

Interfaith Worker Justice



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Testimony of Kim Bobo
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before the Committee on Education and Labor
U.S. House of Representatives
at the hearing on

“Is the Department of Labor Effectively Enforcing Our Wage and Hour Laws?”

July 15, 2008

Thank you for allowing me to testify.

My name is Kim Bobo. I am the Executive Director of Interfaith Worker Justice, a position I've held since 1996 when a group of 45 religious leaders and I founded the organization. We are a national network of 60 local affiliates that engage the religious community in issues and campaigns to improve wages, benefits and working conditions for workers, especially workers in low-wage jobs. We coordinate 19 workers centers that are drop-in centers for workers who are having serious wage or health and safety problems in their workplaces.

Last week I finished a book that will be published this fall on wage theft. The book grows out of the experiences our workers centers have had with wage theft. There are approximately 200 workers centers around the country, including the 19 affiliated with Interfaith Worker Justice. The number one problem addressed by these centers is wage theft. Wage theft has become a national crisis, and yet most Americans with whom I talk are surprised to learn the scope and breadth of the problem.

If the goal of Wage and Hour's labor law enforcement is to stop and deter wage theft, then the answer to the question posed by this hearing, "Is the Department of Labor Effectively Enforcing Our Wage and Hour Laws?" is a resounding "NO."

As a nation, we face a crisis of wage theft.

- * Two million workers aren't paid the minimum wage.¹
- * Three million are mis-classified as independent contractors instead of employees.²
- * Millions more are illegally denied overtime pay.³

Millions of workers are having wages stolen each and every year. Workers are confused by the laws and unsure about which agencies can help them. Employers understand that the consequences of stealing wages are negligible. Wage stealers have no fear. The general public doesn't understand there is a crisis. Consequently, one must conclude that the Wage and Hour Division is failing to protect workers from wage theft because of its woefully inadequate enforcement of the federal wage and hour laws.

Unlike many issues that face our nation, stopping wage theft is not that complicated of a problem to solve. There are many of us who are willing to help – the religious community, ethical businesses and trade associations, unions and workers centers. But we can't do it by ourselves. We need a strong Wage and Hour Division of the Department of Labor that works collaboratively with all of us to protect workers from wage theft and enforce the nation's labor laws.

Interfaith Worker Justice offers five recommendations for strengthening the Wage and Hour Division: It must:

1) Develop a community policing model for wage enforcement. Local police forces learned

years ago that the most effective way to stay abreast of community problems is to involve the community in addressing problems. Police who attempt to enforce the laws in their precincts without working collaboratively with community residents are bound to fail.

Although the Wage and Hour Division has a number of formal community collaborations, such as JEWEL in Houston and Dallas and EMPLEO in Las Vegas and Los Angeles, our experience around the country is that these partnerships are inadequately staffed and fail to take advantage of the possibilities these partnerships could provide. In addition, the Division does not consistently work with community partners, refuses to involve workers and advocates in helping gather information for supporting cases, ignores recommendations for targeted investigations, and sometimes won't even return our phone calls. Last week I heard the Director of our Northwest Arkansas Workers Center say that she and her colleagues had sent the Wage and Hour Division 60 wage complaints. Two were investigated and one resulted in back wages to workers. If the 58 other complaints we submitted did not have adequate information or were deficient in some other way, we should discuss it and figure out what can be done together to recover wages for workers.

The Wage and Hour Division can't operate as if it can stop wage theft all by itself. It cannot. It needs to work with the community, but it must commit to working with them in meaningful ways. Complaints generated must be quickly addressed. Worker advocates must be trusted and treated as allies. New approaches for targeting and enforcement should be tried and evaluated. Enforcement actions should be publicized to deter further wage theft. The Wage and Hour Division must be both transparent and accountable in appropriate ways.

