

HELD UP WITHOUT A GUN

Wage Theft in Minnesota's Janitorial Industry



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Table of Contents

Introduction	4
An Industry-wide Problem.....	5
Capital Building Services.....	6
Carlson Building Maintenance.....	7
Diversified Maintenance Services	8
KBS (Kellermeyer Bergenson Services).....	9
Kimco Services (formerly Eurest Services).....	10
Prestige Maintenance USA	11
What Can Be Done.....	13
About CTUL.....	14
End Notes	15

“

I am here not only to recover the wages that I am owed, but also for all of the other workers who have faced the same problem. In my work, I traveled from store to store doing special cleaning projects. I met other workers who were facing the same issue of wage theft. It is time to end this problem.

”

– David Jimenez



Introduction

In order to cut costs and avoid responsibility, many retail businesses contract out their janitorial work. There is fierce competition among janitorial companies for these contracts, with each company trying to underbid the others. Since labor is by far the largest and most costly expense in a cleaning contract, the company with the lowest labor costs tends to win the contract.

In some cases, the janitorial companies try to reduce their labor costs with practices such as paying below minimum wage, not paying overtime, or just not paying workers at all.

The largest companies that clean retail businesses in Minnesota have been the subjects of lawsuits and Department of Labor investigations for not paying their workers all of the wages they earned. To these contractors, the benefits gained by breaking the law outweigh the consequences.

The failure to pay workers what they are legally entitled to is known as “wage theft,” and it is an epidemic in the retail janitorial industry in Minnesota.

Wage theft is often a calculated risk that these companies take. They count on the predominantly immigrant workforce not being aware of their rights or being too afraid to complain. Intimidation and retaliation are all too frequent in the retail janitorial industry, including firing workers, cutting back workers’ hours, assigning workers more difficult work, physical violence, threatening to call

immigration or the police, and other practices.

Janitors who are hired by contractors to clean retail businesses are already struggling to get by on pay that is at or near minimum wage, without any benefits such as paid sick leave, and with no health insurance.

Their lives are made even more difficult when they don't receive the compensation they have earned through hard work.

Wage theft has a devastating impact on workers and their families, resulting in increased food insecurity and unstable housing situations and deteriorating health conditions.

Current enforcement efforts are inadequate for an epidemic of this size.

Many employers get around the law by deliberately using subcontractors to shield themselves from legal liability since the federal and state departments of labor will usually only go after the most immediate employer.

The state and federal agencies that are charged with enforcing wage and hour laws are perpetually under-resourced and often lack the political will to engage in the aggressive and proactive enforcement that will send a message to employers that wage theft doesn't pay.

An Industry-wide Problem

This problem is not limited to just one cleaning contractor or one retail company. These problems pervade the entire retail janitorial industry in Minnesota and throughout the U.S.

This report documents wage theft by seven cleaning contractors currently operating in the Twin Cities metro area:

- Capital Building Services;
- Carlson Building Maintenance
- Diversified Maintenance Systems
- KBS(Kellermeyer-Bergenson Services)
- Kimco Services (formerly Eurest)
- Prestige Maintenance USA
- ROC Commercial Cleaning

These contractors provide janitorial services to the following stores in the Twin Cities:

- Best Buy
- Cub Foods
- H&M
- Herbergers
- Home Depot
- JC Penneys
- Kmart
- Kohl's
- Lund's and Byerly's
- Macy's
- Marshall's and TJ Maxx
- Michael's
- Sears
- Target

Capital Building Services

Headquarters: Lake Zurich, IL

Founded: 1987

Executives: Rick Aiello, President

Stores they clean in the Twin Cities area: Macy's, Herberger's

Total Employees: N/A

Wage and Hour Abuses

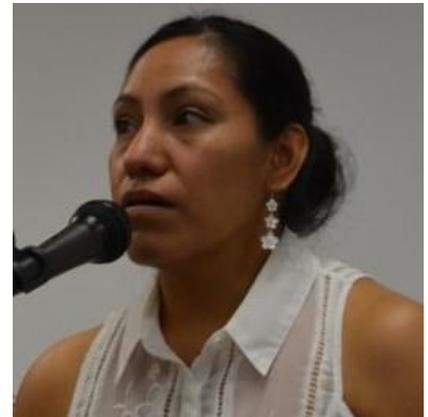
- In May 2015, eight janitors who clean Macy's and Herberger's stores in the Twin Cities metro area filed a class action lawsuit against Capital.¹ The lawsuit alleges that in some cases employees' wages were as little as \$4 or \$5 an hour and describes Capital's violations of wage and hour laws as "systematic and severe," including:
 - Minimum wage violations
 - Overtime violations
 - Under-reporting of hours worked
 - Unreimbursed expenses
 - Uncompensated travel time

- In her book *Wage Theft in America*, author Kim Bobo describes a case in which the Cincinnati Workers Center helped four workers recover the wages they were owed by Capital Building Services.²

CAPITAL BUILDING WORKER:

Leticia Zuniga,
who cleans a Herberger's store

"It is not fair that Capital would take away part of our pay. They are taking money out of the pockets of our families."



