New Initiatives

"Buying the Job"

Target Programs & the Elgin Plan

■*Jack Metzgar*

A "piss-ant" IBEW local in Illinois is the last place you'd expect to find an innovative program designed to combat the open shop.

Most national scorecards estimate that unions now do only about 30% of construction work, with the IBEW doing somewhat better at about 40%. In Illinois about half the industry is union, and the IBEW represents more than 80% of the electrical workers, far and away the best organized state in the country.

Why here? Why now? Why would IBEW Local 117's membership agree to put 60 cents an hour in a target fund to "buy" jobs away from nonunion contractors when the open shop hardly has a toe-hold in their area—not more than 2% of commercial/industrial work and barely 25% of residential?

"Now's the time to act," explains Fred Smith, Local 117 business manager, "not after you're already in a hole and have to dig yourself out."

Don Mahoney, international representative for IBEW District 6 covering Illinois and 4 other Midwestern states, elaborates: "If they don't keep they're hands on it, the same thing's going to happen to them that's happened down the street. I just saw some

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statistics that in Hannibal, Missouri, union work went from 85% to 10% in just 5 years. Hell, in Portland [Oregon], before they started targetting, they went from 80% to 20% in six months! When it comes, it comes fast."

IBEW Local 117, representing some 200 electricians in and around Elgin, Illinois, hasn't been as active in its use of target programs as some other building trades locals around the country. It hasn't had to be. But Smith has worked to establish legal precedents for developing this tactic beyond its original form, and Mahoney has been gathering information on targetting from around the country and spreading it to the locals in his district. With more than a little local pride, they describe funded targetting as evolving from "the Kansas City Plan" to "Elgin I" and "Elgin II."

The Elgin Plan has a number of tactical advantages over earlier forms of target programs in the building trades. But it also strengthens important union principles that a beleaguered labor movement has been having difficulty defending in the 1980s—internal solidarity and the inviolability of the contract.

What Is Targetting?

Targetting is basically a local union subsidy to union contractors that has evolved from concession bargaining in the trades.

The most dramatic and damaging concessions in the building trades have taken the form of area-wide freezes or cuts in the union wage rate. But concessions also have come in "project agreements," a separate agreement applicable to only one construction project, usually a large one, where all the trades agree to work at a percentage of the union rate. The trades agreed to 90% of local scale, for example, to get the work building General Motors' new Saturn plant in Tennessee. Likewise, after a brilliant corporate campaign, the trades won the work on the new Toyota plant in Kentucky, but only at 90% of scale. In project agreements, there are usually substantial concessions on work rules as well, and many times these are even more important than the wage concessions.

Target programs, in their original unfunded form, were simply project agreements engaged in by only one union on a job. The local union's business manager unilaterally determined a wage rate on a specific job which was lower than the minimum rate published in the then current area-wide labor agreement.

In both project agreements and unfunded target programs, union construction workers are paid less than union scale so that contractors who use only union labor can bid low enough on a job to win it away from nonunion contractors. Nobody likes to take a wage cut, but where open shop contractors are winning more and more of the construction work, a cut for one project seems preferable to an area-wide reduction.

But, like plant-by-plant concessions in industrial unions, project agreements eventually jigger down the actual wages of most construction workers, as open shop contractors continually adjust their wages downwards in order to better compete with the newly "competitive" union contractors. Also, in construction, where workers are assigned out of the union hiring hall, there is bound to be a lot of internal membership dissension when one worker goes out of the hall to earn $2 or $3 an hour less than another.

Funded Target Programs

A "funded target program" accomplishes the same thing—giving the union contractor a break on labor costs—but through a different mechanism. *All* working members pay into a fund, from which the union draws money to subsidize a union contractor on a job it targets. This spreads the financial pain of competing with open shop contractors among all the members rather than concentrating it on just those who are referred out to a job where concessions have been made to win the work.

In a funded target program everybody loses a little instead of a few losing a lot, and this builds union solidarity instead of threatening it. The Elgin Plan further solidifies the membership in that a cut in scale is never granted on a targetted job. With the Elgin Plan, the union simply subsidizes the job outright, not with a wage cut, but by making a cash payment to the contractor out of its target fund.

