PROTECTING THE CONTINGENT WORK FORCE: LESSONS FROM THE WOMEN'S GARMENT INDUSTRY

Prepared by: ILGWU Legal Department,
Max Zimny, General Counsel
Brent Garren, Associate General Counsel

I. INTRODUCTION

The spread of "contingent" work throughout the economy, including sub-contracting, licensing, franchising and leasing employees, has seriously undercut labor standards and the right to organize. Contingent workers have their terms and conditions of employment controlled by an entity which is not their direct employer and which frequently escapes responsibility for these conditions under current labor law.

The garment industry has long relied extensively on the "integrated process of production" (or the "outside system of production"), in which the garment producer, known in the industry as a "jobber[1]", employs no assembly workers. Rather, it produces its garments through sub-contractors, which are referred to as contractors in the garment industry. The contracting system, when left uncontrolled by unionization, results in the massive spread of sweatshops, in which minimum wage, overtime, child labor protections; health, sanitation and safety standards; and rights to engage in concerted activity are routinely ignored.

Four principal lessons emerge from the International Ladies' Garment Workers' Union's struggle to protect contingent workers in contracting shops against sweatshop conditions.

1. In the integrated process of production in the garment industry, the contractor/sub-contractor is nothing more than a glorified foreman dressed up as an independent businessman. The jobber effectively controls the wages and working conditions of the contractors' employees by determining the quantity, price of the work and means of production by the contractor.

2. Labor standards can be enforced only if the jobber, the real employer, is directly responsible for them. ILGWU agreements require jobber responsibility for wage rates, insuring that wages are paid and providing fringe benefits for workers in the contracting shops. Jobbers may contract to union shops only. Bitter experience demonstrates the impossibility of unionizing or enforcing labor standards in the contracting shops without jobber responsibility.

3. Garment industry jobbers and contractors are closely allied employers which, under the NLRA, are deemed primary employers, rather than secondary or neutral, with respect to each others' employees. The complete exemption of the jobber-contractor relationship from secondary boycott restrictions is essential for effective unionism and decent labor standards in the garment industry.

4. Labor standards must apply and be enforced on an industry-wide basis. Only if all contracting shops are held to essentially the same standards can those standards be enforced.

The 1980s and 90s have seen the resurgence of the sweatshop as the intense economic pressure from low-wage garment imports have eroded labor standards in this country. The Commission should consider recommending extension of "jobber responsibility" so that jobbers are held liable at law for their contractors violations of FLSA, OSHA and NLRA. Also, jobbers should be held responsible to ensure that their overseas contractors adhere to minimal labor and human rights standards. Protection of the rights of immigrant workers is essential to combating the resurgence of the garment sweatshop.

The lessons from the garment industry apply to any situation in which a dominant economic entity controls the working conditions of contingent workers. Labor standards can be enforced only if the dominant entity is held responsible and the workers are permitted to pressure that entity without being hamstrung by the restrictions on secondary activity.

II. THE NATURE OF WOMEN'S GARMENT INDUSTRY

Two factors shape the women's garment industry, fashion and labor-intensity. The demands of fashion produce great volatility. Each year and each season brings new fashions. The customer buys different products[2] (e.g, sweaters one year and blouses the next; slacks one season and skirts the next), different fabrics, different trimmings and accessories and different stylings and fabrications depending on fashion. A designer can have great success with its fall line and see sales plummet for the spring. One design can exceed expectations, while another falls far short.

Fashion renders women's apparel a perishable commodity. A blouse or skirt produced for the spring season cannot be sold at full price when shoppers are looking for fall clothes. And, if not sold at a great discount at an "end of season sale", it is likely to be out of style and unmarketable next spring. Since the vagaries of fashion make forecasting difficult, there is great pressure to produce many garments very quickly during the busy season. Work disappears at the end of the season. Retailers accentuate this problem by placing orders as late as possible and demanding reorders be in the stores as quickly as possible.

Fashion requires the production of relatively small runs of a great number of different products. Contrast the number of different styles among men's suits and shirts as opposed to women's dresses and sportswear. Menswear companies produce long runs of a few styles, year after year, with relatively stable markets. Womenswear must be distinctive to sell.

