



Building Dignity and Respect

The Case for Worker-driven Social Responsibility
in the Twin Cities Construction Industry

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I. Introduction

In September 2018, Ricardo Batres' name made headlines after he was arrested and charged with labor trafficking in Minneapolis, Minnesota.¹ He also brought well-known developers throughout the Twin Cities metro area, including Lennar Homes and another major developer, into an unwanted spotlight. Batres – the owner of American Contractors and Associates LLC who operated as a labor broker on construction projects tied to several well-known developers – was charged by the Hennepin County Attorneys' office with severe abuse of workers including threatening people with deportation when they complained about problems in the workplace, stealing wages by withholding them, failing to take basic safety precautions, and more.

In an industry that places constant downward pressure on costs, developers seem to have purposely turned a blind eye to the abuses reportedly perpetrated by Batres on their projects. Since this case broke, one of the major developers where Batres worked on a project claims to have

established a sub-contractor certification process to ensure that such abuse would never take place on one of their job sites again. Yet in September 2019, a construction worker came forward reporting that after working on a project of that same developer in Minneapolis, he received death threats from the contractor with whom he worked, simply for asking for his unpaid wages.² Shortly afterwards, KSTP News reported finding Batres on another site of that same developer in Richfield. At first representatives of the company denied that Batres was on one of their sites, and even tried to claim that the site in question was not a project of theirs. Only after the pressure of the public spotlight did the company acknowledge that Batres was in fact on site at one of their projects.³

"We know that it is not only us who are being abused," said Jose Adalid Zavala Lopez, one of the workers who, motivated by the mistreatment he experienced while working for Batres, chose to participate in the labor trafficking investigation.⁴ Zavala Lopez is not wrong; this case reveals how the prevailing business model of the non-



CTUL member and construction worker, Luis Nuñez, calling on Wells Fargo to invest in responsible housing development in the Twin Cities

union segment of the construction industry renders thousands of workers vulnerable to extreme exploitation and abuse. While project budgets, schedules and permits are subject to strict oversight, little effort is made to ensure the protection of workers' basic human rights.

The sheer volume and scale of these abuses – many of which never come to light – confirm that the industry is exploiting workers, their families, and their communities. This report surveys working conditions in the Twin Cities construction industry and proposes a path forward focused on proven models of worker driven enforcement.

Methodology

Primary source data was collected from surveys with Twin Cities construction workers by Centro de Trabajadores Unidos en la Lucha (CTUL)⁵, a human rights organization that focuses on deep leadership development with low-wage workers in the Twin Cities metro area. From January to March 2019, CTUL surveyed 76 construction workers on and off job sites about wages, benefits, training, and workplace health and safety. Survey respondents

worked on a diverse range of project types, including commercial buildings, multi-family residences (e.g., apartments, condominiums, senior housing, etc.), and single-family residences (remodeling as well as new construction). Respondents also came from diverse trades, including framing, siding, roofing, cement, masonry, painting, and remodeling. Additionally, CTUL surveyed workers from different cities of residence (the top four being Minneapolis, Saint Paul, Columbia Heights and Burnsville), with varying levels of experience (ranging from less than one year to over ten), and numerous countries of origin, the top five being Mexico, the United States, Honduras, El Salvador and Guatemala.

In addition to worker surveys, this report draws on data from official court documents and reputable media outlets to provide an overview of working conditions in Minnesota's construction sector. Lastly, data on the industry's expansion were gathered from the U.S. Census Bureau, the U.S. Department of Labor and the Minnesota Department of Labor and Industry.

Labor Supply Chain in the Construction Industry

Developers coordinate a range of activities, including the construction of new buildings, the renovation of existing buildings, the purchase of raw land, and the sale of developed land. Some developers operate as their own general contractors on projects, while others outsource this function. General contractors are responsible for the day-to-day oversight of a given construction project and the provision of the material, equipment, labor and other services. General contractors solicit bids for key aspects of a project and then hire subcontractors to complete that work. Subcontractors may specialize in one or more areas of construction such as framing, plumbing, electrical, painting, etc. Some general contractors or subcontractors may hire labor brokers, who provide only labor and light equipment. Labor brokers rely on contract workers.

