ALTERNATIVE VOICES
IN CONTEMPORARY
ECONOMICS

The Economics of Prevailing Wage Laws

Edited by
Hamid Azari-Rad
Peter Philips
Mark J. Prus

The Economics of Prevailing Wage Laws

Edited by
HAMID AZARI-RAD
State University of New York – New Paltz

PETER PHILIPS
University of Utah

MARK J. PRUS
State University of New York – Cortland

ASHGATE

Published by
Ashgate Publishing Limited
Gower House
Croft Road
Aldershot
Hampshire GU11 3HR
England

Ashgate Publishing Company
Suite 420
101 Cherry Street
Burlington, VT 05401-4405
USA

Ashgate website: http://www.ashgate.com

British Library Cataloguing in Publication Data
The economics of prevailing wage laws. - (Alternative voices in contemporary economics)
1.Wages - United States 2.Wages - Government policy - United States 3.Wages - Law and legislation - United States I.Azari-Rad, Hamid II.Philips, Peter, 1947- III.Prus, Mark J.
331.2'973

Library of Congress Cataloging-in-Publication Data
Azari-Rad, Hamid.
The economics of prevailing wage laws / by Hamid Azari-Rad, Peter Philips, and Mark J. Prus.-- 1st ed.
p. cm. -- (Alternative voices in contemporary economics)
Includes index.
ISBN 0-7546-3255-5
1. Wages--Construction workers--Law and legislation--United States. 2. Wages--Construction workers--Law and legislation. I. Philips, Peter, 1947- II. Prus, Mark J. III. Title. IV. Series.

KF3505.C65A993 2004
344.7301'2824--dc22

2004023404

ISBN 0 7546 3255 5

Printed and bound by Athenaeum Press, Ltd.,
Gateshead, Tyne & Wear.

List of Contributors

Hamid Azari-Rad, Ph.D., is Assistant Professor of Economics at the State University of New York—New Paltz

Dale Belman, Ph.D., is Associate Professor of Industrial Relations at the Michigan State University

Cihan Bilginsoy, Ph.D., is Associate Professor of Economics at the University of Utah

Kevin Duncan, Ph.D., is Professor of Economics at the Colorado State University—Pueblo

Gerald Finkel, Ph.D., is the Director of Educational and Cultural Trust Fund of the Joint Industry Board of the Electrical Industry

Erin M. Godtland, Ph.D., is an Economist at the United States General Accounting Office

Jeffrey S. Petersen, Ph.D., is an Economist at the Allman Economic Analysis

Peter Philips, Ph.D., is Professor of Economics at the University of Utah

Mark A. Price, Ph.D., is a Research Associate at the Keystone Research Center

Mark J. Prus, Ph.D., is Professor of Economics and Dean of Arts and Sciences at the State University of New York—Cortland

C. Jeffrey Waddoups, Ph.D., is Associate Professor of Economics at the University of Nevada—Las Vegas

Contents

PART III PUBLIC POLICY: COMPENSATIONS

PART I
HISTORICAL CONTEXT FOR PUBLIC POLICY

Chapter 1

Introduction: Prevailing Wage Regulations and Public Policy in the Construction Industry

Hamid Azari-Rad, Peter Philips and Mark J. Prus

Introduction

Prevailing Wage Laws in the United States regulate the wages paid on government funded construction projects. At the federal level the Davis-Bacon Act is probably the most well known prevailing wage law, though to many citizens, its existence is not recognized. The Davis-Bacon Act has set minimum wages by occupation and locality for federally financed construction projects since 1931. Thirty-one states along with the District of Columbia have prevailing wage laws. These acts are part of a larger set of regulations that began in the last half of the 19th century and developed through the 20th century and into the 21st. These laws include child labor laws, workers' compensation, fair labor standards including the eight-hour day, unemployment insurance, the rights of workers to collectively bargain for wages and benefits, minimum wage laws, Social Security, and the right to a safe workplace including state and federal Occupational Safety and Health Administrations (OSHA).