Garment assembly is among the most labor intensive industries in the U.S. Industrial sewing has changed very little since the beginning of the century. "No cost-effective technology has been conceived to simplify the most time-consuming parts of the assembly process: picking

up individual limp pieces of cloth, placing them properly at the sewing machine needle, and disposing of them after the pieces have been joined."[3] Womenswear, with its short runs of constantly changing styles, is even more resistant to technological improvements than menswear.

Fashion-driven volatility combined with the labor intensity spawned the "outside (i.e., sub-contracted) system of production." Outside or contracting production predominates in women's apparel. Among production workers in 1987, 68.5% were employed in contracting shops in the blouse industry; 69.5% in dresses and 60.5% in coats, suits and skirts.[4] By contrast, apparel as a whole, including menswear, had 47.2% of production workers employed in contracting shops.[5]

The key economic player in the outside system of production in the women's garment industry is the "jobber." The jobber performs the critical functions of design, marketing, financing and coordinating production. The designer is the "star" of the women's garment industry, and jobbers succeed or fail largely on the abilities of their designers. The jobber sets the price points for the garments and markets them to the retailers. Jobbers control or influence advertising and sales strategies. Jobbers compete fiercely for space for their goods in retail stores. The jobber obtains financing.

However, the jobber does not employ any assembly workers and does not directly produce the garments. The jobber usually buys the fabric. Cutting, the most skilled aspect of production, is performed either by the jobber's employees or by contractors. The cut goods and trim (buttons, shoulder pads, buckles, etc., which are selected and purchased by the jobber) are sent to contracting shops, where the garments are sewn and pressed. Sewing machine operators constitute the bulk of the production work force.

The contractors, who employ the sewing machine operators, pressers and ancillary workers, perform only the very limited function of supervising the production workers. The contractor plays no role in garment design, marketing, production coordination or financing. Contractors are often extremely small, undercapitalized, short-lived businesses.

> Business can enter and exit the industry relatively easily and, except in the case of producers of a few standardized products (e.g., underwear or blue jeans), there are few economies of scale necessitating large, inflexible enterprises. There are more than 20,000 separate apparel manufacturing establishments in the United States; over half have less than 20 employees, and more than 90 percent are independent one-factory firms[6]. Yet despite the large number of firms entering and departing the industry each year, total industry capital investment is minimal[7]. The apparel industry's average annual capital investment per employee--including all new and used buildings, machinery, and equipment--is only $732, compared to $2,968 in the textile industry and $4,629 for all manufacturing industries. Fixed assets per employee are $6,325 in apparel, compared to $32,379 in textile and an average of $44,704 in all manufacturing. Thus, for a total fixed investment of about $125,000, the average apparel manufacturer can operate a plant of 20 employees,

larger than half the plants in the industry. Immigrant entrepreneurs can open a contract shop this size without specialized equipment for less than $25,000; equipment dealers finance the endeavors, so only a $6,000 down payment would be necessary.[8]

Jobbers take advantage of the fierce competition among contractors. Given the easy entry into the industry and seasonal production, many more contractors are seeking work than work is available. The contractor cannot compete based on different production methods, machinery or other efficiencies. Rather, the contractors compete based on offering a lower price. The lower price stems directly from driving down wages. The jobber, which controls the price paid to the contractor and the amount of work the contractor receives, controls the labor standards in the contracting shops. The contractor is nothing but the jobber's foreman, dressed up in disguise as an independent businessman. Additionally, the outside system of production maximizes the jobber's flexibility, lowers his capital requirements and shifts the burdens of overhead onto the contractors.

III. THE DEVELOPMENT OF JOBBER RESPONSIBILITY

From its inception as a mass production industry in the 1880s, the garment industry was the preeminent sweatshop industry. Tens of thousands of immigrant workers toiled during 16 hour days for miserable wages. Tuberculosis ran rampant. Home work and production in tenements were common.

