June 14, 1979

DAVIS-BACON: A COSTLY CONTRADICTION

INTRODUCTION

An obscure labor law, the Davis-Bacon Act, is costing the federal government at least three-quarters of a billion dollars a year in wasteful construction costs. It is also restricting minority entry into the construction crafts and shrinking the value of Section 8 housing subsidies for the poor and elderly.

Passed in the early years of the Depression, Davis-Bacon was intended to protect local contractors and labor from the cutthroat competition of intinerant contractors and their poorly paid employees. The Act mandates that for every federal construction project in excess of $2,000 the Secretary of Labor will establish as the minimum wage the wage prevailing for a "corresponding class of laborer in the city, town, village, or civil subdivision in which the work is to be performed."

The General Accounting Office (GAO) has culminated two decades of oversight with a 1979 report urging Congress to repeal the Act. It charges that the Department of Labor has failed consistently to correctly determine the appropriate prevailing wage. Confirming several academic studies, the GAO found that the Department of Labor often incorrectly established collective bargining rates as the prevailing wage. Labor's predilection for union rates explains the vigor with which organized labor has defended Davis-Bacon.

This year, congressional opponents have introduced a number of bills aimed at repealing Davis-Bacon. Representatives John Erlenborn (R-Ill.) and Tom Hagedorn (R-Minn.) are leading the House efforts. In the Senate, Orrin G. Hatch (R-Utah) and John Tower (R-Texas) are the most persistent opponents of Davis-Bacon.

The House, on June 6, rejected a floor amendment offered by Congressman George Hansen (R-Idaho) which proposed to strike the Davis-Bacon provisions from federally financed Indian housing and neighborhood self-help programs. Despite this setback, there have been some recent decisions which opponents of Davis-Bacon find encouraging. The Senate Armed Services Committee voted 11-5 on June 6 to eliminate Davis-Bacon provisions from military construction. A recent ruling by the United States Court of Appeals for the Fourth Circuit, Commonwealth of Virginia vs. Ray Marshall, permits judicial appeals based on a denial of due process or non-compliance with statutes or regulations. The Secretary of Labor is still not subject to judicial review on the basis of fact or substance. Ben Blackburn, president of Southeastern Legal Foundation, which assisted Virginia in the case, was enthusiastic about the outcome. "The Labor Department has now been told that it is not above the law. The result should save American taxpayers many millions each year."

THE ACT

Since 1931 Congress has extended the prevailing wage provision to include not only federal construction but numerous federally-assisted projects. Additional amendments introduced fringe benefits into the prevailing wage calculation and explicitly placed responsibility for prevailing wage determination with the Secretary of Labor.

Determination of the appropriate prevailing wage has been delegated to the Wage and Hour Division of the Department of Labor's Employment Standards Administration. The minimum wages are established primarily on a project basis, although the Wage and Hour Division also maintains a geographical listing. In 1977, for instance, there were a total of 17,931 wage determinations, 15,674 of which were on a project basis.

Interested parties may petition the Wage Appeals Board to overturn the disputed rate. The burden, however, is on the contractor to protest. To support a petition, the protesting contractor must often generate his own survey, a substantial expense with little prospect of reward.

ADMINISTRATION

"After nearly 50 years, the Department of Labor has not developed an effective program to issue and maintain current and accurate wage determinations; it may be impractical to ever do

so."[1] The GAO supports this claim with a compedium of Labor's flaws.

The first charge is that Labor simply assumes that union rates prevail. In an analysis of 73 wage determinations, the GAO found that about one-half were based not on Department of Labor surveys, but rather on union-negotiated rates. (Table 1)

Table 1

Wage Determination Supported and Not Supported by Surveys Conducted by Labor

		Project determination		Area determination		Totals	
Region	Total	No survey	Survey	No survey	Survey	No survey	Survey
New York	15	5	5	4	1	9	6
Atlanta	15	3	7	-	5	3	12
Chicago	13	7	3	2	1	9	4
Dallas	15	6	4	3	2	9	6
San Francisco	15	1	9	4	1	5	10
Total	73	22	28	13	10	35	38

Source: General Accounting Office

The GAO also analyzed 530 area determinations and found that 302 (57 percent) were based on collective bargaining agreements, not surveys. Since nearly 75 percent of Davis-Bacon projects use area determinations, the GAO findings reveal an expensive flaw in Labor's procedures.

