January 2001

Analysis and Critique of KIWA's Reform Efforts in the Los Angeles Korean American Restaurant Industry, An

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Recommended Citation

Link to publisher version (DOI)
https://doi.org/10.15779/Z38TP34

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INTRODUCTION

Although many people are aware, through the efforts of organizations and media attention, of the miserable working conditions facing Asian Americans in garment industry sweatshops, less visible are other arenas in which Asian American workers also face similar plights. One such example is the restaurant industry in Los Angeles’ Koreatown. Since 1997, the number of complaints made by Korean American restaurant employees against their Korean American employers for wage and hour violations has increased exponentially.

Labor violations have been common at Korean-owned restaurants from the initial establishment of Korean restaurants in Koreatown, but it was only recently that these violations were brought to light. Restaurant employers allegedly paid their employees wages that were as little as half of the hourly minimum wage. Furthermore, overtime work was often uncompensated, and many employers did not carry workers’ compensation insurance or other legally required health benefits. The primary reason for the recent media coverage and community exposure was the effort of a non-profit organization called Korean Immigrant Workers Advocates.
(KIWA), whose work caught the attention of the U.S. Department of Labor (DOL) and prompted the Department to conduct random investigations of restaurants in Koreatown. These investigations confirmed the rampant wage and hour violations.

KIWA launched a campaign against Koreatown's restaurant industry in 1997. It sought to provide information and assistance to restaurant employees and ultimately make the Korean-owned restaurants humane and fair places to work. KIWA's methods of operation included negotiations with the employers on the employees' behalf, demonstrations and protests in front of restaurants, and legal action. Inevitably, its efforts were met with resistance from restaurant employers, the Korean Restaurant Owners Association (KROA), some customers, and some members of the general public. Despite this resistance, KIWA played a large role in ending many of the unacceptable practices of the restaurant industry in Los Angeles' Koreatown.

KIWA's mission statement and many of its strategies resonate with a concept advanced by legal academics called empowerment. This concept focuses on the process of enabling a community to take control and help itself. This article will argue that while KIWA successfully incorporated many elements of the empowerment theory into its operations, KIWA's efforts fell short of achieving the final level of empowerment — that of community self-confidence and self-sustenance. Furthermore, due to the particular circumstances of these labor disputes and the distinctive characteristics of the Korean American community, the concept was applicable only to a certain extent.

This article will explore the labor disputes within the restaurant industry in Los Angeles' Koreatown, present an overview of the players' stances based on individual interviews, offer insights into KIWA's role, and provide suggestions for KIWA to use in the future. Since mainstream legal scholarship provides insufficient tools with which to analyze disputes within an ethnic community, this article will utilize materials that are often overlooked or minimized in legal scholarship, namely primary materials. The use of primary materials is important in part because it provides a voice for individuals, in this case, the Korean American community in Los Angeles. Through personal interviews of restaurant owners and employees, KIWA staff members, and KROA members, this article will explore the perspectives and motivations of the players in the Korean-owned restaurant labor disputes.

This article is divided into five parts. Part I will describe the concept of empowerment, providing the theoretical framework with which to analyze the labor disputes. Part II will provide an overview of the Korean American community in Los Angeles. It will delineate the general

4. See infra notes 6-47 and accompanying text.
5. This article is based on eight interviews, four with restaurant owners, one with a restaurant employee, two with KIWA staff members, and one with a KROA representative, which were conducted by the author over a period of one week. Pseudonyms for the restaurant owners and employee will be utilized throughout the article at their request to preserve anonymity.
characteristics of the community and specifically discuss employment opportunities open to Korean immigrants. Part III will examine Koreatown's restaurant industry and the obstacles facing restaurant employees. Part IV will explore the wage and hour violations committed by the Korean-owned restaurants in Los Angeles and responses by KIWA and the Labor Department. Finally, Part V will critique KIWA's efforts using the concept of empowerment and offer suggestions for the future.

I. THEORETICAL FRAMEWORK: THE CONCEPT OF EMPOWERMENT

Whether it is called "rebellious lawyering,"6 "community lawyering,"7 "public interest lawyering,"8 "change-oriented lawyering,"9 "progressive lawyering,"10 or "lawyering for social change,"11 these theories focus on the empowerment of clients. Empowerment is described as the means by which a community of clients ultimately attains the capability of making decisions that affect the group, without relying heavily on an outside source, such as a lawyer or community organizer.12 These theories emphasize process over the end product, seeking not only to enable client communities to "win the battle at hand," but also to provide them with the tools necessary to address any issues that may later arise.13

Though scholars may use different language and models to describe their view of the empowerment theory, most of them emphasize the necessity of moving beyond litigation. They instead propose approaches that directly involve the community, which are advantageous for several reasons.14 First, scarcity of resources demands that community members be taught to help themselves.15 Second, it is better for the community to learn new skills than become dependent on lawyers.16 Third, all laymen should have a working knowledge of the law, at least as it pertains to them.17

9. See id. at 701.
10. See id. at 754.
12. See id. at 657.
13. Id. at 661.
15. See Wexler, supra note 14, at 1055.
16. See id.
17. See id. Wexler includes another reason: "[P]oor people can often do what lawyers cannot or
These scholars, though they do not fully discount the value of litigation and the legal system, recognize the tendency of litigation to be limiting and disempowering for certain communities. According to Stephen Wexler, well-known for his work in legal services, litigation may disempower clients by placing power in the hands of an attorney, providing little opportunity for client participation, isolating clients from each other, and making them dependent on an attorney’s skills. Gerald Lopez, one of the prominent scholars in the field of community lawyering, extends Wexler’s critique, arguing that “litigation often abstracts, sanitizes, and transforms human rage and pain and sorrow into a legally appropriate product.”

Additionally, Lucie White, a leading proponent of collaborative lawyering, points out that litigation is not always the appropriate measure because there may be no legal solution to the problem faced by the community. For example, in the case of the Black South African villagers of Driefontein who resisted the government’s attempt to destroy their village and remove them to remote townships, the law provided no remedy because the law in fact prescribed the removal.

Furthermore, White asserts that litigation does not work as an effective tool for those particular groups and interests that lack a strong voice in the political system. To corroborate this notion, Luke Cole, a preeminent academic in the field of environmental justice and grassroots movements, contends that lawsuits are not empowering because the forum is often one over which the adversary possesses control. Cole identifies one of the three tenets of empowerment to be “law as a means, not an end” and suggests the use of alternative tactics, such as organizing and building a community, appealing to administrative agencies, or applying pressure through publicity and media attention.

According to Cole, some scholars argue that traditional litigation can be an effective community-organizing tool in particular communities, as long as it is a by-product of a firmly entrenched community-based organizing campaign. Litigation has the advantage of educating a community not only about the particular issues at hand but also about the workings of the legal system, and if publicized, can serve to educate and draw support from those outside of the community. It can also be used to unify a community, such as through a class action lawsuit.

will not do.” Id.

18. See Cole, supra note 11, at 667-68; White, supra note 8; Eagly, supra note 14; Brescia, supra note 14; Wexler, supra note 14; LOPEZ, supra note 6.
19. See Wexler, supra note 14, at 1049.
21. See White, supra note 8, at 766.
22. See id. at 748.
24. See id. at 661. The other two tenets, client empowerment and group representation, will be discussed later.
25. See id. at 668.
26. See id.
Cole bases his view of empowerment not just on traditional litigation or "winning the battle at hand," but on the notions of client empowerment and group representation.27 "Client empowerment" is the process through which an attorney educates clients to rely on themselves rather than relying on the attorney, by providing them with the tools to make their own decisions. It also enables individuals to see themselves as part of a group and to participate in working towards a common goal. By utilizing measures that recognize the clients as "experts" and "validate their experiences and knowledge," the attorney endeavors to equip the community with the tools to help itself if the attorney becomes unavailable.28 The hope is that the individuals in the community and the community as a whole will be more informed and confident at the end of the process.

Compatible with client empowerment is the notion of "group representation," which serves as a reminder to the lawyer that he is representing a community, rather than an individual or a group of unrelated individuals.29 Group representation ensures that the lawyer works towards a group goal instead of an individual interest, secures the most efficient use of resources, and builds a sense of community.30 If a group does not yet exist, the lawyer can help form one by organizing clients to reach out to others and by denying representation to persons not members of the group.31 The objective is to develop the community's consciousness as to its sense of worth and power.32

White conveys her view of empowerment through a three-dimensional analysis. First, White notes that the first dimension of activist lawyering – litigation – may by itself be insufficient to achieve the ultimate goal of empowerment.33 The second dimension involves the attorney’s use of the legal system to raise general public awareness of injustice by identifying and focusing on barriers that serve to silence unrepresented groups. Such barriers include formal exclusion from the political process, threat of retaliation, and institutional structures and cultural patterns.34 This second dimension of lawyering is designed to arouse public empathy for the group and enable them to form meaningful political coalitions with others.35 In the Driefontein village case, the villagers’ attorney helped the members use public opinion to motivate their neighbors to participate in community-organizing activities and to gain leverage against the government.36 The final dimension, third-dimensional lawyering, attempts to develop the

27. See id. at 661. These are the other two tenets of Cole's theory of empowerment.
28. See id. at 663.
29. See id. at 664.
30. See id.
31. See id. at 666-67. Wexler also notes the importance of denying service to non-members as an effective means of building membership. See Wexler, supra note 14.
32. See Cole, supra note 11, at 664-65.
33. See White, supra note 8, at 754-66.
34. See id. at 751.
35. See Eagly, supra note 14, at 445 (quoting Lucie E. White, Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice, 1 CLIN. L. REV. 157, 157 (1994)).
36. See White, supra note 8, at 767.
group's own consciousness so that the group is able to organize and act for itself. Devices for such development would include education of the group, creation of internal governmental bodies, independent projects devised and administered by the group, and the inclusion of the group in the lawyer's initial strategy and decision-making processes. To that end, the Driefontein villagers had informal conversations with the organizer, developed a health clinic and a legal clinic, held strategy sessions together with the lawyer, and established a negotiating committee. 37

The theories of Wexler, Lopez, Eagly, Cole, and White establish the background for assessment of a group's application of the empowerment concept. In particular, Cole sets forth three questions to ask when evaluating empowerment strategies and tactics: (1) whether they will educate the community and the public, (2) whether they will build and organize the community, and (3) whether they will attack the root of the problem rather than merely the symptoms. 38

Education is the key to empowerment and should be directed at not only the clients but also the policymakers or decision-makers and the public at large. 39 Education can come in many different forms, including media campaigns, written and video educational materials, training for social service providers, self-help workshops, and workplace rights courses. 40 These methods allow the community members to develop problem-solving and leadership skills and gain enough confidence eventually to help themselves. 41

These methods also address the objective in Cole's second question. They enable the community to reach out to others and pass on its knowledge, thus raising consciousness and creating a unifying network. 42 When doing so, the community should bear in mind that one of its aims is to attract new members and thus, it should employ appropriate tactics to achieve that aim. This is important so as not to alienate potential allies. 43

An attorney should attack the root of the problem by offering strategies beyond litigation, if they are necessary. Although the attorney may be most familiar with litigation, he should consider other measures to achieve the goals of the community, such as community organization or media exposure. 44 Once the attorney provides initial guidance and establishes a working foundation for the community, he should retreat and allow it to make its own decisions and implement its own strategies. If he has been effective in building a community, an attorney's role will be one of "professional back-up." 45 Ultimately, the community should acquire

37. See id.
38. See Cole, supra note 11, at 668.
39. See id.
40. See Eagly, supra note 14, at 446-47.
41. See id. at 475-76.
42. See id. at 454.
43. See Cole, supra note 11, at 669.
44. See id. at 667.
enough strength and confidence to handle its own affairs with minimal guidance from the lawyer. The Driefontein village case illustrates this process. The villagers established both a health clinic and a legal clinic as community projects. These endeavors drew others into the community and taught them how to work together more effectively. Although the lawyer offered legal expertise, the clinic had its own coordinating committee and handled the selection and supervision of cases. Such projects gave the community the skills and the confidence necessary to attain self-sustenance, the very goal of empowerment.

