Workers Rights Board Report –
Exploitation of Immigrant Carpenters in Portland:
Community Strategies for Justice

St. Charles Church Auditorium, Portland, Oregon
July 27, 2017
Executive Summary

For years, immigrant construction workers in the Portland area have experienced substantial, illegal abuses on the job. These include several forms of serious wage theft; deficient safety practices and grave injuries; lack of drinking water, training, protective equipment and legally required breaks; and physical intimidation of workers who object.

Wage theft takes many forms, including partial payment, extortion of kickbacks from wages, payment of overtime hours at the straight time wage rate, deductions for “use of tools” or other expenses that the contractor should pay, and more.

Conditions are worst in residential construction, but even on large, publicly funded projects, layers of subcontracting allow contractors to evade legal responsibility for ongoing abuses.

Even on publicly funded projects, women and people of color remain seriously under-represented at all levels in the construction labor force, and among contractors hired. Public monitoring and enforcement of labor standards, hiring goals, training and safety practices are under-funded and inadequate.

Community Benefits Agreements (CBAs) represent the most successful strategy available for combating illegal abuse and under-representation on publicly funded construction projects.

The City of Portland, working for 2 years with community organizations and construction unions in the Metropolitan Alliance for Workforce Equity, developed a model Community Benefits Agreement for large, public construction projects. The City Council unanimously passed Resolution 36954 calling for its implementation on September 5, 2012.

The model CBA was piloted with great success on two Water Bureau projects, far exceeding ambitious goals, despite a long industry history of little progress on workforce diversity.

The keys to the success of this model CBA, and a similar program pursued on the South Waterfront, were the significant involvement of local community organizations and unions in the recruitment and training of the labor force and contractors, as well as the monitoring of job-site compliance, using a portion of funds from a budget of 1% of hard construction costs.

The City appears to be hesitating to continue use of the CBA, following a consultant’s report finding only good outcomes but advising stronger internal controls in the future. The Portland Workers Rights Board recommends a return to the implementation of the model CBA as a template for all construction projects in the Portland area relying to any degree on public money, with the assurance that protections for whistle-blowers are included.

Public authorities must ensure that equal opportunity, decent wages, safe working conditions, and adherence to labor law characterize all public projects in our region.
Members of the Hearing Panel
(Organizations listed for identification purposes only)

**Professor Mary C. King (Panel Chair)** is a labor economist, Professor of Economics Emerita at Portland State University and long-time member of the Jobs with Justice Workers Rights Board. She has published research on immigrant and Latino workers; obtained her PhD in Economics at UC Berkeley; and lives here in Portland with her family.

**Representative Diego Hernandez** represents the 47th district in the Oregon House of Representatives. Diego is the co-founder of the Momentum Alliance, which develops young civic leaders. He has worked as a teacher at Parkrose Middle and High Schools and currently serves on the Reynolds School District Board where he made history as the district’s first elected Latino school board member.

**Father Jack Mosbrucker** is a priest of the Archdiocese of Portland. He has been involved in social justice issues for a number of years, including as a long-serving Workers Rights Board member. As a member of the Faith/Labor Committee of Jobs with Justice, he has supported labor organizing as well as other justice issues.

**Ranfis Giannettino Villatoro**, the son of immigrant parents from Guatemala and El Salvador, has been a community organizer and fundraiser for community based organizations advocating for Latino and immigrant rights. He currently represents community of color organizations on the Portland Harbor Superfund Site and minority contractors for contract equity. In his free time, Ranfis spends time with his wife, Jess, and their two kids, Noah and Lucca, aged 4 and 1 respectively.

**Testimony Provided By:**
D. Michael Dale, Attorney and Executive Director, Northwest Justice Workers Project
Jésus Pulido, Wood-Framing Carpenter
Antonio Pulido, Wood-Framing Carpenter
Francisco Barajas, Wood-Framing Carpenter
Juan Sanchez, Organizer, Pacific Northwest Regional Council of Carpenters
Ben Basom, Director of Organizing and Communications, Pacific NW Regional Council of Carpenters

**Spanish Translation Provided By:**
John R. Engleheart
Background

Years of serious abuse and exploitation in Portland’s construction industry prompted the Pacific NW Regional Council of Carpenters to request a Portland Jobs with Justice Workers Rights Board Hearing. The Portland Workers’ Rights Board regularly convenes public hearings to alert the community to local workplace injustices that require public attention and pressure to achieve labor standards respecting the dignity of all workers.

