nebraska as they relate to the provisions of the Governor's Nebraska Meatpacking Industry Workers Bill of Rights, which rights are outlined as follows:

(a) The right to organize;

(b) The right to a safe workplace;

(c) The right to adequate facilities and the opportunity to use them;

(d) The right to complete information;

(e) The right to understand the information provided;

(f) The right to existing state and federal benefits and rights;

(g) The right to be free from discrimination;

(h) The right to continuing training, including training of supervisors;

(i) The right to compensation for work performed; and

(j) The right to seek state help.

(3) The coordinator and his or her designated representatives shall have access to all meatpacking operations in the State of Nebraska at any time meatpacking products are being processed and industry workers are on the job.

(4) Necessary office space, furniture, equipment, and supplies as well as necessary assistance for the coordinator shall be provided by the commissioner.

(5) Preference shall be given to applicants for the coordinator position who are fluent in the Spanish language.

(6) The coordinator shall, on or before December 1 of each year, submit a report to the members of the Legislature and the Governor regarding any recommended actions the coordinator deems necessary or appropriate to provide for the fair treatment of workers in the meatpacking industry.

48-2214. Rules and regulations; commissioner; powers. The commissioner shall adopt and promulgate rules and regulations necessary to carry out the **Non-English-Speaking Workers Protection Act**. The commissioner or a representative of the commissioner, including the coordinator, may:

(1) Inspect employment records of an employer relating to the total number of employees, the total number of non-English-speaking employees, and the services provided to non-English-speaking employees; and

(2) Interview an employer, any representative, any agent, or an employee of the employer during working hours or at other reasonable times.