Popular education image used to organize construction workers



CTUL member and construction worker, Humberto Miceli, speaking on a panel about wage theft together with Minnesota Attorney General Keith Ellison and Minnesota Commissioner of Labor and Industry Nancy Leppink

A Pattern of Wage Theft

Gonzalo Monge is a painter and a construction worker. Over the last eight years, Monge has experienced at least one major instance of wage theft each year totaling over \$1,000. He has to budget with the assumption that he will only receive a fraction of his wage. His former employers have routinely broken the law with little to no consequence. He has taken a number of them to conciliation court and won, but still hasn't been paid for all his labor.

option for workers in the Twin Cities. But this number reflects the formal and visible segments of the construction industry, where workers labor under contracts that ensure enforcement of their rights and decent wages. It does not reflect the many workers hidden in the shadows where subcontractors suppress wages and coerce workers through retaliation and violations of their basic rights.

While the construction boom has generated immense profits for developers and investors, a significant portion of the industry is riddled at its base with worker exploitation. The constant downward cost pressure incentivizes various types of abuse, while the widespread practice of sub-contracting shields those up the chain from accountability for those abuses. As a result, workers often labor in precarious and vulnerable circumstances with little meaningful avenue for remedy in the event of mistreatment.

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As the non-union segment of the construction labor market continues to grow, it erodes union density and threatens to undermine industry wages and working standards more broadly. Paradoxically, however, the prevalence of unions in certain segments of the construction industry demonstrates that the industry can in fact thrive when workers are paid well and treated with respect.

Construction members of CTUL
building power



Construction Company Reportedly Subjected Black Employees to Noose, Threats and Racial Slurs

In 2016, two African-American men filed a charge with the Equal Employment Opportunity Commission (EEOC) against JL Schwieters Construction, Inc., located in Hugo, Minnesota.²¹ Staple and Pye worked as carpenters for the construction company between September 2012 and December 2013, a period during which both were reportedly subjected to racial harassment during their employment by a white supervisor.²²

The EEOC sued the construction company, noting "...[t]he harassment included the supervisor making racially derogatory comments to Staple and Pye, including calling them 'n----r.' The supervisor told Staple and Pye that he had a gun, and made threats that he could 'shoot a n----r a mile away.' The supervisor made a noose out of electrical wire and threatened to hang Staple and Pye, EEOC alleged. The harassment was witnessed by other supervisors, but no action was taken to stop it. According to EEOC's lawsuit, Pye complained to another supervisor and the company's safety director about the harassment, but no action was taken to stop or prevent the harassment."²³

The case was ultimately settled for \$125,000.²⁴

Violent Retaliation Against Yovani Castro Romero

In 2017, Yovani Castro Romero, a roofer from El Salvador, was working on a residential construction project in Maple Grove, Minnesota. He had been hired to hang sheetrock by Douglas Maroto Sanchez, owner of Martinez Construction. Castro Romero was not paid upon finishing this task; instead, Maroto Sanchez kept piling on new projects, withholding payment until these were completed.

On July 10, after several weeks of working from 8 a.m. until midnight, Castro Romero and Maroto Sanchez had an argument. It was 3 p.m. and Castro Romero had not eaten all day, but Maroto Sanchez insisted that Castro Romero finish the day's work before leaving to get food. When Castro Romero tried to leave, Maroto Sanchez responded by putting his hands around his neck, picking him up off the ground, and throwing him down.

Castro Romero called 911. A coworker who was on site captured photos of the assault and corroborated everything Castro Romero reported to the police. Maroto Sanchez was cited for fifth-degree assault and fined \$800.²⁵



II. Labor Conditions

The downward pressure on costs by some developers drives many construction contractors in the non-union sector to cut corners with respect to labor conditions. Ultimately, it is the workers at the bottom of the chain who bear the hidden costs of this business model controlled by the top.

