



Photo by Brandon Wu

Participants at a July 12, 2008 rally in Philadelphia call on their governors to end public purchasing from sweatshops. The National Governors Association Centennial Meeting was taking place across the street.

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MAKING CITY HALL SWEAT

Using Procurement Power for Worker Rights

INTRODUCTION

AN HISTORIC EVENT IN THE ANTI-SWEATSHOP MOVEMENT OCCURRED EARLY IN 2008 when the city of Los Angeles persuaded a uniform supplier in Cambodia to improve working conditions for over 1,000 workers. This victory was the result of years of effort by activist groups in Los Angeles, including Sweatshop Watch, the Progressive Jewish Alliance, Tom Hayden's "No More Sweatshops," and UNITE HERE to push the city to pass and effectively enforce a "sweatfree" procurement ordinance that bans sweatshop conditions in the factories that produce uniforms and other apparel for the city.

Los Angeles passed a sweatfree procurement ordinance in November 2004, covering the city's estimated \$3 million worth of apparel procurement each year.¹ Effective enforcement began two years later when the city hired the Worker Rights Consortium (WRC) to study its apparel procurement and undertake investigations of factories in their apparel

supply chain. The WRC, a labor rights group founded in 2000 to investigate factories that produce university-licensed apparel, now also works in the area of public apparel procurement.² Gathering information about the city's uniform suppliers, WRC investigators learned about severe worker rights violations in a factory called New Wide Garment in Cambodia, a contractor which employed 1,400 workers and manufactured uniforms for Williamson-Dickie, which supplied them to Los Angeles through a local vendor. The WRC found violations of numerous provisions of the city or-

dinance's Contractor Code of Conduct, including discrimination against pregnant workers, restrictions on workers' access to toilets and health clinics, and the inappropriate dismissal of a worker who was exercising her freedom of association rights.³ Pressure from the city led the contractor to reinstate the fired worker and make several positive changes in its policies that corrected these violations. Los Angeles also ceased purchasing Rocky Brands products when the company refused to respond to allegations of worker rights violations in contractor facilities in China. This is the first known instance of a city canceling a contract due to violations of sweatfree purchasing rules.

Anti-sweatshop activists have long engaged in solidarity campaigns with workers, targeting corporations that provide apparel for universities or retail customers. But now cities like Los Angeles are a new partner in this fight against sweatshops. Activists, in alliance with workers and unions like UNITE HERE, have succeeded in many locales to raise awareness of the global sweatshop problem and how responsible public purchasing practices can improve standards in an apparel industry where the race to the bottom is the norm. UNITE HERE, the principal North American apparel and textile workers union, has been closely involved in this campaign as part of its fight against global apparel sweatshop conditions and it recognizes that raising global labor standards in the industry helps both foreign and domestic workers, including its own members. Over the last decade, many states, cities, counties, and school districts have become concerned about the sweatshop labor conditions under which the apparel they purchase is produced, passing similar ordinances designed to help improve working conditions. This growing movement for ethical procure-

ment is about to take another important step.

Recognizing that public entities can exercise greater impact in improving working conditions if they work together, a coalition of anti-sweatshop groups formed SweatFree Communities (SFC) in 2003 to coordinate such an effort.⁴ SFC is currently organizing an ethical procurement campaign for a State and Local Government Sweatfree Consortium. This Consortium will pool the resources of public entities to investigate working conditions in factories that make uniforms and other products for public employees. Cities and states will hold vendors to similarly high standards, use an independent monitor for enforcement, and create a procurement market large enough to persuade companies to deal responsibly and ethically with their suppliers and workers.

In this work, SFC capitalizes on governments' role as significant participants in the market. Total U.S. government procurement of products and services accounts for 20 percent of the U.S. gross domestic product (GDP); 13 percent involves state and local government procurement, and 7 percent is federal procurement.⁵ Thus, procurement policies that reflect taxpayers' values can provide incentives for private actors to comply with laws and regulations and to develop new ways of doing business that help advance citizens' social agendas.

