



At the Northwest Workers' Justice Project, we believe that all workers share the fundamental **human right** to live and labor with **dignity, safety, and hope**. Whether constructing and landscaping the buildings in our communities, harvesting and preparing the food on our tables, or cleaning our offices and hotel rooms, **every worker** deserves **fair and lawful wages and working conditions**.

ALL WORKERS SHOULD GET PAID FOR THEIR LABOR.



With the support of people like you...

NWJJP and our coalition partners have launched a united campaign to put an end to wage theft in Oregon.

Learn more inside about the coalition and our work to ensure all workers receive the wages they have lawfully earned.

I STAND FOR WORKER JUSTICE.

Count me in! I will help strengthen protections for low-wage workers with the enclosed contribution of:

- \$50 \$100 \$250 \$500 other _____

Name of giver(s): _____

Address: _____

Email: _____ Phone: _____

I would like my donation to remain anonymous.

For a tax deductible contribution, please make your check payable to our partner nonprofit, "NEED Fund."

You can also make a tax deductible contribution by credit card one-time or monthly by visiting www.nwjp.org/support.html.

Thank you for your support.

Mail to: 917 SW Oak St., Suite 412, Portland, OR 97205

The mission of the NORTHWEST WORKERS' JUSTICE PROJECT is to defend and strengthen the workplace and organizing rights of low-wage contingent and immigrant workers in the Pacific Northwest.

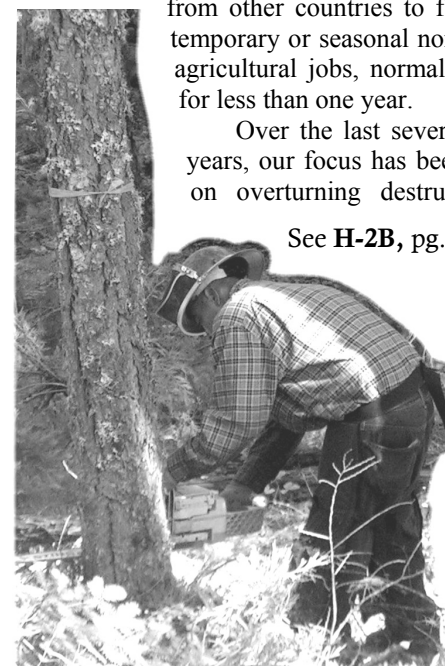
Positive changes to H-2B program within sight

- The U.S. Department of Labor has finally released new proposed regulations for the H-2B temporary foreign worker program, which incorporate the majority of the recommendations made by NWJJP and other worker advocates.
- Unfortunately, DOL has also delayed the implementation of the new H-2B prevailing wage rate (which would increase annual wages of workers hired by employers using or seeking to use the program by an estimated \$769.4 million) by at least a year.

Frequent readers of our newsletter will remember that NWJJP and other advocates have been struggling to improve conditions within the infamous H-2B temporary foreign worker program. The H-2B program allows certain U.S. employers to recruit and hire workers from other countries to fill temporary or seasonal non-agricultural jobs, normally for less than one year.

Over the last several years, our focus has been on overturning destruc-

See **H-2B**, pg. 7



Bills advance to stop wage theft in Oregon

Employer opposition imperils passage



This spring, the Oregon Coalition to Stop Wage Theft held town halls on wage theft in Woodburn, Portland, and Redmond, as part of our campaign to ensure all workers receive the wages they have legally earned for their work. Read more on pages 4 and 5.

Despite an evenly divided legislature and strong business opposition, some of the anti-wage theft legislation sponsored by NWJJP and our partners in the Oregon Coalition to Stop Wage Theft has made progress through the Oregon Legislature.

Two bills that could still be enacted this legislative session are focused on the upsurge of unpaid wages in the construction industry. A recent analysis of wage claims made to the Oregon Bureau of Labor and Industries during a recent four-year period found that construction workers were owed \$3.2 million in illegally withheld wages. (Read more about the Oregon Center for Public Policy's analysis of wage theft on page 5.)

