LEGISLATING SWEATSHOP ACCOUNTABILITY

by

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Abstract:

This paper will study the passage of California's AB 633, the Sweatshop Accountability Bill, in 2000. It will show how the system of subcontracting led to sweatshops, and how in the early part of the 20th Century the apparel union solved these problems by reducing employer competition and negotiating manufacturer-contractor joint liability. It will then trace the history of California garment worker advocates to pass state legislation to provide joint liability. Finally, it will describe AB 633 and the current dispute over the regulations for its implementation.

The system of subcontracting in the apparel industry

Since the inception of the women's apparel industry in the 1880s, production of garments has taken place mainly in contracting shops. The owners of these contracting shops "assemble" the garments; they hire workers to cut, sew, and finish garments that have been designed by manufacturers. Once the garments are completed, they are delivered to the manufacturers for sale and distribution.

This system of production was extremely beneficial to manufacturers, as it shielded them from labor issues in the manufacture of their products. They priced garments according to what they believed the market would bear, rather than the real cost of paying workers decently. If labor costs got too high at existing contract shops, then manufacturers sought to either bargain

with contractors to accept lower prices for their orders, or shift the production to other contractors who agreed to work for lower prices. (Bonacich and Appelbaum, 2000)

By the turn of the 20th century, this system of contracting, with its constant pressure to lower costs, had led to a proliferation of sweatshops. Manufacturers sought to maximize their profits by forcing contractors to either accept lower prices for their orders or lose the orders entirely. Contractors faced with this price cut, in turn sought to limit their losses by lowering wages (paid by piecerate), cheating on overtime pay, operating in dangerous and unhealthy environments, and using homeworkers and child labor.

The workers were mainly immigrants from Eastern Europe. Most did not speak English, but they did have a keen sense of human rights and dignity. In response to the intolerable sweatshop conditions they faced, in 1900 they founded the International Ladies' Garment Workers' Union (ILGWU). Through a number of mass strikes during the next several decades, the union organized nearly 70% of the workers in the industry. It fought for work standards such as the eight hour day, an end to child labor, and health and safety laws. It also played a leading role in many social causes such as a woman's right to vote. (Levine 1969)

The union sought to eliminate sweatshops by structuring industrial relations to 1) regulate competition, and 2) establish manufacturers are the main employer of workers. To regulate competition, it actively encouraged manufacturers to establish manufacturers' associations, and contractors to set up contractors' associations. These associations negotiated union contracts that set forth a standard level of labor costs among competitors. Then the union set up a triangular system of bargaining where it negotiated wage and benefit increases first with the manufacturers association, and then it negotiated the same terms with the contractors' association. Finally, the contractors' association negotiated an agreement with the manufacturers' association that

required the manufacturers to "pass down" to the contractors wage and benefit increases that it had negotiated with the union. Under this system, manufacturers were jointly liable for up to two weeks of unpaid wages in contracting shops, and for paying the cost of health, welfare, vacation and retirement benefits of all workers in contracting shops.

Once the triangular system of collective bargaining was established, the parties negotiated unique provisions that strengthened the regulation of competition. Union manufacturers were required to send work to only union contractors, and union contractors were required to get work from only union manufacturers. If manufacturers were caught sending work to non-union contractors, they were required to pay liquidated damages to the union for lost work opportunities. In addition, manufacturers were required to register their contractors with the union, were required to distribute work evenly among those contractors and their own inside shops (if any), and were not allowed to discharge any contractor except for cause.

For workers, the overall effect of these measures was to stabilize a chaotic and fractured industry and to provide the means to bargain for improved conditions. The union's structuring of the industry somewhat relieved the downward pressure on wages, and it provided the opportunity to negotiate higher wages and benefits directly from the manufacturers, even though the manufacturers did not sign the paychecks of the workers. Key to the success of this model was the strength of the union, both in terms of its vision and will to engage in structuring industrial relations, as well as its representation of an unusually high percentage of the workers in the market. However, beginning in the 1950s, though the provisions of the contracts remained intact, the regulating mechanisms of the system began to weaken, as manufacturers began to source work to contractors in labor markets where the union did not have strength.

