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TRADE UNIONISM V. NEOLIBERALISM: DIFFERENT PATHS TO IMPACT INVESTING IN THE U.S.

Abstract

- *Goal* – privatization and outsourcing help public and private employers, respectively, to reduce their costs and even to increase productivity and output. The state has retained its role in developing and implementing policies in reducing unemployment, providing related social benefits and maintaining core public services. However, the increased use of novel financial instruments such as social impact bonds (SIBs) may result in the privatization of these core state functions as well. With SIBs, private investors are given a goal or target – for example, to reduce unemployment by a certain percentage in a specific community or region-and are rewarded with a return on their investment if these targets are met. This article analyzes and criticizes the use of SIBs in the U.S., and contends that labor unions would do a better job in implementing elements of state employment policy than private investors.
- *Research methodology* – the author used the qualitative empirical, doctrinal and analytical research methodologies.
- *Originality* – it is an original work evaluating different ways in which private actors (financial investors or labor unions) may assist governments in solving social problems such as unemployment.

Keywords: unemployment, investing, bonds, trade unions, pension funds, privatization.

1. Introduction

There are constant pressures on public finances. Residents do not want to be overtaxed, and at the same time they demand sufficient public services. