PREVAILING VIEWS ON PREVAILING WAGES

BY K. DANIEL GLOVER

One of President Bush's first steps in response to Hurricane Katrina was to suspend the law that governs the wages of workers who construct federal facilities. The move means that contractors involved in federal reconstruction within the hurricane zone can pay workers less than the average wage for the Gulf Coast region.

The 1931 Davis-Bacon Act allows the president to take such unilateral action during national emergencies, but organized labor and its allies in Congress are furious nonetheless. Rep. George Miller, D-Calif., has introduced a bill to overturn Bush's decision, and the measure now has 204 co-sponsors. On *TPMCafe,* a liberal Web log, Miller has called Bush "immoral" for, in effect, cutting the wages of Gulf Coast construction workers from an already low $7-to-$8 per hour to the federal minimum wage of $5.15 an hour.

The ongoing debate has once again put a spotlight on the 1931 law, which caused minimal concern in Congress when it was enacted, but which has prompted numerous calls for its repeal since. "If you tried to pass Davis-Bacon again, it would never pass—and Bush wouldn't sign it if it did pass," said law professor David Bernstein, who wrote about the act in a 2001 book, *Only One Place of Redress: African-Americans, Labor Regulations, and the Courts From Reconstruction to the New Deal.* "But it's always harder to repeal."

The idea of guaranteeing a certain wage on federal construction projects in order to combat "cheap, imported labor" was not always popular. Although Kansas passed the first state law on the subject in 1891, the idea did not take solid root at the federal level until more than 35 years later, when protecting local wages became a pet issue of Rep. Robert Bacon, R-N.Y. And even then, it was largely a personal crusade spurred when in 1927, an Alabama contractor who paid lower wages won a bid to build a veterans' hospital in Bacon's Long Island district.

Based on that episode, Bacon introduced a bill to regulate wages on federal projects. Over the next four years, according to Bernstein's research, Bacon introduced another 13 bills to regulate the labor force on such projects, and Congress held hearings on the issue in 1928, 1930, and 1931. Rep. Elliott Sproul, R-Ill., filed the first bill to mandate the local prevailing wage in 1930, and Bacon incorporated the idea into his own legislation a year later.

By 1931—amid the declining wages of the Great Depression and what one lawmaker called "a gigantic [federal] building program, perhaps the greatest the civilized world has ever contemplated"—the concept stirred little controversy. Former Labor Secretary James Davis, who served Republican Presidents Harding, Coolidge, and Hoover, represented Pennsylvania in the Senate by then and he spearheaded the effort there. Hoover administration officials also testified before Congress on behalf of the legislation.

DAVIS-BACON CAUSED MINIMAL CONCERN BACK IN 1931.

The Senate passed the measure first, after limited debate. House consideration took a bit longer, but the chamber acted under a procedure for noncontroversial bills that forbade amendments. Rep. Thomas Blanton, D-Texas, decried both the "pernicious bill" and the process for pushing it through the House. "You have got to take it just like organized labor has written it for you, like a bunch of mockingbirds with their mouths open and their eyes shut," he complained.

But Blanton apparently was a minority of one. The Congressional Record indicates that applause regularly punctuated the debate after sound bites like this one from Rep. Fiorello La Guardia, R-N.Y.: "There is not a reputable, responsible contractor in this country who is opposed to this bill."

Although even Blanton conceded that enactment was a foregone conclusion by the time the measure reached the House, some supporters did voice regrets about the final language. Rep. John O'Connor, D-N.Y., said the bill needed "some teeth, some penalty or forfeiture," for contractors who did not pay the average wage. And Rep. Hamilton Fish, R-N.Y., said the measure also should "give preference to local and American labor over alien labor"—an idea that Bacon said he dropped to speed passage of his "emergency measure."

A more noteworthy omission involved how to determine prevailing wages. The bill let contractors decide, with the Labor Department ready to intervene when necessary. Noting that the Supreme Court had said that the phrase "current rate" as applied to wages was too vague, Rep. William Kopp, R-Iowa, suggested that the Court could make a similar ruling on "prevailing rate."

Kopp, a supporter of the bill, expected the Labor secretary to "formulate a fixed and definite method" for defining the term. But Congress had to amend the Davis-Bacon Act four years later to address that issue, and the difficulty of establishing thousands of average wages for each community has been a core motivation for repealing the law ever since.

Kopp also warned that the law would "be of no value" unless administration officials supported it. But to the applause of his colleagues, he added this thought, which today's Democrats no doubt hope to apply to Bush's party: "If we ever have officials not in sympathy with the law, it will then be time either to change the law or to change the officials. Probably, the latter will be the wiser thing to do." ■

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