In an important victory for workers, Senate Bill 612-A passed narrowly in the Oregon Senate in early May and was sent to the House. Construction contractors increasingly rely on fly-by-night labor brokers—whom they characterize as "subcontractors"—to supply workers. These labor brokers frequently violate wage laws, and state regulation of these practices is minimal. Consequently, workers who have been ripped off by labor brokers face challenges in collecting their lawful wages. SB 612-A intervenes in this exploitive subcontracting chain by requiring construction labor brokers to obtain state licenses and post a bond to cover

See **LEGISLATION**, page 5

Northwest Workers' Justice Project

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* The Northwest Employment Education and Defense Fund (NEED Fund), our partner organization, was founded alongside NWJP to support our 501(c)(3)-eligible program work.

** Affiliations listed for identification purposes only.

Dedicated labor lawyer brings her experience to Oregon

NWJP welcomes our newest staff member, Genice Rabe, who can often be found working in the Capitol Building as Legislative Counsel to NWJP and the Oregon Coalition to Stop Wage Theft.

Before joining NWJP, Genice worked as a labor and employment discrimination attorney representing unions in Dallas, Texas for thirty years. A native of Salem, she returned to her Oregon roots in 2009.

She is a member of both the Texas and Oregon State Bars.

Genice has been working with NWJP since 2010 to advocate for new laws to fight wage theft. We are fortunate to have her on our team!



Genice Rabe

A special thanks for our newest foundation support

We would like to extend our appreciation to the **Sisters of St. Francis of Philadelphia** for their generous support of our work to engage the public in productive conversations about the myths and realities of immigration.

We would also like to acknowledge the **General Service Foundation** for their

crucial support for our efforts through the Low Wage Worker Legal Network (LWWLN) to bring together low-wage worker advocates from legal organizations across the country to push for policies that protect low-wage immigrant and contingent workers in the U.S.

NWJP seeks law student to sponsor for legal fellowship

NWJP is seeking to sponsor a third year law student for application to a legal fellowship program, to begin in fall 2012. NWJP will work with the selected candidate to develop a public interest project. We intend for the fellow's work to focus on enforcing worker protections in reforestation, particularly under the H-2B temporary worker program.

We seek applicants who are dedicated to using legal tools to defend the employment rights of low-wage temporary and immigrant workers. The fellow will be based out of our office in Portland, Oregon, and may be required to travel to southern Oregon. We are a diverse workplace and strongly support workplace diversity. Spanish fluency will be very useful but is not strictly required.

Interested applicants should send a cover letter describing your interest in employment rights of low-wage temporary and immigrant workers, along with a current resume, to meg@nwjp.org as soon as possible, but no later than **July 15, 2011**.

Immigrant rights = Workers' rights

On May Day 2011, thousands of Oregonians gathered in the streets of Portland and Salem to stand in solidarity with workers across the globe and speak out against attacks on immigrants and the working class.

Stronger worker protections within H-2B program in sight

Continued from page 1

tive regulations adopted by the Bush administration in the final days of 2008 that further undermined wages and working conditions in affected industries for U.S. and foreign temporary workers.

Also, as reported in our last newsletter, the Bush Department of Labor in 2005 secretly and illegally changed the method for calculating the "prevailing wage" which employers who propose to use the H-2B program are required to offer to U.S. workers and to pay temporary foreign workers. Before this change, the prevailing wage was the average wage for an occupation in the area. The Bush method set prevailing wages at about the 16th percentile.

In early 2009, shortly after President Obama took office, NWJP and our allies filed a federal lawsuit challenging the changes (*C.A.T.A. et al. v. Solis, U.S. District Court for the Eastern District of Pennsylvania, Civil No. 09-CV-240*).

In August 2010, the court ruled that the Bush administration's changes to the prevailing wage calculation were unlawful. The court also ruled against a number of other changes made by the Bush administration.

Secretary Solis issues proposed H-2B program regulations in March 2011

Now, DOL has finally released new proposed regulations for the H-2B temporary foreign worker program. Although it is too early to say with certainty, we are cautiously optimistic that the new rules will be a definitive rollback of the Bush regulations. The proposed regulations favorably address many of the concerns we raised in our comments on the 2008 regulations and in the *C.A.T.A.* case, even including most of the parts of the Bush regulations that the court upheld in *C.A.T.A.*

For example, one of the chief reasons that H-2B workers are so vulnerable to exploitation is that they arrive in this country heavily indebted, often to unethical loan-sharks, for the high costs they had to pay to get the H-2B job — sometimes amounting to thousands of dollars. Bound to the employer that "imported" them, H-2B workers are less likely to speak up about workplace abuses for fear of being fired and left without an income to repay their loans.