The Davis-Bacon Act is not administerable because so much of the necessary information is compiled on a strictly voluntary basis and from a multitude of sources. The GAO found that Labor

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1. U.S. Comptroller General, The Davis-Bacon Act Should Be Repealed (HRD 79-18) (Washington, D.C.:General Accounting Office, April 27, 1979).

not only lacked a consistent methodology but also capriciously deleted and added wage data. Furthermore, Labor biases its determination by including previous Davis-Bacon projects in the calculations. The Department of Labor compounds these difficulties through a biased interpretation of "prevailing" wage, arbitrary job classifications, and the importation of urban wage rates into rural areas.

30 Percent Rule

To determine the prevailing wage, Labor will first ascertain whether a majority of workers receive the exact wage rate. If not, Labor will establish as prevailing any wage paid to 30 percent of the appropriate workers. Should no single rate exist for at least 30 percent, Labor will set as prevailing the average rate.

The use of the 30 percent rule seriously distorts the prevailing wage. The requirement that both the majority and 30 percent rule be based on the same wage, to the penny, distinctly favors unions, since typically all union members receive the same rate. Non-union wages often vary according to experience and productivity.

As an illustration of the effect of the 30 percent rule, GAO cited a painting contract in Carson City County, Nevada. Labor established $12.40 per hour as the minimum wage. Although as table 2 shows, 30 percent were paid that rate, all of the remaining painters were paid less. The average rate, which Labor also uses in its calculations, was $9.52 per hour, 23 percent less.

Table 2

Carson City County Survey

Number of painters employed	Hourly wage rate paid
2	$ 6.25
2	8.74
1	9.00
3	12.40

It is possible that the 30 percent rule might also produce an inappropriately low wage. This occurrence however is mitigated

by two considerations. The first is that union wages, to which the 30 percent rule is most likely to apply, nearly always exceed non-union wages. Secondly, the GAO has observed that the market will ignore inordinately low minimum wages and instead provide bids based on the actual prevailing wage.

Importation of Wages

Davis-Bacon specifies that the appropriate geographic application be the "city, town, village, or other civil subdivision of the state in which the work is to be performed." The Department of Labor however has consistently violated the intent of the law and imported prevailing wages from non-adjacent counties. The imported rates, in nearly all cases, originated in urban unionized areas and were applied to less populated areas with a smaller percentage of union labor. In the most extensive analysis of Davis-Bacon to date, D. N. Gujarati of the University of Chicago found that "25-38 per cent of building construction and about 46-73 per cent of highway and heavy construction determinations that were based on union rates used rates from non-contiguous counties and or statewide union wage rates."[2] Gujarati also found that the average distance traveled by rates from non-contiguous counties was 75 miles - hardly a reasonable commute.

Imported wages not only drive up construction costs but also take work away from local contractors and labor. The latter is precisely the opposite of the intent of Davis-Bacon. Local contractors are reluctant to bid on projects with unrealistically high Davis-Bacon rates primarily because of the accompanying morale problems. Employees on such jobs receive greater wages than their equals who were not so fortunate as to be assigned to the federal project. Also the return to previous wages may result in a decline of worker productivity and possibly agitation for union wages. The intinerant wage of the 1970s has replaced the intinerant laborer of the 1930s.

Project Classification

Prevailing wages must also be determined on the basis of both project and work. The Department of Labor has created four major classifications: residential, highway, heavy and building. These categories are both large enough to include highly dissimilar projects and yet sufficiently vague to permit an overlap. As

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2. D.N. Gujarati, "The Economics of the Davis-Bacon Act," Journal of Business, Vol. 40, No. 3 (July 1967), p. 307.

an example of the former, GAO cited a Cumberland County, North Carolina, contract to overhaul an air conditioning unit. Classified as "building," the survey included such dissimilar projects as the installation of a sprinkler system in a men's shop and the construction of a synthetic fibers plant. The wages on the various projects surveyed possessed a similar degree of diversity.

The classification of Interstate 66 in Fairfax County, Virginia, as "heavy" construction illustrates the flexibility between the major construction catagories. The majority of the work will be done under "highway" rates. However, since it is possible that the Washington Metrorail system might be extended down the median, Labor ruled that part of the work must carry "heavy" rates despite the nearly identical nature of work. This decision resulted in a doubling of many pay rates. Unskilled labor, for instance, will earn rates of $4.50 on "highway" and $9.68 on "heavy."

