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Labor: A Never-Ceasing Issue

Vernon M. Briggs Jr
Cornell University, vmb2@cornell.edu

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IMMIGRATION POLICY AND ORGANIZED LABOR: A NEVER-CEASING ISSUE

Vernon M. Briggs jr.
Cornell University

Over its long history, few issues have caused the caused the American labor movement more agony than has the issue of immigration. It is ironic this is the case since most adult immigrants directly join the labor force as do eventually most of their immediate family members. But precisely because immigration affects the size, skill composition and geographical distribution of the nation's labor force, it also influences local, regional and national labor market conditions. Hence, organized labor can never ignore the public policies that determine immigration trends.

In the process, however, organized labor is confronted with a dilemma. If it seeks to place restrictions on immigration as well as to press for serious enforcement of its terms, the labor movement risks alienating itself from those immigrants who do enter (legally or illegally) and do find jobs which may make it difficult to organize them. If, on the other hand, they support permissive or expansionary immigration admission policies and/or lax enforcement against violators of their terms, the labor force is inflated and the ensuing market conditions make it more difficult for unions to win economic gains for their existing membership and to organize the unorganized. The main reason most workers join unions in the United States is, after all, is because they believe unions can improve and protect their economic well-being (i.e., their wages, hours of work, and working conditions). It also is implied that if organized labor were to become an advocate for immigrant causes (e.g., support for guest worker programs; the non-enforcement of employer sanctions against hiring illegal immigrant workers; or favoring mass amnesties that reward those who have illegally entered the country and are illegally employed), such positions would be adverse to the best economic interests of the vast majority of American workers who are legally eligible to work but who do not belong to unions. These legal American workers (i.e., the native born citizens, naturalized foreign born workers, permanent resident aliens, and those foreign born nationals given nonimmigrant visas that permit them to work temporarily in the United States) would face the increased competition for jobs as well as wage suppression from such pro-immigrant policies. Hence, immigration has always been a "no-win" issue for the American labor movement.

Nonetheless, a choice must be made. At every juncture and with no exception prior to the late 1980s, the labor movement either directly instigated or strongly supported every legislative initiative enacted by Congress to restrict immigration and to enforce its policy provisions. Labor leaders intuitively sensed that union membership levels were inversely related to prevailing trends in immigration levels. When the percentage of the population who were foreign born increased, the percentage of the labor force who belonged to unions tended to fall; conversely when the percentage of the population who were foreign born declined, the percentage of the labor force who belonged to unions tended to rise. History has validated those perceptions. To this end, the policy pursuits of the labor movement over these many years were congruent with the economic interests of American workers in general - whether or not they were union members (and most were not).

But by the early 1990s, some in the leadership ranks of organized labor began to waffle on the issue. This was despite the fact that the nation was in the midst of the largest wave of mass immigration in its history while the percentage of the labor force who belonged to unions was plummeting. In February 2000 the Executive Council of the American Federation of Labor - Congress of Industrial Organizations (AFL-CIO) announced it was changing its historic position. It would now support expanded immigration, lenient enforcement of immigration laws and the legislative agenda of immigrant advocacy groups. Subsequently, AFL-CIO officials publicly explained that the organization was now "championing immigrant rights as a strategic move to make immigrants more enthusiastic about joining unions."

In mid-2005, four unions who had belonged to the AFL-CIO disaffiliated and formed a new federation - Change-to- Win (CTW). The largest of these to disaffiliate was the Service Employees International Union (SEIU). While there were other issues involved in this split-up, SEIU had been the leading voice for the efforts to change labor's historic role on the subject of immigration within the AFL-CIO. It continues to be in its new role in CTW.

But the key point is that hitherto the labor movement had been the nation's most effective advocate for the economic advancement of all American workers eligible to legally work. With these position changes, the issue is open to question. Working people - especially those on the lowest rungs of the economic ladder - can no longer be assured that the most effective champion they have ever had is still there for them. The potential loss of public support for organized labor among the general populace may in the long run prove to be more costly than any short run tactical gains achieved by this shift in its advocacy position.

A BRIEF REVIEW OF LABOR'S PRE-1990 POSITION

Although efforts of working people to band together to form organizations to represent their collective interests date back to the earliest days of the Republic, it was not until the 1850s that several craft unions were able to establish organizations that could survive business cycle fluctuations, anti-labor court rulings, and employer opposition to their existence. By this time, immigration had already become a controversial subject among the populace. Immigrants were used as strikebreakers and as an alternative source of workers that could be used to forestall union organizing. Already unions were

contending that rising immigration levels were making it difficult to secure wage increases and improvements in working conditions. But the federal government had yet to formulate any specific policies to regulate the flow.