All of these laws come from one spirit—that the American economy, in general, and the U.S. labor market, in particular, should develop along a high-skill, high-wage, capital-intensive and technologically dynamic growth path. This is a vision of an economy where jobs are systematically good and safe and constantly getting better as employers, workers and society all join together in investing in both better technology, better tools and equipment, and higher skills. This is a vision of society where children are in school preparing for a better future for themselves, their families and their communities—rather than in dead-end jobs where the future is the first victim of employment. This is a view of competition where the playing field is level,

and the worst employer does not chase out all of the better, safer, fairer employers. This is a vision of the labor market where workers have rights—rights to organize together and bargain collectively and rights not to be the victims of discrimination or exploitation. But this is a vision of society that is not shared by all.

There is now and always has been another view of the matter. There are those who believe that unregulated markets should be left alone to work out, how children are treated, how workers are treated and how the economy should develop. Whether the issue is the privatization of social security, the elimination of minimum wages, the toleration of child labor, the elimination of the 40-hour work-week, the gutting of workers' compensation, the watering-down of civil rights protections or the elimination of prevailing wage laws, this alternative view of America harkens back to the time of the Robber Barons in the post-Civil War period. This was a time when workers had no protections, black listing of union organizers was legal and widely practiced, there was no restriction on the formation of monopolies, and safety at work was a roll-of-the-dice.

We are in a topsy-turvy world here. The true conservatives in this debate are those who would preserve the laws and regulations that have developed over the last 150 years to protect workers, foster education, preserve the environment and safeguard civil rights. The true radicals are those who wish to erase this 150 years of progressive legislation as quickly and as completely as possible. We will see that the debate today is not new. We will see that critics of prevailing wage laws (among other protections) are using arguments that are 150 years old. Thus, we begin at the beginning when the notion of protecting workers was new, the notion of regulating markets was new and the idea of never, under any circumstance, intervening in the contracts agreed upon by employer and worker was the conventional wisdom of the day.

The First Federal Prevailing Wage Law (1868)

The first federal eight-hour day law was enacted on 25 June1868. It also was the first federal prevailing wage law. The country had just passed through a Civil War that among other things had kick-started massive industrialization across the north and west of the country. The next thirty years would see the emergence of a new class of wealth and power in the country. Men such as J. P. Morgan, John D. Rockefeller, and Andrew Carnegie were using the rapid growth stimulated by the Civil War as a foundation for accumulating economic power never before seen in the country.

At the same time, the lives of working people were in flux. Hours of labor had always been long but they had moved to the pace and the rhythms of the farm. Shoe factories in New England, meat packing plants in Chicago, woolen mills in California, and silver mines in Nevada changed all that. Work was being harnessed to the time clock, the production line and the will of the foreman. People were being ground down by the pace of machinery, the demands of the supervisor, and the strain of 12 hour days and six day weeks.

In 1868 Congress addressed this issue with the National Eight-Hour Day Act. The idea was to set labor standards, to guide the labor market, to nudge it away from the stretching out of the workday towards competitive behavior that emphasized increased productivity within a limited set of hours. It was felt that the market could not get there by itself. Short-run competitive pressures would continually push for the longer day. But by regulating the market, it could be forced to find its own best interest, competition over productivity rather than competition over sweating labor.

At the time, the current legal doctrine of the individual's right to freely contract with others over wages and work conditions prevented Congress from directly regulating the labor market. Nonetheless, Congress could regulate its own contracts. Thus, public works were targeted as a way of indirectly trying to regulate all labor markets by regulating the contracts of contractors (and through them workers) on public construction. Republican Senator John Conness of California captured most of these ideas in one line of argument:

> [The eight-hour law] is but a very small boon that the working men of America ask from the Congress of the United States, namely: that the example be set by the Government of reducing the number of hours of labor. I know that the passage of this bill cannot control in the labor of the country; but the example to be set by the Government, by the passage of this bill, is due to the laboring men of the country, in my opinion. I know that labor in the main, like every other commodity, must depend upon the demand and supply. But, sir, I for one will be glad, a thousand times glad, when the industry of the country shall become accommodated to a reduced number of hours in the performance of labor. After forty or fifty years of such advance in the production of the world's fabrics by the great improvements that have been made by inventions, and the application of steam as a power, by which the capital of the world has been aggregated and increase many fold, I think that it is time that the bones and muscles of the country were promised a small percentage of cessation and rest from labor, as a consequence of that great increase in the productive industries of the country (U.S. Congress, 1868).