II. THE KOREAN AMERICAN COMMUNITY IN LOS ANGELES

This part presents an introduction to the Los Angeles Korean American community to enable the reader to better understand the nature of the labor disputes within the context of the larger Korean American community. Section A discusses general characteristics of the Korean American community in Los Angeles and specifically in Koreatown, while Section B focuses on employment opportunities for Korean Americans in Los Angeles.

A. General Characteristics

The 1970’s and 1980’s marked the peak of Korean immigration to the United States due to the enactment of the Immigration Act of 1965. The number of Koreans who immigrated to the United States in the 1990’s was substantially less than the number of Koreans who immigrated to the U.S. in the 1970’s. Figures for 1990 reveal that the immigration explosion had subsided. A possible reason was that many Koreans had opted to remain in Korea where the standard of living and level of income had risen rapidly and there were no language barriers or difficulties in pursuing one’s profession, like those found in the United States.

According to the 1990 census, almost 10 percent of all Korean

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46. See id. at 729.
47. See id. at 729-32.
48. Many of the sources cited in this part do not distinguish between first generation and second generation Korean Americans. Thus, when either the term “Korean American” or “Korean American community” is used, it encompasses both the first and second generation, unless specifically noted.
49. See INS ANN. REP. (1960); INS ANN. REP. (1970); INS ANN. REP. (1980). See also SUSAN B. GALL & TIMOTHY L. GALL, STATISTICAL RECORD OF ASIAN AMERICANS (1993). The Immigration Act of 1965 abolished the highly restrictive limits on immigration from many Asian countries and instituted a system in which no country received special preferences or quotas. Every country in the Eastern Hemisphere received 20,000 immigrant visas regardless of its size. Preference categories and numerical limits were established for those visas. During the 1970’s and particularly 1980, Korean Americans relied heavily on the fifth preference. This preference allowed brothers and sisters of American citizens to enter the United States. For further discussion of immigration laws and Korean immigration history, see id. at 49; DAVID M. REIMERS, STILL THE GOLDEN DOOR: THE THIRD WORLD COMES TO AMERICA (1985); BILL ONG HING, MAKING AND REMAKING ASIAN AMERICAN THROUGH IMMIGRATION POLICY: 1850-1990 (1993); RICHARD A. EASTERLIN, ET AL., IMMIGRATION (1982); ROGER DANIELS, COMING TO AMERICA: A HISTORY OF IMMIGRATION AND ETHNICITY IN AMERICAN LIFE (1990).
50. See INS ANN. REP. (1970); GALL, supra note 49.
Americans in the United States lived in Los Angeles.\(^{51}\) The Korean American community in Los Angeles was still very young, with only 15 percent born in the United States.\(^{52}\) Of Los Angeles Korean Americans five years old and over, about 95 percent spoke a language other than English, about two-thirds did not speak English "very well," and a little over half of those living in a household resided in a "linguistically isolated" household.\(^{53}\) However, Korean immigrants in the United States were noted for their relatively high level of educational attainment. In Los Angeles, the level of educational attainment among Korean Americans was higher than that of the entire population of Los Angeles.\(^{54}\)

The heart of the Korean American community in Los Angeles lies in Koreatown, a place recognized by the city government and often shown on maps. One Korean American expressed, "Koreans from around the region, and around the world, are drawn to Koreatown. It's not that there aren't Korean markets, restaurants and churches throughout Southern California. It is simply that the largest concentration of the best, biggest, newest and oldest for the community exists in Koreatown."\(^{55}\)

Advertisements and signs written in Hangul, the Korean written language, for Korean restaurants, grocery stores, newspapers, radio stations, clothing boutiques, etc., are everywhere. A Korean person can function comfortably in Koreatown without any knowledge of English.\(^{56}\)

From its inception in the early 1970's, Koreatown has been home mainly to non-Korean Americans.\(^{57}\) Koreatown, as described by Won Moo Hurh, serves as a "reception area" for new Korean immigrants because it offers them a familiar and non-threatening environment.\(^{58}\) Once they achieve a certain level of financial security, however, they often search for homes in the suburbs where families can enroll their children in better school systems. In 1990, Korean Americans only constituted a tenth of the Koreatown population, with Latinos comprising 68 percent of the population, and Asian Americans, 26 percent.\(^{59}\) Studies showed that many of these Latino residents worked in Koreatown as well. In fact, nearly 75


\(^{53}\) See id. at 2853. The ability to speak English "very well" is assessed by self-report. Thus, it is based on the person's own perceptions. "Linguistically isolated" households refer to households in which there is no one fourteen years or older who speaks only English or no person fourteen years or older who, speaking a language other than English, speaks English "very well."

\(^{54}\) See id. at 1012, 2853.

\(^{55}\) H. Cooke Sunoo, Understanding the Riots Part 5; The Path to Recovery; Ethnic Coalitions; Reinvent Koreatown from the Center to the Sidewalks, L.A. TIMES, May 15, 1992, at 5.


\(^{59}\) See ABELMANN & LIE, supra note 57, at 105.
percent of all Korean-owned businesses in Los Angeles had hired a Latino worker.60

Koreatown possesses a strong sense of community but remains very insular. Since its inception, Koreatown has grown in area as well as in the number of Korean Americans residing and doing business there. It maintains its own telephone directory, radio stations, newspapers, television stations, and numerous organizations that provide a wide variety of services to the members of its community. However, due to the 1992 Los Angeles riots and the increasing number of Latinos in the community, Koreatown residents and proprietors have realized the importance of reaching out to other communities and making Koreatown accessible to all.61

B. Employment Opportunities

Figures for 1990 revealed that although Korean immigrants in Los Angeles generally possessed a high level of education, with about 55 percent holding a bachelor’s degree or higher, only a quarter of Korean Americans in Los Angeles were employed in managerial and professional specialty occupations.62 Limited knowledge of the English language and financial constraints forced many Korean Americans to work in Koreatown. Preferring self-employment to manual labor, immigrants with the requisite capital rushed to open small businesses, which were usually unrelated to the careers for which they had studied in Korea.63 Kyeyoung Park cites that “[f]rom 1972 to 1987, the number of Korean-owned stores and businesses in Los Angeles County exploded from 398 to 17,105 establishments, and from $425 million dollars in annual sales to $25 billion.”64 This growth made the rate of business ownership by Korean

60. See Darryl Fears, Koreatown Tolerance is Model of Promise: Race: Latinos Are the Majority, Koreans the Keepers of Commerce. Both Find Common Goals, L.A. TIMES, Sept. 21, 1992, at A1. The fact that numerous Korean-owned restaurants rely on Latino employees and the fact that some of the labor disputes discussed below involved Latino employees are significant. However, due to time and language constraints, the author found these issues to be beyond the scope of this article and deserving of separate study and attention. Thus, this article will only mention briefly labor disputes with Latino employees.

61. See id.

62. See CA SOCIAL AND ECONOMIC: 1990, 3 OF 4, supra note 52, at 2927. Note that the numbers do not directly correspond since the number of Korean Americans employed in managerial and professional specialty occupations includes immigrants and second generation Koreans. However, since 85% of Korean Americans in Los Angeles are foreign-born, as discussed above, the comparison can still fairly be made.


Americans "one of the highest among all ethnic groups in the region."65

One-third of these businesses were located in Koreatown.66 Offering a wide range of goods and services in the Korean language, Koreatown provided everything that a person may want or need. As many as 30 percent of Korean American establishments catered specifically to Korean American consumers,67 and the Los Angeles Times estimated that "seventy percent of customers in Koreatown's Korean stores [were] Korean, ten percent were other Asians, and twenty percent were non-Asian."68

Stories of flourishing businesses in Los Angeles County flew back to the homeland and encouraged others to come and try their hand at similar enterprises. The market, however, quickly became saturated, and the immigrants who arrived later found it more difficult to open businesses. These immigrants, with the hopes and dreams of one day establishing their own businesses, often found themselves relegated to working as employees of other establishments. The advantage of these jobs was that they did not require an extensive command of the English language. However, as these jobs often involved manual labor or menial tasks at low wages, overqualified Korean immigrants frequently felt disappointed and dissatisfied as they watched their dreams dissipate.69

III. THE KOREATOWN RESTAURANT INDUSTRY

The labor disputes discussed herein occurred within a specific sector of the Korean American community in Los Angeles, namely the restaurant industry in Koreatown. Wage and hour violations by Korean American restaurant owners have likely existed since the opening of the first Korean restaurant some thirty years ago. Complaints by employees were not an unknown phenomenon, as KIWA confirmed that since its inception in 1992, it had regularly received complaints involving restaurants. In fact, these complaints had acted as the impetus for KIWA's research in the area and eventual campaign. In spite of these facts, it was not until 1998 that labor disputes in the Koreatown restaurant industry stimulated any significant amount of government inspection and media coverage. Section A sets forth general characteristics of Koreatown’s restaurant industry, while Section B describes structural, economic, and social barriers facing restaurant employees and posits them as possible reasons for the recent nature of the exposure of the labor disputes.

66. See LIGHT & BONADICH, supra note 63, at 211.
67. See ABELMANN & LIE, supra note 57, at 136.
68. LIGHT & BONADICH, supra note 63, at 209.
69. See BONG-YOUN CHOI, KOREANS IN AMERICA 250 (1979); ABELMANN & LIE, supra note 57, at 127-28.
A. General Characteristics

According to KIWA, in 1998, Koreatown was home to 283 Korean-owned restaurants that ranged from large to very small establishments. Most of these restaurants were open continuously for twelve hours a day, seven days a week, every day of the year except New Year’s Day, with a few open even twenty-four hours a day. These restaurants were opened with capital obtained in a variety of ways. Methods included owning other businesses first, such as beauty salons, printing shops, and video stores, and using the income from those businesses to open or operate a restaurant; relying on kyes, which are rotating credit associations, and even achieving the coveted “American dream” by working up from dishwasher to owner.

As with most of the businesses in the Koreatown area, cutthroat competition is the norm in the Koreatown restaurant industry. One owner complained that instead of a cooperative, neighborly feeling among restaurant owners, each worked to compete against each other. If a certain type of restaurant, for example, was doing well, someone else would open a similar restaurant nearby. Competition is particularly stiff among Korean restaurants because of their inability to attract non-Korean customers and the nature of Korean food. Since Korean meals often come with a number of side dishes, Korean restaurants incur higher costs for both food and dishes than other restaurants. Therefore, many Korean restaurants, according to one owner, find themselves competing with each other in the variety and number of side dishes they offer, in order to attract customers, leading to spiraling operating costs.

In 1998, Korean-owned restaurants in Koreatown employed about 2,000 workers, serving as waitresses, cooks, dishwashers, meatcutters, and busboys. Seventy percent of them were Korean and the remaining 30 percent were mostly Latinos. Hearing that the restaurant business was the easiest to enter, recent Korean immigrants found their restaurant jobs by answering ads in the Korean language newspaper. The turnover rate is quite high in most restaurants since many employees jump from one

71. See interview with Mrs. Chang, restaurant owner, in Los Angeles, Cal. (Jan. 9, 1999); interview with Mr. Kim, restaurant owner, in Los Angeles, Cal. (Jan. 12, 1999); interview with Mrs. Park, restaurant owner, in Los Angeles, Cal. (Jan. 14, 1999).
72. Kye “consists of a group who pool their funds on a regular basis then rotate the pool around the group until all members have received it.” LIGHT & BONACICH, supra note 63, at 244. This system has a long history in Korea in which the money was often used for significant events such as weddings or funerals. Light and Bonacich stated that survey studies have “failed to confirm the extent to which the kye was used for business capitalization.” Id. at 255.
73. See interview with Mr. Kim, supra note 71.
74. See interview with Mrs. Chang, supra note 71.
75. See interview with Mr. Kim, supra note 71.
76. One owner estimated that 80 percent of the side dishes get thrown away at the end of the day.
77. See id.
79. See Kang, supra note 70, at B1.
80. See interview with Mrs. Lee, restaurant employee, in Los Angeles, Cal. (Jan. 14, 1999).
establishment to another, in search of the best wages and benefits. 81 According to one source, it is normal in the restaurant business for employees to leave within several months and to have a complete change of staff within a year. 82

Employees of Korean-owned restaurants in Koreatown typically work ten hours a day, six days a week. 83 Most owners followed the Korean monthly salary system, paying a flat rate each month, regardless of the number of hours worked. According to one restaurant employee, almost all small businesses in Koreatown paid employees by cash as recently as the early 1990's but shifted to checks once they became subject to closer attention by government authorities. 84

B. Structural, Economic, and Social Obstacles

Underlying structural and economic problems, as well as social realities within the insular Korean American community have been cited as factors that prevent employees from pursuing their complaints and indeed, in some cases, force employees to stop making complaints altogether. As the Los Angeles Times observed, "[o]ften desperate, unaware of their rights and afraid to speak out, immigrants are much less likely to complain. Many do not know about the labor commissioner's office.... So they remain silent." 85 This apt comment points to (1) the employees' unawareness of their legal rights; (2) the employees' lack of resources; and (3) the employees' need for economic survival within an insular community.

