

# WORKING P A P E R S

**The Campaign  
for the Unpaid  
Wages  
Prohibition Act:  
Latino Immigrants  
Change New York  
Wage Law**

*Jennifer Gordon*



CARNEGIE ENDOWMENT  
*for International Peace*

**International  
Migration  
Policy Program**

**GLOBAL POLICY  
PROGRAM**

**Number 4  
September 1999**

© 1999 by the Carnegie Endowment for International Peace

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means without permission in writing from the Carnegie Endowment.

Carnegie Endowment for International Peace  
1779 Massachusetts Avenue, N.W.  
Washington, D.C. 20036  
Tel: (202) 483-7600  
Fax: (202) 483-1840  
Email: [info@ceip.org](mailto:info@ceip.org)  
Web: [www.ceip.org](http://www.ceip.org)

## **Carnegie Endowment Working Papers**

Carnegie Endowment Working Papers present new research by Endowment associates and their collaborators from other institutions. The series includes new time-sensitive research and key excerpts from larger works in progress. Comments from readers are most welcome; please reply to the authors at the address above or by e-mail to [pubs@ceip.org](mailto:pubs@ceip.org).

\* \* \*

## **About the Author**

**Jennifer Gordon** is an Open Society Institute Individual Project Fellow, writing about the roles of law in supporting community organizing. She is the founder and former executive director of the Workplace Project in Hempstead, New York, and was recently named a MacArthur Prize Fellow.

# CONTENTS

<b>Foreword</b>	<b>iv</b>
<b>Introduction</b>	<b>1</b>
<b>1. Context: Immigrant Workers on Long Island and the Workplace Project</b>	<b>2</b>
<b>2. The Campaign for the Unpaid Wages Prohibition Act</b>	<b>3</b>
The Deterrence Theory Behind the Campaign	3
The Problem: Wage Law Enforcement in New York State	4
The Facts: The Campaign for the Unpaid Wages Prohibition Act	7
<b>3. Political Analysis: How Did the Campaign Win?</b>	<b>9</b>
Politics in Albany and the Role of Long Island	9
The Legislative Record of Targeted Republican Senators on Immigrant and Worker Issues	10
A Shift in Power and Perception: Theories About How the Unpaid Wages Prohibition Act Came to Win	11
<b>4. Internal Impact: The Role of Immigrant Workers in the Campaign</b>	<b>22</b>
The Decision to Run a Member-Led Campaign	23
Collecting Signatures: Immigrants Involving Other Immigrants	24
Nonvoting Immigrants Run Legislative Visits	26
Future Impact of Skills and Analysis Developed by Immigrant Participants	28
Impact of the Campaign on the Workplace Project and the Larger Immigrant Community	29
<b>5. External Impact: Effect of the Campaign and the Law on the Problem of Unpaid Wages in New York</b>	<b>30</b>
<b>6. Lessons About Promoting Immigrants' Political Participation Through Active Citizenship Education</b>	<b>32</b>
The Role of Foundations	36
<b>Conclusion</b>	<b>37</b>
<b>Notes</b>	<b>39</b>
<b>Acknowledgments</b>	<b>45</b>

## FOREWORD

During the 1990s, anti-immigrant rhetoric reemerged as a major theme in American public debate. The rise of this rhetoric was accompanied by new political initiatives at both the state and federal levels to reduce the rights and benefits available to immigrants. The combination of this rhetoric and these various initiatives threw into serious question the legal status of even lawfully-admitted aliens in the United States, their perceived place in American society, and their entitlement to particular menus of rights and benefits. Because aliens in the United States are ineligible to vote in federal and state elections, immigrants as a group offer an inviting target to politicians searching for quick ways to cut government spending and become convenient scapegoats for larger social problems.

Against this background, Jennifer Gordon tells a remarkable story of a successful grassroots campaign led by a group of immigrants to upgrade the enforcement of the minimum wage law against employers in New York state. The odds against success seemed almost insurmountable at the campaign's start, but the commitment, resourcefulness, and organizational agility of the campaign leaders proved equal to the task.

From her experiences with this campaign, Gordon draws important lessons about how to give marginalized groups an effective voice in the political process, how to mobilize support for an issue among different constituencies, and how to develop tactics appropriate for a particular set of circumstances. While this particular campaign for the enforcement of a minimum wage law can hardly serve as a panacea for the many problems that immigrants face, it remains instructive as a specific, concrete case study for grassroots activists.

The 1997 U.S. Immigration Commission's Final Report emphasized the importance of citizenship education to facilitate the integration of immigrants into American ways of life. Without seeking to disparage the role that formal classes in civics, language, and American history can play in such a process, Gordon argues that the practical knowledge learned from participating in the civic forum may provide the best preparation for promoting the active, constructive engagement of immigrants in their new land. She concludes by calling for a broader understanding of citizenship education that includes not only formal instruction about the American system, but also encourages direct involvement in the institutions and processes of this system.

She has written this study from the twin perspectives of observer and participant. Her work is uniquely informed not only by the expanse of her experience in grassroots organizations, but also by a sophisticated grasp of the scholarship that offers the greatest insight into this experience. The International Migration Policy Program is proud to publish such an exceptional monograph in the Carnegie Endowment Working Paper series.

**Douglas B. Klusmeyer**  
Coordinator, Comparative Citizenship Project  
International Migration Policy Program

## INTRODUCTION

It has been a devastating decade for immigrant workers. In the immigration arena, the 1990s have seen the passage of some of the most restrictive and punitive measures in the past fifty years. On the labor front, the proliferation of sweatshops and the underground economy have made subminimum wages, workweeks of eighty hours or more, and dangerous working conditions a common reality. The government has failed to respond adequately, hampered by lack of funding, weak laws, and a failure of political will. Traditional union organizing has been stymied by the barriers of language, culture, fear and immigration status, as well as the small size and fly-by-night nature of most immigrant-heavy shops.

In response to the severity of the exploitation and the absence of traditional institutions, however, the past ten years also have seen a resurgence of creative organizing efforts involving immigrant and other low-wage workers, born of desperation but also of a new sense of possibilities outside of the standard U.S. organizing and advocacy models. From immigrant workers centers to innovative union campaigns, supported by a fledgling interest in the foundation and academic worlds, new models for confronting the abuse of immigrant workers are growing around the country.

As this work is relatively new, its early successes raise questions about what works and what does not, which victories teach lessons that others can repeat and which depend more on luck or the idiosyncrasies of a particular situation. This paper explores one attempt to address some of the problems faced by immigrant workers through a successful legislative campaign designed and led by the workers themselves.

On September 17, 1997, Governor George Pataki of New York signed the Unpaid Wages Prohibition Act, giving New York state the strongest wage enforcement law in the country. The Act was won through a campaign conceived of and led by immigrant workers, members of the Workplace Project, a nonprofit workers center in Long Island, with the support of two other workers centers, the Latino Workers Center and the Chinese Staff and Workers Association, and of a broad coalition of business, labor, religious, and community groups.

The Act, and its passage, are unusual for several reasons. It is the first in the country to sharply raise penalties for unpaid wages on the theory that only severe deterrents will be effective in breaking the cycle of nonpayment of wages that characterizes the underground economy. The law dramatically increases the penalties against employers who do not pay their workers, from a 25 percent civil fine to a 200 percent civil fine, and from a misdemeanor with a maximum \$10,000 penalty to a felony with a maximum \$20,000 penalty. No state or federal law about wage payment has ever been this strong.

Second, this pro-labor law was passed against great odds in the context of New York's legislative system, in which substantial new legislation is rarely able to survive clashes between the Democrat-controlled Assembly and the Republican-controlled Senate and governorship.

Finally, the Unpaid Wages Prohibition Act was designed by immigrants, the vast majority of whom could not vote, in response to a problem that they perceived in their workplaces. These immigrant workers were the only affected people who visited legislators in support of the bill, and those legislative meetings—largely with conservative Republicans—were held in Spanish

and translated for the senators into English. It thus represents a new level of legislative advocacy, and a very active model of citizenship education, for noncitizen immigrants.

In this paper, I will describe the campaign's origins and strategy, further explore lessons that we learned that may be useful to other groups seeking to carry out similar efforts, and suggest ways that the campaign could be used as the basis for a model of active citizenship education.

Section 1 begins with a brief introduction to Long Island and the Workplace Project to give the reader a sense of the context in which we carried out our work. Section 2 outlines the campaign itself, including a survey of the problems at the Department of Labor. Section 3 describes the political system within which the law was passed, and attempts to answer the question of why it was able to garner strong support from legislators whose previous voting records had been largely anti-immigrant and anti-labor.

The following two sections of the paper explore the impact of the campaign and the resulting law: in Section 4, on Workplace Project members, the immigrant community at large, and the Workplace Project itself; and in Section 5 externally on the Department of Labor and the problem of unpaid wages in New York. Finally, Section 6 concludes with lessons for the future, both about the sort of education and support necessary to transform immigrants into active political participants in the United States, and about the role of nonvoting immigrants in creating political change.

### **1. CONTEXT: IMMIGRANT WORKERS ON LONG ISLAND AND THE WORKPLACE PROJECT**

Large numbers of Latino immigrants came to the United States in the 1980s, propelled by bloody civil wars in Central America and economic crisis throughout Latin America. Although in many ways this migration echoed others of decades past, in at least one sense it was different: instead of settling first in cities, many immigrants headed straight for the suburbs. Long Island, New York was a major destination, in particular for tens of thousands of families fleeing El Salvador. The path traced by earlier immigrants between El Salvador and Long Island played an important role in guiding resettlement patterns. But work was the real drawing card. In an economy where manufacturing jobs, the traditional first step on the ladder for newcomers, were increasingly scarce, suburban neighborhoods offered the alternative of work in the service sector. At last count, Long Island's Latino population was estimated at over 200,000.<sup>1</sup>

At first glance, suburban work seems an appealing alternative to the garment factories of New York City. But sweatshops followed immigrants to the suburbs. In the Workplace Project's experience, common problems on Long Island include restaurants where busboys and dishwashers often labor more than seventy hours a week for wages of less than \$3 an hour; small landscaping companies where workers mow up to fifty lawns a day and serious injuries are common; and private homes where isolated and vulnerable domestic workers receive as little as \$1.90 an hour for workweeks ranging up to eighty-five hours. Business is transacted in cash, employers close and open under new names, and workers are plentiful and cheap. The economy bears all the hallmarks of sweatshop labor except for its suburban setting.

This phenomenon is far from unique to Long Island. The same story of suburban migration and service sector exploitation is repeated in the outskirts of Los Angeles, Dallas, Chicago,

Washington, D.C., and elsewhere around the country. But government agencies have been slow to respond, hampered by low staffing levels and weak laws coupled with a lack of political will. And unions, despite the recent rededication of the AFL-CIO to the organizing of immigrant workers and resulting victories in immigrant-heavy industries,<sup>2</sup> are often stymied by cultural differences and the barrier of the workers' immigration status, or unwilling to undertake expensive organizing campaigns in the context of small, fly-by-night businesses that do not generate an adequate dues base even if the unionization drive wins.

In response to this vacuum, a number of nonprofit organizations, generally referred to as “workers centers” have developed over the past fifteen years in immigrant and U.S.-born communities around the country.<sup>3</sup> In general, such centers are independent membership organizations that tend to have roots in one immigrant community, although a few have begun to work across racial and ethnic lines.<sup>4</sup> They organize broadly among low-wage workers in the community to try to improve wages and working conditions, rather than in a particular industry or workplace. Although all focus on labor, many work on other social justice issues as well. Different workers centers use a variety of strategies to support their organizing work, including education, legal services, legislative advocacy, and the development of cooperative businesses.

The Workplace Project is a workers center in the large Latino community on Long Island.<sup>5</sup> It is made up of more than 420 immigrant workers who have graduated from its nine-week course on labor law, immigration and labor history, and organizing techniques. With the support of the organization's staff, members design and run the center's organizing campaigns and oversee the center itself, through a series of worker committees, membership meetings, and a board of directors elected entirely from among the membership.

Like other workers centers, the Workplace Project uses a variety of tactics to confront the problems of sweatshop working conditions in Long Island. Its programs include a Workers Legal Clinic, through which workers who come in with nonpayment and other labor-related problems are given organizing and legal support so long as they agree to take the course and become active members of the organization; a community education program that uses a variety of tools including comic books to reach workers in bus stations, street corners, and laundromats; and a cooperatives development program, which has launched a landscaping business owned and operated by Workplace Project members and is currently initiating a domestic workers co-op on a similar model. Its organizing campaign victories have included raising wages for day laborers, abolishing the employment agency practice of charging double the legally permissible fee to place domestic workers in jobs, and—the subject of this paper—the campaign for the Unpaid Wages Prohibition Act.

## **2. THE CAMPAIGN FOR THE UNPAID WAGES PROHIBITION ACT**

### **The Deterrence Theory Behind the Campaign**

At first glance, the solution to the problem of subminimum wages seems obvious. Minimum wage laws exist—why not simply enforce them? In practice, the situation is much more complex. First, drastic under-funding of federal and state government agencies means that there are not enough inspectors even to begin to cover the number of legitimate, registered business. This situation is unlikely to change, because workers who receive subminimum wages are not

perceived as an important political constituency, and thus there is little political will to press the issue. Second, many of the worst exploiters are part of the underground economy. Paying cash, unlicensed and unregistered, these businesses require more time and effort to locate than the established variety. Third, the search for such violators is further hampered by the reluctance of many undocumented immigrants to report subminimum wages to government authorities, a reluctance which is exacerbated by the federal Department of Labor's policy of cooperation with the Immigration and Naturalization Service (INS).<sup>6</sup> Fourth, penalties for non- or under-payment of wages are so low, particularly at the state level where many immigrants bring cases, that they represent no deterrent at all.<sup>7</sup>

Although the Workplace Project and other workers centers use a variety of strategies to ensure the payment of minimum wages, they constantly are hampered by the problem of scale. One small organization can create only so many pickets, press conferences, and court cases. The campaign for the Unpaid Wages Prohibition Act is an example of a strategy that attempts to confront the problem of non- or under-payment of wages more broadly, by focusing on increasing the deterrent factor by increasing fines.

This tactic is premised on the idea that there is such a thing as a penalty high enough to deter employers from paying illegal wages without government or nonprofit intervention. In theory, unscrupulous employers do an informal calculation discounting the profit to be made by paying a subminimum wage by both the likelihood of being caught and the amount of the fine and degree of criminal penalty if discovered. Low or nonexistent penalties mean that even if an employer is caught, he will only have to pay back the money that he should have paid in the first place, or a little more, months or years after the fact. This amounts to a long-term low-interest loan from the government, essentially an incentive to pay below-market rates.

If the fine and criminal penalty are high enough, on the other hand, reason suggests that the employer will begin to raise the wages he is paying before he is caught, even if he is unlikely to be detected, because the risk to his profit and reputation is much greater. At the very least, once caught, an employer would be much more likely to pay than fight, because fighting and losing could result in a financial and personal disaster.

### **The Problem: Wage Law Enforcement in New York State**

In the early to mid 1990s, New York State provided a textbook case of a situation where employers were encouraged to pay subminimum wages by both low penalties and a scattershot approach to enforcement.<sup>8</sup>

Under the administration of George Pataki, elected in 1994 as the first Republican governor of New York state in twenty years, the Labor Standards Division of the New York State Department of Labor (DOL) was moving from a pro-worker stance to a vision of itself as an agency that had business and workers as equally important "customers." The DOL had adopted a new mission statement: "The New York State Department of Labor will be a key partner in a statewide effort to develop and sustain a world-class workforce so that our customers, both workers and employers, can prosper in the global economy." In contrast, the mission statement under the previous governor, Democrat Mario Cuomo, had been threefold: "To serve and protect the working men, women, and children in the workforce. To assist the unemployed and



provide that assistance in a way that is efficient, effective, and compassionate. To strengthen the workforce of today and prepare the workforce of tomorrow.”<sup>9</sup>

In our experience, the new vision was reflected in an execution of the DOL’s wage enforcement responsibilities that bordered on negligence. The DOL on Long Island had one inspector for approximately every 7,000 private workplaces, thwarting any real attempt at curbing the problem of nonpayment of wages. Under then current New York state labor law, an employer who repeatedly or willfully failed to pay minimum wages was subject only to a 25 percent civil penalty. The crime of repeat nonpayment of wages was only a misdemeanor.

Staffing shortages and weak laws were compounded by the DOL’s lack of political will to fight unpaid wages. A 1994 study by the New York state comptroller Carl McCall showed that the Labor Standards Division had failed to effectively implement even the minimal existing penalties effectively. McCall concluded that the division imposed penalties in only 2 percent of settled cases over a three-year period, thus sacrificing as much as \$6.7 million in revenues, and that “the division does not have adequate procedures to identify and deal with repeat violators of the Labor Law.”<sup>10</sup> In our attempts to work with the DOL, we had seen delays of up to eighteen months in initiating investigation of cases it had accepted; frequent refusal to accept claims brought to local offices by undocumented or off-the-books workers;<sup>11</sup> Spanish translation available only once every other week for three hours; case investigations going back only two years although the law permitted six; and—in New York City—the practice of investigators settling for a payment of 50 percent of what the employer admitted to owing, with no penalty levied.

We had ample evidence of the effect of these problems on workers who had not been paid. Beginning in 1993, the Workplace Project kept records of three things: case outcomes, DOL treatment of immigrants seeking assistance at the Long Island office, and DOL handling of cases it accepted.<sup>12</sup> By the end of 1995, the results of this statistic-gathering effort were clear. Our computer database contained records of the over 900 Latino workers who had sought help from our legal clinic over the previous three years. It showed that only two of the 72 cases that we had filed with the DOL over three years, or just 3 percent, resulted in even partial payment to workers. By contrast, over the same period, our office, with only one person working half-time on these cases at any point, accepted 234 wage cases for representation and resolved 71 percent of them, winning over \$215,000 for 166 workers during that time.

