

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2620 SLC SB 172 (FILE 2)

then you lay them off because they are unskilled to perform the function that has to be performed. So you end up with two other factors in this. One is, that when you're working on a job in such a case, when it's totally open, then you bring in novice help. I work in tunnels and off cliffs. If somebody doesn't know what they are doing, they can end up killing me. There are not enough skilled people that are out of the union working in the field that I'm in, except maybe from down south. I travel around the State. I'm what you call an "outsider", but I do a job that cannot be performed by the local community. I'm very serious about the fact by repealing the Little Davis Bacon Act, you are going to be causing deaths of people because of the fact of hiring unskilled people.

Dillingham - David Bouker, Nushagak Electric Co-op & Nushagak Telephone Co-op - When the 1982 Legislature approved a \$539,000 grant to the Nushagak Electric Co-op for the extension of the waste heat project, from the power house to the local high school. We were shocked to discover that the wage rates in the project were in fact mandated by the state because state funds were to be utilized. We believe this concept to be an unusual application when electric cooperatives, funded by REA, are exempt under provisions of the federal Little Davis Bacon Act. The next best thing we felt to do would be to approach the Legislature with a request to exempt communities, non-profit agencies, and public utilities operated in a community of 5,000 or less. The rationale behind this request is outlined in HB 304, is that normally the rural or decentralized areas of the state, do not enjoy stable economics that are generally prevalent in the rail belts. We must compensate for this fact of life, by getting the most out of every dollar that we can and spreading it out as much as possible. For example, under the existing statutes, a grant to a rural community at this time would require that the agency receiving the grant, initiate a health and welfare plan costing at least a \$1.75/hour and a pension plan costing \$3.75/hour. There is no provision, whatsoever under the existing statutes, to recognize health and welfare plans, or pensions already in effect. It makes one wonder where these numbers came from. In many cases, this would result in duplicate expenditures that would benefit no one, but insurance companies and huge pension trusts, run by unions. For example, Alaska Natives are already covered for health and welfare benefits the state law is in fact a better plan, because it is run by the national rural electric co-operative association, a non-profit agency, set up specifically for the benefit of rural electric cooperatives and their employees. Direct labor rates of, for example, a line man, are mandated by Title 36 of \$25.15 per hour. Why the big difference? It would appear that those wage rates mandated by statutes are geared for the seasonal type construction, projects under union contracts. The state is actually carrying the torch for the unions and supporting them over the needs of the rural residents. A lineman at Nushagak Electric can expect to gross \$42,120.00 in straight time every year, this doesn't include overtime. In addition, we also provide a minimum of 21 days vacation for first year employees. The requirements from the Department of Labor do not recognize this feature, however. In fact, the Department of Labor regulations are set up for the seasonal union worker who may not even be a state resident. We recognize that in many areas, unions are a necessary buffer between employees and management. Though we have a problem recognizing the state's needs, who mandates the labor rates from Ketchikan to Barrow, whether or not that mandate is necessary. Alaska's larger than many countries in the world today, and it enjoys many diversities not readily found elsewhere. It may be necessary to protect the union

construction worker in the rail belt. We believe that the application of mandated labor rates in the rural areas do not serve the best interests of the rural communities in any way, shape, or form. These wages are addressed to a small segment of the total labor force. That is, seasonal type construction workers. They are highly inflationary, when applied to an employee who has a steady job. They disrupt pay over residents of an employer. They cause dissention among employees. They just disrupt payroll records of employers, because they require artificial contributions to health, welfare, and pension plans, that may not be appropriate, and they make no provision for holidays or vacation time. It also appears that the provisions of the statutes are applied inconsistently with the federal statutes. In summary, I've been authorized to advise that the following agencies, located in the Dillingham area, support passage of HB 304, and I urge you to consider our request favorably. This would include, the City of Dillingham, Nushagak Electric Cooperative, Nushagak Telephone Cooperative, Bristol Bay Native Association, Choggiung Ltd. (the village corporation), Fortune Enterprises (contractor), and Dillingham Construction which is also a contractor. And I thank you for the opportunity to present my case.

Juneau - Jeri Pond - I'm against any adjustments to the Little Davis Bacon Act. One thing that comes to my mind is that I don't quite see where a person in a small village is worth any less than a town over 5,000 people. Another thing, I hear administrators of various towns talking about their local wages being between \$6, 10, 15, 20/hour and the fund indication they thought was around \$10 or \$12 was a fair wage. I'm sure that most of them were drawing considerably more than that. As far as the local contractors being hurt by these people, or these contractors bidding for the Davis Bacon prevailing wage. I really feel that the Davis Bacon is at least offering the local contractors, the city administrators seem to be weaseling around, spreading most of the work that they can through the local contractors. Also, Davis Bacon, all the special of the national economy as it is, pick up all the rich people. The Juneau areas have two mattresses on their pick-ups. Without the Davis Bacon, I believe you'd see a lot more of these people out in the villages, Mr. Furnace, to get what they can get. It would reduce the wages further than what they are. I reiterate, that I don't believe the person in the villages is worth less money, than a person in the larger South. I think really, that if we want to get the cost down a little further on these projects, so that we can get people from India or... someplace like that, where they work cheaper than \$6.00 an hour, as one administrator quoted. I haven't heard too many people that are drawing the \$6.00 or \$10.00 per hour, testify in favor of repealing this Davis Bacon law. I'm sure that they realize that if it is repealed, their wages will decrease even further. One last thing another person brought up, that I haven't thought of and I'd like to reiterate it. That the construction workers is one of the more dangerous lines of work, from every insurance company and also reflect in insurance premium for people that work in that line.

Furnace: Thank you....

Sand Point - No answer to teleconference moderator.

Delta - Joan Dean, City Clerk, City of Delta Junction --I would like to testify in behalf of the city and that we support passage of this bill. Delta is a community of about 1,000 people inside city limits, about 1500

outside. We have had an increase in our contract funds through the use of Davis Bacon Act. Local bidders have complained about the accounting requirements, that they are having to do for the Department of Labor, when they have employees that work for both private and city projects. The U.S. District Court has forsook U.S. Davis Bacon ruled invalid. In January 1983, revenue sharing bulletin, there are a number of details on that ruling. I would be more than happy to send copies to the members of the committee. One of our local survey crews, when they are working for private enterprise, will be paid anywhere from \$14 to \$15.00 an hour. If they have to pay the Davis Bacon Act, the cost would be \$23.00 an hour for surveying costs. Thank you.

Furnace: Thank you. I'm sorry Representative Schultz couldn't be with us this afternoon...

Suzanne Johnson (Delta) - I am representing myself. I'm opposed to HB304.

Fairbanks: Harvey Laborne - I'm opposed to HB 304. I'm in construction for many years. I feel that the Davis Bacon laws is on a par to good building codes. I do feel, some other figures mentioned in the villages for those people, are worth every bit of in quick money, as people are in the cities. Certainly they have to pay higher prices for things they do high. I would like to go on record as being opposed to HB 304.

Dave Rasley: Fairbanks - I represent the operating engineers. I'm opposed to HB 304...even the width of Davis Bacon reporting features that we have over the past several years, there have been thousands and thousands of dollars that contractors have had to pay when the labor department audited them because they were trying to cheat on what they had bid. They had bid on Davis Bacon wages and yet they were not paying those wages, though it looks to me like somebody was stealing there. And I think that if this legislation is enacted, you are not interested in dropping the bucket, but what you will be. I think the contractors will take unscrupulous, and unmerciful advantage of the employees. I would like to know, what will stop the contractors from the lower '48, coming to Alaska with workers with union lives, immigrants and union wages and not benefiting the Alaskans whatsoever. I'm interested in promoting section end of Title 36 to stop that. I think we can all find examples where that's been violated time, and time again. I don't think that the clause in there will represent that. Furthermore, if someone comes to Alaska within 30 days, he's considered a resident, so that doesn't look to me that would be too much of a problem to overcome for a contractor who was doing his bidding by exploiting the employees, rather than on his expertise as a contractor. Also, there's been some testimony from several people, in particular, the gentlemen from Cordova and some of the others, concerning the difference in wage rates, as to what was paid when he first came there, as to what he is paid now, and what their difference is, in local city rates as oppose to the prevailing wage of Davis Bacon. I would like to ask that those individuals, how has their wages change in that time since they first came, are they still getting the same wages as when they first came to that city? I think that's a point that ought to be considered. Just because inflation has gone down here recently in the past year, doesn't mean that it's going to stay down. I think that the lady from Kotzebue made an excellent point when she said that many of the people from the NANA Corporation who do work (end of tape).

I hope that you will certainly consider this bill very carefully, and of all the things that could happen if this bill is passed. I think that most of them would be bad for the working men and women of the State of Alaska. I don't think that it would increase the amount of construction that noticeably, that any area is able to do. I know several large contracts recently, where the top bidders were all within 3%, and some of those contractors were non-union contractors, who bid with the Davis Bacon and if a contractor who has the so-called union contract and restrictive work practices, that he can compete and be within 1, or 2%, or 3% of a non-union contractor that doesn't have that. I don't think that speaks very well of that non-union contractor's expertise, in a construction field, if there's that big of an advantage that the union contractor has.

Juneau, Edwin Frolick - I'm a professional working man in Alaska, and I've also been a professional working man in the lower '48. I believe that the quality of workmanship is available in Alaska through prevailing wage--is the highest quality in the world, probably because we do jobs that can't be done by other people in the world. And you can't just go to a local town and hire somebody off the street. Where as in my union, it takes 5 years to make the "A" list. Which means that I am a 5-year, experienced man before I am even qualified to go out at top scale. I don't believe the work that is done in Alaska today can be done efficiently, as it has been historically in the past, with such jobs as the pipeline, by average men off the street that would be brought up by repealing of this act. So therefore, I am opposed to any thing that would lower the standard of the quality of workmanship, in the State, where we are doing things that are unprecedented in the world. Thank you.

Fairbanks: Willy Louis - I represent the laborer's union here in Fairbanks. We have approximately 2500 members. First of all, I would like to say that I'm definitely opposed to HB304, SB172, and HB378. I'm going to tell you my reasons, Mr. Furnace, because one of this so near, it hasn't been brought out. For years and years through the minority, women, Title 30, Title 7, Executive Order No. 246 of the Civil Right's Act, when a contractor would employ minorities, women and so on, whatever. I've been in the work force for about 32 years and nobody tells me that an employee, if he had an opportunity to pay a woman less wages on a project, would he do not have any type of federal standards. He would not do so or take the advantage of or make an intimidated annis? (intimidated dispute) dispute? in which he would probably quite..under the circumstances. The same thing with other extra minorities. I want you to really consider those particular situations. When I first became to be a union member, and I don't think that Title 36 is usually talking about union people, but that has been brought out since I first became a union person. When we get the two people on the job, that's the first time I've ever seen equal employment opportunity in pay, he calls it some federal standards. I want some people in Juneau to really understand that. I also would like to bring out some other things. What would happen when three different projects be left within the city? Would that mean that the contractor, that _____ projects have the opportunity to give wages?...What would happen if they all would get these particular opportunities? I really think that someone that introduced this type of legislature is supposed to be representing the people. I'm talking about equal standards under the law, have got to research this man, in some kind of

_____ . Maybe most of the working people do not have the opportunity to sit down and hire secretary to throw different comments that would probably sound very good over the mic, Mr. Furnace. . .

Rep. Mike Davis: Ya, Willy, I want to thank you for your testimony.

Furnace: Limit your testimony to a minute and a half.

Anchorage: Mario Fry, Business Manager of Laborer's Union, Local #341

I'd like to make several points. First of all, this is not a union versus a non-union problem. It does strike at the very roots of Alaskan hire against outside hire. It will be certainly more of a magnet for the outside carpet baggers to come up here--more so than they are now. The Davis Bacon law had its roots in protecting the economy for a particular area. The same is true now within Alaska, with construction being such a seasonal occupation. It is more vital and that have uniformity in this State. It is a real shame to strike again at the working men or women in the State, instead of controlling some of the other areas that might be looked at--shipping costs, management costs, architectural fees, city planners and managers and grant writers or any of the other costs that increase the rate of construction. Not only in bush areas, but also in the rest of the State. I do have several comments concerning some of the testimony that went on earlier. Mr. Lacky in Unalaska was commenting about the local hire issue, and that's certainly apples vs. oranges in this case. The reveal will certainly make it easier for the outside contractors, and if the local hire issue needs to be addressed, I'll be the first to go on record supporting it for a particular area. And one other thing, I have a math problem for you all. If a maintenance person who works year round, gets paid \$15.00 an hour, they're going to gross during a 2,000 hour year, which is average for a 40-hour week, \$30,000. 75% of our members last year worked fewer than a 1,000 hours. Even at the rate of \$22.00 an hour which is rather inflated, they made less than those people at \$15.00 an hour. And that, in Alaska, was a seasonal construction year is the crux of why the wages are higher.

Anchorage - Lee Metcalfe, Business Manager, Local #367 Plumbers:...I'd like to start out with a brief comment on the bill of 304 as to why it was ever conceived. If somethings not broke, why fix it. The Davis Bacon Act has been in existence for 52 years. I'll read one brief paragraph that was quoted from a testimony by Congressman Bacon, when the bill was under consideration in the Congress in 1931. The quote is: "The practice has been growing up in tearing out in the building program where certain itinerant, irresponsible contractors with itinerant, cheap bootleg labor have been going around throughout the country, picking off a contract here and a contract there. And local laborer and the local contractors have been standing on the sides, looking in. Business has been caused in many communities because of the situation. This bill, my friends, is simply to give the local laborer, the local contractor, a fair opportunity to participate in the building program." That was a direct quote from oen of the co-authors of the Davis Bacon law. Another puzzlement to me is, why the people that will be affected the most by this law, the rural Alaskan, why they have to be hurt because of the law. Because the cost of living in rural Alaska is higher than in any other forces of the State. And whether their making it on \$15.00 an hour,

\$10.00 an hour, if this law is affected, the scale will be immediately lowered to half or less than that.

There's nothing in the bill that would prevent outside or local contractor from bringing in their entire crew and leave the local residents sitting on their dust. About two more points, why is it that savings must always be paid off the back of workers? Contractors don't tell their suppliers, we will only use so much of your material. They don't tell their bankers, we will give you only 5% to borrow your money. They don't tell the freight haulers, we will pay you 10¢ a pound to haul your materials. So, why the very people that will put a project together, be told that we will pay you, whatever we want to pay you above minimum wage \$3.75 for your labor. One thing that is vastly overlooked, is that cheap labor doesn't make for a healthy economy. Simple math points out that a man, a person, a women making \$10.00 does not have the buying power, the purchasing power, of a person that's making \$20, \$25, or \$30.00 an hour. Just for a far out example, if everyone in the U.S. was making \$5.00 an hour, not only would everyone be poor, but the whole country would be bankrupt and go down the chute. Who would pay the taxes? I am violently opposed to HB 304.

Mat-Su: Gary Brooks, Executive Board Member, IPEW--I'm here to speak for myself and other approximately 5,000 electrical workers in the State of Alaska. I'm here to speak in opposition to HB 304. I feel that any alteration of the Little Davis Bacon legislation, will lead not only to greater unemployment of our Alaskan worker, but will lead to more and more of our construction dollars going to the outside contractor and workimgmen. Many of the Alaskan contractors have agreements to bargain under a "fixed faith" to pay a "fixed wage," for a "fixed period of time," some up to 3 to 5 years in late. By repealing the Davis Bacon legislation, we will lead to our contractors beings unable to make competitive bids for many projects, thusly fostering unemployment and more and more of our Alaskan money going outside. Oftentimes, the first place to look credit calls on projects, is the workimgman's pocket or his paychecks. When in reality, better management of the dollars spent can lead us to the cost savings we are all looking for. I again urge opposition to altering any existing Davis Bacon legislation in communities of any size.

Mat-Su: Kay Bill--I'm representing myself. I oppose this legislation. I've listened to the testimony. I've also lived in bush Alaska. Now it appears to me that the project manager, and the city council have been looking for some way to keep the lowest possible way prevalent in their villag.s. The morale problem appears to be more the problem prohibitive cost of living in the villages, rather than the wages paid in the Little Davis Bacon Act. One major rationale of our State capital projects is to provide employment for workers and households, in both the urban and rural areas. I can think of no better utilization of State monies, than to pay a living adequate wage to rural workers. Remember this, without that union wage, the non-union wage would be considerably lower than it is now. And I, for one, put my trust in the State laws, rather than local, neighborhood councils. And I urge you to protect the Constitutional standards of living for village workers, by voting "no pass," on this legislation.

Juneau: William Bancroft, from Anchorage, Furnace's District--I'm opposed to HB 304. Any monies spent on labor, on any local construction projects, the majority of that money is spent and put into circulation locally, helping the

community's economy. Also, the construction trade is very seasonal work. A good year for a construction worker lasts 5 months, at the most. But the worker still has to live their 12 months. Higher wage rates are a necessity to live in Alaska, as temporary help. Apprenticeship programs allowed Davis Bacon wage contractor payers' to train unskilled laborers and to be compensated for the expense of educating these apprentices.

Soldotna: 4 people opposed to HB 304.

Soldotna: Roger Meeks--Several people have stolen my points...I'd like to reiterate the fact that these people who keep harping on the Little Davis Bacon and what it's doing to their communities. It's been with us for 51 years. We've survived with it this long and I don't see how somebody can all of a sudden come up and say that it's doing us an awful lot of harm. I think it's really someone who want to make a name for themselves, and just decide from that. If we do away with the Little Davis Bacon Act, I'll guarantee you one thing, we make \$22.00 an hour as laborers, under Little Davis Bacon, a cannery worker makes about \$7.00. I'll guarantee you, if we start making \$15.00, a cannery worker will start making \$3.50. So it doesn't matter, your economy will stay about the same, and it doesn't matter if you make \$25.00 an hour, or \$15.00 an hour. Everyone in this State seems to ride on the coat tails of the Davis Bacon. You can rest assured that they won't be paying what they're paying, if it wasn't for Davis Bacon. They have to stay up fairly close or, they'll loose their people to the Davis Bacon law. So, this is one good thing that the Davis Bacon Act does, it keeps wages not covered in Davis Bacon, among other things, where more people can at least make decent wages.

Malone: Who are other people in Soldotna?

Answer: Roger Meeks, Walt Cunningham, Jim Shaddock, Allen Butte, Observer: Marilyn Demmick.

Furnace: We apologize for not taking all testimony...

Petersburg: Jim McDenner--I consider myself an average construction worker. I support a family of 6. All in my area stay in Alaska and support families. I had to show over 4 years of experience as a laborer before I could even be accepted on the ...engineers. I've worked hard to get where I am. I understand a lot of people in the State are in the same position...I support Davis Bacon because whether I'm working in Petersburg, or if I'm North in Barrow, this bill kept the way it is right now, where I can at least partially justify all the months away from my family. The last seven years, I've had the opportunity to work at home for 13 months. If HB 304 werer.'t in effect, I'd doubt if I'd have much time at home. If any manager expects a good wage, the fishermen wants good price for it's catch, the doctor expects to be well paid to take care of your health. The politicians don't seem to hesitate for _____ reasons. When I build a highway, I expect to get paid... Davis Bacon is a good law.

Ketchikan: Wayne Thompson--I work full time, for the Brotherhood of Electrical Workers. There are a whole bunch of inconsistencies in the arguments that we've heard. One of them confuses the desire on the part of the Natives in the Native villages to employ their own people. That's not

going to be helped by paying them less money. That can only be helped with enforcing local hire provisions and working with, I hesitate to say, with the unions. With unions to train their people, to perform these jobs. There is no practical way to do specialized work in a village unless there is that work on a on-going basis. Cost of living is an item that hasn't been mentioned. It came in a couple of small times. I heard the man from Cordova testify that, how much cheaper he could pay the monthly worker in the regular full-time worker in Cordova. Nobody asked him what the cost of living is in Cordova. What the justification is for people paying less than they would pay them in Anchorage. If you gentlemen will pull out the Alaska State papers, from the Department of Labor and various other sources, you'll see that the cost of living is in Cordova and several other places compared to Anchorage. There's no justification for paying less. The other misstatement made, is constantly comparing monthly employees to permanent construction workers. I think you by now realize, that it is not a fair comparison in your study of these problems, and the possibility of doing away with what I personally feel is a good law, and a very effective law. I think you can get a very good comparison by looking at the private sector. And you listen to employers from different cities. Those aren't people representing the city or representing the people that live in the city. Those are employers in the cities. They're the city managers or whoever. Those people say that they've got to defend the people that live in their town by paying them less money. If you get people destitute enough, they'll work for less. And you can do it by repealing the Davis Bacon Act.

Sitka: Mr. Larry Baine--speaks on behalf of people present. I represent Local #942. I overwhelmingly response against this bill. I would like to reiterate on one fact. A lot of people seem to be eminent or whatever of the scale set forth by the unions, without realizing our short work periods and underaveraged paid annually, compared to other workers. I would also like to state that, I think municipalities, if this bill goes through, will monopolize on it, to the extent of even asking their employees to give up their rights in collective bargaining.

Anchorage: Roy Colks, Member, IBEW Local #15--36 people present oppose to HB 304...

Kodiak: Herman Buckers, Acting City Manager, City of Kodiak. Been instructed by the City Council to inform you that Resolutions No. 32-83 support SB 172, HB 378. However, if neither bill should pass, they would be willing to support HB 304, provided that it's amended to exempt municipalities with a population of 7500 or less.

Juneau, Lee Stoops, Representing Senator Sackett.--I'm representing Senator Sackett because he is ill. He wasn't in the office today, and couldn't make it here today. Senator Sackett represents a large portion of the rural part of the State, about 70 villages. I'd like to take a few moments to really pinpoint what is being addressed in this particular legislation, as opposed to the more general conversation. Probably the major concern as addressed in Representative Herrmann's bill, is the fact, that we do have uniformity in the Davis Bacon wage division. We have uniformity in the State and in which we do not have uniformity. Simply put, the economy of the rural villages in the State is not the same as the economy of Anchorage or Fairbanks, Juneau, Sitka or Ketchikan. The way of life is totally different. Yet we're

applying the same uniform wage to those areas in which they have a total different lifestyle. The percapita income in those places is a fraction, an eighth, a tenth of what the average percapita income is in Anchorage. People do not have home mortgages, do not drive cars as they do in Anchorage. The entire lifestyle is not cash base, the way it is in those areas. Yet, we are applying a basis for payment of wages that is based only on a very few major cities within the State. I don't know to whose benefit that really is. What it basically means in rural Alaska, where a number of people tried to point out tonight, is that they have many, many concerns to be addressed, many projects they would like to build. If the Little Davis Bacon wages do not apply in those areas, they could build more of them. For the cost of what they would save in building a fire hall, they can also buy a fire truck to put in. They can do projects for less. Many of these villages are trying to use force account procedures to avoid Little Davis Bacon requirements. That's becoming more and more frequent and it is, because of cost conscientiousness, they're doing that. It doesn't seem fair or reasonable that they should have to undergo that additional administrative responsibility, when in fact many of them aren't that really prepared or capable of dealing with that in the rural villages... I would like you to very favorably consider Representative Herrmann's bill, because it is reflective of the desires and the needs of the people in the area that she represents, and that Senator Sackett, and that you Legislators' represent.

Malone: Have you legal analysis of "inequality issue."...

Stoops: Yes, we've talked about this, not only this particular issue, but the issue of forced accounting, and a lot of other issues related to this with the Department of Law and the Department of Labor. We have no reason to believe that if this particular legislation is passed, that there would be a problem with it.

Malone: I think there is a problem. I would like to see opinions...

Stoops: We'll make any and all correspondence available to you...SB173, introduced by Sackett, exempts entire State from Little Davis Bacon provisions.

Valdez: Michael Galliger: 15 other people, all construction workers, all oppose HB 304 for several reasons. We only work 5 or 6 months out of the year...

Valdez: Robert Anders: Adamantly opposing HB 304...

Anchorage: 13 people oppose HB 304

Anchorage: Kathy Kusinsky, Oppose to Davis Bacon Act. I have been personally to quite a few of the Native villages, North and South of Anchorage. If I got \$25,000 per year, given to me free. If I got \$2,500 per person, given to me free. Plus all the fuel flown in free. Plus all the villages being built free. Perhaps I could live on \$10.00 to \$15.00 per year, because all of these people have gotten these things free. I don't think that the people that the Housing Residency have in Anchorage, knows what goes on in these villages. They are not up there to see this. And, so

these villages don't have to worry about paying home mortgages and living. I just wanted to make my comment on that.

Furnace: We appreciate your testimony...

Moderator from Fairbanks: Robin Rinfro, Tanana Chiefs Conference, whose speaking for limiting the bill, and I was asked to state that we have 12 people opposed to the bill. She would not speak for them.