2) Devote 50 percent of the Wage and Hour Division's staff and resources to targeted investigations. The Division should focus at least half of its resources on targeted investigations that have the possibility of recovering significant back wages for tens of thousands of workers in low-wage jobs, punishing those employers who systematically and willfully violate the nation's labor laws and bringing entire industries into compliance with the labor laws. When the agency primarily responds to complaints, it doesn't have much chance of changing the behavior of entire industries because employers will (rightly) gamble that only a small percentage of workers will have the courage to complain, given a tight labor market. In contrast, if entire industries are investigated, back wages collected and meaningful penalties levied, the industries known to steal wages will be challenged to change their business practices.

In 1941, when the Division began monitoring the 360,000 workplaces it was responsible for monitoring, it conducted more than 48,000 on-site investigations. The Wage and Hour Division physically inspected 12 percent of the establishments covered by the law.⁴ Today, the agency conducts only 30,000 "enforcement actions" and approximately half of those "actions" are simply phone calls to an employer. In 2007, the Wage and Hour Division only devoted 23 percent of its resources to targeted inspections⁵, compared to 30 percent in 2000,⁶ 60 percent in 1968⁷ and more than half in 1941. Raising this percentage will be almost impossible to do without more enforcement staff for the Wage and Hour Division. The Secretary of Labor should fight for more staff over a six year time period and the percentage of investigators focused on investigations should increase from its current level to 50 percent of investigators' time devoted

to targeted investigations.

3) Punish those who steal wages in meaningful ways. In the vast majority of situations, the worst thing that will happen to an employer who does not pay a worker for all the hours worked is that the employer will have to pay back the wages that should have been paid in the first place. Often, the employer will pay the worker less than the worker should have earned because the Division only recovered wages for a two-year period and the wages may have been stolen for longer periods, or the case took so long to settle that the recovery amount was diminished, or the enforcement staff wasn't sure its case was strong or that the Solicitor's office would back it up, so the staff settled for lower amounts of wages than may have been owed. As a result, those who steal wages come out better off than if they had obeyed the law.

If my organization doesn't pay its payroll taxes, I know that the IRS could take my house. I know that if I park in a no parking zone, I will get a fine and have my car towed, an expensive proposition in Chicago. Meaningful consequences deter crime, including wage theft.

The Wage and Hour Division has a variety of tools at its disposal for punishing unethical employers who steal wages, but does not consistently use them, even against employers who willfully and repeatedly steal wages, nor does it publicize either those who steal wages or the consequences it imposed as means for deterring others from stealing wages. In 2006 and 2007, the Wage and Hour Division issued civil money penalties (CMP) "fines" against fewer than half of companies that were found to have either repeat or recurring violations and almost half of those fined were for child labor violations, not minimum wage or overtime violations.⁸ In reviewing 294 consent decrees (court settlements) that were entered from 2002 to 2006 in federal court cases brought by the Secretary of Labor that resulted in payment of FLSA back wages, only 28 cases (9.5 percent) were awarded CMPs and only 66 cases (22.4 percent) were awarded liquidated damages (double wages). These were cases that had to be taken to court because the employers would not pay workers quickly, and still the attorneys representing the Department of Labor did not routinely press for CMPs and liquidated damages.

Some might argue that the laws are confusing and so employers shouldn't be punished. Although I admit that some of the overtime issues can be confusing despite many efforts to clarify who is exempt and who isn't, nonetheless if employers knew that there were serious consequences for noncompliance, employers would focus more on understanding the rules. And the second time an employer violates the same law, the consequences should be very serious. The Wage and Hour Division should consistently seek:

- * Liquidated damages (double wages).
- * Interest on the wages owed.
- * Civil money penalties (fines).
- * Debarment from government contracts of companies that steal significant amount of wages or steal wages willfully or repeatedly.

In addition, the Division should maintain a list on line of all those who have stolen wages from workers and publicize every settlement in local papers, both to publicize the bad behavior, which

deters other wage theft, and to encourage other workers to file complaints. All of these things could be done with no legislative changes.

If these punishments aren't sufficient, the agency should seek the authority to extend the look back period, increase the civil money penalties, and mandate certain penalties.

