

The Denver Post

Labor brokers cut costs, corners

Fast-growing firms exploit immigrants to feed construction industry

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Sunday, February 16, 2003 - Companies that provide mostly illegal immigrant laborers to commercial building sites nationwide are thriving even as they flout the country's most basic labor laws, a three-month investigation by The Denver Post has found.

Supporters say the companies, known in the trade as labor brokers, are part of a growing and valuable trend in commercial construction. The industry's version of a temp agency, they rent workers to contractors that are shedding full-time employees to cut costs.

But the companies, some of them million-dollar corporations that control hundreds of workers, are increasingly the subject of lawsuits nationwide and are beginning to face federal probes for violations of immigration and labor laws.

Examining the brokers' involvement in three major construction sites in Colorado, The Post repeatedly found that the companies failed to pay overtime, to insure workers against on-the-job injury, or to pay Social Security and other payroll taxes.

The emergence of labor brokers illustrates a more organized approach in the industry - away from day laborers working on small residential projects, and toward moving large groups of workers from one major construction site to another and from state to state.

In a case last year that federal investigators hoped would send a signal to the industry, a Texas-based broker was indicted on 54 charges, including harboring illegal aliens and tax evasion. In a December plea bargain, the company president agreed to serve four years in federal prison. Under racketeering laws usually reserved for drug cases, the company will forfeit \$10 million in assets. A separate Labor Department case that accuses the broker of bilking workers out of nearly \$1 million in overtime is pending.

But the use of brokers continues to spread. In a growing number of states, the companies dominate building specialties such as drywall installation, one of the dirtiest jobs in commercial construction.

Mike Nobles, a Tennessee-based broker who provided dozens of workers to help build the \$147 million Sky Ridge Medical Center in Lone Tree last year, said his company is profitable because he relieves construction contractors of hiring hassles, providing them cheap, union-free labor.

Some of the company's drywallers lived five to a hotel room and said they made \$4

to \$10 dollars an hour less than the union wage of \$19.70. They said they worked 56 hours a week. They were not paid overtime, nor were they covered by workers' compensation. But they didn't complain about those conditions because of their immigration status, many said.

"The way these (brokers) operate they've crossed the gray line into ... a clear violation" of labor laws, said Jim Gleason, regional director of the Mountain West Council of Carpenters.

"You're dealing with workers who are transient, who generally are undocumented immigrants, so they are easily exploitable," Gleason said. "And if these workers get hurt on the job, you know they are going to end up" in public hospitals at taxpayer expense.

Many brokers, including Nobles, claim that technically, they don't employ the workers at all. Nobles said that his men are required to sign a form that designates them as independent contractors, making them ineligible for overtime and requiring them to pay their own taxes.

But labor experts and federal investigators say those workers don't meet legal criteria for defining workers as independent contractors - including whether they have the opportunity for profit or loss, and whether they bid on jobs and supply materials.

Workers are considered employees if their wages are guaranteed regardless of a bid process, if they are supervised on the job, or receive on-the-job training, among other criteria.

Nobles, who initially defended his \$6 million a year company, said he is rethinking many of his practices as the result of inquiries by The Post and conversations with his lawyers. But, he said, in an industry that depends on undocumented immigrants for much of its labor, abuses will continue because they are profitable.

"You don't have to worry about workman's comp payments with Mexicans because they are afraid to go to the hospital. They're not going to file a big claim and sue you like the Americans are. That's what this boils down to," Nobles said. "We have these people intimidated."

As worrisome as brokers' labor practices, say immigration officials, is the companies' ability to move hundreds of illegal immigrants around the country.

"These guys can move 300 or 400 people from one big city to another without having to look over their shoulder or without any concern about it," said Gary Evans, a Memphis-based INS agent who spent almost two years investigating brokers in Tennessee and other states.

"Anytime you can do that, then the immigration service, the whole federal government, doesn't really have the resources to control it," he said.

While The Post found brokers providing workers to some of the state's major construction projects, they don't show up on projects' organizational charts and no

state enforcement agency contacted by the newspaper knew of their existence.