I. Unawareness of Legal Rights

Many restaurant employees suffered from ignorance and unfamiliarity with American labor laws. While some employees were simply uninformed about the minimum wage and overtime laws and so were unaware that they were receiving less than was mandated by law, others, who were cognizant of such laws, were unsure of how to pursue their complaints. MeeLa Chon, general counsel to KIWA, maintained that some employees were unfamiliar with the federal and state labor departments, let alone the existence of a claims process for their complaints. 86 Thus, before KIWA's inception, if a worker complained to his employer about pay that he did not receive and the employer refused to pay, the worker would not know what additional steps to take and was unaware of where to turn for support. 87

81. See id.
82. See id.
83. See interview with Mrs. Chang, supra note 71; interview with Mr. Choi, restaurant owner, in Los Angeles, Cal. (Jan. 9, 1999); interview with Mr. Kim, supra note 71; interview with Mrs. Park, supra note 71.
84. See interview with Mrs. Lee, supra note 80.
86. See interview with MeeLa Chon, General Counsel to Korean Immigrant Workers Advocates, in Los Angeles, Cal. (Jan. 14, 1999).
87. See id.
Employees’ lack of awareness of their legal rights largely stemmed from their status as recent immigrants. Most of them had emigrated from Korea as adults and were accustomed to Korean business practices. They were not familiar with hourly wages or the concepts of time cards and overtime records. A cook at Chosun Galbi restaurant alleged that he had endured inhumane treatment from his employers from the time he immigrated to the U.S. twenty-four years ago because he “just worked and worked and never paid attention to labor laws.”

The language barriers faced by many restaurant employees exacerbated their unawareness of basic labor rights. Even if labor laws were published, those not fluent in English required additional assistance in order to understand and interpret those laws. The regional administrator of the DOL identified nonfluency in English by both employers and employees to be a major factor of labor law noncompliance. He disclosed that although the Department was attempting to alleviate this problem by hiring more field personnel who were fluent in Korean, it still faced much difficulty due to the diversity of languages used in Los Angeles.

2. Lack of Resources

Even those employees who were aware of their legal rights found few places to turn to for support and assistance. They were unlikely to be represented by labor unions, which typically advocated on behalf of those employed by large employers. Most restaurant employees avoided the court system because private counsel often demanded considerable fees and rarely consented to represent clients with wage cases where the award would be, at the most, a couple thousand dollars. Although small claims court was an option, many employees were discouraged by the court fees and the belief that they would not be able to represent themselves adequately.

Thus, the only recourse for employees faced with employment problems was often the Labor Department, which frequently lacked adequate resources to address their issues. Michelle Yu, a Legal Aid Foundation attorney, described the Department as a “black hole” and a “hindrance,” rather than a helpful source of support. According to Chon, because the Department did not provide services or claim forms in Korean, many employees, especially newer immigrants, found it virtually impossible to submit their claims.

Even when employees were successful in filing their claims, they often confronted subsequent hurdles: delays, lack of service centers, and weak enforcement of decisions rendered. Although agency procedures

90. See Lee, supra note 85.
91. See id.
92. Id.
93. See interview with MeeLa Chon, supra note 86.
required hearings to be held within four months of the filing of the claim and cases to be closed soon thereafter, the Labor Department regularly missed these deadlines. According to data from 1994, more than one-fifth of the workers in the Los Angeles area waited at least one year for resolutions, and of the 12,602 cases that were closed, 4 percent were active for more than two years, 18 percent for one to two years, 31 percent for six to twelve months, and 47 percent for one to five months. Additionally, of the agency's original ten service centers in Southern California, five, including an important hearing office in downtown Los Angeles, were closed in the 1990's. According to the Los Angeles Times, these closures led to a critical drop in the number of wage-claim filings. In 1990, 68,000 claims were filed, whereas in 1995, only 44,000 were filed. Finally, even when cases were resolved relatively quickly, winning claimants had to wait months and even years to collect their wages because of the agency's weak enforcement power.

For example, Joo Ho Lee, a former secretary, won a judgment for $1,621 but did not receive the full amount until two years later, and only after he had incurred $150 in outside legal fees. Lee was fortunate to have resolved his dispute and received a judgment. More typically, immigrant workers who filed wage claims abandoned them along the way because they could not endure the delay, did not understand the letters they received, or were unable to travel to attend the hearings. According to studies, nearly a third of the immigrants who filed wage claims became discouraged and gave up their claims.

3. Economic Survival in an Insular Community

Restaurant employees were highly dependent on their salaries. The money that they earned was not extra spending cash but money spent on food, clothing, housing, and raising their children. Although Korean Americans had been heralded as an immigrant success story, 1990 census figures revealed that the median household income for Korean Americans ($22,325) was lower than that of Los Angeles ($30,925) as a whole, and that the percentage of Korean American families below the poverty level (17.3 percent) was higher than that of the general Los Angeles population (15 percent). Because restaurant employees could not afford to be unemployed and because they were aware of the fungible nature of workers in Koreatown, they felt that they did not have the freedom to complain to their employers or even to their co-workers. The cook at Korean Soup Restaurant asserted that when she complained to her employers about her pay cut, they

94. See Lee, supra note 85.
95. See id.
96. See id.
97. See id.
98. See id.
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responded, “[i]f you don’t like it, you can leave whenever you want to.”100 Another restaurant employee related that when she injured herself, she continued to work while enduring much pain because she knew that if she did not, she would be fired.101 According to the employee, her employer pretended not to notice her injury even though she was wearing a large bandage. Employees were hesitant even to discuss concerns with co-workers because they believed that if their employers heard of it, they would be penalized and marked as troublemakers.102 KIWA attested to the fact that co-workers of an employee who sought KIWA’s assistance were often reluctant to get involved for fear of losing their jobs, though they remained supportive in the background.103

Fear of retaliation and being blacklisted ranked high among the obstacles to employee complaints. Though restaurant owners denied creating a list of those employees who had sought KIWA’s assistance or otherwise lodged complaints against their employers, employees’ belief that such a list existed was sufficient to chill complaints. One employee asserted that, “once you complain, you can’t work . . . anywhere [else] in the community.”104 This sentiment was also expressed at a news conference for the Korean Soup Restaurant case, discussed below. As a waitress came forward to speak, her elderly mother, on the verge of tears, admonished her and pleaded with her not to talk to the press. She warned her daughter that she would never find another job if she said such things and begged the reporters not to take pictures, explaining, “[w]e don’t want to get into trouble.”105

IV. Labor Disputes in the Koreatown Restaurant Industry

The nature of the Korean American community and the Koreatown restaurant industry discussed in Parts II and III set the stage for the events in Koreatown that captured the public’s attention in 1998. Investigations by the Department of Labor and efforts by KIWA uncovered numerous wage and hour violations by Korean American owners of Koreatown restaurants. While some incidents regarding these violations were handled quietly within the community, others led to picketing and even hunger strikes. Specifically, the demonstrations directed by KIWA raised the ire of restaurant owners and the Korean Restaurant Owners Association. Some disputes, unresolved by these activities, were relegated to the legal system. Section A describes the nature of violations committed by the restaurant owners and the players who brought the infractions to light, and Section B explores some individual restaurant owners’ asserted reasons for their violations and responses by KIWA and individual restaurant employees. Finally, Section C examines the players’ attitudes and

100. See Kang, supra note 70, at B1.
101. See interview with Mrs. Lee, supra note 80.
102. See id.
103. Interview with MeeLa Chon, supra note 86.
104. Interview with Mrs. Lee, supra note 80.
perceptions of one another.

A. KIWA's Restaurant Industry Campaign

According to the Los Angeles Times, "KIWA is a unique organization because it is the only Asian American group devoted to helping low-income immigrant workers in Southern California."\(^{106}\) After eight years of experience working for labor unions, Roy Hong, KIWA's executive director, along with Danny Park, KIWA's case manager, co-founded KIWA in 1992. KIWA's seven-person staff is composed mainly of 1.5 generation members\(^ {107}\) who graduated from UCLA and San Francisco State University.\(^ {108}\) They work to fulfill the nonprofit organization's mission "to empower Korean immigrant workers and to develop a progressive constituency and leadership in the Korean community that can struggle in solidarity with other underrepresented communities."\(^ {109}\) Co-founder Danny Park maintains that KIWA's goal is to "see a transformation of [the] Korean immigrants' mind-set that tends to view the people at the bottom of the economic ladder as inferior because of the Korean emphasis on education and hierarchy."\(^ {110}\)

Since several unions, such as the Hotel Employees and Restaurant Employees (HERE) union, dedicate much of their time and resources to larger enterprises, advocacy groups like KIWA\(^ {111}\) try to fill the "vacuum for smaller places where minority communities are working."\(^ {112}\) KIWA provides services predominantly to low-wage Korean immigrants and to Latinos working in a variety of industries, such as janitorial services and the garment industry. While KIWA has no developed project for employers, it unofficially educates those who seek advice and helps resolve disputes between them and their employees.\(^ {113}\) Though outreach occurs mainly through word of mouth, KIWA's listing in the Korean directory, media coverage of its activities, and references by other agencies also help raise individuals' awareness of the organization.\(^ {114}\)

In 1997, KIWA launched a community-wide campaign to improve


\(^{107}\) 1.5 generation members are Korean Americans generally in their 20s and 30s who were born in Korea but largely raised in the United States. See K. Connie Kang, Activism Opens Generational Rift in Koreatown Workplaces, L.A. TIMES, Sept. 6, 1998, at A1. They generally speak both Korean and English. They are "far different from the '1.0 generation'—the familiar Korean grocer with very broken English—and the '2.0 generation,' those who were born here to Korean parents but are highly Americanized in fashion, education and outlook." William Booth, Mercy for the Motherland: Korean Americans Wire Home Millions in Cash, THE WASH. POST, Dec. 21, 1997, at A10. It is said that the 1.5 generation is changing the makeup of the Korean American community. See Larry Kanter, Koreatown's Big Expansion: New Generation Fueling Growth Past Old Borders, L.A. BUS. J., Dec. 8, 1997, at 1.

\(^{108}\) See Kang, supra note 107.

\(^{109}\) Copy of KIWA's mission statement received in interview with Roy Hong, Executive Director of Korean Immigrant Workers Advocates, in Los Angeles, Cal. (Jan. 9, 1999).

\(^{110}\) Kang, supra note 107, at A1.

\(^{111}\) See interview with MeeLa Chon, supra note 86.

\(^{112}\) Ha, supra note 88.

\(^{113}\) See interview with Roy Hong, supra note 109.

\(^{114}\) See id.
KIWA's research revealed that the wait staff in Korean restaurants typically worked nine to twelve-hour days, six days a week, and earned only $600 per month—calculated to be as little as $2.30 an hour, less than half of the $5.75 minimum wage in effect at that time. Kitchen staff members were paid a "flat rate as low as $700 a month." In addition, about three-quarters of the restaurants did not carry workers' compensation insurance, which was required by law. In light of these facts, KIWA felt that the problems needed to be "addressed by someone who's there, and who's... acceptable to the workers." The substantial attention given to the garment industry allowed KIWA to concentrate its much-needed efforts in the restaurant industry.

