

Sweatfree Procurement Forum for Purchasing Officials

Thursday, May 28, 2009

Next forum: Thursday, June 25, 2009

Thursday, May 28, 4 pm ET / 3 pm MT / 2 pm CT / 1 pm PT

Call: 712-432-0800

Access: 946 641#

Duration: 1 hour

RSVP to bjorn@sweatfree.org is appreciated but not required.

Present:

Dan Shoper, State of Washington

Byron Johnson, City of Austin

Sam Dominguez, City of Austin

Farshid Yazdi, City of Los Angeles

Joe Signoretta, State of New Jersey

Dianne Berndt, City of Milwaukee

Henry Oyekanmi, City of Berkeley

Galen Leung, City of San Francisco

Carmen Herrera, City of San Francisco

Michele Reale, New York State

Colleen Gardner, New York State

Monica Wilkes, New York State

Greg Hopkins, State of Oregon

Bjorn Claeson, SweatFree Communities (facilitator)

Liana Foxvog, SweatFree Communities (note-taker)

Guest: Bob Stumberg, Georgetown Law Center

Topic: U.S. procurement and decent work.

Learn about the potentials and challenges of your work in sweatfree procurement as seen by one of the world's foremost legal experts on trade, procurement, and international labor standards. Prof. Stumberg's paper, produced in collaboration with the International Labor Organization's Washington DC office, is written primarily for U.S. government officials, but will be circulated widely among procurement officials internationally and professionals in the ILO, World Bank, and elsewhere. He has shared a draft with us to benefit from our insights prior to publication.

Announcements

1. Correspondence with brands re. *Subsidizing Sweatshops II*

SweatFree Communities is continuing engagement with brands following the release of its new report *Subsidizing Sweatshops II* (April 2009). SweatFree Communities has received responses from Safariland/BAE, Lion Apparel, Propper International, Timberland, and Rocky Brands. Please share any correspondence that you have had with the companies regarding this report with Bjorn Claeson at bjorn@sweatfree.org.

2. Reminder: new website

The new website for the Sweatfree Purchasing Consortium is www.buysweatfree.org. The website has the White Paper, downloadable membership form, and other materials.

3. Upcoming event: Consortium in-person meeting

Establishment of the Sweatfree Purchasing Consortium will continue at an in-person meeting at Lake Tahoe, Nevada, immediately prior to the National Association of State Procurement Officials (NASPO) meeting, September 21.

Presentation by Prof. Bob Stumberg

Introduction by Bjorn Claeson:

Bob Stumberg is Professor of Law and Director of Harrison Institute for Public Law, Georgetown University Law Center. His forthcoming publication is entitled "U.S. Procurement & Decent Work." Soon we will have our own work reflected in a significant piece of analysis that will reach procurement officials and labor rights professionals in the U.S. and around the world.

Summary of Bob Stumberg's presentation:

The purpose of my research is to study what is happening at the state and local level and look at the legal questions that arise, and then tell that story back to the International Labor Organization, which in turn will share with its stakeholders, which include governments, business, and labor.

The way we spend money will change the way the world works. You all know that – that's why you're on the call.

Many of the things that you purchase in the apparel sector are made in ways that violate international law. It's against international law to force people to work under harsh, unsafe conditions; to pay below the minimum wage; to violate rights to freedom of association; and to make children work. And yet that's the way the world works. You are put in an interesting position in which many of the products you buy were made in ways that violate international law.

The International Labor Organization (ILO) is a tripartite organization – it has to reflect the interests of government, business, and labor. The labor standards adopted by the ILO are highly credible because all three parties have agreed to them on an international scale. So far, the ILO has adopted 180 Conventions, many of which are very detailed.

In 1998, the ILO adopted "core labor standards": freedom of association and the right to collective bargaining, elimination of forced or compulsory labor, abolition of child labor, and elimination of discrimination regarding employment and occupation. These are part of the ILO's constitution, so all of ILO's 181 member countries have agreed to these standards. Therefore, there is an international law basis to the labor standards in sweatfree procurement policies, and many sweatfree procurement policies make explicit reference to ILO standards.

Government procurement amounts to 82% of exports. In the U.S., procurement accounts for 20% of Gross Domestic Product (GDP). The majority of that is state and local procurement, which is 13% of GDP.

When you buy something, do you know if it was made in compliance with international law? Well, you have the purchasing power to make that happen. There are a lot of sectors where governments buy a lot of stuff – for example, electronics sector, steel sector, and production of food commodities. Once the mechanisms for implementing compliance with labor standards are worked out in the apparel sector, they can be applied to these other sectors.

Even though labor cost is a tiny percent and less than the profits companies typically make, that tiny percent can make the difference between success in the marketplace or not. Without the presence of effective sweatfree procurement practices, companies that violate labor standards have a competitive advantage.

The ILO's Better Work program is organizing in producer countries a consortium that monitors compliance with labor standards on a micro level. It makes available information on compliance via its website. Companies are finding that there are indeed buyers that are willing to pay a few pennies more for complying with labor standards. What you're doing is participating in a market process for promoting labor standards rather than a top-down regulatory process for doing so.