Garment workers secured union organization in the major sectors of the women's garment industry in New York through a series of general strikes, i.e. strikes against all employers in a given branch of the industry. 1909 saw the historic "Uprising of the 20,000", successfully organizing the shirtwaist industry. In 1910, 60,000 workers struck in the Great Revolt, organizing the coat, suit and skirt industry. In 1913, 30,000 dressmakers won union organization following a massive walkout. Given the large number of small garment producers, organization was possible only if the entire industry were organized and common labor standards enforced throughout all shops. Organization on an individual employer basis was impossible.

No sooner had the workers in the inside shops secured decent labor standards through ILGWU contracts than the employers sought to subvert and evade those agreements by contracting out production. The Union could enforce contractual standards in the inside shops. So, by the mid-1920s, 75% of production workers in the coat and suit industry were employed in contracting shops[9]. Between 1916 and 1924, the number of workers in inside shops declined from 21,604 to 7,438 as 252 employers closed their inside shops and became jobbers.[10]

The contracting shops were under union contract, and the jobbers were required by contract to send work to union shops exclusively. Nonetheless, the jobbers drove down labor standards in the contracting shops through the "auction block system." The jobbers set low prices for the work. The contractors subverted the contractual standards to vie for the work. The

workers, faced with the Hobson's choice of no work or work under sweatshop conditions, acquiesced in contract violations.

New York Governor Alfred E. Smith appointed a Governor's Advisory Commission in the Cloak, Suit and Skirt Industry of New York City. Its Final Recommendations, issued in 1926, described this problem:

> But the fact is that a large proportion of the sub-manufacturers succeed in shifting the burden on to the workers. The shops being small, there is a comparatively close relation between the firm and the workers. When work is scarce, as it usually is except for a few weeks in each season[11], the workers are told that in order to meet the exigencies of price competition and to bring some work into the shop, they must enter into secret arrangements contrary to the minimum labor standards which have been agreed upon, and which are pretty successfully enforced in the larger shops of the inside manufacturers.
>
> These concessions by the workers take various forms. They chiefly involve wages, hours, rates of pay for overtime, work on holidays, and the substitution of piece work for pay by the hour. All this is done without the knowledge of the Union officials and is frequently concealed in the books of the firm. Incidentally, it subjects the inside manufacturers to such unfair competition as tends to drive out of legitimate manufacturing into jobbing all except those producing garments of the most exclusive and expensive styles.[12]

Years later, the Court of Appeals set forth the relationship between the "outside system of production" and sweatshops in Danielson v. Joint Board of Coat, Suit and Allied Garment Workers' Union, 494 F.2d 1230, 1234 (2nd Cir. 1974):

> Garment manufacturers, in an effort to avoid unionization, largely abandoned their "inside shops," transformed themselves into jobbers, and then engaged contractors to do the actual manufacturing. "The jobber had no direct dealing with employees, was not responsible to them for wages, and was unconcerned with hours and adequate standards. . . . The contractors were in fierce competition with one another for the patronage of jobbers and inside manufacturers. The essential basis of this intense competition was reduced labor costs. The brunt of this economic rivalry was borne by the workers and reflected itself in depressed wages and substandard labor conditions." Since unionization of one contractor would be ineffective if the jobber could turn to a non-union competitor, the weapon developed by the union to meet

> this was to require the jobber to agree to deal only with unionized contractors.

In its 1926 Final Recommendations, the Governor's Advisory Commission viewed the outside system of production as inherently harmful to the industry and the workers, but believed it could not be eliminated. The starting point for curtailing the abuses of the system was to recognize jobber responsibility.

> In determining the relationship between jobber, sub-manufacturer, and workers we should be concerned not so much with the form as with the substance. By whatever name he may call himself, the jobber controls working conditions; he controls employment, and that element of control imposes upon him the responsibility that he shall so conduct his business that proper working standards may be upheld instead of undermined, and that employment may be stabilized instead of demoralized.[13]

The Commission recommended many of the ILGWU's proposals. However, the employers refused to accept the major recommendations of the Commission.