This sweatfree purchasing movement follows a long tradition of using public procurement to advance progressive social policy on issues such as local economic development, women and minority-owned businesses, living wages, fair labor, and environmental sustainability. For example, the federal government requires payment of prevailing wages

on federal construction projects.⁶ Many state and local governments require the payment of a living wage to workers employed via government service contracts, provide bidding preferences to local establishments, and pur-

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chase a variety of products with “green” attributes, from low-emission vehicles to forest products made with sustainable timber. With the globalization of supply chains, public procurement can play an increasing role in addressing unjust conditions in other countries. Anti-Apartheid procurement policies may be the first and most strikingly successful examples of states and local governments amassing their procurement power to further international human rights. Twenty-five states and 164 local governments either avoided purchasing from or investing in companies doing business in South Africa.⁷ Today, fair trade, the elimination of child labor, and sustainable development issues increasingly amount to key considerations in the public procurement agenda.

THE SWEATSHOP PROBLEM

The global apparel industry employs tens of millions of workers in over 100 countries. Many of those workers toil at contract factories that produce for customers in the U.S.

market. The apparel industry has long been organized under the contract production system where the owner of a brand, such as Nike, will send the designs for garments to a large group of contractors for manufacturing. The

large brands constantly search the globe for contractors that offer the cheapest price and the fastest delivery, putting contractors in fierce price competition with each other. This leads the contractor to minimize all possible costs, squeezing labor costs the most. The sweatshop labor conditions that result include poverty-level wages below the low local minimum wage, extremely long and mandatory work weeks with no days off for weeks

or months at a time, unsafe factories, child labor, and no real freedom of association for workers.⁸ Workers who try to organize unions to improve their working conditions are usually unsuccessful due to tremendous resistance from contractors. Thus sweatshop conditions arise from this production system that separates brand from contractor, allowing the brand to escape direct responsibility for the resulting labor conditions, and leaving the contractor to discipline the exploited workforce.

While there have been numerous reports published over the last decade detailing sweatshop labor abuses in the global apparel industry, there have been until recently very few investigations concerning the uniform sector specifically. Uniform factories are subject to the same competitive price pressures and organized under the same contract production system as the rest of the industry, so sweatshop conditions are a natural consequence. However, in the effort to encourage cities and states to pass sweatfree procurement ordinances, activists have lacked a sufficient body

of evidence linking sweatshop problems to the factories that are making public sector uniforms. In July 2008, a groundbreaking study was published by SFC that confirmed the existence of sweatshop conditions in this sector. The report, “Subsidizing Sweatshops: How Our Tax Dollars Fund the Race to the Bottom, and What Cities and States Can Do,” includes detailed case studies of 12 factories in nine countries that produce public employee uniforms for eight major uniform brands.⁹ The report documents instances of child labor, illegally low poverty wages, forced overtime work, health and safety problems, abuse and harassment, forced pregnancy testing and discrimination, a lack of associational rights, and workers being coached to lie about their working conditions to company auditors. Ongoing research will no doubt reveal more serious problems in uniform factories.

Not surprisingly, most supplier companies refute the existence of worker rights violations in the factories investigated for the report and, in some cases, deny violations in any of the uniform factories that produce for the company.¹⁰ We have seen over time that, as activists engage with brands over problems in their supply chain, some of the companies drop their traditional denials and begin to work more constructively to address the issues. As more cities and states pressure the brands to take action, we will likely see this pattern repeated.

SWEATFREE PROCUREMENT

ONE HUNDRED AND EIGHTY-THREE U.S. PUBLIC entities—states, cities, counties, school districts and public schools—have committed to ending purchasing from sweatshops. In 1997, North Olmsted, Ohio

became the first city in the country to adopt a sweatfree procurement ordinance in the wake of a wave of media revelations linking major apparel brands and stars like Kathy Lee Gifford and Michael Jordan to sweatshops and child labor: “I am sure you have heard over the past year about clothing made under sweatshop conditions,” North Olmsted Mayor Ed Boyle announced. “Apparently many of the items produced in third world nations are done so through the exploitation of workers, under unsafe and unfair conditions and through the utilization of child work forces. The City of North Olmsted will not be a party to this.”¹¹

One hundred and eighty-three U.S. public entities have committed to ending purchasing from sweatshops.

