

G. ICE Policy Regarding Labor Disputes

OI 287.3a Questioning persons during labor disputes. (Revised 12/04/96; Added to INSERTS April 99)

When information is received concerning the employment of undocumented or unauthorized aliens, consideration should be given to whether the information is being provided to interfere with the rights of employees to form, join or assist labor organizations or to exercise their rights not to do so; to be paid minimum wages and overtime; to have safe work places; to receive compensation for work related injuries; to be free from discrimination based on race, gender, age, national origin, religion, handicap; or to retaliate against employees for seeking to vindicate these rights.

Whenever information received from any source creates a suspicion that an INS enforcement action might involve the Service in a labor dispute, a reasonable attempt should be made by Service enforcement officers to determine whether a labor dispute is in progress. The Information Officer at the Regional Office of the National Labor Relations Board can supply status information on unfair labor practice charges or union election or decertification petitions that are pending involving most private sector, non-agricultural employers. Wage and hour information can be obtained from the United States Department of Labor (Wage and Hour Division) or the state labor department.

In order to protect the Service from unknowingly becoming involved in a labor dispute, persons who provide information to the Service about the employer or employees involved in the dispute should be asked the following: 1) their names; 2) whether there is a labor dispute in progress at the worksite; 3) whether they are or were employed at the worksite in question (or by a union representing workers at the worksite); and 4) if applicable, whether they are or were employed in a supervisory or managerial capacity or related to anyone who is. Information should be obtained concerning how they came to know that the subjects lacked legal authorization to work, as well as the source and reliability of their information concerning the alien's status.

It is also appropriate to inquire whether the persons who provide the information had or have a dispute with the employer of the subjects of the information. Likewise, the person providing the information about the aliens should be asked if the subjects of the information have raised complaints or grievances about hours or working conditions, discriminatory practices or about union representation or actions, or whether they have filed workers' compensation claims.

Generally there is no prohibition for enforcing the Immigration and Nationality Act, even when there may be a labor dispute in progress. However, where it appears that information may have been provided in order to interfere with or to retaliate against employees for exercising their rights, no action should be taken on this information without the review of the District Counsel and approval of the Assistant District Director for Investigations or an Assistant Chief Patrol Agent.

When Service enforcement action is taken and it is then determined that there was a labor dispute in progress, or that the information was provided to the Service to retaliate against employees for exercising their employment rights, the lead immigration officer in charge of the Service enforcement team at the worksite must ensure to the extent possible that any arrested or detained aliens necessary for the prosecution of any violations are not removed from the country without notifying the appropriate law enforcement agency which has jurisdiction over these violations.

Any arrangements for aliens to be held or to be interviewed by investigators or attorneys for the state or federal Department of Labor, the National Labor Relations board or other agencies/entities enforcing labor/employment laws will be determined on a case-by-case basis.