In the original funded target program, called "the Kansas City Plan," the contractor paid below scale, and the union used the target fund to pay members working on that project the difference between what they were being paid and the union scale. This involved an enormous amount of paperwork for the union, as it had to keep track of each hour worked by each member on a targetted job and then issue checks to each as the work proceeded. With "Elgin" the local union simply figures the total dollar amount of subsidy the contractor needs, and once the deal is done, it writes one check.

But, besides being more efficient, the Elgin Plan is a different kind of animal altogether from a wage concession. True, each working electrician is losing 60 cents an hour and that money is going out of his/her pocket and into the pocket of a contractor.

But the integrity of the union scale is preserved. Every union contractor pays and every union worker leaving the hiring hall receives *the same rate of pay*. Though the economic effect is the same, the principle is very different. The union is not cutting wages in order to be "more competitive." It is, in the words of Fred Smith, "buying the job."

Furthermore, the union *does not negotiate* its subsidy with a contractor. It targets a job at the bid stage, determines the amount of subsidy, and announces that a "grant" is available for that job to whichever contractor wins the bid. There is only one condition for receiving the local's grant—that the contractor either has a collective bargaining agreement with the union or signs one. In the words of IBEW Local 117's target fund resolution:

> "The determination as to which projects are going to be included in the Target Program, and the amount of money to be granted for each specific project, will be made solely by the Union. There will be no employer involvement in this process."

Elgin II is a further development, where the union pays the customer rather than the contractor. Here the union offers a cash "rebate" to the company letting the contract if it awards the contract to a union contractor. As Smith explains it, this allows the union a second chance at bat if it misses the job at the bid stage. In the one instance where Elgin II has been used, a non-union contractor was already doing the work when the union approached the customer with its rebate offer. The customer liked the idea, pulled the open shopper from the job, and gave the work to a union outfit.

Is This Stuff Legal?

Funded target programs began at IBEW Local 714 in Minot, North Dakota, in 1984, and right from the beginning they raised a series of daunting legal issues. The International's attorneys initially advised that the target fund strategy was too legally risky to experiment with. But Jim Walsh, a dedicated labor lawyer in Kansas City, worked with Local 714 and with Local 124 in Kansas City to sort out the legal issues with what came to be known as "the Kansas City Plan." Since then, Fred Smith has compiled a series of rulings from the Department of Labor and the Internal Revenue Service approving the various elements of the Elgin Plan, both Elgin I and II.

Would funded target programs violate anti-trust laws? Could the union be considered a co-employer? What liability might be incurred to local union officers given their fiduciary responsibilities under NLRA and ERISA? Could the local union's non-profit tax exempt status be put in jeopardy? These and other legal issues were explored before target funds were actually started.

Two things stand out in terms of what the union must do to make sure its legal bases are covered. The subsidy must be offered to whichever contractor wins the bid, whether union or nonunion; the union cannot pick and choose a specific contractor, though signing a union contract is a condition for receiving the subsidy. Second, the target fund must be authorized by the affected part of the union's membership.

Here's how Elgin I works with the contractor:

The local union business manager peruses the local Dodge Reports, a construction industry service that shows which contractors are bidding on a particular job. If some open shop contractors are bidding a job, the BM contacts the union contractors who are also bidding it to determine their estimates of the hours required to do the work. With this information, the BM can estimate an average bid for the union contractors and the likely bid of the open shop contractors, thereby determining the size of the grant needed to close the distance between the two. The union then informs the contractors' association that a grant will be available in such and such an amount for that job. It is the association's responsibility to inform its member contractors (both union and nonunion, if the association includes open shoppers) of the availability of the grant. So informed, contractors can, if they choose, revise their bids downward to take account of the grant the union is offering.

Here's how Elgin II works with the customer:

Let's say the union's grant to the contractor was listed at $5,000, and this turned out to be $2,000 short of what was needed to win the bid from the open shopper. The union then approaches the customer, offering a $2,000 rebate if the customer chooses a union contractor instead. The customer knows the union wants this job and is likely to picket and leaflet the worksite if it's done open shop, and that this hassle is likely to delay and otherwise cost the project. If the customer agrees to accept the rebate, the union has $7,000 committed to the job—a $5,000 grant to the contractor and a $2,000 rebate to the customer.