On the evening of July 27, 2017, the Workers Rights Board panel met to hear testimony documenting significant problems on Portland’s construction worksites. The worst conditions are found for non-union wood-framers - many of whom are immigrant Latinos, sometimes undocumented - working on private sector residential projects. Flagrant wage theft, inadequate safety practices, failure to provide legally required breaks and other serious abuses appear widespread.

Even on large commercial projects supported with public monies, enforcement of labor law and oversight of labor standards is underfunded and inadequate. On big public projects, unscrupulous subcontractors flout our labor law and exploit immigrants, due to inadequate funding for inspections, while major contractors are exempted from responsibility. Women, people of color and people from low-income families are still seriously under-represented among construction workers at all levels, as well as among construction contractors.

To combat these and related longstanding problems, the Portland City Council in 2012 unanimously passed a resolution to approve the use of the Metropolitan Alliance for Workforce Equity’s model Community Benefits Agreement (CBA) for construction projects with budgets over $15 million. Pilot projects relying on the CBA were remarkably successful, doubling and tripling equity goals that were already deemed ambitious, particularly in the context of the lack of progress over the past several decades.

However, despite the impressive results and the significant of investment of time, effort and good-will by the City of Portland, community organizations and construction unions in the development of model practices, the City of Portland is hesitating to extend its highly successful, pilot community benefits agreements to future projects. The City Council has floated a much weaker alternative, after a consultant’s assessment of the pilot projects recommended stronger internal controls to ensure that funds would continue to be well spent in the future.
It is imperative that public authorities ensure that equal opportunity, decent wages, safe working conditions, and adherence to labor law characterize all public projects in our region. To best assure that outcome, the Workers Rights Board strongly urges the City of Portland and Multnomah County to rely on community benefits agreements modeled on that used for the Water Bureau pilot projects. Our detailed recommendations appear at the conclusion of this report.

**Issues Raised in Testimony**

*Michael Dale,* Attorney and Executive Director of the Northwest Justice Workers Project, reported that construction workers are the single largest occupational group in the Northwest Justice Workers Project caseload, most often seeking redress for unpaid wages. “Failure to pay overtime, failure to pay the minimum wage, not paying for all hours worked, and not paying the final paycheck are all quite common,” and “more claims of unpaid wages are filed with Oregon’s Bureau of Labor and Industries ((BOLI) Wage and Hour Division per person employed in construction than in any other industry in Oregon.

“Failure to pay overtime, failure to pay the minimum wage, not paying for all hours worked, and not paying the final paycheck are all quite common.”

*Michael Dale - Attorney and Executive Director, Northwest Justice Workers Project*

Construction work is dangerous, and injury rates are particularly high among workers who are temporary, non-English speaking and recently hired, who also have a hard time gaining the benefits due them from the workers compensation system.

The web of subcontractors common in construction allows the primary contractors to evade responsibility for wage theft and other abuses. Sometimes many layers of subcontractors each take a cut, until the subcontractor who actually hires the people who do the work is left with too little to pay decent wages or for workers compensation insurance, while the primary contractor is absolved of the legal obligation to see that labor law and safety practices are enforced.

Shady subcontractors have demanded kickbacks from workers on public projects entitled to prevailing wages, forcing employees to accept little more than minimum wage, or lose their jobs.

Mr. Dale suggested that the best strategies for cleaning up the construction projects carried out with public money are to (a) implement strong community benefits agreements that include hiring goals, public or community oversight to monitor compliance, funding for
community groups to assist with oversight, and a requirement of culturally and linguistically appropriate safety training, developed by the city with other stakeholders; (b) require all subcontractors to be licensed as contractors with Oregon’s Bureau of Labor and Industry (BOLI); and (c) bar irresponsible employers from further participation in public projects.

Jésus Pulido immigrated to Portland as a six-year old, grew up here, and followed his father into construction at the age of 16 years old. He and the other members of a panel of immigrant wood-framing carpenters held the audience rapt as they shared their experiences.

Mr. Pulido testified that he found construction work difficult, made worse by discrimination, poor pay, inadequate training and defective safety gear for Latinos. Employers took advantage, particularly of undocumented workers afraid to speak out for fear of losing their jobs. He, himself, was shortchanged of $3,000 by an employer who paid in cash, without receipts, leaving Mr. Pulido with no recourse to claim his unpaid wages. In a similar situation, he and others were able to complain to the subcontractor one level up from their employer who was behind on their paychecks, and then they were paid immediately.

Some subcontractors avoid paying the customary per diem pay for jobs out of town, so that Mr. Pulido and others have had to pay their own way, staying 3 to 4 to a hotel room to afford accommodation.