The campaign's goal was to make the restaurants humane and fair workplaces that provided adequate compensation for all their workers, from the cooks and waiters to the dishwashers. According to Hong, KIWA desired to "push the industry into self-cleaning" by appealing to the owners' business sense. KIWA envisioned a discussion with restaurant owners in which it would explain that government agencies would inspect the owners' practices and issue citations when warranted. This would convince the owners that their illegal practices were only hurting their businesses, and thus encourage them to obey the minimum legal standards. In furtherance of these aims, KIWA hoped to convince KROA to adopt a "model employment agreement" it had drafted regarding fair business practices and conditions. The agreement established a grievance procedure, workers' compensation programs, and the payment of legal minimum wage, overtime pay, and accurate taxes. Hong anticipated that the approval of the agreement by the association would move employers to change their practices. In any case, Hong believed that, "restaurants will begin to realize that if they don't change how they do things, we will let the community know what is going on" and "[t]hat's not going to be too good for business."

KIWA acquires its clients through various circuits. Clients either seek advice on a walk-in basis during intake hours or learn about KIWA through representatives who visit workplaces and homes to distribute newsletters and pamphlets with information about KIWA and detailed calculations of

115. Id.
116. See Ha, supra note 88.
117. See Thomburg, supra note 78, at 12. Employers are legally required to pay wait staff minimum wage in addition to any gratuities they may receive. See CAL. LAB. CODE § 351.
118. Martin, supra note 89.
119. See Ha, supra note 88.
120. Interview with MeeLa Chon, supra note 86.
122. See id.
According to Chon, the most common complaints involve basic wage and hour claims and injury cases, with a recent increase in sexual harassment claims. Hong estimated that in 1998, KIWA had represented clients in disputes with about fifty or sixty restaurants. In dealing with these disputes, KIWA usually begins by interviewing both employee and employer to ascertain the chain of events that led to the dispute. If KIWA determines that the employee has a viable claim, at least one staff member and the employee approach the employer to attempt to reach a settlement. KIWA calls this procedure “direct action.” Though some employers cooperate, others refuse to enter into any discussion. If the owner agrees to pay, a payment schedule is arranged. About 95 percent of cases are resolved in this manner.

If, however, negotiations fail to bring results, KIWA may resort to other tactics, such as demonstrations and picketing in front of unresponsive restaurants during lunch and dinnertime. KIWA conducts such demonstrations only with the employee’s permission. While these tactics are designed to force responses from restaurant owners, the demonstrations are carried out as peacefully as possible. KIWA typically sets up a moving picket line that allows for the free flow of traffic, with volunteers who chant, allegedly without using noise-making devices, and hand out fliers. The turnout depends on how quickly KIWA mobilizes its volunteers through its “rapid response network.” Oftentimes, workers with the day off will come out in support of their peers. The employee, by this point, has already quit or been fired, and is thus free to participate in the demonstrations.

KIWA protesters attempt to avoid any physical contact with restaurant customers, though they will give explanations to customers who inquire. It does not benefit KIWA to provoke or anger customers, so KIWA makes an effort to ensure that its protestors are hospitable to the customers. Nevertheless, altercations have occurred with customers who were offended by KIWA’s activities. According to Hong, however, these altercations usually ended in shouting matches that did not effectively impede KIWA’s purposes.

Demonstrations are an attractive tactic when negotiations fail because KIWA, along with other advocacy groups, such as the Thai Community Development Center and the Filipino Worker Center, try to avoid the Labor Commissioner’s office, claiming “the agency is too slow and often

124. See interview with MeeLa Chon, supra note 86.
125. See id.
126. See interview with Roy Hong, supra note 109.
127. See id.
128. See interview with MeeLa Chon, supra note 86.
129. See id.
130. See id.
131. Interview with MeeLa Chon, supra note 86.
132. See interview with Roy Hong, supra note 109.
133. See id.
134. See id.
unresponsive." Furthermore, in 1998, the Labor Department generally awarded only up to three months of backpay. Hong believes that this is an arbitrary internal policy and noted that some states provided up to six months of backpay. More significantly, because these violations occurred between members of the same ethnic community, KIWA wished to keep the money within the community. Rather than having employers pay fines to the Labor Commissioner's office, KIWA preferred to launch public campaigns against an employer or utilize small claims court to recover employees' wages. For this reason, Hong did not "want labor commissioners to do a massive crackdown on Korean businesses."

According to Hong, all of the disputes end in favorable outcomes for KIWA. "We always win.... Reinstatement or backpay, some sort of a resolution where workers get whatever it is they want.... It's designed that way because we can sue them [the employers], boycott, or go to the Labor Commissioner, since the law is on our side. At least 99 percent of the time." One of KIWA's biggest victories was its settlement with Chosun Galbi, a large Korean barbecue restaurant. On September 17, 1997, Myung Jin Park, the head cook at Chosun Galbi, was fired after a year of employment. With the support of HERE and Asian Pacific American Labor Alliance (APALA), KIWA claimed that Park was wrongly discharged after refusing to sign an "illegal agreement" that made him partially responsible for his own payroll taxes. As a result of this alleged action, KIWA demanded an apology, reinstatement, backpay wages for the cook and compensation to both KIWA and the cook for slander against them and their reputations. The owners of Chosun Galbi, supported by KROA, maintained that they discharged Park for poor job performance and for being uncooperative with co-workers. To support their assertions, they alluded to a petition signed by fifteen employees at Chosun Galbi who threatened to quit if the owners did not fire the cook by September 15. KIWA claimed that this petition "was fabricated after the fact, after we notified them we were going to be boycotting."

When negotiation attempts failed, KIWA initiated a letter-sending campaign to Koreatown restaurant owners and eventually began picketing and distributing leaflets in front of Chosun Galbi. Hong and the cook also participated in a hunger strike that began on December 23 and continued for nine days. Chosun Galbi sued to stop the picketing and succeeded in obtaining a court order that required the demonstrators to stop obstructing customers' access to the restaurant and to stop using noisemakers. In

136. See interview with Roy Hong, supra note 109.
137. Park, supra note 121, at 23.
138. Interview with Roy Hong, supra note 109.
139. See Park, supra note 121, at 23.
140. See Ha, supra note 88, at 1.
141. See id.
142. Id.
143. See Park, supra note 121, at 23.
response, KIWA filed an anti-slap motion alleging that Chosun Galbi’s lawsuit was frivolous and initiated only to intimidate and harass those exercising their valid First Amendment rights.144

In early 1998, Chosun Galbi received a citation from the state Division of Labor Standards Enforcement for illegally paying employees in cash. This unexpected development led to a broader investigation of other alleged unfair labor practices.145 After a six-month campaign against the restaurant, a settlement was agreed upon in April 1998 that included reinstatement of and back wages for the discharged cook.146 The settlement was a significant victory for KIWA because it “raised KIWA’s profile and ... engendered fear and loathing among small business owners who view the case as a bad precedent.”147

In addition to demonstrations, KIWA helped workers pursue legal action against their employers. In what has been called “an unprecedented action in the local Korean American community,”148 on May 20, 1998, all five Korean employees of Korean Soup Restaurant walked out and later sued their employer for hundreds of thousands of dollars in backpay. Represented by Chon, KIWA’s general counsel, the workers accused their employers of paying them illegally low wages and disregarding labor laws.149 One of the employees who worked as a waitress alleged that during her nine years working at the restaurant, she had received $760 a month and only two days off every three weeks.150

KIWA’s campaign minimized the effects of the three obstacles facing restaurant employees discussed above. By distributing information to employees and offering consultation services, KIWA educated employees about their rights under the labor laws and provided them with various alternatives in pursuing complaints against their employers. KIWA also diminished the effects of the third obstacle faced by employees, the need for economic survival, by exposing general problems such as blacklisting to the Korean American community and mainstream society, thereby making it more difficult for employers to fire employees for suspect reasons and easier for employees to voice complaints.

These efforts led to an enormous surge in the number of complaints made by employees and actions taken against employers. KIWA’s client list increased considerably from the inception of the restaurant industry campaign.151 It is thought that the highly publicized lawsuit for back wages...

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144. See Ha, supra note 88, at 1.
146. See Kang, supra note 107, at A1.
147. Id.
149. See id.
150. See id.
151. See interview with Roy Hong, supra note 109. Hong, however, explained that the influx of clients at any one point often depended on KIWA’s activities and successes. A big victory drove employers to negotiate or settle problems more readily, thus attracting more workers, whereas a big fight resulted in employees staying away. Unless a serious problem existed at their workplace, employees would not be willing to boycott, picket and publicize their complaints. Thus, the number of...
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against Korean Soup Restaurant, as well as the numerous protests highlighted by the media, inspired many other employees to seek KIWA’s assistance. Hong speculated that nearly everyone in Koreatown, not just restaurant employees, knew of KIWA’s efforts and services.

The publicized efforts of KIWA caught the attention of the DOL, which conducted random investigations of forty-three restaurants, most of them located in Koreatown, during the summer of 1998. The DOL found several violations, including minimum wage and overtime violations, tip stealing, and failure to utilize time cards, in all but two restaurants. Investigators disclosed in August of 1998 that 200 workers were owed $250,000. Although the law at that time required workers to be paid a minimum wage of $5.75 and at least one and a half of their regular hourly pay for working more than forty hours a week, government investigators and others confirmed that Koreatown’s practices were not uncommon among ethnic restaurants. Labor Secretary Alexis M. Herman lamented that “[r]estaurant workers are some of the nation’s lowest paid and most vulnerable workers. . . . It is especially disturbing that the violations continued even after the department explained the application of federal labor laws to the restaurants’ owners.”

According to George Friday, acting regional administrator in the San Francisco office of the DOL, the random investigations were part of a national strategic plan to examine industries as opposed to individual businesses. Kathleen Yasuda of APALA explained that the abuses were widespread. “[I]t’s not just in Koreatown. . . . This happens in a lot of small- to medium-sized businesses in ethnic communities where immigrants are working under very bad situations. It isn’t about just one restaurant.” State Labor Commissioner Jose Millan pledged to conduct raids on restaurants through 1998 as part of the Targeted Industries Partnership Program, an effort using the forces of the DOL’s Wage and Hour Division and three state labor agencies. In addition, he declared that clients depended on how “we’re doing when we’re fighting with the owners.”

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152. See Martin, supra note 89, at 3.
153. See interview with Roy Hong, supra note 109.
154. See K. Connie Kang, 41 Restaurants Violated Labor Laws Probe, L.A. TIMES, Aug. 22, 1998, at B1. Newspaper articles differed as to the number of restaurants examined under the federal probe, the number of restaurants cited for violations, and the amount of backpay owed. 33 of 35 restaurants were found to be in violation of wage or overtime laws with about 200 workers owed roughly $95,000 in back wages. See Tanner, supra note 123, at 8. 30 out of 31 restaurants were cited for violations. See Martin, supra note 89, at 3. The sweep found violations in 32 restaurants out of the 33 investigated. See Kang, supra note 70, at B1.
155. See Martin, supra note 89, at 3.
156. See Kang, supra note 154, at B1.
157. In 1998, federal laws required a minimum wage of $5.15, but California required $5.75.
158. See Kang, supra note 154, at B1.
159. See Lee, supra note 85, at A1.
160. See Kang, supra note 154, at B1. State and federal labor officials had held seminars for KROA in early 1998 to inform and educate owners about wage and overtime laws.
161. See Martin, supra note 89, at 3. In March of 1998, the DOL and state labor agents conducted raids on numerous San Diego restaurants and levied $407,350 in penalties in the first two days of investigations.
162. Ha, supra note 88.
he had made it clear to Korean owners that "they have 'to clean up soon' or face the consequences of state action."\(^{163}\)

Chuck Striegel, a Los Angeles deputy district director of the federal Wage and Hour Division, believed that Korean restaurant owners had undergone an important educational process. Situations are "at least half better than when we started the investigation...."\(^{164}\) Although encouraged by the DOL's actions, Hong hopes the Department will go further and issue more crackdowns in the area. He remarked, "[t]here is what we call 'hyperexploitation' going on in the restaurant industry.... There has been complete disregard for any labor regulations for the last 20 years."\(^{165}\)

**B. Employers' Justifications for Labor Violations and KIWA's Responses**

Korean American restaurant owners cited three main reasons for the wage and hour violations in their industry: (1) financial troubles produced by the economic crisis in South Korea; (2) the "Korean way" of running a business; and (3) their ignorance of the American system and American labor laws due to language barriers.