Nationwide an inspired grassroots sweat-free movement emerged in a variety of places led by community organizations, people of faith, labor unions, high school students, and others. In 2001, Maine became the first state to commit to ending public purchasing from sweatshops as legislators joined a broad “clean clothes” coalition of human rights groups, small businesses, laid-off shoe workers, and others. To date, seven states, 38 cities, 15 counties, four Catholic dioceses, 118 public school districts, and three individual high schools have joined the movement to end taxpayer support for sweatshops.¹²

Internationally, the sweatfree procurement movement may be dated to 1949 when the International Labour Organization (ILO)

established the Labor Clauses (Public Contracts) Convention (No. 94) to ensure that public purchases of goods and services did not have the effect of depressing working conditions, an issue of high importance in the context of the massive publicly financed rebuilding efforts after World War II. In its preparatory work for Convention 94, the ILO studied the U.S. Federal Public Contracts Law, specifically referencing the labor standards criteria in contracts for procurement of imported materials. According to the ILO, the U.S. Government included a fair employment contract clause because of: “The belief that men and women who work under decent conditions produce more per person than those who work under less desirable conditions; that work stoppages and labor shortages are less likely under better working conditions and that loss of man hours from accident or occupational disease is reduced by a program of safety and sanitation.”¹³

In 2008, the ILO affirmed the continued relevance of Convention 94. The combination of a highly globalized economy and procurement practices that promote “competition at all costs among potential contractors” results in “bidding enterprises [that] compress labor costs which most often results in reduced wages, longer hours, and poorer conditions,” said the ILO in its analysis of government purchasing. “Governments should not be seen as entering into contracts involving the employment of workers under a certain level of social protection but, on the contrary, as setting an example by acting as model employers.”¹⁴

Thus, the sweatfree purchasing principles—that public spending should not encourage violations of labor rights and human rights, and that sweatshop exploitation ought not to be a competitive advantage—are well established in the United States and in-

ternationally.¹⁵ However, implementing those principles through standards and procedures that are both meaningful and feasible is more challenging than simply affirming them.

THE SWEATFREE CONSORTIUM

NO SINGLE STATE OR local government has the resources to monitor working conditions in supplier factories beyond their immediate jurisdiction and enforce sweatfree purchasing policies on its own. However, a large number of public entities committed to sweatfree procurement can facilitate policy enforcement by pooling resources, sharing knowledge and expertise, and coordinating standards and code compliance activities.

In November 2005, San Francisco’s Mayor Gavin Newsom called for a “consortium of public jurisdictions” to “better assure that anti-sweatshop policies achieve their intent.” Mayor Newsom proposed independent monitoring of supplier factories, coordination of policy enforcement, and consolidated purchasing from sweatfree suppliers.¹⁶ Several U.S. cities and counties (Albany, New York; Austin, Texas; Berkeley, California; Los Angeles, California; Lucas County, Ohio; Madison, Wisconsin; Portland, Oregon; Providence, Rhode Island; and San Francisco, California) have also called for collaboration with other public jurisdictions for more effective sweatfree policy enforcement.

In February 2006, Governor John Baldacci of Maine invited fellow governors to join a collaborative effort for sweatfree purchasing, calling for a Governors’ Coalition for Sweatfree Procurement and Worker Rights.¹⁷ In September 2006, Governor Jon Corzine of New Jersey and Governor Edward Rendell of Pennsylvania joined the Coalition. The governors agreed to develop:

- Best practices and procurement policies to end taxpayer support for sweatshop abusers, including binding codes of conduct, disclosure of supplier factories, independent investigations of factories, and remediation of worker rights violations;

- Cost-effective and reliable independent monitoring mechanisms and inspections of contractor and subcontractor places of manufacturing; and

- A purchasing consortium to facilitate procurement from sweatfree supplier factories.