“One time I worked for cash and didn't have any receipts or anything. They ended up owing me about $3000 and there was nothing I could do about that.” - Jésus Pulido, Wood-Framing Carpenter

Antonio Pulido also came to the U.S. as a young child, grew up in Portland, and went into construction work as a young man. He too experienced discrimination against Latino workers, including frequent wage theft, such as being paid straight time rather than the legally required overtime premium, when regularly working 10-hour shifts
Employers didn’t equip them or train workers properly. Many employers provided safety harnesses that weren’t in good condition, didn’t fit correctly and were unsafe. The employers failed to provide goggles, gloves and high visibility shirts. Neither did they provide classes for certification to do the work properly; sometimes workers had to do things in ways that were dangerous, and unnecessarily dangerous.

“I’ve heard of many people who have fallen down and been hurt, even lost their lives because we didn’t have the right equipment. I’m here to represent the people that can’t speak for themselves, or are afraid.”

*Antonio Pulido, Wood-Framing Carpenter*

Francisco Barajas also came to the U.S. as a young child, and began working at 14 or 15 to help his mother. He found the work very hard, with long shifts of 10-12 hours, only short breaks and no water provided. Often he was paid late, and not paid in full.

He worked six days a week, including Saturdays. Francisco testified that “We didn’t have any life, it was from home to work and work to home. Then, on top of that, they wouldn’t pay us.”

“My work paid us only once a month. Sometimes we had to wait another month, and after two months, they would pay us for only half of the hours we’d accumulated.”  *Francisco Barajas, Wood-Framing Carpenter*

Mr. Barajas also experienced being poorly equipped, working without a forklift and having to carry wood up to the second floor. He and his co-workers walked on top of walls without any attachment, because they weren’t provided the safety equipment they needed.

Mr. Barajas told the audience, “I want people to realize that it’s not easy to be up here, but it’s so important that there are communities that are willing to help us Latinos. Thank you very much.”
Juan Sanchez described arriving in the U.S. in 1999, with just $5 or $10 and very little English. He lived crowded into an apartment with more than a dozen others, rising before dawn to be at the jobsite by 6 am to get an early start on the work day.

The hours were very long; lunches were short and breaks non-existent. They worked every day in the summer, seven days a week.

Mr. Sanchez now speaks English, with a raconteur’s style that had listeners laughing to a hard story, culminating in a description of being paid, late, only $200 for two months of hard work. His boss justified that paycheck with “deductions” for rent, food, transportation to the jobsite, and the “need to pay to use the tools” – letting him know that he should be thankful he had a job.

“We can believe that my story is repeating today? Right now, somebody’s working under the same circumstances that I worked under 18 years ago in this city. Are we going to let that happen? It is important that we know that that happened to me, but you see I’m not important. It’s about the thousands and thousands of carpenters out there living under exploitation for one reason or another.”

Juan Sanchez, Organizer, Pacific Northwest Regional Council of Carpenters

Juan Sanchez and the Pacific NW Carpenters Union visit jobsites to let carpenters know that the public projects they’re working on should be paying the mandated prevailing wage, and that the Carpenters Union will help them if the law is being broken. They find, for instance, that employers will report that carpenters worked fewer hours than they actually did, so that their pay appears to equal prevailing wage.

“We do have laws in place, but believe me they’re close, really close, to being worthless because if they’re not being enforced, what good do they do?”

Juan Sanchez, Organizer, Pacific Northwest Regional Council of Carpenters

Carpenters union representatives are reaching out to owners and developers with new projects, to let them know about contractors who have been reported for breaking the law to the Bureau of Labor and Industry (BOLI). Even when a complaint is upheld by BOLI, Mr. Sanchez reported it takes at least six months for people to be paid, a lifetime for people living from paycheck to paycheck.
Mr. Sanchez and others also encourage immigrant carpenters to join the union, to be paid decently, earn benefits and enjoy a better life.

Ben Basom, Director of Organizing and Communications, Pacific NW Regional Council of Carpenters, related having worked on dozens of cases of worker exploitation in construction, and says the most severe were cases of Latino workers on residential construction projects.

However, egregious abuses and worker intimidation are occurring even on projects supported with public money. During an investigation of cash payments and tax evasion by a drywall subcontractor in Portland that has participated on scores of public projects, Mr. Basom met off-site with an employee who told him about wage theft, cash payments to avoid taxes and Workers’ Compensation, and bullying of workers who complained. The next week, that informant “was terrified of us...his arm now in a cast. He repeatedly told us that ‘he could no longer talk to us because he didn’t know what else they would do to him’ and said that they made even bigger personal threats, that ‘they knew where his family in Mexico lived.’ That was the last time we spoke to him.”

