

Workplace Fairness

What can we do?

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ILR, Cornell University, Ithaca. NY

I am glad to be back at Cornell

Taught Arbitration with Chuck Rehmus when he was Dean

Papers in Catherwood Library

Saul Wallen Fellow supporter

Cornell group at MVY

Used to have Non-stops to Boston

Promise to have you out in time to get first election returns

I am partial to YLS Graduates becoming Presidents (despite Alito and Thomas)BUT

“ I hope that HLS Obama will wrap it up!!

Paul Weiler says Obama was his best labor law student

Good segway to the topic, the candidates discussion re NAFTA.

Repeal NAFTA? NOT! Wont bring jobs back to Ohio, and Texas is thriving from invigorated Mexican economy. Lubbock population tripled with new port

Can't keep jobs with tariffs, sell high abroad, and buy cheap?

World won't buy our products,except when weak \$

We proclaim need for raising standards and income in the world

We now realize our security depends economic upsurge abroad

Global world, US MFG to Service lower incomes, buy cheap, buy

Walmart (union people do)

When I was a child, before World War II, it was relatively simple. The steel companies and big three auto companies produced for the US market and there were no foreign competitors, even for 10 years after World War II that was the case. The United Steel Workers and United Auto Workers entered into annual negotiations, they reached agreement, the big three passed on the increased cost to the consumer in the higher price of steel and autos and the workers enjoyed job security and an ever better way of life. In 1954 one out of every three workers (34%) belonged to a union which provided them workplace security, health care, pensions and a growing stake in the American Way of Life were unionized. We produced steel for the entire world from our mills in Pittsburgh and autos from Detroit, management and labor alike benefited from that world trade.

But also after World War II the US recognized the needs to provide jobs and industrial development in the countries we had defeated, Germany and Japan to create new markets for us, and through the Marshall plan we helped to develop their economies. And American companies began to invest in steel companies abroad and the German and Japanese auto companies began to expand and before long, benefiting from their native country's lower wages, government provision of health and pension benefits and open markets began to sell their product in the US. Our early reliance on tariffs to protect against foreign competition in the US soon shifted to recognition that their tariffs would preclude our selling products overseas and we began to enter the era of free trade.

That shifted the focus from the US internal market to the global market, and we can never turn back.

I was born in Lynn Massachusetts which used to be called the shoe capital of America. Then as the population and market moved west, the shoe

industry moved to St. Louis. Now it has left the United States and most of our shoes and sneakers are made overseas. 85% of the worlds footwear is made in Asia. Steel, autos, shoes, textiles...all those industries which made up the bulk of the US manufacturing sector developed overseas competition and the orders went abroad. And the unionized US workers in those sectors saw their jobs go overseas as well as foreign competitors began to manufacture at lower costs for the US markets. This year Toyota is expected to pass General Motors as the largest producer of cars for the US market. Levi Straus which had 64 factories in the US as of Jan 2004 had none. In 2004 we lost 406,000 jobs to offshore outsourcing, double the number in 2001. 83% of those lost jobs are in manufacturing.¹ It is logical for employers to move to those areas where they can maximize their profits, by employing people at less than they would pay at home.

Trade unions in the United States brought their members into the middle class, with tuition bills, second homes, credit card bills and other deterrents to their going on strike. And union membership which was so strong in manufacturing is now bulked up in the public sector and in the service sector. Indeed people who were working in those manufacturing jobs are now working in McDonald's and Wendy's at one third the pay, with wives working as well and often working second jobs, struggling to maintain the middle class life style they have long been induced to emulate. And those negotiated benefits of employer paid health care, pensions and the like are but fond memories, even for those in the unions.

The unionized workers has contractual protection against the unilateral whims of management over negotiated working conditions and unfair discipline and discharge as well as statutory protection on hours, safety issues and against discrimination. We tend to get brainwashed by the

¹ Shifting Production and Services to Foreign Locations, website of Manufacturing and Technology News Oct 21, 2004 Vol. 11, No. 10.

publicity against powerful unions running the country, but when one realizes that less than 8 out of 100 private sector employees have those contractual protections (which I might note management voluntarily agreed to provide them through collective bargaining), we get a sense of the conditions which the remaining 9/10ths of the workforce, some 110,000,000 workers contend with. Sure they have the statutory rights, but scant prospect for invoking them for fear of retribution by their employers.