So how is it that governments as purchasers can promote good labor standards, and does it need to be complicated? That's the work that the Sweatfree Purchasing Consortium is taking on.

U.S. federal law includes thresholds (labor standards and prohibitions of forced labor and child labor) for receiving certain tariff preferences. When you adopt labor standards for purchasing you are acting consistently with those federal laws.

The US-Peru Free Trade Agreement requires compliance with core labor standards, so that requires you to respect labor standards in procurement.

Regarding the WTO Government Procurement Agreement, there's an argument that requiring labor standards in procurement conflicts with the GPA. It requires governments to state technical specifications in terms of performance rather than design or descriptive characteristics and would appear to preclude considerations of compliance with labor standards. However, the GPA includes a general exception for measures necessary to protect public morals, order or safety. There is a very strong case to be made that core labor standards fit within the scope of public morals and order.

The ILO is trying to boost visibility of countries that comply with labor standards. While they are working on the supply side, the question is who is organizing the demand side. Think of supply and demand as two hands clapping. The loudest clap would be if those of you who

work on the largest part of the demand side (procurement) would meet what the ILO is doing on the supply side. You would change the global economy.

Bob asks the group:

Are you finding resistance on the grounds that sweatfree procurement is not justifiable with taxpayers- money? Does anyone raise legal questions or concerns that requiring compliance with labor standards is in violation with legal or trade standards?

Greg: We support the moral grounds, but the struggle is how to accomplish this. If you look all the procurement that Oregon is doing, the amount that is coming from sweatshops is very small, so not high priority. Are we superseding international law with terms and conditions of a contract? A contract can't be broader than the U.S. Constitution or international law. There's been a lack of clarity on what supersedes what. If you have someone in Portland, Oregon, who is part of a supply chain, and they are turning around to someone in their supply chain and they have already signed a contract, how does that play out? How wide and how deep is the responsibility? You need to have a flowchart/diagram of the supply chain.

Bob: The problem that you describe is the reason for existence of the ILO standards and the specific ILO conventions, for example, Convention 94 (www.ilo.org) on contracts. The purpose of that Convention is to give you language that you can cut & paste into contracts. If someone raises the question about this, you can say it *is* international law. Suppliers may need to go through a bidding or rebidding process to know the standards they need to be held to.

Farshid: What if a sub-sub-supplier says they would like to comply with the terms of the contract but they don't have enough orders to comply with the non-poverty wage? This happened with the City of Los Angeles. The city was willing to comply, but the factory was competing with too many other factories, so by improving their wages they would lose their competitive advantage.

Bjorn: In the apparel industry, one of the root causes of the violations on the factory level is that the Wal-Mart style of business drives down the cost at any price to the workers. The big brands tell us that they expect the factories to comply with the law. But the truth is that they are not paying them enough to comply with the non-poverty wage. It also costs money to limit the workday to hours that are legally permissible and to have legal health and safety conditions. So what do you do? Move away from a factory-by-factory model to changing the purchasing practices of the companies. If you change the purchasing practices of the companies you will make huge strides in changing the labor conditions on the factory level.

Bob: Imagine a slow motion clap. Bjorn is describing the demand side hand moving closer. The ILO strategy is the supply side hand. The two hands are coming closer together. The ILO also works with governments to ensure that factories allow access to factory inspectors. The ILO also provides space for research and reports on its website. If you know that there are certain countries seeking to promote their economic development by ensuring workers

have a living wage – the more there are similar standards, the more the hands will come together rather than missing each other. The solution that seems most practical is that people doing work on each end do so with awareness of each other.

Bob: Organizing a Consortium has two huge values. One is to tackle the cost in terms of creating a new purchasing mechanism. You achieve an economy of scale for bidding that is likely to grow so that you will be able to sustain a supply chain with non-poverty wages and compliance with labor standards.

Farshid: It will be helpful to have convincing examples for purchasing officials to manage this change in this transition period. Will appreciate that sort of support from the ILO or the Sweatfree Purchasing Consortium. On the second page of Bob's paper there is a reference to the need to show convincing examples. It will help those in the field to have these examples in order to overcome the challenges that they are facing.

Bob: Eight of the ILOs conventions deal with the issues raised by the core labor standards. See page 48 of the paper for additional conventions on child labor, wages, and working conditions. You can use those conventions for persuasion. Show that 181 countries have signed onto these standards, including countries where production facilities are located; you can refer to these standards in your ordinances; you can refer to these in your contracts.

Byron: We would like to have a system to purchase apparel jointly from sweatshop-free sources.

Liana: That is something we are supporting. If anyone would like to help take the lead on this or has a contract coming up that could be used for cooperative apparel purchasing, please contact at bjorn@sweatfree.org.

Bob, in conclusion: The ILO Convention on labor standards in procurement is even more relevant now than when it was adopted. At that moment in history – during rebuilding after World War II – it was recognized that it could have a lot of impact. Now we are in a similar moment in which governments are in a position of trying to use procurement as a vehicle for economic growth.

Suggestions or corrections to the paper may be sent to Prof. Bob Stumberg at stumberg@law.georgetown.edu

Next meeting

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