Carlson Building Maintenance

Headquarters: White Bear Lake, MN

Founded: 1978

Executives: President Nick Geise and CEO Rob Hamme

Stores they clean in the Twin Cities area: Byerlys, Coborns, Cub Foods, Festival Foods, Jerry's Foods, Lunds, Rainbow Foods,

Total Employees (nationwide): 500

Wage and Hour Abuses:

Carlson was investigated by the Department of Labor which found that Carlson owed back wages to 242 of its employees.³

CARLSON BUILDING WORKER:

Maricela Flores

"I clean a Target store from 4am-10am. I have four children and the wage I make does not stretch enough to be able to provide all the basic needs for my family. My wages are so low that I now have to share a home with another family and rely on food stamps to be able to feed my kids.

I am not the only one. All of my co-workers face the same low wages and have a workload that is more than we can finish in the 6 hours we are given to clean a store. Our workload is too high and our wages are too low."



Diversified Maintenance Services

Headquarters: Tampa, FL

Founded: 1990

Executives: President Peter Belusic and CFO Patrick J. Sheil

Stores they clean in the Twin Cities area: Kmart, Sears

Total Employees: 10,000+

Wage and Hour Abuses:

In the last 10 years, Diversified Maintenance has settled at least 10 private lawsuits, and there have been at least six investigations by the Department of Labor, alleging violations of minimum wage and overtime laws.

- In 2014, Diversified paid \$675,000 to settle a class action suit brought by workers who cleaned Target, Kmart and Sears stores in Minnesota.”⁴
- In 2011 Diversified settled a lawsuit by a New York employee who charged that the company didn’t pay him overtime although he had to work eighty-four hours a week.⁵
- In 2009 Diversified settled a lawsuit which charged that the company “repeatedly and willfully” failed to pay employees for overtime, and that this was a “company-wide” policy.⁶

DIVERSIFIED WORKER:

Leticia Baeza

“I worked as a cleaner for Diversified Maintenance for about 4 ½ years. I worked 8 hours per night, seven days a week without a day off, to be able to make extra money. However, I was not paid time and a half for 8 of the hours every week.”



KBS (Kellermeyer Bergenson Services)

Headquarters: Maumee, OH

Founded: 1984

Executives: CEO Mark Minasian

Stores they clean in the Twin Cities area: Apple, Best Buy, H&M, Marshall's, Office Max, TJ Maxx

Total Employees (nationwide): 11,000 direct employees plus a network of subcontractors

Wage and Hour Abuses:

- KBS operates under a model of using subcontractors who hire janitors as “independent subcontractors.” This type of arrangement has come under increased scrutiny by the U.S. Department of Labor, which stated that the mis-classification of employees as “independent contractors” is a serious problem since workers are often denied critical benefits and protections they are entitled to, such as family and medical leave, overtime pay, minimum wage, workers compensation, and unemployment insurance.
- Over 30 employees of KBS subcontractors have come forward and contacted CTUL about not being paid their full wages – over \$20,000 in the last year alone. CTUL has helped many of these workers recover the compensation they are owed, and the cases of some workers are being investigated by the Department of Labor.

KBS SUBCONTRACTOR WORKER:

David Jimenez

“I was hired by a subcontractor of KBS to go to Chicago to clean Walgreens and T-Mobiles stores. I worked up to 18 hours a day, but have not been paid for all my overtime.”



Kimco Services (formerly Eurest Services)

Headquarters: Atlanta, GA

Founded: 1970

Executives: Mark Horn, CEO and Jim Given, President

Stores they clean in the Twin Cities area: Home Depot, JC Penney, Kohls

Total Employees (nationwide): 7,200

Wage and Hour Abuses:

- In March 2015, Kimco settled a lawsuit brought by three former supervisors who oversaw the cleaning of Kohl's, Home Depot, and other stores in the Twin Cities metro area. The supervisors alleged that they had to work up to 35 hours a week off the clock, and that Kimco terminated them in retaliation for filing the lawsuit.⁷
- In 2013 Kimco settled a lawsuit filed by seven Latino employees charging that Kimco had failed to pay them their overtime wages. According to the lawsuit, one of the workers who cleaned a Home Depot store was owed a month's worth of pay. The workers said they were fired in retaliation for their complaints about not being paid. The lawsuit also charged that the company's retaliation was "malicious, intentional and performed with the actual intent of harming [the workers]."⁸

KIMCO SERVICES WORKER:

William Wissbaum

"I was not paid for many hours that I worked cleaning stores like Kohl's. My co-workers and I are suing the company for unpaid hours."



