

X. San Francisco and the New Social Compact

San Francisco Values: The New Social Compact

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Abstract

Over the last 12 years there has been a significant transformation of basic labor standards in San Francisco. A series of city policies have raised wages and expanded health care access and paid sick leave for ten of thousands of San Francisco workers. The earliest of these policies set minimum labor standards for firms doing business with the City and County of San Francisco. A second set of policies covered all firms operating within the geographical boundaries of the city. Over the same period, the city established new programs requiring card-check procedures at hotels and restaurants where the city has a proprietary interest, established a local earned income tax credit, and created a universal health access program for local residents. While modest by European standards, these policies represent a bold experiment in American industrial relations that can provide important lessons for the rest of the country.

Introduction

The move to enact labor standards policies on a local level emerged in the context of eroding federal protections. Over the course of the 1980s the real value of the minimum wage declined by 30% (Reich and Laitinen 2003). In 2000, 14.9% of workers nationally were covered by a union contract, a drop of 42% over two decades (Hirsch and McPherson 2008). In 1994 the first modern living wage law was passed in Baltimore. The law required service companies contracting with the city to meet wage standards above the federal minimum wage. Ten years later, more than 100 local jurisdictions had passed living wage laws (Fairris and Reich 2005). Over the course of the decade, these laws became more complex, applying to wider ranges of workers and containing a broader mix of protections, including minimum paid time off, requirements that workers be retained if the city contract changes hands, and protections against retaliation by employers against workers who file complaints.

Over the course of the 1990s, San Francisco underwent an economic boom and a population shift as housing prices rose and middle income families left for surrounding areas. In 1989, the median income in San Francisco was slightly below the state median; 10 years later it was significantly higher. San Francisco's growth in high-wage professional jobs during this period was accompanied by a growth in low-wage service jobs. By 1999 San Francisco had a disproportionate number of families earning over \$75,000 a year and under \$10,000 a year compared to the rest of the state (Reich and Laitinen 2003).

Growing housing costs increased pressures on working families. Median home prices in San Francisco went from \$175,000 to \$540,000 in 2002. That same year, the California Budget Project estimated that a full-time single worker would need to earn \$9.86 an hour to meet basic needs in San Francisco; for a single parent with one child they put the figure at \$20.89 (Reich and Laitinen 2003).

San Francisco was especially well suited to enact broad ranging labor standards laws that might be more difficult to achieve elsewhere in the state or country. San Francisco is located on the end of a peninsula. Its most important industry is tourism, which is location based. By 2000, San Francisco's garment industry

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was largely gone, and the city had very few low-wage jobs in industries that are subject to strong out-of-town competition (Wells 2002).

San Francisco is a strong labor town, with a rich tradition of community organizing. As a city and a county, San Francisco shares the legal powers of the two levels of government. This both broadens the reach of specific laws and allows for the passage of laws with a single act, where coordination of multiple jurisdictions would be required elsewhere. Unlike other counties that include suburban and rural areas that often have more conservative electorates, San Francisco is entirely urban. Starting in 2000, the San Francisco Board of Supervisors has been elected through district elections. This served to disperse power and increase the influence of labor, community organizations, and the city's many democratic clubs.

Equal Benefits for Domestic Partners: A Blueprint for Local Action

In November 1996, the San Francisco Board of Supervisors enacted an equal benefits ordinance requiring firms that did business with the City and County of San Francisco to provide the same benefits to employees' domestic partners that they provide to married spouses. The law applied to all firms entering into contracts or leases of more than \$5,000 with the city. Benefits were defined broadly as including health insurance, retirement plans, leaves of absence, use of company facilities, and employee discounts.

United Airlines, Federal Express, and the Air Transport Association sued, arguing preemption under federal law, including the Employer Retirement Income Security Act (ERISA), and violation of the Commerce Clause of the U.S. Constitution. The Federal District Court upheld the ordinance, with several important restrictions. Outside of the city or land owned by the city, the ordinance could only be applied where work related to a city contract is being performed. Where the city is acting as a regulator, rather than in its proprietary interest as a consumer, the ordinance could apply only to benefits not covered under ERISA, such as bereavement leave, paid family leave, and company discounts. An appeal by the employers was rejected by the 9th Circuit Court of Appeals (*Air Transport Ass'n of America v. City & County of San Francisco*).

