



Contracting Out In the Private Sector

Justice for Janitors

The Challenge of Organizing In Contract Services

■ *John Howley*

In 1988 Omar Vasconez, a commercial office janitor in New York City, earned \$11.29-an-hour plus full benefits. In Atlanta, janitor Mary Jenkins was earning \$3.40-an-hour with no benefits. While Mary could be fired at the drop of a hat, Omar had job security and would keep his job even if his employer, a janitorial contractor, lost the cleaning account at that building and was replaced by another contractor. Both worked for large, multinational service contractors with tens of thousands of employees in all major U.S. cities. Omar is a member of Local 32B-32J, Service Employees International Union (SEIU). Mary typifies the nonunion office cleaner.

This tale of two cities reveals at a glance some basic features of service contracting. In service industries, labor markets are strongly segmented by geography: janitorial services don't compete in international markets, like cars and computers do. At the same time, cutthroat competition among contractors amplifies the already sharp competition among unskilled labor within the local market. Omar's total compensation is over four times that of Mary for one reason only: his union controls the local labor market.

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The term "building service" refers primarily to janitors in commercial office buildings and similar facilities, but also includes window washers, elevator operators and security guards. Originally, these workers were direct employees of the building's owner or managing agent, and the union typically bargained with city-wide associations of owners and managers. Today, this arrangement persists in only a handful of cities where the union is very strong. Increasingly, the trend is for building management to contract-out building service work.

For the past 20 years, unionists in the building service industry have experienced the same type of contracting out that their sisters and brothers in the public sector have been assaulted with more recently. Contracting out now dominates the building service industry to such an extent that it leaves unionists with but one alternative—organize the contractors. The unique nature of the building service industry has taught SEIU organizers that the tried and true methods of organizing industrial unions don't always apply when organizing service contractors.

The peculiarities of service contracting have created many obstacles and many opportunities for SEIU's nationwide drive to organize building service workers under the theme of Justice for Janitors (JfJ). This article introduces some key aspects of organizing workers employed by service contractors that, while radically different from the experience of most trade unionists, are becoming increasingly common.

By creating a new vision of unionism which seeks to represent workers on a community-wide basis, rather than by individual companies, the Justice for Janitors campaigns provide union leaders and activists in other troubled industries with relevant strategies and alternatives to labor's current difficulties.

Building Service & the New Work Force

Today, building service contractors employ over 700,000 workers, most of whom clean commercial office space. Another 2.3 million people report cleaning and building service as their occupation but are not employed by contractors; directly employed as janitors in every industry, from public schools to chemical plants, all are now targets for fast-growing building service contractors. The number of contract cleaning workers is growing at twice the rate of the occupation as a whole.

Labor conditions vary dramatically from city to city. In some cities, office cleaners work four hours a night, and for most it is a second job. In other (even some nonunion) cities, it remains an



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eight-hour job; for these workers, it is their primary job. The ethnic make-up varies from black to Eastern European to Salvadoran to Chicano. This variation in workers and working conditions means that no organizing formula can be applied rigidly in city after city.

The inherent instability of building service contracting produces a workforce that receives low wages and no benefits and is often part-time. Workers have little attachment to an employer or a job site, and as a result the union organizer has little to rely on in the way of group cohesion based on long-tenured employees. But this sword has another edge to it. Workers with a second job or who routinely change jobs among contractors show a surprising tendency to engage in spontaneous job actions. Lack of attachment to the job translates into less fear of losing one's job, often a key deterrent to militancy.

During the 1960s and '70s, SEIU's building service membership held steady. But, in the face of rapid industry growth, the union's market share was declining. Partly, this trend arose from rapid commercial development in the sunbelt and in the suburbs, areas traditionally beyond the union's reach. Suburban growth eventually allowed nonunion contractors to grow sufficiently large and competent to bid on union accounts downtown.

Other factors also played a role. Widespread factory closings forced many to leave manufacturing permanently to seek jobs in the service sector, and the international character of the recession generated a large influx of undocumented workers.

Commercial real estate, the source of demand for the industry's

services, also underwent dramatic changes. Liberal tax laws and financial deregulation, along with a lack of investment opportunities elsewhere, channeled a flood of new capital into real estate. The insatiable urge of commercial developers to build, build, build took many major markets from boom to bust in but a few short years. Office markets were depressed nationwide.

When rental revenues decline, building managers have limited options for cutting costs. Financing costs, which eat up about half of an office building's revenues, are fixed; so are property taxes, utility rates, and insurance charges. So, despite the fact that the cost of cleaning typically accounts for less than a nickel out of every dollar of office rent, it became a prime target of cost-cutting.