The next significant step toward cooperation in sweatfree purchasing took place in Harrisburg, Pennsylvania in March 2007, when the Pennsylvania Department of General Services hosted a meeting of state and local government officials, factory monitoring experts, and human rights advocates. Organized by SFC, this meeting conceived the State and Local Government Sweatfree Consortium, merging previous state and city collaborative efforts in sweatfree procurement.¹⁸

In July 2008, shortly after the release of the “Subsidizing Sweatshops” report, Governor Rendell became the first governor to commit his state to participation in the Sweatfree Consortium. “State and local governments represent a major consumer block,” said Rendell. “By committing to stop the purchase of goods made in sweatshops we can drive companies to improve working conditions.”¹⁹

All the government entities that have expressed interest in a collective sweatfree pur-

chasing effort represent, so far, about \$30 million in apparel procurement. With more cities and states likely to join over the next year, there is growing momentum for those stakeholders to convene, determine a governance and action plan, and carry out collective sweatfree enforcement efforts.

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One important issue that remains to be resolved is the cost of sweatfree procurement, including the cost of enforcement and the price of apparel. Based on the WRC’s experience with university procurement, SFC recommends that participating entities contribute roughly 1 percent of their apparel procurement budget to the Sweatfree Consortium, subject to some adjustments, to cover enforcement and administration of the project. The increased prices that may result from higher labor standards in the apparel supply chain are at this point unclear. Maine and Pennsylvania have experienced almost no price increases after they started their sweatfree procurement efforts, while Los Angeles has projected an increase of 1.5 percent. Investigations of uniform pricing have revealed that prices may rise by 3 percent based on a

comparison of conventional and union-made items, but an investigation by Olympia, Washington found virtually no difference. Academic research has found that the labor costs in the apparel industry account for only 1 to 3 percent of the retail price, so a doubling of

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wages would not necessarily result in significant price increases. More work needs to be done in this area, but the overall price increase is likely to be in the range of these figures. In an era of strained public budgets, increased costs, however small, are an important challenge for furthering sweatfree procurement efforts. However, some jurisdictions such as Maine are experimenting with creative ways to get the industry to pay for increased costs by establishing vendor fees to cover monitoring and enforcement efforts. Several states are also making plans for cooperative contracting for both sweatfree apparel and monitoring services in an effort to lower the costs for each participant. Of course in tough financial times, one could also look at any increased costs in a positive way, as extra spending on sweatfree standards is a way to strengthen the economy through investments in better jobs.

Initially focused on the working conditions in production facilities that manufacture uniforms and other apparel for its members, the Sweatfree Consortium plans to take several significant steps to end public purchasing from sweatshops. First, it will create a database

of contractors and factories producing for the state and local government procurement market. Second, it will educate workers on their rights, work with an independent monitoring organization to investigate allegations of worker rights violations in supplier factories, and address code of conduct violations. Finally, it will identify and pre-screen both vendors and factories that are willing to take the high road to win public contracts, and also develop a joint purchasing program, in which public entities will have the opportunity to buy similar products in bulk, thus increasing their influence on vendors and factories while reducing their costs.

Transparency, independence, and fairness are the values that will guide the work of the Sweatfree Consortium. Vendors must be transparent in order to qualify for public contracts, disclosing the names and locations of the factories where the apparel sold to states and local governments are made. The Consortium's investigations of working conditions in supplier factories must be fully independent of the industry. Pre-screened sweatfree vendors and factories must be committed to fair purchasing practices and fair treatment of workers. Vendors (buyers) must give suppliers (factories) a fair deal, because without fair pricing of products, fair delivery schedules,

and fair and dependable business relationships, factories will have neither the resources nor the incentive to treat workers fairly. In return, factories must commit to full compliance in order to be eligible to supply members of the Sweatfree Consortium.

CONCLUSION

THE SWEATFREE CONSORTIUM CAN MAKE A significant breakthrough in efforts to address the problem of global sweatshops simply by leveraging the economic relationships of states and local governments with both domestic and overseas suppliers. By operating as a consortium, public entities can ensure that there will be no duplication of government budgets and staff efforts in conducting investigations of contractors and subcontractors. Vendors will benefit from more uniform sweatfree procurement rules across jurisdic-

tions that are members of the Sweatfree Consortium. At the same time the Consortium will provide vendors with easy access to a reliable and up-to-date information clearinghouse showing where they can obtain sweatfree products, and which manufacturers may be off-limits for sweatfree bids. Factories will benefit from fair purchasing practices, fair pricing, and consolidation of orders. And most importantly, workers will be able to enjoy and exercise their basic human rights and labor rights within a system of purchasing and production that expects decent and humane working conditions. Moreover, this campaign can also provide new models for how government procurement can advance a progressive agenda and for how the larger global apparel industry can operate without their traditional reliance on a sweatshop business model. ■