In 1994, we began to build a file of statements about the treatment that immigrant workers received when attempting to file cases with the DOL. We sent in staff and volunteers with workers who wished to file claims, and when they came back to the office with a worker whose case had been rejected or mishandled, we helped them to write basic statements or sworn affidavits documenting the problem. Typical statements recounted problems such as the following.

- In June of 1994, a DOL investigator told us, “I don’t like to take claims for domestic workers and restaurant workers.”
- In July of 1994, a different investigator told us: “I don’t even take claims for housekeepers for overtime. . . it’s a waste of time.”

## THE CAMPAIGN FOR THE UNPAID WAGES PROHIBITION ACT

- In October of 1994, the DOL refused to take a domestic worker's case for the simple reason that she had no co-workers, a policy that would disqualify almost all domestic workers if it were universally applied.
- In August of 1994, we accompanied to the DOL office a construction worker who had not been paid overtime wages for four years. He regularly had been paid his first 40 hours' wages by check, from which taxes were deducted, and then was paid at the same rate but in cash for his overtime hours. Instead of accepting his case, the DOL investigator gave him a lecture about not paying taxes, added a comment about how "illegal aliens" rob the taxpayer of money (although this worker was not an illegal immigrant, and had paid taxes on almost all of his income), and told him that if he pursued the case, he would owe more in taxes than he received in back wages. This last statement was false: this worker had already paid taxes on all but his overtime wages; at most, he would owe the government less than half of what the DOL would have recovered. Nevertheless, the discouraged worker decided not to file.

Over three years, we had also compiled a long list of concerns about the way that the DOL handled the wage claims that it did accept. Examples of these cases follow.

- In June of 1994, we filed a case on behalf of a restaurant worker who was never paid for his work. Twenty months later, neither the worker nor our office had ever heard from the Department of Labor again. Although the worker moved, he was easy to reach: he responded within three days to a letter sent by our office to his old address.
- In June of 1993, we filed an overtime case on behalf of three workers in a factory employing approximately 200 people. For years, the employer had been forcing the workers to work a full second shift under a pseudonym, without paying overtime wages for the extra hours. After a twenty month wait, an investigator was assigned to the case, and in March of 1995 the DOL determined that the employer had indeed engaged in this deliberate and systematic evasion of the labor law over a number of years.

The DOL's response? First, it looked at the employer's records for only two years prior to the date the claim was filed, despite the fact that the workers in question reported that they had been working for at least five years under the same regime. Then, it investigated the claim only on behalf of the three workers who had filed, although the entire workforce had suffered the same abuse. Finally, it brought no criminal prosecution against this willful violator of the labor law, nor, to our knowledge, did it even fine him.

The end result: this employer, after a supposedly successful DOL enforcement action, received a settlement that required him to pay two years of back wages to three workers, and nothing more. The \$35,000 that he had to pay did not compare to the millions of dollars in profit that he had made over the years by cheating hundreds of workers out of their overtime pay. To add insult to injury, the money that the employer paid the DOL in April of 1995 was not sent to the workers until six months later, in October of that year. During those six months, the DOL refused to provide either the workers or our center with a letter stating that the case had been resolved, or indeed with any written information about the settlement, characterizing such a document as "unnecessary communication."

In several of these cases, we wrote out affidavits with the workers attesting to the problems that they had faced. These became particularly effective tools in this campaign. In truth, an affidavit is little more than a person's recounting of their story, with the paragraphs numbered and a notarized signature at the end. But by virtue of their legal appearance and the seal of the notary, affidavits take on more weight than an ordinary written statement. Reporters relied on them, they were admitted as testimony in public hearings, the Department of Labor took them seriously, and if we lost contact with the workers and therefore could not ask them to meet with the press or legislators—a frequent problem in work with low-wage immigrants—affidavits provided the evidence we needed.

### **The Facts: The Campaign for the Unpaid Wages Prohibition Act**

By late 1995, frustration with this situation was building within the Workplace Project's staff, board, and membership. Members were angry that their wage claims were not being taken seriously by the government; staff were tired of filing cases into what felt like a black hole.<sup>13</sup> The organization decided to undertake an organizing campaign to improve both wage enforcement laws and the DOL's treatment of immigrant workers.<sup>14</sup> Our members focused on two issues: (1) dramatically increasing penalties against repeat or willful violators of wage laws, on the theory that this would deter employers even without the intervention of the DOL and (2) addressing the major problems in DOL mismanagement of cases. Much more for the learning experience than because we felt it was possible to win, we decided to try to do this by changing New York state labor law.

We launched the campaign with testimony of Workplace Project staff and members at a public hearing called in February 1996 by the chair of the New York Assembly Committee on Labor, Catherine Nolan. Although a bill reflecting some of our concerns was introduced in the Assembly Committee on Labor, little happened during the 1996 legislative session.

Dissatisfied by the lack of progress, our membership was forced to decide whether they would drop the issue or commit to a real legislative campaign. In the summer of 1996, they voted to begin a serious effort to pass a bill in 1997. Together with members of the Latino Workers Center and the Chinese Staff and Workers Association, they developed a series of proposals based on their analysis of what needed to be changed at the Department of Labor. Geri Reilly, the Associate Counsel for Labor in the Assembly, and our summer intern Terry Maroney (then a student at NYU School of Law) put those demands into draft legislative form, creating the Unpaid Wages Prohibition Act of 1997.

The proposed Act included the following provisions:

- The civil penalty for repeat or willful nonpayment of wages would increase from 25 percent to 200 percent of the amount owed.<sup>15</sup>
- The criminal penalty for nonpayment would change from a misdemeanor to a felony
- DOL investigations would be *required* to go back the full six years permitted by law, instead of the two that the DOL currently reviewed.
- Settlements of less than 100 percent of the wages owed would not be permitted without the worker's consent.

## THE CAMPAIGN FOR THE UNPAID WAGES PROHIBITION ACT

- When an employer failed to keep adequate records of wage payment, the burden of proof would shift from the worker (to prove nonpayment) to the employer (to prove that he had paid).
- Workers would be informed of the process that their claim would follow when they filed and at regular intervals as the claim was investigated.
- Labor unions could file wage claims on behalf of workers.<sup>16</sup>
- Spanish and Chinese translation would be guaranteed.<sup>17</sup>
- An ombudsman's office on behalf of low wage workers would be created to oversee the division's work.

None of us thought that such a bill would be an easy win. As I describe in detail in Section 3, nothing becomes law in New York state without strong Republican support, as both the Senate and the governorship are controlled by conservative Republicans. If we were going to make a serious effort to pass our bill, we would have to seek out not only the votes but the sponsorship of legislators who had been in the lead of recent anti-labor, anti-immigrant efforts. And their first concern—as we quickly learned when we began to contact them—was to know what position business groups would take on our proposal.

With this in mind, a group of fifteen of our members worked with me over a period of weeks to refine our message, basing it on the relationships we saw between the legislation we had drafted and what we perceived to be the interests of Republican legislators and industry organizations. In the end, we came up with four points to stress about what the bill would do:

- *Prevent unfair competition* by strongly punishing employers who undercut legitimate businesses by paying less than minimum wage,
- *Keep people off of public benefits* by ensuring that they were paid the wages they earned and did not have to turn to welfare to support their families,
- *Increase revenue to the state* by raising penalties against noncompliant employers by 800 percent and by scaring employers into paying taxes,
- *Be self-funding* through the revenue generated by increased penalties.

We developed these points into a one-page document that we used throughout the campaign.

Over the first half of 1997, we built a list of endorsers for the bill that included unions, labor councils, community organizations, religious groups, and, most notably, two of Long Island's most powerful business associations. (For a description of how the business groups came to sign, see Section 3.) A complete list of supporters is included in the Acknowledgments section of this paper.

With letters from these allies, but otherwise unaccompanied, our immigrant members (sometimes joined by the Latino Workers Center) carried out over fifteen visits with senators or, more often, their staff. Some were in Albany and others took place in local offices. We coordinated these visits with media exposés of the abuses suffered by immigrant workers on Long Island and of the Department of Labor's ineffectual response. These efforts are discussed in greater detail later in this paper.

Initially very reluctant, ten Republican senators had signed on by the end of June as co-sponsors in the Senate—five from the Long Island delegation and five from other districts. The bill emerged from the committee process after its ombudsman and translation provisions were cut, revisions which our members agreed to once it became clear that they were necessary for the bill to be released to the Senate floor for a vote.

On June 30, the Unpaid Wages Prohibition Act went to the Senate floor. On July 1, both the Senate and the Assembly unanimously passed the bill. On September 17, after a ten-week battle, Governor Pataki signed the bill over the strong objections of the Farm Bureau, his ally and the powerful representative of agricultural interests in a state where agriculture is still the largest industry.<sup>18</sup>

### 3. POLITICAL ANALYSIS: HOW DID THE CAMPAIGN WIN?

In this section, I will explore the obstacles that we faced in the political context in which we were working, and discuss possible explanations for how we were eventually able to win support for the Unpaid Wages Prohibition Act.

#### Politics in Albany and the Role of Long Island

To try to pass legislation in New York state is to enter a world of seeming impossibility. The Assembly, with districts drawn by population and therefore heavy with New York City liberals, is staunchly Democratic. The Republicans of the vast upstate farm counties and Long Island control the Senate, where seats are assigned by square footage. The governor is from an upstate farm family himself.<sup>19</sup> In each house of the legislature, one person, who has absolute say about what reaches the floor, rules: in the Assembly, the Speaker; in the Senate, the Majority Leader. The power of the controlling political party in each house, and the level of animosity between the houses that has grown up over time, can seem impenetrable.<sup>20</sup> A *New York Times* editorial in 1997 urged voters to approve a constitutional convention because “in New York the chances for reform are so rare, the price of inaction is so great, and the status quo is so wretched.”<sup>21</sup>

Bills benefiting workers face a particularly tough road. Agriculture is still the top industry in New York state, and the Farm Bureau, a private industry organization representing farmers, exerts powerful influence over the Senate. Unions are not a strong force in the legislature.<sup>22</sup> In this context, ostensibly simple legislation can become tangled in debate and rancor for years. For example, a bill guaranteeing clean drinking water to farmworkers in the fields had to be reintroduced five times over as many years before finally passing in 1996.

Long Island’s delegation to the Senate plays a critical role in this political system—moderate to conservative, very powerful, tightly adherent to party discipline, it is made up of nine staunch Republicans. In fact, Long Island has never sent a Democratic senator to Albany.<sup>23</sup> With the support of the majority of the Long Island delegation, almost any legislation can pass in the Senate; without it, it can easily wither and die.<sup>24</sup>

Looking at this system with an eye toward winning passage of the Unpaid Wages Prohibition Act, one thing was clear: the Assembly would be easy. The active support of the Chairwoman of the Committee on Labor, Assemblywoman Catherine Nolan, and the thirty-three Democratic

co-sponsors that she gathered for the legislation, virtually guaranteed passage in that house.<sup>25</sup> But without strong Republican backing in the Senate, the bill would go nowhere.

This meant that the bill had to be introduced in the Senate by a Republican, preferably by the Chair of the Senate Labor Committee, Senator Nicholas Spano, and it had to have co-sponsorship that demonstrated serious Republican support. For a Long Island organization, the Long Island delegation was a natural target.<sup>26</sup> We set ourselves the goal of winning the sponsorship of Senator Spano plus any five Long Island senators, to make a majority of the delegation.

### **The Legislative Record of Targeted Republican Senators on Immigrant and Worker Issues**

Our campaign faced a problem. It was taking place in the midst of a tidal wave of anti-immigrant legislation around the country. Proposition 187 had recently passed in California, and at the federal level the immigrant-bashing triumvirate of the Anti-Terrorism Act, the Personal Responsibility Act, and the Illegal Immigration Reform and Responsibility Act were voted into law as we worked on our campaign in 1996. New York and Long Island were far from immune to these trends. Suffolk County was in the midst of a virulent “English Only” battle that was garnering national attention. Many of the senators whose support we needed had not only voted for, but sponsored, some of the most anti-immigrant and anti-worker bills to pass through the Senate in the mid-1990s.<sup>27</sup>

For example, three Long Island senators and six other Republicans attempted to bring Proposition 187 to New York through a series of bills reintroduced each year from 1995 through 1997. This proposed legislation, none of whose provisions were ever enacted, would have denied undocumented children the right to attend public schools, required that schools investigate and report “suspected illegal aliens,” prohibited public hospitals from treating undocumented patients, barred undocumented immigrants from all public benefits, and mandated cooperation between local police and the INS to enhance immigrant deportations.

In a remarkable twist, one of the Long Island senators sponsoring this anti-immigrant legislation—Senator Marcellino—would eventually become the principal sponsor of the Unpaid Wages Prohibition Act, and three other non-Long Island supporters of the anti-immigrant bills—Senators Maltese, Marchi, and Volker—later were among the Unpaid Wages Prohibition Act’s co-sponsors. Every one of the senators that later sponsored our legislation had previously voted in favor of each anti-immigrant provision that made it to the Senate floor.<sup>28</sup> A separate group of eight senators had led an annual English-only effort in the Senate. They included one Long Island member and two eventual sponsors of the Unpaid Wages Prohibition Act.

On labor issues, things were no better. In 1995 and again in 1997, Labor Committee Chair Senator Spano and three others had sponsored a bill to repeal the New York corporations law permitting workers owed back wages to collect them from the ten largest shareholders of the company if the company itself did not obey a court judgment. Three of these same senators later sponsored the Unpaid Wages Prohibition Act, including Senator Spano himself. All of the senators that later sponsored our bill voted for this anti-worker provision when it was brought to the Senate floor. An effort to make the state’s Workers Compensation law more favorable to

employers in 1996 was led by three eventual co-sponsors of our bill, among others. With Senator Spano in charge and four Long Island Senators on the Labor Committee, the Senate had—and to date still has—been unwilling to pass legislation bringing New York’s minimum wage up from \$4.25 an hour to the level of the federal minimum wage, \$5.15 an hour.

The Unpaid Wages Prohibition Act eventually gained the primary sponsorship of Long Island Senator Marcellino, the co-prime sponsorship of Labor Committee Chair Senator Spano, and the co-sponsorship of four other Long Island senators (Trunzo, Skelos, Levy, Hannon) and four non-Long Island Republicans (Volker, Velella, Marchi and Maltese). In the following section, I will try to unravel the puzzle of how these senators came to promote one of the most pro-worker, pro-immigrant laws to come out of the New York state legislature in years.

### **A Shift in Power and Perception: Theories About How the Unpaid Wages Prohibition Act Came to Win**

Conventionally, power in the legislative system is seen to come from two sources: either votes or money. And conventionally, immigrant workers are thought to wield neither. How, then, did this campaign move a Republican Senate and governor to support strong legislation written by and for immigrant workers, at the peak of local and national anti-immigrant sentiment in the Republican Party?

A few simple political factors suggest themselves. First, the bill required no additional expenditures—that is, it had no impact on the budget. In fact, through increased penalty revenue and reduced welfare rolls, it promised to bring additional money into the state’s coffers. Although this does not explain the support the bill received, it does highlight a barrier we avoided. Had we, for example, written in a provision funding additional wage inspectors, it is clear that the bill would have required a great deal more organizing on our part to win passage. Second, the bill came along at a time when the Senate, long accustomed to blocking social justice legislation in order to stymie the will of a Democratic governor, was recognizing the need to send some bills to Governor Pataki, a Republican, that would make him look sympathetic to working people. The Unpaid Wages Prohibition Act represented a relatively painless way to do that.<sup>29</sup>

But in some ways, this last explanation begs the question. Why was our bill painless to a Republican Senate and administration not known for its support of immigrant or worker issues?

There is no clear answer to this question, but there are several interesting theories.<sup>30</sup> One possibility is that Republicans did in fact perceive immigrant workers as controlling money and votes, if not now then in the future, and saw this legislation as a relatively painless way to secure Latino support in upcoming elections. This is the explanation favored by most of the immigrant participants in the campaign. Another is that the campaign attracted a mix of unexpected allies who represented powerful interests; their power made up for the political weakness of the immigrant community and shifted the focus away from the tough “immigrant question.” A third is that the message that we crafted and spread through the media made it very difficult for legislators and the DOL to oppose the bill without looking like they supported employers who did not pay their workers. A fourth is that immigrant participants in this campaign and their stories of hard work thwarted by unpaid wages convinced supporters through moral strength—

a power outside of the money/votes dichotomy. I suspect that each of these four factors played a role in the eventual passage of the legislation.

**Theory 1: Latino immigrants were perceived as a growing part of the Republican constituency, having potential economic and electoral power.**

*I think the senators must have thought “this way we’ll get Hispanic votes, the ones there are.” And also they imagined that if Hispanics united we could be a monster! Without the senators we could never have gotten in the door. So they must have seen something in it.*

—JOSE RAMIREZ, WORKPLACE PROJECT MEMBER<sup>31</sup>

*[Hispanics] are a major part of my constituency. . . . Ten or fifteen years ago you didn’t have the same volume of people, there’s a lot more of them here now. . . . Of course it changes politics. You pay attention to the concerns of whatever constituent group is there. . . . That’s the game of politics, whatever group is there you’re going to try to appeal to and try to bring them under your umbrella to increase your membership.*

—REPUBLICAN SENATOR CARL MARCELLINO, THE BILL’S PRIME SPONSOR<sup>32</sup>

The first theory, that Republican senators supported this legislation because they saw Latino immigrants as a group soon to have economic and voting power, is rational given the demographics of Long Island and the state. It becomes more complicated, however, given the demographics of our membership and the other beneficiaries of the legislation.

