

In Rubashkins' Backyard, Another Tale of Labor Strife

Kosher Giant Turns To Supreme Court in Fight With Immigrants

By Nathaniel Popper

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At the farthest end of the Brooklyn Wholesale Meat Market, just past Chow Trading Co. and Lancaster Quality Pork, an inconspicuous black-and-white sign marks the presence of a very conspicuous tenant.

The building houses the local warehouse for Agriprocessors, the largest kosher meat producer in the country. Agriprocessors is best known for its slaughterhouse in Postville, Iowa, which was raided in May in what authorities have called the largest single immigration raid ever. The raid has been followed by intense scrutiny of the way Agriprocessors treated the nearly 400 undocumented immigrants who were arrested.

But Agriprocessors' legal collision with immigrants began long before the raid, here in Brooklyn, where dozens of workers move palettes of meat between refrigerated rooms and trucks that take the beef and poultry to stores and restaurants around New York. The company has been locked in legal battles for the past three years over its immigrant workers, who wanted to unionize the warehouse because of what they described as mistreatment.

"We were treated like garbage," Joel Garcia, a former truck driver at the Brooklyn warehouse, told the Forward. "We were doing a lot of work for not a lot of money. And if we said anything, we got fired immediately."

The company declined to comment on specific conditions at the warehouse.

Workers at the warehouse eventually voted in September 2005 to join the United Food and Commercial Workers union, which has also been involved in a scrappy battle to represent the workers at Agriprocessors' Iowa slaughterhouse. After the election in Brooklyn, the company came back with an unusual argument. Lawyers for Agriprocessors said that the company had determined that 17 of the 21 workers who had voted were undocumented immigrants. Their status had not been brought up before, but after the union vote the company said that the immigrants were not eligible for employment, much less union membership. The workers went on strike and were soon replaced.

Since then, three rounds of judges have ruled that Agriprocessors must recognize the union, pointing to a 1984 U.S. Supreme Court decision that granted undocumented immigrants protection under the National Labor Relations Act. The company has appealed these decisions, and at the end of June, lawyers for Agriprocessors petitioned the U.S. Supreme Court to hear the case. The company's petition argues that "if the votes of illegal workers are counted in union elections, unions may have an incentive to encourage illegal aliens to conceal their undocumented status."

Experts in labor law say that the Agriprocessors case is not likely to be heard by the Supreme Court, due to the 1984 ruling, but the case has already succeeded in maintaining the status quo at the Brooklyn warehouse for three years.

"Every day that goes by is one day less that they have to negotiate" for a contract, said Alvin Blyer, regional director of the National Labor Relations Board, a federal agency that has overseen the Agriprocessors case.

"This delay is certainly very financially beneficial."

Beyond the legal issues, the situation in Brooklyn opens a window onto the way Agriprocessors has treated workers outside its flagship Iowa slaughterhouse, and suggests that the complaints about working conditions that have arisen in Iowa were not isolated.

The situation at the Brooklyn plant also answers questions that have gone unanswered in Iowa. Most notably, it is unclear if the company knowingly employed undocumented workers, such as those who were arrested during the raid in Iowa. The company has pleaded ignorance. But the Brooklyn case suggests that long before the raid in Iowa, the company knew it had undocumented workers in its ranks and knew how to find them — when it was to the company's benefit. Immigrant advocates say that the Brooklyn plant paints a clear picture of what this has meant for immigrant workers.

"You are employing and taking advantage of the workers' vulnerable status, and then when they try to assert their rights, then you use that immigration status that allowed you to exploit them to prevent them from using the courts and fighting for their rights," said Nora Preciado, an attorney at the National Immigration Law Center.

The brown-brick meat market in Brooklyn also houses two other kosher meat distributors, Eastern Meats and International Glatt Kosher Meats. Both of these companies have a unionized work force that has health care benefits, paid sick time and a starting salary above the minimum wage.

"Every job has its downside," said Dave Young, regional organizing director for United Food and Commercial Workers. "But for the most part, International is a decent place to work. The workers have been there for years. It doesn't have to be like it is at Agri."

The Brooklyn warehouse was opened in the 1990s by the Rubashkin family, which owns Agriprocessors. The warehouse, according to people who have been inside it, is divided between freezer rooms and refrigerated rooms containing the many brands of Agriprocessors meat, which include Rubashkin's, Aaron's Best and Iowa Best Beef. The UFCW collected information indicating that between 30 and 40 people work at the site, most of them either truck drivers or meat packers. Overseeing the operation from an office on the warehouse's second floor is Joseph Rubashkin, a son of the octogenarian butcher who started Agriprocessors, Aaron Rubashkin.

A reporter visiting the plant recently was directed to speak with Shalom Minkowitz, who was described as the warehouse manager. In a telephone conversation, Minkowitz said he would not speak about the situation at the plant. "I think that our attorney can answer any questions," Minkowitz said.

Nathan Lewin, who is representing Agriprocessors before the Supreme Court, said: "The Supreme Court petition speaks for itself. As to anything else, you'll have to rely on the record in the case."

Outside the warehouse, at around 8:30 on a recent morning, three men who spoke Spanish sat near the main door. They said they worked for Agriprocessors, but they declined to answer questions about the company. Another man, who identified himself as a truck driver, declined to give his name and offered an explanation for the silence: "Nobody wants to lose their job, and if they talk about it they are definitely going to lose their job."