While the law was fundamentally a human rights ordinance, it did serve to broaden health coverage. Many contractors chose to extend the same rules to their entire workforce, not only to those covered by the law. A report by the San Francisco Human Rights Commission in 2002 estimated that more than 50,000 people in 35 states had taken advantage of health insurance offered to domestic partners by firms contracting with the city (Goldstein 2002).

With the Equal Benefits Ordinance, San Francisco directly established labor standards conditions on a wide range of firms, and did so in a way that survived legal challenge. The law served as a blueprint for many of the labor standards policies passed in San Francisco in the succeeding years. It also served as a model for other cities around the country.

Card Check

The next major piece of labor standards legislation came in December 1997, when the San Francisco Board of Supervisors passed the Employee Signature Authorization Ordinance. The ordinance requires that employers in hotel or restaurant developments where the city has a propriety interest as a landlord, lender, or loan guarantor enter into a card check agreement with a labor organization requesting such an agreement. The agreement must provide for a card check procedure with a neutral third party, binding arbitration over disputes, a prohibition on economic action by the union against the employer at worksites covered by the agreement as long as the employer is in compliance, and a prohibition on coercion or intimidations of workers by the labor organization or employer during the process (Wells 2002).

The stated purpose of the ordinance is to protect the city's economic interest from the threat of labor-management conflict where it is acting as a market participant, with the same risks and liabilities as others participating in similar ventures. It is expressly not intended to affect the outcome of the determination of preference regarding unionization.

Since its inception, slightly more than 1,000 workers have chosen union representation through UNITE HERE! Local 2 using the Employee Signature Authorization Ordinance. During the same period, an additional 2,000 workers have gained union representation with Local 2 in San Francisco through card check neutrality agreements with hotels not covered by the ordinance (Lewis 2009).

Compensation Conditions on Public Contracts and Leases

San Francisco was a relative latecomer in passing a living wage law. Labor and community organizations and policymakers drew from the experiences of other cities in crafting the San Francisco laws. At the same time, they introduced their own innovations and used San Francisco's power as both a city and a county to reach greater numbers of workers. Between 1998 and 2001, a series of policies placing conditions on firms doing business with the city were passed by the San Francisco Airport Commission, the Board of Supervisors, and the Redevelopment Commission.

In 1998 the city passed a law requiring janitorial firms contracting with the city to pay prevailing wage rates, including the cost of benefits. In 1999 the city passed the Displaced Worker Protection Act, which requires janitorial and security firms taking over contracts with the city to retain workers hired by the previous contractor for a transition period of at least 90 days.

Quality Standards Program

In January 2000, the San Francisco Airport Commission passed the Quality Standards Program, which was designed to improve safety and security at the San Francisco International Airport. At the time, the turnover rate for airport security screeners at SFO was nearly 100% a year (Reich, Hall, and Jacobs 2005). Officials at SFO expressed concerns over the impact of the high turnover rates on worker performance and airport security.

With many security and airline service jobs carried out by airline contractors, the airport had no direct relationship with—or oversight over—many of the firms operating at the airport. The airport crafted an innovative policy designed to give it greater oversight of airline contractors and to address the high turnover rates. The Quality Standards Program established a permitting process for airline contractors operating in secure areas of the airport or carrying out security functions; minimum training and compensation standards were required as a condition for receiving a permit. The policy went into effect starting in April 2000. Nearly a third of the airport's 30,000 workers received pay increases in the year following the implementation of the ordinance (Reich, Hall, and Jacobs 2005). As of January 1, 2009, the minimum compensation rate under the program at SFO was \$12.33 an hour for firms that provide health coverage and \$13.58 for those that do not.

Minimum Compensation Ordinance

In August 2000, the San Francisco Board of Supervisors passed an ordinance establishing living wage standards for firms contracting with the City and County of San Francisco or holding leases at the San Francisco International Airport. An additional 22,000 people not effected by the Quality Standards Program are projected to have benefited from the law, including 15,400 In-Home Supportive Services (IHSS) workers (Reich, Hall, and Hsu 1999; Reich and Hall 1999). The wage is indexed to the Bay Area Consumer Price Index. As of January 1, 2009, the required rate was \$11.54 an hour, \$11.03 for non-profit organizations (including IHSS).