Many of the brokers are headquartered in Southern right-to-work states with booming immigrant populations and weak labor-law enforcement. Their use of undocumented workers - and the ability to move those workers quickly between states - makes it difficult to build cases, investigators said.

"We have no bilingual investigators, so even if these workers come to us, we have to get an interpreter," lamented Mary Ellen Grace, wage and hour division head at the Tennessee Department of Labor. "And because they are immigrants and in the country illegally, they almost never come to us."

Brokers not only cut builders' costs, but in an industry where many of the most energetic workers are illegal immigrants, they provide a legal buffer between contractors and immigration authorities.

"If the INS does come to call, the contractor doesn't care. It's not his problem," said Will Collette, who has studied brokers for the AFL-CIO in Washington.

Collette estimated that together with smaller brokers in residential construction, labor brokers may provide 1 million workers, a sixth of the industry's labor force.

Nobles said the owners of construction projects must share blame with the brokers.

The owners could write ironclad contracts insisting "that every man on the site have a Social Security number, all the clean (immigration) documentation."

"We have so much pressure to cut costs," Nobles said. But "the owners of the buildings - they want to wink at it and ignore it, and then if anything goes wrong, they want to blame it on somebody like me."

Maureen Tarrant, president and CEO of Sky Ridge Medical Center, referred inquiries about the brokers to the site's general contractor, New York-based Bovis-Lend Lease. In a written statement, Bovis spokeswoman Mary Costello didn't directly respond to accusations of labor brokers' wrongdoing but said the company had found no evidence of improprieties on the part of the Tennessee-based drywall contractor that hired Nobles.

"We welcome the opportunity to review any new information that contradicts our initial findings," the statement said.

At other sites in the state, building owners said they cannot legally dictate how contractors work or how workers are paid.

In Colorado, The Post's investigation focused on brokers who provided workers for HealthOne's Sky Ridge site in Lone Tree, a State Farm Insurance office campus in Greeley and an Intel chip plant in Colorado Springs. Of more than a dozen workers interviewed, most admitted they were in the country illegally, although some said they provided brokers with fake Social Security numbers or green cards.

Among The Post's findings:

* Laborers worked long hours but were never paid overtime, a legal obligation regardless of employees' immigration status.

At the HealthOne site, at least two brokers provided workers to the drywall subcontractor, Tennessee-based Delta-United Specialties, a company spokesman acknowledged. The drywallers worked a set 56 hours a week and were paid a straight hourly wage of \$8-\$16 per hour, the workers said.

Fernando Morales worked on the Greeley State Farm project for an Atlanta-based broker called Eagle Managed Subcontractors, or EMS. He said he worked 48-hour weeks without overtime there, and between 60 and 80 hours a week at other EMS-brokered sites nationwide.

"You work so much you don't know what day it is," he said.

EMS refused repeated requests from The Post for comment.

* Workers for both Nobles and EMS said they were required to sign forms designating themselves as independent contractors in order to get and keep jobs with the brokers. While Nobles said he made sure those forms were translated into Spanish, federal investigators said some brokers didn't bother to do even that, making it doubtful their Spanish-speaking workers understood what they were signing.

In any case, labor lawyers and Colorado authorities said the legal determination of who is an independent contractor is based on what happens on the work site.

"It's not like they do the job on their time and when they want to do it. They have to be there and they are told what to do and they are supervised," said Richard Rosenblatt, a Denver labor lawyer. "That is not an independent contractor."

At the HealthOne site, workers said the brokers did not deduct taxes from their wages, and paid neither Social Security nor unemployment taxes. Some of the workers said they were paid in cash.

* None of the brokers contributed to workers' compensation, according to state records.

But Colorado authorities said that because the contractors' supervisors directed the brokers' workers, they may be legally liable as joint employers for that coverage.

"You can have all the paperwork you want prepared by all the most highly recognized professionals, but what counts is whether in practice there is an employer-employee relationship," said Deborah Weis-Heath, state workers' compensation enforcement supervisor.

In several cases, workers said brokers skimmed from their wages. Nobles' CPI Systems deducted \$600 from workers' pay, promising to get them work visas. Half

the money went to the INS while the other half went to Nobles as a processing fee, the broker said.

