

JOB TARGETING AND THE LAW

Job targeting programs, also known as, “market recovery” funds, collect fees from union members (often compelled by “union security” clauses in collective bargaining agreements with union contractors), for the purpose of providing financial subsidies to union contractors on projects where they face competition from merit contractors. The practice has long been criticized as unfair competition, but targeting has also been found to be a protected union activity, at least under some circumstances, by the National Labor Relations Board.

The main circumstance where job targeting has been found **not** to be protected by law, but rather violates the law, has to do with the source of job targeting funds and the Davis-Bacon Act. Davis-Bacon requires employees on most federally funded construction projects to be paid the “prevailing” wage, “without subsequent rebate on any account.” In 1989, in a case brought by ABC, the U.S. department of Labor declared that it is unlawful to force union members working on Davis-Bacon projects to give up any part of their wages to job targeting programs for subsequent rebate to unionized employers. Two courts of appeals upheld the Labor Department ruling during the mid-1990’s.

The focus of these cases is the source of the union funds, and it does not matter whether the job targeting subsidies are paid out on public or private projects. If the money for such programs is collected, even in part, through compelled dues or assessments from union members while they perform work on Davis-Bacon projects, for ultimate rebate to employers on either private or public works elsewhere, then the Davis-Bacon Act has been violated. (the application of state prevailing wages to job targeting programs is currently being considered by the NLRB but has not yet been held to be unlawful.

Despite the prohibition against using Davis-Bacon wages to fund job targeting programs, however, many union jobs targeting programs have continued to collect their funds in apparent violation of Davis-Bacon, thanks in large part to the Clinton Administration’s failure to enforce the law. In any event, the Department of Labor’s cumbersome complaints and investigation procedures have proved ineffective against illegal job targeting programs.

Now the National Labor Relations Board, backed up by the Ninth Circuit, has declared that union collection of funds for job targeting from members working on Davis-Bacon jobs not only violates the Davis-Bacon Act but also violates the National Labor Relations Act as an unfair labor practice. As the court stated: “Deductions from employees’ wages which revert to contractors and artificially increase the prevailing local wage are antithetical to the purpose of the [law].”

ABC has long asserted that the collection of job targeting funds from workers on Davis-Bacon projects violates the law, but there has been little action on enforcement. Under the Ninth circuit’s ruling, any person who has evidence that a job targeting program is collecting funds from employees working on federally funded projects can file an unfair labor practice charge. It is hoped that the availability of this new remedy will cause union job targeting programs to modify their activities and insure for the first time that they comply with the law.

As explained, job targeting programs violate the Davis-Bacon Act and the NLRA where they are funded through Forced dues money or assessments taken out of employee wages paid on projects covered by the Davis-Bacon Act. All that is needed to file an unfair labor practice charge, therefore, are the following:

- Evidence of a job targeting program sponsored by a particular union
- Evidence that funds for the program have been derived, in part, from wages paid to union members under the Davis-Bacon Act.
- Evidence that funds from the program are being paid to employers.