Years later, others came forward to talk about this same contractor, asking that their faces be masked and their voices disguised, out of fear for their and their family members’ safety. A HUD investigator tried to go forward with their testimony, but couldn’t build a case because others were too afraid to speak out. Mr. Basom reported that even with video testimony, written testimony, written collaborative witness statements, and union research through public records requests and worker interviews, the primary contractors chose to turn a blind eye to the evidence on the subcontractor with whom they worked regularly.

“They told similar stories of intimidation on the job sites, and the boss who intimidated workers through coercion and threats of physical violence if they...said anything...Often times their pay for a week was around $250 for 5 days of work, 10 hours a day...[they] were earning about $5/hr, nearly $3/hr under Oregon’s minimum wage at the time. This was a public works project with federal Hope 6 grant money involved.”

Ben Basom, Director of Organizing and Communications, Pacific NW Regional Council of Carpenters

The best strategy to combat wage theft, intimidation and abuse in local construction that Mr. Basom sees is to work with a Community Benefits Agreement (CBA) on all projects
with public monies involved, including funding – direct or indirect - from the City of Portland and Multnomah County.

Community Benefits Agreements have reduced exploitation on public projects and successfully diversified both construction labor forces and contractor rolls. The City of Portland CBA achieved remarkable results on the Kelly Butte Reservoir and Interstate Maintenance Facility projects, far exceeding even ambitious goals of apprentice utilization and of employment of women and people of color, while providing family wages, benefits and training to the workers.

After decades of unmet equity goals by contractors, the key to the success of the CBAs was community involvement and oversight in the prep work, and throughout construction. Contractors were penalized for non-compliance, judged by community organizations with a vested interest in the agreement and contractors who legitimately cared. There was no need to wait for months for a complaint to be heard, or investigated by a separate public agency.

Comparable successes resulted from a similar program operating in the South Waterfront re-development zone for nearly a decade, working with the Portland Development Commission, now known as Prosper Portland. The South Waterfront Oversight Committee was able to remove a drywall subcontractor who worked with labor brokers who skimmed the pay of undocumented workers and left them vulnerable to a host of abuses.

Mr. Basom stated clearly that only strong oversight by an empowered and funded community-based committee is capable of turning goals into reality. Investigation, enforcement and penalties are necessary, and should be public record.

Mr. Basom reported that Portland is once again experiencing a construction boom, extending to residential housing and the wood-framing and drywall jobs associated with the worst cases of abuse and exploitation. Many mixed-use residential projects are part of the city’s Prosper Portland development zones, and should be built under the protection of strong Community Benefits Agreements with an impressive record of success.

Panel Response and Recommendations

The powerful testimony, deep personal experience and solid expertise that speakers shared during this hearing held the community audience and panel members spellbound, despite the warmth and late hour on a workday summer evening.

Panel member Ranfis Villatoro particularly thanked the wood-framers for testifying, saying “It’s pretty clear that we all in this room benefit from your work. It is also clear from your testimony that our laws and regulations are failing people like you everyday.”
“It’s pretty clear that we all in this room benefit from your work. It is also clear from your testimony that our laws and regulations are failing people like you everyday.” -Ranfis Villatoro, Community Organizer

Father Jack Mosbrucker captured the reaction of the panel, stating,

It is abundantly evident that carpenters are being taken advantage of—workers who are vulnerable because of the inherent imbalance of power between them and managers. These workers have only their hands and head with which to work in exchange for compensation – a compensation that is necessary to feed, clothe and house their families.

The injustice of taking advantage of these workers by stealing their wages is truly appalling. It demands adjudication by responsible authorities, especially those elected to serve the citizens of this city when they have jurisdiction. Whatever processes and influence the city officials have to insure that workers are compensated fairly and justly should be employed.

“The injustice of taking advantage of these workers by stealing their wages is truly appalling. It demands adjudication by responsible authorities.” -Father Jack Mosbrucker, Priest of the Archdiocese of Portland

Speaking for the panel as a whole, chair Mary King said, “As a city and county, we can and must do better. Clearly articulated, monitored and enforced labor standards are fundamental to the health of our community. Labor law applies to all, regardless of legal status. To that end, we make the following recommendations and pledge to do what we can to publicize and promote them.”