This section draws from interviews CTUL conducted with 76 workers in the Minneapolis-St. Paul construction industry, as well as publicly available secondary data, to provide an overview of non-union working conditions in the industry. This research reveals widespread and myriad forms of labor abuse, including:

- Wage theft
- Dangerous conditions
- Discrimination
- Retaliation
- Labor trafficking

Wage Theft

A 2017 study from the Economic Policy Institute found that, across the ten most populous U.S. states, nearly 20% of the low-wage workforce reported being illegally paid less than the applicable minimum wage in their state. As a result, wage theft has been estimated to cost the

average minimum wage worker \$2,634 per year, and annual aggregate stolen wages across the US exceed \$8 billion.¹¹ Those experiencing wage theft are most often low-wage immigrant workers and workers of color.

In the construction industry, employers commit wage theft in a number of ways, including by:

- Misclassifying workers as “contractors” in order to skirt federal and state labor standards
- Shaving hours from workers’ paychecks with no explanation
- Subjecting workers to excessive workloads that require them to work unpaid during breaks or after hours
- Failing to track or pay overtime
- Firing workers while refusing to give them their final paychecks
- Simply refusing to pay workers once the work is done.

“It doesn’t matter if I get hurt; I need the money.”

The data collected by CTUL’s 2019 worker survey confirmed the pervasiveness of wage theft in Minnesota’s construction industry. Among the workers surveyed by CTUL, 48% reported having experienced wage theft. Of those workers who reported wage theft, the most common form (36%) was not being paid overtime rates for overtime hours worked. The second most common form (30%) was being paid below the minimum wage. Other reported forms of wage theft included illegal pay deductions and workers being forced to work through their breaks.

The implications of wage theft for construction workers and those who depend on their income cannot be understated. Wage theft can trigger a spiral of debt and instability as workers fall behind on bills, forgo nutritious food and needed healthcare, and turn to predatory payday loans as a last resort to make ends meet. Furthermore, wage theft undermines attempts by low-wage workers to raise themselves out of poverty, thus causing harm to their families and communities. An estimated \$30 million in tax revenue is lost to wage theft each year in Minnesota, which lessens available resources for public education, healthcare, and other social services.¹²

Dangerous Conditions

The federal Occupational Health and Safety Administration reports that the construction industry is by far the most dangerous employment sector for workers, with 971 workplace fatalities recorded in 2017 across the US.¹³ The construction industry also had the greatest number of Latino worker deaths (291) and immigrant worker deaths (262).¹⁴

Among the 76 workers surveyed by CTUL, 44% of respondents reported that their employer does not provide them with proper safety equipment, and 49% said that they had not received any safety training. Taken together, the lack of proper safety

equipment and training combined with strenuous and often rushed working conditions creates a perfect storm for workplace injuries. In fact, three in ten of the workers surveyed said that they had been injured on the job at some point.

When construction workers are injured on the job, they often must miss days of work to recover, which means foregoing the wages they rely on to support themselves and their families. Some injuries are so severe, they force workers to leave the industry altogether. Unfortunately, many employers take advantage of workers’ economic insecurity. As one of the survey respondents stated:

“It doesn’t matter if I get hurt; I need the money. I can’t quit the job because then I need another one... They are taking advantage of us because we are immigrants and they know that we will accept anything in front of us.”

Of the workers who reported being previously injured on the job, only 26% said that their employer covered their medical costs and paid for the time they missed from work.



Discrimination

The demand for low-wage labor in the construction industry drives employers to hire workers who are perceived to be more vulnerable, be it due to their immigration status, race, ethnicity, gender, or other social factors. Discrimination therefore plays a consequential role in terms of shaping how people are treated in the labor market. When asked by CTUL if they see their gender, race or ethnicity as a factor that shapes their labor conditions, 42% of surveyed workers responded affirmatively. Some of these workers reported that they receive no breaks at work, in contrast to their white counterparts. Another worker stated that his employer makes non-white workers carry out more dangerous tasks than their white counterparts. And workers who are undocumented stated that their employers take advantage of their work authorization status to pay them lower wages.