The union was able to implement many of the Commission's recommendations in the 1930s. Many of the provisions appeared in the National Industrial Recovery Act Code of Fair Competition in the coat and suit and dress industries. The Union was able to incorporate them into the labor agreements in those industries in the 1930s. The jobber-contractor provisions of the New York coat and suit and dress industry agreements became the model throughout other branches of the women's garment industry and in other markets throughout the country.

While the provisions changed over time and varied somewhat in different markets and branches of the industry, the essential provisions included:

1. The jobber may contract out production only to shops bound to collective bargaining agreements with ILGWU affiliates.[14] An essential enforcement provision is the ability of the union to collect damages for non-union contracting in arbitration, as well as obtaining an injunction against such violations. Moreover, the union has the right to inspect the jobber's books and records to detect cheating.

2. The jobber is responsible for wages in the contracting shops. The wages, both piece rates and hourly, are set with the jobbers and written into the jobber's agreement.[15] The jobber is required to pay the contractor a price sufficient to allow for union conditions and to pay, separately, an amount for the contractor's overhead. The jobber is responsible for up to two weeks wages if the contractor defaults on paying wages due or underpays the workers.

3. The jobbers provide health and pension benefits by remitting contributions to employee benefit funds on behalf of the contractors' employees based on a percentage of the

bills submitted by the contractor to the jobber. This measure minimizes defaults to the funds and gives coverage to workers who often move frequently from contractor to contractor.

4. Several related measures prohibit the jobber from inducing a bidding war among contractors.

a. The jobber could use only "registered" contractors, and it could register only as many contractors as it actually needed. It could not string some contractors along, using them to threaten the regular contractors with loss of work.

b. The jobber was required to distribute work equitably among his inside shop and regular contractors when there was insufficient work, so that contractors could not obtain greater work volume through slashing wages.

c. The jobber could not add contractors unless he had additional work, and could not discharge a contractor except for good cause, i.e., poor workmanship or late deliveries. A contractor could not be discharged because of price.

5. The union and the workers have the right to respect lawful picket lines and refuse to work on struck goods in the integrated process of production.

From its development until the 1980s when pressure from low-wage imports placed an unbearable strain on the system, the system of jobber responsibility limited sweatshops to a marginal problem in the garment industry. The system provided an ordered industry in which legitimate jobbers and contractors earned profits, while workers enjoyed decent wages and benefits. While the jobber responsibility system has been modified over the years, its heart -- limiting contracting to union shops and jobber responsibility for wages and benefits for contractors' employees -- remains the cornerstone of labor relations in the unionized women's garment industry today.

IV. THE GARMENT INDUSTRY PROVISO

The jobber responsibility provisions of garment contracts were the basis of labor relations in the garment industry in 1947, when Congress enacted the Taft-Hartley amendments, including the ban on secondary picketing. As expressed in a colloquy between Sen. Ives of New York and Sen. Taft, the ban on secondary picketing, Sec. 8(b)(4)(ii) of the Act, was not intended to apply to the garment industry. Sen. Ives noted that "the jobber 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." Sen. Ives further stated: "Economic pressure exerted against either jobber or contractor cannot be construed as secondary action against either, but must be deemed primary against both." Sen. Taft agreed.[16]

The Landrum-Griffin Act introduced Sec. 8(e) of the Act, banning "hot cargo" agreements. The garment industry proviso[17] was included to continue and strengthen the protection enjoyed by garment unions from the secondary restrictions.

The proviso removes those in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry" from the ambit of the restrictions on secondary activity, including both Sec. 8(e) (ban on hot cargo agreements) and 8(b)(4)(B) (ban on secondary picketing). The garment industry proviso is an "absolute" exemption from the restrictions on secondary activity.[18]

Congress enacted the garment industry proviso to "avoid serious damage to the pattern of collective bargaining" in the apparel industry and to avoid "interference with already established and legitimate union practices". The legislators "do not intend to upset the status quo of the garment and apparel industries."[19]

Congress understood that effective unionization of the industry was essential to prevent sweatshops. As Sen. Kennedy stated:

> First, restrictions upon subcontracting which are absolutely essential to stabilizing wages in such industries as the garment industry are not forbidden. . . . In that industry while production is carried out by subcontractors, it is highly integrated and the unions customarily have utilized clauses in their contracts to insure against subcontracting to the substandard sweatshops. We insist that unions in the garment industry continue to have that right and that it is socially desirable.[20]

Congress intended the proviso to attack the industry-wide problem of sweatshops with an industry-wide solution. The garment industry proviso enables the union to regard labor standards in the entire garment industry, regardless of specific employer, as a primary, not secondary, concern.