CPI employees said the visas were never granted and Nobles refused to return the money when some workers asked for it.

Nobles said some workers who were in the country before April 1, 2001, met conditions for a congressional amnesty and got visas. After inquiries from The Post and discussions with his lawyers, Nobles said he plans to fire those workers he knows are undocumented and whose visa requests haven't yet been approved. It is illegal to employ workers while visa applications are pending, immigration officials said.

In Greeley, a worker said EMS deducted 10 percent from his check "for taxes," a level that does not correspond to either federal or state tax rates.

In Omaha, carpenters union organizer Joe Avila said EMS drywallers working at a convention center told him the broker deducted nearly 15 percent of their weekly checks for what they were told was insurance. When a worker suffered a serious back injury on the job, EMS paid part of the doctor's bills, then fired the worker, Avila said.

But contractors say the more common that brokers become, the more competitive pressure there is to use them.

Bob Caya, senior vice president of Utah-based Standard Drywall, said his company hired a broker to provide drywallers for an Intel chip plant in Colorado Springs. After the Texas-based broker failed to pay them overtime, 10 of the mostly illegal immigrant workers sued. Caya's company paid an undisclosed settlement to the workers in 2001.

Caya said he stopped using brokers after learning how they treated workers. But, he added, he is one of few major drywall contractors who don't.

"It's getting so you almost have to use them in order to compete," Caya said.

INS veteran Evans may know more about what he calls the "smokescreens," "scams" and "dirty tricks" of brokers than any other federal agent in the country.

Over 22 months, Evans sifted through the history and financial records of an obscure Texas corporation called Brother's Construction II. That investigation yielded a federal indictment against Brother's in Tennessee in December 2001.

The probe is the government's biggest swipe at construction brokers to date. Brother's president David Cantu plead guilty in December to four conspiracy charges and is set to be sentenced in April.

A \$5.6 million-a-year business that operated in several Western and Southern states, Brother's supplied hundreds of workers, nearly all illegal immigrants, to some of the country's major drywall contractors, investigators said. In some cases, workers were recruited through Spanish-language newspapers along the U.S.-Mexico border, but

most were already in the U.S.

By claiming its workers were independent contractors, not employees, the company evaded more than \$500,000 in payroll taxes over 15 months, and bilked its workers out of \$1 million in overtime, according to the indictment and a Labor Department source familiar with the case.

Cantu also deducted 10 percent from workers' checks, telling them it was for insurance. Investigators said the money went directly to the broker.

But Evans said he was most stunned by the broker's ability to move large numbers of undocumented workers across state lines at customers' demand.

Investigators who raided a Memphis hotel room found business cards suggesting that Brother's operated under more than 20 different identities. On a single site - FedEx world headquarters in Memphis - the broker provided more than 150 undocumented workers, according to the indictment.

"I used to feel that wherever I was, the immigration service had control," Evans said. "But with these guys, there is no control. You're just there and the best you can do would be (to get) a fraction to what's going on out there."

The growth of the broker industry, experts said, has been buoyed by two trends: The growing use of temporary labor by major contractors and a wave of Hispanic immigrants who flooded construction sites in the 1990s.

Contractors "are trying to get the lowest-skilled workers for the lowest amount of money to get things done separate from the main core of employees," said Thomas Juravich, a University of Massachusetts professor who has studied brokers.

Mark Erlich, director of organizing for the carpenters' union in Boston, said that model is so profitable that it is moving quickly even to heavily unionized regions such as New England.

"These guys will work from 6 in the morning until 6 at night for ... months and then move on to the next city," he said.

For the workers, that mobility means months, sometimes years, living in hotel rooms and cheap apartments.

Morales, who worked in Greeley last summer, said he's spent most of the past six years in hotels while working for EMS. Between January and August of last year, he worked in Pennsylvania, Nebraska and Colorado. He bought an old Buick in June and put 5,000 miles on it in two months.

