

“More than a Strike”: Ethnicity, Labor Relations, and the Origins of the Protocol of Peace in the New York Ladies’ Garment Industry

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The New York City Cloakmakers’ Strike of 1910, was, to use Samuel Gompers’s apt phrase, “more than a strike[, it was]...an industrial revolution” because it created a wholly new system of industrial relations (IR): the Protocols of Peace [Greenwald, 1998]. “The signing of the Protocol,” as one scholar has noted, “...ushered in a new period of constructive experimentation in collective bargaining...” [Levine, 1924, p. 196]. Benjamin Stolberg, an early historian of the ladies’ garment union, believed that “the Protocol of Peace marked a decisive turning point [in part because]...its basic idea was later copied by the other needle trades... And in time its influence spread throughout American Industry” [Stolberg, 1994, p. 68]. In this way, the Protocol has to be viewed as *the* watershed event in labor relations during the Progressive Era [see Kaufman, 1993].

The Protocol was revolutionary because it went beyond hours and wages to the heart of the problems facing industrial America: democracy in the workplace. “It introduced the notion,” as Stolberg observed in 1944, “that labor had a stake in efficient management, continuous prosperity and social responsibility. The Protocol,” Stolberg continues, “assumed a benevolent partnership between capital and labor, a sort of joint industrial syndicate of boss and worker” [Stolberg, 1994, p. 68].

What was unique about this “revolution” in labor relations was that the Protocol was almost entirely the creation of Jewish-Americans. The leaders of both industry and labor, as well as the middle-class reformers who crafted the Protocol shared a common religious, if not ethnic, identity and community. This fact, often overlooked by labor relations scholars, is of critical importance in understanding the development of modern labor relations. Antisemitism, a sense of a shared collective identity, and a common ethnic experience allowed

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labor, management, and reformers to come together in ways others had not been able to before.

The strike of 1910 was unlike previous garment strikes in its planning and organization. On July 7, 1910, 60,000 cloakmakers walked off their jobs as their union presented their collective demands to employers. Large manufacturers, usually fiercely independent and antiunion, responded to the strike with a call for the formation of a manufacturers' protective association. Three days after the strike started a few hundred manufacturers meet to form the Cloak, Suit and Skirt Protective Association (Association). There they elected their leaders who were all Jewish-American factory owners: A.E. Lefcourt was chosen Chair, Max M. Schwarcz was elected Treasurer, Max Meyer was made Secretary, and, most important, Julius Henry Cohen, a noted corporate lawyer, was named legal council.

Soon after the strike began, Meyer Bloomfield, a prominent Boston social worker and industrial reformer, began efforts to end the strike on behalf of A. Lincoln Filene, owner of the Boston department store. As Jews, Bloomfield and Filene could easily move between both sides of the conflict, for they shared a common culture.

Bloomfield and Filene had been involved with "the labor question" for some time. Both had been active in the National Civic Federation. Both had experience with the ladies' garment industry and Jewish labor. Moreover, both were keenly interested in forging a new labor relations environment. As historian Arthur Goren has observed, "from downtown social workers and uptown patricians came the peacemakers." Yet, while Filene's involvement was indeed important, his efforts, and those of his associates, were not solely responsible for the accord. As we will see, the story is much more ambiguous and complicated than previously told [see Goren, 1970, pp. 186-213, quote p. 197].

On July 21, Bloomfield met with Lefcourt to offer his services in settling the strike. As a representative of Filene, he had access to manufacturers – Filene was after all one of the largest purchasers of women's clothing in America. The next day, Bloomfield met with Julius Henry Cohen and addressed the Executive Board of the association. They decided that if "a big man" made a call for a settlement conference, and if the union and Cohen could set certain preconditions, talks could begin. It was clear to all concerned that they meant a big Jewish man. Both sides were concerned that "their" matters be settled within their community. They did not want an outsider meddling in their affairs. In a July 21 letter to Louis Brandeis, Bloomfield explained how he laid the foundation for talks:

Said to [the ILG leaders]...that there was only one open door – to take a big man like Brandeis and empower him...to confer with both sides and draw up a fair basis of negotiations. Both responded heartily and suggested that I invite Mr. B. and come with him for a private talk. Am convinced that in final conference

fundamental injustices will be righted, the union not smashed,
and the open shop prevail.¹

That initial meeting set in motion a process that eventually led to the Protocol. Bloomfield quickly wrote to Filene to explain the good news and to have his patron contact Brandeis.