Before the Bush regulations to the H-2B program were adopted, a handful of court cases had established that an employer of temporary foreign workers is required to refund to workers in their first pay period any costs that they incurred in coming to the United States to work (to the extent that deducting those costs from the wages the workers had earned would cause the first week's wages to fall below the minimum wage). However, the Bush regulations reversed that progress by disapproving of the court decision that set the precedent for these rulings (known as the *Arriaga* decision).

In an about-face from the Bush administration, the current DOL has essentially written the *Arriaga* decision into the proposed regulations. In fact, the new regulations go further by requiring employers of H-2B workers to pay or reimburse transportation and subsistence to and from the worksite, visa, border crossing, and other fees for H-2B and U.S. workers in identical jobs up to the prevailing wage (rather than the minimum wage).

The Department estimates that workers will be reimbursed \$11.7 million per year for visa fees, \$37.8 million for transportation, and \$1.5 million for subsistence, for a total of **\$50 million a year** as a result of this change alone.

DOL delays implementation of increase in prevailing wage rates for H-2B program

Unfortunately, the struggle to secure immediate adoption of a new calculation method for H-2B program prevailing wage rates drags on. As announced in our last newsletter, DOL responded to last August's federal court decision by proposing a rule that will increase the prevailing wage that must be offered to U.S. workers and paid to all workers affected by the program by an average of \$4.38 per hour, resulting in an additional \$769.4 million dollars a year for U.S. and foreign workers of H-2B employers. Such an increase in wages should also make many of the jobs that are currently filled by H-2B workers more attractive to U.S. workers and prevent employers from preying on vulnerable temporary foreign workers.

NWJP and our allies led efforts to submit comments in support of the proposed wage calculation methodology, and DOL has adopted the new rule.

However, after intervention by the U.S. Chamber of Commerce, the Office of Management and Budget required in the final regulation that the implementation of the new wage rate be delayed for at least a year. Worse, DOL also invited comment on whether the Department should phase in the new policy over an even longer period. Although adoption of the rule was an important step, the delay in implementation allows abuses in H-2B workplaces to continue and robs workers of the wages they deserve.

Struggle for stronger worker protections in H-2B program continues

NWJP and our allies have submitted comments to DOL in support of the proposed H-2B program regulations, and pushing for even fuller worker protections, especially with regard to the enforcement of employer obligations. We are hopeful that stronger protections for U.S. and H-2B workers under the current administration are in sight. We expect DOL to issue final regulations in a few months, although there could be several rounds of proposed regulations.

As to implementation of the new prevailing wage rate, we do not believe that the delay by DOL complies with either the law or the judge's order in the case. We have asked the judge in *C.A.T.A.* to order earlier implementation, or at minimum, to preclude DOL from phasing the new wage rate in over even more than one year.

Over the coming months, we will continue to push for the timely adoption of H-2B program regulations and wage rates that protect U.S. and foreign workers from abuse and help to prevent employers from using temporary foreign workers as a source of inexpensive, exploitable labor.



Data indicates millions of dollars of unpaid wages in construction

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OCCP further illuminated the problem of wage theft in the construction industry by focusing in on wage claims filed with BOLI by construction workers over a four-year period, ending June 2010:

- Construction workers filed 1,823 wage claims, alleging \$5.2 million in illegally withheld wages.
- The average claim was for \$2,847.
- Of those claims, BOLI found that workers were owed \$3.2 million in unpaid wages.
- However, of the wages BOLI determined to be due, workers recovered only about \$1.9 million (61%) of the total they were owed.

OCCP's policy analyst Janet Bauer stressed that the claims filed with BOLI "are just the tip of the iceberg," explaining that the numbers only reflect instances where workers knew of BOLI's enforcement authority and actually filed a claim.

"Workers whose wages have been stolen may not know they have recourse or may fear reprisal from their employer," said Bauer.

Also, because BOLI is constrained from pursuing some types of complaints, it is likely that the level of wage theft they find understates the extent of the problem, Bauer said. For instance, BOLI closes cases where they cannot locate the employer or the claimant was paid on commission and received at least minimum wage.