Still, EMS pays him \$16 an hour, money he is saving for a new house in San Luis Potosi, Mexico. Even without overtime pay, "everybody at EMS likes the hours," said Morales, who wore a worn Redskins cap, his boots and pants stained with plaster.

"We've come to this country to work," he said. "You think of your family. You don't

want them to suffer. That keeps you going."

Other workers said they resented not being paid as well as Americans for the same work and often being cheated by the brokers.

Angel Flores, who worked for Brother's in Atlanta and Memphis before the indictment, said when he asked his supervisor for a \$2- an-hour raise, it came with a condition.

"The manager said he'd do it, but he wanted me to give him a week's pay," Flores said.

His bosses "liked money, easy money," Flores said.

Nobles' company, CPI Systems, works mainly with four or five national contractors and sends about 400 workers to construction sites, mainly hospitals, nationwide.

Current and former employees say most of Nobles' workers are Spanish-speaking undocumented immigrants.

Nobles said he strictly complies with all immigration laws, including the requirement that workers prove their eligibility to work in the United States.

But he added that he and many of his competitors know those documentation rules don't apply to independent contractors - which some brokers say their workers are.

"There's a little loophole in the law that says you don't have to have a Social Security number if you work guys on a W-9," the IRS form independent contractors provide their clients to establish that they will pay their own taxes, Nobles said. Workers on W-9s, unlike direct employees, do not have to prove their immigration status to their clients.

Jose Luis Tapia, a skilled drywaller from Mexico who works for CPI, said some CPI workers give Nobles false Social Security numbers in case INS ever checks. But he said that Nobles promised many of those same workers temporary work visas. That shows, Tapia said, that Nobles knows many of his workers are illegal. "He knows we don't have a (real) Social Security number. In truth, he knows," Tapia said. "That's why he takes advantage of us."

Many brokers also use the independent contractor designation to avoid paying overtime and payroll taxes. Those payments are recorded on IRS 1099 forms - the equivalent of a W-2 form for independent contractors - Nobles said.

The Brother's indictment labeled a similar use of 1099s part of a criminal "conspiracy" to "minimize INS and Internal Revenue Service reporting requirements."

Several states, eyeing growing revenue losses, have begun to act.

In Washington, recent legislation makes it a felony to miscategorize employees as

independent contractors in any industry. A new state task force is compiling a list of the construction industry's worst offenders.

In California, a task force has begun cross-matching IRS 1099s against unemployment insurance tax data to spot companies that are switching large numbers of employees to independent contractor status. In 2000, the task force audited 369 companies in several industries, assessing \$6.5 million in unpaid taxes.

To prove their case against Brother's, investigators pieced together the way workers were used at the FedEx site, conditions similar to those described by workers at HealthOne in Lone Tree, where CPI supplied workers.

In Tennessee, workers signed in daily with E.L. Thompson, the project contractor that hired Brother's. Thompson paid Brother's for every hour the broker's men worked. And Thompson foremen directed the workers on site, investigators said. They even fired one employee for sitting on a pail while applying plaster.

"This is the legal equivalent of 'If it looks like a duck, quacks like a duck, then it's a duck,'" said a Labor Department source familiar with the case.

Kenneth Fox, the Delta vice president who hired Nobles and other brokers at HealthOne, acknowledged that CPI's use of 1099s to pay workers is questionable.

But he said Delta can only require brokers to sign a contract clause promising to obey the law.

"Legally, we do not run that man's business and we can't run his business," Fox said.

Dimitria Hurst, a spokeswoman for State Farm Insurance in Greeley, agreed that her company cannot legally dictate how contractors operate.

"We don't have control over what they do, who they hire, or any of that," Hurst said.

Nobles said that after recent discussions with his lawyers, he no longer will pay workers as independent subcontractors.

"The way we're going to work these men from this point forward is as employees - pay them their wage, pay them their time-and-a-half," the broker vowed.

But even if CPI stops the questionable practices, Nobles said, his competitors won't.

"It's a very deep-rooted problem. And it goes much farther than the construction industry, though they are a major player, no doubt about that," Nobles said. "These poor Mexicans are getting raped and they're getting raped because a lot of them are not documented. And they are the finest, hardest-working people in the world."