Fairbanks: Robin Rinfro, Tanana Chiefs Conference--Tanana Chiefs Conference is a regional non-profit organization, representing 43 villages within the interior of Alaska. We recognize that there are some serious financial burdens, placed on small contractors working on small projects in small communities, by implementing the current prevailing wage rate. We also recognize that there is a substantial cost of the State. There are many evidences of the need for a limited change. As an example, it might not be a bad idea to have a separate wage structure for municipal projects under \$250,000 in communities under 2,500 people. It would be necessary to fix the dollar ceiling, since many small communities may eventually be the size of a large scale construction, which should be concurrent with the existing prevailing wage rate. The savings to the State should not be as expense of it's wage earners. The emphasis for the recent house action, may have developed some infuriating frustration with the exuberant laborers' costs on small projects, as well as the inabilities of the local community and/or the State to protect in-State hire. Reducing the wage rate may increase the potential for local hire, but it will not guarantee it. This is an extremely complicated, not to mention emotional issue, and it requires adequate confrontation. We suggest that further time is necessary for contractors, organized laborers, and the general public to concur. Thank you.

Furnace: Thanks, Robin, we would certainly appreciate receiving your suggestions in writing. You may send to either to me, Chairman Furnace, or the Representative Adelheid Herrmann. We also would like to acknowledge the other 12 persons that are there. Again, we appreciate you taking the time to participate in the teleconference. If there's someone there that just must have that testimony on record, again, we will take it. We are just about almost out of time, however.

Barrow: John McCullen--I've lived and working in Barrow the past 18 months, and I've had the opportunity to meet many residents of the North Slope Borough. I have acquired on a very short notice, over 100 signatures in the petition, strongly opposing HB 304, HB 378, and SB 172 from people who live and work here in Barrow. We feel that the repeal of the Little Davis Bacon law, could create an atmosphere right for the exploitation and depression of the local labor force in the North Slope Borough. With the Committee's permission, I have a list of 20 lifelong residents of Barrow, who would for the record, who would like to be counted as strongly opposing these bills.

Furnace: Thank you, Mr. McCullens, we would appreciate receiving a copy of your petition for the record, if you don't mind.

Soldotna: Walt Cunningham--Yes, I'd just like to say that there's been some racial and minority overtones, and it shouldn't have been. However, I do want to go on record as being opposed to this bill, number 304. I'm in favor

of the Little Davis Bacon Act in Title 36 wages. I know you will take all testimony into consideration, equitably. One comment, I do have to say, is...I'm thankful that I do have Little Davis Bacon wages...If it weren't for those wages, I won't be able to take care of my little family.

Kodiak: Bob Burtie (spelling?) --I'm sneaking on behalf of the carpenters, locally here in Kodiak. I'd just like to say that I heard a great deal from municipalities' people, and their representatives in support of HB 304. I haven't heard too many voices of many carpenters in rural areas, who are asking for reduction in their wage rates, so that they can compete better for local jobs. Lower wages, means lower wages for all Alaskans. We cannot support a bill which only will make it harder for an Alaskan to pay medical bills which are 49% higher than the national average. I don't understand how lower wage scales will get local carpenters in the villages, and rural areas, their house building jobs, in the summer months, in their communities to go to work on a municipal job. Lower wages do not give a local competitive advantage, only lower wage to an employee. Prevailing is not set by the government, but by the prevailing wage rate, negotiated between laborer and management for qualified workers in Alaska. Just an example, there's some jobs in Kodiak where they're funded through the Native Association, at a lower rate because they're residential work. Their scale there is \$13.51 an hour and there isn't a single Kodiak carpenter, that I know of on the job, that's employed, that's also a contractor from Seattle. This is the case on all the low-cost residential housing jobs, that have gone up in Kodiak, in recent years here. We have projects, in Kodiak now, that have and in the past, that have fell under the federal prevailing wage scale, \$13.51, and these were not manned by local people, or local contractors. Also, the quality of work on these jobs is a farce. Many of the projects have losses going for poor workmanship and chintzy work, and cut corners, and etcetera, just to get the job done, and get out of here, and leave it; however you can get out of it. The carpenters union in Alaska, is one of the best training programs in the U.S., and it encourages trainees from the villages to participate. And, recently, it has been getting some very good apprentices from the villages. We hope that continues. And, also, beginning apprentice's receive 60% of journeyman's scale, and increases with hours' work. So that people as they're trained, can become qualified to do this kind of work in Alaska, do eventually, whether their from the villages, or from the cities, work up to a journeyman's level of wage. I am totally opposed to HB 304, and many of the 100 members, and if not all of them in my local here, are also opposed to it, as well as the laborers, and other union members. Thank you.

ENDING COMMENTS:

Representative Herrmann: I just like to thank the Labor & Commerce Committee, and Chairman of the Labor & Commerce Committee, for holding a teleconference on HB 304, to see both sides. I know there are two strong opponents' sides. And like I said before, I hope that the Chairman will keep the bill active, so that both sides can work on a solution to the problem. Thank you.

Chairman Furnace: Thank you, Representative Herrmann. To the ladies and gentlemen, and most of all the moderators, throughout the State of Alaska, who have aided in putting on this teleconference. We really appreciated you

taking time to do so. We've been very pleased with the response across the State. And, I think we have a reasonably good idea, as to what the sentiments are. I will ask if there are any comments from members of the Labor & Commerce Committee, at this time. I see the nods of none...If there is no other comments at this time, we will sign off...

AH/hc

The Outdated Law That's Costing Taxpayers Billions

Most people have never heard of it, but it is one of the most insidious sources of inflation in America

By IRWIN ROSS

INITIALLY, the contractor had figured the cost of a residential high-rise in Gaithersburg, Md., to be \$4,694,452. But then the developer asked the Department of Housing and Urban Development to subsidize the project. Result: an extraordinary escalation of labor costs.

With federal money involved, the contractor was required, under provisions of the Davis-Bacon Act—a law passed in 1931—to pay his work force the prevailing wages in the community, as determined by the Department of Labor.

Common laborers at Gaithersburg now had to be paid \$10.05 an hour, rather than the \$4.50 to \$6.21 which they could have been hired. Excavation-equipment operators

were entitled to \$12.40 an hour rather than \$6. carpenters to \$13.51 rather than \$8.60. Overall, the project's cost jumped to \$5,122,260—an increase of nearly ten percent.

Most people have never heard of the Davis-Bacon Act, but it is a major cause of our skyrocketing construction costs. In 1979 the General Accounting Office surveyed 30 federal construction projects. In 12 instances, they found that rates established by the Department of Labor were unrealistically high—raising wage costs 36.8-percent higher than they should have been. The GAO also concluded that Davis-Bacon had saddled the government with excess costs of perhaps \$700 million a year.

Two years ago, an inter-agency

Senator John C. Sackett

Fouché V

Juneau, AK 99811

THE OUTDATED LAW

task force of the Carter Administration came to similar conclusions. It calculated that if the inflated wage rates of Davis-Bacon were eliminated, federal-construction-payroll costs would be reduced by ten percent—a saving of a billion dollars a year on a federal-construction budget of \$40 billion.

The Davis-Bacon Act served a purpose during the Depression. It protected local workers from contractors who might bid low on a government project and then import itinerant workers who found substandard wages preferable to starvation. Initially, the act applied only to construction projects directly undertaken by the federal government, but gradually it was extended to include just about every construction program with a federal subsidy or loan guarantee.

The basic problem with the act involves the bewildering rules the Department of Labor uses in determining what wage "prevails." Under department regulations, the prevailing rate is the one received by a majority of workers in a specific craft. The majority rule seems fair enough, and in highly unionized areas there is generally no argument about the prevailing wage.

The rub comes, however, when 50 percent or more of the workers do not receive the same wage—a characteristic of open-shop, or lightly unionized areas. Then the Department of Labor invokes the "30-percent rule." If 30 percent of

Why you should consult your doctor to determine if this vaccine is right for you

The vaccine helps protect against 14 of the most common types of pneumococcal pneumonia. While there are over 80 different types of pneumococci, the vaccine affords protection against the most prevalent types in the U.S. causing approximately 80 percent of all pneumococcal pneumonia. The vaccine will not afford protection against any type of pneumococcus not included in the vaccine. Also, the vaccine is not 100 percent effective for the 14 types included. It is intended for certain people, 2 years of age or older, whose physical condition indicates an increased risk of serious, or possibly fatal, illness should they develop pneumococcal pneumonia. Included in these "higher risk" groups are: (1) persons who have chronic ailments, such as chronic heart disease, chronic disease of the lungs or air passages, chronic kidney problems, diabetes, or other chronic disorders involving metabolism; (2) persons in chronic care facilities; (3) persons convalescing from severe disease; (4) persons 50 years of age or older, especially those over 65. Only your doctor can determine if the vaccine is appropriate for you.

Special Considerations

AS WITH MOST VACCINATIONS, certain adverse reactions may occur. A common reaction is redness and soreness at the point of injection. Usually this will last less than 48 hours. In some cases, a hard, lump-like spot may appear in the area, but this happens less frequently. Occasionally, low-grade fever (less than 100.9°F) occurs. When it does, it usually lasts no more than 24 hours following the vaccination. In rare cases, there have been reports of fever over 102°F. More serious long-lasting reactions and serious allergic reactions are unusual, but may occur.

Your doctor knows that special care must be taken when administering the vaccine and in selecting patients who should receive the vaccine. For example, women who are pregnant should not be vaccinated, because the possible effects of the vaccine on the development of the infant are not known. The vaccine is also not intended for persons who are allergic to any of its components, for children less than 2 years of age, or for persons with Hodgkin's disease who have received extensive chemotherapy and/or radiation. Other factors which may preclude vaccination are:

- medication affecting the body's immune response;
- respiratory illness with fever or other active infection;
- severe heart or lung disease.

Available information indicates that revaccination before five years is unnecessary and may, in fact, cause more frequent and severe local reactions at the site of injection. Thus, it is important that people not be revaccinated within five years.

This message does not include complete information regarding pneumococcal pneumonia or the vaccine. Therefore, you should consult your doctor for further details.

THE OUTDATED LAW THAT'S COSTING TAXPAYERS BILLIONS

the workers in a classification receive the same wages and fringe benefits—*so the penny*—then that rate becomes the prevailing one. The likeliest circumstance in which that can occur is when 30 percent of the workers in a particular craft are unionized. Thus, the minority-union rate becomes the prevailing rate, even though 70 percent of the craftsmen are paid less. Only when the 30-percent rule cannot be applied does Labor average all the local wages.

In its 1979 study, the GAO chronicled a typically absurd example of the 30-percent rule that turned up in Carson City, Nev. To determine the prevailing wage for painters, the Department of Labor surveyed 11 projects, finding eight painters at work. Two were paid \$6.25 an hour, two were paid \$8.74 and one \$9. But *three* painters were getting \$12.40 an hour. Three out of eight comes to 37.5 percent—so \$12.40 became the prevailing wage.

Sometimes Labor does not even bother to take a wage survey. When the GAO was conducting its study, it asked the department for the basis for the 530 area-wage determinations that were in effect in October 1976. But no surveys had been conducted for 57 percent of them. The Labor Department simply adopted the union rates of each locality.

The "importing" of union rates from big cities into smaller communities also prompts a persistent

criticism of Davis-Bacon. Michael Callas, a general contractor in Hagerstown, Md., told a Senate committee that he had been interested in bidding on a government project in Adams County, Pa. He was already working on a similar project four miles away, at Fort Ritchie, Md. Callas was amazed to learn that Labor Department wage rates were more than double the Davis-Bacon rates he was paying at Fort Ritchie. The reason: the department had gone to Harrisburg, Pa.—75 miles away—to find the prevailing wage rates.

Callas refused to bid on the project because of the inevitable friction that would have resulted within his work force over widely varying rates for identical work. For the same reason, many non-union contractors refuse to bid on federal construction. Where this occurs, there is less competition for government work—a phenomenon that hardly keeps prices down.

Davis-Bacon inflates costs in another way as well. Non-union contractors often employ "helpers" and "learners" at considerably lower rates to assist qualified craftsmen. But the Labor Department generally requires all workers on a federally subsidized construction project to be paid journeymen's wages.

The absurdities of Davis-Bacon have led to widespread demands for its demise. The GAO argues that besides being inflationary, "other wage legislation and changes in economic conditions

THE OUTDATED LAW THAT'S COSTING TAXPAYERS BILLIONS

make the law obsolete. GAO believes it should be repealed." Support for repeal also comes from newspapers with such diverse editorial views as the *New York Times* and *The Wall Street Journal*. The liberal organization Common Cause as well as many building-contractor groups point to flaws in Davis-Bacon.

Several bills are currently being considered in Congress to rescind the act completely. A piecemeal approach is also being tried—tacking on a Davis-Bacon exemption to expenditure bills as they come up. Such an exemption was part of the military-construction bill that recently emerged from Senate committee.

The staunch defenders of Davis-Bacon are the construction unions of the AFL-CIO. They maintain that if the act were discarded, workers would be subject to the potential abuses that were feared in 1931. Union spokesmen also minimize any deficiencies in the Labor Department's application of the law. But organized labor has a clear economic stake, for whenever it maintains high union rates, unionized contractors can compete effectively and thus obtain more jobs for union members.

The Department of Labor and the Reagan Administration favor reform rather than repeal of the Davis-Bacon Act. Proposed reforms,

announced in August, would substitute a 50-percent rule for the present 30-percent one, prohibit the importing of urban rates into rural areas, and allow one helper for every five journeymen.

But the case for repeal is more compelling. A 50-percent rule would still be inequitable, if, for example, other wage rates in an area were lower; the Labor Department would be establishing a minimum-wage rate rather than a true prevailing one. Besides such details, the problem with changing the regulations is that the reforms of one Administration can be undone by the next. Moreover, whatever the changes, the Davis-Bacon Act by its very nature imposes an impossible burden on bureaucrats by obliging them, if need be, to issue wage determinations for more than 3100 counties and at least 10 crafts.

As Sen. Donald Nickles (R., Okla.), author of one of the repeal bills, says, "I find it ludicrous that the Department of Labor—in Washington, D.C.—is in the business of setting local wage rates for projects all across the United States."

Indeed, the country is too large and diverse, local economic conditions are too varied, for centralized bureaucratic wage determination. Beyond that, the Davis-Bacon Act is expensive, inequitable and unnecessary. We would be well off without it.

A MIDWESTERNEK living in California: "How do I stand the smog? Well, I haven't had to shovel it yet."

—Contributed by William Fowler

How Big Labor Brings Home the Bacon

by Gregg Easterbrook

On Symphony Road in Boston's Fenway district a contractor is gutting an old building to make apartments for the poor. The renovation is costing \$23,000 per unit, and the finished apartments will rent to eligible families for \$225 to \$375 per month. About a block away, another contractor is fixing up a similar building for a similar purpose. The finished apartments won't be any bigger or better than the apartments on Symphony Road. But there will be one big difference. They'll cost \$39,000 each to complete, and will rent for \$600 or more.

Sounds like somebody is ripping off the poor. Somebody is. Only this time it isn't the banks, the slumlords, or the faceless multinationals. It's the AFL-CIO, with the consent and assistance of the federal government. In our land of unlimited possibilities, even the defender of the working man has devised a respectable way to steal from the poor.

One rehab is costing more than the other because the construction workers fixing it up are being paid significantly more. In the \$23,000 building, a carpenter makes \$13.34 an hour—not too shabby. In the \$39,000 building, a carpenter makes \$19 an hour. Both are doing the same work. In the cheaper building, a plumber makes \$15.55 an hour and an electrician \$16.27; in the more expensive one, a plumber makes

\$21.16 and an electrician \$20.18. When you add up all the extra wages for workers in the more expensive building you get a surcharge of \$16,000, which you pass along to the poor.

This enlightened arrangement is imposed by federal law. The \$39,000 apartments are being renovated under a grant from the Department of Housing and Urban Development—which means they are a federal construction project, which means wages must comply with something called the Davis-Bacon Act, which means inflated prices.

Under Davis-Bacon, all construction workers in projects involving federal funds must be paid the "prevailing wage." That sounds so self-evident you may wonder why anybody bothered writing it down, let alone enacting it into law. But the construction-trades unions know why. Using bureaucratic flash powder and prestidigitation, the Department of Labor sees to it that the "prevailing wage" often means the highest possible union wage. In Montgomery County, Maryland, just outside Washington, you can hire a bulldozer operator for about \$9 per hour. Yet when construction of Metro, Washington's subway, pushed into the county, Labor officials ordered that bulldozer operators be paid \$13.72 per hour. They ordered similarly inflated wages for other Metro workers. The net result, according to the General Accounting Office, is that Metro will cost at least \$149 million more than it should. Pay more, get less is the government's motto when it comes to construction—less

Gregg Easterbrook is an editor of The Washington Monthly.

housing for the poor, or less subway. Construction of Metro lines to Washington's comfy white suburbs continues apace. But construction of the line to Anacostia, the city's poorest and hardest-to-reach area, has been postponed indefinitely. Reason: "fiscal constraints."

What's that you say? You don't care about the poor? How fashionable of you! Then maybe you care about the environment. Davis-Bacon has so inflated the cost of pollution-control projects that the EPA's plan to finance a nationwide series of water-treatment plants has largely been stymied. A treatment plant in Houston, for instance, was held up and nearly canceled because Davis-Bacon inflated the price of its filter houses and dryers by 55 percent.

What? You don't care about the environment either? You devil you, you must have known about tree pollution long before the rest of us. Surely, though, you must care about national security. Davis-Bacon is slowing construction of the Strategic Petroleum Reserve to a crawl, and slowing renovation of military bases. It will add many billions of dollars to the proposed MX missile system, which is essentially a construction project, thus delaying its completion for years.

The Davis-Bacon Act sets taxpayers back at least \$2 billion a year in federal construction wages. It also indirectly inflates the cost of private construction, by "importing" high union wages into non-union areas, and driving small, cost-conscious contractors out of business. The total inflationary impact of Davis-Bacon is estimated to be as high as \$20 billion a year.

In Washington, a city seemingly bent on creating automatic all-weather inflation guarantees, Davis-Bacon is a triumph of the art. It is artistically pure and uncompromised, serving no purpose whatsoever other than to raise prices. The act not only means higher wages for union workers on federal construction jobs, but non-union workers as well, helping enhance Big Labor's image and expand its scope. It's one reason building unions have expanded with such success, organizing more than 40 percent of the country's construction workers. "Davis-Bacon is the greatest treasure in Big Labor's chest," notes a unionized contractor.

Labor proponents paint Davis-Bacon not as a goodie, but as the last faint hope of a shoeless proletariat. Senator Harrison Williams, who until the Republican Senate takeover was chairman of the Labor Committee, says the law keeps "the living standards of construction workers" from being "sacrificed in the battle against

inflation." Construction workers suffer from a peculiar form of exploitation—they are among the highest-paid workers in the country. In 1978, the average construction worker made more than \$8 an hour, while the average for manufacturing workers was about \$5.50 an hour, and the average for all workers was much lower than that. In the battle against inflation, not only have construction workers not been sacrificed, they have yet to be conscripted—while the consumer price index rose 63 percent between 1969 and 1979, construction wages rose 130 percent.

Davis-Bacon insures that average taxpaying stiffies shell out to subsidize this cream of the working crop, and it's an especially white cream. Only about ten percent of journeymen in the building trades are black or Hispanic, far less than the share of minority group members in the population; union work rules are carefully calculated to keep it that way. (In construction, a journeyman is not a pitcher whose fastball can be clocked with a sundial, but an experienced worker with seniority.)

So Davis-Bacon seems like exactly the kind of boondoggle Ronald Reagan is looking for. It wastes taxes and increases the deficit without accomplishing anything. It subsidizes those who don't need it. And best of all, it's not fogged up by complex interrelationships with due-process rights and land-use planning in the Yucatan. Davis-Bacon can be dealt with swiftly and decisively, simply by repealing the law. Repeal would lower taxes, speed up important federal projects, stimulate the construction business, and increase opportunities for blacks and Hispanics. Bing, bang, boom. All it requires is a president with the courage of his convictions, a sincere belief in free-market economics, and a willingness to stand up to Big Labor, which should be good practice for standing up to the Russians.

Symptoms of Depression

As soon as Reagan wakes up from his nap, we'll ask him if he is that president. Meanwhile, let's see how Davis-Bacon works.

The law was passed in 1931, intended to combat the desperation of the Depression. At that time, the federal government was about the only builder anywhere. Jobs were so scarce and times were so hard that workers—especially Southern blacks—were fighting just for subsistence wages. Southern contractors formed "roving gangs" of starving blacks and traveled around the country, bidding on federal construc-

tion. They underbid whatever the already depressed local "prevailing wage" happened to be. By ordering that federal construction pay the "prevailing wage," Congress not only took away the "roving gangs" advantage, but heated up the economy in keeping with the spend-your-way-out theory of ending the Depression. States began passing "little Davis-Bacons" that ordered prevailing wages for state and local construction; 40 states have them now.

The plumber making \$21.16 is not a needless dustbow waif; however, the anti-Depression mechanism of the act, whose purpose has long since expired, continue to jack up his wages.

Suppose, for example, you are a painting contractor in Carson City, Nevada. King Soopers is finishing a new supermarket, and wants it painted. It calls for bids. You figure out your cost of paints and materials, how many people you need and what to pay them, figure in the highest profit you dare, and submit a bid. If you're lower than everybody else, you get the job. King Soopers does not ask to see your books, or negotiate individual items, like whether you pay painters or truck drivers more. It just asks how much you want, and when you can finish.

Now suppose the government is finishing a courthouse and wants it painted. You still have to bid on materials and timing, but you can't bid on labor. Washington will set the labor rates, and every contractor wanting the job must bid the same rates. To set the rates, the Department of Labor will dispatch surveyors, whose purpose, even liberal economist Charles Schultze has said, is to pump wages up to "the construction union scale in the nearest large city."

Here's where the fun begins. The simplest way surveyors can express their pro-union bias is by not reporting evidence of non-union wages. The GAO found that when one Labor surveyor was setting wages for a residential housing project in California, he "systematically excluded" mention of 113 local carpenters making \$2.50 to \$4.50 an hour, recording only higher wages. If he had included the low-end wages in his survey, GAO said, he would have found the prevailing wage for carpenters to be \$4.85. Instead he found it to be \$6.54 an hour, and that's what the government paid.

A Labor surveyor can be somewhat more subtle, and base wages on projects that have nothing to do with the business at hand, but pay better. When a U.S. Postal Service office air conditioner in Cumberland, North Carolina, needed overhaul, instead of examining other

nearby air-conditioning jobs the Labor surveyor looked at a range of 53 projects, including installation of a sprinkler system in a men's formal wear shop.

Roller Disco

But sometimes these little expediciencies aren't enough. Maybe it turns out all nearby construction workers are making pretty much the same thing—in other words, the surveyor has accidentally found the actual "prevailing wage." That will never do. So he declares that nothing in the area is similar to the project under consideration, forcing him to "import" wages from somewhere else. That somewhere else is a large city, which will probably be unionized, and thus have higher rates. "Importing wage determinations has one and only one purpose," said a member of the Carter White House's Domestic Policy Staff. "It puts union wages into non-union areas. It doesn't matter if there's no union in Dubuque. They just bring in union rates from Chicago."

The Department of Labor has become particularly adept at this procedure. Twenty-five to 38 percent of its wage determinations in building construction come from "noncontiguous counties," as Labor calls them, the GAO found. In highway construction and similar work, GAO says, as much as 73 percent of the wages are airlifted in. A study by the University of Chicago further demonstrates the pro-union bias. In setting Davis-Bacon wages for projects in counties of more than 500,000 people—that is, large cities—Labor considered "noncontiguous" wage rates less than 15 percent of the time. In setting wages for counties of fewer than 5,000 people—that is, non-union towns—Labor brought in "noncontiguous" rates 95 percent of the time.

Most often surveyors at least attempt to present some reason for wage importing, citing "specialized skills" or "unique circumstances." At other times, they drop all pretense. Consider Cape May, New Jersey, a small town in the state's sparsely populated, low-cost-of-living coastal area.

Cape May needed road repairs, and asked local contractors for bids. One, McCarthy Paving Co., bid the job based on local wages, like \$5 an hour for a roller operator. Then New Jersey's Department of Labor ruled that the state's "little" Davis-Bacon law applied. It imposed a roller-operator wage of \$16.

Running a roller—those big black cylinders with a seat on top—is little more than unskilled labor. "I can teach you to be a roller operator in

half an hour," said Jerald Barrett of McCarthy Paving. "When you want to go forward, push the stick forward. When you want to go back, pull it back. There. Now you're a roller operator."

McCarthy Paving still could have taken the contract, and not suffered immediately from the inflated wage structure. After all the government was paying for the job, so McCarthy Paving could just pass the costs along. But the company withdrew from the bidding, as do most non-union contractors faced with Davis-Bacon rates. "Once I've paid a man \$16 to run the roller, how am I going to keep him happy at \$5?" Barrett asked. "Wages like that tear a company up. How do I keep the rest of my people who don't get on this sweetheart job happy? I have tar-distributors [a skilled position that requires knowledge of math and drafting] who've been with me for ten years and are making \$9 an hour. Nine dollars is a decent wage. What happens when they hear I took some guy in off the street and paid him \$16 to sit on the roller?"