With the coming of the Civil War in 1861, labor shortages quickly developed in the industrialized North. As a consequence the first statutory immigration law was adopted in 1864 by Congress. The Contract Labor Act, as it became known as, allowed employers to recruit foreign workers, pay their transportation costs, and obligate them to work for them for a period of time for no wages until they could repay the transportation and often their subsistence costs during this period of virtual servitude. The program continued after the war ended. Free labor, quickly deduced that they could not compete with such workers who could not quit and who were not paid. The National Labor Union (NLU), the principle labor organization at the time, viewed the Contract Labor Act as an artificial method to stimulate immigration and to suppress wages for all workers. They sought repeal of the authorizing legislation and were successful in doing so in 1868. But the practice itself was not banned and it continued to flourish as a private sector recruiting device.

The NLU then shifted its attention to the large-scale immigration of unskilled Chinese workers who were also largely recruited through the use of contract labor. Employers consistently paid Chinese workers less than white workers (which is often done today with illegal immigrant workers). Naturally, the belief that Chinese workers would work for considerably less than they would raised the ire of the white workers. Chinese workers were also used as strikebreakers. As the practice of hiring Chinese workers for low pay spread to the East from the West Coast, the NLU responded to the pleas of workers to end such practices. The NLU sought repeal of the Burlingame Treaty of 1868 with China that allowed Chinese immigrants to enter the country on the same terms as immigrants from other countries (although they could not become naturalized citizens).

By 1872, however, the NLU had passed away after as it unsuccessfully tried to become a political party. A new national labor organization, the Knights of Labor, had been formed by this time. It picked up the baton of trying to reform the nation's quiescent immigration system. Concluding that the revival of mass immigration was serving to depress wages for working people and to provide employers with ample supplies of strikebreakers that hampered union organizing, it too sought repeal of the Burlingame treaty and for legislation to end the practice of contract labor. They were unable to have the Treaty revoked but they did succeed in getting it amended to allow the United States to "suspend" the entry of unskilled Chinese immigrants. This was done in 1882 with the passage of the Chinese Exclusion Act that suspended Chinese immigration for ten years (and the practice continued until the law was repealed in 1943 and China was given a small quota). The Knights then successfully lobbied for passage of the Alien Contract Act of 1885 (and strengthening amendments in 1887 and 1888). This legislation forbade all recruitment of foreign labor by American employers under contractual terms. This ban remained in effect until 1952 when, unfortunately, it was repealed and this practice is today once more becoming a mounting concern for both organized labor and American labor in general (i.e., the H1-B visa issue, etc.).

Despite these successes by the Knights, by the 1880s their organizing appeal (that emphasized long run political reforms) had lost its following. The American Federation

of Labor (AFL) came into being during this decade. Its member unions tended to focus on the achievement of short run economic gains in "the here and now."

Samuel Gompers was instrumental in the formation of the AFL. He was its president for all but one year between 1886 and 1924 and is generally recognized as being the most influential labor leader in American history. Gompers was himself an immigrant (as were many of the nation's union leaders during the movements formative years). Nevertheless, when the Supreme Court finally confirmed in 1892 that the federal government has sole responsibility for the formulation and enforcement of the nation's immigration laws, the opportunity for organized labor to press national political leaders to adopt finally an immigration policy that set limits, screens applicants, and that could be held accountable for its employment and wage consequences. In his autobiography, Gompers boasted that "the labor movement was among the first organizations to urge such policies." For as he famously stated: "we immediately realized that immigration is, in its fundamental aspects, a labor problem." For no matter how immigrants are admitted legally or enter illegally, they must work to support themselves. Hence, the labor market consequences should be paramount when designing the terms of the nation's immigration policy.

In 1896, the AFL leadership first addressed directly the issue of limiting immigration. Gompers at the AFL convention that year proclaimed "immigration is working an great injury to the people of our country." At its convention the following year, the AFL adopted a formal resolution calling on the federal government to impose a literacy test for all would-be immigrants in their native languages. As the preponderance of immigrants at the time were illiterate in their native tongues, the implicit goal of the requirement was to to reduce the level of unskilled worker immigration into the country. It renewed this effort in 1905 and did so at every subsequent convention until such legislation did become the law of the land in 1917.