Healthcare Accountability Ordinance

In 2001, companion legislation to the living wage ordinance was passed by the Board of Supervisors requiring firms with city contracts or leases to provide health insurance or pay \$1.50 an hour per worker to the San Francisco Department of Public Health to cover the costs of the uninsured in the city. In 2006, the hourly requirement was raised to \$2. While limited to firms doing business with the city, the Healthcare Accountability Ordinance could be considered the first pay-or-play health care policy to go into effect in the United States. In 2008, Governor Bill Richardson enacted a similar policy by executive order for state contractors in New Mexico.

Sweat-Free Contracting

In 2006 the Board of Supervisors passed an ordinance modeled on a similar law in Los Angeles, prohibiting the purchase of goods made under sweatshop conditions, using child labor or forced labor. Sweatshop conditions are defined as compensation under \$10.15 an hour, including the cost of benefits. The

minimum wage rate is adjusted nationally and internationally using purchasing power parity. The ordinance applies to good contracts over \$25,000 and with duration of more than three months. The initial application of the law was focused on the purchase or rental of uniforms.

Citywide Policies

San Francisco's living wage policies were largely variations on policies being carried out in other cities. They differed mainly in the number of workers covered. San Francisco was able to reach more workers through these policies in part as a result of its joint powers as a city and a county. San Francisco policy could reach the airport, the thousands of homecare and human service workers (a county function), and city service contractors. Where San Francisco has made the greatest innovation is in setting policies that apply to all employers in the city.

Minimum Wage

Building on the success of the living wage campaign, an initiative to create a citywide minimum wage was placed on the ballot by a coalition of labor and community organizations in November 2003. The initiative passed with 60% of the popular vote. It was the first minimum wage law implemented in a major city (not including Washington, DC; Reich, Dube, and Vickery 2005). At the time of passage, the minimum wage was predicted to impact 54,000 workers, 11% of the city's workforce. This includes worker who were earning under the minimum wage rate and would received a mandated increase and those earning slightly above the minimum wage, where employers were expected to raise wages to retain employees (Dube, Naidu, and Reich 2006). The San Francisco wage was set at \$8.50 an hour and indexed to the Bay Area Consumer Price Index. The current wage rate is \$9.79, the second highest in the nation (Selna 2008).

Working Families Credit

Established as a pilot program in 2005, the Working Families Credit was designed to encourage take-up of the earned income tax credit (EITC), promote savings, and help working families stay in San Francisco. Initially funded with public and private sources, the program provided a 10% supplement to the EITC. In 2005, 10,000 families received an average credit of \$220. When private funding ran out at the end of the pilot program, the city switched to a flat credit of \$100 per family. When families apply for the credit, they are also connected to other programs for low-income working families (Flacke and Wortheim 2006).

Healthcare Security

In October 2003 the California legislature passed SB2, a pay-or-play health care law sponsored by state senator John Burton with the support of the California Labor Federation, the California Medical Association, Kaiser Permanente, and Blue Shield of California, among others. The bill was signed into law by then-governor Gray Davis shortly before he was recalled. A referendum effort led by the California Chamber of Commerce forced the law onto the ballot in November 2004, where it was defeated by a slim margin.

While the referendum lost statewide, it passed with 69% of the vote in San Francisco. Supervisor Tom Ammiano and the San Francisco Labor Council began a discussion over how similar legislation could be enacted at a local level. At the time, an estimated 82,000 San Franciscans lacked health coverage; 56% were employed. The city was spending \$104 million a year on health services for the uninsured (Universal Healthcare Council 2006). Supervisor Ammiano introduced the initial legislation in late 2005. In February 2006, Mayor Gavin Newsom requested that the supervisors hold off on voting on the legislation, while he convened a universal healthcare council made up of healthcare providers, labor, business, and other community stakeholders charged with developing a proposal for universal healthcare in San Francisco. The council proposed a universal health access program and left decisions on financing the program to the Board of Supervisors. The San Francisco Healthcare Security Ordinance was approved in July.

The resulting ordinance has two central elements: it establishes a new health program, Healthy San Francisco, to provide comprehensive health services to uninsured San Francisco residents with a focus on prevention, and it sets a minimum health spending requirement for firms with 20 or more workers. Employers may meet the requirement through contributions toward health benefits, health savings accounts,

direct reimbursement of health care costs, or payment into the city program. The requirement was designed to level the playing field for firms that already provide coverage, discourage firms from dropping coverage and placing a greater burden on the new public program, and help reduce the taxpayer cost of caring for uninsured workers. The public plan creates an affordable option for employers that do not currently provide health coverage to all or part of their workforce.