Retaliation

Construction workers’ vulnerability to abusive labor conditions is further exacerbated by employers’ widespread use of retaliation to prevent workers from defending their rights in the workplace. As a report co-published in 2017 by the Raise the Floor Alliance and the National Economic and Social Rights Initiative describes:

“Retaliation as a systemic business practice, when coupled with our inadequate social

safety net for workers to fall back on, compels silent acceptance by hundreds of thousands, even millions, of workers as their wages are stolen and conditions degrade to levels incompatible with human dignity and rights.”¹⁵

Retaliation not only affects individual workers who complain but can also have a chilling effect on other workers by clearly illustrating the consequences for speaking up. This underscores the way in which retaliation is used as a means of disciplinary control by employers. This chilling effect also makes retaliation extremely difficult to measure because, as articulated in a recent report by the National Employment Law Project, “it operates almost by definition to silence workers.”¹⁶ However, studies have shown that the risk of retaliation is widespread, particularly for low-wage and immigrant workers who already experience structural marginalization.¹⁷ Moreover, across the spectrum of workplace issues, retaliation can often create the conditions for undetected “smaller” problems to metastasize over time into more serious forms of abuse or risk.

Among the workers surveyed by CTUL in the Twin Cities construction industry, 30% said that they do not feel that they can complain to supervisors about concerns without fear of retaliation. Workers cited threats of being fired, blacklisted, deported, or kicked out of employer-provided housing as forms of retaliation common in the industry.

Contractor Ricardo Batres Charged with Labor Trafficking Yovani Castro Romero

In September 2018, Centro de Trabajadores Unidos en la Lucha (CTUL) helped local authorities bring a labor trafficking case against construction contractor Ricardo Batres – making this one of the first labor trafficking cases filed in Minnesota. Based on testimony from other workers who have come forward to CTUL since Batres was charged, Batres’ firm is not the only perpetrator of labor trafficking.²⁶

Batres was charged with “labor trafficking, theft by swindle of public funds and insurance fraud. According to the criminal complaint, Batres began recruiting workers in 2017. He enticed as many as 12 people to work for his company, American Contractors and Associates LLC, by promising an hourly wage, benefits, and housing. But instead of fulfilling his promises, Batres leveraged deportation threats against his workers to coerce them into working exceedingly long hours for very little pay. He offered workers substandard housing with no heating or hot water, failed to provide the workers with adequate safety protection, and did not purchase legally-required workers’ compensation insurance. As articulated in the criminal complaint against Batres:

“Due to the risks inherent in the construction industry, Minnesota law requires employers to maintain workers’ compensation insurance to provide medical care, lost income, and vocational rehabilitation for injured employees. [Batres] knew that he had made false statements on his workers’ compensation policy application denying that he had employees, so, when workers began to suffer injuries he told them not to seek medical attention and not to report the injuries. [Batres] told his workers that if they reported their injuries, they and their coworkers would lose their jobs. He also told them that they would be deported for illegally working in the United States.”²⁷

There is a human rights crisis in the Minneapolis-St. Paul construction industry.

Labor Trafficking

Labor trafficking occurs when an employer compels a worker – using force, fraud, or coercion – to perform labor that is involuntary. Construction is widely known to be a high-risk industry for labor trafficking in the US and globally.¹⁸

Construction workers’ vulnerability to labor trafficking is exacerbated by the industry’s practices in the non-union sector. Constant downward cost pressure creates a demand for cheap labor, which consequently leads to various forms of labor abuse, including, in the extreme, trafficking. Furthermore, the widespread use of sub-contracting makes it difficult to identify and hold perpetrators of labor abuse accountable and creates an environment of impunity for abusive employers. Some of the largest and most-respected developers in the industry have been enriched at the expense of trafficked workers, but they set up a complex labor chain which allows them to claim ignorance of these grave conditions on their worksites, despite the stream of repeat violations.

Perpetrators of trafficking use different forms of coercion, including withholding wages, failing to pay workers for all hours worked or for overtime, denying workers rest or meal breaks, or denying a worker’s right to medical care after a workplace injury, to name a few. Because many construction workers in the US are immigrants, many of whom are undocumented, threatening to report workers to immigration officials or law enforcement is a common and especially powerful form of coercion,¹⁹ as was made evident in the case against Ricardo Batres in 2018.