McCarthy Paving and other local contractors sued the state over its wage determinations. During the trial, they asked where the \$16 figure came from. "Newark," was the reply. Newark, 250 miles from Cape May, is the most populous and heavily unionized city in the state.

Road paving, of course, involves no "specialized skills" or "unique circumstances." It is among the most common and simple construction activities. It's so simple, in fact, that Cape May's surrounding Cape May County government decided to go into the business itself. The county commissioners found they could buy their own paving equipment and hire permanent civil-service workers to run it for less than the cost of contracting out under Davis-Bacon. At present more than a dozen southern New Jersey towns have established road-paving departments, and more are planning to. What, then, has been the effect of Davis-Bacon in southern New Jersey? You guessed it—local contractors are out of work.

The 30% Solution

And if you liked that, you'll love something called the "30 percent rule." Like wage-importing and other survey techniques, it isn't part of the original Davis-Bacon statute. It's just a "rule," something the Department of Labor dreamed up on a rainy Saturday afternoon. To a bulldozer operator, it's the most golden rule of all.

Here's how it works. Unions negotiate wages

by "classification." In other words, every unionized sheetmetal worker in Duluth gets the same hourly wage, say \$10 an hour, regardless of what company he works for. But non-union companies do their negotiating separately. So a sheetmetal worker at one non-union Duluth company might get \$11 an hour, while one at a different company gets \$9 and so on.

When Labor surveyors go to Duluth to set wages for a government project, they're supposed to examine all workers in the same classification. So if, for example, Duluth were a 100 percent union town, the Davis-Bacon wage would have to be \$10, since that's what every sheetmetal worker in Duluth would be making. (Unless the surveyors cooked up an excuse to throw Newark wages into the survey.)

Liberals favor handouts to the needy; conservatives favor handouts to the well-to-do. Davis-Bacon passes the latter test.

Many towns, however, have both union and non-union workers, so surveyors must determine what the majority are paid. If, say, 60 percent of Duluth's sheetmetal workers are getting \$10, then that's the majority, and that's the federal wage.

You've been waiting for the Big But, and here it is: BUT what if there isn't a clear majority? What if 51 percent are making \$10 and 30 percent are making \$9 and 30 percent are making \$8 and the rest are making less? Then the wage selected is the *highest* wage for the greatest number of workers over 30 percent. Get it? Even though in Duluth as a whole (greater metropolitan Duluth, one might say) only 31 percent of sheetmetal workers are making \$10, on the federal job *everybody* makes \$10.

With rare exceptions, collectively bargained

federal funds were going ostensibly to teach minority workers housing rehabilitation and building trades, the Department of Labor had imposed a ratio of 14 journeymen (teachers) to every one apprentice (student). The situation was so ridiculous, even Senator Williams pressured Labor for a change. Now the ratio is one journeyman (teacher) for every seven apprentices (students), which is a good ratio for instruction, and also Labor's way of saying its original ruling was only off by a factor of 98.

No Appeal

Sometimes, even the best-laid inflationary plans go awry. Labor survey teams occasionally dream up rates that are lower than the true prevailing wage, thus insuring that the few workers who don't enjoy windfall are zapped with an undeserved penalty. The Labor wage-setting apparatus is so scrambled that GAO has audited it seven times in the last ten years, and each time has come away with progressively more negative findings. In 1989 the normally reticent GAO said Labor had become so disorganized it couldn't administer Davis-Bacon fairly even if it wanted to, and called for the act's repeal.

It's a mistake to think, however, that workers are the only ones who benefit from Davis-Bacon. When the act inflates the cost of a government job, contractors don't just pass that cost along to the taxpayer—first they add their overhead and profit markups. So the higher the inflated wage, the greater the contractor's profit. This means contractors doing all or most of their work on federal jobs (usually union contractors) are quite content with the law. Since the government is by far the largest construction buyer—some \$45 billion of last year's \$200 billion construction industry was government work—this makes for a lot of fat, happy contractors to lobby for Davis-Bacon's preservation.

"Under this act the government basically says, 'We, as customer, insist on paying the highest possible price,'" notes Armand Thieblot, an economics professor at the University of Maryland. "How many businessmen do you suppose will say, 'We refuse to charge the highest price?'"

The contractors who don't want the highest price generally are the small, non-union shops who fear a few months of inflated work will destroy their wage structures. Davis-Bacon rates for one federal housing project in Stoughton, Wisconsin, were set so much higher than local rates that all the contractors who bid on the

contract dropped out, fearing disruption of the rest of their businesses. The housing developer then had no choice but to find an out-of-town contractor to take the job—an interesting inversion of the "roving gangs" protection Davis-Bacon was supposed to provide.

It is possible to appeal a Davis-Bacon wage determination, but such appeals are rare, since they are costly and time-consuming, and offer no assurance that the contractor doing the appealing (that is, demanding the right to charge less) will end up with the job after a new ruling. When MARTA, the Atlanta subway authority, got its Davis-Bacon wage structure in 1975, it appealed. MARTA economists figured the inflated wages would drive the cost of their subway up by at least \$100 million. MARTA eventually prevailed and had its wage structure re-written, but construction start-up was delayed while the appeal dragged its way through hearing boards. In the process interest and carrying costs for the non-work ran at \$200,000 a day, a bill that was forwarded to guess who?

Can't Hire Taipei Paving

The Davis-Bacon statute itself, as it was written in the Depression, applies only to construction undertaken directly by Washington, like post offices. It has expanded in influence both through the "little" Davis-Bacons and by being written into other federal statutes. Some 77 federal laws, involving loan-guarantees and other indirect federal financing, now say all sponsored projects must abide by Davis-Bacon rules. The laws include the Commercial Fisheries Research and Development Act, the Indian Self-Determination and Educational Assistance Act, the National Technical Institutes for the Deaf Act, and the Domestic Volunteer Service Act. Davis-Bacon insures that money committed to the programs under these acts is channeled away from those it is intended to help to those who need it least.

How do the construction unions continue to get away with it? One reason is that they are one of the few segments of the economy that does not compete with overseas labor. Those teeming hordes of cheap, obedient workers in faraway lands serve as a kind of relief valve for wages. If a manufacturing union pushes its wages too high, management might react by moving operations elsewhere. In construction, there is no such alternative. You cannot have your subway tunnel dug in Hong Kong and shipped here.

Another reason is the protective shield the Department of Labor lowers over Big Labor, its

primary constituent. When asked why government should not try to get the best deal on construction wages, just as it should get the best deal on roofing pitch and vanilla extract, Nik Edes, a deputy undersecretary of Labor, expressed revulsion for the very notion. "Wages should not be the mechanism for the competitive edge in government contracting," Edes said. "Labor is not a commodity suitable for competition." Edes suggested that businessmen should compete for government contracts by offering efficient management and cutting costs on materials.

Excluding labor from competition no doubt helps keep \$19-an-hour carpenters from becoming alienated over exploitation of their surplus value, but it's difficult to see how businessmen can magically compete on materials without indirect labor competition. Competing on materials means getting them cheaply, and that often means finding suppliers who pay their workers as little as possible. This tends to put suppliers who pay their workers high wages out of business. But far more important, labor is treated like a commodity when it is poured down the drain, which is exactly what Davis-Bacon does with it. If the government could pay individual construction workers less—not little, mind you, just less—it would be able to employ more of them. Government could build more housing for the poor, more water-treatment plants and subway stations, enhancing the general good as well as increasing employment.

Those good things—more government construction and more jobs—could happen only with true competition, and "competition" is a dirty word in Washington. (One HUD report defending the Davis-Bacon Act refers to price-undercutting on contracts as "an unscrupulous practice.") The prevailing attitude in Washington—and state and local offices across the nation—is that running up the public's bill is what government is all about. From defense contractors to insurance carriers to doctors and hospitals billing for Medicare, everyone saves his highest price for government. It's just assumed The People pay the limit. The attitude starts at the top and works its way down; government is headed by congressmen who say they cannot live on \$60,000—more than four times the median family income of the people they govern—and fly into righteous fury when someone proposes that they pay for their parking.

Edes was asked what might happen if Davis-Bacon were repealed. His voice dropped a dark

octave and he warned, "Why, that would lead to a lot of unfair competition in which people would try to cut costs...."

'Tis Better to Give Than Repeal

Hold on—what's that I hear? It's the clatter of horse hooves in the East Wing. That must mean Reagan has awakened from his nap, his waving hand refreshed and rejuvenated. He must be ready to do battle with the unions. What can we expect of the conservative Republican with the landslide legislative mandate?

During the early campaign, Reagan called Davis-Bacon "a needless burden on local taxpayers" and "a gift of tax funds to the affluent." But that was before he endorsed the Chrysler bail-out, before he said forget about a national right-to-work law, before he started sipping tea with those upstanding community leaders, the Teamsters, and before he said, in an October speech in Youngstown, Ohio, that he wouldn't try to repeal Davis-Bacon. Reagan did say Davis-Bacon administration should be "tightened up." Possibly he means to eliminate that "waste and fraud" he's ever on the watch for, establishing once again that he will not sell out to any interest group that openly advocates fraud (it's going to be a rough four years for the Pennsylvania congressional delegation).

Meanwhile, hard-line conservative Senator Orrin Hatch, who made loud noises about Davis-Bacon repeal when he rose to chairmanship of the Labor Committee after the election, has fallen silent. So have Garn and other long-time Davis-Bacon foes, who you might think would be trumpeting their moment of triumph. Republican Capitol Hill staffers say word has been passed to take it easy on Davis-Bacon. "There's no point in going after it," said one knowledgeable staffer. "It would be so much work politically. Besides, if we got it [repeal] out of the Senate, the House would just bottle it up, so why bother?" Meanwhile the "Stockman Manifesto" of new Office of Management and Budget Director David Stockman suggests leaving Davis-Bacon intact so as not to antagonize Big Labor, and thus win its cooperation on progressive social goals like relaxing pollution controls.

It may seem hard to believe that conservative, business-oriented Republicans could learn to love Davis-Bacon. But actually, it fits in smoothly with their philosophy of life. Liberals favor government handouts to the needy; conservatives favor handouts to the well-to-do. Davis-Bacon certainly passes that test. ■

Bush communities testify against Davis-Bacon by Peter Friend

Juneau lawmakers heard a barrage of opposition from Bush communities to an Alaskan law that requires a minimum wage rate to be paid on public construction projects, during a legislative teleconference Monday night.

The law in question is Title 36, otherwise known as the "Little Davis-Bacon Act."

Many of those who testified pledged their support of HB304, sponsored by Rep. Adelheid Herrmann, which would exempt from Title 36 all public construction in municipalities of 5,000 people or less, unincorporated communities, public non-profits, or public utilities operating in a community of 5,000 or less people.

SB172, introduced by Senator John Sackett, would repeal Title 36 completely. This bill is also under consideration by the Legislature.

Bethel Capital Projects director Dan Boyette testified to the House Labor and Commerce Committee that "Little Davis Bacon" was "a government feeding trough," sponsored by labor unions. Its enforcement, he said, means high wages and restrictive work rules, which drive up costs of public construction projects vital to the development of an economic infrastructure in rural Alaska.

Boyette referred to the recent City shop project, which came under the provisions of Title 36, even though it was built with local funds. The result: a 10 percent increase in cost, including a 25 percent increase in the overall cost.

Boyette also said that "Little Davis Bacon" was responsible for the state paying \$49.49 a man-hour for work being done on the Bethel petro-port project. He called these rates of pay "staggering."

Boyette called the effect of "Little Davis-Bacon" an undue burden on the already strapped finances of small

communities."

A Mountain Village spokesman told the Labor and Commerce Committee that Title 36 meant that 40 percent of the state money for local projects was being lost. He said that friction between workers was caused, when one worker was paid \$18-20 an hour for a "Davis-Bacon" job, when another was paid only \$9-12 for the same work, but on a non-state funded project.

Ms. Herrmann, the sponsor of the bill to exempt small communities from the necessity of paying union-negotiated wage scales for public construction projects, testified that "Little Davis-Bacon" wages for an electrician were about \$32; for a carpenter about \$26, and for a general laborer about \$24.

She said that the "Little Davis-Bacon Act" imported union wages in parts of Alaska where they were not part of the economy before, especially where work is scarce, and causes friction between local workers.

Ms. Herrmann said that the present law also discourages local hire. As she put it, "if you have to pay union rates, why not hire an outside man?"

She said that "Little Davis-Bacon" wages were not the prevailing wages in rural Alaska, but rather the prevailing negotiated wage in the urban areas, and attacked the present law for causing divisiveness in communities and inflating the costs of construction.

Alaskans testifying in favor of the present law said that it was an important protection for Alaskan workers' living conditions and a safeguard against an influx of cheap, non-union labor.

The Labor and Commerce Committee heard testimony from more than thirty communities all over Alaska; most of that testimony supported either change or repeal to Title 36.



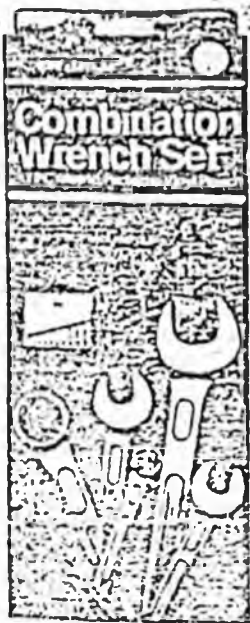
Photo by Rich Trotter

med

Master

cerned about fair competition on the dock when it became apparent that Crowley, a main line carrier, may be involved in some way with Kuskokwim Transportation Company, the company which purchased United Transportation and acquired the accompanying dock management agreement last year.

Mr. Connick said he will be overseeing the operation of the cargo dock, the petro port, and the small boat harbor.



The Bethel Receiving Home would like to

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APP 4 1983

Yanana Chiefs Conference, Inc.

Doyon Building
201 First Avenue
Fairbanks, Alaska 99701
Phone (907) 452-8251

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GRANT APPLICATION

CONCEPT PAPER

Department Education and Employment Date January 1, 1983

Program Manager Gale K. Vick, Director

Project Title Remote Dispatch Pilot Project

Amount of Funds Required \$ 172,248.00

PROGRAM ABSTRACT

I. Introduction

On July 9, 1982, an interdepartmental work group developed a draft employment and training policy for the State of Alaska (see Appendix #1) which laid the framework for the Governor's Task Force on Employment and Training. The objectives in that draft included:

- (a) "to provide an economic alternative to preference legislation,"
- (b) "to provide coordination to ensure that employment and training efforts mesh with economic development/job creation efforts," and
- (c) "to improve equity of access to vocational education/training and employment."

On September 16, 1982, Governor Jay Hammond issued a letter to the members of the new Task Force which included revised policy objectives, among them stating: ("the State will:") improve the efficiency and effectiveness of Alaska's labor exchange of supplemental services to the unskilled or under-skilled. (see Appendix #2)

Both of these messages indicate that the State of Alaska recognizes the confusion existing in current training and employment opportunities.

II. Need

It is no secret that unemployment in rural Alaska communities (see Appendix #3) runs much higher than for urban communities. There are a lot of obvious reasons (lack of local employment, lack of basic skills), but perhaps the most easily remedied is lack of access to information and to dispatch centers.

The following is quoted from a letter written December 14, 1982 to Commissioner James Robison, Alaska Department of Labor:

"One issue that has been of concern to us for a very long time is something we've dubbed "remote dispatch." Remote dispatch simply means the ability of rural residents to be competitive in the open market, especially on union contracts. Rural residents are continually discriminated against by virtue of hiring hall procedures, and the disparity is growing.

The problem seems to be mechanical, not philosophical. Personnel within many of the union halls are appreciative of the difficulties rural residents have in coming to the urban dispatch centers and the expense of waiting in town for a call. However, except for special instances when this can be circumvented, halls have been at a loss to devise a more equitable system without (a) creating a bureaucratic nightmare, or (b) spending a lot of money.

During construction of the Trans-Alaska Pipeline, special project labor agreements, as well as the Alaska State Manpower Utilization System (ASMUS) (administered by the Tanana Chiefs Conference and the Fairbanks Native Association), facilitated high percentages of rural hire in the various crafts and trades. This special agreement died when the project was completed and many people in rural communities found themselves, because of geography, unable to compete for existing jobs. Some people were still able to obtain employment on the slope through a name request, but as time went by and there were fewer and fewer original pipeline companies still in operation, even this avenue could not be used.

Most recently, during the pre-construction stage of the proposed Alaska Natural Gas Transportation System (ANGTS), Tanana Chiefs worked with the project (specifically on survey contracts), as well as with the State Pipeline Coordinator's Office, in developing socio-economic stipulations to be attached to the State Grant of Right-of-Way. We also worked on an employment and training committee resulting from federal stipulations.

All of this experience reinforced our awareness of the lack of remote dispatch capabilities.

Being very project-oriented, the employment patterns within this State fluctuate rapidly. Currently, much of the major construction work occurs on the North Slope, with the dispatch centers being in Fairbanks, Anchorage or Juneau. There is a continual influx of new people from Outside (of Alaska), many of whom,

after varying periods of residency, find themselves in a more favorable position for obtaining employment than does the person who lives in Holy Cross or Allakaket. This scenario is speculative, of course, because it seems that neither we nor the State of Alaska truly understands the employment patterns for Slope activity, but we have good reason to believe that this situation does exist and will increase.

Conversely, there are many instances where the labor force for capital improvement projects in village communities is imported from the urban centers - these, again, being the places from which dispatches are affected.

Union members in rural areas are caught. Many of them, because of lack of available employment and general economic conditions, have withdrawn from union membership. There is a general feeling that if employment is not a likely possibility, there is little reason to continue paying union dues.

We feel it is time for a positive change. We have done some research on methods to improve the situation without getting into legal difficulties or spending an enormous sum of money. Right now, the most important step forward is to create an atmosphere in which a dialogue can occur to discuss a pilot program."

After receiving the letter, Commissioner Robison has responded that the state is indeed very interested and will be hosting a meeting in Juneau for the interested parties, including organized labor (AFL-CIO, Teamsters, Central Labor Council), the Alaska Federation of Natives, rural legislators, the Alaska Commission on the Status of Women, Tanana Chiefs Conference, and others.

III. Objective

To really test the waters, we are suggesting that a pilot project be conducted in one region which should accomplish the following:

- (1) determine practicality of "remote dispatch,"
- (2) establish greater ties of communication on a structured basis among labor, government and industry,
- (3) help determine impact of changing hiring procedures on unemployment in rural communities,
- (4) articulate some major barriers to employment.

IV. Approach

The State Office of Telecommunications has been approached concerning their interpretation of the feasibility of a "remote dispatch" system. (see

Appendix #4) The response was encouraging on the use of existing telecommunications systems. However, the possibility has only been discussed in very simplistic terms, when in fact it is more likely that the politics of "remote dispatching" are much more complicated than the mechanics.

At this point, developing an experimental project on a regional scale should indicate whether or not there is a need to approach this on a statewide basis.

We suggest the Tanana Chiefs (see Appendix #5) region for several reasons:

- (1) the region is large and geographically diverse,
- (2) the region includes Fairbanks, which is a focal point for North Slope hiring,
- (3) the region has existing outreach capabilities through TCC, sub-regional offices, Job Service, the Rural Education Centers, other government agencies,
- (4) the region does not have direct access to major companies situated in Anchorage, which provides for an existing "control group."

Hopefully, such a project will integrate with research currently being conducted by the Governor's Task Force for Employment and Training and the Institute of Social and Economic Research (see Appendix #6) and take us that much closer to comprehensive planning for employment and training opportunities.

The steps in such a project would include (in sequence):

- (1) researching the availability of telecommunications systems and assessing their application,
- (2) establishing a formal agreement with organized labor (and Associated General Contractors, etc.) to conduct a pilot project,
- (3) conducting an advertising campaign (with the use of video) to announce the system and how it works,
- (4) developing an outreach program to monitor the program and/or facilitate usage,
- (5) Working with labor and industry on a continual basis to evaluate the project and to apply a similar strategy to nonunion work.

Some of this outline follows the concept of the Alaska State Manpower Utilization System (ASMUS) used during the construction of the Trans-Alaska Pipeline. Perhaps the most valuable legacy of ASMUS was the communications and cooperative spirit developed among labor and industry and service agencies.

ADDENDUM TO January 1, 1983 proposal to the Alaska State Legislature
for Remote Dispatch Pilot Project

Since the proposal for the "Remote Dispatch Pilot Project" was submitted in January, the following meetings have occurred:

February 15th/Juneau (attendance list attached)- Commissioner Jim Robison chaired a meeting of rural legislators, various regional corporations, organized labor, Associated General Contractors, National Electrical Contractors, the Governor's Office, the Alaska Commission on the Status of Women and other interested parties to discuss what problems do exist and how they might be alleviated. With over 17 crafts and trades represented in Alaska, each with their own hiring hall practices, it is difficult to pinpoint what works and what doesn't without some in depth research, but there was little disagreement that rural residents do have a considerable disadvantage. There was a discussion of anticipated union activity, and what provisions had been discussed for non-union work, which was followed by the clarification that the proposal has concentrated on organized labor precisely because they are organized, but is not intending to exclude ways to improve access to non-union jobs.

March 4th/Anchorage - (attendance list and meeting report attached)

March 21st/Fairbanks - (attendance list attached)- This meeting brought the parties involved to the consensus that we should definitely try a pilot project in lieu of any other way of trying to solve the problem. However, there were quite a few caveats, everyone being very concerned with legal precedents and membership approval. Therefore, a pilot, with the following components, was suggested:

1. Research - (a) how the different crafts and trades do/do not affect rural dispatch, (b) identifying the population base, (c) statewide telecommunications capabilities (current and projected), (d) legal problems associated with dues check-off, etc...
2. Advisory committee - A nine member advisory committee, composed of six members of various crafts and trades (major and minor, including all three jurisdictions) the Alaska Dept. of Labor, Associated General Contractors and a regional corporation (representing a rural constituency) to meet on a monthly basis (minimum) to further discuss implementing a pilot project based on the findings of the research and the formal consensus of the committee.
3. Implementing the project - This is the third and most important step, but it is contingent on the success of the research and the advisory committee. There have been three meetings on the issue, each one bringing the group nearer to some possible solutions, but also reinforcing how complicated the concept is. It is going to take more than just a few meetings to structure a pilot; it's going to take a concentrated and coordinated effort. Basic to the premise is a way to transmit daily calls to rural residents combined with a reasonable way to communicate back to the hiring hall.

In conclusion: This project requires at least one full time person (the attached budget suggests a director, half-time and an administrative assistant, half-time) to pull it together. It is not a project where any of the involved agencies have existing staff that can be spared to give attention it needs.

Developing a "remote dispatch" system is only one way to increase employment opportunities for rural Alaskans, but it is an important step. Once such a system has been operational for a decent period then perhaps employment profiles will be more reflective of needs other than lack of access.

The following is an unofficial overview of the March 4, 1983, meeting held in Anchorage to further discuss rural dispatch systems:

The meeting was called to order at about 9:15 am. The first item of discussion was the initial meeting held in Juneau on February 15th which was attended by over sixty persons from organized labor, Alaska Department of Labor, Associated General Contractors, National Electrical Contractors, various Native organizations, the Governor's Office and other interested parties, including representatives from the offices of rural legislators. The number of attendants indicated that the issue was important but there was general confusion on the exact problem. Tanana Chiefs Conference, Inc., circulated copies of a proposal submitted (in a rudimentary stage) to the State legislature for consideration of operating a pilot project within the Interior of Alaska to (a) bring the involved parties together for a series of discussions on the difficulties rural residents have in competing for jobs in the labor market, (b) review existing systems, (c) work out the mechanics of new and innovative approaches. The proposal is basically being used as a catalyst to bring the system makers closer to some possible solutions to the complex problem of dispatch for the bush.

As was very evident from the February 15th meeting as well as the follow-up on March 4th (which was attended by over thirty persons), many of the participants felt the meeting was a Native corporations vs. organized labor issue. TCC emphasized that this is not the case. While a majority of the rural population may be Native, there is a substantial non-Native population, just as there is a substantial Native population in urban centers which would not be affected. The intent of the proposal is to protect in-state hire for rural residents.

Among the many host of questions raised were:

- (1) Is the project attempting to change basic hiring hall procedures?
- (2) How does the project propose to access rural residents?
- (3) How do we equalize the procedures of over 18 crafts and trades?
- (4) How do we encourage village projects to be union?
- (5) What happens to existing local hire provisions?

The unions were all in agreement that they would not relinquish any control over their hiring hall procedures: They could not legally do so even if they wanted to.

The general discussion at both meetings indicated that the problem was one of:

- (1) infrastructure: It isn't just a labor issue but requires the cooperation of contractors, etc.
- (2) time and cost:
- (3) legality : What is legal and what will members likely ratify?
- (4) politics: Are we talking about trade-offs?

There was also a discussion of co-existing systems - such as the Alaska Department of Labor (with 19 Job Service offices) and the emerging Tribal Employment Rights Offices (TERO's.) The confusion created by independent growth of many systems is magnified at a rural level.

There were many questions on the relationship of the Native profit corporations to the non-profit. The relationship was defined as the difference between a tribal entity (non-profit) and a corporate entity. They should not be construed as being one and the same.

