US appeals court rejects Brooklyn garment workers' lawsuit against union

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In a ruling issued May 23, the United States Court of Appeals for the Second Circuit upheld a previous court decision rejecting a lawsuit brought by a number of Brooklyn, New York garment workers, who charged they were not fairly represented by their union.

The lawsuit was initiated by a group of employees at Mademoiselle Knitwear Inc., which in 1989 had about 780 mostly immigrant workers, but is now out of business. One of the main reasons for Mademoiselle's bankruptcy was the loss of its contract with Liz Claiborne, the wholesale and retail apparel company. Liz Claiborne decided to obtain its supplies from manufacturing companies utilizing cheaper labor in Britain, Australia and the Far East.

The displaced workers are members of Local 155 of the Union of Needletrades, Industrial and Textile Employees (UNITE). The lawsuit names as defendants Local 155, the parent union UNITE and the union for the Claiborne workers, Local 23-25.

The lawsuit involves a procedure in place in the garment industry since the 1950s by which unions and affiliated locals collect “liquidated damages” from unionized employers who contract out to nonunion suppliers. Corporations often pay these fines when they conclude they can make more by exploiting foreign labor, even after paying off the union.

UNITE, representing 300,000 workers, collects such money on a regular basis. Union spokesmen have admitted that UNITE makes as much as $10 million per year in liquidated damages, about 20 percent of its annual budget. However, in a separate lawsuit against the union brought by the Mademoiselle Company, it was calculated that the actual figure is $16 million, more than the union collects in annual dues payments from all of its individual members.

In the Brooklyn garment workers' case, the displaced union members were offered a total severance package of $750,000, which amounts to less than $2,900 for each worker. In order to obtain this money, the workers had to sign a document pledging not to take any legal action against UNITE or Liz Claiborne. Approximately 50 workers refused to do this and were denied their share of the severance money.

The union, on the other hand, received $13 million up front from Claiborne, with another $7.5 million to be paid over the next three years. Three immigrant workers, Chun Hua Mui, Josefa Gantes and Fong Tse Tsui, initiated the lawsuit on September 30, 1997 against both UNITE and Claiborne. The goal of their class action suit was to utilize the $20.5 million payoff to the union as a fund for all the displaced Mademoiselle workers. The workers charged union officials and Claiborne with bribery.

Judge Harold Baer Jr. of the Federal District Court in Manhattan issued a preliminary ruling in the summer of 1998 in which he dismissed much of the plaintiffs' lawsuit. Although the judge did allow depositions to proceed, he made it very clear that it was unlikely the workers would win.

In that decision, he stated, “In order to prevail, the plaintiffs must show that the conduct of the unions...[was] arbitrary, discriminatory, or in bad faith. Undoubtedly, it will be difficult for the plaintiffs to ultimately prevail on the breach of duty of fair representation claim.”

In response to the charge of bribery against the union and the company, Judge Baer said he would refer the matter to the US Attorney's office for investigation. However, the general counsel for Claiborne explained at the time that the federal prosecutor had been aware of these charges for over a year and taken no action.

In the summer of 1999, the trial judge issued a ruling

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in which he concluded that the national union did not violate any “duty of fair representation” under federal labor laws. The appeals court on May 23 upheld this ruling, claiming that the national union, UNITE, and Local 23-25 were not legally obligated to protect the Mademoiselle workers. The court ruled that the only bargaining unit legally responsible was the workers' own unit, Local 155. But this local played no role in negotiating the payoff, the court continued, so it too could not be held legally liable.

Commenting on the ruling, Howard Rhine, the lawyer representing the Mademoiselle workers, said, “What this court is saying is that no one is responsible.” Rhine said he was considering an appeal to the US Supreme Court.

The courts have long given unions wide latitude when ruling on whether or not union officers breached their legal obligation to “fairly represent” their members. Workers rarely win cases against corrupt union officials who collaborate with management, sign sweetheart contracts, take payoffs and suppress the rank and file.

This places union members in a Catch-22 situation. On the one hand, federal labor law recognizes the unions as the only legal representatives of the workers, and there are legal restrictions making it difficult for workers to seek relief for grievances against management through the courts. On the other hand, the unions have, in practice, virtually no legal obligation to conscientiously represent the interests of their members.

The Brooklyn garment workers' case raises another important issue. For years the AFL-CIO and its affiliated unions have denounced the export of American jobs overseas. But this case demonstrates that the labor bureaucracy's interest in preserving jobs within the US is a subordinate function of its overriding concern—the defense of its own bank accounts and privileges.

During the 1970s and 1980s, the International Ladies' Garment Workers Union and the Amalgamated Clothing and Textile Workers Union—which merged in 1995 to form UNITE—organized no strikes or other forms of struggle against the destruction of tens of thousands of garment jobs. Instead they collaborated with the textile and garment employers in a chauvinist campaign against imports. The unions were allied with such anti-labor employers as South Carolina magnate Roger Milliken.

Behind the scenes, union officials were collecting “liquidated damages” payoffs from the employers to offset their loss of income due to declining union membership and dues revenue. At the same time they were helping the employers impose pay cuts on those workers “lucky” enough to hold onto their jobs.

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