Empire State Plaza
Agency Building 2, 20th Floor
Albany, New York 12223
Phone: (518) 474-4785 Fax: (518) 473-7533

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of:	
MUDD (USA) LLC (T/A MUDD JEANS),	
Petitioner,	
To review under Section 101 of the Labor Law: An Order to Comply under Article 12-A of the Labor Law, dated May 26, 2006	DOCKET NO. PR-06-049
- against -	RESOLUTION OF DECISION
THE COMMISSIONER OF LABOR,	
Respondent.	

WHEREAS:

The Petition for Review in the above case was filed with the Industrial Board of Appeals (Board) on June 27, 2006. Petitioner Mudd (USA) LLC (T/A Mudd Jeans) (Petitioner or Mudd Jeans) seeks to vacate an Order to Comply with Labor Law Article 12-A (Order) that the Commissioner of Labor (Commissioner) issued against Petitioner on May 26, 2006.

The Order found that Petitioner violated Labor Law article 12-A by failing to comply with: (1) Labor Law §§ 341 and 345.1 that require manufacturers and contractors in the apparel industry to register with the Commissioner and (2) an order to register that was issued against the Petitioner on February 10, 2006, pursuant to Labor Law §§ 341 and 345.2. The May 26, 2006 Order assessed

civil penalties against Petitioner in the amount of $3,000 for each violation, for a total penalty of $6,000.

The Petition asserts that the fines were wrongfully imposed and that the Order should be reversed because according to the Petitioner, the only garments that Petitioner produces in New York State are samples or prototypes of jeans which are not offered or intended to be offered for sale in the State, and the jeans themselves are manufactured out of state. Based on these facts, Petitioner argues, it is not a "manufacturer" and does not employ "production employees" as those terms are defined in § 340 and used in § 341.1, and is, therefore, exempt from the Article 12-A registration requirement.

Respondent Commissioner filed an Answer to the Petition, denying the material allegations of the petition and interposing as an affirmative defense that the Petition contains insufficient and conclusory allegations.

Upon notice to the parties, a hearing was held on November 28, 2006 before Khai H. Gibbs, then Associate Counsel to the Board, the designated Hearing Officer in this proceeding. Petitioner was represented at the hearing by Salon, Marrow, Dyckman, Newman & Broudy, LLP, Daniel L. Goldberg of counsel. Respondent was represented by Jerome A. Tracy, Counsel to the Department of Labor (DOL), Benjamin T. Garry of counsel.

Each party was afforded full opportunity at the hearing to present documentary evidence, to examine and cross-examine witnesses, and to make statements relevant to the issues. Testifying in support of the Petition were Francesca Cruz, Min Zhang, and Anthony Stellato. DOL investigator Jeanne Huo testified in support of Respondent Commissioner.

SUMMARY OF EVIDENCE

Mudd Jeans manufactures denim jeans and accessories for children and juniors. Petitioner operates its business at three locations in New York City.

DOL Labor Standards investigator Jeanne Huo testified concerning the investigation that led to the Order to Comply at issue herein, which included two prior registration violations by Petitioner in 2004 and 2005.

As a result of an investigation by Ms. Huo in 2004, Petitioner was found to have failed to register in violation of Article 12-A § 345.1, and agreed by stipulation with DOL, dated March 4, 2004 , to resolve the violation by paying a penalty of $350. Petitioner "further agree[d] to maintain its New York State Apparel Industry Registration by timely renewals and contracting only with registered manufacturers and contractors."

DOL did a second investigation of Petitioner in 2005, and found that Petitioner had operated its business without a NYS Certificate of Apparel Industry Registration from January 15, 2005 to June 30, 2005 (24 weeks); failed to timely comply with an Order to Register (OTR) served on Petitioner on February 3, 2005; and did not file an initial application for the year until June 10,

2005. According to Ms. Huo, Petitioner never did complete the registration process for the 2005 year. The Commissioner issued Petitioner an Order to Comply on August 5, 2005, assessing a penalty of $1,000. The Order explicitly found that Petitioner, *inter alia*, was at all times a "manufacturer" as defined in Labor Law § 340(d), and had employed "production employees" as defined in §340(f). Petitioner did not appeal the Order or these statutory findings to the Board.