Many restaurant owners blamed pay cuts on the economic downturn in South Korea. The cook at the Korean Soup Restaurant, for example, claimed that her employers cited slower business caused by recent financial troubles in Korea for the reason her pay was cut from $2,000 to $1,400.\(^{166}\) The Korea Times reported that South Korea had suffered tremendously as a result of the economic crisis beginning at the end of 1997.\(^{167}\) In turn, South Korea's economic woes inflicted serious distress on Korean American entrepreneurs. Owners of restaurants, hotels and travel agencies, and other businesses particularly tied to tourism, were the most severely impacted. Gilbert Gil, owner of a Koreatown department store, declared that "[j]ust two months ago... 1,000 to 1,500 tourists moved through his store daily, eagerly swooping up Burberry coats and Calvin Klein jeans... [b]ut since then, the tourist business has completely stopped."\(^{168}\) As a result, he believed he had no choice but to reduce prices drastically and lay off a third of his twenty-five employees. Henry Cho, an owner of a travel agency that provides trips to Las Vegas, also expressed this sentiment, estimating that 90 percent of the Korean tourists had canceled their winter trips to Los Angeles.\(^{169}\) One storeowner claimed that business was down by at least 30

\(^{163}\) Kang, supra note 107, at B3.

\(^{164}\) Id.

\(^{165}\) Park, supra note 121, at 39. The author does not know what to make of the contradiction between this statement and Hong's earlier statement, see supra text accompanying note 137, that he does not wish the Labor Department to issue major crackdowns on Korean American businesses because he would like to see the money stay within the Korean American community.

\(^{166}\) See Kang, supra note 70, at B1.

\(^{167}\) See Yeong-mi Yoon, Koreans Suffer Most from Financial Crisis, KOREA TIMES, Nov. 1998, at 8.


\(^{169}\) See id.
percent in the once-bustling Koreatown Plaza.\(^{170}\)

Although KIWA acknowledged that Koreatown was affected by the economic events in South Korea, it maintained that the employers' complaints were exaggerated and served merely as excuses to cut employees' wages. Hong commented, "if the cars some of them [the employers] drive is an indication, they are doing quite well."\(^{171}\)

Owners also explained that they practiced the "Korean way" of running a business because they did not know any better or had merely continued the policies of the previous owner.\(^{172}\) In Korea, as one owner described, people tend to do things very approximately, just more or less following the rules.\(^{173}\) Owners found, often too late, that in America, significant repercussions follow if a law is not obeyed to the letter.\(^{174}\) Many, such as the attorney for the owners in the Korean Soup Restaurant case and Don Ho Chon, KROA's president, argued that the restaurant owners still possessed a Korean mentality with respect to their businesses.\(^{175}\) They paid employees monthly wages, rather than hourly wages, and did not use time cards or maintain overtime records because they were conducting their business in the manner that businesses were operated in Korea. According to Daniel Oh of KROA, "[m]any remember how workers back in Korea used to eat, sleep, live and work with their employers twenty-four hours a day."\(^{176}\)

Lastly, restaurant owners attributed their violations to their ignorance of labor laws and the American legal system in general.\(^{177}\) A spokesperson for KROA concurred that the ignorance of labor laws was a primary reason for the employers' infractions.\(^{178}\) Hong of KIWA conceded this fact, stating that "unless you take a civics course in America, immigrants who come here as adults don't know rules governing workers and employers."\(^{179}\)

Chon, however, responded: "I don't think that's a viable excuse. Even if you're a recent immigrant, the minimum wage law is so strongly emphasized in California that it's hard to avoid [not] even knowing about it."\(^{180}\) She found it inconceivable that employers who were capable of obtaining SBA loans and starting their own businesses were unable to familiarize themselves with the minimum wage and overtime laws.\(^{181}\) Instead, she believed it was active denial or refusal on the part of owners to

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170. See id.
173. See interview with Mrs. Chang, supra note 71.
174. See id.
176. All Things Considered, supra note 172.
177. See Andrew Park, supra note 175, at 39.
178. See id.
180. Andrew Park, supra note 175, at 39.
181. See interview with MeeLa Chon, supra note 86.
learn about them.\textsuperscript{182}

Various motivations were offered for the alleged denial or refusal by the owners. One KIWA organizer suggested that because employers were aware of the workers' powerlessness and the "vacuum of nonenforcement of labor laws," they took full advantage of the situation.\textsuperscript{183} The workers in the Korean Soup Restaurant case and elsewhere alluded to an "I won't get caught" mentality among the owners.\textsuperscript{184} Even some restaurant owners charged fellow owners of considering only their profits while violating the law.\textsuperscript{185} Hong suggested that some employers may have presumed that their Korean compatriots would not lodge official complaints against them, either from a sense of national loyalty or because they, too, were unfamiliar with the labor laws.\textsuperscript{186} This was confirmed by at least one employee, a waitress in the Korean Soup Restaurant case, who contended that the owners treated the non-Korean employers more favorably to ensure that they would not be sued, meanwhile assuming that "we would keep quiet because we are Koreans.\textsuperscript{187}

Hong suggested that the structural and economic problems found in an ethnic enclave economy were better explanations of the owners' violations of labor laws.\textsuperscript{188} He recounted the typical Korean immigration story. The immigrant comes to the United States with no money. He and his family members, including the children, work one or even two jobs. Since the life of a low-wage worker is difficult and does not amount to the perceived "American opportunity," the family pools its scarce resources and establishes a business in the only areas it can afford, Koreatown or South Central Los Angeles. The family's priority is to survive in this cutthroat industry, not to treat its employees humanely. Because owners cannot sell their products at higher prices than neighboring businesses, "a race to the bottom [for wages and working conditions]" ensues.\textsuperscript{189} In the end, it is not about exploitation, but survival. Limited resources and a lack of economic opportunity force people to make these choices. Even if a family's business is doing particularly well, it will not comply with the law because of competition with neighboring businesses.\textsuperscript{190} Hong finds this course of action ironic because he expects businesses that treat employees fairly and humanely have a greater chance of survival. He reasons that employees who are treated properly work harder, generating more business for the restaurant. He regrets, however, that few employers appear to share this perspective.\textsuperscript{191}

\textsuperscript{182} See id.
\textsuperscript{183} Thomburg, supra note 78, at 12.
\textsuperscript{184} Kang, supra note 70, at B1; interview with Mrs. Lee, supra note 80.
\textsuperscript{185} See interview with Mrs. Park, supra note 71.
\textsuperscript{186} See Martin, supra note 89, at 3.
\textsuperscript{187} Kang, supra note 70, at B1.
\textsuperscript{188} See interview with Roy Hong, supra note 109.
\textsuperscript{189} Id.
\textsuperscript{190} See id.
\textsuperscript{191} See id.
C. The Conflict Zone

The volatile situation inevitably led to a drawing of battle lines within the Korean American community. However, the lines were not as clear as some suggested. The Los Angeles Times characterized the conflict as a “power struggle between generations, stemming from different political and cultural values and aspirations,” and a rift that “also underscore[d] the diversity within the Korean American community, entrenched cultural and language gaps, and the accompanying alienation between the generations.”\(^{192}\) The journalist referred to the gap between the first generation restaurant owners and the mostly 1.5 generation KIWA activists in their 20s and 30s, and further claimed that the disputes have “split the insular community along political and class lines”\(^{193}\) with the possibility of “irreparable harm.”\(^{194}\)

However, Hong disregarded this characterization as the journalist’s attempt to sell the story to the mainstream. A labor dispute within an ethnic community is “not front-page material by any means. The way they’re going to make it sexy is by saying, ‘Oh, there’s a fight between the generations.”’\(^{195}\) In addition, Hong maintained that the depiction of KIWA as being composed of purely 1.5 generation members was inaccurate, given that the average age on KIWA’s board is close to fifty and clients range from age twenty to seventy.\(^{196}\)

On the employers’ side, although KROA was widely regarded as the representative for the restaurants, it did not represent all of the restaurants. KROA was said to have a membership list of about 100 Koreatown restaurants,\(^{197}\) which is less than half of the 283 Korean-owned restaurants.\(^{198}\) Many of the larger, more well-known restaurants in Koreatown were not members, and some of the restaurants that were members did not play an active role in the organization.\(^{199}\) The lack of participation may have been a result of KROA’s perceived powerlessness and incompetence.\(^{200}\) One restaurant owner claimed that KROA made very little effort to represent the owners.\(^{201}\) Instead, the organization left individual owners with the much harder task of fighting back one-by-one. This owner, believing that there was not one capable, talented member who could speak English fluently or who was familiar with the law, described KROA as an organization comprised of “a bunch of old, uneducated men from the countryside who just by chance happened to set up a small hole-in-the-wall Korean restaurant.”\(^{202}\)

\(^{192}\) Kang, supra note 107, at A1.

\(^{193}\) Id.

\(^{194}\) Id.

\(^{195}\) Interview with Roy Hong, supra note 109.

\(^{196}\) See id.

\(^{197}\) See Ha, supra note 88.

\(^{198}\) See Kang, supra note 70, at B1.

\(^{199}\) See Interview with Mrs. Park, supra note 71.

\(^{200}\) See id.

\(^{201}\) See id.

\(^{202}\) Id.
1. KROA’s Complaints and Accusations Against KIWA

Although the battle lines were not clearly drawn, it is safe to say that the vast majority of restaurant owners and KROA denounced KIWA’s efforts, disapproved of its tactics, and distrusted its motives. Though some owners believed that KIWA had good intentions while others considered it to be an “unnecessary evil,” most agreed that the organization often overstepped its bounds. Owners accused KIWA of being a group “[worse] than unions,” and described them as “self-styled leftist ‘bullies,’ bent on destroying businesses with disruptive demonstrations and picketing under the pretext of representing workers.” Dong Ho Chon, KROA’s president, condemned KIWA for “agitating employees by digging up old stories.”

He claimed that since KROA had sponsored seminars explaining labor laws, all the owners had been playing by the rules. Daniel Oh of KROA also objected to what he believed to be KIWA’s portrayal of all employers as criminals. One owner felt that many of her colleagues had come to see KIWA not as a service organization assisting employees to receive proper treatment from business owners but rather as a group whose objective was to teach employees how to extract money from their employers.

Owners regarded KIWA’s tactics not as tools conducive to resolution but rather as disruptions and obstructions that widened the gap between the owners and employees. The owners of Baek Hwa Jung, whose restaurant was picketed by KIWA because they allegedly owed two Latino workers back wages of $29,728 and $1,774 respectively, described KIWA members and supporters as “gangsters.” They claimed that on the first day of picketing, six police cars and twelve officers stood by as KIWA entered their small restaurant with bullhorns and signs, disrupted their business, and handed out leaflets to would-be customers, all the while shouting “Boycott!” and “No wages, no peace!” The owners claimed to have lost $500 worth of business on that night alone. According to the owners, they informed KIWA that they were willing to pay the penalty to the Labor Department and go to court if necessary, but KIWA continued to prevent customers from entering the restaurant and furthermore, provided

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204. See interview with Mrs. Chang, supra note 71; interview with Mr. Kim, supra note 71; interview with Mrs. Park, supra note 71.
205. Ha, supra note 88. Many of the owners appear to be using “union” in a pejorative manner, possibly due to the militancy and violence of labor unions in Korea.
208. See id. KROA held seminars to educate owners. See interview with Mrs. Chang, supra note 71.
209. See Kang, supra note 70, at B3.
210. See interview with Mrs. Chang, supra note 71.
211. See id.; interview with Mrs. Chang, supra note 83; interview with Mr. Kim, supra note 71; interview with Mrs. Park, supra note 71.
213. Id.
the customers with names of other Korean restaurants nearby. The owners initially rejected a $12,000 settlement drafted by KIWA, but after eight months of protests in front of their restaurant, they eventually capitulated to KIWA's demands.

