

Redefining The Purpose of Sheltered Workshops

by Kevin L Lilly

The sheltered workshop system, originally developed to provide a "work opportunity" for disabled persons, changed dramatically during the past decade.¹ The number of programs increased markedly, from 1,128 in 1968 to 4,418 in 1976. The workshop population grew from 39,525 to 145,442 persons.² There were also shifts of emphasis in the types of persons served and the type of programs offered. Over 60% of all persons presently in sheltered workshops are mentally retarded.³ The number of "work activity centers" (programs for inconsequential producers) increased from 468 to 2,252, compared with an increase in regular workshop programs of only 667. Counseling and other collateral (non-productive) services were greatly expanded.

Total program expenditures also increased.

within that growth, though, there was a significant redistribution of spending. In 1967 expenditures were allocated as follows: staff costs (22%), client wages (35%), materials and supplies (24%), and overhead (19%). As of 1974 those cost distributions had shifted to: staff costs (39%), client wages (17%), materials and supplies (21%), and overhead (23%). This breaks down to an increase in the average aggregate expense for each dollar of client wages from \$2 in 1967 to \$6 in 1974.

There were also areas in which a lack of change was significant. The average wage rate only increased from \$.76 per hour in 1968 to \$.81 per hour in 1976. Subcontract work, the core of the productive component of the shops, was not significantly expanded. Only about 1/3 of all clients received some kind of formal work training. The rate of placement in outside competitive employment decreased from 17% in 1967 to 12% in 1976.^T

Faced with these conflicting patterns of development, there seems to be a need to reexamine the purpose of sheltered workshops in order to clarify the direction in which future energies should be expended. This paper will attempt such an inquiry.

Purpose

The "purpose" of sheltered workshops has been articulated in a number of contexts. The first to be examined here is the legislative formulation. As previously mentioned, the average wage rate in

sheltered workshops is well below the standard minimum wage. This is possible because of a provision for "special minimum wages" incorporated in the Fair Labor Standards Amendments of 1966. The justification for the wage exemption is that it is necessary to "prevent curtailment of opportunities for employment" for the total population served in these facilities.¹

The exemption is translated into practice by the issuance of special certificates, authorizing reduced wage rates, to workshop programs which qualify according to their level of productivity. Regular program certificates provide a minimum wage of 50% of the standard statutory rate. Work activity center certificates contain no minimum wage level. All workshops are to pay wages "commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work."¹⁰ The findings as to productivity are based on factors including the "present and previous earnings" of the workers.¹¹

The regulations that explicate the application of these special wage rates define each of the component programs specifically in terms of purpose.

"Sheltered workshops" (regular programs) are institutions conducted "for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, and/or providing such individuals with remunerative employment or other occupational rehabilitative activity of an educational or therapeutic nature."¹² This definition indicates that providing "remunerative employment" is not the primary focus. Rather, the goal is to provide a rehabilitation program of which remunerative employment may be but one of a number of equally weighted considerations. Work or production is viewed as a medium for the achievement of a broader purpose.

The definition of "work activity centers" carries this orientation one step further. Such programs are to be "designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential."¹³ This regulation clearly states that "work or production is not the main purpose" of a therapeutic activity.

A second context in which the question of the

purpose of sheltered workshops has arisen is in attempts to organize handicapped workers within those facilities for collective bargaining purposes. In *Goodwill industries of Southern California*, 231 N.L.R.B. No. 49 (1977), such an attempt was found to be invalid. The delineation of purpose was developed in three stages. First, it was recognized that such workers are "employees in the generic sense," since (1) they work a set number of hours a day, (2) they perform functions of economic value, and (3) they are paid for those functions. In contrast, however, it was noted that there are a number of significant differences in this environment from normal employment: (1) the focus is on rehabilitation and not on producing a product for profit, (2) these persons are "hired" on the basis of handicap, (3) wages are uniform for all clients, and (4) clients are counseled rather than disciplined for poor work performance. Weighing these competing considerations, it was decided that the workshop would most appropriately be characterized "as a vocational clinic rather than a viable entrepreneurial concern."

The primacy of rehabilitation that is distilled from these examples is not surprising nor does it appear inappropriate. Turning to a clinical definition of "purpose," however, we are faced with a distinction which raises an important question as to the adequacy of that result.

In "Work and Rehabilitation," Dr. Walter Neff compared the purpose of "sheltered workshops" and "rehabilitative workshops". He noted that the "prime objective" of the latter "is to bring about a basic change in the client's ability to work . . ." Such programs are "designed as transitional and temporally limited service, as a vestibule to ordinary, unprotected work." In contrast, "the essential function" of sheltered workshops "is to provide some minimal levels of remunerated and productive employment for handicapped persons who, it is believed, cannot compete for jobs in the open, unprotected labor market..." He concluded that "the true sheltered workshop can be regarded as a *maintenance program*".