> Finally, nothing in the § 8(e) proviso suggests that union efforts at work preservation must be aimed at protecting only the workers of a particular employer or contractor; to the contrary, the industry pattern . . . is to preserve work for the union as a whole.[21]

The jobber-contractor relationship exists whenever the garment producer exercises control over the design, production and distribution of the garments.

> The § 8(e) proviso may have been "extremely limited,": but only in the sense that it applies to a certain industry, not in the scope of the authority it confers to permit "hot cargo" agreements within the industry exempted. Once a manufacturer assumes control over the manufacture of a garment, whether through actual ownership and oversight, a jobber's contract, or an agreement to license the use of its name, that manufacturer becomes an employer with whom an apparel-industry union needs to be able to bargain under the § 8(e) proviso's protection. The owner of a trade mark could of course so

> divorce itself from the process of manufacture, design, quality control, and merchandising, that it could establish that it is not engaged in the apparel business. But even a bona fide effort to do no more than protect the economic value of a name may lead a trademark owner to perform or supervise functions of manufacture, design, quality control or merchandising that are the very functions brought within the scope of lawful bargaining by the § 8(e) proviso.[22]

The exemption from restrictions on secondary picketing allows the union to picket and/or strike any jobbers and contractors engaged in an integrated process of production. This is essential so that the union can exert meaningful economic pressure on jobbers and contractors. The union may pressure the jobber to obtain an agreement from it prohibiting non-union subcontracting. The union may picket both the jobber and its contractors to obtain such an agreement. The NLRB and the courts find this activity protected. Picketing the jobber is not recognitional picketing and does not run afoul of Sec. 8(b)(7)'s requirement of the filing of a representation petition.[23] Picketing the contractors is essential to affecting the jobber's production.

Similarly, when the union has a dispute with a contractor, it may picket the jobber that supplies the work to the contractor. If it pickets only the contractor, the jobber will simply give the work to another contractor. The union may picket, not only the jobber, but also any other contractor doing work for that jobber.

The exemption from Sec. 8(e) is necessary to permit the restriction of sub-contracting to union shops and many of the other jobber-responsibility measures.[24]

V. THE GARMENT INDUSTRY TODAY

The garment industry, one of the largest manufacturing industries in the country, is once again seeing the rise of the sweatshop. In 1991 the industry employed 815,000 production workers.[25] The wages and conditions of these workers are eroding as the employers react to the flood of imports from countries where garment production workers earn pennies an hour. This Commission noted the virtually universal disregard of health and safety and wage and hour laws in the garment industry.[26]

The General Accounting Office stated:

> In our opinion, the most credible estimate of the number of sweatshops and people working in them was from the directors of the state's Apparel Industry Task Force. The official estimated that about 7,000 apparel firms operate in [New York] city and about 4,500, 64 percent of them are sweatshops employing over 50,000

> workers. He believes that 1,200 of the 4,500 sweatshops are operating illegally, meaning they have not complied with the requirement for apparel manufacturers to register with the state. The remaining 3,300 firms are registered with the state but still are multiple labor law violators.[27]

The GAO identified a link between "an exploitable, mainly immigrant, labor supply; labor-intensive industries; and the practice of subcontracting" and the proliferation of sweatshops.[28]

In the 1980s, California, New York and New Jersey, states which contained the largest concentrations of garment workers in the nation, enacted legislation to combat garment industry sweatshops.[29] These statutes move in the direction of imposing jobber responsibility. They have three major features. 1) They require all garment producers to register with the state. The jobber is held liable if it sends work to unregistered contractors. 2) The California and New Jersey statutes allow the confiscation of "hot goods", i.e., goods produced in violation of the registration laws. Confiscation of a jobbers' goods creates de facto jobber responsibility. 3) New York and New Jersey created special apparel industry task forces to concentrate specially trained investigators in labor standards enforcement in the garment industry.[30]

In the 1990s the U.S. Department of Labor rediscovered the "hot goods" confiscation provision of the Fair Labor Standards Act, 29 U.S.C. § 215(a)(1). The DoL has been obtained agreements from garment jobbers making them responsible for contractor compliance with labor standards through this tactic.