But these non unionized workers are losing their jobs as well to outsourcing and overseas factories. We in the United States, unionized and not, take for granted statutory protections against child labor, forced labor, gender discrimination and at least the right to freedom of association and the right to engage in unionization and collective bargaining. These jobs are moving overseas to areas where those rights do not exist, even though they may be found on paper. The United States as well as Europe is losing jobs to the developing world. We have our collective bargaining and the European countries have the worker protection in statute as well as through works councils and labor courts but employers seeking to avoid fair labor conditions are not fleeing to Europe they are fleeing to countries where virtually all such statutory protections are lacking or unenforced.

Jobs go where maximum profits are available and its not just jobs leaving the US. At the same time we sometimes also become the beneficiaries of globalization. Look at the factories of Mercedes Benz and BMW who have found a way to avoid the high social costs of labor such as statutory holiday and vacation and severance pay, govt paid health insurance for all in Germany and Austria and who have fled to the south of the US to manufacture their automobiles at greater profit with much lower taxes. ... a clear loss of jobs for German craftsmen but new jobs for Americans, even if with minimum benefits and protections. Honda, Nissan and Toyota have also opened plants in the US to avoid the higher operating costs of keeping

those jobs at home in Japan. As a consequence workers in Tennessee, Alabama, South Carolina and Mississippi now have jobs in factories replacing those of farming, and the textile and apparel industry which have moved to Central America and South East Asia. Last fall saw 63,000 showing up to apply for 2000 job openings at the new Toyota factory in San Antonio. Cheap land, interstate highways, seaports, tax breaks, job training and in the tradition of the south no union problems to contend with,² are strong attractions. The new order for 400 aircraft refueling tankers is but the latest example. Our own government instead of keeping the work with Boeing, has contracted through Northrup-Grummon to Airbus in exchange for the promise of an assembly plant in Mobile They may not be there forever but they are signs of the globalizing world. Employers alight in the place where they can maximize their profits and when they can do better elsewhere they move. That is what happened to the US TV, telephone, microwave ovens, refrigerator, textile and apparel industries. And as the jobs go overseas and provide income, meager as it may be for overseas workers and they gain access to wages and access to better living standards, and want toasters and TVs and ultimately automobiles, the factories will maximize profits by moving to those new markets. But workers here and abroad should not be forced to work under exploitive conditions so that those profits can be maximized, at their expense and on their backs

As these jobs flee overseas our officials offer pious statements that we want to help workers in these countries as a crucial element of world economic development as well as to facilitate the spread of democracy while at the same time trying to assure that they do not unfairly take jobs from the US.

²Herald Tribune Saturday May12, 2001, page R

Jobs have fled to Central America, to South East Asia, and increasingly to China.

And the evidence is rife of exploitive conditions. In 2002, El Salvador exported \$1.6 billion worth of apparel to the US making it the eighth largest apparel exporter to this country. Many of the countries 229 apparel factories providing 79,000 jobs did not provide basic safety equipment and fired workers unless they agreed to long hours of overtime at regular wages. The Ministry of Labor had only 37 labor inspectors for those factories as well as coffee plantations, constructions cites and other places of business in the country of 6.1 million. Workers were required to put in extra hours of work without extra pay, if they did not meet quotas. And of course they fired workers for efforts to form unions. None of the 229 factories had a union.³

And where does worker protection come from? From national laws requiring national enforcement. There is no international law governing workplace conditions. There are however international standards which provide the norms for countries, and hopefully companies to follow.

In 1919 the League of Nations created the International Labor Organization, a tripartite international government which has established norms for fairness at the work place. Its international conventions have become the international standard for protecting workers. Unfortunately, those countries which have the jobs have been lax in adopting the standards, while those countries which lack the jobs or any interest in enforcing workplace rights have been quick to adopt them all. There are about 200 such conventions, but eight, termed ILO Fundamental Labor Rights, have become the focus of the workplace rights movement. They include C 87 and C98 Freedom of Association and Protection of the Right to Organize

³

and Bargain Collectively, C29 and C 105 Abolition of Forced or Compulsory Labor, C138 and C182 Abolition of Child Labor and Minimum Age for Work, and C 100 and C111 Equal Remuneration and Elimination of Discrimination in respect to Employment and Occupation. Of the 8 conventions the US has adopted two. But we claim to endorse these conventions and expect other countries to abide by them.