One owner acknowledged that demonstrations might be effective in forcing large companies to change their policies, but asserted that for small businesses, they were more likely to result in closure of the business. Another owner stated that if she were forced to close her restaurant, she, as well as her fourteen employees, would be unemployed. She asked how, given these potential consequences, KIWA could conclude that it was helping employees.

Owners also accused KIWA of using dishonest tactics. One owner contended that KIWA fabricated stories and printed outright lies about owners and their restaurants on the flyers distributed to customers at demonstrations. According to this owner, KIWA admitted to her that the flyers did contain some untruths. It promised a retraction and correction upon settlement but failed to honor its promise once settlement was reached. Owners also charged KIWA with utilizing paid protestors. One owner claimed that when she asked a Latino demonstrator why he was picketing, he responded that he did not know. According to this owner, the demonstrator explained he was getting paid by the hour to stand in front of the restaurant and beat a Korean gong.

The conflict between restaurant owners and KIWA extended to perceptions of wealth and expectations of privacy. Owners caustically accused KIWA of prying into their personal lives when KIWA claimed that the owners could afford to pay their workers higher wages. Hong had contended, for example, that the owners of Baek Hwa Jung and Sa Rit Gol restaurants owned nice homes and commercial property, drove new cars, and indulged in luxury activities. The owners maintained that these statements were not supported by the truth and moreover asked, "Who are these people, anyway—snooping around to check where we live, what kind of cars we drive? What standing does KIWA have?" One owner insisted that income disparities were inevitable. The fact that a person happened to be well-to-do was not a valid justification for dispossessing him of his assets.

Owners believed that workers were manipulated by KIWA and likened them to "pawns or controlled puppets." They claimed that even

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214. See interview with Mrs. Chang, supra note 71; interview with Mr. Choi, supra note 83.
215. See Kang, supra note 107, at A1.
216. See interview with MeeLa Chon, supra note 86.
217. See interview with Mr. Kim, supra note 71.
218. See Kang, supra note 107, at A1.
219. See interview with Mrs. Chang, supra note 71.
220. See id.
221. See interview with Mrs. Chang, supra note 71; interview with Mrs. Park, supra note 71.
222. See Kang, supra note 107, at A1.
223. Id.
224. See interview with Mr. Kim, supra note 71.
225. Interview with Mrs. Park, supra note 71.
if an employer and employee were to reach a compromise on their own, KIWA would not allow the employee to make his own decisions and would demand that the employee compensate KIWA for the money spent on his case. An owner alleged that one of her employees, who had threatened to sue her with KIWA’s help, admitted to her that she would receive nothing from the damage awards even if she won.

Owners resented KIWA’s appeal for support from outside the community because they perceived KIWA as “bringing embarrassment to our community.” One owner, who insisted that it was important for the future of the Korean American community to make Koreatown accessible to other communities, regarded KIWA’s activities as discouraging non-Koreans from patronizing businesses in Koreatown.

Many rumors regarding KIWA’s operations and motives circulated throughout Koreatown. Many were suspicious of KIWA’s source of funding and were skeptical that a seven-person staff and the organization’s operations could be financed solely by donations, as KIWA had asserted. Some posited that KIWA was receiving a commission from each settlement. Others suggested that KIWA was establishing a union and collecting dues from each employee. Some even suspected KIWA of working for North Korea to destroy the Korean American community in Los Angeles.

Owners believed that KIWA possessed ambitions of establishing itself as the “government” of Koreatown. They contended that KIWA’s desire to keep the money within the Korean American community, and thus bypass the Department of Labor, was a part of this overall plan. In effect, KIWA was using the disputes, especially the high-profile ones, to amass power for its own benefit. One owner hypothesized that if KIWA were to control all of the labor disputes, it would be in a position to demand that all parties deal with them.

The result of these convictions on the part of many of the owners was that they avoided negotiating with KIWA altogether. Many owners preferred alternative means of resolution to KIWA’s “radical” methods and

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226. See id.
227. See interview with Mrs. Chang, supra note 71.
228. Interview with Mr. Kim, supra note 71.
229. See id. Anthropologist Sue Yung Chin believes that many Korean Americans are “sensitive to how the outside world perceives [their] problems, particularly after the negative press Koreatown received during the 1992 riots.” All Things Considered, supra note 172.
230. The Los Angeles Times reported that KIWA operated on an annual budget of $250,000. Hong was paid $38,000 a year, while the rest of the staff earned less than $20,000. See Kang, supra note 107, at A1. Chon stated that most of the funds were donated by private foundations, such as Liberty Hill. See interview with MeeLa Chon, supra note 86.
231. See interview with Mrs. Park, supra note 71.
232. See interview with Won Taek Kim, KROA’s former president, in Los Angeles, Cal. (Jan. 9, 1999); interview with Mrs. Chang, supra note 71; interview with Mr. Kim, supra note 71. A couple of owners specifically maintained that dues were $20 per person. See interview with Mrs. Chang, supra note 71; interview with Mr. Kim, supra note 71.
233. See interview with Mrs. Park, supra note 71.
234. See interview with Mr. Kim, supra note 71.
235. See id.
intimidation tactics. Some believed that the federal and state labor departments were the appropriate forums for such disputes. Others appealed to the courts, as the owners of Baek Hwa Jung restaurant did when they attempted to obtain a restraining order against KIWA to prevent further disruption of their business. One owner vowed that she would rather close her restaurant than acquiesce to KIWA's intimidation. The bottom line, as one owner asserted, was "KIWA, no involve."

Owners voiced sentiments that they wished KIWA remain true to its name, which translated literally into English from Korean is Workers' Counseling Center, and limit its activities to counseling services for Koreans, instead of staging demonstrations and pursuing legal action. One owner commented: "If this group is really what its name says it is, they should be counseling us non-English-speaking immigrants by informing us about American laws and being helpful."

2. KIWA's Responses and Counter-Complaints

KIWA rejected owners' claims that it was hurting them. Hong explained that "[t]he exploitation and mistreatment of our own ethnic members is a hidden reality that our community wants to cover up." By uncovering the violations and encouraging restaurant owners to follow basic labor laws, KIWA believed it was protecting owners as well as the future of the Korean American community. If employers were to adhere to the basic labor laws, their employees would appreciate their jobs and work harder. This would result in commercial success for the restaurant in the long run, as well as a healthier, more unified Korean American community. However, if employers failed to comply with these laws, the legal liability created by their failure could ultimately force the restaurant to close, resulting in a loss for the Korean American community.

In response to the owners' charge that KIWA's tactics, particularly the use of protests, were divisive, Hong insisted that KIWA had limited itself to moderate forms of persuasion. Though the organization was aware of other more militant approaches, it wished to stay within a certain level of conduct that would not divide the community beyond the point of reconciliation. In Hong's opinion, KIWA had been very "reserved" in its activities. Hong defended the use of protests and described them as public education to put pressure on an exploitative employer and as exercises of the workers' First Amendment rights. They were effective because they sent a strong message to the restaurant industry, namely that

236. Interview with Won Taek Kim, supra note 232; see interview with Mrs. Chang, supra note 71.
237. See Tanner, supra note 123, at 8.
238. See Kang, supra note 107, at 11.
239. Interview with Mrs. Chang, supra note 71.
240. Kang, supra note 107, at 11.
241. Interview with Roy Hong, supra note 109.
242. See Kang, supra note 107, at A1; interview with Roy Hong, supra note 109.
243. See interview with Roy Hong, supra note 109; interview with Mrs. Park, supra note 71.
244. See interview with Roy Hong, supra note 109.
245. Id.
owners must adequately compensate their employees and treat them humanely, and by deflecting would-be customers, they had an economic impact. Hong asserted that this pressure was necessary because it was not sufficient merely to tell owners to change.\footnote{246}{See id.}

KIWA also dismissed owners' accusations that it utilized dishonest tactics. Chon scoffed at the suggestion that KIWA used paid protestors, stating that they could not afford to hire such people even if they so desired, and explained that most protestors were volunteers from universities, other progressive organizations, and unions.\footnote{247}{See interview with MeeLa Chon, \textit{supra} note 86.} One employee defended KIWA's tactic, also criticized by owners, of providing customers with names of other restaurants to patronize because she believed that customers should support those restaurants that comply with the law and treat their employees properly rather than support those that overwork their employees and deny their employees adequate pay.\footnote{248}{See interview with Mrs. Lee, \textit{supra} note 80.}

Although owners resented KIWA's appeal for support from those outside of the Korean American community and felt that KIWA was bringing embarrassment to the community, Chon argued that such public pressure was an acceptable method of encouraging resolution and was in fact necessary to prevent owners from stalling.\footnote{249}{See interview with MeeLa Chon, \textit{supra} note 86.} According to Chon, owners refused to confront their problems and continually delayed the process, presumably hoping that the problem would disappear. For instance, once an employer was informed of his violations, he would suggest that he was amenable to negotiating with KIWA. KIWA would approach the owner and attempt to negotiate a settlement. At that point, the owner would deny that he owed the employee any money and refuse to pay. KIWA would then file a claim with the Labor Commissioner, to which the employer would complain that KIWA did not come directly to him. If KIWA were to claim that it had approached the owner first, he would respond that it had not, because if it had, the owner would have considered its allegations. If the claim were not successfully resolved at the Labor Department, KIWA would utilize protests. The owner would then blame KIWA for not taking its complaint to the Labor Department. Because KIWA believed the owners were using this course of action to stall resolution, it concluded that public pressure was necessary to compel the owners to confront the issue.

KIWA denied the rumors concerning the organization and its members. It disclaimed the notion that KIWA was organizing a union, explaining that a union format would not be effective in Koreatown due to the predominance of small businesses.\footnote{250}{See id.} Chon also flatly rejected the owners' presumption that KIWA retained a part of workers' settlements. She explained that KIWA did not ask for donations or fees for its services but only required workers to pay for their own costs. Nevertheless, many
workers desired to give a part of their settlement to KIWA. Thus, KIWA eventually created a workers’ fund using those donations and provided interest-free loans from it to workers in need of immediate resources.\[251\]

KIWA explained that it preferred to avoid the Labor Department and the courts and to resolve the matter within the community, not because it wanted to establish itself as the “government” of Koreatown as owners had suggested, but because it had found the latter channel to be more effective and efficient. Hong argued that if a worker were to file a back pay claim with the Labor Department, he would have to wait up to a year for a resolution.\[252\] Furthermore, the Labor Department had no Korean-speaking claim officers and possessed insufficient resources to give each case the attention it deserved. Even if the worker received a resolution, he would be limited to three months backpay, while the employer would have to pay a considerable fine to the Department. Similarly, if the worker were to sue his employer, litigation could last up to five years and would require considerable attorney fees. Chon believed that these methods also would not educate and empower workers, commenting that, “[o]ur goal is the empowerment of these workers so that next time they go to a workplace and they get offered a job of less than minimum wage, they know . . . .”\[253\] For the reasons above, KIWA preferred direct, publicized action to these other measures.

In response to owners’ request that KIWA remain true to its name and also provide counseling services to owners, Chon asserted that KIWA’s funding requirements demanded that KIWA advocate solely for employees.\[254\] Moreover, though it could not provide consultation services to employers, KIWA had offered to hold educational seminars for both employers and employees at their restaurants, but many employers had refused. KIWA had also translated into Korean and Spanish the labor notices that employers were mandated by law to place on their walls, but employers had failed to utilize them. Hong opined that once employers decided to recognize their problems and face the consequences, they would realize that KIWA could be their allies.\[255\]

KIWA believed that it had fairly good relations with KROA and stressed that it was not advocating for its disbandment. According to Hong, although KROA’s initial denial of the violations and KIWA’s duty to expose them had inevitably led to a hostile and confrontational relationship, relations improved and both sides engaged in numerous talks once KROA’s leadership admitted to the existence of widespread labor violations and the need to correct them.\[256\] Chon believed that many of the restaurant owners regarded KIWA as the enemy but emphasized that KIWA’s goal was not to destroy these restaurants. Despite what the

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251. See id.
252. See interview with Roy Hong, supra note 109.
253. Interview with MeeLa Chon, supra note 86.
254. See id.
255. See interview with Roy Hong, supra note 109.
256. See id.
owners may think, KIWA hoped that the restaurants would continue to exist and be prosperous, so that the owners would be able to provide jobs with decent wages and working conditions.257

KIWA maintained that KROA should play a larger role.258 As the representative for the restaurants, KROA had a responsibility to facilitate industry-wide changes by making an earnest effort to assist its member restaurants in legalizing their businesses. KIWA suggested trainings genuinely designed to teach the owners, as opposed to KROA seminars in the past that were motivated by the DOL’s threat to inspect restaurants. Chon regarded the seminars that KROA had held in the past as a means to stall the DOL and claimed that the DOL had found them completely ineffective.259 If KROA abandoned such tactics and took the lead in accepting responsibility, Chon believed that this would go a long way in changing the attitudes of the individual owners.

