



MISUSE OF “NO-MATCH” LETTERS AND VIOLATION OF WORKERS’ RIGHTS

**Congressional Briefing
April 3, 2008**

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Interfaith Worker Justice (IWJ) is a national organization that educates and organizes the faith community to work to defend workers’ rights, especially of low-wage workers.

Interfaith Worker Justice’s network of nineteen workers’ centers deals with the abuse and consequences of no-match letters on a daily basis, working on the ground to protect workers who are wrongly fired, intimidated, and penalized as a result of the no-match letter program.

Social Security Administration (SSA) “no-match” letters—sent to employees and/or employers when an employee’s records do not match those of the SSA, in order to ensure that workers receive credit for their earnings—are abused by unscrupulous employers and can be misused by misinformed employers; workers’ rights are compromised by the program as a whole. I want to emphasize that no-match letters sent to employers affect entire workplaces and the overall workforce, from U.S. citizens to undocumented immigrants to legal, permanent residents. The rule from the Department of Homeland Security (DHS) would formally turn the no-match letters into an immigration enforcement tool and would exacerbate the letters’ misuse. The rule would introduce a further motivation for employers to simply get rid of workers who receive the letters, since they could serve as evidence of “constructive knowledge” of employing a worker who lacks authorization to work.

The context of the no-match letter program today is one of a perfect storm for unscrupulous employers, on a nation-wide scale: the harsh anti-immigrant climate in combination with little recourse for workers when faced with abuse of their rights and little more than a slap on the wrist for the few employers found to be in violation of workers’ rights. As a result, unscrupulous employers are capitalizing on the moment and using the no-match letters to thwart workers’ attempts to improve wages and working conditions or organize a union.

Furthermore, the perception of immigration enforcement, and particularly of ICE, the Immigration and Customs Enforcement Agency, is one of a fear-inducing, militaristic agency, as they conduct high-profile raids around the country. Meanwhile, ICE and DHS are working to include “notices” of potential penalties along with SSA no-match letters; it is no wonder there is such fear and confusion surrounding the no-match program.

Abuse and Misuse of “No-Match” Letters by Employers

No-match letters are abused by unscrupulous employers who use them as a pretense for firings and other retaliation against workers; in many cases, workers may not have actually received a letter. Other employers make mistaken assumptions about their meaning, with harmful consequences for workers. The problems are such that many of our workers’ centers have developed entire training programs about the no-match program.

Abuse of the no-match letters includes **retaliation** for bringing labor complaints to management; a tool of **union-busting** by management, especially harassment of workers, threats of firings, and actual firings of leaders during a unionization campaign to intimidate and divide the workers; and purposeful **lowering of labor costs** by firing senior workers with benefits and replacing them with new, lower paid workers without benefits.

Secondly, employers may make assumptions that workers who receive no-match letters are undocumented if they seem to be immigrants or that they may be committing identity theft or are otherwise a problem if they seem to be native-born. This misuse of the letters has occurred despite the letters explicitly stating that they alone should not be used as a basis for firings or discrimination and they “make no statement about [an] employee’s immigration status.” In fact, no-match letters frequently list authorized workers, placing them at risk of wrongful termination. This situation results from employers unilaterally deciding who is undocumented and their mistaken understanding of the purpose of the no-match program and complex immigration laws.

A 2003 study by the University of Illinois at Chicago, IWJ, and other groups, surveyed nearly 1,000 workers affected by no-match letters. It found:

- More than half of employers fired workers listed on the letters.
- 34% of workers who were fired reported that their employer failed to give them an opportunity to correct their social security record.
- Almost half of workers fired had been involved in labor organizing or had complained about poor working conditions.

Finally, many employers are misinformed about the proposed DHS rule. They believe it has already been implemented and have therefore prematurely applied it, wrongfully firing workers for fear of facing penalties. Other employers, upon hearing about the proposed rule, have conducted their own internal audits and fired workers with old no-match letters on file, many times without offering workers a chance to correct their records.