It was a triple whammy: over-built office markets, nonunion contractors invading from the suburbs, and a sudden surplus of unskilled labor. Subcontracting in commercial office cleaning had grown steadily during the 1970s, but it took the crisis of the early '80s to expose the weakness of the union's position in the new institutional setting. While their brothers and sisters in manufacturing agonized over concessions versus plant closings, building service locals faced the nightmare of seeing union jobs converted into nonunion jobs right before their eyes. Would union organization simply become irrelevant in the context of the harsh new realities of janitorial contracting? Local after local saw its dominance of the local market slipping into minority status.

At first, some locals responded by trying to re-organize building by building. Quickly the lesson became clear: building service contractors cannot be organized on a site-by-site basis because the building owner can easily terminate the unionized contractor. One alternative was to offer the contractor concessions to help retain the account; but then the other contractors would want the same deal. Terms and conditions would deteriorate as cleaning accounts changed hands and members were lost.

This slope to disaster is steep as well as slippery—a flourishing local can disappear in a single bargaining season. Because labor costs account for up to 85% of the value of a contract for janitorial services, site-by-site variation in terms and conditions within a given market produce competitive pressures that quickly lead to disaster.

Labor Law & Service Contracting—A Poor Fit

SEIU's experience in building service organizing has exposed critical deficiencies in the National Labor Relations Act (NLRA). The NLRA was designed for a world where the employer and the

bargaining unit were easy to identify. In manufacturing, workers come to the employer's place of business to produce goods, which are then shipped out to consumers. By contrast, in contract service industries, the employer dispatches workers to the customer's place of business. Identifying the employer and defining the bargaining unit become highly problematical.

A building service contractor may have a thousand employees scattered over 50 sites in one city, ranging from accounts with a hundred workers to "route jobs" where a worker travels from one tiny account to another. A single account, administrative subdivisions or the entire local operation may be determined to be an appropriate bargaining unit by the Labor Board.

Unlike the factory owner, the service contractor is not attached to any particular site of operation; accounts turn over as business is lost here and gained there. Contractors accept the tyranny of the 30-day cancellation clause. Because they supply mainly people, building service contractors win or lose accounts based on their ability to squeeze labor costs. The boundaries of the potential bargaining unit fluctuate constantly and are highly sensitive to economic competition.

The nature of service contracting has profound implications for collective bargaining. Even if it were a simple matter to gain recognition from the contractor, the nature of the business is such that the contractor has little or no control over wages and working conditions. A contractor who pays above the going rate will easily be underbid by one who does not. An anti-union building owner can simply dismiss a unionized contractor. It is impossible for meaningful collective bargaining to occur with a contractor who has no financial autonomy and can lose the account literally overnight. In short, while the NLRA protects *employees* against being fired for union activity, it does not protect *employers* who are "fired" for recognizing the union. Suitable pretexts for terminating the contractor are not hard to find.

Here lies the central conundrum of service contracting for the union: on a practical level one is bargaining with the building owner who has the money and power, even though for purposes of the NLRA, this is usually not the primary employer. The subcontracting of services, employee leasing, and the use of temporary employees—these institutional arrangements have partially repealed the NLRA insofar as the rights of workers to bargain collectively are concerned. But at the same time, the NLRA's protections for the ultimate employer against secondary boycott activity remain very much in place.

Avoiding the obligations of an employer under the NLRA

provides a powerful incentive for building owners to subcontract services, but it is difficult for them to isolate themselves completely from the reach of labor law. It is quite common for the owner or manager to play a direct role in supervising building service workers, who perform tasks that are crucial to keeping tenants happy. The manager of an office building worth \$200 million or more won't entrust its cleaning and maintenance blindly to a contractor. Establishing the owner's status as a co-employer is usually helpful in defending the union against charges of illegal secondary boycott activity.



Martha Labor

The Justice for Janitors Concept

The nature of service contracting pushes the union to attempt to influence the local labor market as a whole. This, in turn, requires building a movement that extends beyond individual workplaces and individual employers. Workers are asked to identify with a movement—Justice for Janitors—not merely to sign union authorization cards.

This approach, building a movement, has helped local unions achieve their objectives in many situations, from bargaining in well-organized cities to organizing in nonunion cities. In union strongholds, momentum is built by organizing nonunion work-sites, which translates into increased leverage at the bargaining table. For those locals with a tenuous grip on the market, organizing is usually a prerequisite for successful contract negotiations.

The need to establish city-wide bargaining structures mandates the JfJ approach. What makes this approach different is its dual strategy of representing janitors without relying on a union contract (or even union recognition) and of mobilizing community and public support for the janitors' movement. This internal/external approach to organizing creates a dynamic which feeds rank-and-file members' creativity and activism.