Although there were some negative feelings about the necessity of even addressing the problem (some people felt that rural residents make the either/or choices by virtue of their decision to live in a rural community) most people felt that the true problem - protecting in-state hire - definitely included consideration of the dichotomies that rural residents face in getting into the labor market. It is always difficult to know which comes first - the chicken or the egg - but this could be a positive step in the right direction. Everyone did agree that better communications was a priority.

RURAL HIRING MEETING
March 4th, 1983
DOL Conference Room
Anchorage, Alaska

1. Gale K. Vick Tanana Chiefs Conference, Inc.
2. Dick Currington Teamsters Local 959 - Juneau
3. Boyer Brown D.O.L. Rural
4. Nancy Cannington D.O.L. Commissioners Rep.
5. Ted Lane ISER, UAA
6. Leonard Hamilton CINA
7. Janice Gregory CINA
8. Russell J. Anderson Apprenticeship Outreach
9. John A. Abshire Ironworkers # 751
10. John L. Alexander OFI - ANGTS
11. Robert W. Reide CIRI Construction, Co.
12. Edward A. Janzen Sheet Metal # 23 - Anchorage
13. David E. Chess Boilermakers/WAB & CTC
14. Phil Thingstad Carpenters # 1281
15. Ambrose Bittner Bureau of Apprenticeship & Training
16. Bill Schneider A.G.C.
17. Joe J. Thomas Laborers Local # 942
18. Pat Smutz IBEW Local # 1547
19. Mike Andrews L.U. # 1555 Painters - Fairbanks
20. Art Zillig Dept. of Labor
21. Kay Rollison CIRI Construction Co.
22. Ron Grant Parsons Construction Inc.
23. Glenn Lundell Glenn Lundell & Associates

RURAL HIRING MEETING

February 15, 1983

DOL Building

Juneau, Ak.

- | | |
|---------------------------------|--|
| 1. ✓ Lee Sanders | Alyeska Electric, NECA, AGC |
| 2. ✓ Mike Andrews | Painters L.U. # 1555 |
| 3. ✓ Glenn Lundell | Glenn Lundell & Associates |
| 4. ✓ Mike Irwin | Doyon, Ltd. |
| 5. ✓ Rep. Adelheid Herrmann | Fouch V, Juneau, Ak. 99811 |
| 6. ✓ Ken Spray | Rep. Jim Duncan, Pouch V, Juneau 99811 |
| 7. ✓ Michael Jennings | U of A - Fairbanks |
| 8. ✓ Jim Addington | Asbestos Workers - Local # 97 |
| 9. ✓ Roy F. Foehl <i>Rochl?</i> | Office of the Federal Inspector |
| 10. ✓ Richard Frank | Doyon Construction, Fairbanks |
| 11. ✓ Micheal Thill | Sen. Mulcahy staff |
| 12. ✓ Larry Slay | JEETCA |
| 13. ✓ J.A. Kornfeind <i>SP?</i> | N.E.C.A. |
| 14. ✓ Gay Dunham <i>SP?</i> | I.B.E.W. # 1547 |
| 15. ✓ Roger Sams | I.B.E.W. # 1547 |
| 16. ✓ Chip Parr | AIR/PIC |
| 17. ✓ John Creed | Teamsters Union Local # 959 |
| 18. ✓ Lee Metcalf | U.A. Local 367 Plumbers & Pipefitters |
| 19. ✓ Dwight Perkins | U.A. Local 262 |
| 20. ✓ Cory Blackwood | Cook Inlet Region Inc. |
| 21. ✓ Patrick C. McLaughlin | Alaska Laborer - Employers Trusts |
| 22. ✓ Joe J. Thomas | Laborers Local 942 |
| 23. ✓ James R. Wakefield | Laborers Local 942 |
| 24. ✓ Lee Powelson | A.P.E.A. |
| 25. ✓ Edward Mussleuhite | Dept. of Labor |

February 15, 1983
DOL Building
Juneau, Ak.

26. ✓ David E. Chess WAB & CTC
27. ✓ Ray M. Brown Local # 190
28. ✓ Katie Hurley Ak. Comm. on the Status of Women
29. ✓ Al J. Baffone Sr. Local 71 - Laborers - AFL-CIO
30. ✓ Jim Johnson I.U.O.E. Local 302
31. ✓ Mike McConahy U.A. Local 375
32. ✓ Dick Currington Local 959
33. ✓ Com Frank A.G.C.
34. ✓ Evelyn Myers Tlingit & Haida, One Sealaska Plaza
35. ✓ James Plasman *Plusman* Rep. Vaska
36. *PRU* Jerry Arca Tlingit & Haida Central Council
37. ✓ Ray Rollison CCC Anch.
38. ✓ Leonard Hamilton Cook Inlet Native Assn. Anch.
39. ✓ Lynne Collins Rep. Fuller
40. ✓ Jonathan Sperber Rep. Davis
41. ✓ Rep. Mike Davis Pouch V, Juneau
42. ✓ Jack Goddard Rep. Shultz, Pouch V, Juneau
43. ✓ Allen D. Blume Office of the Governor
44. ✓ Lee Stoopes Senator John Sackett
45. ✓ Karen Perdue C.R.A. Employment Opportunity
46. ✓ Theodore Lane I.S.E.R.
47. ✓ George Bringmann N.E.C.A. - Anch.
48. ✓ Ike Waldrop N.E.C.A.
49. ✓ Tom Cashen I.B.E.W.
50. ✓ Bud Garrison I.B.E.W.
51. ✓ R.W. Rogers I.B.E.W.
52. ✓ George J. Nifon I.B.E.W.

RURAL HIRING MEETING
February 15, 1983
DOL Building
Juneau, Ak.

53. ✓ Don Wagner

Local 367 Anch.

54. ✓ Don Rouleau

District Council-Juneau

55. ✓ Russell J. Anderson

Apprenticeship Outreach

56. ✓ Art Zillig

Dept. of Labor

57. ✓ William C. "Spud" Williams

Tanana Chiefs Conference, Inc.

58. ✓ Bill Schneider

A.G.C.

59. Gale K. Vick

Tanana Chiefs Conference, Inc.

PROPOSED BUDGET

I. PERSONNEL

Project Director (½)	20,000.00
Administrative Asst. (½)	<u>11,000.00</u>
TOTAL WAGES	31,000.00
Fringe Benefits @ 21%	<u>6,510.00</u>
TOTAL PERSONNEL	37,510.00

II. OTHER COSTS

Travel and Per Diem	20,000.00
Telephone	8,000.00
Office Supplies	1,000.00
Reproduction	2,000.00
Advertising	500.00
Equipment Lease and Maintenance	10,000.00
Contractural (Video and Other)	50,000.00
Meeting Fees	<u>500.00</u>
TOTAL	\$ 129,510.00
Indirect @ 33.3 %	<u>42,738.00</u>
TOTAL PROPOSAL	\$ 172,248.00

This is an estimated operational cost. The communications cost is unknown and is dependent on research.

CONFERENCE, INC.
DEPT. OF EDUCATION AND EMPLOYMENT
Concept Paper for Remote Dispatch Pilot Project

BUDGET JUSTIFICATION

I. PERSONNEL

Project Director (½) - (per attached job description) 20,000.00

Administrative Asst. (½) 11,000.00

SUBTOTAL 31,000.00

Fringe @ 21 % - Fringe benefits for health insurance, workman's compensation, etc. 6,510.00

TOTAL PERSONNEL 37,510.00

II. OTHER COSTS

Travel and Per Diem - anticipated expense for Advisory Board meetings and other travel. 20,000.00

Telephone - based on anticipated long distance phone tolls. 8,000.00

Office Supplies - expected costs of basic office supplies. 1,000.00

Reproduction - to cover cost of reproduction of materials to both the Advisory Board and to the participating communities. This also includes brochures. 2,000.00

Advertising - expected cost of advertising program to local communities. 500.00

Equipment Lease and Maintenance - lease of computer time. 10,000.00

Contractural (Video and Other) - this is an anticipated cost for video production to develop information about the pilot project for released to local communities, as well as a series of interviews with labor officials and employers on how to get into the labor market, responsibilities and opportunities. 50,000.00

Meeting Fees - Miscellaneous meeting costs. 500.00



COURT OVERTURNS NEW DAVIS-BACON RULES, NEW PREVAILING WAGE DEFINITION OKAYED

Revised Davis-Bacon Act regulations issued by the Reagan Administration last May are held invalid by the U.S. District Court for the District of Columbia.

Ruling on a suit filed by the AFL-CIO Building and Construction Trades Department, Judge Harold H. Greene issues a permanent injunction against implementation of the regulations. The new rules were to have gone into effect on July 27, but on July 22 Judge Greene granted a preliminary injunction against their enforcement, 28 CLR 743 (July 28, 1982).

In his six-page opinion, Judge Greene notes that current regulations have remained in effect since shortly after the Act became law in 1931, and that, despite public debate in the ensuing years, "the Congress has not amended the law and it has not expressed its displeasure with the regulations." Pointing out that the rules have remained unaltered under 15 secretaries of labor, he finds that Secretary Raymond J. Donovan's "claim to have discovered a wholly different congressional intent rings hollow in the light of that history."

Prevailing Wage Rule Okayed

There is one major exception to the invalidation of the regulations. Judge Greene upholds a proposal to redefine the "prevailing wage," finding that the interpretation of this term is "entirely delegated to the Secretary." Under the Administration proposal, the standard is changed from the wages being paid to at least 30 percent of workers to the wages being paid to a majority of workers.

The most controversial aspect of the revised rules was the proposal to establish a semi-skilled "helper" category and allow the use of two helpers for every three journeymen. Judge Greene rejects the arguments of the Associated Builders and Contractors that the proposed change would mirror actual practice and promote employee opportunity.

Instead, the court says the change would result in helpers performing work of all sorts and not the "well-defined tasks" as required under the Act. Contractors accordingly would be inclined to use the lower paid helpers to perform tasks "traditionally beyond their competence," the court says. Congress was aware of this danger when it enacted the law and sought to guard against it, says Judge Greene. "It is quite clear

that the new regulation would subvert the congressional will."

Policy Difference Not Enough

A proposal to exclude wage rates paid on federal projects in determining the prevailing wage rate in an area is based on nothing more than policy differences between Donovan and 15 previous labor secretaries, the court says. "This is not enough."

Similarly, an attempt to exclude wage rates from nearby metropolitan areas in determining a prevailing wage for a rural area goes against "consistent administrative practice," the court finds.

A change in regulations under the Copeland Act eliminating the requirement that federal contractors furnish copies of weekly payrolls is not only contrary to longstanding administrative practice but would also "render the Act largely unenforceable," Judge Greene says.

In upholding the revised definition of the prevailing wage, Judge Greene observes that the Davis-Bacon Act does not provide a definition of the term and that there is "nothing intrinsically appropriate or inappropriate" about the 30 percent figure. The statute authorizes the secretary to exercise his discretion in determining the figure.

"There is no indication that Congress intended the first Secretary of Labor following enactment of the law to define the definition of prevailing wage for all time," the court says. "To the contrary, contemporaneous and subsequent legislative materials indicate that Congress was fully aware that the definition might or would be adjusted depending on existing conditions."

When the regulations were unveiled in May, the Administration estimated that they would produce annual savings of \$600 million. The Building and Construction Trades Department immediately challenged them, contending they were "arbitrary and capricious" and an abuse of discretion.

(Text of the opinion appears on p. 1519).

(Building and Construction Trades Department, AFL-CIO and Raymond J. Donovan, USDC-DC, No. 82-1631, Dec. 23, 1982.)

SENATE FINALLY PASSES AND SENDS GAS TAX INCREASE BILL TO PRESIDENT

After a lengthy, filibuster-fueled delay, the Senate finally approves the highway jobs and gas tax increase

As appellants correctly argue, areas of the administrative process so laced with discretion are traditionally shielded from direct judicial intervention. But these are not the areas to which appellees sought and obtained relief. Appellees' claim went to a threshold matter — the required content of acceptable affirmative action plans. *This issue is distinct from such subsequent questions as to whether a contractor is in compliance with a valid affirmative action program (to which the good faith standard is relevant), or what should be done to secure compliance once it is determined that a contractor has violated his affirmative action obligations* [to which the conciliation provisions are directed]. Appellees seek only to require [compliance] officers ... to perform the ministerial duty of complying with their own regulations by disapproving programs that do not contain the elements required by the regulations.

608 F.2d at 1331 (citations and footnote omitted; emphasis supplied).

The department regulations requiring contractors to file timely implementation reports and making non-complying contractors subject to various sanctions, when viewed as part of the enforcement mechanism of the Plan as a whole, simply do not require the Department to perform ministerial acts as did the regulations at issue in *LASAC*.

However persuasive may be the plaintiff's arguments regarding better ways of administering the Plan, these arguments do not support the issuance of a writ of mandamus against any of the defendants. The Court will therefore enter an Order granting judgment in favor of the defendants. This Memorandum is in lieu of findings of fact and conclusions of law pursuant to Fed.R.Civ.P. 52(a).

**TEXT OF U.S. DISTRICT COURT RULING IN AFL-CIO
BUILDING AND CONSTRUCTION TRADES DEPARTMENT V. DONOVAN**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
BUILDING AND CONSTRUCTION TRADES
DEPARTMENT, AFL-CIO, et al.,
Plaintiffs,

v. Civil Action No. 82-1631
RAYMOND J. DONOVAN, et al.,
Defendants.

ORDER

Upon consideration of the various briefs and memoranda submitted by the parties and the amicus, the oral argument, and the entire record herein, it is this 23rd day of December, 1982,

ORDERED That, with the exception noted below, plaintiffs' motion for summary judgment be and it is hereby granted, and defendants' motion for summary judgment be and it is hereby denied; and it is further

ORDERED That the regulations published in the *Federal Register* by the Secretary of Labor on May 28, 1982 (revisions to 29 C.F.R. Parts 1 and 5) allegedly in implementation of the Davis-Bacon Act, 40 U.S.C. §276a *et seq.*, and the Copeland Anti-Kickback Act, 40 U.S.C. §276c, be and they are hereby declared invalid with the exception of the regulation redefining the "prevailing wage" (47 Fed. Reg. 23,652 (1982), codified in 29 C.F.R. §1.2(a)(1)), and it is further.

ORDERED That the defendants, their agents and employees, and all those acting pursuant to their direction or in concert with them be and they are hereby permanently enjoined from enforcing or giving

any effect to such regulations, including 47 Fed. Reg. 23652, 23654-55, 23668, 23679, codified in 29 C.F.R. §§1.3(d), 1.7(b), 1.7(d), 55(a).

Harold H. Greene
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BUILDING AND CONSTRUCTION TRADES
DEPARTMENT, AFL-CIO, et al.,

v. Civil Action No. 82-1631
RAYMOND J. DONOVAN, et al.,
Defendants.

MEMORANDUM

On July 22, 1982, the Court issued a preliminary injunction restraining the enforcement of certain regulations which the Secretary of Labor had issued ostensibly in implementation of the Davis-Bacon Act, 40 U.S.C. § 276a *et seq.*, and the Copeland Anti-Kickback Act, 40 U.S.C. § 2776c. The same matter is now before the Court on the parties' cross motions for summary judgment.

The order granting the preliminary injunction was accompanied by a Memorandum which discusses the various regulations and the issues of this lawsuit at

¹ The Court permitted the Associated Builders and Contractors to file briefs as *amicus curiae* in support of the position of the Secretary of Labor.

some length, except for certain specific matters, no useful purpose would be served by plowing over the same ground once again in similar or greater detail.

Briefly, the July 22 Memorandum expressed the Court's view that the statutory language and the legislative history regarding the basis for the five types of regulations at issue was somewhat ambiguous, with language and history supporting the Secretary's interpretation more strongly with respect to some of the regulations and less strongly with respect to others. The Court ultimately resolved the doubts for preliminary injunction purposes in favor of the plaintiffs because each of the regulations issued by the present Secretary of Labor is wholly inconsistent with administrative interpretation contemporaneous with the enactment of the statutes about 1935 and consistent administrative practice since then. See generally *Norwegian Nitrogen Co. v. United States*, 288 U.S. 294 (1933). The Court will now simply add the following to what was said on July 22, 1982.

First. Nothing substantially new has been adduced by the parties or the *amicus* or found by the Court with respect to three of the challenged regulations.

a. The Act directs the Secretary, in his ascertainment of the prevailing wage, to determine wages for "projects of a character similar to contract work." 40 U.S.C. §276(a). As the Court previously pointed out, administrative practice from the early 1930s on has been to consider both private and public projects in ascertaining the appropriate standard for ascertaining the prevailing wage. The present Secretary's attempt to alter this consistent practice² is based essentially on nothing more than his policy difference with the preceding fifteen Secretaries of Labor. That is not enough. See Memorandum of July 22 at pp. 12-14.

b. The next point of dispute centers around the question whether, in setting prevailing wage rates for rural areas, the Secretary may consider the wages being paid in nearby metropolitan areas. As the Court previously indicated, the legislative history of this provision is mixed, but here, too, the ambiguities are fully resolved by contemporaneous and consistent administrative practice against the construction adopted by the present Secretary.

c. The Copeland Act requires the Secretary to issue regulations for federal contractors which, *inter alia*, require such contractors to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." Secretaries of Labor have always construed this provision to mean that copies of the actual weekly payroll must be submitted. The regulations issued by the present Secretary, however, would require only a statement from the contractor

that he had complied with the Act. The new regulation suffers not only from the same infirmity as the others referred to above — that it is contrary to consistent, long-standing administrative practice — but it is also subject to the additional criticism that it would render the Act largely unenforceable. See pp. 10-11 of the Memorandum of July 22, 1982.

Second. The Davis-Bacon Act provides that every federal construction contract shall contain a provision to the effect that the minimum wages being paid to various classes of laborers and mechanics shall be those determined by the Secretary "to be prevailing" for corresponding classes of laborers and mechanics. The existing regulations define "prevailing wage" as the wages being paid to at least thirty percent of those so employed. The new regulations issued by the present Secretary and temporarily enjoined by the Court would change this standard to provide in essence that a wage shall be deemed prevailing only if it is paid to a majority (more than fifty percent) of a particular class.

The Act itself does not provide a definition of "prevailing wage," and it is abundantly clear that the definitional task was entirely delegated to the Secretary. There is nothing intrinsically appropriate or inappropriate to the thirty percent rule or to any other figure as representing the "prevailing wage." Moreover, the legislative history of the statute and its purposes do not provide support for any particular figure. The statute quite simply relies on the Secretary to give content from time to time to the term "prevailing wage" in the exercise of his discretion and his expertise. There is no indication that Congress intended the first Secretary of Labor following enactment of the law to define the definition of prevailing wage for all time. To the contrary, contemporaneous and subsequent legislative materials indicate that Congress was fully aware that the definition might or would be adjusted depending on existing conditions. See 74 Cong. Rec. 6516 (Feb. 28, 1931); 75 Cong. Rec. 12365 (June 8, 1932); Hearings before Senate Committee on Labor and Human Resources on Military Construction Authorization Act of 1980, 96th Cong., 1st Sess. at 363 (1979).

In view of the background, which differs significantly from that of the other regulations at issue here, the Court concludes that, notwithstanding prior administrative practice, it was not improper for the Secretary to substitute the fifty percent standard for the earlier thirty percent standard. Accordingly, the Court will not enjoin that part of the new regulation which sets the prevailing wage as the wage paid to the majority (more than 50 percent) of the various classes of laborers and mechanics.

Third. The post-argument briefs, including particularly that of the *amicus*, focus on the "helper" issue.

²This consistent administrative practice was well known to the Congress, but it was never overruled by that body.

In its Memorandum of July 22, 1982, the Court expressed the view that the various regulations which would permit a substantial increase in the number of "helpers" in the construction industry probably did not reflect the will of the Congress. The Associated Builders and Contractors argue with considerable vigor that the Secretary's revisions of the "helper" regulations are correct. In this regard, the *amicus* points to an alleged statutory mandate to establish classifications by regulation that would mirror actual practice; that the scope and significance of the helper category has expanded dramatically in recent years (particularly in nonunion shops); and that the helper classification promotes employee opportunity. These arguments proceed from erroneous premises and they are insufficient to overcome the conclusions to be drawn from the basic legislative purpose.

The crux of the matter is this. The integrity of the statutory scheme requires that each "class of laborers and mechanics" be comprised of "members" who perform "well-defined tasks" and do not perform traditional craft work of another, higher paid class. This is a fundamental principle with which apparently neither the Secretary of Labor nor the *amicus* quarrel, at least not in theory. Indeed, the *amicus* argues that the Secretary's definition of "helper" will maintain "the strict lines of demarcation between skilled and unskilled labor." Memorandum at p. 15. But in practice that distinction can be maintained only if the tasks of the helper class are defined as discrete and distinguishable from those of laborers and mechanics.

Yet the new regulations would allow helpers to substitute for laborers and for journeymen, and that helpers would be allowed to perform tasks of all sorts. Under these regulations, "helpers" would *not* be performing well-defined tasks, either with regard to type of skill or to amount of experience, but they would be available in a general way to substitute for workers of many types and many levels of experience.¹

The *amicus* suggests that any problems in this regard are remedied by the provision in the regulation which forbids contractors to pay reduced rates for

¹The legislative history indicates that when "actual practice" may be equated with a practice to evade the prevailing wage requirement it is not determinative. Cong. Rec. Senate, p. 12073, July 30, 1935.

work "properly performed" by classes other than helpers (Memorandum, p. 17). However, since the entity which will determine whether a particular task is "properly performed" by a helper or by a skilled person will be the contractor, it may reasonably be assumed that his determination will follow his self-interest: lower-paid helpers will be regarded as properly performing many tasks traditionally beyond their competence. When Congress enacted the Davis-Bacon Act, it was well aware of these practicalities (see *e.g.*, Cong. Rec. Senate, p. 12073 (July 30, 1935)) and it sought to guard against them. It is quite clear that the new regulation would subvert the congressional will.⁴

Despite its seeming complexity, the basic issue governing this lawsuit is relatively simple. Congress enacted the Davis-Bacon Act and the Copeland Act in the 1930s with certain purposes in mind. Regulations were issued very shortly following the enactments to implement the words and purposes of the legislature. In spite of substantial public debate concerning both the laws and the regulations in the years since then, the Congress has not amended the law and it has not expressed its displeasure with the regulations. Moreover, fifteen Secretaries of Labor serving under eight Presidents have never altered the regulatory scheme. The present Secretary's claim to have discovered a wholly different congressional intent rings hollow in the light of that history.

For the reasons stated, the Court this day permanently enjoins the enforcement of all the new regulations at issue here, with the sole exception of the regulation which defines the prevailing wage in terms of a higher percentage of employees in each class of laborers and mechanics than was provided for heretofore.

Harold H. Greene

United States District Judge

Dated: December 23, 1982

⁴As for the argument of the *amicus* that increased use of the helper classification promotes employee opportunity, it appears that as of 1978 minority participation in joint union-management apprenticeship programs was 21.2 percent while its participation in open-shop training programs was only 11.4 percent. Department of Labor data tabulated for Union and Open Shop Construction, p. 72 (1978). The regulation adopted by the present Secretary is likely to have the effect of allowing contractors to replace higher wage minority laborers with lower minority helpers.

cal 13th extend for one year their current agreement originally set to expire May 31, 1983. This action freezes the journeyman rate at \$17.55 and fringe benefit contributions at \$3.68 for a total \$21.23 wage-fringe payment.

The extended agreement, covering approximately 6,500 workers in Cook County (metropolitan Chicago), Illinois, will run until May 31, 1984. ECA, affiliated with the National Electrical Contractors Association, represents 120 electrical contractors operating in the area.

Major Step

Extending the current agreement was a major step in combating the serious unemployment problem plaguing metropolitan Chicago, Don Weimar, ECA manager, said. Hopefully, this action will stimulate some interest among our users and indicate that "we are trying to hold the line," he commented.

None of ECA's member contractors reacted either positively or negatively to the extension, he said, suggesting that they are too busy looking for work. Although open shop contractors have made no significant inroads in Cook County's commercial and industrial market "that situation could always change," he observed.

Other NECA chapters in the area are considering similar measures, he said. Recently, Northern Illinois Building Contractors Association negotiated a three-year agreement with the Rockford Area Building Trades Council that freezes wages and fringes for the first year, 28 CLR 1691 (Feb. 9, 1983).

IBEW Local 134 business manager Timothy J. Bresnahan, who negotiated the extension, could not be reached for comment.

HATCH BILL WOULD AUGMENT EMERGENCY JOBS MEASURE

A \$1.5 billion jobs measure intended to "augment" the emergency employment measure approved on Mar. 3 by the House and headed for a Senate floor vote is introduced by Sen. Orrin G. Hatch (R-Utah).

Although the Hatch bill (S 649) was not included in version of the Senate jobs bill which is currently scheduled for a floor vote Mar. 9 (see report in this issue), a spokesman for the Senate Labor and Human Resources Committee said the senator plans to offer his bill as an amendment.