The third investigation in 2006 resulted in the Order to Comply on appeal herein.

On February 10, 2006, Ms. Huo did a site inspection of Petitioner's operations at 247 West 38th Street in Manhattan, the same site she had inspected in 2004 when she observed workers engaged in cutting and sewing apparel on two floors of the premises, without registration. This was also the same site where DOL's 2005 investigation revealed some 34 workers engaged in producing apparel, again without registration.

The conditions and activities Ms. Huo observed were no different than she saw on her earlier inspection; i.e., she saw cutting and sewing tables, fabric on tables, sewing machines, finished fabric hanging on a model, and at least five workers engaged in measuring, cutting, and sewing fabric. Ms. Huo interviewed a Ms. Clay, who identified herself as employed as the Petitioner's office manager. Ms. Clay told the investigator that at the time there were twenty-five employees working on one floor of the premises and that they were engaged in "production" of apparel. Because apparel production was taking place and Petitioner did not display a valid Certificate of Apparel Registration for 2006, Ms. Huo issued Petitioner an OTR within twenty days.

On notice to Petitioner, on March 9, 2006 DOL held a compliance conference concerning its 2006 investigation. Such conferences afford an employer the opportunity to present evidence why an Order to Comply should not be issued or a penalty should not be imposed. Petitioner did not appear at the conference.

A report summarizing the compliance conference indicated that DOL's investigation revealed that since June, 2004 Petitioner had: operated business at three locations in New York City without the proper NYS Certificate of Apparel Industry Registration; violated the registration statute in 2005 and paid a $1,000 penalty; although invited, did not participate in Apparel Industry Task Force ("AITF") monthly seminars held in July and August, 2005; failed to timely file any renewal application after January 14, 2006, even after another violation had been served on it on February 10, 2006; failed to comply with the OTR served on it on February 10, 2006 within twenty days; and employed twenty-five people in a premises occupying 24,000 feet.

Based on DOL's investigation and the report of its compliance conference, the Commissioner issued the instant Order to Comply, finding that Petitioner: (1) was at all times mentioned in the Order a "manufacturer" as defined in Labor Law § 340(d); (2) was engaged in the apparel industry as defined in § 340(c); (3) employed "production employees" as defined in § 340(f); (4) had on February 10, 2006 failed to register as required by §§ 341 and 345.1; and (5) had failed to comply with the twenty day time period for registration specified in the Order issued by the Commissioner on February 10, 2006. Upon these findings, and citing the penalty criteria of the statute, the Commissioner imposed a penalty on Petitioner of $3,000 for the violation of failing to register and $3,000 for failing to timely comply with an Order to Register.

Petitioner, by its attorney, then filed a Petition for Review of the Order with the Board on June 27, 2006, asserting that the fines were wrongfully imposed and the Order should be reversed for the reasons stated above. Petitioner did not challenge the Order or penalties in any other respect.

Francesca Cruz, Min Zhang, and Anthony Stellato testified in support of Petitioner's contention that pattern and samplemakers do not produce garments "for sale". Petitioner employed Ms. Cruz at its showroom located at 1407 Broadway in Manhattan since September, 2005, first as a receptionist, and from April, 2006 as office manager. Since 1995, Ms. Zhang has been Petitioner's technical director at its West 38th Street warehouse, where she has supervised the making of patterns and samples for its jeans. Mr. Stellato has been Petitioner's Vice President of production since October, 2005. His duties involve placing orders to eight factories in China where Petitioner's jeans are manufactured, and following up on delivery of the orders to warehouses in California.

Ms. Cruz and Ms. Zhang testified that the showroom is where the production team and designers work and where buyers come to view jeans' lines. Across the street at Petitioner's West 38th Street location is Petitioner's tech center/warehouse, where the technical work of designing the product is done.

Ms. Cruz testified that Petitioner had employed two patternmakers at its warehouse until January, 2006, and nine samplemakers until April, 2006. She and Ms. Zhang stated that up through that time, the design team made the design, the patternmakers cut the pattern, and the samplemakers made a single sample to be brought to the showroom to show buyers. If buyers liked the sample and placed an order, the pattern and sample would be sent to factories in China. The factory would modify the design for production and return one sample to Petitioner in New York City for final approval by the buyer. If approved, the entire order would then be manufactured in China, shipped back to Petitioner's warehouses in California, and delivered to retail stores in the United States for sale under Petitioner's name as "Mudd Jeans", or under private labels for Target and other retailers.