In summary, Labor's administration of Davis-Bacon has, over the past twenty years, been marked by inconsistencies in both methodology and results. Prevailing wage determinations have been, in a significant number of cases, unrealistically high. This is attributable to both the built in and discretionary biases in favor of union-negotiated wages.

The extent of Labor's reliance on union rates was revealed in the GAO's survey of 30 locations and 277 worker classifications (Table 3). Labor had assigned union rates to 66 percent of the worker classifications. The GAO found that only 42 percent warranted such wages.

THE EFFECTS

According to the GAO the Department of Labor's inappropriately high wage determinations cost the federal government over one-half billion dollars in excessive labor costs during 1977. The GAO also calculated that the Act imposed compliance and administrative costs of $189.1 million on contractors and another $12.4 million on federal agencies, including the Department of Labor. Armand J. Thieblot, Jr., testified before the Senate Committee on Banking, Housing, and Urban Affairs that the cost is at least one billion dollars, an estimate which he terms conservative.

These estimates are based on incorrectly determined Davis-Bacon rates. There are additional, indirect costs which occur even when Davis-Bacon is properly administered. At the very least, Davis-Bacon sets the average wage as the minimum. In

addition, because of the minimum wage requirement, government demand is unresponsive to wage costs. This unresponsiveness, in combination with Labor's tendency to set union rates as prevailing and the relatively fixed supply of union labor, strengthens organized labor's bargaining position.[3] High union rates, and a general rise in construction costs, result.

Table 3

Comparison of Union-Negotiated and Nonunion Rates Issued By Labor and GAO Survey
(in percentages)

Region	Total wage rates compared	Labor rates issued		GAO survey rates	
		Union negotiated	Non-union	Union negotiated	Non-union
New York	12	97	3	59	41
Atlanta	27	21	79	4	96
Chicago	17	76	24	39	61
Dallas	16	79	21	33	67
San Francisco	28	82	18	77	23
Total	100	66	34	42	58

The United States Chamber of Commerce has estimated the indirect cost of Davis-Bacon to be $1.8 billion a year and the total cost to be $2.8 billion. The Chamber has also calculated that repeal of Davis-Bacon would lower the price level by 0.1 to 0.3 percent, reduce the cost of a new home by $741, and create anywhere from 23,000 to 150,000 new jobs (Table 4).

Minorities

Davis-Bacon is above all a union protection measure. Since organized labor's major bargaining tool is control of the labor

3. John P. Gould, Davis Bacon Act, The Economics of Prevailed Wage Laws (Washington, D.C.: American Enterprise Institute, 1971), p. 21-22.

supply, any enhancement of that power will hurt the efforts of minorities to enter the construction crafts. Davis-Bacon discriminates against minorities primarily through three channels: 1) the concept of a minimum wage, 2) high apprentice rates and 3) discouragement of minority contractors.

Table 4

DAVIS-BACON REPEAL: What Does It Mean To A Typical American
(Level Changes in Percent or Constant 79 $)

	Lower Inflation					More Employment		More Spendable Income		Lower Federal Taxes	
	Lower Prices		More Purchasing Power		Lower Cost of New Homes						
	Low Est. (%)	High Est. (%)	Low Est. ($ Per Household)	High Est. ($ Per Household)		Low Est. (Jobs)	High Est. (Jobs)	Low Est. ($ Per Household)	High Est. ($ Per Household)	Low Est. ($ Per Household)	High Est. ($ Per Household)
U.S.	-0.1	-0.3	31	92	-741	23,000	150,000	10	50	-15	-80
Alas.	-0.2	-0.5	82	247	-970	42	275	16	82	-25	-131
Cal.	-0.1	-0.3	37	111	-887	2,390	15,585	11	55	-16	-88
D.C.	-0.1	-0.4	53	157	-691	178	1,160	13	65	-20	-104
Ill.	-0.1	-0.4	42	127	-863	1,116	7,275	12	59	-18	-94
N. Y.	-0.1	-0.3	38	113	-628	1,677	10,939	11	55	-17	-89
Penns.	-0.1	-0.3	30	89	-683	1,164	7,589	10	49	-15	-79
Tex.	-0.1	-0.3	29	88	-753	1,464	9,550	10	49	-15	-78

Source: U.S. Chamber of Commerce, Forecast and Survey Center

The minimum wage creates a strong disincentive against the substitution of unskilled labor for more expensive and non-essential

skills and machinery. If there was no minimum rate, contractors would, at some wage, be willing to give up the expertise and expense of the skilled craftsman in favor of the inexpensive unskilled laborer. The task performed must, of course, be a routine and repetitive one. Davis-Bacon, in its role as a minimum wage, discourages the substitution of unskilled labor, and thus suppresses the employment of the unskilled and structurally unemployed.