The eight-hour law as proposed applied only to government workers and the workers of those receiving government contracts. So it applied to shipyards and armament factories and construction, but it did not apply to all workers. Yet Senator Conness saw the law as a boon to all working men in America. Why not apply the eight-hour day to everyone? The answer is the Supreme Court, at the time, would not permit the Federal government from interfering in the private contracts between individuals. This was the doctrine of freedom of contract, and indeed, the recently fought Civil War was seen, in part, as a war over the rights of individuals to freely contract out their services. Slavery was seen as wrong by many because it violated the freedom to contract for one's labor services. One of the complaints of opponents of the national eight-hour day law was precisely that it violated this freedom of contract. Republican Senator Morrill of Vermont argued:

> Sir, I believe [that this Act] is a degradation of the working men of this country to deprive them of making contracts to work for just whatever sum and for whatever time they please (U.S. Congress, 1868).

The conventional wisdom that the Constitution forbade government interference with the freedom of individual contracts accounts for the focus of the National Eight-Hour Day Act on government workers and government contractors. If the government could not interfere with the contracts of others, it nonetheless could set the terms and conditions of its own contracts. Thus, it could require its contractors to meet the conditions of an eight-hour day. Both proponents and opponents of this law in the Senate viewed this Act as having the potential to reach beyond public works by setting a standard and custom that eventually would hold in the private sector.

Opponents of the National Eight-Hour Day Act wanted to leave the market completely unregulated and they were satisfied with whatever outcome emerged. Maine Republican Senator Fessendon summarized the laissez faire position of the opposition and the fear that such a law would make workers feel entitled to shorter hours:

> I oppose [this Act] upon principle, and because I believe that no good can come of it, and much evil probably will. The moment we have passed this bill there becomes an excitement throughout the country upon the same subject between the employer and the employed, and the evil example will go forth from this place. Let men make their contracts as they please; let this matter be regulated by the great regulator, demand and supply; and

> so long as it continues to be, those who are smart, capable, and intelligent, who make themselves skilled workmen, will receive the rewards of their labor, and those who have less capacity and less industry will not be on a level with them, but will receive an adequate reward for their labor (U.S. Congress, 1868).

Prevailing wage regulations were an integral part of the first national eight-hour law. For the Act said that when hours on public works were cut from 12 to 8, the daily wage should not be cut from (say) $1.20 to 80 cents. In those days, construction workers were paid by the day. Congress said that when hours were cut, the contractor on public works still had to pay the daily wage that was current in the locale in which the work was being done. Proponents were not unmindful that such a provision would raise the hourly wage rate of workers. A popular doggerel of the time captured this position in rhyme:

> Whether you work by the piece or by the day—
> Decreasing the hours increases the pay (Hunnicutt, 1988).

Proponents of the National Eight-Hour Day Act, such as Senator William Stewart of Nevada argued that the increase in hourly pay would come primarily from and be justified by increased hourly productivity.

> I say a man will do more per hour who is only required to work eight hours a day than will a man who is required to work ten hours. The less the number of hours a man works the more he can do in the hours that he does work ... Certainly, if a man only works a single hour a day, he can do more in that hour, make greater exertions, than if he had to work every hour in the day. So to adjust the wages *pro rata* according to the number of hours would not be fair (U.S. Congress, 1868).

This argument comes down to us today over whether higher paid construction workers are better trained and more productive. Proponents of prevailing wage regulation argue that these laws encourage collective bargaining in construction. Collective bargaining, in turn, creates joint labor-management apprenticeship programs that invest in the training of construction workers leading to higher productivity in (primarily) the union sector of construction. Opponents assert that there is no difference in the productivity of union and nonunion workers. If prevailing wages are cut, there will not be any corresponding fall in labor productivity.