Ms. Cruz and Ms. Zhang further testified that Petitioner has not employed pattern or samplemakers since April, 2006. Instead, it produces all its samples at its factories in China. When it needs a full sample for a buyer in an emergency, or to "fit"the sample returned from the factory with a different button or thread, etc., Petitioner contacts a "freelancer". Both witnesses called these freelancers independent contractors. However, Ms. Zhang conceded on direct and cross-examination that Petitioner uses one patternmaker and one samplemaker for such purposes; the same person is used every time; the pay rate is arrived at after negotiation between the parties; the Petitioner sets the time for completing the work; Petitioner provides the sewing machines and equipment used to make the patterns and samples; and payment is approved by Ms. Zhang after reviewing the invoice submitted for the work.

Based on the above, Petitioner's witnesses testified in conclusory fashion that Petitioner's employees in the State have not engaged in activities involved in "manufacturing" garments "for sale" during the time period covered by the Commissioner's various Orders. Ms. Cruz stated that since at least January, 2005 no employees in the showroom or the warehouse have been physically involved in "manufacturing" garments "for sale", including cutting, sewing, finishing, assembling, or otherwise pressing such garments. Ms. Zhang also testified that the pattern and samplemakers

never made anything "for sale", and broadly stated that Petitioner has not "manufactured" goods in *the United States* since she began working for Petitioner in 1995. Accordingly, Petitioner asserted in its Petition and opening statement that it is and has been exempt from the registration statute the entire time.

GOVERNING LAW

1. Standard of Review

The Board reviews the reasonableness and validity of an order of compliance issued by the Commissioner pursuant to Labor Law § 101 upon the filing of a petition that specifies the,

> " respects [the order] is claimed to be invalid or unreasonable. Any objections . . . not raised in [the petition] shall be deemed waived."

The Board shall presume that the order is valid:

> "Every provision of this chapter and of the rules and regulations made in pursuance thereof, and every order directing compliance therewith, shall be valid unless declared invalid in a proceeding brought under the provisions of this chapter."

Labor Law § 103.1. Furthermore, pursuant to Board Rules of Procedure and Practice (Rules) § 65.30,

> "the burden of proof of every allegation in a proceeding shall be upon the person asserting it."

The burden of proof is therefore on the Petitioner when seeking review of an order of compliance to prove that the order is not valid or reasonable.

2. Article 12-A of the Labor Law

Article 12-A of the Labor Law requires all "manufacturers" and "contractors" engaged in the apparel industry to register with the Commissioner by January 15 of every year (§ 341). Those who fail to register (§ 345.1), or who fail to comply with an order of the Commissioner to register (§ 345.2), are in violation of the statute. The Commissioner may assess a penalty for registration violations of up to $1,500 for an initial violation, and up to $3,000 for a second or subsequent violation (§ 345.4(a)). A "special task force" is established within the DOL to concentrate enforcement of the Labor Law affecting "production employees" in the apparel industry (§ 342). On their behalf, the task force is assigned duties to inspect manufacturers and contractors to insure compliance with registration, the Labor Law, and orders of the Commissioner (§ 343), and is given powers to inspect their books, records, and premises for compliance with payroll tax, building, health, and safety laws, and to refer violations to proper authorities (§ 344).

Sections 340(d) and (f) of the Labor Law define the "manufacturers" and "production employees" in the apparel industry who are governed by registration as:

> "(d) 'Manufacturer' shall mean any person who (i) in fulfillment or anticipation of a wholesale purchase contract, contracts with a contractor to perform in New York state the cutting, sewing, finishing, assembling, pressing or otherwise producing any men's, women's, children's or infants' apparel, or a section or component of apparel, designed or intended to be worn by any individual which, pursuant to such contract, is to be sold or offered for sale to a retailer or other entity, or (ii) cuts, sews, finishes, assembles, presses, or otherwise produces in New York state any men's, women's, children's, or infants' apparel, or a section or a component, designed or intended to be worn by any individual which is to be sold or offered for sale; provided, however, that manufacturer shall not mean a production employee employed for wages who does not employ others;
>
> * * *
>
> "(f) 'Production employees' shall mean persons who are employed by a contractor or manufacturer directly to perform the cutting, sewing, finishing, assembling, pressing, or otherwise producing of any men's, women's, children's or infant's apparel, or a section or component of apparel, designed or intended to be worn by any individual which is to be sold or offered for sale."