KIWA also insisted that KROA refrain from blacklisting employees.260 Though KROA adamantly denied such accusations, KIWA suspected that KROA formed a list of those workers who had complained to their previous employer or had taken any action against them. Using this list, restaurant owners refused to hire or, alternatively, discharged such workers. However, no concrete evidence was found, and in fact, Hong speculated that KROA did not have the level of coordination and sophistication to manage such an operation.261 He noted that running an organization was “more KIWA’s forte.”262

Hong blamed the Korean American media for exacerbating the problem.263 He argued that while it generally supported KIWA’s demands for better working conditions and higher wages for employees, it accused KIWA of using excessively harsh tactics. The media, in effect, focused people’s attention on KIWA and its tactics rather than the plight of employees and the wrongdoing of owners, thereby allowing owners to avoid the real issues and resist change.

V. CRITIQUE OF KIWA’S EFFORTS AND SUGGESTIONS FOR IMPROVEMENT

KIWA’s stated mission is “to empower Korean immigrant workers and to develop a progressive constituency and leadership in the Korean community.”264 KIWA successfully incorporated much of the concept of empowerment,265 discussed in Part I, into its mode of operation in helping

257. See interview with MeeLa Chon, supra note 86.
258. See id.
259. See id.
260. See Ha, supra note 88; interview with Roy Hong, supra note 109.
261. See interview with Roy Hong, supra note 109.
262. Id.
263. See id.
264. Copy of KIWA’s mission statement received in interview with Roy Hong, supra note 109.
265. Many of the scholars and pieces discussed in Part I addressed specifically the role of lawyers in a community. Although most of KIWA’s staff members are not lawyers, their work and efforts fit nicely into the same model.
a group saddled by a history of mistreatment and a lack of resources. However, it failed to reach the final level of empowerment, in part because of its choice of strategies and in part because of the particular aspects of the Korean American community in Los Angeles. Measures exist which would enable KIWA to improve further the plight of Korean American restaurant employees, foster better relations between them and their employers, and promote a sense of goodwill and cooperation within the entire Korean American community in Los Angeles.

A. KIWA’s Application of the Empowerment Concept

KIWA employed litigation, or what White calls the first dimension, through suits in Superior Court and small claims court to obtain compensation for the workers. It also used litigation to attain political leverage, publicize its cause, and draw public support, as scholars prescribed.\(^{266}\) Cases such as the lawsuit against Korean Soup Restaurant, brought by five employees who demanded over one million dollars in relief from the owners, encouraged employers to settle earlier. By holding press conferences and utilizing other methods, KIWA publicized the case to those within the Korean American community and to the outside world, ultimately putting the Labor Department on notice and compelling them to conduct investigations.

KIWA pushed beyond litigation and engaged in what Cole calls client empowerment and group representation and what White refers to as the second dimension. By dispensing information on labor laws, distributing pamphlets and newsletters in Korean, and providing counseling services, KIWA helped employees understand their rights and gave them the necessary tools with which to approach their employers. Employees and KIWA staff members confronted employers together, a method that KIWA found to be liberating and confidence-building for the workers.\(^{267}\) These actions, combined with protests, demonstrations, and lawsuits, alerted employers and the Labor Department. Coverage by the community and mainstream media of these protests and lawsuits informed those within and outside the Korean American community in Los Angeles of the numerous violations by restaurant owners and propelled some from outside the community to help employees receive fair pay, such as by participating in protests. This support from the outside world raised the confidence and motivation level among the workers and provided them with leverage against their employers.

KIWA also employed methods to build a true community of workers. When employees sought KIWA’s services, staff members inquired whether their co-workers would like to join them in confronting their employers.

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266. See Cole, supra note 11, at 668.

267. Interview with MeeLa Chon, supra note 86. Wexler agrees with this approach. He states that if the lawyer negotiates a settlement, all that people will see is one lawyer beating another. However, if "the people confront those who oppose them and win, they see that they can beat those whom they will inevitably oppose again. That lesson is more valuable than anything the lawyer can win . . ." Wexler, supra note 14, at 1038.
This, along with protests and meetings coordinated by KIWA, brought together employees who had previously thought of themselves as individuals rather than as part of any group, to fight for themselves as well as for their fellow workers. KIWA’s victory over Chosun Galbi restaurant helped a great deal in organizing workers. This large and high-profile victory had a greater impact on the restaurants than would have resulted had KIWA triumphed in a handful of smaller battles.\footnote{See interview with MeeLa Chon, supra note 86.} In addition, KIWA’s sessions between government authorities and workers in which employees spoke of incidents at their workplaces encouraged workers to come together and forge strategies for improving conditions across the entire industry.\footnote{See Kang, supra note 106, at B3.} Protests, participants of which included Korean, Chinese, Taiwanese, African Americans, and Latinos,\footnote{See interview with Mrs. Lee, supra note 80.} increased the workers’ standing and power and brought them in contact with other communities, making the formation of future multiracial coalitions possible.

KIWA aimed not only to correct wage and hour violations but also to effect a change in the overall attitudes of owners and their treatment of employees.\footnote{See interview with Mrs. Lee, supra note 80.} The root of the problem was that owners did not treat their employees with respect and were willing to sacrifice their workers’ well-being for the sake of profit.\footnote{See Kang, supra note 107, at A1.} Employees complained of not only gross instances of abuse but also inconsiderate gestures and words. Among other things, owners made employees work long hours; they paid wages one week to ten days late or held one week’s pay as deposit until the employee left; they pushed their employees to the point of exhaustion or even sickness; they pretended not to notice when employees were injured; and they ignored workers’ greetings and spoke to them disrespectfully or even called them insulting names.\footnote{See id.}

Because the root of the problem in the restaurant industry was somewhat intangible, KIWA focused on wage and hour violations, an easily definable and concrete symptom. KIWA recognized the potential of a campaign against wage and hour violations to bring about widespread change in the relationship between the owners and the employees, the ultimate goal. Its campaign was successful largely because it had the force of law behind it and left owners with no choice but to change their policies. As for specific tactics, the distribution of information and the staging of protests helped to equalize the balance of power between owners and employees.
B. Inapplicability of the Empowerment Concept and Suggestions of Alternatives for KIWA

Although KIWA made considerable progress by providing education and working towards building a community of workers, it did not achieve White’s third dimension of empowerment, which calls for the development of the employee community’s own consciousness and the ability of the community to sustain itself with minimal guidance.274 There will likely come a time when KIWA identifies other interests more urgent and worthy of its attention and due to scarcity of time and funds will be unable to provide much assistance to the restaurant employee community.275 When this time comes, the community will have to fend for itself. As of 1999, it appeared that the community was still very much dependent on KIWA. KIWA representatives visited restaurants and homes to distribute information; they accompanied employees when confronting employers; they organized protests and arranged press conferences; and they sued on behalf of employees and filed claims with the Department of Labor for employees. Although these actions were, of course, commendable on the part of KIWA, they did not appear to be motivated or focused on attaining a goal of self-sustenance for the employee community.

Furthermore, three things set this case study apart from the studies in the scholarly literature. First, unlike White’s case study of Driefontein, here there was a clear legal remedy: the law demanded back wages and any other appropriate compensation for wage and hour violations. Second, the scholarly literature considers situations in which the government or some other powerful organization is the adversary. For example, White explores a Black South African village’s fight against the government,276 while Cole examines a poor community’s struggle against corporations that pollute their community.277 However, in this situation, Korean immigrant employees were pitted against Korean immigrant employers, who were not themselves a powerful entity. Third, the conflict in Koreatown differs from case studies like White’s and Cole’s in that it occurred wholly within an insular ethnic community, where unity must be encouraged over division.

Although the argument that litigation disempowers clients by making them dependent on attorneys may still be relevant, the contention that lawsuits take disputes into arenas most controlled by the adversary does not apply in this case. Most Korean immigrants do not feel comfortable taking their struggles to court because they perceive the legal system as intimidating. Although it is arguable that the Korean American restaurant employees, as opposed to their employers, may have found this particularly true, it is most likely that both felt the same apprehension towards the

274. See White, supra note 8, at 767.
275. For articles addressing the choices public interest lawyers have to make because of scarce resources, see generally Gary Bellow & Jeanne Kettleson, From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice, 38 BOSTON UNIV. L.J. 337 (1978); Paul R. Trebilay, Toward a Community-Based Ethic for Legal Services Practice, 37 UCLA L. REV. 1101 (1990).
276. See generally White, supra note 8.
277. See generally Cole, supra note 11.
American legal system. Both groups were hindered by language barriers, inexperience, and insufficient resources to hire an adequate attorney or any attorney at all. For instance, restaurant owners through KROA tried to bring a lawsuit against KIWA but ultimately gave up because of inadequate counsel. In this case, the two sides were generally on equal footing in the litigation arena.

Because of this equal footing, there was no reason for KIWA not to utilize the legal system to the fullest extent as an empowerment tool. KIWA did draw upon the legal system by reporting violations to the Labor Department, representing employees in Superior Court, and helping employees represent themselves in small claims court. In early 1999, KIWA indicated that it represented employees in about four or five civil suits at a time and assisted a number of workers with their small claims court cases.

However, KIWA could have expended more effort to achieve client participation and community-building, thus reaching Cole’s goals of client empowerment and group representation and White’s second and third dimension of activist lawyering. First, KIWA could have established a small claims court project where KIWA would help workers pursue their litigation in small claims court until enough workers had gone through the process so as to be able to assist others. These workers would then administer and run the program with minimal guidance from KIWA staff members. A similar project could have been established to file claims with the Labor Department. These projects would take advantage of the existence of a clear legal remedy, encourage client participation, make efficient use of limited resources, and work towards building a strong community. Edgar Cahn stresses the need for people to help others similarly situated and suggests a system, which would request that the workers give one hour of their time for each hour of help that they receive or that they join a service credit program. This could have been an option, in addition to the workers’ money fund, for workers who desired to make a donation to KIWA. As an important added benefit of these programs, the workers would become more familiar with the court system and administrative process. By understanding, rather than feeling intimidated by such agencies, they would be able to use their knowledge and confidence in situations that may arise in the future. Another possibility would be to initiate a class action suit, which would also bring the workers together and educate them about the American legal system.

The second difference between the Koreatown situation and most other case studies applying the notion of empowerment is the powerlessness of the restaurant employers in this case. KROA, the only organization whose primary aim was to work on behalf of the restaurant employers, represented less than half of the restaurants in Koreatown. Hong and some restaurant owners felt that KROA was a disorganized and

278. See interview with Mrs. Chang, supra note 71.
279. See interview with MeeLa Chon, supra note 86.
weak organization.  

Its leadership was not composed of full-time paid employees but of immigrant restaurant owners who were not familiar with English and who held meetings in their spare time. In contrast to KROA, KIWA was composed of 1.5 generation Korean Americans who were fluent in English and Korean. They possessed the necessary skills and knowledge to effect changes and were paid to devote their attention full-time to the community and its problems.