On July 22, Brandeis left for New York, taking with him a “draft of a proposed labor agreement. “This draft included several ideas, the most important of which was the request that the union give up its demand for a closed or union shop. Brandeis believed that the ILGWU was simply too immature to be given full partnership in industrial governance.”²

After a preliminary meeting between the principal negotiators, Meyer London, noted socialist lawyer who advised the union, and Cohen, a later conference was scheduled with Brandeis as chair.³ At this first meeting were ten representatives from each side plus Brandeis and his staff. In writing about this meeting, *McClure's Magazine's* Edith Wyatt was struck by similarities on both sides. Both groups were almost identical. They were overwhelmingly Jewish. The union delegation included middle-aged unionists, radical workers, East Side intellectuals, and socialists. And, so did the management group. The mood at that first meeting was hopeful, according to *McClure's*.⁴ Samuel Gompers, President of the American Federation of Labor (AFL), who was an observer at the first meeting was so confident that he returned to Washington on the 29th, telling the *New York Times* he was sure “that the garment workers’ strike would be settled speedily.”⁵

Brandeis set the mood for the conference. He told the twenty men assembled that they were witnessing an important moment in history, the birth of a new system of industrial relations. They would help shape the future. “Gentlemen,” Brandeis stated,

¹ See “Memorandum of Conference Between Meyer London and Principles,” July 21, 1910 as quoted and cited in Berman [1956, pp. 125-6]. The quote is from Mason [1946, p. 292].

² See “notes of Telephone Conversations Between A. Lincoln Filene and L.D. Brandeis,” July 22, 1910 and “Draft of Proposed Labor Agreement,” July 23, Brandeis Papers, as cited and quoted in Berman [1956, p. 126].

³ See Meyer London and J.H. Cohen to L.D. Brandeis, July 27, 1910 and L.D. Brandeis to M. Cohen and J.H. Cohen, July 27, 1910 as quoted in Berman, “Protocol,” 128; The representatives for the association were E.A. Lefcourt, M. Silverman, M.M. Schwarcz, Max Meyer, Joseph Jonasson, Max Rubin, William Fishman, I. Stern, Max Solomon, and R. Sadowsky. The union’s representatives were A. Rosenberg, J. Dyche, J. Lennon, Benjamin Schlesinger, J. Greenberger, S. Polakoff, H. Kleinman, Alexander Bloch, A. Baffa, and Morris Siegman. London and Cohen acted as council and Brandeis as chair. See Mason [1946, p. 294].

⁴ Edith Wyatt in *McClure's Magazine*, XXXVI, 1903, pp. 710-1.

⁵ *New York Times*, 29 July 1910. See also *New York Globe* and *New York World*, 29 July 1910 for the belief that the strike would soon be over – a few days more at most.

we have come together in a matter which we must all recognize is very serious, and an important business, not only to settle this strike, but to create a relation which will prevent similar strikes in the future. That work is one which it seems to me is approached in a spirit which makes the situation a very hopeful one and I am sure from my conferences with council of both parties, and with individual members whom they represent, that those who are here are all here with that desire.⁶

Brandeis maneuvered the discussions away from the controversial issues for the first few days. But, eventually the issue of closed versus open shop came up. After a few tense moments, when it appeared that some union representatives would leave the talks if they did not get the union shop, Brandeis called the meeting back into order. He then made what must have appeared to be a stunning announcement, the "preferential shop":

It seems to me...that aid could be effectively and properly given by providing that the manufacturers should, in the employment of labor hereafter, give the preference to union men, where the union men are equal in efficiency to any non-union applicants... [Mason, 1946, pp. 296-7].

For Brandeis, this plan would solve many problems. It was a compromise both groups could live with, what he believed to be a true middle ground. Plus, more importantly, it would prevent the ILGWU from creating a labor monopoly, which he believed disrupted industry. His belief that the ILGWU would not be effective at policing its members drove much of his thinking. Only a "mature" union, one that would form a partnership with industry, could be trusted with the union shop. This partnership would involve "scientific management," a no-strike pledge, and high wages to provide for leisure time activities and consumer spending for workers. The ILGWU had not yet proven itself mature. But, in time it might. Thus, for Brandeis, unionism was just a tool to rationalize industry, not "merely an instrument" for "improving the condition of the working man." For workers, however, unionism was the vehicle for democratic reform, an end in itself [Mason, 1946, pp. 296-7; Berman, 1956, pp. 129-30 (Brandeis quote is from page 130); Levy, 1989, pp. 108-9; Strum, 1984, pp. 94-113].