FINDINGS AND CONCLUSIONS OF LAW

The Board having given due consideration to the testimony, documentary evidence, and all the papers filed herein, makes the following findings of fact and law pursuant to the provisions of Rule 65.39 of the Board's Rules of Practice and Procedure (12 NYCRR § 65.39).

At the outset, we find that Petitioner is a private employer doing business in the State of New York, as defined by Article 1 of the Labor Law, and is subject to the jurisdiction of the Commissioner.

1. Petitioner Has Engaged In Apparel "Manufacturing" Throughout the Period Covered By the Commissioner's Order(s).

As a matter of statutory construction, we discuss below why the making of apparel prototypes and samples is an activity fully encompassed within the definitions of "manufacturer" and

"production employees" who are covered by Article 12-A. As a factual matter, however, we also *find* that Petitioner has engaged in "manufacturing" under the statute during the period covered by the Commissioner's Order under review, and the period covered by the prior orders upon which it is based, which continues through the present. We reject the conclusory testimony offered by Petitioner's witnesses that no apparel "manufacturing" has taken place the entire time; that there were just nine samplemakers still employed when DOL inspected in February, 2006; and that the two pattern and samplemakers presently used are independent contractors. Petitioner's efforts to deny or minimize the nature and scale of its operations to avoid the statute are unavailing.

First, it is factually undisputed that Petitioner's employees, both those pattern and samplemakers regularly employed up through April, 2006 and the two purported freelancers still employed, have engaged in the cutting, sewing, assembling, etc. "or otherwise producing" involved in making apparel patterns and samples during the registration years covered by the Commissioner's orders. Since we find below that these activities are covered by Article 12-A, Petitioner has necessarily been involved in apparel "manufacturing" the entire time. Petitioner's witnesses are not competent to testify as to what the law contemplates by the term "manufacturing". Their conclusory testimony on this issue is rejected.

As to the scope of Petitioner's apparel "manufacturing" in February, 2006, the date of DOL's inspection which formed the basis for the Order under review, we credit the DOL investigator's testimony that on her inspection she personally observed workers engaged in garment production and that, Ms. Clay, Petitioner's representative, admitted to her that there were twenty-five employees so engaged at the time. Ms. Clay was the receptionist at the West 38th Street warehouse and was performing identical receptionist duties at Petitioner's behest to those Ms. Cruz was performing at the showroom. This admission is credited over the testimony of Ms. Cruz that there were just nine samplemakers still employed after January, 2006. Ms. Cruz admitted that she had no personal knowledge or involvement with DOL's investigations before April, 2006. Moreover, the admission of Petitioner's representative is credited because Labor Law § 31 requires that employer agents and employees facilitate inspections by the Commissioner and "answer truthfully any questions authorized to be put to [her]."

We reject Petitioner's witnesses' conclusory testimony that the two pattern and samplemakers it presently uses are independent contractors. The record amply demonstrates that Petitioner exercises sufficient direction and control of the time, place, means, product, and payment for the work to be performed, such that the supposed freelancers are employees under the Labor Law and not true independent contractors. *See, Bynog v. Cipriani Corp.*, 1 NY3d 193, 198 (2003) (critical inquiry for employment or independent contractor status is degree of control exercised by the employer over results produced or means used to achieve results). The two pattern and samplemakers therefore continue to be covered by Article 12-A. Moreover, independent contractor status alone would be insufficient to avoid the registration statute, since § 340 (d) (i) and (ii) not only define covered "manufacturer[s]" as those directly producing apparel, but also those who "contract" with those who produce apparel, that is to be sold or offered for sale. Petitioner cannot avoid the statute by misclassifying its workers.

