

Immigration Foundry Fires Hundreds After ICE Audit As ACLU Seeks I-9 Data Under an FOIA

By Joyce Cutler

SAN FRANCISCO-A San Francisco Bay Area foundry fired 200 workers over three months based on results of a Department of Homeland Security audit, a "wrenching" situation for the family-owned company and for workers, a company spokeswoman said Dec. 19.

Pacific Steel Casting Co. in Berkeley, Calif., a specialty casting heavy manufacturer, fired a third of its workforce after DHS's Immigration and Customs Enforcement in February demanded the Form I-9 for all 600 workers, according to company spokeswoman Elisabeth Jewel.

Pacific Steel complied with DHS demands "and then the union did everything it could to prevent these terminations, and part of that was alleging there were ongoing labor negotiations," Jewel said.

The workers are represented by Glass, Molders, Pottery, Plastics, and Allied Workers Union Local 164B, which reached agreement last March with Pacific Steel on a four-year contract. A union representative could not be reached for comment.

ACLU, Unions File FOIA Request

The American Civil Liberties Union of Northern California; the Glass, Molders, Pottery, Plastics, and Allied Workers International Union and GMP Local 164B; the Service Employees International Union-United Service Workers West; and the weekly independent San Francisco Bay Guardian newspaper in September filed a Freedom of Information Act request seeking records relating to I-9 audits.

The groups allege a lack of transparency on the "silent raids" and contend that the government has targeted unionized workplaces. The groups want records from actual workplace investigations in California and aggregate data regarding arrests and other immigration actions taken against employees identified through worksite actions from January 2009 to the present.

"The public has a right to know about these 'silent raids' on American workplaces," said Julia Harumi Mass, a staff attorney with the ACLU of California. "Is the federal government trying to detect bad actors who hire undocumented workers to avoid labor law obligations, or are there other triggers that explain why several unionized workplaces have been audited recently?"

"From janitorial firms, to Pacific Steel, to Chipotle, there is a lot that we just don't know about federal immigration audits in the workplace," Conchita Lozano-Batista, an attorney with Weinberg, Roger and Rosenfeld in Alameda, Calif., said in a September statement.

"The federal government is certainly right to crack down on unscrupulous employers who break labor and employment laws, but without the full picture and supporting documentation, it would seem that the employers who are bearing the brunt of these audits are employers who are involved in collective bargaining agreements with labor unions."

Prosecutions on the Rise

Employers under the federal Immigration Reform and Control Act are required to use DHS's Form I-9 to document employment eligibility and can be held criminally liable for violations. "No match" letters are

sent to employers when employees' Social Security numbers do not match government records, at which point employees have the opportunity to resolve the issue and provide documentation.

In fiscal year 2011, ICE criminally charged a record-breaking 221 owners, employers, managers and/or supervisors, up from 196 in FY 2010, ICE spokeswoman Virginia Kice said. ICE conducted more than 2,496 I-9 audits, up from 2,196 in FY 2010. The agency also initiated 3,291 worksite enforcement investigations, up from 2,748 in FY 2010, Kice said.

I-9 Audits Routine, ICE Says

Kice said although the agency routinely conducts audits of companies' hiring records to ensure compliance, "as a matter of policy, ICE only confirms that an employer has been audited when the review results in ICE taking a public enforcement action, such as filing criminal charges or issuing a civil fine. The goal of these audits is to ensure employers are following the law."

All investigations and arrests related to worksite enforcement cases are based on "specific intelligence," Kice said Dec. 19. "ICE Homeland Security Investigations gets its leads in these types of cases from a variety of sources-tips from the public, reports from a company's current or former employees, even referrals from other law enforcement agencies."

"We're very happy there was no civil or criminal action but it's not a secret that the company lost 200 workers over the past several months" in the forced terminations, Jewel told BNA. "It was a difficult and wrenching situation not only for the families but for the company."

Many Long-Term Employees Discharged

Pacific Steel followed the law in verifying employment, and is using the E-Verify program, the federal government's electronic employment verification system, "so there's no possibility to hire somebody who is not in this country legally," Jewel said.

Some of the workers fired from the family-owned foundry worked at the Berkeley facility for decades, Jewel said.

"It's not easy to replace skilled workers, and there aren't many foundries left," she said, adding that the facility hired a few former workers from the shuttered New United Motors Manufacturing Inc. plant in Fremont, Calif.