III. Toward Worker-driven Social Responsibility

There is a human rights crisis in the Minneapolis-St. Paul construction industry. It is important to note that the labor abuses and case studies detailed above do not occur in a vacuum. Rather, they thrive at the nexus of workers’ intersecting vulnerabilities and a setting in which workers can be exploited with impunity. However, workers in other industries have developed an approach that, if carefully adapted, may effectively protect the human rights of construction workers in the Twin Cities.

Under the Worker-driven Social Responsibility (WSR) model, corporations at the top of product supply chains or labor contracting chains adopt legally-binding standard-setting agreements with a human rights organization that require those corporations to impose market consequences on suppliers who violate workers’ rights.²⁰ In doing

so, WSR agreements harness immense purchasing power so that workers are empowered to enforce workplace standards without fear of retaliation, including genuine independent investigations and complaint resolution. The WSR model also requires companies at the top of the supply chain to pay to help change the conditions that they helped create at the bottom. The structure of WSR is designed by the very workers whose rights are at risk and is intended to end the abuse and poverty those workers face.

To date, the two most widely known WSR successes are the Accord on Fire and Building Safety in Bangladesh and the Fair Food Program (FFP) in the US. These programs offer proof that supply chains can offer dramatically better labor conditions. In the wake of factory fires and building collapses killing garment workers by the hundreds, the Bangladesh Accord offers an impressive example

The experiences of WSR programs to date provide valuable proof that such an approach would raise the floor across the Twin Cities construction industry – for both union and non-union workers.



in both scale and impact. The agreement covers more than two million workers, the majority of whom are women, and has compelled the implementation of more than 100,000 safety renovations (from installation of fire doors to strengthening of substandard structural columns) across more than 1,600 factories. The design and implementation of the Accord was spearheaded by global and national unions as well as NGOs and demonstrates how WSR and collective bargaining can form a complementary strategy.

In U.S. agriculture, the Fair Food Program offers a forceful illustration of the power of the WSR model to generate comprehensive change across every aspect of the work environment. The FFP has transformed the tomato sector along the East Coast for 35,000 workers. Under the FFP, workers receive peer-to-peer education on enforceable rights and raise complaints that are resolved within weeks by a third-party monitoring organization dedicated to this purpose. Sexual violence, wage theft, forced labor and the most dangerous conditions have been virtually eliminated; compensation for workers has risen dramatically; and the work environment is recognized as the best in U.S. agriculture.

There are many components of an effective WSR program, and each application of the model must be tailored to a particular industry and workplace

context. Construction workers in the Twin Cities have worked closely with CTUL, the WSR Network, and other national and local experts to build a standard-setting and monitoring program in construction – the Building Dignity and Respect Standards Council (BDC). For such an approach to deliver its intended results in the highest risk sectors of the Twin Cities construction industry, developers of single- and multi-family residential projects must adopt legally binding standard-setting agreements to:

- Ensure that workers on their projects enjoy safe and dignified conditions
- Ensure that workers on their projects have effective mechanisms to enforce their rights, including independent monitoring and the ability to complain without fear of retaliation
- Hold contractors and sub-contractors responsible for non-compliance through meaningful market consequences

The experiences of WSR programs to date provide valuable proof that such an approach would raise the floor across the Twin Cities construction industry – for both union and non-union workers. Indeed, development does not need to incentivize the abuse and impoverishment of the industry’s most vulnerable workers. The WSR model offers another path.



CTUL member and construction worker, Adalid Zavala, speaking on a march to demand justice for construction workers

Endnotes

1

Filiberto Nolasco Gomez ‘Contractor Ricardo Batres Charged with Labor Trafficking, Revealing Immigrant Worker Abuse,’ Workday Minnesota, September 26, 2018, <https://www.workdayminnesota.org/articles/contractor-ricardo-batres-charged-labor-trafficking-revealing-immigrant-worker-abuse>.