VI. RECOMMENDATIONS

A. The Garment Industry

The special problem of garment sweatshops requires special legislative attention. Special legislation aimed at the garment industry has played an indispensable role historically in controlling sweatshops.[31] Today's reality requires updated specific treatment.

1. Jobber responsibility should be incorporated into labor law, so that the jobber is held responsible when its contractors' employees suffer from violations of FLSA, OSHA, or NLRA. Jobber responsibility is necessary to compensate workers for harm done. All too frequently contractors go out of business or do not have the funds so that workers cannot collect back pay/wages awarded to them. Moreover, only jobber responsibility provides any effective deterrence to labor law violations. Leglislatively imposed jobber responsibility provides a labor-standards floor for the entire garment industry and protects legitimate jobbers and contractors from unscrupulous competition.

2. Jobbers should be held responsible to ensure that their overseas contractors comply with at least minimal labor and human rights standards. The government should be able to prohibit specific jobbers from importing when those jobbers utilize contractors

which violate appropriate labor standards, and/or be able to confiscate goods produced in violation of labor standards.

B. Immigrant Workers

Garment sweatshops have always exploited immigrant workers, and they do so today. Undocumented workers are a substantial portion of the labor force in the garment industry, especially in garment centers such as New York, Los Angeles and Miami. These workers need full protection under labor standards legislation. Moreover, the industry cannot be effectively organized unless those workers have a meaningful remedy, including back pay and reinstatement, if they are discharged for union activity.

C. Contracting In Other Industries

More and more workers throughout the economy are in the position of garment contractors' employees: their conditions of employment are controlled de facto by an entity other than their de jure employer. These workers will enjoy protection of the labor laws only when the laws reflect this reality. The definition of "primary employer" under Sec. 8(b)(4) and 8(e) of the National Labor Relations Act should be updated to reflect today's realities, enabling employees to enter into agreements with and exert economic pressure against the controlling economic entity, whether that control takes the form of double-breasting, parent-subsidiary, or contracting, licensing or franchising.

July 21, 1994

END NOTES

1. A jobber contracts out all production. A "manufacturer" is a garment producer which employs production workers in an inside shop. Manufacturers often contract out some of their production, acting as a jobber in relation to its contractors.

2. For example, from 1974-80, while the physical volume of all types of output of women's and children's apparel was relatively stable, blouse production increased 38% while dress production declined 15%. Skirt production rose 16%, but slacks fell 11%. (Application To the Pension Benefit Guaranty Corporation on Behalf of ILGWU National Retirement Fund, p. 10, May 7, 1982) Similarly, from 1984-90, retail sales of different sportswear products varied greatly. While total sportswear sales grew 4.2%, sales of blazers and blouses declined, while pants grew significantly more than skirts (Keeping New York in Fashion, Garment Industry Development Corporation, p. 21).

3. Keeping Jobs in Fashion: Alternatives to the Euthanasia of the U.S. Apparel Industry, Richard Rothstein, Economic Policy Institute, 1989, p. 30.

4. Statement on Behalf of the International Ladies' Garment Workers' Union Before the United States International Trade Commission, Investigation No. 332-327, Submitted by Dr. Herman Starobin, November 25, 1992 , p. 11.

5. These numbers are understated since they do not include the tens of thousands of workers in the underground economy, including homeworkers, who work almost exclusively for contractors.

6. "According to the 1987 Census of Manufacturers, there were 17,428 establishments making apparel in the U.S. Of these, 8,934 or 51.1. percent employed 19 workers or less and 5,880 or 33.6 percent employed 20 to 99 workers. Only 15.3 percent of apparel establishments had a work force of 100 or more." Starobin, p 14.