All of the above is legal because, in the words of the IRS:

> "The program is designed to combat the intense competition from nonunion employers which competition you feel poses

a threat to the future well-being of your Local and its members as well as the entire American labor movement.''

The target fund is based on a dues increase of the affected membership. In Local 117, for example, only some 200 members work in construction out of a total membership of 680, which includes factory workers, tree-trimmers and some public employees. As with other dues increases, each affected member (the 200 construction electricians) must be informed by mail of the requested increase, and the request must then be presented at a regular union meeting and voted on by secret ballot at the following meeting.

In Local 117 the target fund is supported by a 3% assessment, which works out to a little more than 60 cents an hour. At larger locals, the assessment can be smaller. IBEW 364 in Rockford, Illinois, for example, has some 700 construction electricians and requires only 1% or about 20 cents an hour to fund its Elgin Plan.

The Track Record

There is no centralized source of information about how successful funded target programs have been. Don Mahoney estimates that about 200 building trades locals in the country are using target funds, about 80 of those being IBEW, and their use is expanding rapidly now.

The longest running program, Local 124's in Kansas City, has targetted 1,864 jobs since it was begun in January 1985; of these, it got 691, or about 37%, for union contractors. This represents more than 800,000 hours of work for 124's members and some $18 million in wages and benefits. Local 124 still uses the ''Kansas City Plan'' it helped pioneer.

IBEW Local 48 in Portland, Oregon, began its funded target program in January 1986, after the union part of construction had dropped to nearly 20%. Since then, the local figures it has won nearly 750,000 hours of construction work with the program, bringing the union share of construction work back up to 75%. In Oakland, California, IBEW 595 has won 156,000 hours, or nearly $5 million in wages and fringes, in its first seven months.

In Illinois, IBEW Local 364 in Rockford started its Elgin Plan in December 1986. Through 1987 it had targetted 104 projects, winning 61 for union contractors. These 61 projects cost the target fund $238,705 and recovered $2.6 million in electrical work that would otherwise have been lost to nonunion electrical contractors.

Based on his investigation of the results thus far, Mahoney estimates that many target funds, like the one in Rockford, have been producing nearly $10 of work for each $1 the unions have paid out.

Conclusion

Fred Smith sees funded target programs as no more than a "band-aid" on a problem for which organizing—both bottom-up and top-down—is the full treatment. "I see targetting working for only a limited time, during which you'd better be organizing." Eventually, all union contractors are going to want the subsidy, with some even getting open shoppers to bid on a job in order to entice the union into targetting it.

Though a short-term tactic, the Elgin Plan contains principles relevant to all unions when they're convinced they've got to help their union employer become "more competitive" in order to save their jobs:

—*Share the pain.* Whatever sacrifice is needed, it should be equitably distributed so that everybody loses a little rather than a few losing a lot. Bad times require more union solidarity, not less, and in the long run, creating two and three tier structures within the union will bring everybody down.

—*Capital strategies.* Instead of cutting wage rates and giving up work rules, unions need to look for ways to pool their members' financial resources to change the financial situation of union employers. Even in industrial unions, it makes sense to keep the negotiated wage rate inviolable and to have the union collect money through assessments and simply give it to the employer in a lump sum. The absolute loss in dollars, and in reduced standards of living, may be the same. But, in our society, he who pays the piper calls the tune. Lump-sum cash payments give union workers potential power over the employer that giving away pieces of the contract do not, because the union is free to withhold or change the conditions of its subsidy whenever it wants, or as circumstances permit. The union is not put in the position of having to win back wages and work rules it has already tacitly admitted were "too high" or "too rigid."

Among the capital strategies being explored in the building trades, the Elgin Plan is certainly not the most important. But it has shown itself effective in winning work from the open shop. And, it may provide a more general principle for unions who are looking for ways to make their retreats more orderly so they can find some higher ground from which to get back on the offensive. ■