Cohen, speaking for the association, quickly agreed to the new shop, although, personally, he had little faith in the plan. The union, however, reacted strongly against it. Led by John Lennon, the union wanted to terminate the conference, and it was all Brandeis could do to keep the participants in the room. He tried to return to other issues and tabled the preferential shop. But, the genie was out of the bottle, and it would not go back peacefully. John Dyché, Brandeis's contact within the ILGWU, in effect, terminated the

⁶ Brandeis' opening remarks for the conference on July 28, quoted in Mason [1946, p. 294].

conference when he declared he had “no faith” in the proceedings any longer. He added, “for the sake of self-preservation, you would be committing suicide to go into an agreement where such a condition prevailed” [Mason 1946, p. 298]. And with that, Brandeis adjourned. Before leaving, he suggested that he, London, and Cohen draw up an agreement consisting of all the settled issues of the past few days to be used as the basis for future talks [Ibid, p. 131].⁷

On August 1, Cohen sent Brandeis a written agreement which contained the clauses on which settlement had been reached before the conference broke up. Included in this agreement were three Joint Boards, one each for Grievances, Arbitration, and Sanitary Control. Cohen reiterated his view that the association would accept the preferential shop. Brandeis, on receipt of this agreement, revised the language for the preferential shop to make it more acceptable to the union. It now read: “a shop in which union standards prevail and the union man is entitled to preference.” Brandeis then forwarded the agreement to London without comment, and London forwarded it to the Strike Committee, also without comment.⁸

Opposition to the preferential shop united the ILGWU in new and exciting ways and demonstrated the class divisions in the Jewish community. ILGWU leaders were indivisible in their public denunciation of the new agreement. Their public pronouncements spilled into the press as both *The Jewish Daily Forward* and the *Call* denounced it. *The Forward* called it “the scab shop with honey and a sugar coated poison pill.”⁹

While the mainstream press denounced the union for breaking up constructive talks for selfish motives, the union tried to explain its actions. The *Call* reprinted a letter Meyer London wrote to Cohen rejecting the agreement. London explained that the real obstacle was decades of distrust combined with an overly ambitious agreement; the preferential shop simply gave the employer too much power and placed the union, and, therefore, workers, in a weak position where they could be further exploited. This shop gave employers the right to judge “ability”: an owner could judge union workers inferior and hire only nonunion workers. They could legally discriminate against the union and

⁷ Brandeis was not optimistic. Writing his brother after the meeting broke up, he stated, “[I] have been here since Thursday morning again trying to settle the Garment Workers Strike... The outcome is doubtful with probabilities [sic] that there will be no settlement because of the union demand of an all-union shop.” L.D. Brandeis to Alfred Brandeis, July 31, 1910, in *Brandeis Letters* [Berman, 1956, p. 368].

⁸ See Cohen to Brandeis, August 1, 1910, with Tentative Agreement, Brandeis to Cohen, August 1, 1910, with revised agreement, Cohen to London, August 1, 1910, with corrected agreement in *Ibid.*, 132.

⁹ *The Call*, 3 August 1910; *The Jewish Daily Forward*, 30 July 1910, 4 and *Ibid.*, 3 August 1910, 1.

have the contract to back themselves up! How, he asked rhetorically, could the union, knowing this, be a party?¹⁰

In the meantime, with talks stalled, the union concentrated on individual shops and attention returned once again to the rank and file. Each day became filled with massive demonstrations and fiery speeches, marches, and parades. The union continued to sign up shops. Many manufacturers were afraid to lose their whole season. They waited and watched as the talks progressed, but when the talks stalled without any hint of restarting, they started to settle. In doing so, they recognized the union.¹¹