Notes

1. Los Angeles City Council member Eric Garcetti, "L.A. Passes 'No-Sweat' Ordinance 13-0," November 9, 2004 press release, www.lacity.org/gsd/sms/SupSweatFreeOrdinance.pdf/.
2. For more information, see www.workersrights.org/.
3. "WRC Assessment re: New Wide Garment (Cambodia), Findings, Recommendations and Status Report, March 6, 2008," www.workersrights.org/Reports/New_Wide_Garment_Report_3-6-08.pdf/.
4. For more information see www.sweatfree.org/.
5. The Organization for Economic Cooperation and Development (OECD) estimates. See "The Size of Government Procurement Markets," (OECD, 2002), available at http://www.oecd.org/document/63/0,3343,en_2649_201185_1845951_1_1_1_1,00.html (accessed June 21, 2008). Worldwide, public procurement is an estimated 15 percent of the world's GDP (figure cited in International Labour Office, "Labor Clauses in Public Contracts," (ILO, 2008), available at <http://www.epsu.org/>

IMG/pdf/Gen_Surv_Final_C_94.pdf (accessed June 21, 2008).

6. See, for example, the Davis-Bacon and Related Acts (DBRA) and the Contract Work Hours and Safety Standards Act (CWHSSA), available at <http://www.dol.gov/compliance/laws/comp-dbra.htm> (accessed June 20, 2008).
7. Harrison Institute for Public Law, Georgetown University Law Center, "Procurement & Decent Work," Draft of May 30, 2008, version 1a.
8. Sweatshop conditions have been documented numerous times during investigations of apparel factories by groups such as the National Labor Committee (www.nlcnet.org), and other labor rights groups.
9. For "Subsidizing Sweatshops," see www.sweatfree.org/subsidizing/.
10. For information on company responses to "Subsidizing Sweatshops," see http://www.sweatfree.org/docs/SFC_response_to_companies_708.pdf/.
11. "Our administrative policy," memo from Ed Boyle to all directors and division leaders, January 20, 1997. On file with SweatFree Communities.
12. For a full list of public entities with sweatfree procurement policies, see

<http://www.sweatfree.org/policieslist/>.

13. The U.S. labor clause for public contracts, similar to sweatfree policies today, emphasized contractors' responsibility to improve conditions among their suppliers, rather than cutting and running from problems. See: "Labor conditions in war contracts with special reference to Canada, Great Britain, and the United States," ILO, Montreal (1943): 55-56, quoted in "Labor clauses in public contracts," ILO, Geneva (2008): 3-4.

14. *Id.*, at p. 5.

15. Cities and provinces in the following countries have also committed to ending public purchasing from sweatshops: Australia, Belgium, Canada, France, Germany, the Netherlands, Spain, and Sweden.

16. Mayor Newsom's letter, sent to several dozen mayors including mayors of all cities that have adopted sweatfree procurement policies, is available at: <http://www.sweatfree.org/consortium/lettertomayors.pdf/>.

17. Governor Baldacci's letter to the

nation's governors is available at:

<http://www.sweatfree.org/consortium/baldacciletter.pdf/>.

18. The Consortium initiative is currently led by an interim Steering Committee consisting of government representatives from three states, two cities, and one school district as well as human rights advocates and labor rights experts. Affiliation is open to all public entities that: adopt a sweatfree code of conduct with strong protections for workers' rights in apparel factories; require contractors to publicly disclose names and addresses of production facilities; pay annual dues; and, as soon as contractually possible, require contractors to commit to fair purchasing with their suppliers. More information is available at: <http://www.sweatfree.org/whitepaper/>.

19. "Governor Rendell Signs Declaration against Government Spending on Sweatshop Goods," July 11, 2008 press release.