

Statement of
Catherine K. Ruckelshaus
Maurice Emsellem
National Employment Law Project

An Act Concerning
Temporary Help Service Firms, Unemployment
Contributions and Other Taxes, Payments and
Contributions
(Assembly Bill A2889)

Hearing before the
New Jersey Assembly Labor Committee

March 22, 2001

Catherine K. Ruckelshaus
Maurice Emsellem
National Employment Law Project
55 John Street, 7th Floor
New York, NY 10038
(212) 285-3025, ext. 107
(212) 285-3044 (fax)
cruckelshaus@nelp.org
emsellem@nelp.org

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**Hearing before the New Jersey Assembly Labor Committee
March 21, 2001**

Members of the New Jersey Assembly Labor Committee, we are Catherine K. Ruckelshaus, Litigation Director and Maurice Emsellem, Director of Public Policy with the National Employment Law Project. We appreciate this opportunity to submit testimony in support of the "Act Concerning Temporary Help Service Firms, Unemployment Insurance Contributions and Other Taxes, Payments and Contributions" (Assembly Bill A2889), which would resurrect previously rescinded requirements aimed at curtailing abuses in the temporary help industry. For the reasons described below, we believe that the legislation represents sound public policy and a critical step towards eradicating the sweatshop conditions and tax evasion rampant in the temporary services industry.

The National Employment Law Project (NELP) is a non-profit organization that specializes in advocacy on behalf of contingent or nonstandard workers, including contract employees working for temp firms and labor contractors. We provide technical assistance to state lawmakers and advocates in support of reforms of labor and employment laws to ensure coverage of low-wage workers. We have published extensively on the problems faced by nonstandard and contract workers including several scholarly articles and a popular resource guide entitled, *Organizing for Workplace Equity: Model State Legislation for "Nonstandard Workers"*. We have also worked closely with policy makers in the states to develop proposals ensuring labor protection coverage for contract workers, misclassified independent contractors and day laborers, to name a few. We have litigated successfully to enforce existing labor and employment laws on behalf of subcontracted workers in industries where abuses in the temp industry abound.

These comments briefly highlight the following key points: (1) regulation of temporary help agencies is not a new phenomenon; as recently as the mid-1980's temp agencies were regulated in New Jersey; (2) the temporary help industry has grown exponentially in recent years and in particular in low-wage sectors; and (3) since the 1980's when the laws were revamped, workplace abuses and tax evasion schemes associated with the vastly growing temp work have been rampant, as documented by the New Jersey Commission of Investigation's report, *Contract Labor: The Making of an Underground Economy*. This bill merely returns New Jersey law to where it was before the temporary help industry succeeded in rescinding the temporary agency provisions. Given the vast growth in the industry in recent years and the many documented workplace abuses, it has become necessary to once again vigilantly protect those workers who have no choice but to work for unscrupulous temp agencies. Thus, we urge the Committee to favorably endorse the proposed legislation.

- **Most states, including New Jersey, regulated temporary help agencies as far back as the 1920's, due to a range of abuses associated with temp work. Like most other states, however, key provisions of the New Jersey temp agency law were repealed in the mid-1980's after a successful campaign by the temp industry.**

As far back as the late 1800's, abuses associated with the temp industry made front page news, and by the 1920's statutes regulating the industry were in place in most states.¹ Then, during the 1960's and 1970's, the temp industry waged an all-out campaign which went largely unnoticed by the media and general public to re-write these state laws. New Jersey was one of the last states to deregulate the industry, holding out until the mid-1980's. As a result, the temp industry is effectively exempt from state regulation in New Jersey. This is especially problematic given the rise in temporary help firms in New Jersey and across the country, and in particular in low-wage sectors where workers are less able to complain about workplace abuses.

- **The temporary help industry has grown in recent years, especially in the low-wage sectors, creating more firms that are able to evade laws and unfairly compete with law-abiding employers.**

A recent report of the U.S. General Accounting Office (GAO) documented that the temporary industry is growing at a much faster pace than most other industries in the U.S.² From 1982 to 1998, the total number of jobs in the temporary supply industry grew 577 percent. *Id.* at 16.