When the Immigration Commission (i.e., the Dillingham Commission) issued its famous report in 1911 on the impact of the immigration on the u.S. economy and society, its findings confirmed the AFL beliefs that mass immigration was depressing wages, causing unemployment, spreading poverty and impairing the organizational abilities of unions. In the wake of the release of this historic report, the Immigration Act of 1917 was passed. It enacted a literacy test for would-be immigrants and it also contained the Asiatic Barred Zone provision that banned virtually all immigration from Asian countries. In 1921, the prospect of the renewal on mass immigration from Europe led to the passage of the Immigration Act of 1921 (a temporary step) and then the Immigration Act of 1924 (a permanent step). These laws imposed the first ceiling on immigration from Eastern Hemisphere nations in the country's history at about 154,000 visas a year. Within the overall cap, the law also called for differential country quotas based on national ethnicity that were overtly discriminatory. National origins became the basis for admission or exclusion under this adopted immigration system.

The AFL and most national labor leaders strongly supported all of these legislative initiatives. For instance, A. Philip Randolph, who would soon become president of an AFL affiliated union and who would later become a national leader of the civil rights movement in the 1940s-1960s era, wrote in strong favor of the adoption of these restrictive laws. He claimed the nation was suffering from "immigration indigestion." Mass immigration, he claimed was imperiling union organizing and was especially

harmful to the economic welfare of African American workers who were just beginning to migrate out of the South in significant numbers. He even suggested that the appropriate immigration level should be "zero."

With the passage of these immigration laws as well as the onset of the depression in the 1930s and World War II in the 1940s, immigration levels fell dramatically while union membership levels soared to unprecedented heights. In the immediate postwar years, the AFL did support efforts to admit a limited number of refugees. But it also reaffirmed its belief that there was no need to increase the level of immigration or to change any of the existing immigration statutes. The AFL did strongly criticize the continuation of the Mexican Labor Program (popularly known as the "bracero program") that had been introduced as a temporary guest worker program during the war years but had remained operational after the end of the war because it was popular with agricultural employers. Organized labor, supported by emerging research findings, contended that employers regularly undermined the worker protections and wage requirements so that Mexican workers were exploited while American workers were discouraged from being employed in this industry. In the process, unionization efforts were thwarted. The AFL lobbied hard for its termination - which finally happened at the end of 1964.

After the AFL merged with the CIO in 1955, both new combined federation did join efforts launched by the Kennedy Administration and completed by the Johnson Administration in 1965 to eliminate the overtly discriminatory features of the prevailing immigration laws. Organized labor concurred with other reform advocates that the discriminatory features of these laws were hampering efforts by the country to even reach the low immigration ceiling that was in effect. Nations with high quotas could not fill them while nations with low quotas had massive backlogs. Organized labor supported efforts to find a new admission selection system that was not discriminatory. But organized labor agreed with the other reform groups of that time that there should not be any increase in the low level of overall immigration. The politicians that crafted the new legislation assured labor and the nation that passage of the Immigration Act of 1965 would not lead to a return to mass immigration. But it did--and it continues to do so.

In 1965 the foreign-born population was only 4.4 percent of the total population (the lowest percentage in all of American history). Union membership, however, was near its all time high -- 30.1 percent of the employed non-agricultural labor force were union members in 1965. But both trends were about to be sharply reversed.

The new legislation introduced family reunification as the basis for almost three-quarters of the available visas. The number of immediate family members whose numbers were not limited rose far faster than were anticipated. Furthermore, there were no enforcement teeth included in the new law--' which gave implicit sanction to illegal entry. There were no penalties for those employers who hired them. Illegal entries quickly soared especially in the Southwest where former "bracero" workers just kept coming--albeit illegally -- after the program was terminated on December 31, 1964. A new admission category for refugees was quickly overwhelmed by political decisions to admit vast numbers of persons well beyond what was specified in the law. Thus, because there were so many unexpected consequences from the legislation adopted in 1965, immigration reform was back on the table by the mid-1970s.

The Select Commission on Immigration and Refugee Policy (SCIRP)(also known as the Hesburgh Commission) was created by Congress in 1978 in response to a package of legislative proposals by the Carter Administration to address the immigration policy crisis. SCIRP's findings led to the passage of the Refugee Act of 1980 and set the basis for the terms of the Immigration Reform and Control Act (IRCA) that was adopted in 1986. The key provision of IRCA was the enactment of a system of sanctions that made it illegal for employers to hire illegal immigrants. It also provided for what was believed at the time to be a "one-time" amnesty for those who had entered the country while the law was ambiguous. Once more, organized labor strongly supported these endeavors and it lobbied hard for their adoption. They also pressed for "an eligibility verification system that is secure and non-forgivable" and expressed strong opposition to "any new guest worker program" at the 1985 AFL-CIO convention. Following the passage of IRCA, the 1987 AFL-CIO convention adopted another resolution calling IRCA "the most important and far reaching immigration in 30 years" and "applauded the inclusion in that law of employer sanctions and a far-reaching legalization program."

