

Watchdog group helps keep janitorial contractors clean

Leonel Sanchez, Jan 28, 2004

When a Vons cleaning contractor vanished last year without paying dozens of immigrant janitors, a watchdog group funded by other cleaning contractors stepped forward and helped the janitors file claims with the California Labor Commission.

Vons ended up paying the workers, including several from San Diego, nearly \$115,000 that it withheld from the contractor's final payment -- and the watchdog group added another victory to its unbroken record of successful claims.

The Maintenance Cooperation Trust Fund was created in 1999 to do what the government has been unable to do: Rid the janitorial industry of unscrupulous contractors who intentionally violate labor laws so they can underbid legitimate contractors. Often this means taking advantage of the industry's large immigrant work force.

The group, modeled after labor compliance programs in the construction industry, targets the worst violators, usually fly-by-night operators who don't have offices and pay their workers flat rates in cash to avoid paying taxes and other required expenses.

More than 12,000 janitorial companies operate in California, but only half are registered with the state as legitimate businesses.

"Illegitimate contractors are stealing millions in unpaid taxes, and they're huge liabilities for those responsible employers who are abiding by the rules. They're losing their right to a fair marketplace," said Lilia Garcia, executive director of the Maintenance Cooperation Trust Fund.

The watchdog group was formed by a handful of union contractors tired of losing contracts to cleaning companies that submit low bids because they don't pay minimum wage, overtime or payroll taxes or pay for worker's compensation coverage.

"(Not paying) workmen's comp can give a contractor a 40 percent advantage," Garcia said. "But it's a high-risk industry. Janitors use heavy machinery and chemicals."

Forty union contractors belong to the organization, including some whose janitors clean retail and office buildings in San Diego County. Members pay one cent for every hour worked by their employees.

It's part of the cost "to level the playing field," said Dick Dotts, president of Los Angeles-area based Diversified Maintenance Services and a member of the watchdog's board of trustees.

Since 1999, the group has interviewed more than 2,000 janitors, investigated 300 cleaning companies that service commercial, medical and industrial buildings, and helped janitors file wage and labor violation claims against 100 of them.

"We've never lost a claim," said Garcia, who is based in Los Angeles. The group also has offices in Santa Ana and has been sending investigators to San Diego twice a month.

Collecting back pay is another story, however.

Many contractors disappear when successful claims are made against them, she said, and more than \$1 million in penalties have gone uncollected in the past year.

The group's five investigators rely on tips from employers, unions and workers.

Former janitors

"Our secret ingredient is that we actually have former janitors who are field investigators, (speak Spanish) and identify with the workers," said Garcia, a former Chicano studies teacher.

Not all contracting is bad.

Some contractors are unionized, and many non-union companies pay fair wages and benefits. But the system has been rife with abuse, particularly in the agricultural, garment and janitorial sectors.

"The reason why anyone outsources is because they want to pass out the responsibility to the worker. They don't want to have to deal with insurance and all the other costs," said Garcia.

As late as the 1970s, most supermarket janitors were in-house employees, mainly African-Americans, who earned union wages and benefits. Some earned more than the \$7 to \$10 an hour that many janitors earn in 2004.

Today's work force is largely non-union, and many of the workers are in the country illegally.

Garcia said the most abusive contractors threaten their workers with deportation if they speak out.

"They tell them they have no rights because they're undocumented," she said.

But even illegal immigrants are protected by federal and state labor laws.

Employers have just two opportunities to check workers' immigration status: At the time they are hired and if the company is audited by immigration officials, Garcia said.

The state's Department of Industrial Relations also steers clear of asking about immigration status.

"It's not something we're concerned about. It's not in our jurisdiction," said Dean Fryer, spokesman for the Department of Industrial Relations, which oversees the Division of Labor Enforcement Standards. "If you work in California you're entitled to the basic (labor) provisions provided by law."

First big case

The Maintenance Cooperation Trust Fund's first big case is still moving through the legal system.

When the watchdog group began investigating supermarket janitorial contractors in 1999, it quickly focused on Building One, a national cleaning contractor that operated a network of subcontractors in California.

"We found that all the workers were being paid the same," Garcia said. "All in cash, no days off. They were working 10- to 16-hour days."

The group's investigation led to a class-action lawsuit filed in 2000 by the Mexican American Legal Defense and Educational Fund, or MALDEF, and the Service Employees International Union against Building One Service Solutions; its parent company, Texas-based Encompass Staffing Services; and Vons, Ralphs, Albertsons, Safeway and Pavilions, accusing them of labor violations.

The lawsuit charges that the supermarkets "schemed" to pay workers less than the minimum wage, didn't pay overtime and committed other violations by pretending to hire janitors indirectly through a contractor while retaining control over the work they performed. The supermarkets have said they were unaware of any violations at their stores and that the contracted janitors were not their employees.

In 2001, Ralphs, Vons and Albertsons signed a four-year labor contract with the SEIU in which they agreed to reduce contracting by either hiring staff janitors or paying union wages.

The labor agreement covered Los Angeles, Orange, San Bernardino and Riverside counties but not San Diego County, whose janitors were represented by a different SEIU local at the time.

Trial scheduled

The labor union withdrew its name from the case after the agreement, but the class-action lawsuit is scheduled to go to trial in a Los Angeles federal court in June. Building One and Encompass have filed for bankruptcy but are still defendants in the case.

Yesterday, MALDEF launched a campaign in California and Mexico to locate many of the janitors affected by the lawsuit by April 19 so they can be included in the class-action lawsuit.

Steve Reyes, a MALDEF lawyer, said the Latino civil rights group has identified about 500 janitors so far, but believes more than 1,000 are affected and that they're owed tens of millions of dollars in back pay. Any janitor who worked at any of the supermarkets between January 1994 and January 2003 is asked to call 1-888- LIMPIEZA (in California) or 001-888-LIMPIEZA (from Mexico). Limpieza is the Spanish word for cleaning.

Undocumented workers need not fear coming forward because they will not be required to provide their status, Reyes said.

In 2002, a federal judge denied a request by Albertsons to disclose the plaintiffs' immigration status. A lawyer representing Albertsons in the case could not be reached yesterday.

Albertsons cited a U.S. Supreme Court ruling issued that year that restricts the right of illegal immigrants to collect damages from employers.

But the judge said the workers' status was irrelevant because the janitors were trying to collect back pay for work that had been done, not work lost or not performed, as was the case in the Supreme Court ruling.

"Regardless of a person's immigration status, an employer still has to pay minimum wage and overtime," said Puja Batra, a Pasadena- based labor lawyer whose firm is also representing janitors in the case.

Garcia said she's proud of the investigative work her group has done in its short life because of the impact it has had on the janitorial contracting industry. Still, there is a lot of work left to be done, she said, including persuading companies to hire responsible cleaning companies.

"Contracting can be done responsibly," she said. "When it's done responsibly the clients are not placed at the type of risks that these retailers now find themselves in fighting lawsuits."