STATE OF NEW YORK
DEPARTMENT OF LABOR
Counsel's Office
345 Hudson Street – Room 8001
New York, New York 10014-0673

September 28, 2001

Mr. Jesse L. Atilano
President / Chief Executive Officer
Labor Law Employer Defense Corporation
2639 Commerce Way
City of Commerce, California 90040

Re: Request for Opinion
Warrantless Inspections by
Apparel Industry Task Force

Dear Mr. Atilano:

Your July 18, 2001 letter objects to the conduct of the investigators of the Apparel Industry Task Force (AITF) of the Department's Division of Labor Standards in conducting inspections of premises of manufacturers and contractors who have registered with the Department pursuant to Section 341 of the Labor Law without obtaining their consent. You also ask the following questions: (1) whether the Department has the authority to conduct an on-premises inspection without a warrant if an employer objects to its presence; (2) whether an employer which asserts its rights pursuant to the Fourth Amendment to the United States Constitution will be punished for doing so; and (3) what instructions the Department has issued to its investigators with respect to warrantless searches.

The Department does not obtain warrants before conducting inspections of the premises of manufacturers and contractors. The Department has instructed its investigators to enter such premises, request to inspect payroll records, and proceed to interview employees. If the employer objects to their presence, they are to remain on its premises and complete their inspection. If the employer impedes the conduct of the inspection, they are to issue it a Notice of Labor Law Violation referencing Section 661 of the Labor Law, which requires that employers, *inter alia*, keep payroll records open to inspection by the Commissioner or her duly authorized representative at any reasonable time and permit the Commissioner or her duly authorized representative to question any employee in the place of employment and during working hours in respect to wages and hours. If the premises are not open and the employer does not respond to a request to permit entry, they are to leave.

The United States Supreme Court has held that warrantless inspections of pervasively regulated businesses are reasonable where there is a substantial governmental interest that informs the regulatory scheme underlying the inspection; the inspection is necessary to further the regulatory scheme; and the scheme provides a substitute for a warrant by alerting the owner to the likelihood of such inspections and limiting the discretion of the inspecting

officials. *U.S. v. Biswell,* 406 U.S. 311 (1972); *New York v. Burger*, 482 U.S. 691 (1987). In this case, in enacting Article 12-A of the Labor Law, the Legislature found as follows:

> "The legislature hereby finds that there is a growing concern over the increasing numbers of people working for employers in certain segments of the apparel industry under conditions which violate statutes of New York state governing wages and hours, child labor, unemployment insurance, workers' compensation and the payment of payroll taxes and local laws, codes and regulations governing health and safety in the workplace. Persons working under all these unlawful sweatshop conditions face exploitation each and every working day. It is the sense of the legislature that this exploitation must, in so far as it is 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."

(L. 1986, c. 764, § 1.) The warrantless inspection is necessary to further the regulatory scheme because only an unannounced inspection will detect violations of the laws referenced in the Legislative Findings and Declaration of Intent; advance warning of an inspection would permit an employer to alter its payroll records and instruct its employees how to respond to the AITF investigators' questions so as to conceal such violations. Manufacturers and contractors who register sign a statement including the following language: "I know that I must make the required records available to representatives of the Commissioner of Labor at my place of business upon request and that I must cooperate with any investigation to determine compliance with the provisions of the Labor Law." The statute limits the discretion of the AITF investigators by specifying the laws which they are authorized to enforce and the violations which they are directed to detect. Accordingly, the AITF inspections of manufacturers and contractors who register pursuant to Section 341 of the Labor Law are reasonable and constitutional.

Similarly, the Department may take punitive action against employers which refuse to permit administrative inspections by the AITF to determine compliance with the provisions of the Labor Law. The United States Supreme Court has held that monetary penalties for failure or refusal to permit an administrative inspection authorized by a statute as part of a pervasive civil regulatory scheme are constitutional. *Colonnade Catering Corp. v. U.S.*, 397 U.S. 72 (1970).

I trust that the foregoing is responsive to your inquiry. If you have any further questions, you may contact me at (212) 352-6655.

Very truly yours,

Robert Ambaras

Robert Ambaras
Associate Attorney

bc: Richard J. Polsinello
Opinion File (A & M)
RO-01-0048