The senator said funding for the Job Training and Partnership Act sought by the Reagan Administration is for programs that would not become operational until Oct. 1. "The proposal I have suggested will make funds immediately available to states for allocation as training grants directly to employers who have committed to hire one or more structurally unemployed or

dislocated workers. It will assist in matching up willing workers and employers with jobs to offer," Hatch said.

Funds Available Quickly

Hatch, who chairs the Senate Labor and Human Resources Committee, said the funds would be made available on a needs-based formula and could be available "within weeks" after the appropriation has been passed.

Under the program, he said, "businesses of any size which had job openings and committed to hire a worker with a certification from the ES (Employment Service) or UI (Unemployment Insurance) office, regardless of the individual's skills, or lack thereof, could request a training grant from the state. The grant application would be simple and would basically consist of the number and types of jobs the employer was offering and a requested amount to cover the training costs."

"Training," he added, "could be done by the employer or could be contracted out by the employer to a training organization."

Hatch's bill includes a \$15 million authorization to fund training programs for in-school youth. "If we are going to have an emergency appropriation for emergency jobs and emergency humanitarian aid, then the second step ought to be bridging the gap before the Job Training and Partnership Act is fully operational with an emergency structural unemployment relief bill," he said.

SUPREME COURT AGREES TO TAKE NEW LOOK AT RESIDENCY RULE FOR PUBLIC WORKS JOBS

The Supreme Court agrees to review the constitutionality of a Camden, New Jersey, ordinance requiring that at least 40 percent of the labor force on municipal public works projects be city residents. The Justices vote to hear an appeal filed by the United Building and Construction Trades Council of Camden County and Vicinity. The union group seeks to overturn a ruling by the state's highest court.

The case will give the Court an opportunity to address many of the questions left unresolved by its decision last week in a similar case from Boston, 29 CLR 8 (Mar. 2, 1983). In *White v. Massachusetts Council of Construction Employers, Inc.*, the Justices upheld the constitutionality of Boston Mayor Kevin White's executive order requiring that city residents hold 50 percent of jobs on tax-supported construction projects. But the Court limited its holding to the Commerce Clause of the Constitution. It also found that the record in the case was not sufficiently documented to permit resolution of the challengers' contention that much of the construction subject to the

mayor's order involves nonpublic projects financed largely through private funds.

City Resident Definition

The New Jersey Supreme Court held in February 1982 that the Camden ordinance did not violate the Commerce Clause, the Equal Protection Clause or the Privileges and Immunities Clause. The ordinance, adopted in July 1980, defines as a city resident "any person who has been domiciled in the City of Camden for a continuous period of 12 consecutive months prior to the application for employment and continues as a domiciliary of the City of Camden during the period of employment or contract."

The statute also specifies that the person must intend that Camden be his permanent place of residence. It provides that "any party performing or offering to perform a contract for public construction in the City of Camden . . . in hiring for jobs, shall make every effort to employ persons residing in the City of Camden but, in no event, shall less than forty percent of the entire labor force be residents of the City of Camden." The measure applies "wherever the City of Camden spends funds derived from any public source for construction contracts . . ."

Impinges Fundamental Right

The union trades council contends that the ordinance, by limiting the preference to those who have resided in the city for one year, violates the Equal Protection Clause by setting up a classification that impinges on the fundamental right of interstate travel. The brief stresses that the statute has its impact on employees of private contractors, rather than public employees, where the city is acting as an employer.

"Whether the test be that of a compelling state interest or even minimum rationality, the Camden residency requirement must fail," the council says. "The classification employed by the ordinance is not even remotely tailored to further the city's purported interest in reducing unemployment. Rather than targeting the employment preference to the long term unemployed, the ordinance merely benefits long term residents. Moreover, rather than increasing the number of jobs, the ordinance simply limits the universe of those who may compete for them. Reducing unemployment may constitute a valid state interest, but it may not be achieved by means which are repugnant to fundamental constitutional rights."

(United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and City Council of Camden; No. 81-2110.)

LEGISLATION INTRODUCED TO GIVE PLANS EASIER ACCESS TO MORTGAGE INVESTMENTS

A bill that would permit pension plan managers to invest plan assets in residential mortgages (H.R. 1418) was introduced Feb. 10 by Rep. Ron L. Wyden (D-Ore).

The bill, entitled the Residential Mortgage Investment Act of 1983, would exempt qualified mortgage transactions from some of the prohibited transaction provisions of ERISA and the Internal Revenue Code. The only requirement would be that mortgage investments by employee benefit plans receive prior approval of an independent fiduciary.

Wyden, along with Reps. Richard Gephardt (D-Mo) and Barber Conable (R-NY), cosponsored similar legislation during the 97th Congress. Sen. John Chafee (R-RI) introduced a similar Senate bill during the 97th Congress. Those bills called for exemptions to allow pension plans to invest in the mortgage market, including mortgage-backed securities, and to engage in a variety of mortgage-related transactions, as long as they met ERISA's prudence and arm's-length standards.

Range Of Transactions

A range of transactions would be permitted under H.R. 1418. In addition, the bill would provide an exemption for purchases by plans of any interest in government-guaranteed residential mortgage loans.

Under the bill, qualified mortgage transactions would include the following:

- ▶ Issuance of a residential mortgage financing commitment by one or more employee benefit plans as a mortgage investment pool;
- ▶ Receipt of a fee in exchange for issuing a residential mortgage financing commitment;
- ▶ Origination, acquisition, purchase, retention, or sale of a residential mortgage loan, or of a participation interest in a residential mortgage loan;
- ▶ Origination, acquisition, purchase, retention, or sale by one or more employee benefit plans or a mortgage investment pool of a residential mortgage loan, or of a participation interest in a residential mortgage loan, in any case in which a residential mortgage financing commitment has not been issued;
- ▶ Sale, exchange, or transfer of a residential mortgage loan, or of a participation interest in a residential mortgage loan, by an employee benefit plan or mortgage investment pool before the maturity date of the loan;
- ▶ Servicing of a residential mortgage loan (whether or not the mortgage loan is part of a mortgage investment pool) by an employee benefit plan (or a

Employees who are represented by the Bay Counties District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, are entitled to perform the work of the scrapping or cleanup which follows the installation of drywall, on work performed by employer-members of the Northern California Drywall Contractors Association, wherever the jurisdictions of the Bay Counties District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, and Laborers Union Local 261, Laborers International Union of North America, AFL-CIO, coincide.

Employees who are represented by Painters & Decorators Union, Local No. 4, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL-CIO, are entitled to perform the work of the scrapping or cleanup which follows the process of the taping of joints between pieces of

drywall, on work performed by employer-members of the Northern California Drywall Contractors Association, wherever the jurisdictions of Painters and Allied Trades of the United States and Canada, AFL-CIO, and Laborers Union Local 261, Laborers International Union of North America, AFL-CIO, coincide.

Dated, Washington, D.C.

December 7, 1982

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

Robert P. Hunter, member

NATIONAL LABOR RELATIONS BOARD

TEXT OF THE SUPREME COURT RULING IN WHITE V. MASS. COUNCIL OF CONSTRUCTION EMPLOYERS

No. 81-1003

KEVIN H. WHITE, ETC., ET AL., PETITIONERS v.
MASSACHUSETTS COUNCIL OF CONSTRUCTION EMPLOYERS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

Syllabus

No. 81-1003. Argued November 1, 1982—Decided February 23, 1983

Petitioner Mayor of Boston, Mass., issued an executive order requiring all construction projects funded in whole or in part by city funds or funds that the city had authority to administer to be performed by a work force at least half of which are bona fide residents of the city. The Massachusetts Supreme Judicial Court held the order unconstitutional under the Commerce Clause.

Held: The Commerce Clause does not prevent the city from giving effect to the Mayor's executive order.

(a) When a state or local government enters the market as a participant, it is not subject to the restraints of the Commerce Clause. *Hughes v. Alexandria Scrap Corp.*, 426 U. S. 794; *Reeves, Inc. v. Stake*, 447 U. S. 429. In a case like the instant one, the only inquiry is whether the challenged program constituted direct state or local participation in the market.

(b) Insofar as the city expended only its own funds in entering into construction contracts for public projects, it was a market participant and entitled to be treated as such under the rule of *Alexandria Scrap Corp.* Even if implementation of the Mayor's order might have a significant impact on specialized construction firms employing out-of-state residents, this is not relevant to the inquiry of whether the city is participating in the marketplace when it provides funds for construction. Impact on out-of-state residents figures in the equation only after it is decided that the city is regulating the market rather than participating in it, for only in the former case need it be determined whether any burden on interstate commerce is permitted by the Commerce Clause. And, even if the Mayor's order is characterized as sweeping too broadly, such characterization is relevant only if the Commerce Clause imposes restraints on the city's activity and is no help in deciding whether those restraints apply.

NOTICE: These opinions are subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

(c) Insofar as the Mayor's order was applied to projects funded in part with funds obtained from certain federal programs, the order was affirmatively sanctioned by the pertinent regulations of those programs. Where the restrictions imposed by the city on construction projects financed in part by federal funds are directed by Congress, then no dormant Commerce Clause issue is presented.

384 Mass. 466, 425 N. E. 2d 346, reversed and remanded.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, MARSHALL, POWELL, STEVENS, and O'CONNOR, JJ., joined. BLACKMUN, J., filed an opinion concurring in part and dissenting in part, in which WHITE, J., joined.

JUSTICE REHNQUIST delivered the opinion of the Court.

In 1979 the mayor of Boston, Massachusetts, issued an executive order¹ which required that all construction projects funded in whole or in part by city funds, or funds which the city had the authority to administer, should be performed by a work force consisting of at least half bona fide residents of Boston.² The Supreme Judicial Court of Massachusetts decided that the order was unconstitutional, observing that the Commerce Clause "presents a clear obstacle to the city's order." 384 Mass. 446, 425 N. E. 2d 346 (1981). We

¹The executive order provides:

"On any construction project funded in whole or in part by City funds, or funds which, in accordance with a federal grant or otherwise, the City expends or administers, and to which the City is a signatory to the construction contract, the worker hours on a craft-by-craft basis shall be performed, in accordance with the contract documents established herewith, as follows:

- a. at least 50% by bona fide Boston residents;
- b. at least 25% by minorities;
- c. at least 10% by women."

Only the residency requirement is being challenged.

²In 1980, of approximately \$482 million expended on construction in the City of Boston, some \$54 million, or 11%, was spent on projects to which the executive order applied. Of this latter amount, approximately \$34 million represented projects being funded in part through federal Urban Development Action Grants (UDAGs).

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released . . . at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

granted certiorari to decide whether the Commerce Clause of the United States Constitution, Art. I, §8, cl. 3, prevents the city from giving effect to the mayor's order. 455 U. S. 919 (1982). We now conclude that it does not and reverse.

I

We were first asked in *Hughes v. Alexandria Scrap Corp.*, 426 U. S. 794 (1976), to decide whether state and local governments are restrained by the Commerce Clause when they seek to effect commercial transactions not as "regulators" but as "market participants." In that case, the Maryland legislature, in an attempt to encourage the recycling of abandoned automobiles, offered a bounty for every Maryland-titled automobile converted into scrap if the scrap processor supplied documentation of ownership. An amendment to the Maryland statute imposed more exacting documentation requirements on out-of-state than in-state processors, who in turn demanded more exacting documentation from those who sold the junked automobiles for scrap. As a result, it became easier for those in possession of the automobiles to sell to in-state processors. "The practical effect was substantially the same as if Maryland had withdrawn altogether the availability of bounties on hulks delivered by unlicensed suppliers to licensed non-Maryland processors." 426 U. S., at 803, n. 13. In upholding the Maryland statute in the face of a Commerce Clause challenge, we said that "[n]othing in the purpose animating the Commerce Clause prohibits a State, in the absence of congressional action, from participating in the market and exercising the right to favor its own citizens over others." *Id.*, at 810 (footnotes omitted). Because Maryland was participating in the market, rather than acting as a market regulator, we concluded that the Commerce Clause was not "intended to require independent justification," *id.*, at 809, for the statutory bounty.

We faced the question again in *Reeves, Inc. v. Stake*, 447 U. S. 429 (1980), when confronted with a South Dakota policy to confine the sale of cement by a state operated cement plant to residents of South Dakota. We underscored the holding of *Hughes v. Alexandria Scrap Corp.*, saying:

"The basic distinction drawn in *Alexandria Scrap* between States as market participants and States as market regulators makes good sense and sound. As that case explains, the Commerce Clause responds principally to state taxes and regulatory measures impeding free private trade in the national marketplace. [Citation omitted]. There is no indication of a constitutional plan to limit the ability of the States themselves to operate freely in the free market." 447 U. S., at 436-437.³

We concluded that South Dakota, "as a seller of cement, unquestionably fits the 'market participant' label" and applied the "general rule of *Alexandria Scrap*." *Id.*, at 440.

¹We also noted the policy in support of this limitation on the Commerce Clause:

"Restraint in this area is also counseled by considerations of state sovereignty, the role of each State 'as guardian and trustee for its people,' *Heim v. McCall*, 239 U. S. 175, 191 (1915), quoting *Atkin v. Kansas*, 191 U. S. 207, 222-223 (1903), and 'the long recognized right of trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal.' *United States v. Colgate & Co.*, 250 U. S. 300, 307 (1919). Moreover, state proprietary activities may be, and often are, burdened with the same restrictions imposed on private market participants. Evenhandedness suggests that, when acting as proprietors, States should similarly share existing freedoms from federal constraints, including the inherent limits of the Commerce Clause." 447 U. S., at 438-439 (footnotes omitted).

Alexandria Scrap and *Reeves*, therefore, stand for the proposition that when a state or local government enters the market as a participant it is not subject to "the restraints of the Commerce Clause." As we said in *Reeves*, in this kind of case there is "a single inquiry: whether the challenged 'program constituted direct state participation in the market.'" *Id.*, at 436, n. 7. We reaffirm that principle now.

The Supreme Judicial Court of Massachusetts concluded that the City of Boston is not participating in the market in the sense described in *Alexandria Scrap Corp.* and *Reeves* because the order applies where the city is acting in a nonproprietary capacity, has a significant impact on interstate commerce, is more sweeping than necessary to achieve its objectives, and applies to funds the city receives from federal grants. 384 Mass., at —, 425 N. E. 2d, at 354-355. For the same reasons the court found that the city is not a market participant, it concluded that the executive order violated the substantive restraints of the Commerce Clause.⁴ *Ibid.*

II

Petitioners and respondents both, to a greater or lesser extent, seek to have us decide questions not presented by the record in this case. In support of the Massachusetts court's finding that the city is acting in a nonproprietary capacity, respondents urge that much of the construction subject to the mayor's order involved nonpublic projects that were financed largely through private funds. While the mayor's order by its terms would appear to apply to such construction, there is simply nothing in the record before us to support the conclusion that city funds were used for these types of construction projects. Respondents, had they wished to raise this question, were obligated to offer some evidence that city funds and private funds were used jointly to finance construction of some of the projects which were in fact subjected to the provisions of the mayor's order; nothing in the record supports such a conclusion.⁵ The only issues before us, then, are the propriety of applying the mayor's executive order to projects funded wholly with city funds and projects funded in part with federal funds. We address first the application of the order to city funded projects.

The Supreme Judicial Court of Massachusetts expressed reservations as to the application of the "market participation" principle to the city here, reasoning that "the implementation of the mayor's order will have a significant impact on those firms which engage in specialized areas of construction and employ permanent works crews composed of out-of-State residents." 384 Mass., at —, 425 N. E. 2d, at 354. Even if this conclusion is factually correct,⁶ it is not relevant

³ Respondents made several other challenges to the order, none of which are before us. Respondents also directed challenges to resident preferences contained in other state and local laws. None of these provisions is before us.

⁴ The case was submitted below on an agreed statement of facts. The only reference in that statement to the funds affected by the order provides:

"The approximate dollar value of construction, both private and public within the City of Boston in 1980 was \$482,886,000; of that amount approximately \$4,421,040 represented construction projects funded in whole or in part by City funds, or funds which, in accordance with a federal grant or otherwise, the City expends or administers, and to which the City is a signatory to the construction contract to which the Executive Order, by its terms, was applicable. Of that \$4,421,040 approximately \$34,000,000 represented projects involving Urban Development Action Grants." Agreed Statement of Facts, at A-42.

⁵ The record does not readily support a finding of "significant impact" on firms employing out-of-state residents. The parties stipulated that a "small number of plaintiff contractors are out-of-state contractors who

to the inquiry of whether the city is participating in the marketplace when it provides city funds for building construction. If the city is a market participant, then the Commerce Clause establishes no barrier to conditions such as these which the city demands for its participation. Impact on out-of-state residents figures in the equation only after it is decided that the city is regulating the market rather than participating in it, for only in the former case need it be determined whether any burden on interstate commerce is permitted by the Commerce Clause.

The same may be said of the Massachusetts court's finding that the executive order sweeps too broadly, creating more burden than is necessary to accomplish its stated objectives. *Id.*, at —, 425 N. E. 2d, at 355. While relevant if the Commerce Clause imposes restraints on the city's activity, this characterization is of no help in deciding whether those restraints apply. The Massachusetts court relied in part on our decision in *Hicklin v. Orbeck*, 437 U. S. 518 (1978), saying that "as in *Hicklin*, *supra*, there is a broadly drawn statute which sweeps far wider than merely favoring unemployed or underemployed local residents." *Ibid.*

In *Hicklin* we considered an Alaska statute which required employment in all work connected with oil and gas leases to which the State was a party to be offered first to "qualified" Alaska residents in preference to nonresidents. The State sought to justify the "Alaska Hire" law on the ground that the underlying oil and gas were owned by the State itself. Analyzing the case under the Privileges and Immunities Clause of Art. IV, § 2, cl. 1, we held that mere ownership of a natural resource did not in all circumstances render a state regulation such as the "Alaska Hire" law immune from attack under that clause. We summarized our view of the Alaska statute in these words:

"In sum, the Act is an attempt to force virtually all businesses that benefit in some way from the economic ripple effect of Alaska's decision to develop its oil and gas resources to bias their employment practices in favor of the State's residents." 437 U. S., at 531.

Even though respondents no longer press the Privileges and Immunities Clause holding of *Hicklin* in support of their Commerce Clause argument, we note that on the record before us the application of the mayor's executive order to contracts involving only city funds does not represent the sort of "attempt to force virtually all businesses that benefit in some way from the economic ripple effect" of the city's decision to enter into contracts for construction projects "to bias their employment practices in favor of the [city's] residents."¹

have regular and permanent work crews comprised entirely of out-of-state residents. These contractors for the most part are those who perform specialty work. . . ." Agreed Statement of Facts, at A41 (emphasis added). Although the parties also stipulated that some out-of-state workers who would otherwise have been employed on the projects would be unemployed and that some out-of-state contractors would be discouraged from bidding on public construction work, Agreed Statement of Facts, at A-37, the record does not reveal that any significant number of out-of-state workers or contractors has withdrawn from the construction market because of the order. Furthermore, the data in the record does not show that the increased employment of city residents in publicly funded construction projects has been accompanied by a decline in the percentage of out-of-state residents. See Agreed Statement of Facts, at Appendix E.

JUSTICE BLACKMUN's opinion dissenting in part, *post*, argues that the mayor's order goes beyond market participation because it regulates employment contracts between public contractors and their employees. We agree with JUSTICE BLACKMUN that there are some limits on a state or local government's ability to impose restrictions that reach beyond the immediate parties with which the government transacts business. Cf.

The Supreme Judicial Court of Massachusetts also observed that "a significant percentage of the funds affected by the order are received from Federal sources." 384 Mass., at —, 425 N. E. 2d, at 354. The record does indicate that of approximately \$54 million expended on projects affected by the mayor's executive order, some \$34 million represented projects being funded in part through Urban Development Action Grants (UDAGs).² While the record assigns specific dollar amounts only for UDAGs, the parties also have stipulated that the executive order applies to Community Development Block Grants (CDBGs) and Economic Development Administration Grants (EDAGs).³

But all of this proves too much. The Commerce Clause is a grant of authority to Congress, and not a restriction on the authority of that body. See *American Power & Light Co. v. SEC*, 329 U. S. 90 (1946); *Gibbons v. Ogden*, 9 Wheat. 1 (1824). Congress, unlike a state legislature authorizing similar expenditures, is not limited by any negative implications of the Commerce Clause in the exercise of its spending power. Where state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with interstate commerce. *Southern Pacific Co. v. Arizona*, 325 U. S. 761, 769 (1945). Thus, if the restrictions imposed by the city on construction projects financed in part by federal funds are directed by Congress then no dormant Commerce Clause issue is presented.

An examination of the applicable statutes reveals that these federal programs were intended to encourage economic

Hicklin v. Orbeck, 437 U. S. 518, 529-531 (1978). We find it unnecessary in this case to define those limits with precision, except to say that we think the Commerce Clause does not require the city to stop at the boundary of formal privity of contract. In this case, the mayor's executive order covers a discrete, identifiable class of economic activity in which the city is a major participant. Everyone affected by the order is, in a substantial if informal sense, "working for the city." Wherever the limits of the market participation exception may lie, we conclude that the executive order in this case falls well within the scope of *Alexandria Scrap and Reeves*.

²Not all UDAG projects in Boston have been subjected to the executive order. HUD publications indicate that in 1970 Boston received \$28,600,000 through UDAGs and that this money was to be spent on projects costing a total of \$397,000,000. UDAG Project Approval List, Region I, Department of Housing and Urban Development, at 1 (Boston, Mass., Feb. 9, 1982). While we do not know what percentage of the \$34,000,000 spent on projects affected by the executive order was in fact UDAG money, we do know that overall UDAG funds comprised 7% of the total costs of projects they were expended on.

³UDAGs are administered by the Department of Housing and Urban Development pursuant to the Housing and Community Development Act of 1977, 42 U. S. C. § 5318 (Supp. IV 1980). The HUD regulations governing the program are found at 24 CFR Part 570, Subpart G (1982). CDBGs are administered by HUD pursuant to the Housing and Community Development Act of 1974, 42 U. S. C. § 5301 et seq. (1976 & Supp. IV 1980), and the implementing regulations at 24 CFR Part 570 (1982). EDAGs are administered by the Department of Commerce in accordance with the Public Works and Economic Development Act of 1965, 42 U. S. C. § 3131 et seq. (1976 and Supp. IV 1980), and the implementing regulations at 13 CFR Part 305 (1982).

Respondents have asserted in this Court that the executive order also applies to funds the city receives from the Department of Transportation. In the Agreed Statement of Facts the parties stipulated that a resident preference in a state statute challenged below applied to DOT funds. Agreed Statement of Facts, at A45. There is, however, nothing in the record to indicate that DOT funds are affected by the order. In fact, the parties stipulate that the affected federal funds come from UDAGs, CDBGs, and EDAGs. Agreed Statement of Facts, at A43-A44. Without support in the record for a contrary conclusion, we decide this case as though DOT funds are not involved. See *Ramsey v. UMW*, 401 U. S. 302, 312 (1971); *Tyrrell v. District of Columbia*, 243 U. S. 1, 4-6 (1917).

revitalization, including improved opportunities for the poor, minorities, and unemployed.¹⁰ Examination of the regulations set forth in the margin indicates that the mayor's executive order sounds a harmonious note; the federal regulations for each program affirmatively permit the type of parochial favoritism expressed in the order.¹¹

III

We hold that on the record before us the application of the mayor's executive order to the contracts in question did not violate the Commerce Clause of the United States Constitution.¹² Insofar as the city expended only its own funds in entering into construction contracts for public projects, it was a market participant and entitled to be treated as such under the rule of *Hughes v. Alexandria Scrap Corp.*, supra. Insofar as the mayor's executive order was applied to projects funded in part with funds obtained from the federal programs described above, the order was affirmatively sanctioned by the pertinent regulations of those programs. The judgment of the Supreme Judicial Court of Massachusetts is therefore reversed, and the case is remanded to that court for proceedings not inconsistent with this opinion.

It is so ordered.

¹⁰ See 42 U. S. C. § 5318 (Supp. IV 1980) (UDAGs); 42 U. S. C. § 5301 (1976 and Supp. IV 1980) (CDBGs); 42 U. S. C. 3131 (1976) (EDAGs).

¹¹ In issuing implementing regulations to carry out its authority under the UDAG program, HUD requires that a city certify that its project would not be undertaken by the private sector without public funds and that the project will alleviate economic distress by helping the poor, minorities, and unemployed. 24 CFR § 570.458(c) (1982). The regulations further provide that the city must "comply with . . . Section 3 of the Housing and Urban Development Act of 1968, as amended, and implementing regulations at 24 CFR Part 135." 24 CFR § 570.458(c)(14)(ix)(D) (1982). The regulations implementing that Act provide that "to the greatest extent feasible opportunities for training and employment arising in connection with the planning and carrying out of any project assisted under any such program be given to lower income persons residing in the area of such project. . . ." 24 CFR § 135.1(a)(2)(i) (1982) (emphasis added).

Similarly, CDBG regulations provide that a recipient of funds must "comply with section 3 of the Housing and Urban Development Act of 1968, as amended, requiring that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing in the area of the project." 24 CFR § 570.307(m) (1982) (emphasis added).

