



UNITED STATES DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

STATEMENT OF

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BEFORE THE

**SUBCOMMITTEE ON DOMESTIC POLICY
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES**

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Chairman Kucinich, Ranking Member Issa, and distinguished members of the Subcommittee:

Thank you for the opportunity to appear before you today to discuss the efforts of the Department of Labor's Wage and Hour Division (WHD) in New Orleans following the devastation of Hurricanes Katrina and Rita. I have served as the District Director of the New Orleans District Office (NODO) of WHD since 2002, and have worked in the NODO since 1997. Since joining WHD in 1967, this is the third time I have been stationed in New Orleans, the first being from 1971 to 1974 and the second being from 1979 to 1990. As the District Director of the NODO, I supervise investigators, technicians, and support staff in offices in the City of New Orleans, as well as the four field stations across the State of Louisiana.

These investigators, technicians, and support staff in the NODO have done an incredible job under extraordinary circumstances. Our office has a strong record of enforcement on behalf of workers in New Orleans due to our efforts following the hurricanes. We have protected and secured the wages of the individuals who have been cleaning up and rebuilding New Orleans. I am honored to share with the Subcommittee the efforts of the NODO staff and to discuss the challenges that they have faced and continue to face.

In understanding the efforts of the NODO, it is important to understand the backdrop against which those efforts took place. As a result of Hurricane Katrina, which struck New Orleans on August 29, 2005, the staff members of NODO evacuated from New Orleans and

relocated to various locations around the country, including Houston; Dallas; Grand Rapids, Michigan; Baton Rouge; and Jacksonville, Florida.

Given the difficulty of securing office space in New Orleans – despite our best efforts in conjunction with the General Services Administration – immediately after Hurricane Katrina, the NODO operated out of the Houston District Office from August 29, 2005, until late September 2005, when NODO management team moved to the Baton Rouge field station. We remained in Baton Rouge until November 2005, at which time NODO management team and some staff members moved back to the area into a former retail shoe store in a mall in Metairie, Louisiana, just outside of New Orleans. As our staff members worked out personal issues, such as ensuring that their children continued to attend school and making arrangements for adequate housing for their families in New Orleans, they returned to the New Orleans area. It was not, however, until late December 2005, that all NODO staff was back working out of the temporary space in Metairie.

We continued to work from the shoe store until July 2006, when the office moved to temporary space on the seventh floor of the F. Edward Hebert Building in New Orleans. Finally, in December 2006, the NODO made its final move – this time to the sixth floor of the Hebert Building.

Compounding the issues associated with moving an office five times in the course of 16 months were the personal issues being dealt with by the NODO staff themselves. Over half of the staff assigned to work in New Orleans experienced significant damage to their homes and belongings with about one third losing everything they owned.

The issues the NODO staff experienced were not unlike those experienced by anyone trying to reestablish his or her life in New Orleans:

- Finding schools that were operating and able to accommodate the needs of their children.
- Finding adequate health care for themselves and their families.
- Finding repairmen who could help them with receiving basic services such as water, heat, and electricity in their homes.
- Repeatedly meeting with insurance adjusters in an attempt to obtain the money they needed to repair their homes.
- Finding affordable alternative housing until their homes could be repaired.
- Finding alternative methods of transportation when vehicles were lost in the storm and public transportation was operating on a very limited schedule.
- For those who did not have adequate insurance, meeting with the Red Cross and FEMA to obtain assistance.
- Standing in lines at multiple postal facilities in an attempt to locate mail.

Despite these challenges, every member of the NODO staff returned to continue working for the people of New Orleans and the surrounding areas. It is a testament to the men and women of the NODO that they continued to perform the work of the agency by conducting investigations under the various laws that we enforce to provide the protections to which employees are entitled.

Upon returning to New Orleans, one of the most significant challenges was (and continues to be) the sudden and dramatic demographic shift in the area. According to some news

accounts, the Hispanic population in the New Orleans metropolitan area had increased from two percent to 20 percent. It was obvious that the two Spanish speakers on staff at the time would not be adequate to serve the Hispanic workers who had come to the area to help rebuild. We realized that we needed to address this problem – in both the short term and the long term.