Consequently, this view asserts that eliminating prevailing wages will save on construction costs rather than reduce construction labor productivity.

Stewart went on to argue that there were additional societal benefits from an eight-hour day law (with its prevailing wage codicil) that went beyond the cost-productivity issue:

> The [eight-hour day law need not be rejected even] if there was not as much work done in the eight hours, because there might be other good results following from it. There might be greater comfort given to the workingman; there might be an improvement in the condition of society; and if there should be an approximate amount of labor, something near the same amount as now, the other good results might be sufficient to justify the adoption of the reform. I have no idea but that taking the term of years through which men labor, an individual, in the course of his life, accomplishes more with eight hours a day than he will with ten hours a day labor. I think he will live longer, so that in the course of his natural life he will do more work if he works eight hours a day regularly than he will if he works ten hours. If you will put the value of men on the amount of labor they can do in the course of their natural lives I think men will be more valuable who work eight hours a day than if they work ten hours a day. I think they will accomplish more in their natural lives; they will not wear out so soon, and if there is any object in prolonging human life and increasing the aggregate of human happiness the argument would be in favor of this bill (U.S. Congress, 1868).

Stewart's arguments anticipate what proponents of prevailing wage laws will argue for the next 150 years—that high-wage, skilled labor can be as cost effective as low wage, unskilled labor. Even if this is not quite the case, having workers who are paid health insurance, paid a pension, adequately and safely trained and capable of making a career out of a casual labor market generates dividends to the worker, the worker's family, the community, and society as a whole so as to prolong human life and increase the aggregate of human happiness.

Republican Senator John Sherman of Ohio had led the effort to weaken the national eight-hour day law. In particular, he wanted daily wages to fall in proportion to the diminution in hours. When the final bill passed 26 to 11 Senator Sherman carped:

> The title of the bill ought to be changed, it seems to me to read: A bill to give to Government employees twenty-five per cent more wages than employees in private establishments receive.

To which Republican Senator from California, John Conness replied:

> That is an eccentricity if the honorable Senator from Ohio. The bill has a very good title as it stands.

In this last snippet of debate, we find an argument that critics will raise for the next 133 years—prevailing wages cost too much; they pay workers on public projects 25 percent more, and eliminating prevailing wage regulations will save taxpayers this unwarranted 25 percent. Proponents respond just as Nevada Senator Stewart argued 133 years ago. Prevailing wages support and promote higher productivity that offsets some or all of the increased costs. And furthermore, there are other benefits of this regulation associated with broader social benefits, a higher quality of life and safer work that mitigate any associated increase in costs.

Enforcement of the prevailing wage provision proved difficult. Twice Republican President Grant had to issue proclamations directing contractors and government agents to respect the prevailing wage provision of the eight-hour day law.[1]

Thus, the principle of a prevailing wage law at the federal level predates the current federal prevailing wage law, the Davis-Bacon Act (1931), by fifty years. The purpose of the first federal law was to set labor standards regarding hours and wage rates in the public sector presumably with the hope that these standards might spread to the private sector. That the purpose was thwarted in enforcement is indicated by Grant's need to make the same proclamation twice. It was also thwarted by legal decisions emphasizing the rights of individuals to contract without government interference.

Frustrated by problems of implementation and court rulings, the American Federation of Labor (AFL), in its first convention in 1881 stated what it thought the purpose of the law was and complained that it was not being enforced:

> Resolved ... that the National Eight Hour law is one intended to benefit labor and to relieve it partly of its heavy burdens, that the evasion of its true spirit and intent is contrary to the best interest of the Nation; we therefore demand the enforcement of said law in the spirit of its designers (Federation of the Organized Trades and Labor Unions of the United States and Canada, 1881, p. 3).[2]

The next year the AFL convention went on to argue 'that the system of letting out Government work by contract tends to intensify the competition between workmen, and we demand the speedy abolishment of

the same'. Further by focusing on enforcing the federal law, 'the enforcement of the national eight-hour law will secure adoption of similar provisions in nearly all the States of the Union' (Federation of the Organized Trades and Labor Unions of the United States and Canada, 1882, pp. 4 and 18). Soon the AFL would turn to states to develop and enforce hours and prevailing wage legislation, but in the United Kingdom and in Canada, legislatures were preparing to follow the U.S. example.