As the strike entered mid-August, the painstaking plans that the ILGWU laid began to unravel as the strike fund dried up. While the fund was never much, it, simply put, kept the workers on the picket lines. Responding quickly the ILGWU worked with the Workman's Circle, United Hebrew Trades, Socialist Party, and Central Federated Union of New York, among others to rebuild the fund. *The Jewish Daily Forward* and the *Call* ran almost daily reports on the fund's progress. The papers kept the community abreast of the efforts, and, by September – only a month later – reported that the fund stood at \$246,403. That the ILGWU could raise this extraordinary amount of money as quickly as it did was a sign of just how integral it was to the Lower East Side community. The success of the fund-raising helped restore the morale of the strikers and renewed the faith of those bargaining on their behalf. It surely also sent a message to the manufacturers and their negotiators: the union could and would hold out.¹²

Yet, as the union was regrouping and demonstrating its resolve, liberal, middle-class public opinion began to shift. When the union rejected "the Brandeis Compromise," as the preferential shop was called, news coverage in the mainstream press shifted towards the association. The coverage in the *New York Times*, portraying the workers as selfish and greedy, was typical. The Brandeis "deal" was portrayed as adequate; what more did workers want? The negative depictions and stereotypes of the mostly Jewish workers worried middle-class Jews like Moskowitz and Brandeis. And, they redoubled their efforts to find a peaceful settlement.

The association found a new strategy to end the strike: the injunction. Cohen, a gifted lawyer, knew of the courts' general opposition to unions and strikes [Cohen, 1916, pp. 12-13]. Most justices saw unions as illegal trusts and, therefore, strikes as illegal actions [Ernst, 1995]. As mainstream press opinion shifted against the union and the talks stalled, Cohen now sprang into action. Acting on behalf of the association, Cohen filed for an injunction against the union in the Supreme Court of New York State. Justice Lehman issued a

¹⁰ Reprinted letter of Meyer London to Julius Henry Cohen, August 3, 1910 in *The Jewish Daily Forward*, 5 August 1910.

¹¹ Rosenberg [1949, pp. 219-221]; *Jewish Daily Forward*, 12 August 1910, 4.

¹² *Jewish Daily Forward*, 3 August 1910, 8; *New York Times* 25 August 1910, 2; Morris Winchevsky, "Report of the Strike Fund Committee," *Jewish Daily Forward*, 8 September 1910, 5; and Berman [1956, p. 135].

temporary limited injunction to Cohen. This injunction restrained the union from coercing employees to leave work. In short, it prohibited picketing. The court ordered the union to show cause as to why this injunction should not be made more sweeping and permanent. The case was then assigned to Justice Goff for a hearing.¹³

Filene, Moskowitz, Bloomfield, and Brandeis agreed that it was critical that they, as a team, remain removed from the courtroom. "The theme which ran through the correspondence which passed between the peacemakers," writes historian Hyman Berman, "...was that their position of neutrality [must] not be disturbed" [Berman, 1956, pp. ???].

This team of "peacemakers" saw two major obstacles to a peaceful settlement. The first was the "rabid" *Jewish Daily Forward*, which fomented a prolonged strike spirit among the workers that divided them from the ILGWU leadership. The second and equally problematic obstacle was Cohen himself. By bringing labor relations to the courts, Cohen had made them contested and removed them from the more conciliatory ambiance of a joint conference. Cohen was attempting, in Moskowitz's opinion, to make "a lawyers' scrap" out of the proceedings. Moreover, he was dividing the association. There were those, like Max Meyer, who refused to even think about recognition, and those, like Reuben Sadofsky, another leading manufacturer, who supported it. If only they could forge a momentary unity, the strike would fade to history.¹⁴

Filene, too, feared division. Worrying that radicals had too much influence on the union, he wrote to Moskowitz urging him to find more "conservative" Jewish leaders to be added to the strike committee to counterbalance and moderate the radical rank-and-file. Filene even offered two possible people: Joseph Barondess and Louis Miller. Discussion also focused on finding someone to pressure the manufacturers.¹⁵

¹³ *New York Times*, 7 August 1910, 6; *Ibid.*, 14 August 1910, 2; *The Jewish Daily Forward*, 13 August 1910, 1. For the case summary see Max M. Schwarcz as Treasurer of the Cloak, Suit, and Skirt Manufacturers' Protective association, Plaintiff, v. the International Ladies' Garment Workers' Union et al., Defendants. Supreme Court, County of New York, August 1910, 68 Misc. 528 (534).