Additionally Article 23 of the 1948 Universal Declaration of Human Rights⁴ provides

- 1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment**
- 2. Everyone, without any discrimination, has the right to equal pay for equal work**
- 3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented, if necessary by other means of social protection**
- 4. Everyone has the right to form and to join trade unions for the protection of his interests.**

The United States has been eager to negotiate with other countries for free trade zones to assure the factories in those countries will have access to the US market without tariffs as we have access to their consumers. And the Clinton Administration did undertake to provide the ILO's fair labor conditions in its Free Trade Agreements. But the Free Trade Agreements with Canada, Mexico (NAFTA), Central America (CAFTA), Singapore, Chile,

⁴ UN Universal Declaration of Human Rights GA Resolution 217 A UN GAOR 3rd session (1948)

Australia and Morocco provide no provisions for workplace fairness except for our Free Trade Agreement with Jordan which does include the labor standards. All such agreements proclaim their protection of intellectual property rights of the management, but none protect the workers rights to fundamental standards of workplace fairness. Most labor advocates are not opposed to globalization but seek to achieve it with fair workplace conditions. There are two arguments in favor of such provisions: First, labor rights are human rights and the trade agreements provide an ideal context for the promotion of international human rights. Second it is unreasonable for US workers to compete against foreign workers working under repressive governments and employers who are subjected to low wages and egregious working conditions in which they have little or no voice for change⁵.

The Clinton administration in 1994 did take a big step toward workplace protection in the garment industry when it extended the Multi-Fibre Agreement enacted by the GATT/WTO in 1970's to eliminate quotas on imports of Garments from Cambodia, Bangladesh, Viet Nam, Sri Lanka and Indonesia in exchange for the governments of those countries adhering to the ILO Core Labor Standards. In Cambodia the result has been the creation of 500 factories producing for Gap, Nike, Adidas, Columbia, Northland employing 250,000 workers who are protected even to the extent of having collective bargaining and a Cambodian Arbitration Council with union and management endorsement for resolution of workplace interest and rights disputes. That 10 year Multi Fibre Agreement expired Dec 31, 2004 amidst fear that with China's entrance into the WTO, those factories would close and move to China, where those labor standards are largely ignored. But it did not happen, and the companies expanded their factories

⁵ Marissa Anne Pagnattaro, *The Helping Hand in Trade Agreements: An Analysis of and Proposal for Labor Provisions in US Free Trade Agreements* , 16:4 Florida Journal of International Law 855-856, 2004

because they found themselves able to negotiate improved productivity with their unions and that with arbitration and no strikes they were better able to meet their production and customer deadlines without disruption, problems they feared if they moved to China. But since 2004 China has become the main player for outsourced manufacture, and an ever expanding competitor for world trade.

Returning to my comment about the demise of the US Shoe industry, the town of Dungchuang not far from Hong Kong now has 2,000 factories, employing 300,000 employees and producing 1 billion shoes a year, 600,000,000 of which are exported. China last year exported 6 billion pairs of shoes. In 2004 it provided 55% of the worlds shoes and sneakers, an increase in production of 74% in two years.

And moving up the ladder from mere assembly to total production and now into design and marketing and knowledge intensive jobs and off shore servicing.

The wage differential, coupled with modern factories, cooperative governments and increasingly open world trade are forcing those wishing to remain competitive to move to the developing world, and of course in staggering numbers to China. It also produces more than half of the worlds TV sets, refrigerators, air conditioners and microwaves. China is now the biggest furniture exporter in the world with 50,000 factories producing furniture exports that are increasing 30-40% per year. It produces 81% of the printed circuits. More computers than US. And has gone from 17% of worlds steel production in 2001 to 36.4% in 2007 while the US dropped from 10% to 7.2 % in the same period. China and India now produce 47% of the worlds cotton (US 10%). National laws of China do little to protect the workers, as we know from our daily reading of air pollution

water pollution, toxic spills and the like with ramifications for the fish we eat and the medicines we take.

The trade union is hardly a protector of the workers, since the All China Federation of Trade Unions, created to monitor workers in the public sector and now anointed by the government to be the union for the burgeoning private sector, is funded either by government or employer. There is no right to freedom of association, let alone the right to engage in collective bargaining. Independent unions are prohibited in China. The role of governments in South East Asia (except perhaps for the Multi fibre countries), and Central America is scarcely better. Governments are anxious for the foreign investment, particularly for the income and jobs it brings to its citizens in societies where the agricultural sector is under increasing pressure. National labor laws are minimal, and lacking enforcement, and even if used are often overwhelmed by the propensity for graft and corruption in too many of these marginal economies.