Our short-term solution was to have investigators with Spanish language skills detailed to New Orleans from offices all over the country to work on a temporary basis in the New Orleans area. The first of them arrived shortly after we moved into the shoe store in November 2005. Other investigators with Spanish language skills rotated through the NODO to help with outreach activities and investigations of employers who employed workers who only spoke Spanish. To date, twenty investigators with Spanish language skills have been detailed to the NODO for various lengths of time, generally ranging from two weeks to four weeks. In addition, from approximately August 2006 through May 2007, a bilingual Assistant District Director from the Dallas District Office worked most of his time in the NODO, helping with the management of the office and assisting with the investigations. We in the NODO are grateful for the willingness of our WHD colleagues to assist the people of New Orleans, as well as for the flexibility of their managers, co-workers, and families around the country in handling their absences from their home offices.

Our long-term solution has been to increase the number of Spanish-speaking investigators in the NODO and to improve outreach and accessibility to the Hispanic community. To that end, we advertised for and hired three additional Spanish speakers – two investigators and one team leader (who conducts investigations in addition to his supervisory duties). In addition, the NODO opened a satellite office in Kenner, Louisiana, approximately fifteen miles from the District Office. The office is located in a community heavily populated with Hispanic residents and businesses. It is staffed with three investigators and a team leader. Of the four individuals who staff the satellite office, three are Spanish speakers. One of the main purposes of this satellite office is to provide easy access to WHD for workers who are reluctant to come to a federal building to file a complaint.

Our efforts to improve outreach began almost immediately after returning to the New Orleans area. Some of the outreach events that took place soon after the hurricane include:

- In the second week of December 2005, I traveled to Houston, Texas, and met with the Mexican Consulate to offer assistance with addressing wage issues being experienced by Hispanic workers in the New Orleans area. It was agreed that if the NODO secured a location to hold an outreach event to provide workers with information regarding their rights, the Mexican Consulate would publicize the event to the workers. The NODO secured the location and the event took place on January 11, 2006.
- On January 19, January 24, and February 9, 2006, experienced Spanish speaking investigators came to New Orleans from other WHD offices and participated in community call-in radio shows (in addition to conducting investigations). The first segment of these shows was devoted to advising the Hispanic worker about their rights under the laws that WHD enforces and informing the listening audience about how to contact WHD if they believed that their rights were violated. The second segment was devoted to answering questions from the listening public. These events were broadcast by the two Spanish language radio stations operating in New Orleans at the time. This service continues to the present with the most recent broadcast taking place on October 10, 2007.

- On March 25, 2006, the NODO participated in an outreach activity sponsored by Loyola Law Clinic in which workers were informed of their rights and how to file a complaint if they were not paid correctly.
- On May 20, 2006, the NODO participated in a Mobile Mexican Consulate in which workers were advised of their rights and how to file a complaint if they are not paid correctly.
- On August 13, 2006, the NODO participated in a job fair for Hispanic workers sponsored by St. Joseph's Church and the Hispanic Apostolate.
- We have developed a relationship with the Honduran Consulate, and we provided the Consulate with literature and contact information for its constituents.
- We developed a relationship with Javier Gallardo, Day Laborer Project Coordinator for the New Orleans Worker's Center for Racial Justice. NODO has furnished this organization with WHD literature written in the Spanish language to distribute to workers as the day laborer sites are visited. In addition, the NODO has visited those sites with Mr. Gallardo to be available to take complaints or provide information.
- For most of 2006, until the operation was closed, twice per week the NODO visited the Good News Camp, a faith-based organization that provided workers with free lunches and dinners, clothes, cleaning supplies, etc. Good News camp was located in City Park where many of the immigrant workers had pitched makeshift tents and were living there. Each week on Tuesdays during the lunch meal, and on Thursdays during the dinner meal, the NODO sent two investigators (at least one Spanish speaker) to visit the camp site and provide information about rights under the wage and hour laws to the workers or take complaints about wage issues. The NODO presence at this facility was publicized by notifying local advocacy groups, announcing it on radio shows, and distributing flyers written in Spanish and English.