Davis-Bacon also discourages the use of minorities on federal construction projects. Apprentice rates are often set so high as to favor use of the more skilled journeyman over the apprentice. In addition, open shop categories such as helpers and trainees are often unrecognized. These are the major means of minority entry into the construction industry. Finally, the Department of Labor often mandates job practices and ratios contained in collective bargaining agreements regardless of whether the contractor was a party to the agreement. A dramatic example is the Neighborhood Based Self Help Rehabilitation Program. In areas such as the South Bronx residents could through their labor purchase the apartments on which they worked. The "sweat quality" approach possesses the multiple virtues of providing housing, rehabilitating neighborhoods, and permitting the untrained and unemployed to acquire skills. The program was canceled, however, because in New York City the appropriate journeyman-apprentice ratio is 12 to 1. If the ratio was achieved, the entire purposed of the program would be defeated.

The Department of Labor disposition toward union rates discourages minority contractors, a vast majority of whom are open shop, from bidding on federal projects. This not only hurts minority employment, but also contradicts federal procurement policies aimed at encouraging minority enterprises.

Housing

The application of Davis-Bacon to federally-assisted housing is antithetical to the goal of providing sufficient and inexpensive housing for the poor and elderly. With a given amount of resources available for housing, Davis-Bacon will direct a greater amount of funds into wages and thus reduce the amount available for structures. Section 8 rent subsidies serve as an excellent example. Since the federal government will pay any rental costs in excess of 25 percent of the eligible rentor's income, it would be in the government's interest to pursue low rents. The lower the rent subsidies are, the greater the number of people who receive them will be. Unfortunately, Davis-Bacon often drives up the construction cost of federal projects and thereby reduces the value of the Section 8 dollar.

An example is a project of 44 units for the elderly at Keyser, West Virginia. The original bid, without Davis-Bacon, was $740,000 or $16,800 per apartment: When Davis-Bacon was applied the bid jumped to $1.2 million or $27,200 per apartment.

Another example is a nine story, 193 unit apartment complex for the elderly in Grand Rapids, Michigan. It has been estimated that Davis-Bacon caused an additional cost of $51,220 or 11 percent of the entire contract.

Necessity of Davis-Bacon

Defenders of Davis-Bacon assert that the Act is as necessary now as it was during the Depression. Without it, they charge, construction workers would bear the burden of the frenzied competition for federal contracts.

Nearly 80 percent of all 1977 construction was undertaken within the private sector. If the thesis that competition results in low wages is correct, then construction wages on the private projects must be inordinately low. This, however, is not the case. Construction workers receive nearly double the wages paid to their counterparts in retail trade. Furthermore, Davis-Bacon, if correctly applied, ties wages on federal contracts to the private market. Should the wages collapse in the private sector, the federal sector would follow.

Proponents of Davis-Bacon also cite an MIT study which finds that Davis-Bacon rates have a positive effect on productivity. Contractors place their best workers on federal projects as a reward. (It should be noted that implicit within this defense is the acknowledgement that Davis-Bacon rates do exceed the prevailing rate.)

To attempt to justify Davis-Bacon on these grounds is erroneous. The productivity of the bidding contractors is a matter of procurement policy. To maximize productivity, without regard to cost, does not always yield the most efficient result. The intent, past and present, of Davis-Bacon has never been to offer an incentive for greater productivity.

CONCLUSION

The purpose of Davis-Bacon was to protect local contractors and labor. The market has proven more effective in fulfilling the goals of Davis-Bacon than has the elaborate and expensive structure constructed by the Department of Labor. Local interests

are best served when prevailing wage determinations are set so low as to be disregarded. Contractors will include within their bids the actual prevailing wage. In these situations the contracts usually go to local construction.

The heart of the Davis-Bacon question is whether Congress places a greater value on the benefits received by organized labor than on the public's desire for more efficient use of the tax dollars, minority efforts to gain employment, and the elderly's need for decent and inexpensive housing. The Davis-Bacon Act makes the two incompatible.

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