Lastly, we also find Petitioner's claim that no covered "manufacturing" has taken place to be disingenuous in light of its history of unchallenged prior violations. Petitioner voluntarily agreed

with DOL in 2004 to timely register every year in order to resolve its first violation. It failed to do so. Petitioner was issued an Order to Comply with the registration statute and a $1,000 fine the next year in 2005, but again failed to comply with registration. During both years Petitioner had ample opportunity to test the Commissioner's assertion of Article 12-A jurisdiction over its operations on the grounds that no apparel "manufacturing" was taking place by an appeal to this Board. Yet it did not do so. Only in 2006, after having flaunted the registration statute for three consecutive years, and after reducing the number of its employees engaged in making patterns and samples from over thirty down to two, did Petitioner come forward with the claim that no apparel "manufacturing" was taking place the entire time. However, the nature of its domestic work making apparel did not change over this period, only the scale of Petitioner's operations. This history undermines the sincerity of Petitioner's present claim.

Based on this record evidence, we find that Petitioner has engaged in apparel "manufacturing" during the relevant period.

2. The Making of Prototypes and Samples Is a Stage of Apparel Production Fully Encompassed Within the Meaning of the Statute.

The issues of law raised by Petitioner's appeal are: (1) whether Petitioner is a "manufacturer" engaged in the apparel industry that is required to register with the Commissioner under Article 12-A of the Labor Law, and (2) whether its employees who produce samples of its jeans in New York State that are manufactured out of State are "production employees" within the meaning of the statute. The resolution of these issues turns on statutory construction.

The primary consideration in construction of statutes is to ascertain and give effect to the intention of the Legislature. Statutes, § 92(a). Legislative intent is first sought from a literal reading of the act itself, but if the meaning is still not clear, the intent may be ascertained from such facts and rules of statutory construction as may, in connection with the statutory language, reveal the intent. *Id.*, § 92(b).

We therefore first turn to the literal text of Article 12-A to determine whether its plain and clear wording encompasses the making of garment patterns and samples within the meaning of those activities performed by "manufacturer(s)" who are mandated for registration under § 341, and "production employees" who are protected by the Commissioner's enforcement powers and duties under §§ 342-344. *Id.* § 94 (statutory language to be construed according to its most natural and obvious sense without resort to artificial or forced construction).

The definition of the activities performed by "manufacturer(s)" and "production employees" in subdivisions (d) and (f) of Labor Law § 341 is identical, except that production employees are "persons" who "are employed" by a manufacturer or contractor "directly to perform" the same apparel making activities that bring manufacturers under the statute. The statute defines these activities as,

> "cutting, sewing, finishing, assembling, pressing or otherwise producing in New York state of any . . . apparel,

> or a section or component of apparel, intended to be worn by any individual which is to be sold or offered for sale;"

Giving this language its natural and obvious meaning, it provides that these labor activities are governed by the registration scheme if: (1) they are performed in New York State and are involved in "produc[ing]" apparel, and; (2) the apparel "produc[ed]" is to be worn by individuals (i.e. wearing apparel or fashion) which is eventually to be sold or offered for sale on the market. The literal language does not require that employees work directly on the garment itself that will be sold because the term "*or otherwise producing*" follows and subsumes the more particular activities of "cutting"and "sewing", etc. By subsuming the narrower activities into the broader process of production by the disjunctive "*or otherwise produc[es],*" the statute plainly intends that all stages of apparel production be encompassed within its scope. Webster's Third New International Dictionary (3d ed., 1964) broadly defines "produce", in relevant part as,

> " . . . **8 a :** to give being, form, or shape to : make often from raw materials : MANUFACTURE [produced 5,002 cars in three years . . .] **b :** to make economically valuable: make or create so as to be available for satisfaction of human wants . . ."

The entire chain of creation or "*produc[tion]*" of the apparel - from cutting the fabric, to making the sample, to sewing the final garment, to shipping and warehousing – is therefore included in the statutory definitions because these activities are stages in "making" or "creating" the apparel from fabric to the final garment so as to be "available" for sale to "satisfy human wants". So long as any of these activities are performed in New York State, the statute requires that the "manufacturer" who performs them be registered, and the "production employees" who directly perform them be covered, regardless of whether the remainder of the chain is dispersed out of State. In the case here, since Petitioner's pattern and samplemakers perform activities in "otherwise producing" apparel in the State, Petitioner must register with the Commissioner.