Regardless of the above differences, KIWA appeared to hold KROA responsible for representing all the restaurant owners. As this was not the case, KIWA should have realized that while KROA can be a resource from which to draw, the only organization able to handle and improve the situation in the restaurant industry was KIWA itself. If it had proceeded with this thought in mind instead of continuing to compare KROA to itself and criticize it for failing to fulfill its obligations, a resolution might more rapidly have been achieved. While KROA should not have been disregarded or ignored altogether, KIWA should have borne most of the responsibility for effecting change rather than depending on KROA to educate owners and to institute industry-wide transformations. Strangely enough, the restaurant industry may actually have been weaker and more disjointed in many ways than the workers. Thus, it may have been helpful for KIWA to think of itself as an advocate for the entire industry rather than just for one side. As a practical matter, conflict of interest issues may have arisen, but at the very least, KIWA could have made a greater effort to mediate between the employers and employees, rather than siding entirely with the workers, which antagonized the owners.

Finally, the situation in KoreatOWN differed from other case studies in that it took place wholly within an insular ethnic community. Although it was important for KIWA to build a community for workers, the resulting divisions did not benefit the restaurant industry in Koreatown or the Korean American community at large. In addressing a conflict within a relatively small, insular community like the Korean American restaurant community of Los Angeles, KIWA should have considered the larger context.  

Although KIWA could argue that the disputes could have been easily avoided if owners had simply obeyed the law, the reality of the situation was that owners had to be made to admit their violations and change their policies. Instead of offering less confrontational means of attempting resolution, KIWA alienated the owners to the extent that many ultimately refused to have any interaction with KIWA at all. Although protests were effective in attracting the media and broadcasting the disputes to the public, they increased the level of hostility and bitterness between the parties involved. By doing so, KIWA did not help to build a cohesive restaurant industry community but instead divided the community further into opposing factions.

Three situations come to mind which KIWA could have handled differently to produce more amicable results. First, if KIWA had seriously
considered the employers’ claims that ignorance and unfamiliarity with labor laws were the reasons behind their violations, it could have exposed these claims as pretextual and forced the employers to take remedial actions. In the case of Driefontein, the government claimed that removal was necessary, not because of racial cleansing but because of the construction of a dam. The villagers suspected this was a pretext but decided to take it seriously and thus looked for replacement land in the same area. They reasoned that if they found such land, the government would have no reason to banish them according to its logic and would be forced to admit that its justification had indeed been a cover-up.283 Similarly, if KIWA had acted as if the employers’ reasons were truthful and provided thorough education to the employers, the employers could no longer rely on ignorance and unfamiliarity with the law as excuses for their transgressions. If restaurant owners continued to violate labor laws, KIWA could then have revealed the owner’s reasons as pretextual and built a stronger case for the workers.

Second, by making the employers feel unwelcome in its session between federal and state labor officials and restaurant workers, KIWA missed an opportunity to bring the entire Koreatown restaurant community together and instead created deeper rifts.284 KIWA organized an unprecedented session between federal and state labor officials and restaurant workers. About two hundred people attended this session, which featured workers who spoke about wages and working conditions. Meanwhile, about two dozen restaurant owners and their supporters picketed outside.285 According to one owner, although KIWA ostensibly invited both employers and employees to this event, the employers were required to obtain consent beforehand in order to speak at the session. One KROA member alleged that his request for time to speak was denied. As a result, the employers believed they would have no voice at the session and decided not to attend. Some expressed their anger and frustration by demonstrating outside.286 Through these and other tactics, owners began to perceive KIWA as an organization intent on ruining them and thus resisted KIWA’s efforts even more.287

Third, though KIWA was conscious of the rumors circulating in Koreatown about its motives and sources of funding, it failed to dispel them. Rumors are by nature hard to dispel, but KIWA could have made a more concerted effort to ensure that such rumors were not perpetuated. Restaurant owners spoke of a talk show hosted by Radio Korea in which restaurant employers and employees as well as Hong discussed the labor disputes. When a listener called to ask Hong about where KIWA received its funding to support such a large staff, pay rent for the office, and provide

283. See White, supra note 8, at 734.
284. See Kang, supra note 106, at B3.
285. See id.
286. See interview with Mrs. Chang, supra note 71.
287. See id.
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its services, owners felt that Hong evaded the question.288 This incident fueled more rumors regarding KIWA's funding, including the speculation that KIWA was working for North Korea. These rumors further tarnished the owners' perception of KIWA and damaged KIWA's general reputation in the community.

Besides antagonizing the restaurant owners targeted by its demonstrations and campaigns, some of KIWA's tactics angered other members of the Korean American community in Los Angeles. The targeted restaurants were often located in a plaza that housed other restaurants. Though these other owners were not engaging in any illegal practices and had no problems with their employees, KIWA's protests often had a negative effect on their businesses. Preventing customers from entering some restaurants and directing them to others, sending threatening letters, and disrupting businesses also alienated potential supporters, including other restaurant employees, restaurant customers, the Korean American media, and the general public.

In some instances, KIWA's antagonistic tactics may have in fact backfired. Some owners claimed that KIWA's disruptive protests and demonstrations had not discouraged business, but had actually caused customers to sympathize with the affected restaurant.289 And many Korean newspapers and radio stations denounced KIWA's tactics as too harsh and militant and even suggested that KIWA was interested in the destruction of Koreatown.290 Thus, many in the community, even those who had no relation to the restaurants or KROA, criticized KIWA for its tactics, which they believed would not lead to a resolution.291 Although the president of the Asian Pacific American Legal Center supported KIWA's restaurant industry campaign in general, he stated that he disagreed with KIWA's tactics at times.292

Finally, although these disputes took place within a single ethnic community, KIWA should not have lost sight of the differences among members within that community in forming its strategies and tactics. KIWA staff members, restaurant owners, and restaurant employees were of the same ethnic background, yet it is inappropriate to perceive them as having the same cultural identity.293 The restaurant owners and employees were often immigrants while KIWA staff members were composed of 1.5 or second generation Korean Americans. Class differences also played a

288. KIWA claimed that it was fully funded by its own fundraising and private foundations, such as Liberty Hill. See interview with MeeLa Chon, supra note 86.
289. See interview with Mrs. Park, supra note 71.
290. See interview with Roy Hong, supra note 109; interview with Mrs. Park, supra note 71.
291. See interview with Mrs. Park, supra note 71.
292. See Kang, supra note 107, at A1.
large role as the restaurant owners were, in most cases, financially better off than their employees, although even among the owners, differences in socioeconomic status existed. The age gap between KIWA’s staff members and the restaurant owners and other factors, such as gender, also contributed to differences in attitude and perspectives.

In formulating its tactics, KIWA did not appear to have taken factors such as immigration status and class differences into account. Instead of tailoring measures to each particular owner, KIWA appears to have engaged in the same course of action for each employer. Some employers were recent immigrants. While that should not have excused them from following the labor laws, it did make their violations more understandable. KIWA should have given these employers the benefit of the doubt and invited them to a seminar geared specifically toward recent immigrants. The seminar could have explained the American labor laws, highlighted the differences between the Korean system and the American system, and articulated the significant repercussions if such laws were not followed to the letter. After a month had passed, KIWA could have then conducted random investigations of such restaurants to ensure they were following the laws. If at that time, it appeared that the owners were deliberately violating the law, KIWA could have taken its regular course of action.

In addition to immigration status, KIWA should have considered class differences between the restaurant owners and acted accordingly. In general, the owners of larger restaurants were likely to be more well-off than the owners of small restaurants. Large restaurants, such as Chosun Galbi, would be better equipped to sustain a protest while small restaurants, such as Baek Hwa Jung, would have found it more difficult to survive in the face of a protest. By not taking such considerations into account and conducting protests at both restaurants, KIWA missed an opportunity to demonstrate that it was not interested in the destruction of restaurants, as owners perceived, but in the application of appropriate pressure to produce results.

The following illustration demonstrates how KIWA failed to consider differences in age, gender, and culture in devising its tactics. Restaurant owners complained of KIWA staff members’ attitudes and conduct towards them. One owner related how a female KIWA staff member came to see him wearing blue jeans and slippers and displayed an aggressive and disrespectful attitude. He found this to be so offensive that he “felt like slapping her.”

The Los Angeles Times reported that KIWA staff members refused to “play this cultural game” and thus disregarded the “time-honored Korean emphasis on appropriate attire, gestures and deference to elders in business dealings.” While the KIWA staff member’s attire and attitude may not seem disrespectful by American standards, KIWA’s refusal to honor these Korean customs insulted the owners and ensured their lack of cooperation.

By failing or refusing to consider the differences among owners and

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295. Id.
the differences between KIWA members and the owners, KIWA constructed barriers between themselves and the owners and ensured the owners' rejection of KIWA's overtures. While KIWA may assert that the owners did not deserve respect or consideration, it should have implemented its tactics with the goal of improving overall conditions in the workplace and relations between owners and employees. Recognizing these important cultural differences and acting accordingly would have gone a long way in effecting change.

CONCLUSION

Hong noted in early 1999 that the situation was gradually changing for the better in Koreatown's restaurants. Workers reported an overall improvement in working conditions. Owners appeared to be abiding by the wage and hour laws. They carried workers' compensation and sent employees to the hospital when injured. More significantly, the workers noted that their owners were more respectful of them and treated them more humanely.

As a reflection of a less contentious atmosphere, in March of 1999, Koreatown community leaders formed a mediation and arbitration panel to resolve disputes between restaurant owners and their employees. Each side selected three people for the panel and agreed upon the seventh panelist, Reverend Hyun-Seung Yang, who acted as the chairman. Pursuant to the agreement, a panel of three members handled disputes, first attempting mediation and then issuing a ruling as the arbitrator, if mediation failed. The Korean American community hoped that this approach would lead to peaceful resolutions, a marked change from the contentious relations between KIWA and restaurant owners over the past two years.

Although created with high hopes, the mediation and arbitration panel appears not to have been completely successful. In late April of 2000, the Los Angeles Times reported another contentious labor dispute within the Koreatown restaurant industry. Eight former employees of Elephant Snack Corner Restaurant, represented by KIWA and Mexican American Legal Defense and Educational Fund (MALDEF), filed a lawsuit, alleging violations of wage and hour laws and poor working conditions and seeking overtime pay. The owner's attorney remarked that "his client welcome[d] the lawsuit because it represent[ed] a break from KIWA's previous tactics, which included pickets of the eatery ...." However, the owner's attorney charged KIWA with the familiar allegation of

296. See interview with Roy Hong, supra note 109.
298. See Bobby Cuza, Koreatown Restaurant Suit Seeks Back Overtime, L.A. TIMES, Apr. 27, 2000, at B6. This marked the first time that MALDEF and KIWA worked together, and the article suggested that they would continue to do so in the future. See id.
299. See id.
300. Id.
handling the case as if it was an "authorized government agency." 301

From the inception of its restaurant industry campaign in 1997, KIWA has employed aggressive tactics to effect change. These strong measures raised its profile in the community very quickly but also had the effect of angering restaurant owners. Its tactics were also criticized by restaurant customers, the Korean American media, other Korean American organizations, and members of the Korean American community. Ultimately, owners refused to negotiate with KIWA and came to regard KIWA as an organization intent on destroying their businesses. In some cases, owners' animosity towards KIWA eclipsed the underlying labor disputes.

One wonders whether KIWA's approach actually prolonged the labor disputes within the individual restaurants and the restaurant industry as a whole. If KIWA had employed more cooperative methods, such as conducting joint information sessions for employers and employees, and had honored traditional Korean customs, the owners might well have been more open and agreeable to change. If KIWA had started with that approach but found it ineffective, it could have at that point escalated the aggressiveness of its tactics and justified the need to do so. This strategy would have drawn more community support and thus placed additional pressure on restaurant owners to change their policies.

Nevertheless, it remains clear that KIWA has transformed the restaurant industry in Koreatown. It has built a community of informed workers and publicized the rampant mistreatment of employees to those within and outside the Korean American community. By doing so, KIWA's campaign has encouraged employers to provide fair and humane workplaces for their employees. Perhaps at this stage, KIWA should now consider focusing its efforts on achieving a goal of self-sustenance for the community of workers. Once the community is fully empowered, KIWA will then be able to dedicate its commendable efforts in other needy industries.

301. *Id.*