Read OCCP's analysis online at www.ocpp.org. OCCP is a non-partisan research institute that does in-depth research and analysis on budget, tax, and economic issues.



Christine Hammond and Luis Martin del Campo from the Oregon Bureau of Labor and Industry's Wage and Hour Division spoke at a town hall on wage theft about workers' rights and resources for workers seeking to make a claim.

Legal network spurs national collaboration

The recent success of national advocacy efforts to roll back the Bush administration's H-2B regulations has highlighted the effectiveness of another NWJP project: the Low Wage Worker Legal Network (LWWLN). The Network brings together low-wage worker advocates from legal organizations across the country to push for policies that better protect low-wage immigrant and temporary workers in the U.S. Since it was formed in 2004, the Network has grown to include 186 legal advocates from 74 organizations in 24 states, the District of Columbia and Mexico.

Two primary goals of the LWWLN are to facilitate joint training and spark coordinated policy advocacy. About once a month, Network members are invited to participate in a national conference call to discuss a particular issue that arises in the representation of low-wage workers in the changing economy. Recognized experts in the field are enlisted to lead each training call. Examples of topics the Network has addressed include Advanced Immigration Considerations in Employment Litigation; Joint-Employment and Independent Contractor Issues; and Issues for Wage Creditors in Bankruptcy Cases.

The training calls also connect Network members who are interested in taking action to address the issues that are discussed. Through independent working groups, the energy and expertise contained within the Network can be channeled into concrete policy advocacy around pressing problems for low-wage workers.

For example, the Network formed a working group on the H-2B temporary foreign worker program back in 2008 to organize national comments in opposition to new regulations proposed by the Bush administration. Since then, the Network group has played a key role in coordinating national advocacy efforts to roll back the Bush regulations. As explained in this newsletter, Network efforts have contributed to significant success in strengthening wages and working conditions for U.S. and foreign workers.

Another Network working group formed in 2010 to look at how best to collect unpaid wages, especially from employers who are insolvent or who use intermediaries to shield themselves. Members are working on a national compendium of pre-judgment wage statutes from around the country that can serve as a resource for policy advocacy. The group is also drafting a model statute incorporating the most effective provisions from states around the country. In fact, one of the bills that formed part of NWJP's original 2011 legislative package was drawn from a Wisconsin statute discovered and strengthened by the Network working group.

Currently, the LWWLN unites legal advocates from a wide variety of workers' rights organizations nationwide, including DC Equal Justice Center, Friends of Farmworkers (PA), Global Workers Justice Alliance, Interfaith Worker Justice, Make the Road by Walking (New York), Legal Aid Foundation of Los Angeles, the National Employment Law Project, New Orleans Worker Center for Racial Justice, Texas Equal Justice Center, and Working Hands Legal Clinic (Chicago). One member organization, Centro de los Derechos del Migrante, is based in Mexico and supports workers in Mexico who have legal problems in the U.S.

Membership in the Low-Wage Worker Legal Network is free and open to low-wage worker advocates across the country. If you are interested in becoming a member, contact NWJP's Staff Attorney, Meg Heaton, at meg@nwjp.org or 503-525-8454 (NWJP office).

Workers seek justice through legal system

NWJP's work is guided by the fundamental principle that all workers should have access to the legal system to hold their employers accountable to state and federal labor laws. We provide the most vulnerable low-wage workers with direct legal representation, education, and referrals, prioritizing cases that support worker organizing and address problems of unpaid wages, discrimination in the workplace, and employer retaliation.

Every day we hear from workers in the Pacific Northwest seeking legal support to stand up against the workplace violations they experience at the hands of abusive employers. We currently represent 185 workers in 68 separate cases (which is only a small portion of those who need employment-related legal services). In our first seven years of operation, we have recovered over \$ 1,295,750 in wages and damages for low-wage workers.

The following examples of workers NWJP assisted this year provide a sense of the injustices that many low-wage workers face daily in their workplaces:



Volunteer attorney Brad Krupicka (right) and NWJP staff attorney Meg Heaton (left) discuss the facts of a wage claim. Volunteers like Brad greatly increase our capacity to meet the overwhelming need for employment-related legal services among low-wage workers.