A BRIEF REVIEW OF LABOR'S POST -1990 POSITION

When Congress turned to reform of the nation's legal immigration system in the late 1980s, organized labor opted not to take an active role in the legislative debates for the first time in its history. The AFL-CIO did not specify any changes it wanted but it did indicate what it opposed. At its 1989 convention, it stated its opposition to any efforts to reduce the number of immigrants admitted on the basis of family reunification; it opposed any suggestion to increase the number of employment-based immigrants favoring greater investment in the nation's education and job training efforts to meet any skilled labor needs. It did seek a cap on the number of non-immigrant work visas issued to foreign performing talent and their traveling crews.

When the Immigration Act of 1990 did pass, it slightly increased the number of available family-based immigrant visas; it more than doubled the number of employment-based visas; it added a new "diversity admission" category for 55,000 immigrants admitted on a lottery basis from countries that had had low number of immigrants in the preceding 5 years. The cap on the number of nonimmigrant visas for performing talent was included.

At its 1993 Convention, the AFL-CIO drastically reversed itself from its past course. It passed a resolution that praised the role that immigrants have played "in building the nation." It proceeded to demonize unidentified critics of immigration reform--especially critics of illegal immigration (which by this time was a national issue again despite IRCA). It then called upon local unions to develop programs to "address the special needs of immigrant members and potential members." Clearly, a new immigration position was emerging within the leadership of the AFL-CIO.

At the same time, the Commission on Immigration Reform (CIR) (also known as the Jordan Commission) had been created by Congress and had begun its task of assessing the effectiveness of the existing immigration system. It issued a series of interim reports, to which the AFL-CIO leadership seemed to be responding. When its final report was issued, it concluded that "our current system must undergo major reform." It recommended a 35 percent reduction in the annual level of legal immigration admissions;

elimination of a number of extended family admission categories; no unskilled workers be admitted under the employment-based admission categories; elimination of the diversity admission category; inclusion of a fixed number of refugee admissions within the annual admission ceiling; no new guest worker programs; and a crackdown on illegal immigration.

The AFL-CIO responded by rejecting virtually all of these recommendations. It even denied that illegal immigrants were to adversely affecting the economic well-being of low skilled American workers. When Congress responded to the interim reports of CIR by introducing legislation in 1996 that sought to codify most of CIR recommendations, the AFL-CIO joined with a coalition of business, agri-business, Christian conservatives and libertarians to separate all of the proposed legal immigration reforms from the proposed comprehensive bill and then kill them. They then stripped-away the key provisions requiring employers to verify the Social Security numbers of new hires as a way to combat illegal immigration as well the proposal to limit refugee admissions. Thus, organized labor's leadership abandoned the efforts to improve the economic circumstances of low skilled workers in the country by reducing their competition with illegal immigrants. Their explanation was that their organizing efforts in many urban areas had led to more contact with concentrations of immigrants - many of whom were illegal immigrants. Hence, they concluded that they needed to take a more accommodative stance on these key issues that many immigrants cared about.

When the Clinton Administration announced in 1999 that it was essentially abandoning worksite enforcement of employer sanctions (and the subsequent Bush Administration followed suit), organized labor concluded that, as a matter of self-defense, it needed to become an advocate for the immigrant community in general and illegal immigrants in particular. The labor movement was increasingly finding that employers were violating the immigration laws with impunity. Unions do not hire employees; employers do - and more and more of them were hiring illegal immigrants for low skilled jobs in particular. Under these circumstances, unions were either going to have to abandon organizing significant sectors of certain industries or they were going to have to become supporters of immigrant causes in order to ingratiate themselves to those they were seeking to organize. They believed that if unions gave up organizing workers who were illegal immigrants, employers would have even more incentive to hire illegal immigrants. Thus, organizing illegal immigrants is not a matter of principle, it is a matter of necessity. Advocating for their protection, they concluded, was simply part of the organizing reality they confront.