Justice for Janitors campaigns are best characterized as organizing laboratories. While JfJ relies on common themes nationwide, tactics are adapted by each local union to fit the great variety of market conditions and local bargaining positions and to encourage the emergence of rank-and-file leadership and spontaneous action in the workplace.

The objective of JfJ campaigns is to win decent wages and working conditions for building service workers. This cannot be done without a citywide bargaining structure such as a master or pattern agreement which allows standardization of the local labor market. The goal is to re-establish the arrangement whereby the local union can control through bargaining the terms and conditions that will prevail across the local labor market.

Representing Workers Without a Contract

Before a union can build an external community-wide movement, it must first become an active presence in the workplace. Despite the problems with the NLRA, JfJ has developed ways to use worker mobilization tactics on the job to force management to respond to worker grievances. By using "in-plant strategies" (see Tom Balanoff's article, "In-Plant Strategies: The Cement Workers' Experience" in *Labor Research Review* #7), JfJ is

demonstrating to janitors that it is possible to have a vibrant union even before union recognition is secured.

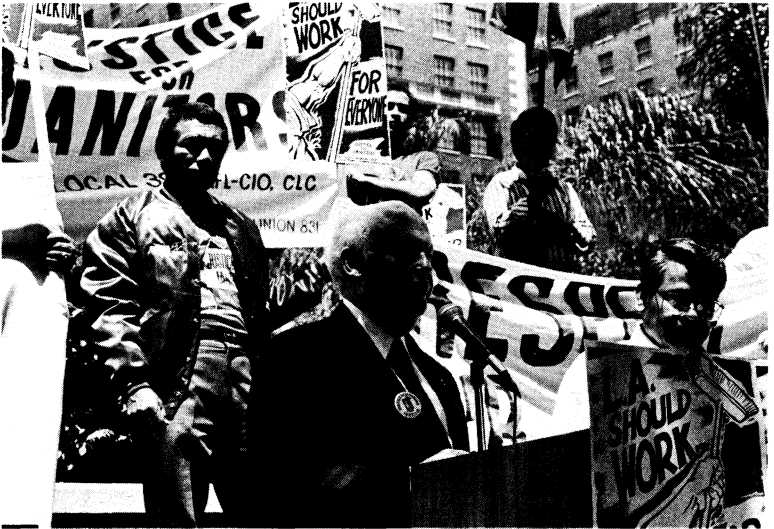
There are many ways to make life without a collective bargaining agreement unacceptable for an employer. While employers know what to expect when the union files for an election, they are uncomfortable with an organizing strategy that does not have the Board election as its focus. As a result, employers will commit numerous violations of labor law, accustomed as they are to abusing nonunion janitors. Field staff must be trained to respond with viable unfair labor practice charges. The union can organize the workers, engage in concerted activities, file unfair labor practice charges, and represent them in disputes with supervisors—all without the formal protections of a contract.

The purpose of this activity is to stimulate the workers' support for the union's recognition demand. The voluntary recognition road encompasses many alternative methods for translating majority support into a bargaining relationship. Even when an employer won't agree to recognition outright, they can be convinced to submit to a card-check election supervised by a neutral party or even an expedited Board election. The important lesson is that viable alternatives to Board elections exist, they do work, and they can be used to keep employers guessing about the union's recognition strategy.

Violations of employment and safety laws also can be used to draw public attention to the plight of the workers and bring enforcement pressure to bear on employers.

For instance, all too common in janitorial contracting is the independent contractor scam where the employer pays the worker a flat monthly or weekly amount, with no deductions or overtime. By the nature of the work, it is impossible for janitors to qualify as independent contractors under the Fair Labor Standards Act (FLSA). The union can win back pay for the workers and sometimes, under the FLSA's definition of joint employer, the building owner shares liability with the operator of the scam for any underpayment. State and federal wage and hour departments, as well as the IRS, all take an interest in phony independent contractor schemes.

While the Occupational Safety and Health Administration has traditionally focused on manufacturing, it is nevertheless possible to use health and safety issues effectively in building service organizing. The new hazardous communication standard applies to workers in every industry who use hazardous chemicals. Janitors regularly use hazardous chemicals such as ammonia. The regulations require training of all new employees, and educational



John Sweeney, SEIU International President, speaks at Justice for Janitors rally in Los Angeles.

materials must be in a form and language the workers can understand. Even where laws and regulations are less clear, the existence of hazardous conditions can be brought to the attention of the public, including office tenants, as in the case of asbestos in older buildings.