This view of purpose is decidedly different from the legal formulations. Programs which perform what Neff terms true "rehabilitative functions" are limited to specifically transitional contexts, which would at best include only a portion of regular program workshops. All other programs are not perceived as primarily performing "rehabilitative functions," but are seen as serving a maintenance function.

The recent changes in the sheltered workshop system tend to support Dr. Neff's characterization. Much of the problem has resulted from attempting to

provide programs which are apparently "work oriented" but which are actually directed at the "non-productive" aspects of a person's development.¹⁶ This has caused an increase of the financial burden to the point that it has become inhibitive. It has also left the focus of actual programming largely undefined. Workshops cannot continue to move along this course and remain viable institutions. Programs that are supposedly offering a total spectrum of services, including an employment opportunity, are in danger of deteriorating into programs that serve solely a maintenance function. A reappraisal of the system is necessary.

An Alternative

One potential response to this dilemma is premised on the belief that the key to the development of these persons in this vital component of their lives is that *work should be the norm*. It should not merely be a medium for "rehabilitation" or "therapy," it should be an end in itself. A move in that direction would involve shifting "some of the energies presently used for maintenance (or therapy) of this population . . . directly toward training the retarded to somehow effectively compete."¹⁷

Expectancy and Ability

The initial and most troublesome barrier to the development of a model based primarily on work is the assumption that "the retarded are incapable of a quantity and quality of work which would necessitate paying them a normal wage."

There has historically been a low level of performance by mentally retarded individuals since they are forced to work in poorly structured environments and they do not have access to training in the skills and attitudes necessary for increased performance. Such performance nurtures an equally low "expectancy level," which has two confounding effects. It "promotes a reliance on screening out individuals who are difficult to train instead of developing training procedures with sufficient power to meet the needs of these persons." It also grounds a system in which low levels of performance are seen as adequate, thus reinforcing the misconceived expectations.¹⁹

Contrary to this pattern, recent studies have shown that retarded persons in properly structured and supervised work situations can perform at levels completely inconsistent with previous expectations.²⁰ There have also been indications of handicapped persons' abilities to perform at significantly higher rates than expected even in the present system. The DOL study (1977) reported that 7% of persons in WAC's were placed directly into competitive work settings.

Since the supposed criterion for participation in such programs is "inconsequentiality" of work ability, and the total placement percentage for all workshops was only 12%, these placements highlight the inappropriateness of placing a "ceiling" on any person's ability.

Training

The fact that a potential for higher levels of performance has been demonstrated by individuals within this class will not alone prompt the shift to work-intensive programs. The real key to that re-orientation is the incorporation of effective training techniques into the existing system. As indicated above, researchers have designed specific programs which have proven successful with individual workers. They have also taken great strides in expanding these techniques into a technology of training which is applicable on a generalized scale.²¹ Underlying that work has been the practical challenge of tailoring programs to the limited resources which are available. Several components of the response to that challenge have been identified.:

(1) Service agencies and research agencies must establish ongoing relationships. This includes the need to train persons as "middle-road" researchers, capable of introducing the techniques into ongoing programs.

(2) Research must be designed with the specific purpose of practical application in mind. It must result in procedures which yield demonstrable useful information.

(3) Training procedures and objectives must be clearly defined.

(4) Procedures must be developed that can be implemented without sophisticated equipment, large sums of money, and highly trained front-line personnel.

(5) Attention must be paid to job enlargement and reinforcement systems.

Work

The existence of a system of training will not of itself exhaust the need for a shifting of "energies." The nature of the work utilized within the system must also be reexamined. The recommendations of DOL (1979) noted that "a continuous, adequate supply of suitable work resulted in better training, higher wage earnings, and more effective placement of trained workers in jobs in competitive employment outside the workshop."

The predominant type of work currently utilized in workshops is subcontract work. Rather than shifting to other types of work, it has been suggested that an increased emphasis be placed on this work since it can provide a favorable setting for an in-

crease in effective training procedures. However, such work must be chosen on the basis of its habilitation value." Work contracts should: (1) require skills that must be taught rather than skills which the person already has, (2) provide sufficient lead time to allow for consideration of training implications while setting up production, (3) be labor-oriented. (4) allow for a variety of job stations, and (5) be profitable for both the workshop and the person."

The underlying characteristic of such contracts (and of all "suitable" work) is that they provide an opportunity for development of skills which will shift these persons out of a context in which they are seen as only ancillary to the normal work force. This orientation is directly tied to the overriding philosophy of "normalization."

In addition, there must also be a continuous and adequate supply of work. This shifts the analysis from "internal" training to "external" market development.