The integrated process of production

In 1947, the subcontracting system in the apparel industry was recognized as an "integrated process of production," and therefore specifically exempted from prohibitions on secondary activity in the Garment Industry Proviso of the National Labor Relations Act (Taft-Hartley). According to a colloquy between Senator Ives of New York and Senator Taft:

> "the jobber [manufacturer who does not have an owned and operated factory] is in economic reality the virtual employer of the workers in the contractors' shops; that he must be responsible for their wages and labor standards, and indeed that the contractor is nothing more than the jobber's outside agent to obtain his required production… Economic pressured exerted against either jobber or contractor cannot be construed as secondary action against either, but must be deemed primary against both." (Congressional Record, 81st Congress)

Thus in the apparel industry, it is legal for the union to picket a union manufacturer who is giving work to a non-union contractor, as well as all of its contractors, both union and non-union. Additionally, it is legal for the union to picket a non-union manufacturer who is putting work in union contractors' shops. (Zimny and Garren, 1994) This exemption from the prohibition on secondary activity became the cornerstone of the union's organizing strategy, where whole markets, such as the New York Chinatown market and many others, were organized "top down" by requiring non-union contractors working for union manufacturers to join the contractors association and become signatory to the union contract.

History of joint liability legislation in California

Based upon the precedents set in union contracts and the Garment Industry Proviso, in the 1990s the ILGWU undertook a strategy to pass legislation to provide for manufacturer-contractor joint liability. This legislation would hold manufacturers responsible for wages and working conditions in their contractors' shops, and would be applicable to the non-unionized as

well as unionized sector. The union reasoned that if manufacturers were held legally liable for labor conditions in sweatshops, they would monitor working conditions in contracting shops to a greater extent, and would put pressure, when necessary, on contractors to comply with labor law.

California was a key target for this kind of legislation. By 1990, it had surpassed New York as employing the largest numbers of apparel workers: 140,000 in the Los Angeles area, and 20,000 in the San Francisco Bay Area. However unlike New York where union density was high, in California the unionized sector was less than 5%, and sweatshops were rampant. Typically workers earned less than minimum wage and were not paid overtime premium for overtime work. They worked 14-16 hours per day in unsafe conditions. The overwhelming majority of workers in Southern California were immigrant women from Mexico and Central America, and the majority of workers in Northern California were immigrant women from China.

To draft and lobby for passage of joint liability legislation, the union joined with California-based garment worker advocates to form the Coalition to Eliminate Sweatshop Conditions. The original members included: Asian Immigrant Women Advocates, Asian Law Caucus, Asian Pacific American Legal Center, Commission on Human Rights (SF), Commission on the Status of Women (LA), Committee for Humane Immigrant Rights of Los Angeles, Equal Rights Advocates, International Ladies' Garment Workers' Union, Jewish Labor Committee, Korean Immigrant Workers Center, Mexican American Legal Defense and Education Fund, Northern California Coalition for Immigrant and Refugee Rights and Services. After several years, this group became known as Sweatshop Watch.

In 1990, the Coalition and the California Labor Federation (AFL-CIO) requested Assemblyman Tom Hayden to introduce AB 3930, the first joint liability bill, which passed both

houses of the state legislature, but was vetoed by Governor Deukmejian (a Republican) because it was "untenable" for manufacturers to oversee the working conditions of contractors. In 1991, Assemblyman Tom Friedman introduced AB 1542, another version of the joint liability bill, which also passed both houses and was vetoed by Governor Deukmejian because he deemed contractors to be "independent" and feared that if this bill was signed into law the apparel industry would be pushed out of state. In 1994, Assemblywoman Hilda Solis introduced AB 3046, yet another version of the joint liability bill, which was duly passed by both houses and vetoed by Governor Wilson (also a Republican), who also cited concerns that its passage would cause an exodus of apparel business from California.