A janitor was hired by a company to work nights cleaning exercise facilities. For many months, he routinely worked more than 50 hours a week for slightly more than minimum wage. However, he was never paid the legally required overtime compensation for the long hours he put in. Rather than pay overtime, his employer paid him for his hours over 40 by including them as regular hours in the paycheck of a part-time co-worker.

A hostess at a restaurant came to NWJP with sexual harassment and wage claims against her boss. For months, the male restaurant owner had been touching her inappropriately and making lewd sexual comments. She repeatedly asked him to stop touching her, but he responded that he was only playing and continued the behavior. After she filed a police report about the sexual harassment, her employer threatened to retaliate against one of her family members if she persisted with her complaint. She had also been paid far less than she legally earned over the seven years she had been working at the restaurant, to the tune of thousands of dollars in stolen wages.

Several Oregon construction workers were employed by a large construction company for many years. They worked on a number of construction projects around the state, frequently putting in 60 hours or more during their six-day work weeks. However, over the entire course of their employment, they never received overtime compensation for the thousands of overtime hours that they worked. Their employer also consistently paid

them for fewer hours than they actually worked. The workers believe that some of the work they did was on state or federal government contracts, but they were never paid at the prevailing wage rate. They almost never received pay stubs detailing the hours for which they were getting paid. Instead, they were usually paid in personal check or cash. To add insult to injury, when the company was fined for violating workplace safety standards, the employer illegally deducted the cost of the fine from one of the workers' pay.

A young woman working at a grocery store was harassed and then fired because she was pregnant. As a single mother with a second child on the way, the economic insecurity and emotional pain of losing her job and her income had a severe negative impact on her mental health.

An employee of an Oregon landscaping company frequently worked long hours on projects for the state and federal government, for which he should have been paid at a prevailing wage – more than double his regular wage rate. However, his employer has many strategies for skirting the law. Sometimes, he required the worker to "kickback" (return) a large part of his pay check, in cash. At other times, his employer cheated him out of overtime wages and the prevailing wage rate by lying about the total number of hours he had worked. The employer fired our client for refusing to return over a thousand dollars from his paycheck.

NWJP is looking for more lawyers in the Pacific Northwest who are willing to take on employment cases on behalf of low-wage workers. We are happy to provide specialized legal training and resources, if needed. To lend your legal expertise to the fight for workers' rights, call Michael Dale or Meg Heaton at the NWJP office (503-525-8454).

Workers speak out about wage theft at community town halls

More than 150 workers and other community members participated in town halls hosted by the Oregon Coalition to Stop Wage Theft in Woodburn, Redmond, and Portland in March and April. Workers shared publicly their personal experiences of wage theft and intimidation in the workplace, and the economic and emotional impact that wage violations have on them and their families.

Housekeepers, construction workers, farm workers, restaurant workers, and others spoke out about not receiving the minimum

wage, working 60 or 70 hours a week without overtime pay or breaks, not getting paid at all for weeks of work, and being threatened by their employers when they claimed their rights.

One woman whose employer robbed the pay she earned for cleaning apartments explained, "I find myself in front of you full of frustration. I feel like I'm a vulnerable worker, and I feel helpless, and no one deserves those feelings. I want to demand and shout for respect and to be valued for my personal qualities and for my work."



Data shows wage theft in Oregon is extensive

1,664 wage claims totaling \$5 million are just the "tip of the iceberg"

A recent analysis by the Oregon Center for Public Policy of data on wage claims filed with state authorities during recent years gives us another window into how pervasive wage theft is in Oregon's workplaces.

The Oregon Bureau of Labor and Industries (BOLI) received 1,664 wage complaints totaling nearly \$5 million during the year spanning July 1, 2009 to June 30, 2010, according to OCPP's analysis of bureau data.

Of the claims investigated over the course of the year, BOLI found that workers were owed a total of more than \$2.5 million.

OCPP's analysis showed that 20 percent of the wage claims filed with BOLI stemmed from the construction industry. Only the retail trade and services industries gave rise to more claims.

In dollars terms, construction had the second highest level of claims, behind services and ahead of retail trade. Of the \$2.5 million in total claims BOLI found had been illegally withheld, over \$700,000 — 28 percent — was from the construction industry.