Consequences of Abuse of “No-Match” Letters and the DHS Rule

The no-match program has long been a problem for workers and has resulted in many cases of abuse of workers’ rights. The proposed DHS rule will only exacerbate this situation. Currently, employers are required only to advise workers that they have received the notice and correct the record. However, the proposed rule would inform employers that they face potential

penalties for companies that employ workers with mismatches. The consequences will be profoundly negative, as employers will be even more motivated to fire people.

Furthermore, there is no recourse for most workers. In IWJ's experience, it is only through action by unions or through community action and publicity by workers' centers that cases have been successfully resolved. But where neither a union nor the opportunity for community involvement exists, a worker has little hope of correcting the situation. Low-wage workers in particular will be most unlikely to have the time, resources, or representation to fight unjust firings.

Entire workforces are undermined by the no-match program. Workers who cannot speak up at work because of fear of getting fired and/or deported can be paid less and will not lodge labor complaints or try to unionize. Again, this indirectly affects all workers, as wages and conditions are depressed and workers are denied exercise of their rights.

Cases

The following are cases that IWJ workers' centers provided for today's hearing. Company names and exact locations have been omitted to protect the workers there.

Lowering of labor costs by firing senior workers: Large factory in the Twin Cities area

In this case, shortly after the Department of Homeland Security announced the new interpretation of "no match" letters, the employer took advantage of the resultant climate of fear to lay off workers with good pay and benefits and replace them with lower-wage, temporary workers. The company did an internal audit of their employment records, essentially conducting their own "no-match" investigation, and called workers into the office one by one to fire anyone who had any discrepancies, *regardless of status*. Workers were theoretically given five days to show their documents to management, but even those who did so were fired. In all, over sixty workers lost their jobs.

These fired workers had worked there for more than four years, some for as long as 13 years. Before the firings, workers made \$11.50-\$16.45 per hour, had up to 3 weeks paid vacation, and affordable health care. But they were replaced with temporary workers making \$9-10 per hour with no benefits. IWJ's workers' center organized a number of actions, exposed some shady management practices (like charging a fee for new jobs and managers clocking in workers), and got the first general raise in 3 years (for permanent workers who managed to keep their jobs) and a reduction in work speed. However, when the fired workers were leaving the plant on the last day, managers told many of them to simply apply at the temp agency and they could get their jobs back, contradicting the pretense of the no-match letters as the reason for their original dismissal.

In this case the employer used the no-match letters to convert to a workforce of temporary workers with no rights and poor wages.

Retaliation for organizing a union: Manufacturing plant in Milwaukee

This company had received no-match letters in the past and so was aware that they alone were not a basis for dismissal; in fact, they had not fired recipients of no-match letters prior to this case. The company had very bad working conditions—one worker lost use of his arm from the machines, their bathrooms were in very poor shape, their wages were low, they had no benefits, and their frequent schedule changes were very disruptive to family life.

Again, in the past, workers had not been fired as a result of receiving a no-match letters. But then the workers decided to form a union. First the company fired the organizing committee and then it made promises for higher wages and other improvements, all violations of the National Labor Relations Act. The company then selectively used no-match letters to fire workers who were sympathetic to the union, firing a total of 28 workers. The NLRB forced the workers to be reinstated, but after this intimidation and retaliation, the union lost the election by one vote.

Conclusion

The abuse and misuse of no-match letters has been detrimental to workers' rights around the country. Unscrupulous employers use the letters as a pretense to retaliate against workers who attempt to exercise and defend their rights; misinformed employers make mistaken assumptions about the letters' meaning; and many employers have prematurely "applied" the proposed DHS rule, firing workers who appear on no-match letters, often without proper time to correct their records.

The abuse of no-match letters and resultant workers' rights violations indirectly affect the entire workforce, as wages and conditions are depressed and workers are denied exercise of their rights. Given past abuse of the letters and certain continued and exacerbated abuse, as well as the fact that the letters do not indicate an employee's immigration status, no-match letters should *not* be used as an immigration enforcement tool and the Department of Homeland Security should withdraw its rule.