¹⁴ See Henry Moskowitz to Meyer Bloomfield, August 12, 1910 as quoted in Berman [1956, p. 142].

¹⁵ Barondess was a former cloakmaker and union leader, and was now on the City Board of Education. He was viewed as somewhat of a radical in his younger days, and, because of that, still had much respect among workers, but recently, with his work on the Board of Education, he was becoming increasingly moderate. Miller was the editor of the more conservative Yiddish daily paper *Wahrheit*. But, Markowitz and Filene recognized that both Barondess and Miller were too critical of the *Jewish Daily Forward* to be tolerated by union leadership and that it would be more trouble than it was worth to try to place these people. More to the point it was quickly realized that they would not be effective, so discussion of them was dropped. See Henry Moskowitz to Meyer Bloomfield, August 12, 1910 and A. Lincoln Filene to Louis Marshal, August 18, 1910 as quoted in Berman, "Protocol," 142.

The effort to place more conservative Jews on the strike committee was part of an on-going obsession within the city's German-Jewish community on the public's image of "Jews." There was concern that the strike fed an already pugnacious antisemitic stereotype of Jews as radical workers and money-quibbling shop owners. This racism helped Moskowitz and Filene to persuade Louis Marshal and Jacob Schiff, leading Jewish bankers, to take a leadership role in ending the strike. The press, both mainstream and labor, applauded these efforts. They praised these men for taking the initiative.¹⁶

Marshal first met with Brandeis and his associates to work out the details on the preferential shop. Then, on August 22, he met with both sides. At first, Cohen, in the flush of the injunction and the positive press, resisted. When Cohen rejected the new preferential shop language, Marshall brought in Jacob Schiff and Joseph S. Marcus, President of Public Bank on the Lower East Side, to pressure the manufacturers to settle. This pressure worked: by August 25, both sides were meeting.¹⁷

Marshall worked out a compromise of the preferential shop clause, called now the "Marshall Compromise," and sent it to London and Cohen. Marshall's wording allowed both to claim victory. The union claimed it had won because the employers would not be able to judge the worth of their employees. As long as the union could supply workers, the union would receive preference. In this way, the union got the union shop as long as it could continue to recruit. The union also got the "union standard" for the entire industry. But the association could also claim victory; it did not formally have to recognize the union, nor did it have to share responsibility for managing their industry. Rather, the union could be called upon to police their own work force.

With the language worked out, the settlement went to the union and association. The association quickly accepted the whole settlement. The union had a more difficult time. Deeply split, the Strike Committee sent the agreement to the workers for a vote without a recommendation. Confusion reigned and tensions ran high at the various meeting halls where the vote took place. Mainstream press announcements that the strike was over only added to the confusion. Like their leaders, the strikers appeared to be divided. Some saw the settlement as a realistic victory, many, however, still saw anything short of full recognition as a defeat. Workers at shops who already settled had their own complaints. Most of the settled shops had better agreements than the industry-wide agreement now being voted on. They worried that this would supersede their own gains. These workers, too, opposed the settlement, as a form of self-preservation. In the end, the union might have remained divided

¹⁶ *New York Times*, 20 August 1910, 1; *New York World*, 23 August 1910, 7; *Ibid.*, 26 August 1910, 4.

¹⁷ *New York World*, 21 August 1910, 4; *New York Times*, 26 August 1910, 16; *McClure's Magazine*, XXXVI, 712; and Letter from Meyer Bloomfield to A. Lincoln Filene, August 21, 1910 as quoted in Berman [1956, pp.143-4].

and the strike might have continued had not legal matters infringed on the parties involved.¹⁸

Judge Goff, in front of whom Cohen had filed his injunction, saw the strike as an illegal action by the union, "a common law, civil conspiracy having been shown by overt unlawful acts, done in pursuance of an unlawful object." While the court "can not compel the workmen to return to work," Goff asserted it could, "restrain all picketing and patrolling, though lawful where not accompanied by violence and intimidation, are unlawful where in aid of an unlawful act." Goff took away the one weapon the union had: the strike. Speaking for the association, a jubilant Cohen told the *New York Times* that it was "the strongest [decision]... ever handed down in an American court against trade unionism." He believed that it would end the strike once and for all and provide an immediate victory to the association.¹⁹