Community Support and Public Appeals

Through leafletting, press conferences and public rallies, JfJ campaigns seek to call attention to the powerful contrast between the wealth and influence of office developers and owners and the poverty and powerlessness of the people who clean their buildings.

The organizing committee must develop cooperative and supportive relations with the community, especially the community from which the janitorial workforce is drawn. Ties of mutual support and respect must be carefully cultivated with churches and other community organizations. The union should have a presence at local parades, holiday celebrations and similar activities. In this way, an allegiance to the union can be developed among the rapid-turnover workforce who have little attachment to any employer or worksite. Specific issues of concern to the community, like protection for undocumented workers, may have direct implications on-the-job.

Of course, the pay-off is the ability to mobilize community supporters. Community groups have greater latitude to picket and

protest than the union does. Civil disobedience by a cross-section of supporters, including religious and other community leaders, helps draw attention to the janitors' plight. The themes of the campaign play a role here: "justice" as opposed to "wage" slogans help broaden the appeal of the workers' struggle. The problems of the working poor, mistreatment of minority groups, sexual harassment, and lack of health insurance are issues that will attract a diverse constituency. A Justice for Janitors picket line gives sympathizers a vehicle for expressing their diverse concerns.

Justice for Janitors Campaigns

The Philadelphia Electric Company (PECO) is a unionized company that normally relied upon union contractors when subcontracting for services. One exception was janitorial services. The nonunion contractor, a company called A-to-Z, cleaned PECO's downtown offices and represented a long-range threat to the well-organized building service industry in Philadelphia.

PECO had to be convinced to apply its policy of using union contractors to janitorial services. When the union filed unfair labor practice charges against A-to-Z for harassing union supporters, the union was able to demonstrate that PECO shared responsibility for supervising A-to-Z employees. The Labor Board issued a ULP complaint alleging that PECO was a co-employer with A-to-Z, and thereafter the union picketed at PECO's offices to protest unfair labor practices.

Around the same time, A-to-Z began instructing workers to clean toilet bowls with toothbrushes, which they had to purchase themselves. This is typical of the unthinking abuse with which cleaning workers are routinely treated, and it gave the union a golden opportunity to arouse public sympathy. The local press ran photos of picketing workers carrying giant toothbrushes, and the issue even made its way onto the Op-Ed pages. In the face of public outcry and support for the union among a majority of employees who had signed cards, A-to-Z recognized the union. The alternative for PECO and A-to-Z was a slightly bizarre tug-of-war that appeared to have no end in sight. The victory resulted from a combination of factors: militant support of the workers, creative public exposure of employer abuses, and a legal hook into the ultimate employer—PECO.

In only three years Justice for Janitors has sparked activity at building service locals of surprising breadth and creativity. In Denver, pattern bargaining had broken down, so the union built a movement among Spanish-speaking workers, many of whom

were undocumented. An independent contractor scam was uncovered by the union that required workers to sign non-compete agreements resembling indentured servitude. The union's majority status was re-established along with a standard wage scale.

Where the union was well established, as in one eastern city, JfJ-style tactics, involving rank-and-file members, have been used to organize the isolated nonunion employers downtown. As a result, the local went into bargaining with a greatly strengthened hand.

In Portland and Seattle, the JfJ approach was used primarily as a bargaining campaign. Through effective use of rallies, press releases and community contacts, the problems of an otherwise invisible workforce were brought into the light of day, and the public image of the downtown real estate elite became an issue. The release of new ideas and energies have benefited every local in SEIU's Building Service Division.

Conclusion

These stories show how it is possible to organize in contract services. But there are no easy answers, especially in view of the unfriendly legal context. Simply put, the essence of the JfJ approach is creativity and persistence. Because there is no JfJ formula, employers cannot know what tactics to expect. Just as important, they cannot know when the union will quit, if ever. Business fears unpredictability.

The effectiveness of JfJ campaigns has its source in the same forces that propelled the major organizing drives of the 1930s and '40s. Energetic first-line organizers must be given discretion in devising new tactics as the situation and mood of the workers demand. Leaders must not become wedded to any one set of tactics, but must be willing to change as the situation demands. Finally, the union cannot afford to obstruct the spontaneous, militant action of the workers themselves. It is difficult to realize the full potential of these creative energies within the confines of the now-customary union election mold.

Inertia and habit are powerful forces in human institutions, including trade unions. Justice for Janitors argues that we don't have to wait for better Board appointments, labor law reform, or a change at the White House. We can begin developing now the new ideas and new habits that are needed over the long term. By organizing aggressively and creatively, we will challenge not only the employers, but, more importantly, ourselves. ■