7. In one three year period, 2,000 out of 8,000 New York State garment businesses closed, while 1,460 new firms came into existence.

8. Rothstein, 32

9. The Outside System of Production in the Women's Garment Industry in the New York Market, Emil Schlesinger, 1951, unpublished, p. 24.

10. Ibid., p. 24-25

11. Workers in contracting shops averaged 26.8 weeks of work a year, compared to 37.4 weeks of work in the inside shops. Final Recommendations, Governor's Advisory Commission, p. 6.

12. Final Recommendations, p. 5.

13. Ibid., p. 6.

14. A labor contract signed by the jobber with the union which governs only its subcontracting production and does not govern the terms and conditions of the jobber's employees, such as warehouse and sample room workers, is known as a Jobber's Agreement or a Hazantown Agreement.

15. Because garment production involves so many short runs of differing styles and products, piece rates are constantly being set and adjusted. The setting of piece rates is critical to determining wages.

16. Congressional Record, 81st Congress, First Session, p. 8876.

17. There are two garment industry provisos, with the second stating that "nothing in this Act shall prohibit the enforcement of any agreement which is within the foregoing exception." Litigation and commentary has focused on the first proviso.

18. Danielson, 494 F.2d at 1236, n. 9.

19. 105 Cong. Rec. 17899; id. at 17381; id.

20. Cong. Rec. S15900 (daily ed. Aug. 28, 1959), printed in 2 Legislative History of the Landrum-Griffin Act 1377, published by the National Labor Relations Board, Government Printing Office, 1959

21. Geoffrey Beene, Inc. v. Joint Board of Coat, Suit and Allied Workers Union, 562 F.Supp. 1316, 1324 (SDNY 1983).

22. Ibid. at 1323-24.

23. Danielson v. Joint Board of Coat, Suit and Allied Garment Workers Union, 494 F.2d 1230 (2nd Cir. 1974) and Hazantown, Inc., 212 NLRB 735 (1974).

24. Courts have recognized that garment jobbers control contractors' actions in a variety of circumstances. See Abeles v. Friedman, 171 Misc. 1042 (1939) (denying injunction against jobber picketing by union because jobber controls conditions in contracting shops); In the Matter of Larry Jay, Inc., 3 AD2d 386 (1st. Dept. 1957), aff'd 4 NY2d 912 (1958) (contractors' employees are deemed employees of the jobber under New York debtor-creditor law); Greenstein v. National Skirt & Sportswear Association, Inc., 178 F.Supp. 681 (SDNY 1959) (jobber

responsibility provisions of ILGWU agreements did not violate anti-trust laws and are essential anti-sweatshop measures); ILGWU National Retirement Fund v. Distinctive Coat Co., Inc., (84 Civ. 1758 (WK) mem. order, SDNY 1985) (jobber held responsible for liability incurred by its contractor upon withdrawal from a multi-employer retirement fund).

25. Starobin, p. 11.

26. Fact Finding Report Issued By The Commission On The Future Of Worker-Management Relations, June 2, 1994, p. 124, n. 27.

27. "Sweatshops" In New York City, General Accounting Office, June 1989, p. 22.

28. "Sweatshops" in the U.S., GAO, August 1988, p. 9.

29. In 1980, California enacted Ch. 633, L. 1980, adding Sec. 2670 et seq. to its Labor Code. In 1986, New York enacted Ch. 764, L. 1986, adding Article, 12-A, Secs. 340-347 to the Labor Law. In 1987, New Jersey enacted Ch. 468, L. 1987, which was amended by Ch. 189, L. 1991.

30. The California Department of Industrial Relations developed a Concentrated Enforcement Program focused on the garment industry, along with other sweatshop industries.

31. In addition to provisions already discussed, industrial homework is banned and/or severely restricted in the women's apparel and related industries by federal regulation and in many states due to pervasive minimum wage, overtime and child labor violations. See International Ladies' Garment workers' Union v. Donovan, 722 F.2d 795 (DC Cir. 1983); 29 C.F.R. § 530.