Prestige Maintenance USA

Headquarters: Plano, TX

Founded: 1976

Executives: Founders Alex and Marie Dinverno, CEO Rachel Sanchez

Stores they clean in the Twin Cities area: Target, Michael's

Total Employees (nationwide): 3,000

Wage and Hour Abuses:

- In 2014, Prestige settled a case brought by workers who alleged that Prestige did not pay them all of the overtime wages they were owed.⁹
- Between 2002-2010 Prestige was investigated by the Department of Labor on three separate occasions, resulting in more than 400 violations for failing to pay workers overtime.¹⁰
- In 2009 Prestige settled a lawsuit brought by sixteen of its workers who claimed that the company owed them overtime pay. The workers who brought the lawsuit were Latino immigrants who cleaned Target stores in Maryland overnight from 10:30 pm to 8 a.m. every night.¹¹

PRESTIGE MAINTENANCE WORKER:

Enrique Barcenas

“Every evening I work cleaning a Target store, surrounded by food and other necessities that I can’t afford to buy. The cost of living goes up every year, yet our wages remain stagnant. Now is the time for change.”



ROC Commercial Cleaning, Inc.

Headquarters: Oakdale, MN

Founded: 1990

Executives: Owner-Operator Peter Mogren

Stores they clean in the Twin Cities area: Car dealerships

Total Employees (nationwide): N/A

Wage and Hour Abuses:

- ROC operates under a model of using subcontractors who hire janitors as “independent subcontractors.” This type of arrangement has come under increased scrutiny by the U.S. Department of Labor, which stated that the mis-classification of employees as “independent contractors” is a serious problem since workers are often denied critical benefits and protections they are entitled to, such as family and medical leave, overtime pay, minimum wage, workers compensation, and unemployment insurance.
- A *Wall Street Journal* article about problems faced by undocumented workers featured a Minnesota couple who worked for ROC.

“In November, Alba and Eugenio landed jobs at ROC Inc. for a net sum of \$155 each per week to wash a Chevrolet dealership six nights a week in the St. Paul suburb of Roseville. Pay stubs don’t show an hourly rate. The couple say they didn’t receive benefits or paid time off. . . .People familiar with the company say that ROC, which has contracts with dealers selling major car brands paid wages that dipped below the federal minimum wage.”¹²

ROC SUBCONTRACTED WORKER:

Eustolio Hernandez

“I worked cleaning a car dealership 7 days a week overnight. I stopped working there when they said I would have to be an independent contractor. The boss refused to give me my last paycheck of \$1,625.”



What Can Be Done

Target's Responsible Contractor Policy

In June 2014, after four years of organizing, including leading three strikes by cleaning contractors in 2013, and a year of dialogue between Target executives and CTUL members who work in retail cleaning, Target took a leadership role in the industry by adopting an unprecedented Responsible Contractor Policy to be implemented for new cleaning contacts at their Twin Cities stores. The policy was the first of its kind nationally in the industry.

The policy included provisions to:

- Protect and ensure workers' rights to collectively bargain with their employers
- Ensure workers have the right to form safety committees in the workplace made up of at least 50% workers selected by their co-workers; and
- Ensuring that workers are not forced to work seven days a week.

Workers are in the process of working with Target to implement the policy with the corporation's two cleaning contractors in the Twin Cities.



Recommendations

- 1) Other retailers should follow Target's lead in the Twin Cities by requiring their cleaning contractors to be responsible. Responsible cleaning contractors compensate workers fairly, seek to maximize continuity at workplaces, prioritize worker safety, and respect their employee's rights organize and bargain collectively.
- 2) Minnesota should enact legislation to hold companies that outsource certain services liable for employment law violations by the subcontractor. HF 1093, which was introduced this year in Minnesota would hold companies liable for violations by its subcontractors of minimum wage, overtime, and health and safety violations, if the company "knew or should have known" that the subcontractor did not have sufficient funds to comply with employment laws.
- 3) The Minnesota legislature should increase the fines that businesses must pay if convicted of firing or discriminating against employees because they complained to the employer or to the Department of Labor and Industry that they are owed wages.
- 4) Cities and counties in Minnesota should follow the lead of other municipalities throughout the U.S. that are addressing the problem of wage theft through means such as:
 - a. revoking the business license of companies that commit wage theft;
 - b. directing the City Attorney to prosecute employers that violate wage and hour laws;
 - c. ordering police to treat wage theft in the same manner as other cases of stealing;
 - d. creating an Office of Labor Standards to investigate and pursue cases of wage theft;
 - e. coordinating with community-based organizations to do outreach and education about the legal rights on the job.