In its study (1979), the DOL repeatedly spoke to this problem. (1) It proposed "that the regulations be changed so that subcontracting to sheltered workshops can be considered a part of a company's affirmative action program." This would stimulate the allocation of work by private industry to sheltered workshops, and reinforce that allocation by counting it as fulfillment of a responsibility. (2) It proposed "a nationally coordinated program to develop and expand industrial markets for the products and services of sheltered workshops . . ." (3) It noted that "consideration will be given to the development of annual agreements between workshops, and purchasers of services, where state law permits, in an effort to improve service dealing." (4) It recommended that "a demonstration program should be developed to assist, with a subsidy, sheltered workshops to bid on contracts which might otherwise go to firms outside the U.S."

Expanded "training" would contribute to this effort. By increasing the availability and effectiveness of training procedures, the potential for performance of a wider range of tasks within the workshop is increased. With that "potential" in hand, professional contract procurement agents or sales managers should be able to explore previously untapped markets. Thus, by concentrating on training, the traditional "expectancy cycle" could be inverted into an expanding spiral of increased competence and increased possibility.

Accountability

A shift to work-intensive programming would also require a reorientation of the administrative

focus within workshops. Programs can be evaluated from a variety of perspectives, among them; (1) effect of rehabilitation services, (2) cost efficiency and (3) production efficiency. In a workshop which provides "therapy" the emphasis is necessarily on rehabilitation. The traditional indicia of success is number of competitive work placements. The cost factor is answered primarily in terms of the number of services provided per person, rather than in terms of a "return" on the expenditure. Since production is treated as only the "medium" for rehabilitation (or maintenance), production and income levels are sacrificed in favor of a more diversified program of services.

In contrast, in a work-intensive program a much greater emphasis would be placed on cost and production efficiencies. The workshop would be evaluated on "how well (it) utilizes and adheres to generally accepted industry standards of programming and administration" in delivery of its service.²⁵ "If clients are producing with at least the same quality as nonhandicapped workers, and are paid a wage commensurate with nonhandicapped workers, labor rate should *not* be the factor reduced to allow for competitive bidding. Production efficiency, client training, material handling, and service to the customer should be the main parameters manipulated to effect competitive bidding."²⁶

The concept of "competitive placement" would not be abandoned, but it would be expanded to include permanent and competitive placements even within a sheltered environment.

Implications for the Legal Perspective

A transition to the type of program described above would contribute to a resolution of the inconsistencies which mark the "legal" conceptions of a workshop's purpose.

The basic problem with the existing statutory framework is that the criteria for the existence of workshop programs are defined in terms of *productivity*, yet the purpose of the workshops appears to inhibit the maximization of that capacity. This problem is compounded because previous "earnings" are used to qualify for continuance of the wage exemption. The regulations do incorporate the general language that wage formulae must yield returns "commensurate" with those of nonhandicapped workers. However, such an approach does not guarantee an opportunity equal to nonhandicapped workers. Persons are not presently placed in situations most conducive to work. Rather, persons are paid a "commensurate" rate only within the limited

environment in which they are in fact placed.

A recognition that the primary purpose of workshop programs should be to provide an *opportunity for work* could have several effects. First, it could force a reformulation of the statutory scheme so that workshops could no longer qualify for the wage exemption unless that met certain minimum standards of *potential production capacity* apart from the performance levels of their workers. Workshops would have to demonstrate that they are viable employment situations.

In addition, with a shift of emphasis to production, there would be an increased reliance on specific training techniques and industrial accountability techniques. Both of these would provide more consistent bases for reporting and verifying performance.

Finally, as production did increase, the efficacy of a general "shop-wide" exemption to minimum wage standards might be lost. This would necessitate either a total abolishment of the exemption, or a requirement that applications be made on behalf of specific individuals, with more exact performance data required.

A shift to work-intensive programming could also ground a reevaluation of the appraisal of workshop's function delineated in *Goodwill Industries*. According to that analysis, the *sine qua non* of employee status is defined in terms of (1) number of hours worked, (2) productive function, and (3) compensation. The first of these could be met by a large portion of the handicapped population. Since the third flows directly from the second, the performance of a function of economic value emerges as the key issue. In that case it was found that other considerations overshadowed the level of productivity of the workers. If, however, productivity was increased to much higher levels, it could be argued that persons would be "employees" regardless of ancillary differences in the structure and administration of the programs in which they work.

Beyond any *results* that a general increase in competence of handicapped workers could have on legal institutions, there is a more important point. Beginning to restructure the legal perspective at this time would, in itself, effectively contribute to a change in the growth pattern of the workshop system away from the danger of becoming one of "maintenance" to which it is currently susceptible. This would make the legal "purpose" a more meaningful one, and could serve as the basis of a system with sufficient power to provide a truly "equitable" opportunity for these persons.

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