Forbes

Davis-Bacon: The Price-Fixing Conspiracy That The Feds Mandate

By George Leef

April 10, 2014

Lately, labor law issues have been much in the news, including the vote against the UAW at Volkswagen's Chattanooga plant, and the ruling that college football players are free to unionize. And on March 31, another federal labor statute was the focal point of a court decision, namely the Davis-Bacon Act.

Here is the background on the law. In 1931, Republican Congressman Robert Bacon (NY) teamed up with Republican Senator James Davis (PA) to push through a bill to rectify an egregious wrong (at least as they and some of their constituents saw things) – that construction contractors were choosing to employ lower-wage non-union black workers on federal projects rather than employing higher-wage and mostly unionized white workers.

The Horror — allowing some workers to compete by accepting lower compensation! Bacon and Davis had been trying to enact their anticompetitive bill since 1927. It was finally passed and was signed into law by President Hoover on March 31, 1931.

In order to "protect" against the employment of lower-cost construction workers on federal projects, the law declares that on all such projects, laborers must be paid at "the prevailing wage." So instead of simply allowing competition on that aspect of federal contracting, we have to pay bureaucrats in the Department of Labor to find out what the "prevailing wage" is for all the different kinds of construction labor. What they find to be the prevailing wage is almost always the union-scale wage in the nearest locale where there are union contracts.

"Prevailing wage" law sounds so much nicer than calling it a "price fixing" law, but that is exactly what Davis-Bacon and its many state copy-cats do. Going back to the beginning of the labor movement in the U.S., the stated goal was to *take labor out of competition.* By making it illegal for contractors on federal projects to pay less, even if there are competent workers willing to work at wages below the "prevailing" ones, the government is acting to enforce the unions' wish to suppress competition.

In free markets, conspiracies to fix prices rarely last long before someone tries to get more business by undercutting the established price. The only way to ensure that cartel prices aren't eroded by competition is to use political clout to get the government to prevent competition. Big Labor and Big Business often try to use government for that purpose.

The result of Davis-Bacon is to increase the cost of federal construction projects. Exactly how much is impossible to say, but the combined impact of higher mandated wages and the inefficient work rules that come with union construction probably put the figure in the 15 to 20 percent range. (In this Cato Journal paper I wrote in 2010, I examined some evidence on the magnitude of the cost increase.) In addition, taxpayers have to pay for additional Department of Labor employees to declare what the "prevailing wages" are around the country – more pointless expenditure of taxpayer money and a sheer waste of human resources.

In short, we have here a classic example of special interest legislation, with concentrated benefits flowing to a small number of people, while the costs are spread among a vastly larger number of people. Davis-Bacon "works" by doing through the federal government what the unions could never accomplish by other means – fixing prices.

Davis-Bacon was at issue recently in a dispute in the District of Columbia. A project, "CityCenterDC" is to be a mixed-use development with condos, apartments, office spaces, stores, and public open space. The development is entirely privately funded and its sole connection to the government is that it sits on land owned by the District of Columbia and leased for 99 years and when completed will provide some additional tax revenue to the city.

But that tiny thread of connection was enough for DC unions to insist that they were entitled have it subjected to Davis-Bacon. To no one's surprise, the Department of Labor's Administrative Review Board decided that the project was "public work" and therefore Davis-Bacon's anticompetitive regulations would apply.

That ruling was challenged by both the District of Columbia and the developer and, after considering the arguments for and against, district Judge Amy Berman Jackson struck it down – story here. Quite sensibly, Judge Jackson said that if the "public benefits" in this case were sufficient to trigger Davis-Bacon, it would be hard to find *any* project that wouldn't be subject to the statute. This is a victory for the rule of law.

It's a victory, however, only in that this odious law won't, apparently, be stretched further still. (I say "apparently" because Judge Jackson's decision could be appealed to the D.C. Circuit Court, the very court recently packed with judges friendly to the administration and its labor allies.) It's like an overweight person not gaining any more excess pounds in a week – not really a victory.

Perhaps, as the nation's fiscal condition continues to deteriorate and the prospect of governmental default grows (economists David Henderson and Jeffrey Rogers Hummel argue in this Independent Institute paper that it's almost inevitable already), American voters will demand that political candidates pledge themselves to end all special interest giveaways – to labor, to business, and to non-profit groups. The best change I can imagine for this year's elections and all

future ones would be for voters to demand to know what laws the candidate would seek to repeal.

If the U.S. is ever to regain fiscal health, we must start repealing the numerous laws that needlessly drive up federal spending. Davis-Bacon should be at the top of the list.