U.S. and European labor laws obviously have no impact beyond national borders, and there is of course no binding international law. The ILO conventions are guidelines, norms, frequently adopted seldom implemented. And to the extent they are dependent on national government enforcement are subject to the same pressures of corruption as governments are held hostage to the foreign companies who can pick up and move their factories to a more receptive government environment at more favorable lower wages and sympathetic law enforcement. Nicholas Kristoff in a column in the New York Times described the lot of workers in South East Asia. Nike had 35 factories in Taiwan, 49 in South Korea, 3 in Pakistan and 2 in Cambodia. When the BBC reported that 3 girls under 15 were working in one of the Pakistan factories Nike closed that factory and laid off 2000 workers.⁶

⁶ New York Times June 25, 2002 p A27.

And US unions have little clout abroad, even less than they do at home. It is heartening that some unions are providing assistance to the trade unions in other countries. A representative of the SEIU works with the garment and hotel unions in Cambodia, with a notable respect for the need to conform to workplace employer rules so that the employers are encouraged to work cooperatively with the Cambodian workers while shunning the appeal of crossing the border to China.

Is there hope? Yes, and it has not been initiated by the ILO, by the unions or by the US or other national governments. It has come from campuses like this. It was student initiatives which undertook to tap the fact that universities purchase more than \$5 billion dollars a year in T shirts, sweatshirts, caps, sneakers, sports uniforms under licensing from Nike, Reebok, Champion, and Russell. In the summer of 1997 a group of summer interns at the union UNITE! struggling with how to minimize the damage caused by textile factories fleeing abroad, undertook a program to influence that \$5 billion dollar market by insisting that the universities take responsibility for the conditions under which their licensed apparel was being made by adopting Codes of Fair Conduct for workers in those overseas plants. The next year students from 30 colleges and universities formed the United Students against Sweatshops. The effort which has grown to 200 colleges and universities was opposed by the universities, their contractors, by wealthy alumni donors and certainly by the companies which made the products. Phil Knight President of Nike with 565 factories employing 500,000 workers in 46 countries withheld a \$30 million contribution to his alma mater the University of Oregon until they left one of the monitoring groups, the Workers Rights Consortium (www.workersrights.org), to move to one that he believed was less confrontational, Fair Labor Association. Nike, in fact helped to finance it, as did Reebok. Adidas, Levi Straus, Gear for Sports Liz Claiborne and

Patagonia, all of which have from time to time come under anti-sweatshop attack. But FLA has also gained the support of the Lawyers Committee for Human Rights, the International Labor Rights Fund and the National Council of Churches⁷. There are now several organizations working to improve the working conditions in factories abroad. The Fair Labor Association has joined the USAS, the Worker Rights Consortium, China Labor Watch (www.chinalaborwatch.org) and the National Labor Committee (www.nlcnet.org) in coordinated campaigns. These and other groups have rallied the NGOs such as Greenpeace, Save The Children, ACLU, CARE, Amnesty International and other groups to push for the development of Codes of Conduct to pressure employers into providing fair working conditions. The anti-sweatshop movement has put many apparel makers like GAP and Kathie Lee Gifford on the defensive by picketing in front of stores holding sit ins at colleges and bombarding the companies with letters. The movement has grown to include churches consumer groups, human rights organizations. The American Group, SAI (Social Accountability International) 8000 (www.cepa.org), composed of NGOs, trade unions, consumer groups, government agencies and employers such as GAP, Chiquita Brands, Timberlands, L.L.Bean, Dole, and Avon is working toward the development of a uniform code of conduct for foreign manufacturers, and currently conducts training programs for employers in the ILO Standards and the UN Human Rights Conventions. It issues certification of overseas factories and has a monitoring wing to assure adherence to those standards.

The public, consumer, and student initiatives have helped to focus on the problems of workers in runaway shops, the sweat shops we all deplore, wherever located. The effort is crucial not to bring jobs back but to assure that factories overseas are not unfairly taking work away by using workers

⁷ Apparel Makers Back New Labor Inspection Group Wall Street Journal April 10, 2001, p. B1

unfairly or exploiting them for profits ever bigger profits. This week on the web site of the National Labor Committee is an article on a New Balance factory opened in China on January 16 of this year. Workers are paid 40 cents an hour, \$.2.55 per day \$12.92 per week. New workers are charged \$6.19 for the paper work involved in their hiring, and charged two days wages for their uniforms which they have to return on quitting their jobs without any reimbursement. The Company's World Wide Code of Conduct which permits membership in trade unions has been altered in the Chinese translation to permit membership in social organizations, but not unions. Employees are docked a days pay for being tardy, or walking off sidewalks at their dormitory areas, three days pay for talking back to supervisors and a weeks pay for disseminating rumors. They work 6 days of 10 hour shifts. The web site lists the foregoing and then challenges New Balance to correct their practices to conform to international labor standards, or risk wider adverse publicity.