Nationally, the Republican Party is engaged in a battle to win the hearts of Latino voters. Latinos have recently been portrayed in media and policy discussions as potential Republican Party members by virtue of their social conservatism who are nonetheless increasingly turning to the Democrats out of anger at Republican support of anti-immigrant legislation. The Republican National Party responded to the resounding rejection they received from Latino voters after passing restrictive immigration legislation in 1996 by hiring a Hispanic outreach coordinator, creating a committee to court Hispanic voters, putting out a booklet on “common-sense tips on how to reach out to Hispanic voters,” and, most importantly, beginning to backpedal on their anti-immigrant rhetoric.<sup>33</sup>

On Long Island, the percentage of Latino residents has surged over the past decade and a half, increasing by 80 percent between 1980 and 1990, even according to census data that most advocates believe represents a drastic undercount. In New York state generally, the Latino population grew by 50 percent over the same period. While many of these residents are not yet voters, immigrants are becoming citizens at rates unheard of in previous years.<sup>34</sup> Although Latinos still do not control large amounts of money in the state, their importance as consumers and increasingly as a voting bloc is undeniable, even outside the traditional stronghold of New York City. And the local Republican Party has responded in kind.

Both Senators Marcellino and Skelos recognize that Hispanic immigrants are a quickly growing part of their own voter base and of the constituency of the Republican Party on Long Island. Senator Skelos sees the party making an effort to attract Latinos to its folds: “I think in terms of party leadership. . . [w]e see more Hispanics being moved into higher level positions in government.”<sup>35</sup> He links this to the party’s long time embrace of immigrants. “[W]hen the Italians and the Irish started moving out to the Island. . . [they were] readily accepted into the



party. The party has always opened up their arms to all new groups that have moved into Nassau County, and that's why we've been successful. Now we have an influx of Hispanics coming in—welcome to the party!”

Although others paint a less rosy picture, pointing out that the Long Island branch of the party has never supported the campaign of a Latino person for elected office and that very few Latinos hold positions of real power, though Latinos are starting to rise at the lower levels of the tightly controlled political system—a vice chairman of the party here, a village trustee here, a commissioner there.<sup>36</sup> Several of these officials were supportive of our campaign, and used their connections up the Republican ladder to encourage senators to become more active in backing the legislation as a sign of their interest in the Latino community.<sup>37</sup> The Nassau/Suffolk Hispanic Task Force, Long Island's principal Latino legislative advocacy group, was one of the bill's first endorsers. In this context, it makes sense that Long Island senators would have seen the bill as a way to support a Latino cause without much apparent backlash.

The one challenge to this theory comes in looking at the actual membership of the Workplace Project, the active participants in the campaign, and the intended beneficiaries of the legislation. Our members are almost entirely nonvoters: out of 420 members, approximately 2 percent are citizens, 68 percent are noncitizen legal immigrants, and 30 percent are undocumented immigrants. The members who participated in the campaign mirrored these numbers. Few if any of the workers who we saw as most in need of the legislation could vote. Nevertheless, immigration status did not become a contentious issue in the campaign. If it had, legislators might not have been willing to use this bill, and our members, as proxies for the voting Latino community that they wished to attract.

Some sign of how the campaign could have gone differently appeared the week after the bill passed unanimously in the Senate and Assembly. The *New York Post*, a paper that strongly supports the Pataki administration,<sup>38</sup> played the “illegal alien” card with a flourish, running an editorial entitled “An illegal-alien protection act?” The piece stated “. . .protecting illegals—who by definition are not supposed to be living and working in this country *at all*—can mean infringing the rights of legitimate workers.” It continued:

. . .the Legislature should, if anything, be making it easier to identify and deport illegals. That doesn't mean that employers who hire and exploit these aliens shouldn't be sanctioned; they should be.

But Albany's priority shouldn't be to improve workplace conditions for people who break this country's immigration laws. Making it easier for illegals to hold jobs in New York undermines the rule of law, and puts one more burden on the backs of less-skilled Americans. It also makes it harder for welfare reform. . . to succeed.

The lesson of this law, in short, seems to be that unanimous passage of anything by both houses in Albany is a sign that something hasn't been thought through.<sup>39</sup>

Had this perspective been part of the public debate earlier in the campaign, it might have been much more difficult for senators to see the positive side of supporting the bill, for fear of being seen as pro-illegal alien. But certainly none of the sponsoring senators were so naïve that the possibility of this interpretation of the law did not occur to them. Media coverage of both the problem and the legislation focused extensively on the abuse of undocumented workers.<sup>40</sup> Why, then, did “illegal alien protection” not become the issue that blocked the bill?

I believe that two things kept this from happening. First, the endorsement of two prominent Long Island business associations, together with more predictable alliances, made clear that this was a bill with broad support (see Theory 2, below). Second, our crafting of the legislation itself, and the public message that accompanied it, made it hard for senators to oppose the legislation without looking like they supported businesses that repeatedly failed to pay their workers (see Theory 3, below).

### **Theory 2: Unexpected and diverse allies brought power to the campaign and shifted attention away from the immigrant issue.**

Given that we were running a legislative campaign with almost no voters, we realized that we needed a wide range of allies to show support for the Act. Although the endorsement of labor, religious, and community groups was crucial for the success of the campaign, in the end our most important allies would be the ones no one expected we could get: business groups.

The first question that Long Island senators asked us in our early lobbying forays was: “what is the industry associations’ point of view on this?” It quickly became clear that we would have a difficult time finding the sponsors that we wanted unless we could show business backing for the proposal.

The process for gaining the support of the Long Island Association (LIA), Long Island’s most respected business group, was simple. We sent them a letter setting forth the unfair competition arguments and others that our members had developed (see Section 2). I met with Mitchell Pally, the LIA’s vice president for legislative and economic affairs, and we discussed the proposal briefly. He then presented it to their committees and board, won approval, and wrote a letter of support.

In a recent interview, Pally told me that the main factor behind the LIA’s support was the “equity issue.”<sup>41</sup> Eighty to eighty-five percent of the Association’s membership is made up of small businesspeople, largely in the retail and service industries. (Significantly, few of their members are in the landscaping and restaurant industries, which do a considerable amount of underground hiring of immigrant workers.) According to Pally, “a lot of small businesses on Long Island are impacted when other employers do not pay legal wages, so this is a matter of fairness that affects our members.” Pally also feels that the timing for the legislation was right: “The economy is good, so people feel better about making sure everyone gets a piece of the pie. It would have been more difficult for us to support this in hard times,” given the perception that the legislation put money into the pockets of immigrants.

The LIA’s support for the bill was the first time it had taken action to address the issue of unfair competition, according to Pally, and it has since used the victory as a way to reach out to potential small business members and combat the erroneous impression in the business community that the LIA focuses on issues of greater concern to big business. It was also the first time that the LIA had worked as an ally with a group of immigrants. “We like to think of ourselves as a civic as well as a business group. This was a good tone-setter for the association,” Pally said, that gave the LIA the chance to build bridges to a new part of the community.

The New York State Restaurant Association was slightly harder to convince. This is not surprising, given that restaurants are among the biggest violators of wage and hour laws. We were eventually able to win the endorsement of their Long Island chapter by approaching them as the representative of the “good” employers in the restaurant industry, with the argument that it was

precisely the good restaurant owners who were in greatest need of such legislation because they were being directly undercut by the subminimum wage employers in their industry. This put the association in a position where saying no would have been tantamount to admitting that their members were the “bad” employers who routinely violated the law. After a letter and several phone conversations, the Long Island chapter wrote a letter of support, and subsequently made several positive statements to the press. For example, the chapter’s executive director told the *New York Times*: “It’s hard not to support something that will bring more integrity to an industry. . . . Our members recognize that people who are cutting corners are creating unfair competition.”<sup>42</sup> The association’s statewide chapter took no position on the issue.<sup>43</sup>

To some extent, I am still surprised that these organizations supported us. One advantage was that we focused on associations within our region, as opposed to higher-profile statewide groups that would have been both more concerned about taking a controversial position and forced to respond to a wider range of businesses. The regional groups were all that we needed to get the support of local senators. Another advantage was that we asked very little of our business supporters. A letter of support, one or two conversations with reporters, and a few phone calls to legislators were all that we needed from them; this made it logistically easy for them to work with us. What we really needed was their endorsement—from there we could take the ball and run with it.

To emphasize the role that business support played in this campaign is not to downplay the importance of our community, religious, and labor endorsers. Without the broad-based support that they represented, the bill would not have had the numbers of presumed voters, the potential for economic benefit or harm to senators, or the moral weight that these organizations were able to generate. The endorsement of labor councils and international and local unions communicated that the bill was good for all workers, not just immigrants. The endorsement of groups such as ACORN and advocacy organizations like the Legal Aid Society and the ACLU implied broad-based support at the community level. And the signatures of Bishop Howard Hubbard, Catholic Charities, nine prominent New York rabbis, and the New York Labor-Religion Coalition implied the possibility of large numbers of people learning about the bill at their places of worship, and gave a moral seal of approval to the legislation.

I strongly believe, however, that it was the symbolic value of our alliance with less usual suspects that made this bill stand out from so many others, avoided the “illegal alien” mantra, secured Republican support, and eventually helped to make the difference between winning and losing the campaign.

**Theory 3: The message of the bill, spread through strong media coverage, was hard for the Republican senators and administration to oppose.**

*Nobody heavy came out against it. . . not really anybody. I think frankly once the bill was out there and people understood what it was supposed to do, people were hard pressed to come out opposed to it and not look like some kind of ogre. Even if they were inclined to lean against it, they just kind of walked away from that.*

—SENATOR MARCELLINO

In Section 1, I present the message that we designed about the bill as a boon to the state budget, both for its revenue-generating features and its ability to decrease the welfare rolls, and as a pro-business measure that would prevent unfair competition. We also emphasized that the bill

targeted only the worst exploiters, repeat and intentional violators of the wage laws. Our goal was to neutralize opposition that might otherwise have come from pro-business, anti-government-intervention quarters. I will discuss our use of the media to spread this message, and examine its effect on legislators and the DOL.

***The Media and the Message.*** Strong media support was crucial to our effort to make the bill unopposable. Through media coverage, we built a climate of outrage about the treatment to which immigrant workers were subjected, made our issue into a hot topic, put pressure on legislators, and gained supporters for our cause.

Our media message related to the campaign was threefold and specifically targeted at the Long Island delegation of the New York State Senate. First, given the invisibility of immigrants on the Island, we had to show that sweatshops were a common local phenomenon, though not in the traditional form. Unless the public knew about the scores of busboys and dishwashers earning less than \$2.50 an hour for eighty-hour weeks, the gardeners and landscape workers who often went without pay for weeks on end, and the domestic workers who labored from 6:00 a.m. to 11:00 p.m. for wages of less than two dollars an hour, they would have no reason to support this legislation. This was a real challenge: in 1996, although many on Long Island were aware of some immigrants in their midst, few were cognizant of the sweatshop-like working conditions that prevailed in many service industries.

Second, we wanted to make clear that part of the fault for these circumstances lay in weak state laws and inadequate New York State Department of Labor enforcement practices. Third, we wanted the press to communicate our “universal appeal” points: that the bill was supported by business organizations and that it would bring revenue to the state in a number of ways.

We were largely successful both in shaping the message about the problem and the legislation that appeared in the press and in timing press coverage to crucial points in the campaign. *Newsday's* first Sunday cover piece in January 1996 coincided with our launching of the campaign; their second in April 1997 put the issue on the map as a Long Island problem and gained us our first sponsors.<sup>44</sup> The *New York Times* featured the legislation the day before it was passed in the Senate and Assembly, and ran a lead editorial on Labor Day weekend that preceded the governor's signature by a week. The Schenectady *Daily Gazette*, an influential paper in Albany, published an editorial a week before the bill passed urging the legislature, “this one's too important to get lost in the shuffle.”<sup>45</sup> Long Island papers such as the *Farmingdale Observer* and local TV coverage by News 12 (Long Island's cable television station) were very important for putting pressure on legislators at home and for rewarding them for support when they gave it.

Some of these stories had effects on the campaign that went deeper than simply spreading the word. For example, when *Newsday* did a Sunday full-cover story on restaurant workers on Long Island being paid less than half the minimum wage (an article on which we worked with them for months), featuring the legislation as an important part of the solution to the problem, it put senators who would have liked to ignore the bill in an awkward position. For example, during the months leading up to the publication of that story, we had been in frequent contact with Senator Spano's office about our request that he sponsor the legislation. As Ken Crowe, *Newsday's* labor reporter, put the finishing touches on the story, the Senator's aide called to tell us that he had decided not to become a sponsor. Crowe called him and told him the substance of the story he would be publishing, informed him that the Unpaid Wages Prohibition Act would be featured

in the article, and asked if the Senator could confirm and explain his refusal to sponsor the legislation. Senator Spano's assistant called back within half an hour to state that the Senator would be co-sponsoring the bill.

A few factors contributed to our ability to get good media coverage. First, "press consciousness" is a part of the Workplace Project's outlook; in any situation, we look for an angle that can be developed into a hook for media coverage. Also, over time the organization had built strong relationships with the press. This meant that we had a number of reporters who already knew that we were accurate and would produce both people and numbers to corroborate the stories that we gave to them. One way that we had done this was to become known as an organization that could be counted on to produce immigrants to talk to reporters, even if the stories that they were interested in were only tangentially related to our work.

A related factor was our recognition that, in the hierarchy of most reporting, an idea is good, statistics are better, and best of all is a person who has suffered the problem and is willing to talk with the press. We never went to reporters with an article idea of our own unless we had workers who could corroborate it and unless we felt that their story was strong enough in all of its aspects to prove our point, paint a sympathetic picture, and stand up to reportorial scrutiny. Throughout the campaign, we constantly reviewed cases brought by workers to our legal clinic in order to identify situations that typified the problems with sweatshops and the DOL that we were trying to publicize, such as the situation discussed in footnote 44. We would ask those workers if they would be willing to talk to reporters, and prepare them so that they would feel comfortable with the press.<sup>46</sup> We also tried to step back and look at the cases that workers were bringing into our legal clinic through a broader lens. Could we see any trends? In this way, we were able to identify news stories by picking up on new phenomena, or an increase or decrease in old ones.

Finally, we were tirelessly persistent. The *New York Times* finally printed an editorial in favor of the bill after our fifth attempt over a four-month period to get them to take a position on the issue. We approached columnists and editorial writers over and over as new angles on the story arose, speaking multiple times with five or six journalists for every piece that actually appeared. If we had given up at the first or second "no," we would never have gotten the coverage we needed.<sup>47</sup>

***The Message and the Legislature.*** The message that we crafted and were successful in communicating played an important role in preventing the campaign from becoming a fight about illegal immigrants and jobs. In part, we gained legislative support from our members' decision to cast this bill as being positive for the state budget because it brought in additional funds through penalties and because it cut welfare rolls by insuring that workers were paid for their labor and thus did not need to rely on public benefits. More important still was the shaping of the language of the bill itself. We had written the bill so that the severe punishment it imposed, a 200 percent civil fine and a felony with a maximum \$20,000 criminal penalty, only applied to repeat or willful violators of wage payment laws. In addition, the bill applied to all employers and all workers, mentioning immigrants nowhere in its text.

In essence, this meant that any organization or individual who wanted to oppose the bill had to come out publicly in favor of companies that repeatedly failed to pay their workers. As Senator Marcellino stated, "There should be no way, shape or form that any group can be subjugated in

some kind of substandard, quote-unquote slave labor situation by some unscrupulous people who just want to take advantage of them. . . . So, anyone who stood up and tried to raise. . . objections would have to be a really bad person, and I don't think anybody wanted to do that.”

The uncomfortable position in which this put the opposition was evident in the nature of their statements in much of the press coverage of the legislation. For example, a *New York Times* news article that ran the day before the bill passed had a lead sentence that stated “. . . many are facing a growing and particularly painful form of exploitation: unscrupulous employers who fail to pay some or all of their relatively low wages,” and its sole pull quote was “Unscrupulous employers fail to give immigrant workers their full wages.” The best that the Farm Bureau, our staunchest opponents, could do was to state, “No matter what the penalties are, you'll have unscrupulous individuals out there who may want to take advantage of workers.” Their particular reasons for opposing the bill were both weak and vague: “If this becomes law, it will have a very punitive impact and send a negative tone through the employer community about what the state of New York thinks about employers.”<sup>48</sup> In another *Times* article after the bill was signed, a Farm Bureau staff-person was quoted as saying, “Philosophically, the Farm Bureau agrees with the premise of the legislation that all workers deserve to be paid what is due to them. . . [but] [w]e believe the existing Department of Labor policies and practices will adequately address the problem.”<sup>49</sup>

Despite their objections, the Farm Bureau never circulated a memo in opposition to the bill, standard practice in Albany for groups that come out against legislation. Significantly, with the exception of the *New York Post* editorial, the above quotes were the only two negative comments about the bill that we are aware of in the over twenty newspaper articles and television or radio stories covering the campaign and the legislation. Other than the *Post*, not one opponent publicly brought up the immigration question.

Lack of public opposition thus characterized the bill's passage through the legislature. No senators led crusades against the bill, and no memos in opposition were filed during the course of the legislative session, although after the bill passed there was apparently vigorous behind-the-scenes lobbying by the Farm Bureau and other business interests to keep Governor Pataki from signing the bill into law.<sup>50</sup> In the end, upstate Republican senators voted for the bill—and Governor Pataki signed it—over the Farm Bureau's continued protests.

***The Message and the DOL.*** The fact that the bill and its message were crafted so that only a “really bad person” could oppose it also put the New York DOL in a difficult position. Early conversations with us made clear that the agency was not in favor of new legislation.<sup>51</sup> But to oppose the bill publicly would have made it appear to be against a measure designed to improve collection of unpaid wages, an important part of its responsibility. Instead, the DOL first fought behind the scenes, and then acquiesced in the legislation's passage.