At the October 1999 AFL-CIO convention, the pro-immigrant element made its move from the convention floor. Unions representing janitors, garment workers, hotel workers and restaurant workers argued that the labor movement needed to abandon its past and embrace immigrant causes if it is to survive. They sought to end the use of employer sanctions and they sought to enact another mass amnesty for those who had entered illegally since the last general amnesty in 1986. To avoid a public confrontation, the issue was deferred until the AFL-CIO Executive Council could take up the issue in February 2000. It did so and following that meeting it announced that it would seek to have the employer sanctions provision of IRCA repealed and that it would fight for another general amnesty for most of the millions of illegal immigrants in the country at the time.

At the leadership level, at least, organized labor chose to become a supporter of the immigrant agenda - even if that agenda imperiled the economic well-being of vast numbers of the American work force.

CONCLUDING OBSERVATIONS.

By 2006, the foreign born population has swollen to 12.1 percent of the population and almost 15 percent of the labor force. Union membership in 2006 had continued the decline that had begun following the passage of the Immigration Act of 1965 - falling to only 12 percent of the employed nonagricultural labor force. The revival of the phenomenon of mass immigration is, of course, not the only explanation for the decline in union membership. There are multiple factors -- all of which are beyond the scope of this testimony. But mass immigration is one of the key factors - especially because of the large component of the total flow are illegal immigrants (estimated in 2006 to number close to 12 million persons, of whom an estimated 7.4 million are illegal immigrant workers).

As the findings of two national Commissions as well as the bulk of credible research on the impact of immigration on the nation's work force, immigration laws need to be strengthened-- not weakened. Employer sanctions set the moral tone for the rationale for existence of immigration policy as a worksite issue. One has to be eligible to work in the United States, not simply want to work in the United States. If that is the case, there has to be some way to restrict access to employment only to those who are permitted by existing law to work. Employer sanctions are designed to accomplish this feat. But to be meaningful, they have to be enforced at the worksite. Such inspections must become routine. Furthermore, the identity loophole of the use counterfeit documents must also be closed. There can be no more amnesties (no matter what euphemism is used). There has been no ambiguity in the law since 1986. Persons who have brazenly violated the law against their employment not only should not be at the worksite, they should not even be in the country. Certainly there is no reason to legalize their status so that they can continue to compete with American workers for whom the workplace is supposedly reserved. If illegal immigrants can be kept out of the workplace, there would no longer be any dilemma for organized labor to confront. The real onus is on government to get illegal immigrants out of the labor force.

Until that time, however, organized labor seems convinced that it has no choice but to abandon its traditional role of the past when it sought to monitor the impact of immigration on the well-being of the working people of the country. But in the process of becoming an advocate for the pro-immigrant political agenda, there is a heavy cost.

First, it means that it is unlikely that any organizing success of immigrant workers will be able to translate in to any real ability to improve the wages and benefits of such workers. None of the basic parameters have changed. As long as the labor market continues to be flooded with low-skilled immigrant workers (many of whom are illegal immigrants), unions will not be able to defy market forces that will serve to suppress wages and to stifle any opportunity to improve working conditions. New recruits will pay dues but they cannot expect to see much in the way of material gain from becoming union members.

Secondly, organized labor will run the risk of alienating itself from the millions of low skilled American workers who must compete with the waves of unskilled immigrant workers now in the labor market and the many more who will continue to seek access to the jobs it has to offer. The more organized labor speaks on behalf of illegal immigrants the sooner more American workers are going to realize that the labor movement does not really have their real interests at heart. Indeed, it would be harming them.

Third and last, the greatest danger that this shift in position raises is the prospect that the broader public itself will lose faith in the moral credibility of the labor movement. Is it actually a voice that speaks for the best interests of all working people (members or not) which it often claims to be -- or is it just another selfish interest group willing to sacrifice the national interest for selfish gain? The entire nation has a stake in the struggle to develop a viable and enforceable immigration policy. Future generations will be impacted by decisions made today. For this reason it would be wise if the leadership of organized labor today would reflect on the words of a labor leader of the past, John Mitchell, the influential President of the United Mine Workers, who in 1903 stated:

Trade unions are strong, but they are not invincible nor omnipotent. And it is well that they are not so, for the wisdom that they have shown has been largely due to the ever present necessity of appealing to the public for sympathy and support. In the long run the success or failure of trade unions will depend on the intelligent judgment of the American people.

If the labor movement is to prosper, it should reflect on the wisdom of Mitchell's words when it comes to the design of immigration policy. In seeking to ally itself in the post-1990s with other societal groups that have wider political agendas, the leadership of organized labor is now supporting policies that are patently harmful to the well-being of the nation's labor force. What is bad economics for working people can never be good politics for unions. The "American people" know this.