EDAG regulations provide that "(t)he maximum feasible employment of local labor shall be made in the construction of public works and development facility projects receiving direct grants and loans. Accordingly, every contractor and subcontractor undertaking to do work on any such project which is or reasonably may be done as on-site work, shall be required to employ in carrying out such contract work, qualified persons who regularly reside in the designated area where such project is to be located, or in the case of economic development centers, qualified persons who regularly reside in the center or in the adjacent or nearby redevelopment areas within the economic development district. . . ." 13 CFR § 305.54(a) (1982) (emphasis added).

¹² Respondents ask us to decide whether the executive order offends the Privileges and Immunities Clause of Art. IV, § 2, cl. 1, which provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in several States." In addressing this issue, the Massachusetts court said:

"The preference is for inhabitants of the city, and its 'negative' effect is felt in significant part by other citizens of the Commonwealth, as well as by residents of other States. In such circumstances it may be more difficult to find a violation of the privileges and immunities clause because the discrimination adversely affects citizens of the Commonwealth as well." 384 Mass., at —, 425 N. E. 2d, at 354. Because of its disposition under the Commerce Clause, however, the court did not resolve this issue.

JUSTICE BLACKMUN, with whom JUSTICE WHITE joins, concurring in part and dissenting in part.

I agree with the Court that this case presents two issues: (1) the validity of the mayor's executive order as applied to projects funded entirely by the city of Boston with its own revenues, and (2) the validity of the order as applied to projects funded in part with federal revenues pursuant to certain congressionally created grant programs.

I

Respecting the second issue, I am in agreement with the Court's conclusion that Congress, in creating the grant programs in question, specifically authorized "the type of parochial favoritism expressed in the order." *Ante*, at 9. As the Court holds, Congress unquestionably has the power to authorize state or local discrimination against interstate commerce that otherwise would violate the dormant aspect of the Commerce Clause. *Prudential Ins. Co. v. Benjamin*, 328 U. S. 408, 418-427 (1946).¹

II

I do not agree, however, with the Court's holding that the executive order is immune from Commerce Clause scrutiny insofar as it applies to city activities undertaken without specific congressional authorization.

The Court rejects certain arguments advanced by the Supreme Judicial Court of Massachusetts as relevant only if the order were "regulation of," rather than "participation in," the market. *Ante*, at 6-7. The Court holds that the latter is the latter rather than the former because, in the Court's view, it "falls well within the scope," *ante*, at 7, n. 7, of the Court's decisions in *Hughes v. Alexandria Scrap Corp.*, 426 U. S. 794 (1976), and *Reeves, Inc. v. Stake*, 447 U. S. 429 (1980). (With due respect, this plainly is not so.)

In *Alexandria Scrap*, the effect of the Maryland statute was to offer a subsidy only to scrap processors located within the State. See 426 U. S., at 803, n. 13. The Court held that a State, free from Commerce Clause scrutiny, may enter "the market as a purchaser, in effect, of a potential article of interstate commerce" and "restrict[its] trade to its own citizens or businesses within the State." *Id.*, at 808. *Alexandria Scrap* thus permits a State to prefer its residents as direct recipients of certain subsidies. See *Reeves*, 447 U. S., at 440, n. 14 (discussing *Alexandria Scrap*).

In *Reeves*, South Dakota refused to sell cement to out-of-state consumers until the orders of all in-state customers were filled. The Court held that the Commerce Clause is not implicated when a State prefers its own residents as direct purchasers of state-produced goods. Neither *Reeves* nor *Alexandria Scrap*, however, went beyond ensuring that the States enjoy "the long recognized right of trader or manufacturer, engaged in an entirely private business, freely to exercise his own independent discretion as to parties with

¹ This question has not been, to any great extent, briefed or argued in this Court. We did not grant certiorari on the issue and remand without passing on its merits. See *General Talking Pictures Corp. v. Western Electric Co.*, 304 U. S. 175, 177-178 (1933).

² Because the Court does not pass on the possible invalidity of the executive order under the Privileges and Immunities Clause, U. S. Const., Art. IV, § 2, cl. 1, it has no occasion to determine whether Congress may authorize, through affirmative legislation, what otherwise would be a violation of that Clause. This question may present considerations different from those presented by the dormant Commerce Clause. See L. Tribe, *American Constitutional Law* § 6-31, at 403, n. 18 (1978). For the reasons given by the Court, *ante*, at 10, n. 12, I also decline to reach this issue.

whom he will deal." *Reeves*, 447 U. S., at 438-439, quoting *United States v. Colgate & Co.*, 250 U. S. 300, 307 (1919).

Boston's executive order goes much further. The city has not attempted merely to choose the "parties with whom [it] will deal."² Instead, it has imposed as a condition of obtaining a public construction contract the requirement that private firms hire only Boston residents for 50% of specified jobs.³ Thus, the order directly restricts the ability of private employers to hire nonresidents, and thereby curtails nonresidents' access to jobs with private employers. I had thought it well established that, under the Commerce Clause, States and localities cannot impose restrictions granting their own residents either the exclusive right, or a priority, to private sector economic opportunities. See *H.P. Hood & Sons v. Du Mond*, 336 U. S. 525 (1949); *Pennsylvania v. West Virginia*, 262 U. S. 553 (1923); cf. *Hicklin v. Orbeck*, 437 U. S. 518 (1978) (decided under the Privileges and Immunities Clause).

Such restrictions are not immune from attack under the Commerce Clause solely because the city has imposed them as conditions to its contracts with private employers. In *Reeves*, the Court, I thought, carefully explored reasons the policy there at issue might not have been entitled to the market participant exemption, notwithstanding the policy's essentially proprietary nature. 447 U. S., at 440-447. The Court also observed that the line between "market participant" and "market regulator" is not always bright: "South Dakota, as a seller of cement, unquestionably fits the 'market participant' label more comfortably than a State acting to subsidize local scrap processors." *Id.*, at 440. See *id.*, at 440, n. 14 ("We have no occasion here to inquire whether subsidy programs unlike that involved in *Alexandria Scrap* warrant characterization as proprietary, rather than regulatory, activity").

The line between regulation and market participation, for purposes of the Commerce Clause, should be drawn with reference to the constitutional values giving rise to the market participant exemption itself. As the Court recognized in *Reeves*, the most important of these is that historically the "Commerce Clause responds principally to state taxes and regulatory measures impeding private trade in the national marketplace"; it was not designed "to limit the ability of the States themselves to operate freely in the free market." *Reeves*, 447 U. S., at 437 (emphasis added). The Court also observed that the distinction between participation and regulation rests on core notions of state sovereignty, coupled with the traditional right of private traders to determine the identities of their bargaining partners free from governmental interference. *Id.*, at 438-439. The legitimacy of a claim to the market participant exemption thus should turn primarily on whether a particular state action more closely resembles an attempt to impede trade among private parties, or an attempt, analogous to the accustomed right of merchants in the private sector, to govern the State's own economic conduct and to determine the parties with whom it will deal.

The simple unilateral refusals to deal the Court encountered in *Reeves* and *Alexandria Scrap* were relatively pure

examples of a seller's or purchaser's simply choosing its bargaining partners, "long recognized" as the right of traders in our free enterprise system. The executive order in this case, in notable contrast, by its terms is a direct attempt to govern private economic relationships. The power to dictate to another those with whom *he* may deal is viewed with suspicion and closely limited in the context of purely private economic relations.⁴ When exercised by government, such a power is the essence of regulation.

Attempts directly to constrict private economic choices through contractual conditions are particularly akin to regulation because, unlike simple refusals to deal but like conventional market regulation, they threaten to extend their regulatory impact well beyond the transaction in which the State has an interest. A requirement that firms wishing to deal with the State hire a certain percentage of their workforce from among state residents in practice may constrict the opportunities of nonresidents to work on projects with no connection whatever with the governmental entity imposing the condition. A firm that relies to any significant degree on a permanent workforce will be compelled to favor local residents for these positions. An analogous requirement that such firms purchase only from in-state suppliers the goods used in state projects also might constrict interstate trade wholly unrelated to government business. If economic considerations counsel in favor of stable relationships with sup-

⁴ Compare *United States v. Colgate & Co.*, 250 U. S. 300, 307 (1919) (unquestioned right of trader unilaterally to refuse to deal with those retailers who do not adhere to retail price schedule), relied upon in *Reeves*, 447 U. S., at 439, with *United States v. Parke, Davis & Co.*, 362 U. S. 29, 45-46 (1960) (trader violates Sherman Act by inducing wholesalers to refuse to deal with retailers who will not adhere to price schedule), and *United States v. Arnold, Schwinn & Co.*, 393 U. S. 365, 382 (1967) ("[o]nce the manufacturer has parted with title and risk, he has parted with dominion over the product, and his effort thereafter to restrict territory or persons to whom the product may be transferred" violates the Sherman Act), and *Continental T. V., Inc. v. GTE Sylvania Inc.*, 433 U. S. 36, 49 (1977) (overruling *Schwinn* in part; nonprice vertical market restrictions are not *per se* unlawful, but should be judged individually under the "rule of reason" to determine whether they "should be prohibited as imposing an unreasonable restraint on competition").

Conditioning a willingness to deal with potential bargaining partners on their derivative refusals to deal with others is particularly suspect where those whom the trader attempts to isolate are its competitors. See *Lomin Journal Co. v. United States*, 342 U. S. 143, 164-165 (1951). Here, the citizens of Boston, through their mayor, have sought to do just this by requiring those wishing to deal with their city government to refuse to hire nonresidents competing with citizens for jobs. This anticompetitive and suspect goal will be present whenever a unit of state or local government requires recipients of public contracts or government subsidies to deal only with that government's constituents.

Congress, in §8(e) of the National Labor Relations Act, has expressly prohibited labor organizations from requiring employers to agree "to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person," and has declared any such agreement to be void. 29 U. S. C. 158(e). On the other hand, permitting labor unions to refuse to deal with the primary employer is the staple of federal labor policy, and nothing prevents an employer from refusing unilaterally to deal with others for any lawful reason. To be sure, in the construction industry, at issue in the executive order, collective bargaining agreements are expressly exempted from this proscription of "hot cargo" clauses. *Ibid.*; see *Wolke & Romero Framing, Inc. v. NLRB*, — U. S. —, — (1982). That Congress has chosen, however, for reasons peculiar to labor policy and the history and nature of collective bargaining in the construction industry, *id.*, at —, to exclude collective agreements in that industry from this restriction does not detract from my basic point: there is a world of difference between the kind of "proprietary" activity at issue here and the kind exempted from dormant Commerce Clause scrutiny in *Reeves* and *Alexandria Scrap*.

² Had the city decided to limit its own hiring to Boston residents, its decision would almost certainly have been permissible under *McCarthy v. Philadelphia Civil Service Comm'n*, 424 U. S. 645 (1976), as well as *Reeves* and *Alexandria Scrap*.

³ That the order limits the preference to 50% of the covered jobs is, of course, not relevant to the applicability of the market participant exemption. If such preferences do not implicate the dormant Commerce Clause, they are immune even if they apply to 100% of a contractor's jobs.

pliers, a firm wishing to deal with the State will be compelled to favor local firms across the board. The effect of such "conditions" on the ability of nonresidents to deal with affected firms would be virtually identical to the effect of a conventional market regulation requiring such practices.

In *Reeves*, the Court cited "considerations of state sovereignty" as another factor counseling restraint in applying the Commerce Clause to "proprietary" activity. The States have a sovereign interest in some freedom from federal interference when hiring state employees. It might be argued that because the city could have chosen to build the projects covered by the order itself and, free from dormant Commerce Clause restraint, could have hired local residents, the city may contract to have the work done by private firms on the condition that the firms hire local residents.¹ But the Court never has suggested that the State's special sovereign interest in determining whom it will hire, and in setting the terms and conditions of public employment, extends to dictating whom private parties with which it contracts will hire, or the terms and conditions of private employment. In my view, the State's interest in managing its relations with its employees is fully safeguarded by its power to do the work itself if it so chooses, with such immunity from the Commerce Clause as attaches in that situation. The Court's observation in *Reeves*, 447 U. S., at 438-439, tying concerns for state sovereignty to a merchant's customary power to exercise his independent discretion as to the parties with whom he will deal, is fully consistent with this view. But when a State attempts to arrogate unto itself the "independent discretion" of others to deal with whom they please, it exercises regulatory power that must be consistent with the requirements of the Commerce Clause. See generally Varat, State "Citizenship" and Interstate Equality, 48 U. Chi. L. Rev. 487, 560-564 (1981).

This approach fully safeguards the power of the State to limit to state residents the direct benefits of subsidy programs supported with state funds. It permits a State to prefer local businesses as providers of the goods it purchases in the marketplace, and to prefer local residents as direct purchasers or recipients of state-created bounty. But it does not permit a State to impose clear market regulations as a condition of a contract or of a subsidy, using the tremendous power of the state treasury directly to impede the free flow of private trade in interstate commerce, or, what may be worse, to discriminate against such commerce. South Dakota should not be immune from the Commerce Clause if, for example, it imposes as a condition on the sale of state-owned cement that purchasers employ only South Dakota residents, or resell the cement only to South Dakota customers. Cf. *Reeves*, 447 U. S., at 444, n. 17 ("Nor has South Dakota cut off access to its own cement altogether, for the policy does not bar resale of South Dakota cement to out-of-state purchasers"). Similarly, Maryland should not be free of Commerce Clause scrutiny if it imposes as a condition of receiving a bounty, like that at issue in *Alexandria Scrap*, that scrap processors employ only Maryland residents, or resell the processed scrap only in-state. In my view such conditions, like the condition at issue here, directly intrude upon the historic Commerce Clause concern with "measures impeding free private trade in the national marketplace." *Reeves*, 447 U. S., at 437.

¹ Indeed, the Court appears to rely on this argument. See *ante*, at 7, n. 7.

I do not intend to suggest that the Court necessarily would decide these variations of *Alexandria Scrap* and *Reeves* as it has decided this case; evidently, the Court acknowledges that "restrictions that reach beyond the immediate parties with which the government transacts business" pose Commerce Clause questions more profound than did the restrictions at issue in *Alexandria Scrap* and *Reeves*. *Ante*, at 7, n. 7. The Court indicates that it upholds the executive order on the understanding that, with the exception of the federal grant programs, it is applied solely to construction projects funded entirely by the city. *Ante*, at 4-5. Because many construction contractors hire a substantially different work crew for each project they undertake, applied to such projects the mayor's order is arguably limited, as the Court says, to a "discrete, identifiable class of economic activity in which the city is a major participant." *Ante*, at 7, n. 7.⁴ This unique aspect of employment in the construction industry—and of public works construction projects—must also underlie the Court's related justification that "[e]veryone affected by the order is, in a substantial if informal sense, 'working for the city.'" *Ibid*.

I am not persuaded, however, that even the comparatively limited terms of the executive order constitute "market participation" rather than "market regulation." The "sense" in which those affected by the mayor's order "work for the city" is so "informal," in my view, as to lack substance altogether. The city does not hire them, fire them, negotiate with them or their representative about the terms of their employment, or pay their wages. In the case of the employees of subcontractors regulated by the order, the city does not even pay, or contract directly with, their employers. In short, the economic choices the city restricts in favor of its residents are the choices of private entities engaged in interstate commerce. Thus, the executive order directly impedes "free private trade in the national marketplace," and for that reason I would not hold it immune from Commerce Clause scrutiny. I therefore reach the question whether the order imposes an impermissible burden on interstate commerce.

III

As the Court recognizes, the order constitutes "parochial favoritism" of Boston residents over nonresidents of Boston and Massachusetts for access to private sector jobs. *Ante*, at 9. Thus, the order is a "protectionist measure" subject to the rule of virtually *per se* invalidity established by many of this Court's cases. See, e. g., *Philadelphia v. New Jersey*, 437 U. S. 617, 624 (1978).⁵

That the order burdens Massachusetts residents living outside Boston to the same extent as residents of other States does not save the order from this rule. First, the order de-

⁴ See S. Rep. No. 187, 86th Cong., 1st Sess., 27 (1959) ("The occasional nature of the employment relationship makes [the construction] industry markedly different from manufacturing and other types of enterprise. An individual employee typically works for many employers and for none of them continuously. Jobs are frequently of short duration, depending upon various stages of construction"). It is noteworthy, however, that in this case the parties have stipulated that the order affects some "contractors who have regular and permanent work crews." Agreed Statement of Facts, in App. to Pet. for Cert. A41.

⁵ I reject the suggestion that the record does not establish a cognizable burden on interstate commerce. See *ante*, at 5, & n. 6. The city has stipulated that, as a result of this order, some construction workers who are nonresidents of Massachusetts will be unemployed; contractors from outside Massachusetts will be discouraged from bidding on affected projects; and the costs of construction on affected projects will increase. Agreed Statement of Facts, App. to Pet. for Cert. A37.

rives in part from a state statute encouraging all Massachusetts communities to institute similar measures. Mass. Gen. Laws Ann. ch. 149, §26 (West 1982).⁴ That statute is clearly designed to benefit all Massachusetts residents at the expense of all residents of other States. In carrying out this statutory mandate, Boston—a creature of the Commonwealth, is tainted by participation in the Commonwealth's larger and clearly discriminatory scheme.

Second, and more significant, the order would be improper under *Dean Milk Co. v. Madison*, 340 U. S. 349 (1951), even absent the state statute. In *Dean Milk*, this Court held that a Madison, Wis., city ordinance "plainly discriminate[d] against interstate commerce," even though "Wisconsin milk from outside the Madison area [was] subjected to the same proscription as that moving in interstate commerce." *Id.*, at 351, & n. 4. This was so because the ordinance "erect[ed] an economic barrier protecting a major local industry against

competition from without the State." *Id.*, at 354. The Court held that the ordinance was invalid because "reasonable nondiscriminatory alternatives, adequate to conserve legitimate local interests, [were] available." *Ibid.*

Boston has at its disposal reasonable alternatives to accomplish its central goal—the alleviation of unemployment among Boston residents. It can create training programs for its unemployed residents or establish aggressive referral practices aimed at promoting employment for its residents at all construction projects in the city without implicating Commerce Clause concerns. It also can undertake some of the construction projects itself, and hire Boston residents to work on them, without imposing discriminatory restraints on the private market.

Moreover, as in *Hicklin v. Orbeck*, 437 U. S. 518 (1978), the order is ill-suited to eliminating unemployment because it applies the preference to all Boston residents, not just the underemployed or undertrained. See *id.*, at 527-528. Finally, since *Dean Milk*, the Court has indicated that a discrimination against interstate commerce is unjustified unless there is a legitimate reason, apart from their out-of-state origin, to treat differently articles of commerce or individuals engaging in commerce originating outside the State. *Philadelphia v. New Jersey*, 437 U. S., at 626-627. No such reason has been shown in this case.

Insofar as the Massachusetts court held Boston's executive order violative of the Commerce Clause as applied outside the context of federal grant programs, I would affirm its judgment. To this extent, therefore, I respectfully dissent.

⁴The mayor's executive order itself states that one of its purposes is to satisfy the city's "statutory obligation to give preference to its residents in hiring for public[ly] funded construction projects pursuant to [Massachusetts] G.L. c. 149, §26." App. to Pet. for Cert. A19. The statute to which the order refers provided: "Each county, town or district in the construction of public works, or persons contracting or subcontracting for such works, shall give preference [in hiring] to veterans and citizens who are residents of such county, town or district." Mass. Gen. Laws Ann., ch. 149, §26 (West 1982). In its decision holding the city order unconstitutional, the Supreme Judicial Court of Massachusetts also struck down this statute. — Mass. —, —, 425 N. E.2d 346, 352-353 (1991). The Commonwealth has not appealed that ruling.

TEXT OF THE OUT OF COURT SETTLEMENT AGREEMENT BETWEEN NCA AND NECA

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

NATIONAL CONSTRUCTORS
ASSOCIATION, et al.

Plaintiffs

v.

NATIONAL ELECTRICAL
CONTRACTORS ASSOCIATION,
INCORPORATED, et al.

Defendants

CIVIL ACTION
HM-77-1302

SETTLEMENT AGREEMENT

This Agreement is entered into in full and final settlement between all Plaintiffs, the Class Representatives and the class they represent and all Defendants.

It is hereby agreed by and among the undersigned that the above captioned case shall be terminated and settled upon approval of the Court of this Agreement pursuant to Rule 23 of the Federal Rules Of Civil Procedure, on the following terms and conditions:

Injunction And Dismissal

1. The parties agree that the Court shall enter a final permanent amended injunction in this case in the

form attached hereto as "Attachment A". In the event the Court wishes to change the form of the amended injunction, any such change must be approved by counsel for Plaintiffs, NECA, and IBEW or this Agreement is null and void.

2. If the Court approves the terms and conditions of this settlement, a Final Order and Judgment in the form annexed as "Attachment B" shall be entered dismissing all of plaintiffs' remaining damage claims (other than plaintiffs' \$16 claims covered by the amended injunction) with prejudice and dismissing all of defendants' counterclaims with prejudice and providing for disposition of the Settlement Fund in accordance with the provisions of Paragraphs 12 through 20 hereof.

Collection Cases

3. Defendants warrant and represent that they have not and will not assign to any person or entity any rights to collection of payments to the National Electrical Industry Fund (NEIF) from persons or entities not members of NECA. Defendants, other than IBEW and Charles H. Pillard, further warrant and represent that they retain control over all existing suits and proceedings which have been instituted in any Federal or state court for the collection of payments to the

HIGHWAY BILL'S PROVISIONS: Apportionment—Current law is maintained regarding Interstate construction and 4R programs; the 1/2 percent guaranteed minimum apportionment of Interstate construction funds is retained. A table showing apportionments to each state under the new legislation is included in this Newsletter.

Temporary matching fund waiver—States can waive their matching fund requirement if they do not have funds available, but will be expected to repay the Highway Trust Fund by the end of fiscal 1984 or have the "borrowed" funds deducted from 1985 and 1986 apportionments.

Floor on contributions—No state will be apportioned less than 85 percent of the state's estimated payments into the Highway Trust Fund for the preceding year.

Buy America—The provision in current law is expanded to all federal-aid highway projects and requires that domestic steel, cement and manufactured products be used in such projects as long as they do not increase overall project costs by more than 25 percent.

Minority Business Enterprise—The bill provides that ten percent of program funds will be expended with minority businesses "except to the extent that the Secretary of Transportation determines otherwise." The bill also provides that the MBE requirement be implemented according to the subcontracting provisions of Public Law 95-507. That statute, which is now implemented through Office of Federal Procurement Policy regulations for direct federal work, has two provisions worth noting for their effect on construction contractors. First, subcontracting requirements are based on best efforts, and do not include a mandated fixed goal for each contract. Second, small business concerns (less than \$12 million annual volume) and construction contracts of less than \$1 million are exempt from the subcontracting requirements of P. L. 95-507.

Unemployment compensation—The bill extends unemployment benefits for up to six weeks, depending on the insured jobless rate of particular states.

Davis-Bacon—Coverage is extended to 3R work (resurfacing, rehabilitation, and restoration) which has the effect of reversing administrative action several months ago by the Federal Highway Administration. The Act already applied to reconstruction work.

JUDGE ENJOINS DAVIS-BACON REGULATORY CHANGES, BUT SUSTAINS 50 PERCENT RULE: A U.S. district court judge in the District of Columbia has granted a motion by the Building and Construction Trades Department, AFL-CIO, for a permanent injunction against implementation of four of the five major Davis-Bacon regulatory changes issued last summer by the Department of Labor. The changes never took effect, because of an earlier, temporary injunction.

The single change the judge allowed is replacing the "30 percent rule" for wage determinations with a rate based on wages paid to a majority of workers. (Details to chapters, Davis-Bacon bulletin #24-82, December 28.)

The Administration has not yet announced decisions on possible appeal or on implementation of the majority-rate provision.



Davis-Bacon Bulletin

#24-82

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
1957 E Street, N.W. Washington, D.C. 20006 393-2040

December 28, 1982

TO: Open Shop and Collective Bargaining Committees and
Chapter Managers

FROM: G. Brockwel Heylin

SUBJECT: Final Decision in Davis-Bacon Regulations Lawsuit
(Building and Construction Trades Dept., AFL-CIO et al v.
Donovan, et al, U.S. District Court, D.C. CA No. 82-1631)

In a long awaited final decision, U.S. District Judge Harold Greene issued a permanent injunction and granted a motion for summary judgment against four of the five major Davis-Bacon regulation changes sought by the Reagan Administration. The judge allowed the Labor Department to redefine the term "prevailing wage" to replace the so-called '30 percent rule" with a rate based on a majority (more than 50%) of the workers in the classification on similar projects. The Court's action prohibits the Administration from implementing provisions which would have

- o Allowed DOL to exclude wage data from Davis-Bacon building and residential projects where sufficient data from private projects was available;
- o Prevented importation of urban wage rates to rural areas;
- o Substituted a payroll statement by the contractor for actual weekly payroll information; and
- o Permitted the use of multicraft helpers who could use the tools of the trade in a ratio of up to 40% "helpers" to journeymen on a job.