Healthy San Francisco, operated by the San Francisco Department of Public Health, is open to uninsured San Francisco residents regardless of health, employment, or immigration status on a sliding scale based on income. Enrollees are assigned a medical home and a primary care physician through one of the city's public or nonprofit clinics. Acute care and specialty care are provided by San Francisco General and a network of the city's nonprofit hospitals. Prescription drugs are provided with co-pay. Healthy San Francisco is a health access program, not insurance. Health services are not available through the program outside of the local network. The program is funded by the public, individuals, and employers. It also receives in-kind contributions from nonprofit hospitals.

Businesses with 20 to 99 workers are required to spend a minimum of \$1.23 an hour per employee on health services. For a full-time employee, this is equivalent to 50% of the average amount that the 10 largest counties in California (other than San Francisco) spend on individual health coverage for their employees. Businesses with 100 or more workers are required to spend a minimum of \$1.85 an hour per employee on health services. For a full-time employee, this is equivalent to 75% of the average amount that the 10 largest counties in California (other than San Francisco) spend on individual health coverage for their employees. Workers of firms who pay into the program receive a 75% discount on enrollment fees. There is currently no enrollment fee for any worker with a household income of less than 300% of the federal poverty level whose employer pays into the program.

Nearly half of those who work in San Francisco do not live in the city and are thus not eligible for Healthy San Francisco, which is available only to San Francisco residents. Focus groups of employers found strong reluctance to elect to pay into the city program if the business could do so only for part of their workforce and would need to find another option for workers living outside of the city. To resolve this problem, the Department of Public Health proposed to use the funds paid on workers who do not live in the city to establish medical reimbursement accounts in their names. The ordinance was amended by the Board of Supervisors accordingly.

The Golden Gate Restaurant Association immediately sought an injunction against the employer minimum health spending requirement on the grounds of ERISA preemption. Under ERISA, state and local governments may not impose mandates with respect to health and retirement plans covered under the act. In January 2007 the 4th Circuit Court upheld a District Court ruling overturning a Maryland law requiring very large employers (WalMart) that did not spend at least 8% of payroll on health services to pay a fee to the state to cover the cost of health care for the uninsured. In the Maryland ruling, the court found that since the workers received no benefit if the employer chose to pay in, no rational employer would choose to do so; therefore the law effectively forced employers to alter their existing ERISA plans (*RILA v. Fielder*).

On December 26, 2007, the District Court granted the injunction. The city immediately appealed for a stay along with the San Francisco Labor Council, the Service Employees International Union Local 1021, SEIU United Health Care Workers West, and UNITE HERE Local 2. On January 9th, 2008, a three-judge panel from the 9th Circuit Court of Appeals granted the stay and allowed the law to go into effect. In September 2008, the panel ruled in favor of the city.

The core of the case rotates around the question of whether employers have a means of compliance that leaves their ERISA plans "intact and unaltered." The panel agreed with the city that by including the public option, employers have a rational means of compliance with the law that does not involve an ERISA plan. They also rejected the argument that the city's health access plan is itself an ERISA plan, since it receives funds from employers. The panel noted that the plan is available to low- and moderate-income San Franciscans without regard to employment status and that it is primarily funded by taxpayers (*Golden Gate Restaurant Ass'n v. City and County of San Francisco* 2008). The restaurant association has sought review by the full 9th Circuit Court and the request for review is pending.

The employer-spending requirement went into effect on April 17, 2008, for employers with 50 or more workers and April 1, 2009, for employers with 20 to 49 employees. Nearly 1,000 employers had chosen

to pay into the city plan by the end of August 2008, contributing \$17.5 million on behalf of 26,000 workers. Half the workers were eligible for Healthy San Francisco; the other half received Medical Reimbursement Accounts. Close to 30,000 individuals had enrolled in the program; the Department of Public Health projects that the number will grow to 60,000 by the end of 2009 (Healthy San Francisco Update 2008).

Paid Sick Leave

In November 2006, San Francisco became the first city in the country to require employers to provide paid sick leave when a ballot initiative establishing the policy passed with 61% of the vote. The law requires employers to provide one hour of paid sick time for every 30 hours worked. Workers for businesses with fewer than 10 employees may accrue at least a minimum of 40 hours of paid sick time; for all other businesses the minimum required accrual is 72 hours. Employees may use the time for their own health care or to care for a family member who is sick. Implementation of the ordinance was postponed until June 5, 2007, by the Board of Supervisors to give employers time to come into compliance.