The temporary help industry markets itself as the "employer" to client firms who wish to avoid responsibility for workplace protections and employer-based tax responsibilities. The industry has also shifted from expressly charging the worker a fee directly to charging the client company instead, thus evading state laws that still regulate employment agencies that charge workers a fee. Although these fees are often passed on to the temp worker, these manipulations have succeeded in exempting temp agencies from most state laws. This fee structure also explains why temp agencies are adamantly opposed to laws that would require them to disclose the fees charged to client firms.

This growth in the industry, covering nearly all sectors, combined with the industry's concerted and largely successful campaigns to exempt itself from state regulation, has resulted in a vast second tier of temp workers who suffer from deplorable working conditions.

¹ For an authoritative analysis of state regulation of the temp industry, see Professor George Gonos, *The Contest Over "Employer" Status in the Postwar United States: The Case of the Temporary Help Firms*, 31 *Law & Society Review* 81 (1997).

² U.S. General Accounting Office, *Contingent Workers: Incomes and Benefits Law Behind Those of Rest of Workforce*, GAO/HEHS-00-76 (June 2000).

- **Temp workers in New Jersey and across the country earn less, have fewer benefits and work for employers evading basic labor and employment protections.**

The GAO report found that all categories of contingent workers are more likely to earn far less than similar workers employed in full-time, permanent jobs. GAO Report at 10. It also found that most temp workers would prefer a permanent job. *Id.* at 12. According to the GAO report, almost 30 percent of agency temps have family incomes *below* \$15,000 a year, compared with 7% of standard full-time workers. *Id.* at 18. These same workers are unlikely to have benefits; only 3% of temp workers earning less than \$15,000 annually have employer-provided benefits. *Id.* at 22.

The recent New Jersey Commission of Investigation report, *Contract Labor*, shows that the abusive working conditions of New Jersey's low-wage contract and temp workers are even more extreme.³ The report surveyed agricultural and manufacturing industries using contractors that provided cheap labor to perform unskilled and dangerous jobs in the poultry, shellfish and light manufacturing. Covering the period 1993-1996, the report found in all industries that:

In essence, while these laborers work shifts of up to 10 hours per day inside the confines of a plant or factory – receiving work assignments, training, supervision and, occasionally, disciplinary action as well at the behest and expense of plant managers – they are, for all practical purposes, treated as employees of a third party operating from the outside.

Contract Labor at 5 (emphasis added).

These third parties are the temp and contract labor agencies that prey on the low-wage workers who need jobs and are in no position to complain of sweatshop conditions. The labor contracting firms offer their services to the businesses to shield them from labor and employment requirements and then fail in turn to comply with the laws. As the report aptly notes, “[t]he Commission found that it is precisely this detached, yet mutually convenient relationship between plant management and contract-labor providers that lies at the heart of the systemic abuses uncovered during its investigation.”

The Report found further that both temp agencies and the employing client companies were not reporting nearly \$5 million in payroll tax liabilities, failed to pay New Jersey state unemployment and temporary disability insurance taxes of nearly \$2 million

³ State of New Jersey, Commission of Investigation, *Contract Labor: The Making of an Underground Economy*, Sept. 1997.

and routinely misclassified their workers as “independent contractors,” thus evading all labor and employment requirements. *Id.* at 9-11.

Without reinstating the laws that regulate the temp labor agencies, the agencies and the businesses they serve will continue to exploit workers and cheat the state and other law-abiding employers out of millions of dollars in unpaid taxes. Now is the time, therefore, to enact the modest protections proposed by the bill you are considering today, and ensure that the state’s laws evolve with the expanding temp industry and protect the workers of this state against further exploitation.

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Thank you again for this opportunity to testify in support of the “Act Concerning Temporary Help Service Firms, Unemployment Insurance Contributions and Other Taxes, Payments and Contributions” (Assembly Bill A2889).