



JOB TARGETING AND MARKET RECOVERY PRACTICES OF CONSTRUCTION UNIONS: THEIR APPARENT AND HIDDEN COSTS

EXECUTIVE SUMMARY

A recently completed research study conducted by George Mason University's John M. Olin Institute for Employment Practice and Policy (Olin Institute) shows that during the seven-year period from 2000 to 2007, unions in the construction industry spent more than \$1 billion to engage in and support a practice most commonly referred to as "market recovery" or "job targeting."

Market recovery/job targeting programs collect fees from union members for the purpose of providing wage subsidies to enable union contractors, and in some case non-union contractors, to compete on projects on which they otherwise would be non-competitive. The study documents how job targeting works and the variety of ways that unions use job targeting funds in order to achieve and/or maintain a monopoly in communities throughout the country and, ultimately, to undermine the free market.

The study's author, Dr. Armand J. Thieblot, was able to document the more than \$1 billion in reported expenditures based on the financial reports (commonly known as LM-2s) that unions are annually required to file with the U. S. Department of Labor. The study's findings are contained in the report "Job Targeting and Market Recovery Practices of Construction Unions: Their Apparent and Hidden Costs," Vol. 38, Labor Relations and Public Policy Series (Sept. 2008).

The study provides detailed information into the practice of job targeting and its impact on the free-market system, concluding that "job targeting can only work in areas of protected monopoly, and succeed only if it drives nonunion competitors from the field completely, and in perpetuity." As such, the study raises serious public policy questions about the government's current policy of allowing unions to engage in job targeting and whether that policy should be allowed to continue.

The following are some of the more critical issues raised by the study:

1. **Are market recovery/job targeting programs contributing unnecessarily to higher public construction costs?** Clearly they are.

The wage rate required to be paid on the vast majority of public construction projects is known as the "prevailing wage." In the majority of instances, the prevailing wage rates are the wage rates that unions claim their members are being paid. However, because of market recovery/job targeting programs, there can be a significant difference between what unions may claim an employer is paying and what is actually being paid.

Market recovery/job targeting programs enable unions to assert that a higher wage is being paid than what an employer is paying out of its own pockets. Unions are able to do this by claiming that the wage rate being paid is the combination of the lower rate the employer is actually paying and the amount of the union's wage subsidy, which they then represent to be the "prevailing wage." Their claim is pure fiction.

The true wage rate being paid is the amount that the employer is actually paying out of its own pocket, without the addition of the union's wage subsidy. As such, the wage rates the unions claim are being paid will always be an inflated and inaccurate amount whenever market recovery/job targeting payments are involved.

With the practice of job targeting, the prevailing wages that employers are required to pay on virtually all federal, state and local public construction projects can be considerably higher than they should be. As a result, the public is unknowingly paying a much higher cost to build fire and police stations, schools, roads, libraries, sports arenas, water treatment plants, and the numerous other publicly funded construction projects. In many cases, the public is being prevented from building much-needed projects due to the inflated cost.

2. Are taxpayers unknowingly funding these programs? The facts suggest they are.

The dollars that a union member pays his or her union as "dues" may legitimately be deducted on a union member's federal, state and local tax returns. In contrast, the dollars that union members contribute to fund market recovery/job targeting programs are not considered as "dues" and, therefore, **may not be deducted** on their tax returns.

The study's review of the U.S. Department of Labor's LM-2 forms for the seven-year period found that there is no standardized or consistent terminology used by the unions to describe their market recovery/job targeting payments in their LM-2 filings. In fact, the study found that the unions have used more than 26 different descriptions. Additionally, even though a union's market recovery/job targeting expenditures are required to be reported on Schedule (15) of the LM-2, the study found numerous instances of non-compliance. According to the study, "one-third of all job-targeting unions file reports that fail to identify payments made or recipients thereof, or disguise, hide, or creatively misclassify other job targeting information."¹

¹ There has long been a serious shortage of financial and personnel resources within the Department of Labor's Office of Labor-Management Standards (OLMS). This critical shortage has hampered the Labor Department's ability to ensure on-going union compliance with the LM-2 reporting requirements. OLMS was established to administer and enforce the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). According to the law, Congress saw the need to enact the LMRDA after investigations found "a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives."

As documented in the study, the lengths to which unions have gone to mask their market recovery/job targeting programs raise serious questions about how their contributions to, and payments from, these programs are being treated for tax purposes, as well as whether and to what extent these programs are adversely affecting tax revenues at the federal, state and local levels.

3. **Do union members truly benefit from these programs?** It does not appear so.

A majority of union members underwriting these payments are not the beneficiaries of their contributions. Market recovery/job targeting programs function in a manner that is quite similar to a Ponzi scheme. Ponzi schemes use monies invested by one group of investors to pay off other investors, *i.e.*, the so-called scenario of “robbing Peter to pay Paul,” as most recently occurred in the Maddoff scandal on Wall Street.

In the case of market recovery/job targeting, monies are deducted from individual union members’ wages, and then paid out by the union to construction firms in the form of a wage subsidy. The firms’ out-of-pocket employee wage rate is artificially lower because the union subsidies allow them to underbid on projects. The objective of these payments is quite simple – to take business away from honest firms that are more efficient and competitive by undercutting them in the bidding process.

The study found that the employee wage deductions that fund these programs are deducted in such a way as to have become so institutionalized that they may have become an automatic source for the unions to use at their sole discretion. The study therefore suggests that few, if any, union members may be aware of how their monies are being used.

It is worth noting that at the same time that the unions are spending significant sums on market recovery/job targeting, only 19 percent of union pension plans, including construction unions, were fully funded in 2005, with approximately 40 percent of union plans considered to be “at risk” and 11 percent in “critical” condition.²

4. **If market recovery/job targeting is such a non-competitive and unfair practice, then why is it allowed to continue?** There is no good answer.

Under current law, only unions are legally permitted to engage in the practice of market recovery/job targeting. In other words, the law currently allows a union to pay money to a company for the purpose of putting another company out of business and taking jobs away from that other company’s workers. At the same time, if a construction company engaged in the same conduct as a labor union, the company would be prosecuted for violating the antitrust laws.

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² Source: Diana Furchtgott-Roth, Hudson Institute: “Unions vs. Private Pension Plans: How Secure are Union Members’ Retirements?”