And these efforts are paying off. It was not unusual to find children 14 working in Honduras factories 5 years ago. Now no one is employed under the age of 16. In Villa Altragracia in the Dominican Republic, when workers first tried unionizing the BJ and B hat factory in the 2001 it threatened to shut down and move rather than negotiate. The 20 unionizing workers were fired, prompting several interventions from abroad. They were rehired, to collect trash. More pressure ensued from stateside groups lobbying the brands that had contracts with the factory. United Students Against Sweatshops sent thousands of letters to the factory, as well as student volunteers to help the union organize. University officials, brand executives and officials from a consortium of campuses unions and students visited with the union and factory managers, and convinced them it was not in their interest to allow this to continue The factory came to agree and published a letter pledging neutrality, no intimidation, and that the workers had the right to decide on whether to have a union. Two years later, the

factory was still around, and there was a union in it and it recently negotiated a contract providing for raises, scholarships and other benefits that were unheard of among the countries 500 foreign owned plants. The pressure from students on their university purchasers led the company maker of hats for Nike and Reebok and for schools like Penn State and the University of NC to rethink their priorities and to allow change.⁸

ILO Conventions do establish an international floor for fair working conditions, and employers who adhere to its precepts are competing on the level playing field that the world expects. USAS, Fair Labor Association, and SAI 8000 are making an important contribution not only by pressuring employers to adhere to the international norms, but also by alerting consumers to the exploitative conditions under which most workers in the developing world are required to labor. But consumer interest, as important as it may be touches but a small percentage of workers in factories which have fled to the developing world.\The unfortunate reality is that consumer goods, which is the focus of the student/consumer initiated efforts encompass only 5% of world trade.

How can we get beyond this to the rest of the wide range of factories springing up in the developing world, and particularly in China. Tariffs don't work; the consuming public is not terribly interested in whether the metal components of coiled wire or fencing are made under fair labor standards. Local national government and even the governments mandated union in China don't care enough to jeopardize the work opportunities such sweatshop factories provide and the potential for graft they generate.

All that I have described is the mega approach; what can we do as individuals? Google any of the organizations I mentioned earlier and see

⁸ Latin Sweatshops Pressed by US Campus Power NY Times April 4, 2003,p.10

how you can help them internationally on labor standards or even on programs of living wage here at home. And of course when you go shopping you might ask the store keeper “Will you direct me to the made in the USA section?” I fear they don’t exist, but you can educate yourselves to purchasing from countries and companies which adhere to fair labor standards for their employees.

We can not get those manufacturing, textile and garment jobs back to the US. We should get some solace out of the fact that those jobs are providing new opportunities for workers in developing countries, helping to move them out of poverty. When you speak to the Dell operator in Bangalore, remember he is on that ladder to a better life, a life which will enable him to earn the money to purchase the products we still do manufacture in the US. The African Growth and Opportunities Act passed by Congress a few years ago has already resulted in an increase in textile imports to the United States. For Madagascar a 120% increase, for Nigeria and Malawi a 100% increase and for South Africa a 47% increase and those are real jobs for real people⁹, even if they are unprotected by our push for fair labor standards. For the laborer in a sweatshop in Bangladesh who has given up on trying to earn a living farming on plots that continue to be flooded by rising seas, and turned to factory work a bad job is better than none. Such people need our help. If your involvement can improve the lot of any one of the 30,000,000 workers in Southeast Asia currently working in the garment industry, you have done a good deed. And if you spread the word to other students about the conditions in those areas and about the plight of Africa which is still relegated to exporting raw materials with little prospect of investment until its health and civil strife problems are properly addressed by the developed countries, you have helped raise society’s consciousness of these problems. And that is a good deed. And perhaps you may find a career in helping with these institutions and getting your

⁹ Protesting for Whom, Op Ed by Thomas Friedman, New York Times. (date to be verified)

hands dirty in helping solve those problems. And that would be a good deed. And I can tell you candidly it is a very selfish good deed. Because as we all know, you help yourself while helping others.