About CTUL

Centro de Trabajadoras en Lucha (CTUL) organizes low-wage workers from across the Twin Cities to develop leadership and educate one another to build power and lead the struggle for fair wages, better working conditions, basic respect, and a voice in our workplaces. CTUL is an organization of workers and for workers, committed to securing fair working conditions for present and future generations.

CTUL began in 2005 as the Interfaith Worker Center for Justice (IWCJ), with the goal of supporting low-wage workers who are facing workplace issues such as unjust firings or wage theft, and focusing on resolving those immediate issues.

In August 2007, the Workers' Center shifted from being a service group to a base-building organization. CTUL began focusing on empowering low-wage worker to lead a movement aimed at achieving fair and equitable wages, working conditions and fair treatment for all.

Over the past six years workers have succeeded in recovering back wages and reinstating hundreds of unjustly fired workers, while winning victories against some of the biggest and most well-established employers in the area and becoming firmly established as a major force for worker justice in the process. In only six years, CTUL has grown from a small organization with a few members into a powerful force for those whose voices have gone unheard.

Since 2010, CTUL has been organizing with retail cleaning workers across the industry.



Workers have organized marches, protests, and community events, to bring to light the injustices they face every night as they clean big stores in the Twin Cities.

In May of 2011, 18 workers and allies participated in a hunger strike that lasted 12 days. During that time,

the Minneapolis City Council passed a resolution supporting retail cleaning workers, and workers were supported by a number of influential figures including, Lutheran Bishop Craig Johnson and U.S. Rep. Keith Ellison.

In 2013, janitors held three one-day strikes which brought significant public attention to the problems in the retail cleaning industry. CTUL's work has resulted in a number of victories in the industry, including the first wage increase for retail janitors in years.

CTUL members who work in retail cleaning entered into a year of dialogue with Target executives. This resulted in Target taking a leadership role in the industry by adopting an unprecedented Responsible Contractor Policy.

CTUL is now working with Target to implement that policy and is calling on the other major retail stores to follow Target's lead.

This victory paves the way for workers to gain fair wages and benefits and a voice in the workplace. It has implications that move well beyond the 1,000 estimated retail janitors in the Twin Cities, opening the door to ensure that low-wage workers of color have a place at the table in deciding the future of work.

End Notes

¹ Hussein, et al. v. Capital Building Services Group, Inc., Case No. 0:15-cv-02498.

² “Wage Theft in America: Why Millions of Working Americans Are Not Getting Paid – And What We Can Do About it,” Kim Bobo, The New Press, 2009

³ U.S. Department of Labor, Wage and Hour Division, Minneapolis District Office, Case ID:1561107, Local Filing No. 2010-250-04816

⁴ Alvarez et al. v. Diversified Maintenance Systems, LLC et al, No. 0:11-cv-03106-SRN-TNL, U.S. District Court, Dist of MN

⁵ Arellano v. Diversified Maintenance Systems, Inc. No. 1:11-cv-01288-FB-JO, U.S. District Court, Eastern District of NY

⁶ Munoz v. Building Maintenance, Inc. d/b/a Diversified Maintenance Systems, No. 6:08-cv-922-ORL-DAB, U.S. District Court, Middle District of FL

⁷ Pacheco et al v. Kimco et al, Case No. 0:14-cv-00366

⁸ Ricciardi et al. v. The Kimco Corporation et al., Case No. 2:10-cv-05371-JS-ARL

⁹ Gonzalez et al. v. Prestige Maintenance USA, LTD, Case No. 4:2013cv02150

¹⁰ U.S. Department of Labor Wage and Hour Division Case ID 1183955, Local Filing Number 2002-250-00443; Case ID 1361131, Local Filing Number 2004-167-04122; Case ID 1447129, Local Filing Number 2006-250-02803

¹¹ Gonzales et al. v. Prestige Maintenance, Case 8:07-cv-01949-PJM

¹² “Immigration Audits Drive Illegal Workers Underground,” *Wall Street Journal*, Miriam Jordan, Aug. 15, 2011