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Workers Rights Board Panel Recommendations

We, members of the Workers Rights Board Panel, recommend that the City of Portland and Multnomah County

1. Require all construction projects in the City of Portland and in Multnomah County that rely to any degree on public monies, whether federal, state or local, to operate with a Community Benefits Agreement based on best practices in general and modeled after the successful pilot projects in Portland, in particular the Portland Water Bureau projects at the Kelly Butte Reservoir and the Interstate Maintenance Facility.

These Community Benefits Agreements should ensure that
a. Women, people of color, low-income people and members of other under-represented groups are well represented among employees and contractors.
b. Local, community organizations and unions with expertise at recruiting, training and representing women, people of color, low-income people and members of other under-represented groups are involved at every stage, to assist with developing the Community Benefits Agreement, supporting efforts to meet hiring and contracting goals, and ensure compliance with stated goals.
c. Decent labor standards are met by all contractors and sub-contractors, including equal pay for equal work, appropriate training and professional development, safety practices, and maintaining workplaces free from discrimination, harassment, retaliation against whistle-blowers, and abuses such as wage theft and misclassification of employees.
d. All contractors participate in or operate a state approved apprenticeship program, shown to effectively provide appropriate classroom and practical training
i. To a group of apprentices with strong representation of women, people of color, low-income individuals and other groups under-represented in construction work in the Portland area;
ii. Which creates demonstrable improvements in skill development of a high proportion of participants, including members of all groups mentioned above; and
iii. Which provides evidence that a high proportion of apprentices graduate from the training program in a timely manner.
e. Any contractors that do not meet minimum goals for the objectives outlined above be penalized with fines proportionate to the shortfall. In the case of repeated or particularly egregious shortcomings, contractors should be barred from construction work reliant on public funds for a number of years.
2. An Oversight Committee, comprised of representatives from the City of Portland, Multnomah County, Prosper Portland and local community organizations, be created to monitor and enforce the Community Benefits Agreement, reporting to the Mayor of Portland and the Chair of the Multnomah County Board of Commissioners. The Oversight Committee should have a Labor Compliance Subcommittee that is solely focused on ensuring appropriate project monitoring, compliance and enforcement activities, which regularly reports to the Oversight Committee.

3. The Labor Compliance Subcommittee should contract with appropriate community organizations or directly hire Labor Compliance Inspectors to regularly visit worksites, speaking individually with employees.
   a. The Labor Compliance subcommittee should have access to and review monthly certified payroll, have power to issue penalties and liquidated damages on non-compliant contractors and sub-contractors, and have the power to issue backwages to injured parties.
   b. Labor Compliance Inspectors should report their findings directly to both the Oversight Committee and the Labor Compliance Subcommittee on a regular basis.
   c. Labor Compliance inspectors should be community leaders or members trained by labor representatives, including unions and other community organizations involved in drafting the Community Benefits Agreement and represented on the Oversight Committee and on the Labor Compliance Subcommittee.
   d. The Oversight Committee should regularly report its findings to the City of Portland and Multnomah County, and expect regular, prompt accounts of City or County actions to fine non-compliant contractors or bar them from publicly funded projects for a period of time.

4. At least 1% of the total value of the construction contracts should be placed in an account, in the amounts of
   a. one-fourth for compliance activities, which could include, but not be limited to:
      paying costs of a non-profit organization charged with pursuing remedies from employers who engage in wage theft or other breaches of labor standards enumerated in the Community Benefits Agreement; and making whole employees who experience wage theft or other breaches of labor standards, if that non-profit is unable to collect sums found to be owed from construction employers.
b. one-fourth for increasing the overall capacity of contracting participation through community outreach partnerships and small business technical assistance.

c. one-half for increasing the overall capacity of a diverse workforce through community outreach partnerships, supportive services and industry specific skills training.
Resources on Portland’s Experience with Community Benefits Agreements
(in chronological order)

September 5, 2012, Portland City Council Adopts Resolution 36954 to adopt Model CBA, resulting from 2 years of work of Metropolitan Alliance for Workforce Equity
http://efiles.portlandoregon.gov/Record/5137942/


CBA Labor-Management-Community Oversight Committee, April 2016. Community Benefits Agreement (CBA) – Pilot Projects with the City of Portland – April 2016. 4-Pager
http://www.portlandcbapilotprojects.com/wp-content/uploads/2016/05/4pager_CBA_April2016_Final_03.pdf


City Council’s Materials for Discussion of Reports on CBA Pilot Projects – June 2016
https://www.portlandoregon.gov/omf/70745