AB 633: The Sweatshop Accountability Bill

However by 1998, the situation had changed. Gray Davis, a Democrat, was elected governor, and the anti-sweatshop movement had grown considerably. Worker advocates had already successfully used public pressure tactics to exact retailer and manufacturer accountability for sweatshop conditions in contracting shops in numerous situations. Exposes of the GAP's contractors in 1995 in El Salvador had led to the first monitoring of codes of conduct (labor standards), and later that year the discovery of a contractor in El Monte, California who incarcerated Thai workers behind a razorwire fence fueled public demand for social accountability. By 1996, when TV star Kathie Lee Gifford refused to acknowledge responsibility for her products being manufactured in Latin American sweatshops, public outcry was so strong that Gifford was forced to reverse her position. (Krupat, 1997 and Su, 1997)

During the next several years, most major apparel corporations in the U.S. adopted codes of conduct that required their contractors to comply with standards such as a ban on child labor

and prison labor, payment of a living wage, a limit on overtime hours, and the right to organize unions. Several large corporations, including NIKE, Reebok, and the GAP, hired staff to monitor contractor compliance, and many corporations hired external companies to verify compliance. (Varley, 1998)

Since major apparel corporations were monitoring contractors for compliance with labor standards, and a Democratic governor might now actually sign joint liability legislation, it was little surprise that when Assemblyman Darrell Steinberg introduced AB 633 "The Sweatshop Accountability Bill" in 1999, apparel manufacturers and contractors were quick to express interest in having dialogue with worker advocates. Over the course of nearly a year, the parties struggled to reach agreement on the provisions of this bill. In the end, AB 633 was signed into law in September 2000. Its major provisions were a wage guarantee for workers in contracting shops from manufacturers, an expedited claims procedure, and an increase in manufacturer registration fees to cover the cost of administration of the new provisions. (See Appendix for full text of AB 633)

However, to date the regulations that guide the implementation of the bill have not been adopted. The California Labor Commissioner has requested that the interested parties recommend language. Representatives of the parties had agreed to language for the implementing regulations on February 1, 2000, but the retailers reneged on the agreement and used political connections to stall the process. The retailers had become involved in the negotiations over joint liability because during the past decade they have been increasingly core to the integrated process of production. In some cases they are sometimes manufacturers, when they design and merchandise their retail store's "private labels," such as Arizona (J.C. Penney) and Jennifer Moore (Macy's). In other cases, the retailers are actually manufacturers because

they sell only their own designed and manufactured products, such as the GAP, and Eddie Bauer. In the discussions over implementing regulations, the main objective of the retailers has been to insist on language that would exempt them from coverage of AB 633. However, worker advocates and other industrial experts agree that retailers are so integral to production that when they perform activities as manufacturers, they should be defined as manufacturers. Hence, worker advocates are once again gearing for heated disputes at the hearings on the temporary regulations and have asked supporters to write letters to the California Labor Commissioner voicing their support. Meanwhile, since the passage of AB 633, many workers have filed cases to claim backpay, and it is not clear when and how their cases will be processed.

Significance and Conclusion

In spite of the current dispute over the implementing regulations, AB 633 is an historic victory for workers in subcontracted industries such as the apparel industry. To date, no other state has passed joint liability legislation, although New York and New Jersey have laws that provide for some measures of manufacturer responsibility. (Waelder, 2001) Although labor and human rights activists have already pressured retailers and manufacturers to be socially accountable for working conditions in contracting shops, now in California, manufacturers may also be held legally liable for wages.

Labor advocates hope that this new law will give workers a tool to organize. Millions of dollars are owed each year to sweatshop workers who have not been paid minimum wage and overtime pay. Now that the law is in place, advocates are conducting extensive public education and training to make them aware of their new rights, and to encourage them to step forward and claim their wages. The history of efforts by apparel unions to provide for manufacturer-

contractor joint liability, and to establish manufacturers as the employer responsible for wage increases and benefits, proved to be critical first steps in providing workers with further opportunities to negotiate improved working conditions.

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APPENDIX: Text of AB 633