4) **Experiment with new educational and enforcement approaches.** The Wage and Hour Division is not adequately protecting workers from wage theft and consequently it must try some new approaches. Interfaith Worker Justice recommends that the Division:

** Create pilot projects, in collaboration with workers centers and other worker advocates to conduct educational outreach and enforcement activities targeted on selected industries known for stealing wages. These collaborations must be built upon transparency and accountability.*

** Explore creating one-stop centers to address workplace problems where the alphabet soup of agencies, Wage and Hour, OSHA, EEOC, Worker Comp and State agencies could collaborate to help workers address workplace problems. These centers would be modeled on the one-stops the DOL created for job training.*

** Create at least three joint Wage and Hour and OSHA taskforces to collaborate on protecting workers in industries like poultry and construction that are known for both wage violations and health and safety problems.*

5) **Increase the number of enforcement staff and attorneys devoted to wage and hour compliance.** No matter how effectively the Division used its resources and enforcement tools, it could not possibly protect the nation's workers against wage theft and reasonably deter more wage theft without more enforcement staff and attorneys to back them up. The Wage and Hour Division has many dedicated, hard-working career staff, but 750 enforcement staff cannot protect 130 million workers against wage theft when stealing wages has become common practice in many industries.

The most comprehensive law the Wage and Hour Division enforces is the Fair Labor Standards Act, passed in 1938. It took a few years to get the Wage and Hour Division up and functioning, but by 1941 the Division had hired, trained and deployed 1500 field staff around the country inspecting workplaces covered by the Fair Labor Standards Act. That 1500 number is double the current enforcement staff, despite the fact that the current Wage and Hour staff is responsible for enforcing many more laws and protecting eight times as many workers employed in 20 times more workplaces.

Using the 1941 ratio of investigators to workers covered by wage and hour laws, the Wage and Hour Division would need more than 12,500 investigators. Using the 1941 ratio of investigators to workplaces covered, the Wage and Hour Division would need 34,000 investigators. Clearly having only 750 wage and hour investigators protecting the nation's workers against wage theft is inadequate. So what's the right number?

The best estimate of the number of investigators needed today must start with the premise that the Wage and Hour Division should attempt to maintain the 1941 ratio of investigators to workers. The Division's mission is to protect workers; the number of workplaces does not significantly impact investigator workload. If instead of using the 1941 figures for comparison we use the 1962 figures, we find a similar, albeit slightly less dramatic, need for more staff. Using the ratio of investigators to workers covered by wage and hour laws, the Wage and Hour Division would need over 7000 investigators. Using the 1962 ratio of investigators to workplaces covered, the Wage and Hour Division would need almost 10,000 investigators. Either calculation suggests the Division needs significantly more staff to be able to stay abreast with the enforcement responsibilities assigned to it. Because of the improved productivity that should be available to investigators from cellphones, computers and other technology, the ratio of investigators to workers could certainly be lower and still be effective in combating wage theft. Interfaith Worker Justice recommends that the agency quadruple its enforcement staff over the next six years in order to effectively stop and deter wage theft.

An additional challenge to immediately adding thousands of new investigators is the Wage and Hour Division's capacity to adequately train a large number of new investigators without bringing the agency's work to a halt. Quadrupling the agency's staff would be an overwhelming training challenge. Given the departure over the last few years of many dedicated career staff leaders with decades of experience, perhaps a strong team of retirees could be recruited to oversee the intensive training and mentoring program for new investigators.

Given the crisis of wage theft in the nation, the huge responsibility for protecting the nation's workers and deterring wage theft, and the critical Wage and Hour Division rebuilding needs, the following is a modest and reasonable recommendation:

** Immediately add three new investigators, two new assistant investigators, and one new administrative staff person for each of the 74 District and Area Offices.* The majority of these investigators need to be bilingual. This would require each office to train and orient six new staff people. This is challenging, but possible, bringing the total number of new staff focused on investigations to 444. If there are significant backlogs in one region compared to another, the staff allocations could be shifted to address the backlogs. This would cost approximately \$25 million.

** Immediately add 25 professional staff in the national Wage and Hour Division headquarters to coordinate national surveys, national industry initiatives, worker outreach programs, work with state agencies and other new and expanded initiatives.* This would cost approximately \$3 million.