Fair Wage Policies in England and Canada (1890)

> The country has no interest in keeping down the price of labour; on the contrary, the country is interested in the advancement of the labour market ... It is better for the workingman, for high wages enable him to supply himself with more of the necessaries, more of the comforts, more of the luxuries of life. This is better for the country also, as it stimulates the consumption of manufactured goods of all kinds. Higher wages benefit not only him who receives but him who gives, and they benefit not only the parties directly concerned, but the whole community.
>
> Canadian Postmaster General
> 1900 Workmen's Wages on Government Contracts Debate.

In England in 1890, the House of Lords issued the *Report of the Sweating Commission.* Sweatshop labor conditions had become a scandal. Construction was seen as one of the sweatshop industries. The system of contracting and subcontracting and lowest bidder acceptance led to a form of competition that was deleterious. To obtain a contract in the short run, contractors would ignore long term costs of the industry, such as training. Having shaved on a bid to win a government contract, contractors were trying to offset their costs through shoddy workmanship. Contractors who won a job would shop it around to laborers, seeing who would take the biggest pay cut to get a job. In response to these practices, Parliament enacted a prevailing wage law as part of a larger set of reforms designed to reign in the prevalence of sweatshop competitive practices.

Canada followed the English example in 1900. The Canadian Parliament was persuaded that there was a high-wage, high-skilled growth path and a low-wage, low-skilled growth path opening up before Canada. The high-wage path was seen as preferable because it promoted solid skills and good workmanship on public works, it created middle class citizens and it stimulated demand for local manufactured goods.

The First State Prevailing Wage Law—Kansas (1891)

In February 1891, Samuel Gompers,[3] President of the American Federation of Labor, visited Topeka, Kansas, to speak on what the local newspaper called 'the great topic of labor'. Ten years earlier, the AFL—at its own creation—had laid out legislative aims that included the eight-hour work day, the elimination of child labor, free public schooling, compulsory schooling laws, the elimination of convict labor, and prevailing wages on public works. These proposals were based on a belief that the American labor market should consist of highly skilled workers earning decent wages, with time for family, and with children free to earn an education.

On the morning of Gompers's arrival, the Alliance Party, known to history as the Populist Party, withdrew an earlier invitation for him to speak in the hall of the state House of Representatives, which that party controlled. Gompers, who represented 900,000 workers, had fallen out of favor with the Populists, reportedly because of his belief that the trade unions should not form a political party with the Alliance (*Topeka State Journal*, 1891a). Gompers and the AFL took the position that unions should be nonpartisan. Rather than form a labor party, Gompers advocated that unions support those of any party who would support the needs of working men and women. In Kansas in 1891, this made Samuel Gompers an ally of the Republican Party. The Republicans, who controlled the Kansas Senate, invited Gompers to speak there, and he did. In his Topeka speech, Gompers declared:

> Our banner floats high to the breeze and on that banner float is inscribed, 'Eight hours work, eight hours rest and eight hours for mental and moral improvement' (*Topeka Daily Capital*, 1891).

At that time, when there were no income supplement programs for the poor, low-income parents worked *and* had to send their children to work to make ends meet. This practice was later referred to by some as 'eating the seed corn'. Each generation of poor condemned its offspring to poverty because the children grew up as illiterate as their parents. The prevalence of cheap child labor, which accounted for 5 percent of the manufacturing labor force in 1890 and a larger proportion of service sector and agricultural workers, kept wages down and forced adult workers to put in the long hours to make ends meet. Gompers wanted regulation to force employers and the poor to adopt a strategy, however painful in the short run, of a high-wage, high-skilled growth path where children were in