Even the press, which had criticized the union after each of its rejections of the agreement, took a new sympathetic turn. Goff's decision threatened to upset the delicate balance between labor and capital many felt minimized the worst abuses of industrialization and kept labor peace. To the *New York Evening Post*, it "was strange law and certainly very poor policy... which would seriously cripple such defensive powers as legitimately belong to organized labor." Traditional critics of labor now complained that the injunc-

¹⁸ Alexander Block, who was charged with selling the agreement, claimed it was a victory and the absolute best that could be expected. But, Rosenberg saw anything short of complete recognition as a failure. Claiming the manufacturers were on the ropes and now was not the time for a wringing of the hands, he stated that the workers suffered too long for a "partial" victory. Still other opponents of the settlement disliked the idea that nonunion men would be allowed to work side-by-side with union men. The Jewish press was also split: the *Forward* recommended rejection, while the *Wahrheit* recommended acceptance. Meanwhile, the mainstream press, exemplified by the *New York Evening Post*, presumed if the committee did not reject the pact and it was going up for a vote, the strike must be over.

Once word of their vote got out, crowds assembled in front of the *Forward* building, a symbol of the workers' solidarity. On the morning of August 27, crowds attacked the *Wahrheit* building On East Broadway, a symbol of the compromise. One striker, after breaking the front plate-glass window with a brick, was quoted by the *New York Times* as saying, "we made an open shop in the *Wahrheit*," referring to the critical issue which still divided the union. The crowds cheered this action and it took police hours to restore "order." The same day, though, as the workers were sacking the *Wahrheit* building, Justice John W. Goff shocked the city with his news of a sweeping, permanent injunction. See *New York Times*, 28 August 1910, 1 and 3; McPherson, *Journal of Political Economy*, XIX, 82-3. *New York Times*, 28 August 1910, 3; *Jewish Daily Forward*, 28 August 1910; Rosenberg [1949, pp. 238-42]; *Jewish Daily Forward*, 26 August 1910, .1; *Wahrheit*, 27 August 1910, .1; *New York Evening Post*, 26 August 1910, 3; Hoffman, *Fifty Years*, .201-3; *New York World*, 27 August 1910, .5; *Ibid.*, 28 August 1910, 2.

¹⁹ See Supreme Court, Special Term, New York County, Max M. Schwarcz, as Treasurer of the Cloak, Suit, and Skirt Manufacturer's Protective association, Plaintiff, v. International Ladies' Garment Workers' Union, et. al. Decedents, 68 (Misc) 528-34. Quote from page 534.; see also *New York Times*, 28 August 1910, .1; *New York World*, 28 August 1910, 2.

tion's sweep would push labor to the wall and trample on the more responsible leaders of the movement.²⁰

The injunction coupled with the activities of Filene, the shift in public opinion, coupled with Moskowitz, forced the ILGWU's General Executive Board to rethink the strike. The union officially dropped its demand for the closed shop. Meeting on September 2, Cohen and London worked out a compromise which was only mildly different from the one the union had rejected only a week before. The language was rewritten to remove terms such as "non-union men" and "equal ability." In addition, wage and hour issues were compromised to avoid the settlement bogging down in arbitration. All that was needed now was for the union to ratify the agreement [Berman, 1956, p. 151].

At this point, in a decision which would foreshadow the increasing bureaucratization of a top-down labor movement removed from the rank-and-file, the ILGWU took control of the strike away from the Strike Committee. "Ratification" would not come through a massive voting campaign. Instead the Shop Chairmen (200 in all) would vote at 6 p.m. at the general strike headquarters. With only a few moments of debate, at the appointed time, the shop chairmen voted to accept the agreement, ending the Great Revolt and signaling the birth of the Protocol of Peace.²¹

As word of the settlement spread, both sides quickly called it a victory. Cohen told the *New York Times* that the Protocol provided "a great opportunity to build up a strong working relation between the unions and the manufacturers..." All sides thanked Marshall, Filene, Moskowitz and Bloomfield. But Marshall offered special thanks to Brandeis, whom he saw as a true hero. Many respected Brandeis because he remained above the fray.²²

The Protocol established "a kind of industrial self-government" which Brandeis had been trying to establish for some time. There were three parts to the Protocol. First were the normal labor contract issues of hours, minimum wages, paid holidays. In this regard, the Protocol was better than most contracts of the day. The second, involved features unique to the garment industry: abolition of charges for electricity and supplies; the establishment of shop committees to establish piece rates; and, most revolutionary, a Joint Board of Sanitary Control, a committee make up of representatives of both the union and the association who would oversee working conditions. Third, and the most important feature, were Brandeis's conceptions on efficiency and industrial democracy.