** Over the next five years, continue to add additional investigative staff at this pace, adding 444 divided in an appropriate manner among the 74 District and Area offices.* At the end of six years, this process would add 2664 new field staff.

The additional costs would be at least partially covered by additional civil money penalties paid

directly to the U.S. Treasury.

** Assign at least half the total investigators (222 new and 375 experienced investigators) to targeted investigations focused on low-wage industries known to steal wages from workers.* Please note that it is important that the Division not evaluate itself completely based on total dollar amounts recovered for workers, because the greatest dollar amounts recovered will almost always be from upper middle-class workers who have been denied overtime. These cases are ones that the private bar is willing and interested in representing because of the potential high dollar amounts involved. The cases that the private bar are not interested in, and thus the ones the Department of Labor should focus on, are the workers in low-wage jobs whose stolen wages may not seem like huge dollar amounts, but are significant to those workers' families. The Department of Labor should focus its targeted investigations on industries such as agriculture, restaurants, day labor, residential construction, and garment manufacturing.

Using this approach, the agency could rebuild its enforcement capacity, successfully train and mentor new investigators, and return to having at least half the staff devoted to targeted investigations.

In addition to adding enforcement staff, primarily in field offices around the nation, there must be enough attorneys in the Solicitor's Office to back up the work of the investigators. In 2007, there were 7310 cases filed in federal courts under the Fair Labor Standards Act. Only 151 cases were filed by the Department of Labor.⁹ No matter how well an investigator pursues a case, it will be meaningless if the ultimate threat of taking the employer to court is not used regularly and aggressively.

As a nation, we know that if something is a priority, we do it. If fighting wage theft is made a priority, we will find the resources to hire enforcement staff.

Fighting wage theft in the nation must become a priority for the Secretary of Labor and the Wage and Hour Administrator. New approaches must be developed and additional resources sought. The American public will support efforts to stop wage theft. Collectively we believe that workers should be paid for all the work and that stealing is wrong.

Wage theft is bad for America. It hurts workers and their families, places ethical employers at a competitive disadvantage, robs resources from public coffers in unpaid taxes, and denies communities of the economic stimulus provided by wages spent in local communities. Wage and Hour's role is absolutely essential in restoring wages to workers, fairness to ethical businesses, monies to the public coffers and economic resources to communities. Wage theft is wrong. It should be stopped.

Thank you for this opportunity to testify.

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1. The Urban Institute, Immigration Studies Program, *A Profile of the Low-Wage Immigrant Workforce*, November 2003. This figure of two million is based on this report profiling low-wage immigrant workers, which found that 13 percent of foreign-born female workers and 9 percent of foreign-born male workers are paid less than minimum wage. Based on immigrant workers alone, there are more than two million workers earning below minimum wage.
 2. Government Accounting Office, *Employee Misclassification: Improved Outreach Could Help Ensure Proper Worker Classification* (Washington, D.C.: U.S. Government Accountability Office), May 2007.
 3. There are no comprehensive studies documenting the precise numbers affected by unpaid overtime, but 85 percent of FLSA violations were related to overtime and almost all the large FLSA lawsuits filed are for overtime violations. Mis-classifying workers as exempt when they are really non-exempt and mis-classifying workers as independent contractors when they are really employees are both widespread practices that deny workers overtime.
 4. Wage and Hour Division, *Annual Report, Wage and Hour Division*, 1941.
 5. Interfaith Worker Justice, *Working on Faith: A Faithful Response to Worker Abuse in New Orleans*, 2007.
 6. USDOL, Wage and Hour Division, *1999-2000 Report on Initiatives*, February 2001, page 11.
 7. USDOL 1968 Budget Estimate, Volume II, 90th Congress, First Session, WJ-14.
 8. 49 percent in 2007 and 48 percent in 2006 according to data provided in the DOL FOIA letter to me (Kim Bobo) dated May 1, 2008.
 9. James C. Duff, *Judicial Business of the United States Courts: 2007 Annual Report of the Director* (Washington, D.C.: Administrative Office of the U.S. Courts), Table C-2A.,