Despite its poor collection record, the DOL's Division of Labor Standards was rarely in the news and had not received any major negative publicity in at least a decade. Thus, the criticism that we leveled at the division at the public hearing and in the press apparently came as a rude surprise. Our complaints were hard to refute because of the database we began in 1993 and the statements we had collected starting in 1994. These made it possible for us to produce both

statistics and affidavits related to individual cases to illustrate the problems with the DOL that we were alleging and to complement the stories of the workers who came forward.

Unable to deny our litany of problems with their work, the DOL's initial strategy was to claim that the difficulties we had encountered were merely small quirks due to staffing problems in the Hempstead office or outdated department policies, and then to bring up the "illegal alien" issue as a veiled threat that things could get worse instead of better if we pursued reform efforts.<sup>52</sup>

For example, at one meeting soon after the initial hearing, the deputy commissioner of the DOL stated that there were "those in the Department" considering the "extreme position" of taking cases from undocumented workers, resolving them, and then turning the workers over to the INS for deportation.<sup>53</sup> In a letter to a legislator later that month, Commissioner Sweeney described the problems we had brought up as instances of "questionable procedures endorsed by the former administration which are currently being targeted for change by the Department," and stated that he felt it was "incumbent on the Department" to report evidence that a worker had no valid social security number, or that she or he had not paid taxes, "to any appropriate agencies of jurisdiction,"<sup>54</sup> a reminder that it was not beyond them to turn workers in to the INS.

After we began working to pass the Unpaid Wages Prohibition Act, the DOL was no more positive. Commissioner Sweeney wrote to me, "Concerning your legislation, although I agree we must make every effort to provide for effective enforcement of the payment of wages provision of the Labor Law, I am not certain that this bill is the vehicle to achieve that end. . . . I believe a better approach would be to work within the current structure to address the needs of unpaid workers."<sup>55</sup>

He objected in particular to the provision in the bill, later cut, that would have created an ombudsman's office at the division for low-wage workers. Although DOL representatives initially supported the idea of an ombudsman,<sup>56</sup> they later opposed it on budgetary grounds and because it would add an additional layer of bureaucracy to the department.<sup>57</sup> We took advantage of the specificity of that objection to pressure Commissioner Sweeney to support the other provisions of the bill. In my reply, I stated:

. . . the ombudsman provision is, for us, less important than the provisions dealing with punishment of repeat violators. I know that the Department of Labor shares our concern that repeat violators be effectively deterred. Likewise, I know that you must work with the greatest efficiency possible, in order to conserve your agency's resources. Therefore, it seems to me that you might find the idea of a fine high enough to act as an effective deterrent by the mere fact of its existence, coupled with a felony charge rather than a misdemeanor, an attractive proposition. Such a regime, proposed by the legislation, does not affect the leniency that can be offered to the first-time violator. Instead, it gives the Labor Department a tool that would simultaneously allow it to wield more power—and gain greater revenues—in enforcement against repeat offenders, and would decrease the number of employers willing to take the risk of breaking the law.<sup>58</sup>

At the same time that the DOL was corresponding with the Workplace Project, they were making their displeasure known to key senators. Senator Marcellino recalls that the Labor Department felt the bill "was an insult to them, [implying] that they weren't doing their job." He attributes that response to the "natural bureaucratic defensiveness" of the DOL staff in the

trenches faced with “some wise guy senator. . . riding on his white horse. . . coming in to change the law at the last minute, be a hero.”

As the legislative session neared its conclusion and the Act was stuck in committee, it became clear to us that the reason it had not left the Labor Committee was that the senators were waiting for the Department of Labor’s assent. This was confirmed when Bill Busler, the DOL’s legislative counsel, called me in mid-June to tell me what they were and were not willing to accept in the bill. If we agreed, they would support it. If we continued with the bill as it was, they would not support it, and—we had been told by Senator Spano’s office—the bill would never reach the floor.

Busler asked us to remove three things: the translation guarantee, the office of the ombudsman, and the division of the 200 percent penalty between the worker, the state, and the DOL. The DOL justified the first two as financial concerns in the face of “uncertain funding streams,”<sup>59</sup> although it had been unwilling to request increased funding from the legislature in the past. Perhaps most peculiarly given their stated financial concerns, Busler insisted with regard to the third point that the DOL did not want the additional revenues that our bill could provide.<sup>60</sup>

All of these statements were made in private correspondence or conversations. In public, the Department of Labor and the Pataki administration said nothing. To have taken a stand against legislation that reinforced their supposed mission would have put them in a too compromised position.

At the end of the day, it seems that the DOL, legislators, and interest groups perceived the public cost of standing up against the bill as much higher than the cost of living with it, whatever their initial negative reactions might have been, given that opposition would have made them appear to be defending repeat willful violators of the most basic provisions of the labor law.

### **Theory 4: “Which kind of immigrant are you?” The role of empathy and the power of moral suasion moved senators toward support for the bill.**

*The thing that made it possible to keep going, even when it never seemed like we would win, was knowing how real the problem was, living it daily, either ourselves or through the people that came into the Workplace Project. It’s not just that it kept us going: hearing about it moved the senators, the real situations that we talked about, they had to look at the problem face-to-face.*

—LUZ TORRES, WORKPLACE PROJECT MEMBER<sup>61</sup>

Finally, it is worth considering that some part of what moved the senators had nothing to do with money or votes but instead with empathy for the workers before them, a sense of identification with the immigrant stories that they presented, and thus a moral discomfort with the suffering they described.

During the lobbying visits, immigrant workers spoke directly to the senators or their staff about the abuse that they and their families faced. These were not sob stories or tales from a token “client” brought along to speak on an advocacy visit. Instead, immigrants ran the entire meeting, mixing their personal experiences with statistics from the Workplace Project database, appealing to the senators’ own interests, answering their questions and responding to their concerns. The fact that the bill’s provisions were developed by immigrant workers to remedy the



problems that they faced, rather than being designed by advocates on behalf of the workers, gave the workers a passion for the bill that would have been impossible to achieve otherwise. For these reasons, our meetings had an immediacy and a strength that is all too often lacking in traditional lobbying visits on behalf of poor people. As Senator Skelos said, “I think they did a great job. In government, we’re used to seeing professional lobbyists constantly, whether it’s for a small group, a large group, whatever. But when you see a real human face on it, I believe it has a real emotional impact on the process, and certainly they had that emotional impact.”<sup>62</sup>

The opportunity to speak directly with an organized and prepared group of immigrants may have moved senators from possible sympathy—a common but ineffectual reaction to sad stories—to empathy, the ability to see the victims of the abuse as in some way the same as themselves. Almost all of the Long Island and other sponsoring senators were second or third generation immigrants.<sup>63</sup> They had justified their support of Proposition 187-like legislation with descriptions of illegal aliens who had come to this country to take from the system,<sup>64</sup> an image safely distant from stories about their own family’s immigration experience, which inevitably featured hard work and sacrifice. But it was hard for the senators to separate *these* immigrants, sitting before them with dignity and talking about their struggle to be paid for their labor, from their own family’s experiences of building a life in the United States.<sup>65</sup>

Senator Marcellino is the grandson of Italian immigrants, and speaks with pride about his grandfather’s work as a laborer and what his family did to make his success possible. “They came the hard way up, that’s all. They got their children through school, and their children, my mother and father, worked very hard to get my brother and myself a college education.” He is proud of their mastery of English and their assimilation into American society. He emphasizes that life as an immigrant was tough: “Ellis Island—you know, we treat it like it’s a shrine right now, but it was an extremely horrible place for the people who came through.” Senator Spano is also the grandson of Italian immigrants who made their living in the United States delivering ice and coal.<sup>66</sup> Senator Skelos remembers the labor and suffering of his Greek grandfather: “I mean I came from a background of immigrants, and most of us did in this country, and I saw what my grandfather did. My grandfather was a waiter who was involved in unionizing the restaurant workers, way back. You know, I’m told he was even beat up once because of his labor activities. So, you know, that experience is all there.”

But both Marcellino and Skelos were careful to make the distinction between “good” and “bad” immigrants. Marcellino emphasized that immigrants should be allowed to “[c]ome to the country, but come legally. . . become part of the melting pot. . . . People who are illegal are not going to contribute to the society as such. They have to be contributing members, they have to be taxpayers. . . I’d like to see everybody learn English.” Skelos, speaking of his grandfather’s generation, says “. . .they wanted to work, they wanted to be treated with respect, but they also didn’t tolerate people who would abuse the system or take advantage of the system, or want to have government handouts and not work, and had no intention of working.”

These senators seem to have divided immigrants into two categories. One group had what I would label the “characteristics of our forebears”: hard-working, suffered many knocks, part of the melting pot, quickly learned English, legal. The other had what I call “characteristics of immigrant ‘takers’”: wanting a handout, wanting it easy, part of an ethnic ghetto, never learned English, illegal. What is intriguing about the senators’ support for the Unpaid Wages Prohibition

Act is that the first two elements on the list trumped all of the others. Workplace Project members may have been undocumented and so uncomfortable with English that the meeting was carried out in Spanish—two of the most reviled characteristics of “immigrant ‘takers’”—but they had come to talk about work and hard knocks. And when they, as immigrants, spoke of what they had suffered at the hands of unscrupulous employers while trying to make a better life for their families, they changed from “taker” to “forebear.”

Once the senators had identified the immigrant beneficiaries of the legislation as “forebears,” they were very concerned about fairness, even as they acknowledged that they were talking about undocumented immigrants. Marcellino said that he felt strongly that immigrants should “. . . come legally. That being said, if you’re here, you shouldn’t be mistreated or abused. We should be treating everybody fairly.” Skelos, in response to a question about whether he saw any inconsistency between his support for legislation that would have denied public schooling and basic healthcare to undocumented immigrants, and this legislation once it was cast as an “illegal worker protection act,” said “No, because what you have here is people that are trying to be productive and earn a living, and you want to protect people that are looking to be productive and earn a living.” To appreciate how striking a transformation this is for a proponent of anti-immigrant legislation, restate Skelos’ sentence without changing its meaning: “you want to protect illegal aliens who are looking to be productive and earn a living.”

In addition to the impact of the lobbying visits, media coverage was a very important part of our strategy to relay the moral message. The effect of the *Newsday* cover story about the restaurant worker on Senator Spano’s decision to support the legislation is an example of moral suasion by media pressure. This story cannot be directly explained in terms of money and votes. Although public embarrassment could surely cost a public official either money or votes, the risk of significant embarrassment to Senator Spano from not sponsoring an obscure and unlikely-to-pass bill seems minimal. Instead, I would argue that there are some situations that are so unjust as to simply stick in the craw, and on which a public official feels she or he must take a position as a moral matter. This is particularly true when the legislator comes to identify with some element of the story being told, so that the problem moves from being “those people’s problem” to “a continuation of my family’s problems.” In this case, the considerable press coverage that we generated gave the accurate impression of widespread<sup>67</sup> and unconscionable abuses, which morally required at least symbolic action.

The interrelationship between these four theories provides a strong explanation of why the Unpaid Wages Prohibition Act received the support it did despite the obstacles it faced.

#### **4. INTERNAL IMPACT: THE ROLE OF IMMIGRANT WORKERS IN THE CAMPAIGN**

In addition to the obvious victory of passing the bill, the campaign for the Unpaid Wages Prohibition Act had a strong effect on the immigrant workers who led and participated in the campaign. In this section, I examine the decision to have immigrant workers take leadership roles in the effort, and the impact of the effort on participants and on the Workplace Project as an organization.

## The Decision to Run a Member-Led Campaign

We had initiated the campaign for the Unpaid Wages Prohibition Act in the belief that it would be an opportunity for our members to learn about power, politics, and the legislative process, whatever the outcome. Because the Workplace Project is a member-led institution with organizing as its primary goal, we wanted to run the campaign in a way that maximized our members' leadership and participation. The fact that we did not begin to think that we might win until well over a year into the campaign—and had other goals for the campaign unrelated to winning—freed us to take things at a pace that made full participation possible.

The decision to put immigrant workers in the lead was a practical as well as a philosophical one. We had very limited resources to dedicate to this campaign. In addition, our ability to spend money was limited by the restrictions on lobbying by nonprofit organizations.<sup>68</sup> The campaign had to be carried out in a way that leveraged what we had, without spending too much or interfering with the other work of the organization.<sup>69</sup> Relying heavily on members and volunteers was one way that we did this.<sup>70</sup>

For a variety of reasons, Workplace Project members became the campaign's engine. They targeted the problem of nonpayment of wages because they and their families had suffered from it. With the support of the training and membership discussion sessions provided by the Workplace Project, they designed a bill that reflected their analysis both of what needed to change and what was possible to achieve through new legislation, and crafted a message to support it. After Workplace Project trainings, they collected signatures from immigrants and others in support of the bill, and they ran and participated in the visits where they asked legislators to sign on as co-sponsors. And as strategic decisions needed to be made, the Workplace Project membership discussed them and came up with conclusions in monthly meetings.<sup>71</sup>

We did not form a coalition in support of this campaign, largely because we had little experience and did not think to do so. As it happened, this may have had a positive effect on the level of immigrant worker leadership. In a coalition, the bill might have been diluted by the variety of interests represented, instead of coming directly from immigrant workers. Our members might not have had the chance to deliberate and make their own decisions about bill revisions and strategy; instead, these choices might have been made at the coalition level. Furthermore, if we had launched the bill from within a labor/community/religious coalition, we might have been unable to gain business support; if business had been included at the outset, the bill might never have been written. Finally, it is quite possible that a coalition would have initially rejected this campaign as too unlikely to win or ended it prematurely, since its members would likely have lacked either the determination to learn about the political system or the personal knowledge of the exploitation that drove our immigrant members to keep fighting.

Interviews that I conducted with five Workplace Project members one year after the campaign ended highlighted two parts of the campaign experience in particular that provoked them to think about the political system and their role within it: collecting signatures in support of the campaign and visiting legislators to ask for their sponsorship.

## Collecting Signatures: Immigrants Involving Other Immigrants

The first thing that our membership decided to do to support the campaign was to collect signatures on letters directed toward the Majority Leader of the Senate, Joseph Bruno; the chair of the Senate Labor Committee, Nick Spano; and the Speaker of the Assembly, Sheldon Silver, representing both individual and institutional support. Using packets of materials that we prepared, about thirty of our members worked on this throughout the summer of 1997. Our first instinct had been that this was a good and easy way for people to promote the campaign. Reality provided a quick check.

As we should have anticipated, members encountered reluctance and even hostility when they asked fellow immigrants to put their name and address on a letter to be sent to a government official. In the words of Workplace Project member Jose Ramirez:

When I asked people I knew to sign, some wouldn't even hear of it. Some, out of fear, said "will it hurt me?" And I would explain, and even then they wouldn't sign. [They thought] how can I give my name? Immigration might show up, or the police, or later someone might call or confront me about my support. Others wouldn't sign because they never knew what it was about, they wouldn't let me explain. Others signed—but you could tell they were afraid. Others were excited and signed right away.

Another member was thrown out of her cousin's home. "You must be crazy!," the cousin said. "The government is doing everything it can to throw us out and you want me to give them my name and address? Why not a map to our front door!"

This situation provided our members with food for thought. First, it led them to bemoan the impossibility of achieving a better life for the Latino community, given its members' reluctance to join together to participate politically. Jose Ramirez noted that "in the United States there are so many Hispanics and no solidarity. If a Hispanic gets to be a boss, he treats other Hispanics like dogs. And I ask myself, how will we ever get ahead?" Others pointed to the political conditions in immigrant countries of origin as a reason for their reluctance to participate politically.

But the experience also pointed out to our members the transformation that they had already gone through as a result of their participation in the campaign and the Workplace Project as a whole. Several of the members that I interviewed after the campaign joined Rony Martinez in noting that "people are really timid—even if they have papers or [legal] residency, they are afraid of politics because of what happened in our country. . . . [But] the Workplace Project had given us the chance to overcome this attitude."<sup>72</sup>

Despite the obstacles they encountered, our members collected over 400 letters from other immigrants during this time. Each one of those contacts, difficult though it was, served a dual purpose in addition to adding another letter to the pile: it gave our members practice in outreach and organizing skills, and it spread the word in the community about the work of our organization.

Some members asked their employers to sign, a strategy that produced few letters but some interesting reflections. Luz Torres, a domestic worker and active Workplace Project member, gave her analysis of why she was only able to get letters of support from immigrants (the poor, who

stood to gain from the legislation) and her wealthiest employers (the very rich, who had little to lose if the bill passed), but not from middle-class people.

The middle class in this country is like a sandwich. There are so many of them, right? . . . I have started to think that middle class people are brainwashed. Or they don't want to know. They think this country is perfect, clean, that politics or the system here is full of integrity. And it works for the political system, to keep them that way. I see it when I try to talk to them. They don't believe the terrible things that happen here. You have to prove it to them, but they refuse to believe it could happen in the United States. That's why I only asked poor people I know, or very rich people I work for to sign the letters in support of the campaign. They signed, but middle-class people I work for wouldn't. One lady whose house I clean told me "you Hispanics are using the Workplace Project to take advantage of the American people."