The centerpiece of Brandeis's program for industrial democracy was the preferential shop, the ban on all strikes and lockouts, and the establishment of

²⁰ Editor on the *New York Evening Post*, quoted in Edith Wyatt, *McClure's Magazine*, XXXVI, 713; see also Editorial "A Startling Labor Decision," *New York Times*, 28 August 1910, 8, Editorial, "Enjoining a Strike," *The Outlook*, XCVI (September 19, 1910): 52.

²¹ "Outcome of the Cloakmakers' Strike," *The Outlook*, XCVI (September 17, 1910): 99-101; Hoffman, *Fifty Years*, pp. 207-8 [incomplete reference]; Rosenberg [1949, p. 245].

²² *New York Times*, 3 September 1910, 1; *Jewish Daily Forward*, 3 September 1910, 1.

grievance and arbitration mechanisms. Crucial was the last clause and agreement, on the preferential shop, which, in effect, recognized the union shop indirectly. As Benjamin Stolberg states "the clause [preferential shop] was as effective, for the union's purpose, as if the full closed shop had been adopted."²³ The Protocol attempted to rationalize, standardize, and Taylorize the garment industry. All work stoppages would be eliminated. Work would continue as grievances were simultaneously arbitrated. As a tripartite bargain between labor, management, and the public, the Protocol steered the industry into the modernity of an industrial consumer society. In exchange for giving union leadership authority in hiring and job security, the Protocol mandated industrial self-management. In essence, the association expected the ILGWU to police its own members for the benefit of the industry. Under the Protocol, the union was to insure continuous and efficient production [Strum, 1984, pp. 159-195].

Julius Henry Cohen, chief council for the employers throughout the life of the Protocol recognized the substantial benefit management had reaped. Writing in 1916, he explained how the ILGWU helped make the ladies' garment industry a modern industry:

Into this industry came a union. Another nuisance to add to the plagues of the manufacturer: Is it any wonder that at first it was ignored, then fought, and only with reluctance accepted as a factor. Then, if, through the union, some order could be brought out of this chaos, hailed with hope! If all paid the same price for the same labor, as all paid for merchandise, efficiency as manufacturers would count for something against unscrupulous competitors [Cohen, 1916, p. 91].

By controlling its own members, the union brought to industry what the manufacturers could not: stability and rationality [see Gordon, 1994].

One measure for the Protocol's success could be seen in both the unionization which followed and by the new role for union leaders and outside arbitrators. Union leaders could be cheered by swelling membership roles and the authority and respectability the Protocol vested in them. In 1910, the New York City cloakmakers represented three-fourths of the entire ILGWU membership. The agreement covered 1,796 out of a possible 1,829 shops. By 1912, ninety percent of all cloakmakers were in the union. Manufacturers could take a measure of hope that the anarchy and chaos of the seasonal wildcat strikes were over as all garment workers were brought into a disciplined labor union [Stolberg, 1944, pp. 73-4].

The signing of the Protocol of Peace finally institutionalized for the cloakmakers what they had been struggling for years. By 1912, many who worked with the Protocol came to feel that some larger, stronger force, some real authority, was needed to compel both sides to reach compromise and put

²³ Preferential shop language quoted in Stolberg [1944, p. 117].

teeth into decisions. If greater public pressure was to be brought to bear on both sides, the Protocol needed a source of power and authority which a "private" agreement could not provide. That authority would come from the state. As the details of the Protocols were worked out in 1911, a tragic fire occurred which took the lives of 146 waistmakers. The fire proved to be the spark to reunite the forces which joined together during the waistmakers' strike to change the position of labor in New York. The Protocol, together with the revolution in labor law which followed the Triangle Fire, were the two halves of the new IR.

It is clear then that the Protocol was central in the formation of modern industrial relations policy. But how, then, does one reconcile ethnicity with the formation of what would become a national labor policy? I would suggest that just as feminist scholars have argued that the modern state is gendered, scholars of immigrants must also look at the way the state was ethnicized. Only then can we truly understand the modern state.

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