Should there be any doubt or ambiguity as to this broad construction, it is confirmed by the legislative history of Article 12-A. *See,* Statutes, §§ 125(a) (if the interpretation to be attached to a statute is doubtful, [the courts] may utilize legislative proceedings to ascertain the legislative intent) and 125(b) (where a statute is ambiguous, resort may be had to reports of committees or commissions concerned with the legislation as an aid to construction). This history demonstrates that all stages of apparel production were intended to be included within the registration scheme adopted when Article 12-A was enacted in 1986. Indeed, as we describe below, the definition of "manufacturer" was intentionally broadened, from a narrower formulation "otherwise preparing" to the present "otherwise producing" apparel, to accomplish the broad remedial goal of correcting exploitative working conditions for *all* workers throughout the garment industry.

In 1981, the Legislature passed the "Garment Industry Job Retention Act," L. 1981, Ch. 624, to *inter alia*, direct the Industrial Commissioner to present a report on exploitative working conditions in the "garment manufacturing industry" to the Governor and Legislature concerning the "feasibility of the registration and/or licensing or bonding of employers" in the industry. *Id.*, § 4(a) and (b). The statute defined "(g)arment manufacturing" as,

> "making, cutting, sewing, finishing, assembling or *otherwise preparing* any garment or a section or component of a garment or other article of wearing apparel designed or intended to be worn by any individual which is to be sold or offered for sale provided, however, that garment manufacturing shall not include persons involved in cleaning or tailoring after an article of wearing apparel has been sold at retail." (Emphasis added.)

Id. at § 4(c).

The Industrial Commissioner delivered the "Report to the Governor and the Legislature on the Garment Manufacturing Industry and Industrial Homework", in February, 1982. *See,* New York State Library (LAB 156-4 REPGL 82-70719 c.3) and letter of Lillian Roberts, Industrial Commissioner, February 26, 1982 (identifying major conclusions of study and making legislative recommendations, including system of registration). The Report formed the basis for the passage of Article 12-A in the 1986 Legislative session. *See,* L. 1986, Ch. 764 § 1 ("It is the sense of the Legislature that [exploitative working conditions in apparel industry] must, in so far as possible, be eliminated. It is for these reasons that a special task force for the apparel industry is created and a system of registration is created") and sponsoring Memorandum of Sen. James J. Lack (identifying 1981-82 DOL Study as basis for legislation to establish system of apparel registration).

In a broad ranging study of "Sweatshops And Industrial Homework" and "Economic Trends In The Garment Industry," which supported the Report's conclusions and recommendations, the "production and related workers" described in the Report were defined as including,

> ". . . working supervisors and all nonsupervisory workers (including group leaders and trainees) engaged in fabricating, processing, assembling, inspection, receiving, storage, handling, packing, warehousing, shipping, maintenance, repair, janitorial, or guard services, product development, auxiliary production for a plant's own use (e.g power plant), recordkeeping and other services associated with the *above production operations.*" (Emphasis added.)

Id., Appendix D p. 108. The Study identified the "Definition and Scope of the Garment Industry" as ". . . part of a manufacturing complex whose function is to *convert fabric into wearing apparel.*" (Emphasis added.) *Id* at 58. And in defining the "Types of Operation" in the apparel industry, both the Report and Study stated:

> "Apparel firms differ as to the complexity of their operations. Some combine all of the *stages of production* on one premise, ranging from designing or fashioning, to cutting the fabric, finishing (sewing, etc.), packaging, and shipping the finished product to wholesale or retail distributors. These are the <u>manufacturers</u> who operate an "inside" plant. Other employers conduct limited operations on their

> premises. For example, jobbers may do only designing, cutting, and shipping on their premises while other operations (most often sewing) are parceled out to contractors who operate 'outside' shops. Contractors are employers who service jobbers either by only finishing garments (generally sewing), or by accepting cutting and finishing work (known in the trade as 'cut-make-and trim'). Contractors may also service manufacturers whose inside plants are not equipped to accommodate an extra heavy volume of orders.
>
> In addition, garments may also be produced in whole or in part in the home by homeworkers. In New York State, homework is authorized, provided special legal regulations are met by both the supplier of the work and by the homeworker. (Underscoring in original; other emphasis added.)