Because the NODO is committed to ensuring that workers who have come to aid the City and its citizens in rebuilding efforts are provided the protections that they are entitled to, various types of outreach events continue to the present time.

The heart of our efforts to ensure compliance, however, has been our investigations. There are two types of investigations: "Complaint" and "Directed." Complaint investigations are generated by complaints in which individuals call, write, or visit the NODO and provide information that employers are not complying with the laws that WHD enforces. Directed investigations, on the other hand, are initiated by the NODO as a result of information obtained from other than a direct source that indicates a likelihood that employers may not be complying with the laws.

Before August of 2005, most of the investigations conducted by the NODO were generated by complaints from the general public. This remains the case in the field stations located in Monroe, Shreveport, Baton Rouge, and Lafayette, Louisiana. In the New Orleans area, however, only a minimal number of complaints were coming into the office after the storm. For this reason, we decided that the NODO would begin to systematically conduct directed investigations of all of the major prime contractors on government contracts and their subcontractors. Because the NODO staff working in the Katrina-affected area heard and read stories on a daily basis from the media indicating that workers were being required to work 10 and 12 hour days, six and seven days per week, the NODO management considered it a high probability that some workers were not being paid the prevailing wage or proper overtime. The

news stories further indicated that workers engaged in installing the “blue roofs” were paid piece rates, without overtime pay, and that at the lower layers of the subcontracts there were instances of employees receiving less than minimum wage or in some cases no pay at all. The same stories appeared in the media regarding the debris removal contracts.

To date the NODO continues to conduct directed investigations of employers working on the various contracts let for the recovery of New Orleans. Complaints affecting employees in the New Orleans area are worked as they are received.

Our enforcement efforts have not been without their challenges. Among the substantive challenges facing us in New Orleans has been the misclassification of employees as independent contractors. We also have run into concerns with respect to “coverage,” or the applicability of the statutes enforced by WHD. In addition, workers—frequently day laborers—often lacked basic information such as the name of their employer. For many of these workers, the statutes that WHD enforces simply did not apply because, for example, there was no employment relationship or the requisite connection with interstate commerce. Thus, for a variety of reasons—including lack of coverage and inability of workers to identify their employer—in New Orleans, we often find it difficult to link the workers to an employer that we could hold responsible for compliance with the applicable statutes. Moreover, even when we can establish such a link, the complexities of identifying employment relationships between workers and the companies for which they work, and of determining the existence of joint liability so as to reach an employer financially able to pay back wages, often resulted in lengthier investigations and slower-than-typical back wage recovery.

Yet another challenge is unlike anything we had experienced previously. Federal assistance has poured into the region. The need for an immediate response to the conditions in the area resulted in multiple layers of subcontracting and blurred lines of employer accountability. In our experience with government contracts, a Service Contract Act investigation typically involved one or two tiers of subcontractors. In New Orleans, however, we frequently encountered situations where the prime contractor had dozens, if not hundreds, of lower-tier subcontractors. In one case, we identified over 120 subcontractors to a prime contractor on a U.S. Army Corps of Engineers debris removal contract. In another example, a prime contractor had 72 first-tier subcontractors working in one parish and 183 in another, for a total of 255 first-tiered subcontractors. Some of these upper-tiered subcontractors had little or no experience in government contracting, and many failed to include the required wage determination and contract stipulations into contracts with their lower-tiered subcontractors.

The NODO’s future strategies, indeed all of Wage and Hour, will build upon the lessons learned over the past two years. Our new investigators have received advanced training in the government contracts statutes—a course typically reserved for more senior investigators. Our directed enforcement program will continue to take a top-down approach to enforcing the government contract statutes, holding prime contractors responsible for their subcontractors’ violations.

The long-term reconstruction of New Orleans will require a strong presence by the NODO. We will continue to explore new strategies and partnerships to reach vulnerable workers, and pursue all opportunities to meet any new compliance challenges that may arise.

Mr. Chairman, this concludes my prepared remarks. I will be happy to answer any questions you or the Members of the Subcommittee may have.