Enforcement

In 2000 San Francisco established an Office of Labor Standards Enforcement (OLSE) to oversee enforcement of the city's prevailing wage laws for construction and living wage law. The office has since been expanded and given enforcement responsibilities over many of the laws discussed in this paper. Among its duties the OLSE proposes regulations, sends out notifications to employers about changes in the laws, investigates worker complaints, and conducts audits of city contractors. The city also contracts with a group of local community-based organizations to educate workers about their rights under the laws. This includes organizations working in the Chinese and Latino communities, where language can be a barrier to enforcement.

Discussion

San Francisco's new labor standards policies have brought meaningful improvements in compensation and access to healthcare to thousands of low-wage workers and their families in the city. The combination of three citywide policies together creates an effective minimum compensation level—including the minimum wage, the cost of paid time off and minimum health spending contributions—of \$10.12 to 12.03 an hour, depending on the size of the firm. These numbers should be placed in the context of the San Francisco economy. In 2007, the nonprofit California Budget Project (2007) estimated the minimum hourly amount needed for a full-time working single adult to meet basic expenses in San Francisco at \$14.25 an hour.

The research to date on the impacts of the San Francisco minimum wage and living wage policies has found no measurable effects on employment levels. Dube, Naidu, and Reich (2006) surveyed restaurants in San Francisco and surrounding areas before and nine months after implementation of the ordinance. They found a small but not statistically significant increase in employment in affected restaurants compared to the control group. The length of employee tenure increased in limited service restaurants by an average of 3.5 months, as did the share of employees working full-time. Restaurants in San Francisco raised prices 2.8% more than the control group during the same time period (Dube, Naidu, and Reich 2006). These results are similar to those found by Card and Kruger (1994) and in a national study by Dube, Lester, and Reich (forthcoming) estimating the impact of state minimum wage laws on continuous counties across state lines. A 2008 study by the Chicago Federal Reserve Bank suggests that minimum wage laws may be an especially effective form of economic stimulus, since low-wage workers spend most of their earnings and spend them locally (Aaronson, Agarwal, and French 2008). Indexing the minimum wage, as was done in San Francisco, allows workers' wages to keep up with the cost of living and avoids the larger wage shocks to employers that come from more intermittent adjustments (Ettliger 2006).

Research on the Quality Standards Program at SFO found that the program had a sharp and immediate impact on employee turnover and job performance. Reich, Hall, and Jacobs (2005) found that 15 months after the policy went into effect turnover had fallen by a third among all firms and 60% among the firms with the greatest share of affected workers. Annual turnover of security screeners fell 80%. Sizeable

numbers of employers reported higher morale, fewer grievances, fewer absences, and better customer service. Employees reported that they worked harder, that more skills were required of them on the job, and that the pace of work had increased. The study found no impact on employment levels.

The healthcare and paid sick leave policies are too new to fully measure their impact. From the evidence thus far, employers have largely opted to leave their current benefit programs intact, while paying into the city program for those workers who do not have health coverage. A number of restaurants have adapted to the ordinance by adding surcharges to the cost of dining, ranging from \$1 an entrée to 5% of the bill. The Golden Gate Restaurant Association, which did not take a position on the paid sick leave initiative, reported that the leave requirement has not been a major issue for their members (Jackson 2008).

Employers have raised concerns about large numbers of different jurisdictions creating conflicting standards on healthcare. San Francisco's health reforms are not likely to have widespread adoption by other cities. San Francisco started from an exceptionally strong public health infrastructure that could be used as the core of the health network. The reforms relied on the city's legal power to set a minimum health spending standard and on the public health system, which is operated by the county. San Mateo County to the south of San Francisco is contemplating a similar program. Like San Francisco, it has a strong public health infrastructure to build on. Unlike San Francisco, it would face the more difficult task of passing the same law in the county and a myriad of different cities. The San Francisco experience may be most relevant at the state and national level.

San Francisco's policies offer important lessons for the rest of the country. Healthcare reform with shared responsibility, paid sick leave, majority verification for union recognition, and a higher minimum wage indexed to inflation were all parts of Barack Obama's platform during his presidential bid. We can expect debates on many of these issues over the coming years. San Francisco provides a useful case to study.

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