Id. at 11 and 59.

The dispersion of the various "stages of production" of the industry and different types of operations within and without the State was identified as one of the major "Characteristics and Structure Which Make [the] Garment Industry Susceptible to Illegal Employment Practices" that the Report recommended be ameliorated by a system of employer registration, amongst other reforms. *Id,* at 9-13 and 40. Registration was modeled on the successful registration experience of California's "Garment Manufacturing Act," which provided its Division of Labor Standards with an important enforcement tool "in pinpointing the location of establishments for inspection by concentrated enforcement program personnel". *Id.* at 35. The Report articulated the broad remedial purpose behind a proposed registration system for New York State:

> "It is not the purpose of this study and report to justify the labor standards which have been public policy in New York State for almost fifty years. Practices which result in payment of less than the minimum wage and other exploitative working conditions were and continue to be violations of the Labor Law. What this study and our experience with the law demonstrates is that we lack tools and the commitment of resources to effectuate the elimination of these practices."

Id. at 38.

The Legislature passed Article 12-A in 1986 and broadened the definition of apparel "manufacturing", from its narrower formulation of "otherwise preparing" to the present "otherwise producing" apparel, to accomplish these remedial goals. The legislative history leaves no doubt that *all* stages of apparel "production" are encompassed within the statute, including the making of prototypes and samples, regardless of where other stages of production take place. Indeed, since dispersion of different segments of apparel manufacturing, within and without the State, was one of

the conditions sought to be ameliorated by registration, it would undermine the remedial purposes of the Labor Law and Article 12-A if we were to construe the statute otherwise. *See,* Statutes § 95 (remedial statutes to be broadly construed to consider the mischief to be remedied, and so as to suppress the evil and advance the remedy) and *Tenn. Coal, Iron & R. R. Co., v Muscoda Local No. 123,* 321 U.S. 590, 597 (1944) (statutes like the federal Fair Labor Standards Act "are remedial and humanitarian in purpose. Such a statute must not be interpreted or applied in a narrow, grudging manner.").

Petitioner's desired construction should also be rejected because, if we were to adopt it for "production employees" in the apparel industry in New York State (§ 342), it would impose undue hardship and injustice. Statutes, § 146. Workers employed in one part of a manufacturer's domestic operations making the sample would be unprotected and made more vulnerable to the exploitative conditions the statute seeks to address, while workers in another part finishing the final garment would not. The statute does not contemplate such unequal treatment. Petitioner's construction also leads to the absurd result that literally none of the workers engaged in producing apparel in the industry would be covered by the Act's protections *except* those directly working on the final garment to be sold. Comparing apparel making to an auto plant, could anyone seriously claim that those workers building the "test car" should not be governed by the same labor laws covering those that build the cars to be "sold". Such an absurd or frivolous purpose cannot be attributed to the Legislature. *Id.,* § 145(a construction which would make a statute absurd will be rejected).

For all the above reasons, we reject the statutory construction urged by Petitioner's appeal, and hold that the Commissioner's Order finding that Petitioner is a "manufacturer" employing "production employees" in the apparel industry, as defined by Labor Law §§ 340(d) and (f), is valid and reasonable in all respects.

3. The Order's Assessment of Civil Penalties Against Petitioner

The Order under review assessed civil penalties against Petitioner of $3,000 for failure to comply with Labor Law § 345.1, and $3,000 for failure to comply with Labor Law § 345.2, for a total penalty of $6,000. The Board finds that the considerations and computations required to be made by the Commissioner pursuant to Labor Law § 345.4(a) in connection with imposition of such penalties are proper and reasonable in all respects.

NOW, THEREFORE, IT IS HEREBY RESOLVED:

1. That the Order to Comply with Labor Law article 12-A, dated May, 26, 2006 is affirmed; and

2. That the petition for review, be and the same hereby, is denied.

Anne P. Stevason, Chairman

Mark S. Perla, Member

Gregory A. Monteleone, Member

Susan Sullivan-Bisceglia, Member

J. Christopher Meagher, Member*

Dated and Filed in the Office of the
Industrial Board of Appeals,
at Albany, New York,
on November 28, 2007