Members found different barriers as they tried to get institutional support. Although many of them belonged to local institutions—churches, labor unions, civic associations from a particular country, and the like—few held positions of power or were connected to those within them. For example, a request from a member to her shop steward that the union support our campaign repeatedly got lost before it made its way up through the business agent to anyone with decision-making authority in the local or international union, if it was initially taken seriously at all. Likewise, a Catholic member's presentation to the nun in charge of parish outreach for the Latino community had to be passed to the priest who presided over Spanish-language mass, who then had to discuss the request with the priest in charge of the parish, who then had to take it up the Catholic hierarchy on Long Island. The topic was always dropped somewhere along the chain. Only a few members, those who were active in Latino Protestant churches, small but intense congregations run by charismatic pastors, were able to approach a religious leader directly to ask for support; only one gave a letter in response. In the end, perhaps not surprisingly, it turned out that the Workplace Project as an institution was much more successful in recruiting institutional support than our individual members.

Apart from the lessons that we and our members learned through this letter collection process, was this grassroots strategy concretely helpful to the campaign? My first instinct would have been to say no. After all, what would a legislator in Albany care about a few hundred letters from immigrants? First, however, the legislators could not discern someone's immigration status by looking at the signatures. Second, the letters came from Long Island, an area with tremendous power in the Senate and with considerably less political mobilization than New York City, so they received greater weight than a corresponding number of letters would have from a different region. Third, given the demographics outlined in Section 3 above, the fact that the signers almost all had Latino surnames may have been an appealing indication that this was an issue that moved a community the legislators wanted to recruit.

And finally, my interview with Senator Marcellino reminded me that generalized apathy can have benefits for those who mobilize. The senator and his aide both agreed that it was unusual for their office to get over a few dozen calls or a few hundred letters about any issue, especially what they called "self-generated" contacts—not in response to a survey sent out by the senator's office, but because the writer or caller was angered or excited about the issue when she heard about it through the media or a community organization. They had been particularly impressed that media coverage of the Unpaid Wages Prohibition Act brought in close to fifty calls from

largely Spanish-speaking people, who wanted to know where to go to take advantage of the new law. Our small number of letters may have had a larger impact than one would expect, given that few people take the time to contact state legislators about anything.

### **Nonvoting Immigrants Run Legislative Visits**

The other principle challenge for our members during this campaign was how to communicate with the legislators that they needed as sponsors. Almost none of our members can speak English fluently; almost none can vote. Their initial assumption about this situation was summed up by Rony Martinez: “When we started, I thought it would be very hard to change anything in the system. . . . It’s worse because we’re immigrants, even worse because some of us don’t have any papers at all. If you’re not a citizen, how can you make demands? If I can’t vote, I’m no one. I’m invisible. How can I protest?” Juan Calderon echoed these thoughts about how members felt at the beginning of the campaign: “Some of us are afraid even to show our faces. We have no legal status. . . . I don’t speak English, I have so many limitations.”<sup>73</sup>

Nevertheless, it made no sense for our members to get so far into the campaign and then to hand over one of the most interesting parts to English-speaking, voting outsiders. We decided to go ahead with having our members carry out the legislative visits on the theory that at the very least we would learn from the experience of fielding the first all-immigrant lobbying teams in these senators’ careers.<sup>74</sup>

With the help of Terry Maroney, our law student volunteer, we developed roleplay trainings for our members on how to carry out an effective lobbying visit. The workers divided up into teams, each one with a leader who would make the opening presentation and individuals designated to respond to predicted areas of concern. Much of the material was conventional, the same ground that any lobbying group would cover. In other areas we went down less well-trodden paths: what would we say if the senator asked who in the room could vote? How should we deal with a senator who balked at putting on the translation equipment headphones? What should we do if the senator insisted on speaking with the only white or English-speaking person in the room, namely the translator, and ignored the workers?

The question of how to handle immigration status was one that we rehearsed frequently. With almost entirely nonvoters, including undocumented workers, as lobbyists, we were prepared for trouble. At the same time, we all strongly believed that, as people living in and contributing to the senator’s district, our members were the senator’s constituents. If the issue arose, our members had decided to respond honestly by saying that only some of them could vote, but that they believed that as residents of the community being affected by a widespread problem within it, they had a right to inform the senator of their views and they believed he would be interested in hearing their ideas about solutions. In the end, we never brought the issue of immigration status up, and much to our surprise neither did the senators. (See Section 3 above for a fuller exploration of why the “illegal alien” question did not become a big one in this campaign.)

The language problem had a relatively simple solution: simultaneous translation through radio transmitters.<sup>75</sup> Upon entering, we would hand the senator or his staff-person a translating receiver that looks something like a radio-only Walkman, and ask him to put on the headset. As

the team leader began to speak in Spanish, the senator would hear the words in English. All of our members could communicate directly with the senator and his staff, and vice versa, as the entire conversation was being simultaneously translated by one of our staff-people.

This set up a very different dynamic than the more typical experience of an immigrant worker telling her story as a part of a lobbying group largely made up of advocates. The immigrants themselves ran the meeting, explained the problem, outlined their proposed solution, and fielded the senator's questions. After an early lobbying visit during which a senator's aide directed all of his questions to the interpreter, who was the only white English-speaker in the room, we instructed interpreters in similar situations to simply turn to the person assigned to respond and indicate that she or he would be answering. This avoided a dialogue that excluded the people who were supposed to be in charge of the meeting.

These visits had significant impact, both on the senators and their staff and on the immigrant workers. From the senators' perspective, it was the first time that most if not all of them had participated in a meeting with immigrants that was run by the immigrants themselves, who spoke to the senator's political interests and made a request that the senators could relate to their own family histories. As I described in Section 3, this gained our members and their cause a measure of respect that was important in securing sponsorship of the legislation. The unusual structure of the visit made it stand out in a legislator's mind; the image it presented of immigrant workers as hard-working, engaged members of a community made it stay there.

For the workers themselves, the visits were also important. It was not that our members necessarily saw their ability to meet with a state senator as proof of the openness of political debate in the United States, or of the ease of access to power. Many had been politically active in their home countries and were critical of U.S. politics; even those who were not saw the difference between being granted a visit with an elected official and actually having a range of viewpoints debated and heard within a political system. But the fact that they were able to sit across a table with, as one worker put it, "esos viejones" (those big old guys), make a series of demands, respond to the objections that arose, and gain the support of people in power who had otherwise been unsympathetic to the cause of immigrants and workers, made them rethink their notions of their own inability to exercise political power within the U.S. system. Juan Calderon described the resulting feeling: "In Colombia, I always thought of politics as for politicians and of myself as a worker who—whatever's in power—is going to have to work every day to earn my bread. I couldn't change that. But I feel like now I may have a chance to make changes." Raul Lopez echoed him: "It never occurred to me that we could do something like this. It has awakened something in me: we can keep going on with this."<sup>76</sup>

In emphasizing the role that our members played in the campaign, I do not want to ignore the importance of the role that the Workplace Project and its staff and volunteers played. The Workplace Project as an institution had contacts with allies that the individual immigrants would never have been able to reach. The Project had staff and volunteers whose knowledge of the United States political system and ability to access people within that system were instrumental in providing members with the information that they needed to make strategic decisions. English-speaking staff and volunteers were also able to serve as contacts for legislators and DOL administrators outside of group meetings.<sup>77</sup> As Luz Torres said, "what the Workplace Project did was build a bridge between us and them, and then we could walk across it." All the members that

I interviewed recognized this “bridge to power” as a key role for the organization, not only in this campaign but in the future.

### Future Impact of Skills and Analysis Developed by Immigrant Participants

Concretely, immigrant participants took away skills that will be invaluable to their communities in future political work. Luz Torres, Jose Ramirez, and others credited their campaign experience for making them comfortable in planning and running meetings and articulating their ideas in high-pressure situations—skills that they have taken outside the Workplace Project to other community, political, and religious work. Two Workplace Project members, not politically active before this experience, spoke of how they would now guide another group in designing a campaign:

Do you have proof? You need cases that show that the problem exists. Is it real? If you can show that it is, then design a way to get organized. Analyze the pros and cons. Will it help workers? Who will be against it? People with money are always financing some kind of campaign—will they throw money against you? If what you want is against the interests of rich people—which it will be—look for a way to make things more flexible. . . . Thinking about the system—who won't want what you want?

—RONY MARTINEZ

First look at workers' needs. Study the problem. Then ask, “what do we want?” Design a law that deals with the problem. Analyze what you've written—what are the parts that will help the bill to pass, and what parts are going to hurt your chances? If you think there's a chance you could win, go ahead. Invite members, other people, churches to help you. You have to make fliers, let people know, so there will be more than just our members. There might be other people outside us who could move this forward if we couldn't.

—JOSE RAMIREZ

Participating immigrants, some of whom began with no knowledge of political parties or the political system in the United States, also developed their own analyses of U.S. politics through the campaign.

It's important that we didn't *become* politicians even though we visited them. You know, we didn't affiliate ourselves with a party, we didn't promise our votes, we just placed in front of them information that was of interest, economic and social, to the government, and then we let politics take care of it. But we never promised our votes. It may be that people will think they should vote a certain way, maybe vote for Pataki because he signed, but that's not the same thing.

—JUAN CALDERON

Democrats are for the poor, Republicans for the rich. For us, of the working class, we have to support Democrats, because why would we want to support someone who doesn't care about us. It doesn't matter that Pataki is a Republican—all he wants is re-election, and Hispanic votes will help him, and he got more by signing this. I think he'll be re-elected. The same thing happened with [New York City Mayor] Rudy Giuliani. He always marches in the Spanish parades.

—JOSE RAMIREZ



In interviews with five participants a year after the campaign ended, Workplace Project members reported heightened interest and involvement in political activity that they credited to their experiences during the campaign. Three had begun to work locally on a national campaign to grant legal status to Salvadorans, Guatemalans, Hondurans, and Haitians, and were using the skills developed in the previous year to build a base of allies, get signatures on letters of support, and set up, plan for, and carry out legislative visits. One was using the connections she had developed with the senator in her district to gain support for a Latino cultural center she was founding. All felt that they could help another group of people design and carry out a different campaign, following the basic steps of analysis and action that they had learned through our work.

As a final point, it is important to note that Workplace Project members interviewed for this report all linked their increased political knowledge and activity to their ongoing participation in the Workplace Project as a whole, as opposed to simply seeing it as an outgrowth of the campaign. For example, several traced the beginnings of their belief in immigrants being able to change labor law to the Workers Course, in which we discuss the role of immigrants in winning the right to minimum wages and the eight-hour day. Others saw the legislative campaign simply as a part of a larger strategy. “It grew out of all the work that the Workplace Project had done for years,” Luz Torres said; according to Juan Calderon, “supporting the legislative campaign was just one way” to support the Workplace Project. When the interviewees envisioned future political participation, much of it was also in the context of the Workplace Project.

### **Impact of the Campaign on the Workplace Project and the Larger Immigrant Community**

*It makes me angry. Afterward, when we were evaluating ourselves and the campaign, some members said we hadn't achieved much. They said it was just like throwing little pails of lukewarm water on a big fire. But what I want to know is, if it wasn't for this, where would we have put all of our lukewarm water?*

—JUAN CALDERON, WORKPLACE PROJECT MEMBER

These positive results in the skills, leadership, and level of political participation of the Workplace Project members involved are heartening. But from the perspective of the Workplace Project itself, an ideal campaign would have other internal effects as well, making the organization stronger in reputation, allies, and new membership.

The campaign for the Unpaid Wages Prohibition Act fulfilled some but not all of these criteria. It was a source of skill-building, energy, and motivation for our existing members, with effects that carried over into the organization's other work and beyond. As a substantial and unexpected victory, it unquestionably left the Workplace Project with a new respect from the outside world. Through the process of building support for the campaign, we also developed alliances in many sectors. But the campaign did not have a large impact in the community of Latino immigrants in which the Workplace Project works, and therefore did not result in significant increased membership for the organization.

I believe that the lack of community impact can be traced to two sources. First, not enough people identified with the problem. Although from a community-wide perspective unpaid and underpaid wages are a large concern, it is an issue that few immigrants would identify as an

ongoing occurrence in their individual lives. This is, in part, factually true: *nonpayment* of wages may happen to a worker once or repeatedly at a single job, but rarely occurs year after year at a series of jobs. Although more immigrants are regularly *underpaid*, many of them are not aware that their wage rate violates the law. It is also psychologically true: no immigrant wants to think of nonpayment of wages as something that will recur in her future. To believe that the Unpaid Wages Prohibition Act directly affects you in a significant way, you must believe that you will regularly face non- or underpayment of wages, as opposed to supporting and improving the lot of your family.

Second, even if more people saw the problem as their own than I believe do, the solution that we designed and the victory that we won did not offer broad enough relief to attract large numbers of supporters. Our bill was focused primarily on the Department of Labor. Even within the Workplace Project membership, a very small number of immigrants or their families had personal experience filing a claim with the DOL, both because of the DOL's lack of effective outreach and because of immigrants' lack of knowledge about their rights and their fear of coming forward. Furthermore, when a worker wins a case with the DOL, the law's increased penalties go to the state so they do not benefit her so much as deter her employer.<sup>78</sup> And the increased civil fine and felony penalty do not go into effect until the employer can be shown to be a repeat or willful violator, which puts the benefits at a further remove from most workers.

Because of these problems, news reports published throughout the campaign in the Spanish language press did not draw that many new people into the organization during the effort. The final result was that the campaign was more important in building the skills of existing members who participated than in making the organization grow in size.

### **5. EXTERNAL IMPACT: EFFECT OF THE CAMPAIGN AND THE LAW ON THE PROBLEM OF UNPAID WAGES IN NEW YORK**

With regard to the Unpaid Wages Prohibition Act, it is too early to tell if it will have a serious impact on the problems that immigrants and other low-wage workers face. Because a case must make its way through a series of steps before a fine is issued or a felony prosecution is begun, two years is insufficient time to measure the outcome of the law. For example, there has not yet been an employer convicted of a second offense that occurred after the bill became law, and so there has not been the opportunity to use the law's felony provision.<sup>79</sup>

However, we can look at two things at this early stage to assess how effective the law may be in the long run: its use to date by both advocates and the Department of Labor. Since the law went into effect almost two years ago, the data on the former has shown positive results but on the latter is discouraging.

Soon after the law passed, the Workplace Project noted a rise in the numbers of groups of workers coming to its legal clinic. Presumably, these workers were drawn by both publicity about the changes and a new sense of possibility that recalcitrant employers would be forced to pay. The Project has also found that, when faced with a letter informing them that they may have to pay a fine equivalent to an additional 200 percent of what they owe, employers settle much more quickly than they did when threatened with a 25 percent penalty. In 1998, the first full year after the law went into effect, the Project legal clinic saw 44 percent more workers than the previous year and

recovered a record amount of wages for unpaid workers, a surge due in large part to the new law.<sup>80</sup>

Other advocacy groups and individuals have made similarly effective use of the law. For example, in a presentation to the Standing Committee on Labor of the New York State Assembly on May 19, 1998, Peter Voccola, senior business representative of Local 802 of the American Federation of Musicians, stated:

On September 17, 1997, an act named the Unpaid Wages Prohibition Act was enacted. As recently as May 1, 1998, I have used this change in the labor law to get wages paid to a musician. From March of 1998 a musician was trying to be paid in full for work that he performed for an employer. . . . Finally at the end of April, I read the employer the Unpaid Wages Prohibition Act and sent him a copy. Because of fear of being pursued under this new law, a check was sent out immediately to the employee.

The story with regard to the Department of Labor, sadly, is a different one. It is true that the pressure from our campaign brought about significant changes in the practices of the DOL locally and throughout New York state. On Long Island, the agency hired a full-time Spanish-speaking investigator for the Hempstead office, developed Spanish language versions of their forms, began to process cases in under three months, and built a relationship with our staff that allowed us to coordinate work with them—all without new regulations. Statewide, the DOL has developed a series of new forms and procedures in compliance with the law, including multilingual updates on case progress, the right for workers to be present at the DOL conference held with the employer, and the guarantee that a case will not be settled for less than the full amount owed unless the worker consents.

The DOL also implemented a central docketing system for unpaid wages claims in response to our pressure for swifter processing of cases.<sup>81</sup> Unpaid wage cases are now immediately sent to Albany instead of being put in line for local processing. The main office then generates a series of three increasingly threatening letters to the employer explaining the double fine and felony penalty for noncompliance with the provisions of the Unpaid Wages Prohibition Act. Cases are returned to the local office if the employer refuses to cooperate or challenges the facts given by the worker.

Finally, the DOL perceives the law as helpful to its work. Richard Polsinello, director of the Labor Standards Division of the New York State Department of Labor, states that the Unpaid Wages Prohibition Act has been a “strong enforcement tool that has given us real leverage against employers.”<sup>82</sup> He believes that the threat of much higher civil and criminal penalties has been very effective in convincing employers to settle without the DOL having to begin formal proceedings.