See **DATA**, page 6

Coalition to Stop Wage Theft still growing



A group of coalition members gather after attending a hearing for several of our anti-wage theft bills. Left to right: Tricia Smith, OSEA; Genice Rabe and Michael Dale, NWJP; Ramon Ramirez and Larry Kleinman, PCUN; Romeo Sosa, VOZ; and Javier Lara, PCUN.

The Oregon Coalition to Stop Wage Theft is a broad-based group of worker advocates and allies that have united in a state campaign to prevent abusive employers from stealing wages from Oregon's workers.

During the 2011 legislative session, the coalition has grown to include the following 18 organizations: Northwest Workers' Justice Project (NWJP), PCUN, Rural Organizing Project (ROP), Oregon Center for Public Policy, VOZ Workers' Rights Education Project, Oregon School Employees Association (OSEA), CAUSA, Portland Jobs with Justice, SEIU Local 503, SEIU Local 49, Oregon AFL-CIO, Ecumenical Ministries of Oregon, Oregon New Sanctuary Movement, American Friends Service Committee, Economic Fairness Oregon, Oregon Thrives, Human Dignity Advocates of Crook County, and Common Cause Oregon.

NWJP and our coalition partners are committed to the long-term struggle to build power to win new state laws, demand effective enforcement of wage and hour laws, and give unpaid workers the tools to take action on their own.

Legislation aims to fight wage theft in Oregon

Continued from page 1

unpaid wages. Under the bill, any construction contractor who knowingly hires an unlicensed labor broker would be accountable to the workers for their wages.

Senate Bill 727 has had several hearings in the Oregon Senate but is still pending in Ways and Means. The intent of the bill is to give construction workers more effective tools to recover unpaid wages. Currently, contractors licensed by Oregon's Construction Contractors Board (CCB) must post a bond, a small part of which is available to pay wages to unpaid workers. Workers seeking unpaid wages from those bonds must use the CCB's wage complaint process. However, this process has proved to be unwieldy and difficult for workers to use. SB 727 would streamline the process and give the CCB tools to discipline contractors for not paying workers properly.

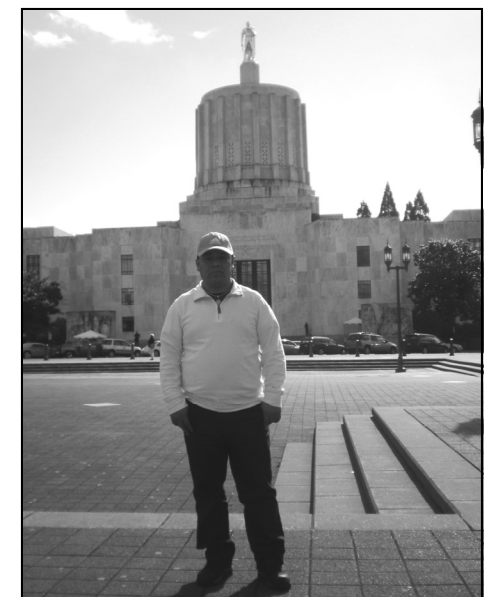
NWJP and our coalition partners also introduced three other bills to combat wage theft into the state legislature in January. A Senate committee heard testimony on all three bills. Although the legislation will not be moving forward this session, our advocacy laid important

groundwork for unifying a broad anti-wage theft coalition, educating legislators about the issues, and understanding our opposition.

Additionally, the committee asked us to form an interim working group for one of the bills, Senate Bill 610, to continue negotiating with the opposition and bring a compromise bill back to them next year. SB 610 would strengthen legal protections for day laborers and other temporary workers and increase regulation of temporary employment agencies.

Another bill, submitted by the Oregon Commissioner of Labor and Industries, would protect workers from bounced checks by allowing the Oregon Bureau of Labor and Industries to assess civil penalties against an employer who has paid an employee with a bad check. The bill (House Bill 2039-1) has passed both the House and Senate and is awaiting the Governors' signature! The Coalition to Stop Wage Theft supported the bill as an important contribution to efforts to hold employers accountable for workers' wages.

As the legislative session continues through June, the Oregon Coalition to Stop Wage Theft will continue to push for the 2011 passage of SB 612-A and SB 727 to ensure fair and legal wages for Oregon's construction workers.



Learn more about the coalition and follow our campaign to combat wage theft by "liking" us at www.facebook.com/protectoregonworkers.