A clearer picture of life inside the plant arises from conversations with people who know the company and from documents surrounding the court case. The basic grievances were summed up in a flier handed out during the strike.

"We cannot work any longer for 55 hours a week at straight time, with no benefits, and abusive treatment by our boss," the flier said.

Pay stub information compiled by the union suggest that in late 2005, workers were being paid \$6.50 or \$7 an hour with no benefits. At the time, the minimum wage in New York State was \$6 an hour. It is now \$7.15.

Organizers for the UFCW, showed up in 2005 and began talking to the workers. Employees from that time told the Forward that managers quickly tried to stop them from interacting with the union representatives.

"I heard that whoever would sign the papers would get fired; that's when I moved to get another job," Garcia said.

During the UFCW's fight to unionize the Iowa plant, the slaughterhouse manager, Sholom Rubashkin, sent a memo to workers, discouraging them from speaking with the union.

"If a union organizer keeps bothering you, JUST SAY NO!" said one memo, dated October 6, 2005.

In Iowa, the workers never reached a vote, but in Brooklyn the staff held an election in the warehouse locker room the morning of September 23, 2005. Fifteen employees went for the union, five went against it and one vote was contested.

The company had a number of different responses to the vote. In the week immediately after the election, workers reported that they were pressured to sign cards for another union — one that has a reputation in New York circles for being brought in by management to organize workers in a way that is beneficial to management. During the strike, fliers from the workers complained about this tactic: "The owner is mad that the workers have chosen to be represented by a REAL union, instead of the fake union the owner picked out and believes he can control."

The NLRB struck down this other union, but complaints continued. A few weeks after the election, the union filed a complaint that the company had fired the employee who had been the union's election observer.

When the company declined to open negotiations for a contract, the workers decided to go on strike at the end of October. Each day, for almost three months, close to a dozen workers marched in the parking lot behind the meat market. An affidavit submitted by a meat packer to the NLRB explained the willingness to strike.

"I decided to go on strike because I wanted a contract with more time for lunch, overtime pay and proper clothing for working in the freezer," said the affidavit from the meat packer, an undocumented worker.

It was in the middle of the strike that the company first made its legal objection to the immigration status of its workers. According to the company's Supreme Court petition, Agriprocessors had run the Social Security numbers of all the employees through a government Web site and "discovered that of the 21 workers who voted in the election, the Social Security numbers of only four matched Social Security records with the same name."

At a hearing before an NLRB judge, Agriprocessors lawyer Richard Howard said that due to federal laws that bar an employer from hiring undocumented immigrants, "it just kind of makes sense logically that if you can't work for this employer, you shouldn't be a member of the bargaining unit for this employer."

The lawyer for the union, Emily Desa, questioned the timing of Agriprocessors' discovery.

"Here, Respondent is grasping at anything to deny employees the right to representation," Desa said in the hearing. "Respondent came up with this defense after it tried everything else and the Union was certified."

The U.S. Supreme Court has dealt with the rights of undocumented immigrants in two high-profile cases, known as Hoffman and Sure-Tan. In the 1984 Sure-Tan case, the court ruled that such immigrants "plainly come within the broad statutory definition of 'employee,'" and thus are protected by the National Labor Relations Act.

Citing this language, first an administrative judge, then the NLRB and, most recently, the United States Court of Appeals in Washington have all ruled against the company. The decision by the circuit court used derisive language.

"Remarkably, Agri Processor's brief neither acknowledges this controlling language in Sure-Tan nor even quotes the NLRA's definition of 'employee,'" said the decision, which came down in January of this year.

One judge on the appeals court did dissent, siding with Agriprocessors, and the company's lawyers have pointed to that dissent in asking the Supreme Court to overturn its previous ruling.

"The Court should reconsider the central legal issue and interpret the National Labor Relations Act in light of today's laws and today's public policies," the brief said.

In Postville, since the May raid, the company has not gone through this legal wrangling. Instead, company spokesmen have simply said that the company did not know it was employing undocumented immigrants.

This contention has come under fire from people who were involved with the workers at the Brooklyn plant. Young said that after the workers went on strike, he saw Agriprocessors picking up new employees at a nearby corner in Sunset Park where Hispanic day-laborers waited for work. In one case, after Agriprocessors had accused its employees of being undocumented immigrants, Young said he saw the company bring to work a relative of one of the undocumented immigrant strikers, whom the striker told him was also undocumented.

"They knew that they had illegals and that was their chance," Young told the Forward. "They could have cleaned up Postville, too, but they didn't."

While the workers who voted in 2005 have been replaced, Young said that his union would represent any workers who are in place when the company begins to negotiate. On May 28, the NLRB wrote the company a letter noting that "the case remains open for all purposes as awaiting compliance."

Nathaniel Popper wrote an [article](#) in 2006 about the working conditions at Agriprocessors' Postville, Iowa slaughterhouse. He followed that with articles about the town of [Postville](#), [health and safety violations](#) at the slaughterhouse and [legal fights with workers](#) there. Later articles looked at the criticism of the company's [Gordon, Nebraska slaughterhouse](#) and the controversial method of kosher slaughter used in [South America](#).

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