2

<https://www.facebook.com/photoset=a.10150900718240258&type=3&theater>

3

‘Weeks before trial, suspected labor trafficker spotted on developer’s job site,” KSTP Channel 5 Eyewitness News, September 19, 2019, <https://kstp.com/news/labor-trafficking-suspect-spotted-on-developer-job-site-weeks-before-trial-batres-reuter-walton/5498878/>

4

Ibid.

5

See CTUL website: <http://ctul.net/>

6

North Star Policy Institute (2018) ‘Divergent Recoveries: An Analysis of Construction Industry Employment in Minnesota and Wisconsin,’ <http://northstarpolicy.org/wp-content/uploads/2018/07/Divergent-Recoveries-July-2018-Web.pdf>

7

United States Census Bureau, Quarterly Workforce Indicator Tool, <https://qwiexplorer.ces.census.gov>

8

Associated General Contractors of Minnesota (2019) ‘MN Construction Industry Assessment 2018-2019’, https://agcmn-c5.s3.us-east-2.amazonaws.com/7915/4534/3137/2018_AGC_of_Minnesota_Industry_Assessment.pdf

9

William Morris, ‘Minnesota’s job growth turns negative,’ Finance & Commerce, March 21, 2019, <https://finance-commerce.com/2019/03/minnesotas-job-growth-turns-negative/>

10

Ibid.

11

David Cooper & Teresa Koreger (2017) ‘Employers steal billions from workers’ paychecks each year’, Economic Policy Institute, <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/#epi-toc-13>

12

Estimate courtesy of Clark Goldenrod, Senior Policy Analyst for Minnesota Budget Project.

13

AFL-CIO (2019) ‘Death on the Job: The Toll of Neglect,’ <https://aflcio.org/reports/death-job-toll-neglect-2019>

14

Ibid.

15

Raise the Floor Alliance & National Economic and Social Rights Initiative (2016) ‘Challenging the Business of Fear: Ending Workplace Retaliation, Enforcing Workers’ Rights,’ https://www.nesri.org/sites/default/files/Business_of_Fear_WEB.pdf

16

National Employment Law Project (2019) ‘Exposing Wage Theft Without Fear: States Must Protect Workers from Retaliation,’ <https://s27147.pcdn.co/wp-content/uploads/Retal-Report-6-26-19.pdf>

17

Ibid.

18

Polaris (2017) ‘The Typology of Modern Day Slavery,’ <https://polarisproject.org/sites/default/files/Polaris-Typology-of-Modern-Slavery.pdf>

19

The Advocates for Human Rights (2019) ‘Labor Trafficking Protocol Guidelines,’ https://www.theadvocatesforhumanrights.org/uploads/labor-trafficking_protocol_guidelines_final.pdf

20

Statement of Principles, Worker-Driven Social Responsibility Network: <https://wsr-network.org/what-is-wsr/statement-of-principles/>

21

Twin Cities.com, <https://www.twincities.com/2016/11/04/feds-sue-hugo-contractor-alleging-firm-tolerated-racial-harassment-of-2-workers/>

22

EEOC, <https://www.eeoc.gov/eeoc/newsroom/release/11-3-16c.cfm>

23

EEOC, <https://www.eeoc.gov/eeoc/newsroom/release/9-7-17.cfm>

24

‘JL Schwieters to Pay \$125K in Racial Harassment Case,’ <https://finance-commerce.com/2017/09/jl-schwieters-to-pay-125k-in-racial-harassment-case/>

25

City Pages, <http://www.citypages.com/news/twin-cities-construction-is-booming-and-human-traffickers-are-com-ing-to-feed/499869302>

26

Filiberto Nolasco Gomez ‘Contractor Ricardo Batres Charged with Labor Trafficking, Revealing Immigrant Worker Abus,’ Workday Minnesota, September 26, 2018, <https://www.workdayminnesota.org/articles/contractor-ricardo-batres-charged-labor-trafficking-revealing-immigrant-worker-abuse>.

27

Criminal complaint, <https://www.hennepinattorney.org/-/media/Attorney/NEWS/2018/Batres-Ricardo-finalcplt.f?la=en&hash=7D74E3E52F4B9931B734DC25FD30C5AF9E1F90F7>

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