Judge Greene stressed that the present interpretations of the DBA were contemporaneous with the statute and have been followed consistently through many administrations with no Congressional correction. As to the important helper classification, the judge contended that helpers were not a group doing well-defined tasks, could replace journeymen contrary to the wishes of Congress, and that minority workers would fare less well. On the provision he approved, he observed that Congress delegated to the Secretary the task of defining the prevailing wage, and thus allowed DOL's modification of the 30% rule to a majority wage rate. According to the decision, "Congress was fully aware that the definition might or would be adjusted depending on existing conditions."

The government now has two decisions to make; whether to appeal and whether to implement the majority prevailing wage provision that was not permanently enjoined. An appeal is likely.

The Building and Construction Trades Department may want to sit on its 80% victory or to appeal its loss on the prevailing wage issue. [A copy of the decision is available from the National Office.]

Sincerely,



G. Brockwel Heylin
Director
Open Shop/Government Services

REBUILDING
AMERICA



AGC CONVENTION/
CONSTRUCTOR EXPOSITION
March 10-15, 1983 Atlanta, GA.

Sen. Eliason

"HISTORICAL OVERVIEW OF THE DAVIS-BACON AND RELATED ACTS"

The Davis-Bacon Act is one of the oldest American labor laws and was the first federal law enacted to regulate the wages of non-government workers. Like most early federal labor laws, the Act was preceded by various state statutes. Kansas, for example, had enacted the first prevailing wage law for state construction projects in 1898. Federal congressional hearings were held as early as 1898 although legislation did not result until 1931. Today, all but 10 states have enacted prevailing wage laws governing state construction projects.

The principal impetus for government regulation of wages for workers employed on public construction projects was the economic and social conditions of the 1930's. During the Depression, the national conscience was aroused by the effect of widespread unemployment on the wages of workers. While the competition for limited markets forced employers to cut labor costs, the scarcity of work created an oversupply of labor that resulted in low wage rates. The absence of job opportunities further increased public reliance upon federal construction as a source of employment at a time when the federal government was required to award its contracts to the lowest bidder. This requirement prevented federal contracting agencies from dictating that successful bidders pay their employees wages comparable to those paid for similar labor in private industry in the same area as the government projects under construction. Some successful bidders took advantage of this situation by "selfishly import[ing] labor from distant localities and...exploit[ing] this labor at wages far below local wage rates." Local workmen were unable to compete with migratory laborers, and qualified local contractors found it impossible to compete with outside contractors who based their estimates for labor costs upon the low wages paid to imported laborers.

The Davis-Bacon Act, enacted on March 3, 1931, was designed to curtail such unscrupulous practices among government contractors during a decade in which public works were on an upswing and economists and politicians were particularly wary of depressed labor markets. The Act was also designed to prohibit wage differentials from becoming a major competitive advantage in bidding on government construction contracts, thereby insuring that the economic power of government as an employer would not contribute to a further depression of local markets. To accomplish these goals, the federal Act required government contractors to pay their "laborers and mechanics" the prevailing private industry wage rates.

The compulsory nature of the Act's prevailing wage rate provision was emphasized throughout the 1931 congressional debates in Davis-Bacon Legislation. Because the Act mandated that under all covered contracts the contractor pay the prevailing wage rate, the only variable was the exact rate to be paid. In the event of a dispute concerning the applicable wage rate, the government contracting officer was to attempt to adjust the rate in accordance with the character of the work performed and the locality in which it was performed. If the contracting officer could not resolve the dispute, the matter was then to be referred to the Secretary of Labor for a conclusive determination.

In the 50 years since the enactment of the federal Davis-Bacon Act, a series of executive orders and congressional amendments have generally broadened its scope and strengthened its impact. Additionally, more than 80 other federal laws relating to prevailing wages have been passed during this period, covering a wide range of federal projects and activities. The amendments to the Davis-Bacon Act as well as the variety of federal legislation requiring prevailing wages to be paid serve to indicate the continuing concern of Congress to preserve prevailing wage standards for government contract work.

In Alaska, legislation requiring the payment of prevailing wages on public construction work has also been in effect since 1931. The original Alaska prevailing wage laws were passed by the territorial legislature on an emergency basis, presumably in direct response to the passage of the federal Davis-Bacon Act by the U.S. Congress two months earlier. The Alaska version was introduced as Senate Bill 69 by Senator Lomen of Nome and was swiftly enacted into law effective April 29, 1931 (SLA 1931, ch. 69). Unfortunately there appears to be no written record on any legislative debate or committee hearings on the proposed Alaska legislation. The prevailing wage provisions were later included in the 1933 and 1949 compilations of Alaska law and, upon statehood, were carried over into state law and are now codified at AS 35.05.010-.110. In the years since the enactment of the original prevailing wage laws in Alaska there have been periodic amendments which further define the scope of the Little Davis-Bacon Act and establish enforcement procedures, largely in response to similar changes in federal law.

In addition to the legislative history, both federal and Alaska courts have had occasion to interpret the basic purposes and policies underlying prevailing wage legislation. In a leading federal case, the U.S. Supreme Court recognized the important wage protection purpose of the Davis-Bacon Act: "The language of the Act and its legislative history plainly show that it was not enacted to benefit contractors, but rather to protect their employees from substandard earnings by fixing a floor under wages on Government projects." U.S. v. Binghamton Construction Co., 347 U.S. 171, 177 (1953). The Alaska Supreme Court has quoted this language in at least two separate cases involving Alaska's Little Davis-Bacon Act, noting that the Alaska statutory scheme is closely patterned after the federal Act. City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227, 231-33 (Alaska 1982); Fowler v. City of Anchorage, 583 P.2d 817, 821-22 (Alaska 1978). In reviewing the policies underlying the Little Davis-Bacon Act, the Alaska Supreme Court has further stated: "The fundamental purpose of Little Davis-Bacon is to assure that employees engaged in public construction receive at least the prevailing wage. The focus of the Act, quite clearly, is to the benefit of the employees, not the contracting principals." City and Borough of Sitka, supra, at 232. From these judicial statements, it is apparent that both the federal and state prevailing wage laws have as their primary objective the protection of local workers on government projects by establishing a required minimum wage in accordance with that prevailing in the area where the work is done. Both the legislative history and judicial interpretation of prevailing wage legislation strongly suggest that this primary objective is as fundamental and vital today as it was in 1931 when the legislation was first enacted.

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:
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**CENTER TO PROTECT
WORKERS' RIGHTS**

**FACTS ON STATE
PREVAILING
WAGE LAWS**

Center to Protect Workers' Rights Robert A. Georgine, President
815 - 16th Street, N.W. Room 603 Washington, D.C. 20006

How Big Labor Brings Home the Bacon

by Gregg Easterbrook

On Symphony Road in Boston's Fenway district, a contractor is gutting an old building to make apartments for the poor. The renovation is costing \$23,000 per unit, and the finished apartments will rent to eligible families for \$225 to \$375 per month. About a block away, another contractor is fixing up a similar building for a similar purpose. The finished apartments won't be any bigger or better than the apartments on Symphony Road. But there will be one big difference. They'll cost \$39,000 each to complete, and will rent for \$600 or more.

Sounds like somebody is ripping off the poor. Somebody is. Only this time it isn't the banks, the slumlords, or the faceless multinationals. It's the AFL-CIO, with the consent and assistance of the federal government. In our land of unlimited possibilities, even the defender of the working man has devised a respectable way to steal from the poor.

One rehab is costing more than the other because the construction workers fixing it up are being paid significantly more. In the \$23,000 building, a carpenter makes \$13.34 an hour—not too shabby. In the \$39,000 building, a carpenter makes \$19 an hour. Both are doing the same work. In the cheaper building, a plumber makes \$15.55 an hour and an electrician \$16.27; in the more expensive one, a plumber makes

\$21.16 and an electrician \$20.18. When you add up all the extra wages for workers in the more expensive building you get a surcharge of \$16,000, which you pass along to the poor.

This enlightened arrangement is imposed by federal law. The \$39,000 apartments are being renovated under a grant from the Department of Housing and Urban Development—which means they are a federal construction project, which means wages must comply with something called the Davis-Bacon Act, which means inflated prices.

Under Davis-Bacon, all construction workers in projects involving federal funds must be paid the "prevailing wage." That sounds so self-evident you may wonder why anybody bothered writing it down, let alone enacting it into law. But the construction-trades unions know why. Using bureaucratic flash powder and prestochango, the Department of Labor sees to it that the "prevailing wage" often means the highest possible union wage. In Montgomery County, Maryland, just outside Washington, you can hire a bulldozer operator for about \$9 per hour. Yet when construction of Metro, Washington's subway, pushed into the county, Labor officials ordered that bulldozer operators be paid \$13.72 per hour. They ordered similarly inflated wages for other Metro workers. The net result, according to the General Accounting Office, is that Metro will cost at least \$149 million more than it should. Pay more, get less is the government's motto when it comes to construction—less

Gregg Easterbrook is an editor of The Washington Monthly.

housing for the poor, or less subway. Construction of Metro lines to Washington's comfy white suburbs continues apace. But construction of the line to Anacostia, the city's poorest and hardest-to-reach area, has been postponed indefinitely. Reason: "fiscal constraints."

What's that you say? You don't care about the poor? How fashionable of you! Then maybe you care about the environment. Davis-Bacon has so inflated the cost of pollution-control projects that the EPA's plan to finance a nationwide series of water-treatment plants has largely been stymied. A treatment plant in Houston, for instance, was held up and nearly canceled because Davis-Bacon inflated the price of its filter houses and dryers by 55 percent.

What? You don't care about the environment either? You devil you, you must have known about tree pollution long before the rest of us. Surely, though, you must care about national security. Davis-Bacon is slowing construction of the Strategic Petroleum Reserve to a crawl, and slowing renovation of military bases. It will add many billions of dollars to the proposed MX missile system, which is essentially a construction project, thus delaying its completion for years.

The Davis-Bacon Act sets taxpayers back at least \$2 billion a year in federal construction wages. It also indirectly inflates the cost of private construction, by "importing" high union wages into non-union areas, and driving small, cost-conscious contractors out of business. The total inflationary impact of Davis-Bacon is estimated to be as high as \$20 billion a year.

In Washington, a city seemingly bent on creating automatic all-weather inflation guarantees, Davis-Bacon is a triumph of the art. It is artistically pure and uncompromised, serving no purpose whatsoever other than to raise prices. The act not only means higher wages for union workers on federal construction jobs, but non-union workers as well, helping enhance Big Labor's image and expand its scope. It's one reason building unions have expanded with such success, organizing more than 40 percent of the country's construction workers. "Davis-Bacon is the greatest treasure in Big Labor's chest," notes a unionized contractor.

Labor proponents paint Davis-Bacon not as a goodie, but as the last faint hope of a shoeless proletariat. Senator Harrison Williams, who until the Republican Senate takeover was chairman of the Labor Committee, says the law keeps "the living standards of construction workers" from being "sacrificed in the battle against

inflation." Construction workers suffer from a peculiar form of exploitation—they are among the highest-paid workers in the country. In 1978, the average construction worker made more than \$8 an hour, while the average for manufacturing workers was about \$5.50 an hour, and the average for all workers was much lower than that. In the battle against inflation, not only have construction workers not been sacrificed, they have yet to be conscripted—while the consumer price index rose 63 percent between 1969 and 1979, construction wages rose 130 percent.

Davis-Bacon insures that average taxpaying stiffies shell out to subsidize this cream of the working crop, and it's an especially white cream. Only about ten percent of journeymen in the building trades are black or Hispanic, far less than the share of minority group members in the population; union work rules are carefully calculated to keep it that way. (In construction, a journeyman is not a pitcher whose fastball can be clocked with a sundial, but an experienced worker with seniority.)

So Davis-Bacon seems like exactly the kind of boondoggle Ronald Reagan is looking for. It wastes taxes and increases the deficit without accomplishing anything. It subsidizes those who don't need it. And best of all, it's not fogged up by complex interrelationships with due-process rights and land-use planning in the Yucatan. Davis-Bacon can be dealt with swiftly and decisively, simply by repealing the law. Repeal would lower taxes, speed up important federal projects, stimulate the construction business, and increase opportunities for blacks and Hispanics. Bing, bang, boom. All it requires is a president with the courage of his convictions, a sincere belief in free-market economics, and a willingness to stand up to Big Labor, which should be good practice for standing up to the Russians.

Symptoms of Depression

As soon as Reagan wakes up from his nap, we'll ask him if he is that president. Meanwhile, let's see how Davis-Bacon works.

The law was passed in 1931, intended to combat the desperation of the Depression. At that time, the federal government was about the only builder anywhere. Jobs were so scarce and times were so hard that workers—especially Southern blacks—were fighting just for subsistence wages. Southern contractors formed "roving gangs" of starving blacks and traveled around the country, bidding on federal construc-

tion. They underbid whatever the already depressed local "prevailing wage" happened to be. By ordering that federal construction pay the "prevailing wage," Congress not only took away the "roving gangs" advantage, but heated up the economy in keeping with the spend-your-way-out theory of ending the Depression. States began passing "little Davis-Bacons" that ordered prevailing wages for state and local construction; 40 states have them now.

The plumber making \$21.16 is not a homeless dustbowl waif; however, the anti-Depression mechanisms of the act, whose purpose has long since expired, continue to jack up his wages.

Suppose, for example, you are a painting contractor in Carson City, Nevada. King Soopers is finishing a new supermarket, and wants it painted. It calls for bids. You figure out your cost of paints and materials, how many people you need and what to pay them, figure in the highest profit you dare, and submit a bid. If you're lower than everybody else, you get the job. King Soopers does not ask to see your books, or negotiate individual items, like whether you pay painters or truck drivers more. It just asks how much you want, and when you can finish.

Now suppose the government is finishing a courthouse and wants it painted. You still have to bid on materials and timing, but you can't bid on labor. Washington will set the labor rates, and every contractor wanting the job must bid the same rates. To set the rates, the Department of Labor will dispatch surveyors, whose purpose, even liberal economist Charles Schultze has said, is to pump wages up to "the construction union scale in the nearest large city."

Here's where the fun begins. The simplest way surveyors can express their pro-union bias is by not reporting evidence of non-union wages. The GAO found that when one Labor surveyor was setting wages for a residential housing project in California, he "systematically excluded" mention of 113 local carpenters making \$2.50 to \$4.50 an hour, recording only higher wages. If he had included the low-end wages in his survey, GAO said, he would have found the prevailing wage for carpenters to be \$4.85. Instead he found it to be \$6.54 an hour, and that's what the government paid.

A Labor surveyor can be somewhat more subtle, and base wages on projects that have nothing to do with the business at hand, but pay better. When a U.S. Postal Service office air conditioner in Cumberland, North Carolina, needed overhaul, instead of examining other

nearby air-conditioning jobs the Labor surveyor looked at a range of 53 projects, including installation of a sprinkler system in a men's formal wear shop.

Roller Disco

But sometimes these little expediencies aren't enough. Maybe it turns out all nearby construction workers are making pretty much the same thing—in other words, the surveyor has accidentally found the actual "prevailing wage." That will never do. So he declares that nothing in the area is similar to the project under consideration, forcing him to "import" wages from somewhere else. That somewhere else is a large city, which will probably be unionized, and thus have higher rates. "Importing wage determinations has one and only one purpose," said a member of the Carter White House's Domestic Policy Staff. "It puts union wages into non-union areas. It doesn't matter if there's no union in Dubuque. They just bring in union rates from Chicago."

The Department of Labor has become particularly adept at this procedure. Twenty-five to 38 percent of its wage determinations in building construction come from "noncontiguous counties," as Labor calls them, the GAO found. In highway construction and similar work, GAO says, as much as 73 percent of the wages are airlifted in. A study by the University of Chicago further demonstrates the pro-union bias. In setting Davis-Bacon wages for projects in counties of more than 500,000 people—that is, large cities—Labor considered "noncontiguous" wage rates less than 15 percent of the time. In setting wages for counties of fewer than 5,000 people—that is, non-union towns—Labor brought in "noncontiguous" rates 95 percent of the time.

Most often surveyors at least attempt to present some reason for wage importing, citing "specialized skills" or "unique circumstances." At other times, they drop all pretense. Consider Cape May, New Jersey, a small town in the state's sparsely populated, low-cost-of-living coastal area.

Cape May needed road repairs, and asked local contractors for bids. One, McCarthy Paving Co., bid the job based on local wages, like \$5 an hour for a roller operator. Then New Jersey's Department of Labor ruled that the state's "little" Davis-Bacon law applied. It imposed a roller-operator wage of \$16.

Running a roller—those big black cylinders with a seat on top—is little more than unskilled labor. "I can teach you to be a roller operator in

half an hour," said Jerald Barrett of McCarthy Paving. "When you want to go forward, push the stick forward. When you want to go back, pull it back. There. Now you're a roller operator."

McCarthy Paving still could have taken the contract, and not suffered immediately from the inflated wage structure. After all the government was paying for the job, so McCarthy Paving could just pass the costs along. But the company withdrew from the bidding, as do most non-union contractors faced with Davis-Bacon rates. "Once I've paid a man \$16 to run the roller, how am I going to keep him happy at \$5?" Barrett asked. "Wages like that tear a company up. How do I keep the rest of my people who don't get on this sweetheart job happy? I have tar-distributors [a skilled position that requires knowledge of math and drafting] who've been with me for ten years and are making \$9 an hour. Nine dollars is a decent wage. What happens when they hear I took some guy in off the street and paid him \$16 to sit on the roller?"

McCarthy Paving and other local contractors sued the state over its wage determinations. During the trial, they asked where the \$16 figure came from. "Newark," was the reply. Newark, 250 miles from Cape May, is the most populous and heavily unionized city in the state.

Road paving, of course, involves no "specialized skills" or "unique circumstances." It is among the most common and simple construction activities. It's so simple, in fact, that Cape May's surrounding Cape May County government decided to go into the business itself. The county commissioners found they could buy their own paving equipment and hire permanent civil-service workers to run it for less than the cost of contracting out under Davis-Bacon. At present more than a dozen southern New Jersey towns have established road-paving departments, and more are planning to. What, then, has been the effect of Davis-Bacon in southern New Jersey? You guessed it—local contractors are out of work.

The 30% Solution

And if you liked that, you'll love something called the "30 percent rule." Like wage-importing and other survey techniques, it isn't part of the original Davis-Bacon statute. It's just a "rule," something the Department of Labor dreamed up on a rainy Saturday afternoon. To a bulldozer operator, it's the most golden rule of all.

Here's how it works. Unions negotiate wages

by "classification." In other words, every unionized sheetmetal worker in Duluth gets the same hourly wage, say \$10 an hour, regardless of what company he works for. But non-union companies do their negotiating separately. So a sheetmetal worker at one non-union Duluth company might get \$11 an hour, while one at a different company gets \$9 and so on.

When Labor surveyors go to Duluth to set wages for a government project, they're supposed to examine all workers in the same classification. So if, for example, Duluth were a 100 percent union town, the Davis-Bacon wage would have to be \$10, since that's what every sheetmetal worker in Duluth would be making. (Unless the surveyors cooked up an excuse to throw Newark wages into the survey.)

*Liberals favor handouts to the needy; conservatives favor handouts to the well-to-do.
Davis-Bacon passes the latter test.*

Many towns, however, have both union and non-union workers, so surveyors must determine what the majority are paid. If, say, 60 percent of Duluth's sheetmetal workers are getting \$10, then that's the majority, and that's the federal wage.

You've been waiting for the Big But, and here it is: BUT what if there isn't a clear majority? What if 31 percent are making \$10 and 30 percent are making \$9 and 30 percent are making \$8 and the rest are making less? Then the wage selected is the *highest* wage for the greatest number of workers over 30 percent. Get it? Even though in Duluth as a whole (greater metropolitan Duluth, one might say) only 31 percent of sheetmetal workers are making \$10, on the federal job *everybody* makes \$10.

With rare exceptions, collectively bargained

federal funds were going ostensibly to teach minority workers housing rehabilitation and building trades, the Department of Labor had imposed a ratio of 14 journeymen (teachers) to every one apprentice (student). The situation was so ridiculous, even Senator Williams pressured Labor for a change. Now the ratio is one journeyman (teacher) for every seven apprentices (students), which is a good ratio for instruction, and also Labor's way of saying its original ruling was only off by a factor of 98.

No Appeal

Sometimes, even the best-laid inflationary plans go awry. Labor survey teams occasionally dream up rates that are *lower* than the true prevailing wage, thus insuring that the few workers who don't enjoy windfall are zapped with an undeserved penalty. The Labor wage-setting apparatus is so scrambled that GAO has audited it seven times in the last ten years, and each time has come away with progressively more negative findings. In 1979 the normally reticent GAO said Labor had become so disorganized it couldn't administer Davis-Bacon fairly even if it wanted to, and called for the act's repeal.

It's a mistake to think, however, that workers are the only ones who benefit from Davis-Bacon. When the act inflates the cost of a government job, contractors don't just pass that cost along to the taxpayer—first they add their overhead and profit markups. So the higher the inflated wage, the greater the contractor's profit. This means contractors doing all or most of their work on federal jobs (usually union contractors) are quite content with the law. Since the government is by far the largest construction buyer—some \$45 billion of last year's \$200 billion construction industry was government work—this makes for a lot of fat, happy contractors to lobby for Davis-Bacon's preservation.

"Under this act the government basically says, 'We, as customer, insist on paying the highest possible price,'" notes Armand Thieblot, an economics professor at the University of Maryland. "How many businessmen do you suppose will say, 'We refuse to charge the highest price?'"

The contractors who don't want the highest price generally are the small, non-union shops who fear a few months of inflated work will destroy their wage structures. Davis-Bacon rates for one federal housing project in Stoughton, Wisconsin, were set so much higher than local rates that all the contractors who bid on the

contract dropped out, fearing disruption of the rest of their businesses. The housing developer then had no choice but to find an out-of-town contractor to take the job—an interesting inversion of the "roving gangs" protection Davis-Bacon was supposed to provide.

It is possible to appeal a Davis-Bacon wage determination, but such appeals are rare, since they are costly and time-consuming, and offer no assurance that the contractor doing the appealing (that is, demanding the right to charge less) will end up with the job after a new ruling. When MARTA, the Atlanta subway authority, got its Davis-Bacon wage structure in 1975, it appealed. MARTA economists figured the inflated wages would drive the cost of their subway up by at least \$100 million. MARTA eventually prevailed and had its wage structure re-written, but construction start-up was delayed while the appeal dragged its way through hearing boards. In the process interest and carrying costs for the non-work ran at \$200,000 a day, a bill that was forwarded to guess who?

Can't Hire Taipei Paving

The Davis-Bacon statute itself, as it was written in the Depression, applies only to construction undertaken directly by Washington, like post offices. It has expanded in influence both through the "little" Davis-Bacons and by being written into other federal statutes. Some 77 federal laws, involving loan-guarantees and other indirect federal financing, now say all sponsored projects must abide by Davis-Bacon rules. The laws include the Commercial Fisheries Research and Development Act, the Indian Self-Determination and Educational Assistance Act, the National Technical Institutes for the Deaf Act, and the Domestic Volunteer Service Act. Davis-Bacon insures that money committed to the programs under these acts is channeled away from those it is intended to help to those who need it least.

How do the construction unions continue to get away with it? One reason is that they are one of the few segments of the economy that does not compete with overseas labor. These teeming hordes of cheap, obedient workers in faraway lands serve as a kind of relief valve for wages. If a manufacturing union pushes its wages too high, management might react by moving operations elsewhere. In construction, there is no such alternative. You cannot have your subway tunnel dug in Hong Kong and shipped here.

Another reason is the protective shield the Department of Labor lowers over Big Labor, its

primary constituent. When asked why government should not try to get the best deal on construction wages, just as it should get the best deal on roofing pitch and vanilla extract, Nik Edes, a deputy undersecretary of Labor, expressed revulsion for the very notion. "Wages should not be the mechanism for the competitive edge in government contracting," Edes said. "Labor is not a commodity suitable for competition." Edes suggested that businessmen should compete for government contracts by offering efficient management and cutting costs on materials.

Excluding labor from competition no doubt helps keep \$19-an-hour carpenters from becoming alienated over exploitation of their surplus value, but it's difficult to see how businessmen can magically compete on materials without indirect labor competition. Competing on materials means getting them cheaply, and that often means finding suppliers who pay their workers as little as possible. This tends to put suppliers who pay their workers high wages out of business. But far more important, labor is treated like a commodity when it is poured down the drain, which is exactly what Davis-Bacon does with it. If the government could pay individual construction workers less—not little, mind you, just less—it would be able to employ more of them. Government could build more housing for the poor, more water-treatment plants and subway stations, enhancing the general good as well as increasing employment.

Those good things—more government construction and more jobs—could happen only with true competition, and "competition" is a dirty word in Washington. (One HUD report defending the Davis-Bacon Act refers to price-undercutting on contracts as "an unscrupulous practice.") The prevailing attitude in Washington—and state and local offices across the nation—is that running up the public's bill is what government is all about. From defense contractors to insurance carriers to doctors and hospitals billing for Medicare, everyone saves his highest price for government. It's just assumed The People pay the limit. The attitude starts at the top and works its way down; government is headed by congressmen who say they cannot live on \$60,000—more than four times the median family income of the people they govern—and fly into righteous fury when someone proposes that they pay for their parking.