But there is little evidence that this perception or the administrative changes are improving the Department’s wage collection record. Once it was out of the spotlight, the DOL made little use of the new tools afforded it by the law. Out of 304 orders issued in the first six months after the Unpaid Wages Prohibition Act went into effect, the DOL issued 24 “orders to comply” (their final stage in a civil case) with the full 200 percent penalty; uncounted others were given fines of 50 percent or 100 percent—higher than the previous law permitted although not the full amount allowed under the Act.<sup>83</sup> In contrast, out of 758 orders issued in the sixteen months that followed that initial burst, DOL issued only 6 additional orders to comply with a 200 percent penalty.<sup>84</sup> Similarly, in the initial six-month period, the DOL investigated 174 cases for periods going back up

to six years, where previously they would have looked no further back than two years;<sup>85</sup> in the following sixteen-month period, they investigated only an estimated 75 additional cases.<sup>86</sup>

Given this pattern, it is disturbing but not surprising to note that early gains in wage collections during the first few months after the law went into effect have fallen back over ensuing months to levels even lower than in the years before the law. In the first five months of 1998, unpaid wage collections rose by 26 percent as compared with the same period in 1997; fringe benefit collections processed under the system rose by 143 percent.<sup>87</sup> But the picture for the year as a whole is depressing. In 1998, the first full year that the law was in effect, the DOL collected less money and helped far fewer workers than in 1995 or 1996.<sup>88</sup>

These results suggest several critiques of the Workplace project's strategy. First and foremost, it is now clear that two of the reasons that the bill was able to pass—no additional money for enforcement and no direct attack on DOL practices—have also undermined its effectiveness. Without any new inspectors or any funded mechanism to ensure that the DOL would do its work differently, the agency has been able to claim that it is working to capacity and within the letter of the law, and yet put no meaningful additional effort toward enforcement. Second, because the Workplace Project did not continue to focus its organizing and advocacy work for the implementation of the law as it had for its passage, the Department of Labor was let off the hook. Without ongoing activism and bad publicity, the DOL had little incentive to do things differently after the bill became law.<sup>89</sup>

It is important to remember, however, that the campaign for the Unpaid Wages Prohibition Act was intended to increase the deterrence factor so that the law would be more self-enforcing *in the absence of an effective DOL*. Deterrence is a very difficult thing to measure. No one can count how many employers changed their practices as a result of the law if their previous violations were not detected by the DOL; a dip in DOL wage recovery could as easily be proof of effective deterrence as of DOL inactivity. Despite this lack of hard proof, it seems likely that even without a positive effect on the Department's enforcement practices, the law and others like it can potentially have a real impact on employers who decide on their own to pay legal wages in order to avoid a high penalty. This is particularly true where advocates and organizers work to make effective use of the law and keep it in the public's eye.

## 6. LESSONS ABOUT PROMOTING IMMIGRANTS' POLITICAL PARTICIPATION THROUGH ACTIVE CITIZENSHIP EDUCATION

The active involvement of immigrant workers at all levels of the campaign for the Unpaid Wages Prohibition Act not only made its success possible, but also dramatically increased immigrant participants' comfort with political analysis, strategizing, and action, and their interest in and confidence about future political participation. I believe that the experience sheds light on the kind of citizenship education that leads to political participation by immigrants and indeed by others.<sup>90</sup>

The Workplace Project approach to immigrant citizenship education is not a common one.<sup>91</sup> Most of what is taught in this country under the category of "immigrant citizenship" or "immigrant civic education" is geared toward helping immigrants pass the citizenship test, assisting them in the mechanics of the citizenship application, and registering them to vote. These programs focus on the design of our political system, emphasizing a textbook version of democracy: how the

people elect the president, how a bill becomes law, how the protections in the Constitution work. They do not explore the problems with our governmental and the electoral systems, nor do they provide immigrants with opportunities for political action beyond voting.

This approach has the advantage of being easily replicable and can be offered to hundreds of thousands of immigrants at once. As a large-scale strategy, it made sense in the context of the harsh anti-immigrant legislation of the mid-1990s. The passage of Proposition 187 in California in 1994, and the Illegal Immigration Reform and Responsibility Act and the Personal Responsibility and Work Opportunity Reconciliation Act by Congress in 1996, were devastating blows to newcomers' ability both to immigrate to the United States and to support themselves during difficult times once they arrived. These legislative attacks on immigrants focused increased attention on the weakness of immigrants in the political arena. The mass approach to citizenship education and naturalization made sense in achieving two very important goals: to protect the income of hundreds of thousands of old, disabled, and poor immigrants whose public benefits were being cut, and to sign up enough new citizens as voters so that politicians would realize that immigrants were an important voting bloc and should no longer be scapegoated.

But for a third goal, promoting active political participation by immigrants to improve the lives of immigrant communities, the mass approach is inadequate. A belief that standard citizenship classes and the naturalization process will result in a group of immigrants who participate effectively in the system requires three assumptions. First, it assumes that immigrants who participate politically will support legislation that is advantageous to immigrants and reject legislation that penalizes immigrants. Second, it assumes that participation follows from the legal right to participate; that is, that immigrants will automatically become voters and active in the political life of their communities as a result of attaining citizenship and registering to vote, perhaps even more active than their U.S.-born counterparts by virtue of their newcomer's enthusiasm. Finally, it assumes that voting is the appropriate end goal for citizenship education, one which will deliver political power to immigrants and ensure a participatory democracy.

None of these assumptions hold up under closer scrutiny. First, naturalized immigrant voting on "immigrant" issues is unpredictable. Recent votes on bilingual education and Proposition 187 in California, for example, show large numbers of Latino and Asian Pacific voters supporting measures that are detrimental to newer immigrants.<sup>92</sup> New voters do not always naturally identify with those they have left behind; many want to shut the door quickly behind them. Without large-scale opportunities for political analysis and community organizing, it is unclear that new immigrant voters can be counted on to protect nonvoting immigrants from xenophobic measures.

The second assumption, that new citizens vote and participate politically at equal or higher rates than their U.S. born counterparts, is refuted by a series of recent studies by the political scientist Louis DiSipio.<sup>93</sup> After analyzing significant data,<sup>94</sup> DiSipio concludes that, in the absence of a powerful system of ethnic leaders and party bosses as was the case with the New Deal,<sup>95</sup> or strong community pressure to participate as with the Cubans in Miami,<sup>96</sup> "naturalization does not serve as a spur to organizational participation, nor does it promote electoral involvement."<sup>97</sup> In fact, when all other factors (including age, education, source of citizenship, English language ability, income, employment) were held constant, he found that "the naturalized were *less likely* to register or vote than were the native born" (emphasis added).<sup>98</sup>

He concludes that without strong community support and mobilization, “new citizens may be more likely to be excluded from U.S. politics than are comparably situated native-born citizens.” As a result “. . . naturalization is simply the first of several steps necessary to assure the full incorporation of immigrants into the United States.”<sup>99</sup>

As for the third assumption, that the goal of citizenship education should be to ensure that immigrants vote, through which they will gain political power and we will gain a richer participatory democracy, we need a more complex definition of both power and participation in order to understand what kind of active political involvement we are aiming for. In this regard, the work of the sociologist John Gaventa is particularly helpful.<sup>100</sup> Gaventa develops a three-dimension analysis of power and participation based on the work of fellow sociologist Steven Lukes.

The first dimension assumes an open system, in which all that is needed to participate (and thus exercise power) is the legal right and the desire to do so. In this scenario, political participation and community power are exercised by voting and by interest-group lobbying. Political action in this dimension includes ensuring that people are eligible and registered to vote, have information about the candidates and issues, understand the importance of voting, and can get to the polls. If people do not vote, the explanation is either that they are apathetic or satisfied with the status quo. There is no doubt that the vast majority of funding for immigrant civic participation is provided on the assumption that the first dimension is the decisive one. The bulk of civic participation support for immigrants goes to organizations that assist people with the naturalization process, sign them up to vote, and provide some level of “voter education.”

The second dimension assumes that there are external barriers to participation for certain groups that must be addressed before they can exercise power. Here, political participation depends on the ability of a community to organize itself to demand its inclusion at the table. Community organizing groups that work in this dimension focus on confrontation with people who control money and political power to ensure that the community’s needs are met.<sup>101</sup> Similarly, steps to reduce the influence of money in politics fall under this type of analysis. In this dimension, nonparticipation is seen as a result of active exclusion by those in power, rather than apathy or contentment on the part of individual citizens. Much of the funding for non-immigrant civic participation has now moved to this second dimension. Support for organizations that challenge the effect of money on politics, analyze barriers to participation for low-income communities, or—more rarely among large foundations—carry out community organizing, now shares the stage with more traditional get-out-the-vote efforts.

Gaventa’s third dimension assumes that, even once external barriers to participation are removed, citizens will only participate effectively once they are able to dismantle internal barriers that have kept them from developing their own political analysis. Work in this dimension focuses on popular education toward the development of a critical consciousness, or “transformative learning,” which leads oppressed communities to an expression of their own reality and the development of a plan of action toward social change. In this dimension, nonparticipation is seen not only as a result of control by the powerful over the political process, but of control of the powerful over *thought* process—through the media, education, secrecy, socialization, and “the shaping of political beliefs and ideologies.”<sup>102</sup> Large foundation support for third dimension work in the United States is rare—for either popular education centers or community organizing groups with strong political or popular education components.

Under Gaventa's analysis, then, if immigrant citizenship education is geared toward increased immigrant voting, it misses the important second and third dimensions of power. And, with regard to the first dimension, we cannot assume that immigrants who become citizens will vote to benefit other immigrants, or even that they will vote at all. What should we be doing about citizenship education to change this? What more than a structural introduction to the American political system do immigrants need to become politically active members of a participatory democracy? How can immigrant civic education become a process of discovery about how individuals can come together to change what needs to be changed in their community? What needs to happen outside the classroom to encourage and increase immigrant political participation?

The Workplace Project's campaign provides the beginnings of an answer to these questions.

***It makes sense to start citizenship education early, with people who are not yet about to become citizens.*** As DiSipio's research shows, immigrants often must overcome the barriers of lack of formal education and the inability to speak English before they feel comfortable voting and, in general, need a strong community context to encourage them to participate politically. To surmount these obstacles and to develop the consciousness, analysis, and skills base that make a person into an effective political participant is a lengthy process. Including nonvoters in citizenship classes and in resulting actions, as the Workplace Project did, gives immigrants who will one day become citizens much more time to develop their citizenship skills. It also increases the political power of immigrant communities because it allows their nonvoting members to participate politically in other ways. Finally, by providing immigrants with an initial experience of political participation that is a thoughtful and positive one, it avoids the defeatism and apathy felt by so many native-born citizens of this country.

***The classroom part of the education needs to reflect the complexity of the real functioning of the political system.*** The "citizenship education" component of our work was embedded in the campaign that we were carrying out. This meant that our members would be at a severe disadvantage unless we presented the way that the system was supposed to work in contrast with how it actually functioned. Education that talks about the vision of the Founding Fathers but makes no mention of the complex issues of the influence of money on politics, concentrated corporate control of the media, voter ignorance and apathy, and the very real barriers to meaningful participation in politics for most people, is doing its students a disservice.

***The class needs to be linked to action, so that participants can test out what they are learning and practice being politically active in a real context.*** Imagination in the classroom only goes so far. In order to fully understand what it means to be an active participant in the political system of the United States, immigrants need to discover its open doors and butt heads against its obstacles. After the campaign, Workplace Project members expressed surprise at the ease with which we were able to arrange visits with legislators, an experience unfamiliar to them from their home countries. At the same time, they came to realize that the step from access to action is a long one and requires power, which must be built from a variety of sources. None of this can be adequately communicated without an action component.

The kind of action is important. Working on the campaign for a political candidate, while instructive, does not teach you how to make change in your community. Instead, *as part of their*

*citizenship education*, immigrants need to start thinking about the kind of issues that they would like to take on, and their strategies for doing so. This means that part of their classroom work needs to address how to understand power and develop campaigns that build it. Not every class has to put a plan into action, but there must be a campaign ongoing that each class can feed into.

***The action needs to be linked to a long-term, institutional organizing effort to build power within the community.*** As important as it is for immigrants to have the opportunity to work on an active campaign, it is even more important that their citizenship education take place in the context of an ongoing effort to build organizing institutions in the communities in which immigrants live. An individual campaign will win or it will lose. People join in because it affects them, and leave when it is done. By contrast, a stable organization out of which such campaigns are run can provide training, support, and community to its members before, during, and between campaigns. Through structures to develop internal democracy and member leadership, it can model the democracy it works toward in the outside world. Such community organizations permit the lessons learned in each campaign to feed back into future efforts, the leadership developed to become leadership for the next stage of organizing, the power built to augment the strength of the next campaign, and the creation of an “organizing culture” in a community to lead to consistent opportunities for analysis and change.

This sounds like a tall order. I am saying that in order to have effective citizenship education, we must have strong community-based organizing institutions, which run effective campaigns that are derived from the concerns of immigrants, which are generated by reflection on life experience carried out in the classroom. The classroom supplements these things, and is tailored to generate them, but it alone is not the point. Isn't this an overly broad definition of citizenship education? Isn't it an expensive alternative to what we currently have, which turns out large numbers of citizens at relatively low cost? The answer is, yes, it is broad, and yes, it requires more intensive effort to generate fewer trained people, but in these disadvantages lie its strength. If our definition of citizenship education is stretched to include real action as education, we will be closer not only in number but in kind to analytical, active, organized citizens.

### **The Role of Foundations**

National funders have an important role to play in promoting this kind of active citizenship education. Some have recognized this role outside the immigration context. Faced with the lack of civic participation among average Americans, foundations have begun to complement funding for traditional voter registration and get-out-the-vote efforts with support for longer term strategies that focus on the problems that underlie voter apathy.<sup>103</sup> Through these programs (such as the civic participation program run by Marcia Smith at Ford), efforts to organize communities around key issues, projects addressing money in politics, and the rethinking of “voter education” have all received support under the rubric of “civic participation.”

Funding in the area of *immigrant* civic participation, however, presents a different panorama. My informal study of the funding patterns of several major foundations that support immigrant citizenship programs shows that funders are still operating under the assumption that immigrants will become politically active if they are assisted to become citizens and are provided with the opportunity to register to vote. Very little money is being directed toward efforts that are



designed to work with immigrants on a deeper level to build the skills, political analyses, and community organization necessary to make them active and effective as citizens.

As more sophisticated conversations begin to develop about the work that must be done to move immigrants from citizenship-on-paper to citizenship-in-action, foundations need to consider new strategies to support organizing as well as services and education in immigrant communities.

## CONCLUSION

What can the Unpaid Wages Prohibition Act Campaign teach us more broadly about the impact of political participation on immigrants, and about the impact of immigrants on politics?

Most important, and perhaps counter-intuitive, the role that immigrant workers played in this campaign strengthened it. Immigrant leadership heightened the sense among the media and politicians that the problem of exploitation was real and that our proposed solution was a good one, because both were put forth by the people who were most affected. Having immigrants visibly leading the campaign shifted the perceptions held by some powerful politicians, business groups, and government leaders from immigrants as victims to immigrants as hard workers, and underscored that they were a political constituency to be listened to. This in turn initiated, if not invaluable alliances, at least relationships of cautious respect between immigrants and people in those sectors. Finally, the active involvement of Workplace Project members in the effort began the process of building their political and organizing experience, which should lead to greater political participation within the community as time goes on.

These successful outcomes would not have been possible without a few key elements. First, the theme of the legislation—hard work and the right to be paid for it—put the immigrant participants outside the camp of “takers” and allied them with non-immigrant workers, an image that is much harder to achieve during equally important campaigns to preserve benefits and increase protections specifically for immigrants. Second, the immigrant leaders were helped immeasurably by the fact that we had been able to develop a message in support of the legislation that had widespread appeal and made anyone who disagreed with it look like a villain. Bills of any real import that share these characteristics may be few and far between. Third, the immigrants needed the support, training, and “bridge to power” provided by the Workplace Project. Without it, they would not have had access to the people who had the ability to move their agenda forward.

Of course, it is also possible to argue that the campaign has little of larger applicability to offer. It involved too few immigrants, and the number I interviewed was smaller still; any conclusions we draw from their experiences may be poor predictors of what will happen in other contexts. So, too, the law that resulted from the campaign may be almost unique among pro-immigrant, pro-worker legislation: it required little financing, was able to attract business support, and made anyone who opposed it look, as Senator Marcellino remarked, like an ogre. Few progressive issues or campaigns fit into all of these boxes.

Nevertheless, this experience holds the promise of several lessons for the future. Most important, it contradicts our instinct that an effort to pass legislation led by noncitizen

## THE CAMPAIGN FOR THE UNPAID WAGES PROHIBITION ACT

immigrants in a wealthy and conservative suburban area that had seen little recent immigrant political involvement, targeting senators who had previously taken strong anti-immigrant positions, would be a recipe for disaster.

Although hard to recreate in their entirety, the conditions that allowed the campaign for the Unpaid Wages Prohibition Act to flourish and succeed are far from unique. Through community-based organizing institutions, immigrant leaders have the opportunity to identify and attack the problems that their communities face. The resulting strategies, if developed with an eye toward unusual alliances and political dynamics that change as the demographics of voting populations do, can win victories that would surprise the staunchest cynic.

## NOTES

- <sup>1</sup> Beth Whitehouse, “The New Long Islanders,” *Newsday*, July 12, 1994, p. A7.
- <sup>2</sup> A few examples of effective union organizing include the Service Employee International Union’s Justice for Janitors campaign and their recent efforts at organizing in the home healthcare industry.
- <sup>3</sup> I have come to believe that “workers center” is not as useful a label as “organization doing innovative organizing in a low-wage community,” a much larger category. Many creative and effective organizing strategies are coming out of a variety of groups, not all of which use or fit the workers center label. Nevertheless, since workers centers share some distinctive characteristics, I still use the term, and a partial listing of groups around the country that identify themselves as workers centers follows. In addition to the Workplace Project, some of the workers centers around the country include the Latino Workers Center, Chinese Staff and Workers Association, and Workers Awaaz in New York City; the Tenants and Workers Support Committee in Alexandria, Virginia; the Korean Immigrant Workers Association in Los Angeles and the Asian Immigrant Women’s Advocates in Oakland, California; the Workers Organizing Committee in Portland, Oregon; La Mujer Obrera in El Paso, Texas; the Immigrant Workers’ Resource Center in Boston, Massachusetts; the nascent Mississippi Workers Rights Project in Oxford, Mississippi; and the Coalition of Immokalee Workers in Immokalee, Florida.
- <sup>4</sup> Examples include the Korean Immigrant Workers Association in Los Angeles, California, and the Workers Organizing Committee in Portland, Oregon.
- <sup>5</sup> The Workplace Project can be reached at 91 N. Franklin St. #207, Hempstead, NY 11550, 516-565-5377.
- <sup>6</sup> Until November 1998, when the federal Labor Department went to any workplace to investigate wage violations, they also were required to review the business’s I-9 forms, on which employers note the documents that each of their employees presented to prove authorization to work at the time of hiring. The federal Labor Department then had to file a report with the INS, noting both whether the I-9 forms were properly filled out and whether the Labor Department inspector noted anything else that would lead him or her to suspect that the employer had violated “the provisions against knowingly hiring or continuing to employ unauthorized workers”. The INS was then supposed to follow up with their own inspection. “Memorandum of Understanding Between INS and Labor Department on Shared Enforcement Responsibilities,” DLR No. 113, June 11, 1992, pp. D-1, D-5. Thus, a report to the federal Labor Department could trigger an INS raid, the last consequence an immigrant worker would be seeking. In November, 1998, the DOL and INS adopted a new Memo of Understanding, under which the DOL will no longer check I-9s and share information with the INS about cases filed by individual workers. However, there will still be this kind of cooperation between the agencies in cases where the DOL initiates the contact with the employer as part of the agency’s efforts to target non-compliant industries. “Memorandum of Understanding Between Justice Department’s Immigration and Naturalization Service and Labor Department’s Employment Standards Division,” DLR No. 227, November 25, 1998, p. E-1.
- <sup>7</sup> For a comprehensive survey of state minimum wage and wage enforcement laws, see “A Survey of State Wage Enforcement Laws: Models for Successful Reform,” National Employment Law Project, 1997.
- <sup>8</sup> New York State wage law is particularly important because many of the Workplace Project’s members, as well as low-wage workers in New York State generally, are not covered by federal wage laws. Most employees of businesses that do not put goods into the stream of interstate commerce and have less than \$500,000 in gross revenues a year are exempt. This includes many small restaurants and landscape and construction companies. In addition, many immigrants who are technically covered under federal law, and their advocates, prefer to use the state DOL instead of the federal Labor Department, because of their link to the INS described in footnote 6. Their only recourse is the New York DOL and the lower New York minimum wage.
- <sup>9</sup> Transcript, “New York State Assembly, Assembly Standing Committee on Labor, Public Hearing: An Inquiry into Department of Labor’s Wage and Hour Division’s Performance,” February 16, 1996.
- <sup>10</sup> H. Carl McCall, “Department of Labor: Recovery of Unpaid Wages on Behalf of Claimants,” Report 94-S-56, State of New York, Office of the State Comptroller, Division of Management Unit (Executive Summary).
- <sup>11</sup> All workers, documented or not, are covered by state and federal minimum wage laws. Although perhaps counterintuitive at first glance—how could a person who is not allowed to work be entitled to a minimum wage?—Congress has recognized that the only way to remove the incentive for an unscrupulous employer to hire undocumented workers and pay them subminimum wages is to punish those who do so. See legislative history of the Immigration Reform and Control Act, H.R. Rep. No. 682(I), 99<sup>th</sup> Cong., 2d Sess. 58 (1986).
- <sup>12</sup> Without requiring any investment of time once the campaign had begun, this documentation allowed us to show that the problems we were confronting were real, forced the DOL and legislators to take us seriously, and gave hard numbers to reporters seeking to cover the story. And it was much easier to collect the data contemporaneously than to have to begin research when the campaign started.
- <sup>13</sup> Wage claims were an important part of our legal clinic workload. At that time, our database showed that non- or under-payment of wages was by far the most common labor complaint brought to the clinic, with nearly 360 workers—forty percent of the total—having come to us because they were not being paid minimum wage and overtime, or because they were simply not being paid at all.
- <sup>14</sup> This decision took three months. Over a series of three Workplace Project monthly membership meetings, members discussed

## THE CAMPAIGN FOR THE UNPAID WAGES PROHIBITION ACT

the problems they had been facing at the DOL and developed a list of additional information they would need to figure out the causes of those problems (for example, knowledge about how the DOL was supposed to function, and about the New York State political system). We presented workshops with this information. Our members used it and their own experience to analyze the immediate and deeper causes of the problems that they saw, and to brainstorm short- and long-term solutions. Looking at the solutions in light of the organization's resources at that time, they decided to focus their energy on a legislative campaign.

- <sup>15</sup> In the original version of the bill as developed by Workplace Project members, this penalty would have been divided three ways: one-third to the worker, one-third to the Department of Labor to increase enforcement of wage payment in low-wage industries, and one-third to the state general fund. However, as I discuss in Section 3, the DOL opposed the division of the fine, justifying their position with New York State law prohibiting the designation of penalty money to any group or purpose other than the state general fund, and so the bill was changed.
- <sup>16</sup> This and the previous provisions were part of the bill that passed.
- <sup>17</sup> This and the following provision were cut from the bill before it passed.
- <sup>18</sup> Despite the unanimous vote in favor in the Senate, there was no hope that senators would override a Pataki veto because of the party-line politics that dominate the New York system.
- <sup>19</sup> Andy Logan in "Family Business," a review of Pataki's autobiography, *Pataki* in *New York Times*, July 12, 1998, p. 24.
- <sup>20</sup> This chronic dysfunction has resulted in New York state's receiving the lowest credit rating of any state except for Louisiana. Clyde Haberman, "Albany Sets Bad Example for California," *New York Times*, July 25, 1997, p. B1. See also "Scorn for Albany Unites Forces Urging a New Constitution," *New York Times*, October 26, 1997, p. 31; "Call a Constitutional Convention," *New York Times*, editorial, October 28, 1997, p. A22.
- <sup>21</sup> "Call a Constitutional Convention," *New York Times*, editorial, October 28, 1997, p. A22.
- <sup>22</sup> Although New York City is more heavily unionized than the country as a whole, the same is not true for the rest of the state. In addition, unions had grown used to doing business in Albany during the long reign of Democrats in the governor's seat. They have had a difficult time developing an effective strategy to promote their legislative agenda under a Republican governor. Jennifer Gordon interview with Geri Reilly, Associate Counsel for Labor, New York State Assembly, October 2, 1998 (hereinafter "Reilly interview").
- <sup>23</sup> For a discussion of the history of the formation of the Long Island Republican machine, see Michael Dorman, "A Legacy of Kings: LI's Suburbs Produced Two Republican Bosses Whose Political Imprint Remains," *Newsday*, May 31, 1998, p. A14.
- <sup>24</sup> The Long Island delegation is important to the New York State Republican Party for several reasons. It is very large—Long Island senators hold 26 percent of the thirty-five Republican seats in the Senate—and Long Island is a very high-income area and brings in more money for the Republican Party than any other region of the state. Until recently, Long Island was home turf for powerful U.S. Senator Alphonse D'Amato, whose support is crucial to New York State Republicans. For all of these reasons, Republicans in the Senate and the Republican governor want to keep the Long Island delegation and their constituents happy, and to ensure that their seats remain in the Republican Party. Thus, they are very responsive to the agenda of the state senators from Long Island (Reilly interview).
- <sup>25</sup> Recognizing this, and because of our limited resources, we did very little work in the Assembly.
- <sup>26</sup> For this and many other insights, the Workplace Project is indebted to Geri Reilly, Associate Counsel on Labor for the Assembly. Without her guidance and willingness to share the insider's perspective, we would have been lost at each bend in the road.
- <sup>27</sup> As with most legislatures, bills in the New York State Legislature are introduced by individual legislators, usually one or two "prime sponsors" accompanied by a list of others, who may sign on at the time of introduction or any other time until the bill dies or reaches the floor for a vote. Sponsorship shows a higher level of support for a bill than simply voting for it; many legislators who do not sponsor a bill will nevertheless vote for it. (Many thanks to Julie Chinitz for her invaluable help in researching recent New York legislation affecting workers and immigrants, and the voting and legislative sponsorship records of our bill's sponsors.)
- <sup>28</sup> The only provision that was not brought to a floor vote was the bill to keep undocumented children out of public schools.
- <sup>29</sup> Reilly interview.
- <sup>30</sup> I am deeply grateful to Janice Fine, whose thoughts about the campaign helped me to form the theories that I discuss here. She discusses this campaign further in her forthcoming dissertation for a Ph.D. in political science from MIT, "Community Unionism: Beyond the Politics of Particularism."
- <sup>31</sup> This and all other quotes from Jose Ramirez are from an interview with the author on June 24, 1998.
- <sup>32</sup> This and all other quotes from Senator Carl Marcellino are from an interview with the author on July 2, 1998.
- <sup>33</sup> See, e.g., Lisette Alvarez, "G.O.P. Tries to Win Hispanic Support Reagan Once Had," *New York Times*, November 21, 1997, p. A30; Todd Purdum, "California G.O.P. Faces a Crisis as Hispanic Voters Turn Away," *New York Times*, December 9, 1997, p. A1; Adam Nagourney, "Badillo Is Said to Be Switching to the Republicans," *New York Times*, June 25, 1998, p. B1.
- <sup>34</sup> In 1990, 234,000 people around the country applied to become U.S. citizens. In 1994 the number had more than doubled to 543,000. By 1997 the number of applicants had almost tripled again, to 1,564,000 (INS Statistical Yearbooks, 1990 and 1994; INS Monthly Statistical Report, September FY1997, Year End Report).

- <sup>35</sup> This and all quotes from Senator Dean Skelos are from an interview with the author on July 23, 1998.
- <sup>36</sup> Ken Moritsugu and Isaac Guzman, “Rallying the Minority Vote: Groups work to gain influence,” *Newsday*, March 20, 1996, p. A29; Lawrence Levy, “This Affirmative-Action Policy Is a Shrewd Ploy,” *Newsday* Viewpoints, January 27, 1993.
- <sup>37</sup> Larry Meneses, Northeast Regional Coordinator of the Republican National Hispanic Assembly and Suffolk County Republican Committeeman, and Ray Lopez, Vice Chair of the Nassau County Republican Committee and Executive First Vice President of the Republican National Hispanic Assembly, were instrumental in this regard.
- <sup>38</sup> See Caryn Eve Murray, “State Aid Seals NY Post Plan to Build Plant,” *Newsday*, July 18, 1998, p. A23.
- <sup>39</sup> “An illegal-alien protection act?,” *New York Post*, editorial, July 7, 1997.
- <sup>40</sup> For example, see Ken Crowe, “The Exploited: Long Island’s Immigrant Workers,” *Newsday*, April 27, 1977; Steven Greenhouse, “Bill Seeks to Make Sure Immigrants Get Paid,” *New York Times*, June 30, 1997.
- <sup>41</sup> This and all other quotes from Mitchell Pally are from a telephone interview with the author, June 8, 1998.
- <sup>42</sup> Greenhouse, *supra* note 40.
- <sup>43</sup> We did not seek support from additional business associations after we had secured the endorsement of these two. This was in part a decision based on our limited resources, and in part the result of the realization—reached after discussing our request for endorsement with a Westchester business group who objected to the inclusion of a right to translation in the initial version of the bill because they believed that English should be the only language for the transaction of government business—that we risked having an association come out *against* the legislation if we looked for more business endorsements.
- <sup>44</sup> The timing of this second piece was largely the result of good luck, if it can be called that when it depended to such an extent on a worker’s suffering. The immigrant whose picture took up the entire front cover of the newspaper was an undocumented Honduran restaurant worker who had come to the Workplace Project’s legal clinic just as our campaign was taking off. After being released from the hospital after a serious bout with pneumonia, he had taken a job in a restaurant that paid him \$5 for a twelve-hour day of work, or a little over 40 cents an hour, less than 10 percent of the minimum wage. He had been evicted from his apartment because he was unable to pay rent. Rather than pay him a higher wage, his employer had told him to move into the restaurant. He had done so, and slept all winter under mounded tablecloths because the owners forbade him to raise the heat above 50 degrees. He agreed to talk with the *Newsday* reporter, who we were also able to lead to other Workplace Project members exploited by the same ring of employers. Although not different in kind than situations other workers faced, his abuse was more extreme and therefore made a more compelling story.
- <sup>45</sup> “Pay Them for Their Labors,” *The Daily Gazette*, editorial, June 25, 1997.
- <sup>46</sup> It is worth noting that although many of the workers whose stories were covered in the media during this campaign were undocumented, none decided to speak anonymously to the press. The picture of one took up the cover of a Sunday *Newsday* with his name directly below it; photos of three others with their names in the caption were published in the *New York Times*. Their willingness to make their faces and situations public was a powerful sign of the strength and determination of immigrant workers faced with an unjust situation. To date, none have suffered negative repercussions for their decision. However, not all undocumented subjects of news stories have been as lucky. For example, an undocumented immigrant profiled in a recent National Public Radio piece was subsequently recognized and arrested by the INS, and is now in deportation proceedings.
- <sup>47</sup> None of this would have happened without strong internal work on media skills. The Workplace Project has no one person in charge of communications. Instead, all staff members are expected to keep an eye out for potential stories, build and maintain relationships with reporters, and develop their own and members’ press skills. The organization also has formal and informal press trainings. For example, a Latino reporter who had covered the Workplace Project for an English-language television news story was invited to a membership meeting, where he gave a workshop on the reporter’s perspective on what makes a good story and a good spokesperson. We followed this up with a membership training on press skills. Board and staff members received more intensive training through workshops and follow-up arranged by a local foundation.
- We have found that thorough preparation is key to successful press efforts. When members or workers who come into the clinic are going to be interviewed by a reporter, the staff-person involved rehearses with them for the interview, using mock questions and a real interview format. At events that the organization expects to attract media interest, we develop one clear message and work to make sure that it is understood by all participants. For example, before the public hearing that launched the campaign, members drilled each other on the press message so that each would be able to speak if questioned by the media. And for members or staff who will be asked to give their opinion for a news show or column, a team of staff, members, and volunteers rehearses the interviewee, taking her down potentially dangerous paths and helping to hone her speaking skills.
- <sup>48</sup> Greenhouse, *supra* note 40.
- <sup>49</sup> Raymond Hernandez, “Tougher Penalties for Employers Who Cheat on Pay,” *New York Times*, Friday, September 19, 1997.
- <sup>50</sup> Reilly interview.
- <sup>51</sup> Author’s notes from telephone conversation with Deputy Commissioner Denis Peterson, February 21, 1996 (hereinafter “Peterson Conversation, February 21”); author’s notes from her meeting with Rhina Ramos, Workplace Project Legal Program Coordinator, Denis Peterson, Richard Polsinello, Director, DOL Labor Standards Division, Joaquin Bermudez, DOL Senior Labor Standards Investigator, and others at the DOL’s Labor Standards Division office in Hempstead, NY, April 10, 1996

## THE CAMPAIGN FOR THE UNPAID WAGES PROHIBITION ACT

(hereinafter “April 10 DOL meeting”).

- <sup>52</sup> It was, and still is, the New York State DOL’s policy to accept wage claims from undocumented workers. However, this is a matter of practice not guaranteed by law, and the DOL knew that the last thing we wanted to provoke was the rescinding of this policy.
- <sup>53</sup> April 10 DOL meeting.
- <sup>54</sup> Letter from DOL Commissioner John Sweeney to Assemblywoman Earlene Hooper Hill, April 29, 1996.
- <sup>55</sup> Letter from Commissioner Sweeney to the author, April 18, 1997.
- <sup>56</sup> Petersen conversation, February 21.
- <sup>57</sup> Author’s notes from telephone conversation with Bill Busler, Associate Counsel to the DOL, June 12, 1997 (hereinafter “Busler conversation, June 12”).
- <sup>58</sup> Author’s letter to Commissioner Sweeney, May 20, 1997.
- <sup>59</sup> Busler conversation, June 12.
- <sup>60</sup> Busler later found a provision in New York law requiring that all penalties go into the state general fund, which made the question of whether the DOL would take the money a moot point. Author’s notes from telephone conversation with Bill Busler, June 17, 1997.
- <sup>61</sup> This and all subsequent quotes from Luz Torres are taken from an interview with the author on June 17, 1998.
- <sup>62</sup> This and all subsequent quotes from Senator Skelos are from an interview with the author on July 23, 1998.
- <sup>63</sup> Interviews with Senator Marcellino on July 2, 1998, and Senator Skelos on July 23, 1998; conversations with press offices of Senators Maltese, Marchi, Trunzo, and Volker on July 31, 1998; Joseph Berger, “When County Politics Is a Family Business; Westchester Feels the Spanos’ Presence,” *New York Times*, April 26, 1996, p. B1. I was unable to obtain information about Senators Hannon and Vellela; Senator Levy is deceased.
- <sup>64</sup> For example, Unpaid Wages Prohibition Act sponsor Senator Marchi was quoted in *Newsday* a few years earlier as saying “It is street knowledge around the world that we’re under a mandate to provide relief. . . We’ve become a magnet, saying, ‘Come to New York, and we’ll take care of you.’” Nicholas Goldberg, “Move in State to Cut Aid to Poor,” *Newsday*, March 11, 1993. Ironically but perhaps not surprisingly, Senator Marchi had the most recent ties to immigration of all the sponsors of our bill. Both his parents and his wife immigrated to the United States from Italy.
- <sup>65</sup> In this regard, it was important that the basic theme of the bill was “payment for work done,” rather than “benefits for immigrants.” (In fact, we used benefits in the opposite direction, claiming that welfare use would decline if wage enforcement went up.) Admittedly, the initial version of the bill included a provision requiring the Labor Department to provide Spanish and Chinese translation to workers, and another section insuring that one-third of the 200 percent fine be given to the worker. Although both were later cut, the bill picked up many of its sponsors before the cuts were made.
- <sup>66</sup> Berger, *supra* note 63.
- <sup>67</sup> Although the focus of the articles was on Latino immigrants, many mentioned other immigrant groups and U.S. born workers as potential beneficiaries.
- <sup>68</sup> In 1990, the IRS issued new rules governing the amount of lobbying nonprofit organizations can do without jeopardizing their tax-exempt status. The rules limit expenditures on all lobbying to 20 percent and grassroots lobbying to 5 percent of the first \$500,000 of an organization’s budget. (Larger organizations can spend decreasing amounts of budget money over \$500,000.) An organization can elect to be covered by these rules, as the Workplace Project has, or choose to remain under the old rule, which simply states that lobbying cannot be a substantial part of the work of the organization. Center for Community Change, “How—and Why—to Influence Public Policy: An Action Guide for Community Organizations,” Issue 17 of *Community Change*, Winter 1996, pp. 21–25.
- <sup>69</sup> By the time this campaign became intensive in early 1997, we had five and a half staff-people, with additional support from three or four non-member volunteers. Our membership numbered about three hundred. Our annual budget was about \$300,000. At the same time, we were running a wage organizing campaign on day labor street corners, founding our first worker-owned landscaping cooperative, working on strategies to organize domestic workers, providing labor-related legal services through our Workers Legal Clinic, teaching an intensive nine-week course at night three times a year, and working to fundraise for and build the internal structure of our barely four-year-old organization. There was not a lot left over to put into a new campaign, however important. The limits on our resources in many ways became a blessing in disguise. Our budget forced us to look closely at what we had on hand, and figure out how to get to the point on the fulcrum where a small push yielded big results.
- <sup>70</sup> We also carried out activities on the smallest possible scale that would make an impact. For example, it was beyond our capacity to organize a large-scale “lobby day” in Albany in support of our bill. Instead, we and the Latino Workers Center once went with ten people, and once with forty, making only the visits that were key to our strategy. Of course, the trade-off here was that, by doing this, we passed up the opportunity to mobilize large numbers of workers and allies for the trip to Albany. I do not feel that this choice was the right one in terms of base-building strategy, but it was a pragmatic compromise. I discuss other reasons why the campaign was not a good base-builder in Section 4. When we were seeking endorsement letters, we only pursued enough groups in each category (labor, religion, community, business) to symbolize support from that

sector, rather than developing a long list of endorsers that would have taken time and resources we did not have. Again, this decision represented a lost opportunity to form alliances that would have been good for our organization in the long run.