Edes was asked what might happen if Davis-Bacon were repealed. His voice dropped a dark

octave and he warned, "Why, that would lead to a lot of unfair competition in which people would try to cut costs...."

'Tis Better to Give Than Repeal

Hold on—what's that I hear? It's the clatter of horse hooves in the East Wing. That must mean Reagan has awakened from his nap, his waving hand refreshed and rejuvenated. He must be ready to do battle with the unions. What can we expect of the conservative Republican with the landslide legislative mandate?

During the early campaign, Reagan called Davis-Bacon "a needless burden on local taxpayers" and "a gift of tax funds to the affluent." But that was before he endorsed the Chrysler bail-out, before he said forget about a national right-to-work law, before he started sipping tea with those upstanding community leaders, the Teamsters, and before he said, in an October speech in Youngstown, Ohio, that he wouldn't try to repeal Davis-Bacon. Reagan did say Davis-Bacon administration should be "tightened up." Possibly he means to eliminate that "waste and fraud" he's ever on the watch for, establishing once again that he will not sell out to any interest group that openly advocates fraud (it's going to be a rough four years for the Pennsylvania congressional delegation).

Meanwhile, hard-line conservative Senator Orrin Hatch, who made loud noises about Davis-Bacon repeal when he rose to chairmanship of the Labor Committee after the election, has fallen silent. So have Garn and other long-time Davis-Bacon foes, who you might think would be trumpeting their moment of triumph. Republican Capitol Hill staffers say word has been passed to take it easy on Davis-Bacon. "There's no point in going after it," said one knowledgeable staffer. "It would be so much work politically. Besides, if we got it [repeal] out of the Senate, the House would just bottle it up, so why bother?" Meanwhile the "Stockman Manifesto" of new Office of Management and Budget Director David Stockman suggests leaving Davis-Bacon intact so as not to antagonize Big Labor, and thus win its cooperation on progressive social goals like relaxing pollution controls.

It may seem hard to believe that conservative, business-oriented Republicans could learn to love Davis-Bacon. But actually, it fits in smoothly with their philosophy of life. Liberals favor government handouts to the needy; conservatives favor handouts to the well-to-do. Davis-Bacon certainly passes that test.

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Another Slice of Bacon

Of course, not every federal worker gets a deal as sweet as the one given construction workers under Davis-Bacon. At least not yet. The wage-inflating mechanisms perfected under Davis-Bacon are slowly being cranked into other federal pay systems.

Most prominent is PL 92-392, or the Blue Collar Pay Act. It covers non-civil-service civilian federal workers. Under this act, federal agencies conduct Davis-Bacon-like surveys to discover a "prevailing wage" for private jobs similar to the public job in question. But to escape the stigma of the term "prevailing wage," which is Washington code for "inflated windfall wage," the survey result is called the "payline." Federal blue-collar workers are then placed on a "step" ladder of automatic raises—yes, just like the civil-service "step" raises their supervisors treasure.

For the first six months, a worker gets 96 percent of the payline. Then he gets 100 percent, or the same as a comparable private-sector job would pay. Then he gets a step raise to 104 percent, then 108 percent, then finally 112 percent. You heard that right. The law whose ostensible purpose is to make federal blue-collar wages "comparable" to private wages says in shameless black and white that workers with seniority get 12 percent more than the comparable private job. And like civil-service step raises, these premiums are automatic. Workers get them no matter how well they perform, as long as they meet a minimal standard of feasant, like not molesting pre-teen girls in the back of government vehicles.

PL 92-392 also contains something called the Monroney Amendment. Its purpose is to make high union wages from urban areas applicable in non-union rural areas, and it functions exactly like the "importation" section of Davis-Bacon. Thus workers at Robins Air Force Base in Macon, Georgia, are not paid the prevailing wage for private workers doing similar jobs in Macon. They are paid Atlanta wages. This costs an extra \$23 million a year, the Pentagon estimates.

One effect of the law is that since its passage in 1972, federal blue-collar wages have been rising faster than white-collar salaries. "A major employee-management problem at the Department of Defense" has resulted, a congressional hearing was told, and guess what solution was proposed: "prevailing wage" raises for white-collar employees, too.

President Ford tried twice to change PL 92-392. President Carter tried once, and both failed. (In the process a new law called the Service Contract Act, extending Davis-Bacon-like wage determinations to workers in window cleaning, garbage collection, and other contract services, was added.) Leading the fight against reform of PL 92-392 were congressmen from districts such as Macon that are raking in a bonus for workers (voters) and a subsidy for the local economy. One might pause here to note that Davis-Bacon and PL 92-392 are endorsed most vocally by philosophically liberal congressmen from urban, unionized areas. They are condemned most vocally by philosophically conservative congressmen from rural, non-union areas. But rural workers getting inflated wages are a prime beneficiary of the law. So subsidies from urban taxpayers to rural workers are favored by urban congressmen and opposed by rural congressmen. Welcome to the big leagues.

Pascale Petosa, a top official in the Pentagon's civilian personnel office, estimates that PL 92-392 wage inflation costs \$400 million to \$600 million per year. (The Pentagon has 370,000 civilian blue-collar employees.) He is pessimistic about reform, even under Reagan.

"Everybody wants more," Petosa says. "The workers want more. The contractors want more. The managers want more. Things are coming apart at the seams, and all anybody wants to talk about is how to get more money. There's nobody to represent the taxpayer and ask, 'Where's it supposed to come from?'"

"I have no illusions about cutting costs," Petosa added. "I just want my epitaph to read, HE GAVE IN MORE SLOWLY."

—G. E.

Summary of AS 36 Activity
June 1, - November 30, 1983

Total enforcement: 200
Resident Hire: 76
Wage related: 124

Total workers assisted: 866
Resident Hire: 319
Wage related: 547

Total dollars recovered: \$535,340.30

The information included in this report was gathered from the audits of 12,040 payrolls for the projects covered. These projects employed an average of 12,361 laborers, mechanics and field surveyors each month.

(The department is approximately 4-6 months behind in their work).

FEB 2 1984

MEMORANDUM

State of Alaska

TO: Judy Knight
Special Assistant
Commissioner's Office

DATE: February 20, 1983

THRU: Robert J. Bacolas

FILE NO:

TELEPHONE NO: 264-2435

FROM: Donald R. Wilson
Supervisor
Wage & Hour Administration
Labor Standards & Safety Division

SUBJECT: AS 36 Enforcement Activity
June 1 - November 30, 1982

Pursuant to your request to Mr. Bacolas on February 11, 1983, subject as above, the attached is furnished. A brief recap follows:

Total enforcement actions: 200
Resident Hire: 76
Wage related: 124

Total workers assisted: 866
Resident Hire: 319
Wage related: 547

Total dollars recovered: \$535,340.30

On June 1, 1982 there were 230 projects under audit. At the end of November there were 386 projects under audit. During this period of time 714 new contracts were filed. All of the information in this report was gathered from the audit of 12040 payrolls for the projects covered. These projects employed an average of 12361 laborers, mechanics and field surveyors each month. Keep in mind, as the Internal Auditors revealed, the Regional Offices were four to six months behind in their work. Please advise if we may be of further assistance.

Attachment
cc: Robert J. Bacolas

TITLE 36 ENFORCEMENT ACTIONS

- (A) Wage violations
(B) Resident hire violations

June 1, 1982 - November 30, 1982

COMPANY INVOLVED	NAME OF PROJECT	TYPE VIOLATION	DATE VIOLATION NOTICED	# WORKERS AFFECTED	CASE STATUS (Resolved, ongoing, amount collected, et
CYNTHIA'S ENTERPRISES	North Fork Anchor River Road, X-14622	wage	6/2/82	6	Owner/operators of trucks-determined to be employees; entitled to prevailing rate of pay regardless. Amount due \$11,370.10. Unable to gain compliance from employer, no retainage funds available. Unable to adjudicate. Returned claims to claimants. They must file suit on their own behalf against payment bond as T-36 does not allow DOL to do so.
WOODBUTCHER SHOP	U of A - Marine Education Center, Institute of Marine Science, Seward	wage	6/2/82	2	Nonpayment of fringe benefits. Paid \$89.74. Case closed.
ROGERS & BABLER	ANCH - Commercial Drive Street Improvements - 3rd St. to Mt. View	Res Hire	6/3/82	2	Rogers & Babler indicate that the two men in question are Alaska residents; their addresses were given incorrectly on payroll. Case closed.
SPEARFLOOR COVERING	Main Bay Hatchery W-80367 P-1189	Res Hire	6/4/82	2	Work done in April of 1982. Spear completed project at that time. They replied that work was specialized--manufacturer requires factory trained personnel do installation. Since no work on-going did not pursue. Case closed.

TITLE 36 ENFORCEMENT ACTIONS

- (A) Wage violations
(B) Resident hire violations

June 1, 1982 - November 30, 1982

COMPANY INVOLVED	NAME OF PROJECT	TYPE VIOLATION	DATE VIOLATION NOTICED	# WORKERS AFFECTED	CASE STATUS (Resolved, ongoing, amount collected, etc)
HUCK'S BACKHOE	Anch - A.T.U. Central Wire Center	wage	6/4/82	1	Failure to pay required prevailing rate of pay, plus overtime and fringe benefits. Collected 794.60. Case closed.
DONALDSON CONSTRUCTION	Kodiak - A. Holmes Johnson Memorial Library	wage	6/9/82	2	Failure to pay any wages. Unable to get compliance from Donaldson (Qualls). Collected payment of \$2,457.96 from prime contractor, King, Harness & Oien. Case closed.
SPAR SHEET METAL	Ninilchik School Addition	Res Hire/ wage	6/11/82	7	It appeared that seven employees were nonresident not being paid the proper rate of pay. Spar clarified that these people all worked in the state in Seattle, not "on-site." We told them only people working "on-site" should be included on the payrolls. Case closed.
PRIDE & SUTHER	Ninilchik School	Res Hire	6/11/82	1	Mr. Simper only employee. He did specialized work. Project completed in June. No way to pursue. Case closed.

TITLE 36 ENFORCEMENT ACTIONS

- (A) Wage violations
(B) Resident hire violations

June 1, 1982 - November 30, 1982

COMPANY INVOLVED	NAME OF PROJECT	TYPE VIOLATION	DATE VIOLATION NOTICED	# WORKERS AFFECTED	CASE STATUS (Resolved, ongoing, amount collected, etc)
HOOPER BAY CONSTRUCTION	Bethel Teen Center	wage	6/18/82	4	Failure to pay current prevailing rate of pay. Collected \$498.83 for employees. Case closed.
SPRAGUES, INC.	Anch Int'l Airport Road Contract #2 & #3	wage	6/22/82	2	Failure to pay current prevailing rate of pay. Collected \$310.66. Case closed.
SPAR COMPANY	Dillingham H.S. Phase I Phase II	Res hire/ wage	6/30/82	9	People listed as nonresidents on payroll were reported by Spar to be people who did fabrication work in the shop in Seattle. They were not entitled to the prevailing rate of pay. Case closed.
WOODARD/FERGUSON, JV	U of A - UAA/ACC Bookstore	Res hire	6/30/82	2	To our complaint company responded that as union contractor they must go through union to obtain employees. One of the persons should have been listed as a superintendent since he does no work. Compliance met. Case closed.

TITLE 36 ENFORCEMENT ACTIONS

- {A} Wage violations
{B} Resident hire violations

June 1, 1982 - November 30, 1982

COMPANY INVOLVED	NAME OF PROJECT	TYPE VIOLATION	DATE VIOLATION NOTICED	# WORKERS AFFECTED	CASE STATUS (Resolved, ongoing, amount collected, etc)
MECO, INC.	Andreafski High School	Res hire	7/2/82	2	MECO states that they sought hard for supervisory personnel by ads in paper, etc. Were unable to find anyone. The two men are supervisors. Job completed before any further action could be taken. Case closed with admonishment to employer.
NIK CONSTRUCTION	Bethel Airport to Brown's Slough	Res hire	7/2/82	5	Company showed that employees were residents. Compliance met. Case closed.
AARDVARK INSULATION	Anch - Fourth & Post Maintenance Facility	wage	7/2/82	2	Respondent did not submit certified payrolls or proper rate of pay. Aardvark had no money. The subcontractor who hired Aardvark eventually paid the wages in the amount of \$1804.21. Case closed.
2W CONSTRUCTORS	Bethel Dock Expansion	Res hire/ wage	7/19/82	5	Re resident hire - company contended the work specified, could find no qualified Alaskans. Re wage - The employee was incorrectly classified. He was earning proper rate for his job class. Job completed early July, respondent warned to comply on future jobs. Case closed.

TITLE 36 ENFORCEMENT ACTIONS

- (A) Wage violations
(B) Resident hire violations

June 1, 1982 - November 30, 1982

COMPANY INVOLVED	NAME OF PROJECT	TYPE VIOLATION	DATE VIOLATION NOTICED	# WORKERS AFFECTED	CASE STATUS (Resolved, ongoing, amount collected, et
L.S.B. CONSTRUCTION	Wasilla Fire Station	wage	7/21/82	5	Employees paid as apprentices although not in approved apprenticeship program. Respondent made up the difference of \$749.03. Case closed.
KIEWIT/GROVE, JV.	Terror Lake Hydro Project	res hire	8/4/82	18	After phone calls, meeting with respondent, call to union halls who supplied the workers, we feel that compliance has been met. Don Wilson did go to the job site to investigate. Case closed.
FELTON CONSTRUCTION	Monashka Creek Dam	res hire	7/28/82	5	Issued cease and desist from hiring improper number of nonresidents. Compliance received Sept., 1983. Project still in progress, compliance continues.
CLARKE'S SHEET METAL	Eek Elementary School	res hire	7/30/82	2	Contacted Northwest Constructors, prime. They said qualified people need to get the 5-yr guarantee. Clarke's Sheet Metal responded that supplier made them sign agreement to use certain people. They contacted Sheetmetal Union here who could not supply qualified workers. We feel Clarke made good faith effort. We did confirm with union. Case closed.

TITLE 36 ENFORCEMENT ACTIONS

- (A) Wage violations
(B) Resident hire violations

June 1, 1982 - November 30, 1982

COMPANY INVOLVED	NAME OF PROJECT	TYPE VIOLATION	DATE VIOLATION NOTICED	# WORKERS AFFECTED	CASE STATUS (Resolved, ongoing, amount collected, et
McKINNEY ALASKA, INC.	Homer Fish Dock Facility	wage/res hire	8/5/82	9	Claims filed by Dodds & Keys for per diem. Unable to process because not part of T-36 requirement. Did recover \$18.50 for Dodds in underpayment of fringe benefits. Joe Fletcher and Dan Wetzel received \$62.35 in underpayment of fringes. McKinney showed good faith effort in obtaining residents through job service. We are currently asking them to update their applications for Alaska residents. They have indicated that they will do so.
RAINIER CONSTRUCTION GROUP	Lower Yukon School Upgrade	res hire	7/29/82	7	Through phone calls requesting school district to withhold funds for displaced residents, and notice that work site would be shut down, Rainier Construction came into compliance. Case closed.
HELMUT LANDSCAPING & EXCAVATING	Little Susitna Access Road	wage	8/2/82	1	Employee claimed he was not paid all wages due. We were unable to substantiate his claim. Case closed.
BERING SEA MECHANICAL	Lower Yukon School Upgrade	res hire	8/5/82	4	Company took steps to come into compliance, which they did. Case closed.

TITLE 36 ENFORCEMENT ACTIONS

- (A) Wage violations
(B) Resident hire violations

June 1, 1982 - November 30, 1982

COMPANY INVOLVED	NAME OF PROJECT	TYPE VIOLATION	DATE VIOLATION NOTICED	# WORKERS AFFECTED	CASE STATUS (Resolved, ongoing, amount collected, etc.)
C H MASONRY	Anch - Remodeling of Traffic Engineering Office	wage	8/11/82	2	Nonpayment of prevailing rates of pay, failure to provide certified payroll records. We received the records requested and payment for employees in the amount of \$885.81.
GORDER EXCAVATING	Anch - Northside Park Improvements	wage	8/13/82	1	Claim filed for prevailing rate of pay. Company contended the watering after seeding was maintenance not construction. After review of contract, discussions with attorneys, Gorder paid claim of \$173.50. The claim was only for 10 hours. Case closed.
WOODLAND CONSTRUCTION	Nikiski Elementary Addition	res hire	9/2/82	4	Complaint about nonresidents from Carpenters Un. Payroll records had no addresses. Contacted company, requiring addresses. Compliance received.
CUSICK CONSTRUCTION CO.	Lower Kalskag School	res hire	9/9/82		Received complaint from AVCP in Bethel. Contacted company regarding submission of timely reports and resident hire. Company came into compliance although we did discuss this with them again in January of 1983. Case closed.

TITLE 36 ENFORCEMENT ACTIONS

(A) Wage violations
(B) Resident hire violations

June 1, 1982 - November 30, 1982

COMPANY INVOLVED	NAME OF PROJECT	TYPE VIOLATION	DATE VIOLATION NOTICED	# WORKERS AFFECTED	CASE STATUS (Resolved, ongoing, amount collected, et
FICKEISEN CORPORATION	Kalskag High School Addition #2 & #3	res hire	9/10/82	6	Received complaint from AVCP that nonresidents on job. Contacted company to submit records and to comply with AS 36.10.010. Mr. Fickeisen called Bethel. Nonresidents terminated. Payrolls will sent here instead of to Juneau for timely receipt. Compliance received.
SEATTLE ELECTRIC	Kalskag High School Addition #2 & #3	res hire	9/23/82	1	Employee (alleged non resident) only man on job. Dispatched from IBEW. Seattle Electric agreed to specify Alaska residents on future jobs. Job was only for few weeks. Case closed.
J. ALAN DeGRAFFENRIED MASONRY	McNeil Canyon Elementary School	res hire	9/10/82	3	Contacted company - instructed him on what is a resident. He appealed to our deputy director in Juneau for definition. Compliance was met. Case closed.
NORTHFACE CONSTRUCTION	Karluk School	res hire	9/21/82	5	The one employee was nonworking superintendent-- the others were residents with the exception of one. The employment ratio did meet the 90% requirement. Compliance met.

TITLE 36 ENFORCEMENT ACTIONS

- (A) Wage violations
(B) Resident hire violations

June 1, 1982 - November 30, 1982

COMPANY INVOLVED	NAME OF PROJECT	TYPE VIOLATION	DATE VIOLATION NOTICED	# WORKERS AFFECTED	CASE STATUS (Resolved, ongoing, amount collected, etc)
MERIT MECHANICAL	Kodiak Island Borough High School Pool Replacement	wage/res hire	10/1/82	3	Contacted company about fringe benefits, apprentice and resident hire. The company had a health plan which was deducted from fringe (H & W). They did pay one person as apprentice who was not in an approved plan. Have asked prime to withhold money (\$2160.46) and send. Last word was that Merit Mechanical had found documentation that employee was in approved program. They are supposed to send confirmation. On follow-up for Feb. 23. If not received, prime will send check.
WESTERN TILE CONTRACTORS	Kodiak Island Borough High School Pool Replacement	res hire/wage	10/1/82	6	Highly skilled work. Bricklayers Union sent people they quit. Went to Bricklayers again and they could not supply qualified employees. Bricklayers gave them permission to use their own people. The wage situation was resolved before we received a response from respondent. Case closed.
KAWOOLUK CORPORATION	Bethel High School Major Maintenance	wage/res hire	9/22/82	4	Company came into compliance for residents and paid the deficient wage in the amount of \$3,673.04. Case closed.
A-1 PAINTING	Nikiski Elementary School	res hire	10/1/82	2	The company came into compliance with AS 36.10.010

TITLE 36 ENFORCEMENT ACTIONS

- (A) Wage violations
- (B) Resident hire violations

June 1, 1982 - November 30, 1982

COMPANY INVOLVED	NAME OF PROJECT	TYPE VIOLATION	DATE VIOLATION NOTICED	# WORKERS AFFECTED	CASE STATUS (Resolved, ongoing, amount collected, etc)
WESTERN MARINE CONST.	Kodiak Dog Bay Harbor Phase II	res hire	10/18/82	4	Company came into compliance after our contact.
BEERS ENTERPRISES	Kodiak Dog Bay Harbor Phase II	res hire	11/8/82 .	1	Address on payroll was incorrect. Employee was resident of Wrangell. Case closed.

TITLE 36 ENFORCEMENT ACTIONS

- (A) Wage violations
(B) Resident hire violations

June 1, 1982 - November 30, 1982

COMPANY INVOLVED	NAME OF PROJECT	TYPE VIOLATION	DATE VIOLATION NOTICED	# WORKERS AFFECTED	CASE STATUS (Resolved, ongoing, amount collected, etc)
HOFFMAN & LANGLIE	Bethel Utility & Maintenance Facility FLOORING	wage	10/7/82	11	This was a grant project that City of Bethel did believe was covered by T-36. After investigation it was determined that it was covered. The contractor paid the difference in wage rates after the city got add'l appropriations from the legislature and provided an amended contract. Wages paid \$18,136.72. Case closed.
BETHEL NATIVE CORP.	Bethel Utility & Maintenance Facility Flooring	wage	11/3/82	1	Same case as above. Laborer received additional payment in amount of \$469.03 to make up deficient wage. Case closed.
CHUGACH CONSTRUCTION CO.	Bethel Utility & Maintenance Facility - PILING	wage	10/7/82	13	Same as above. Company made up deficient wages in amount of \$23,362.77. Case closed.
BETHEL NATIVE CORP.	bethel Utility & Maintenance Facility PILING	wage	11/3/82	1	Same as above. Company made up deficient wage in amount of \$789.12. Case closed.

TITLE 36 ENFORCEMENT ACTIONS

- (A) Wage violations
(B) Resident hire violations

June 1, 1982 - November 30, 1982

COMPANY INVOLVED	NAME OF PROJECT	TYPE VIOLATION	DATE VIOLATION NOTICED	# WORKERS AFFECTED	CASE STATUS (Resolved, ongoing, amount collected, e
KING, HARNESS & OIEN	Bethel Utility & Maintenance Facility METAL BUILDING	wage	10/5/82	5	Grant contract let by City of Bethel as nonpubl works--no Title 36 compliance required. The DO held that T-36 applied, wages must be paid in accordance with T-36. After additional appropriation by legislature, contract amended. Com paid five employees deficient wages in the amount of \$31,223.31. Case closed.
ACTIVE STEEL	Anch - Pre Trial Facility I, and II	res hire	10/7/82	5	Contact with company reveals that all employees dispatched as residents. Case closed.
BIG & SMALL CONST.	West/Romig High School Painting Central Jr. High Painting	wage	10/20/82	5	Subcontractor did not submit certified payroll records or pay prevailing rate of pay. After m effort, we were able to get payroll records and negotiate with the school district to pay the laborers from withheld retainage funds in the amount of \$7,722.00. Case closed.
GLEN HILLS CONSTRUCTION	Thompson Pass Maintenance Station Exterior Painting	wage	10/21/82	4	Contract did not contain current wage rates, no language to say that rates had to be adjusted. Employer did not believe he should have to pay current rate. Compliance was met and deficient payment made in amount of \$259.38. Case closed.

TITLE 36 ENFORCEMENT ACTIONS

- (A) Wage violations
(B) Resident hire violations

June 1, 1982 - November 30, 1982

COMPANY INVOLVED	NAME OF PROJECT	TYPE VIOLATION	DATE VIOLATION NOTICED	# WORKERS AFFECTED	CASE STATUS (Resolved, ongoing, amount collected, e
JRS CONSTRUCTION	East/Benson Pedestrian Traffic Deck Resurfacing	wage	10/22/82	2	Contractor did not submit certified payroll records or pay prevailing wage. We are unable to contact contractor by letter or subpoena. We have requested the school district to remit payment. Follow-up for 2/25/83.
UNIVERSAL SECURITY PRODUCTS	Anch - Pre-Trial Facility I, and Pre-Trial Facility II	res hire	10/25/82	4	Investigation showed noncompliance, however, some employees dispatched by Ironworkers. We did gain compliance after requesting DOT/PF to withhold funds for displaced residents. All employees are now Alaska residents. The funds were released and the case closed.
LATTA CONSTRUCTION	King Cove Public Safety Building	wage	10/27/82	8	Claim for wages filed. Company refused to submit certified payrolls, denying T-36 applicability. Washington company. From records supplied by employees and City of King Cove, we reconstructed the hours and wages paid. The prevailing rate has not been paid. The City of King Cove has forwarded payment for the employees in the amount of \$17,000. Checks will be mailed 2/24-83.
J & A, INC.	Tatitlek School	wage	10/28/82	2	J & A insisted that since federal funds involve they did not have to comply with T-36 and pay current rates of pay. They appealed to the commissioner. It was determined that additional wages were due. Company made up difference of \$151.75. Case closed.