- <sup>71</sup> A particularly difficult series of meetings came in June of 1997, as the campaign was drawing to a close. We had been told that the bill would die in committee if three provisions dear to our members—Spanish translation, the creation of an ombudsman’s office, and one-third of the 200 percent penalty going directly to the worker instead of to the state—were not removed. Our membership struggled with the question of whether it was better to keep our principles intact and let the bill go, or compromise and keep the chance of passage alive. In the end, they decided that they were willing to make the cuts then on the table, but no more. Their resolve was not tested because no further cuts were proposed, but it was an important moment for the kind of political realism about compromise that only comes with active political participation.
- <sup>72</sup> This and all subsequent quotes from Rony Martinez are from an interview with the author on June 17, 1998.
- <sup>73</sup> This and all subsequent quotes from Juan Calderon are from an interview with the author on June 17, 1998.
- <sup>74</sup> Both senators that I interviewed confirmed that they had never before or since had a lobbying session held in a language other than English. The reaction we received during our visits leads me to conclude that this was true for most if not all of the senators we saw.
- <sup>75</sup> The Workplace Project buys its translating equipment from Simultaneous Wireless Interpretations in New York City. (The company ships worldwide). They can be reached at 800-221-7242. The equipment is quite expensive: it cost us about \$4,000 to put together a set of two transmitters and thirty receivers. For our work, however, it is invaluable.
- <sup>76</sup> Author’s interview with Raul Lopez, June 17, 1998.
- <sup>77</sup> In particular, my role as a contact was a crucial one, about which I have some ambivalence in retrospect. As a white attorney, I was a familiar and non-threatening “type” to the men with whom we were negotiating. They assumed that I knew how the system worked and was willing to work with them within it; that in some sense I was one of them. By taking this road, rather than having a Latino contact person for the legislation, we gained ease of entry but lost the opportunity to challenge deeper assumptions about race and ethnicity.
- <sup>78</sup> New York state wage law, as amended by the Unpaid Wages Prohibition Act, provides a clear private right of action for workers who bring cases under it in court. However, no claims for the 200 percent penalty have yet been decided in court, so it is too early to tell for certain what the outcome will be. If the first cases are successful, the bill would become more attractive to individual immigrants. The parts of the law that unquestionably provide a direct benefit to the worker include the requirement that the DOL investigate for six years rather than two, and the shift in the burden of proof if the employer fails to keep adequate records.
- <sup>79</sup> Jennifer Brand, assistant attorney general and deputy chief of the Labor Bureau in the office of the New York state Attorney General in a telephone conversation with the author, October 15, 1999.
- <sup>80</sup> Workplace Project legal program coordinator, Rhina Ramos, telephone conversation with the author, October 18, 1999.
- <sup>81</sup> Author’s notes from her meeting with Rhina Ramos and Michael Hoffman, then-Workplace Project executive director, and Richard Polsinello, Joaquin Bermudez and Manuel Fruchter, DOL, July 2, 1998 (hereinafter “July 2 DOL meeting”).
- <sup>82</sup> July 2 DOL meeting.
- <sup>83</sup> The total number of cases investigated during that period was 5,649; only 174 of those cases had claims for periods going back longer than two years, and all were investigated for the full length of time worked. Statistics regarding the first six months of implementation were provided by Richard Polsinello during July 2 DOL meeting, through subsequent faxes, and in a follow-up interview by telephone on October 7, 1998.
- <sup>84</sup> Richard Polsinello, telephone interview with the author, October 12, 1999 (hereinafter Polsinello interview, October 12, 1999).
- <sup>85</sup> The total number of cases investigated during that period was 5,649; only 174 of those cases had claims for periods going back longer than two years, and all were investigated for the full length of time worked. Statistics from same sources as in n. 83.
- <sup>86</sup> Polsinello interview, October 12, 1999.
- <sup>87</sup> All statistics about wage collections were taken from charts provided to the author by Richard Polsinello. Unpaid wage information is from New York State Department of Labor, Wage and Hour Division, 1998, Report LS 50105; fringe benefit information is from New York State Department of Labor, Wage and Hour Division, 1998, Report LS-50110.
- <sup>88</sup> In 1998 the DOL collected \$5,209,415 for 8,548 workers; in 1996 it collected \$5,370,851 for 12,643 workers and in 1995 it collected \$5,728,902 for 13,376 workers. Statistics provided to author by Richard Polsinello via facsimile, titled “Worker Protection Data, Division of Labor Standards,” October 12, 1999.
- <sup>89</sup> One other critique of the bill is worth noting. Although its language makes clear the *right* of all workers, documented or not, to report wage violations to the DOL and to earn a minimum wage, the bill does not increase the *willingness* of undocumented workers to approach a government authority. That work cannot be done by a piece of legislation, short of a guarantee of non-reporting and protection from deportation; it must be done through the education and support work of community groups such as the Workplace Project.

In this regard, it is important to note that the NY DOL has affirmed its commitment to the principle that undocumented workers have a right to the Department’s wage collection services. When I asked Polsinello about the former DOL deputy

## THE CAMPAIGN FOR THE UNPAID WAGES PROHIBITION ACT

commissioner's insinuations the previous year that the agency was considering taking away access to the DOL for undocumented immigrants (see *supra* note 53 and accompanying text), he replied: "We are very strong on this: workers get service regardless of their immigration status. The INS has asked us to work with them and we have told them that's a federal problem. That's firm." As for the deputy commissioner, Polsinello said "he's no longer in that position. He has been replaced by someone else who supports this policy." July 2 DOL meeting.

- <sup>90</sup> What follows are recommendations for citizenship education that differ from the predominant model offered to *immigrants* in this country. However, the broader concept of citizenship education as a launching pad for community organizing is far from new. For example, the Highlander Research and Education Center in Tennessee and its Citizenship Schools were instrumental in training community members as activists in the civil rights struggles of the 1950s and 1960s. See, e.g., John M. Glen, *Highlander: No Ordinary School*, University of Tennessee Press, 1996.
- <sup>91</sup> Like the Workplace Project, most organizations that do this kind of education are doing it as part of a larger organizing agenda, and do not separate it out from the rest of their work into a "citizenship education" program.
- <sup>92</sup> Forty-six percent of Asians and 22 percent of Latino voters reported voting in favor of Proposition 187. Daniel Weintraub, "Crime, Immigrant Issues Helped Wilson, Poll Finds," *Los Angeles Times*, November 9, 1994. Almost 40 percent of Latino voters voted against bilingual education in California. Don Terry, "The Reply, It Turned Out, Was Bilingual: No," *New York Times*, June 5, 1998, p. A12.
- <sup>93</sup> See Louis DiSipio, "'Making Citizens or Good Citizens?' Naturalization as a Predictor of Organizational and Electoral Behavior Among Latino Immigrants," *Hispanic Journal of Behavioral Sciences* (Vol. 18, No. 2, May 1996, pp. 194-213) (hereinafter DiSipio, 1996); and Louis DeSipio and Jennifer Jerit, "Voluntary Citizens and Democratic Participation: Political Behaviors Among Naturalized U. S. Citizens" unpublished paper, 1998 (hereinafter DiSipio and Jerit, 1998).
- <sup>94</sup> DiSipio examines the American National Election Study, carried out between 1980 and 1996 among 10,116 voters; a study done by Levitt and Olson in 1996 of voting patterns in six immigrant-heavy neighborhoods in New York City; the Latino National Political Survey, conducted among 3,270 Mexicans, Puerto Ricans, and Cubans in 1989 and 1990; and the National Latino Immigrant Survey, conducted in 1994 among 1,636 Latino permanent residents eligible for citizenship.
- <sup>95</sup> DiSipio and Jerit, 1998, pp. 7-8. It is too early to tell if anger at anti-immigrant legislation is a third kind of situation that will produce a wave of high levels of voting among immigrants who naturalized in the mid-1990s. One example of this effect seems to be immigrant voting in California under and after the threat of Proposition 187. Studies have shown a high level of immigrant voting in Northern California around that time, assumed to be due in part to fear and in part to mobilization by community and advocacy groups. See, e.g., "Northern California New Citizen Vote 1996: A Preliminary Analysis of New Citizens in San Francisco and Marin Counties Voting in the 1996 Election," Northern California Coalition for Immigrants Rights, June 1997.
- <sup>96</sup> He notes a concentrated push to increase registration and voting among the Cuban American community, led by respected community leaders and seen by the community at large as an important way to achieve shared objectives. "For these Cuban immigrants, then, community leaders added what the formal process excludes—a connection between naturalization and political participation." DiSipio, 1996, p. 210.
- <sup>97</sup> DiSipio, 1996, p. 210.
- <sup>98</sup> DiSipio, 1996, p. 207. Another explanation for this phenomenon is suggested by different research in progress. The preliminary results of an ongoing study by Audrey Singer and Greta Gilbertson show that the act of becoming a citizen may have a different significance for the individual than the political one that we in the United States would like to read into it. Their immigrant subjects choose to become citizens for a variety of nonpolitical, instrumentalist reasons, including, ironically, to permit them to reside uninterrupted in their countries of origin as they grow older. Singer and Gilbertson, "The Social Process of Naturalization among Dominican Immigrants in New York City," paper presented at "Transformations: Immigration and Immigration Research in the United States," Social Science Research Council, June 1998.
- <sup>99</sup> DiSipio, 1996, p. 211.
- <sup>100</sup> All quotes in this section are from John Gaventa, "Citizen Knowledge, Citizen Competence and Democracy Building," *The Good Society* (Journal of the Committee on the Political Economy of the Good Society), vol. 5 no. 3 (Fall 1995), pp. 28-35 (hereinafter "Gaventa, 1995").
- <sup>101</sup> Gary Delgado, *Beyond the Politics of Place: New Directions in Community Organizing in the 1990s*, The Applied Research Center, 1993, pp. 10-11.
- <sup>102</sup> Gaventa, 1995, p. 31.
- <sup>103</sup> See Stephen G. Greene, "Renewing American Democracy: Foundations Seek to Reverse a Loss of Faith in the Political Process" and "Foundations Try Using Local Issues to Increase Voting," *The Chronicle of Philanthropy*, September 21, 1995. "Among people least likely to vote—poor people, young people, minority-group members, and recent immigrants—the massive voter registration drives and get-out-the-vote efforts traditionally favored by foundations have had little long-term success."



## ACKNOWLEDGMENTS

I deeply appreciate the time that Fran Ansley, Annanya Bhattacharjee, Janice Fine, Pam Galpern, Omar Henriquez, Taryn Higashi, Randy Jackson, Nadia Marin, Joe Morris, Rhina Ramos, Steve Ross, Larry Siems, Linda Steinman, Michael Wald, and Lucie White took to read and give me thoughtful comments on drafts of this paper.

The following people gave generously of their time and insight in interviews I conducted for this paper:

Juan Calderón, Workplace Project Member  
Raul López, Workplace Project Member  
Rony Martínez, Workplace Project Member  
José Ramírez, Workplace Project Member  
Luz Torres, Workplace Project Member  
Geri Reilly, Associate Counsel for Labor, New York State Assembly  
Richard Polsinello, Director, New York State Labor Department, Division of  
Labor Standards  
Mitch Pally, Vice President for Legislative and Economic Affairs, Long Island  
Association  
NYS Senator Carl Marcellino (R-C, Syosset)  
NYS Senator Dean Skelos (R-Rockville Centre)

Finally, I am indebted to the generous support of the Ford Foundation and the ongoing encouragement of Taryn Higashi, Ford Program Officer, who funded my writing about this campaign.

A complete list of endorsers of the legislation follows:

ACLU Immigrants Rights Project  
ACORN  
Building and Construction Trades Council of Nassau and Suffolk Counties  
Catholic Charities, Diocese of Rockville Centre  
Catholic Charities, Archdiocese of New York  
Rabbi Jerome Davidson and eight other New York rabbis  
1199, National Health and Human Services Union  
Bishop Howard Hubbard  
Legal Aid Society of New York City  
Long Island Association  
Long Island Progressive Coalition  
National Employment Law Project  
New York City Central Labor Council  
New York Coalition of Nurse Practitioners  
New York Immigration Coalition  
New York State AFL-CIO  
New York State Labor-Religion Coalition  
New York State Restaurant Association, Long Island Chapter  
New York State United Teachers  
Progressive Tenants Association  
UFCW Local 342-50  
UNITE!



## **ABOUT THE CARNEGIE ENDOWMENT**

**THE CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE** is a private, nonprofit organization dedicated to advancing cooperation between nations and promoting active international engagement by the United States. Founded in 1910, its work is nonpartisan and dedicated to achieving practical results. Through research, publishing, convening and, on occasion, creating new institutions and international networks, Endowment associates shape fresh policy approaches. Their interests span geographic regions and the relations between governments, business, international organizations, and civil society, focusing on the economic, political, and technological forces driving global change. Through its Carnegie Moscow Center, the Endowment helps to develop a tradition of public policy analysis in the states of the former Soviet Union and to improve relations between Russia and the United States. The Endowment publishes *Foreign Policy*, one of the world's leading journals of international politics and economics, which reaches readers in more than 120 countries and several languages.

**THE INTERNATIONAL MIGRATION POLICY PROGRAM**, founded in 1989, bridges the spheres of migration research and policy-making and brings an informed and independent voice to the policy debate on migration and refugee issues. The Program has developed and refined a number of techniques for stimulating serious policy discussion among the principal actors in this area—injecting objective analysis related to the development of public policies and gathering, analyzing, and disseminating sound information widely. The Program sponsors study groups, holds policy briefings, convenes policy seminars and roundtables, and publishes both policy-oriented monographs and an analytical bulletin, *Research Perspectives on Migration*. The Migration Program is part of the Carnegie Endowment's Global Policy Program, which addresses the policy challenges arising from globalizing processes of economic, political, and technological change.

## Carnegie Working Papers

### 2000

- 16 *The Clinton Record on Democracy Promotion*, Thomas Carothers
- 15 *Intervention in Internal Conflicts: Legal and Political Conundrums*, Chantal de Jonge Oudraat
- 14 *Privatization and the Distribution of Assets and Income in Brazil*, Roberto Macedo
- 13 *Democratization and Globalization: The Case of Russia*, Yuri Fedorov
- 12 *Party Formation and Non-Formation in Russia*, Michael McFaul
- 11 *Drug Trafficking on the Great Silk Road: The Security Environment in Central Asia*, Martha Brill Olcott and Natalia Udalova
- 10 *Naturalization in the Wake of Anti-Immigrant Legislation: Dominicans in New York City*, Audrey Singer and Greta Gilbertson
- 09 *Natural Resources, Human Capital, and Growth*, Nancy Birdsall, Thomas Pinckney, and Richard Sabot
- 08 *Democracy Assistance and NGO Strategies in Post-Communist Societies*, Sarah E. Mendelson and John K. Glenn

### 1999

- 07 *The Challenge of Semi-Authoritarianism*, Marina Ottaway and Martha Brill Olcott
- 06 *The Rise and Fall of START II: The Russian View*, Alexander A. Pikayev
- 05 *Putting Education to Work in Egypt*, Nancy Birdsall and Lesley O'Connell
- 04 *The Campaign for the Unpaid Wages Prohibition Act: Latino Immigrants Change New York Wage Law*, Jennifer Gordon
- 03 *Intergenerational Mobility in Latin America: Deeper Markets and Better Schools Make a Difference*, Jere R. Behrman, Nancy Birdsall, and Miguel Székely
- 02 *Politics at the Heart: The Architecture of Humanitarian Assistance to Afghanistan*, Paula R. Newberg
- 01 *No More Secrets? Policy Implications of Commercial Remote Sensing Satellites*, Ann M. Florini and Yahya A. Dehqanzada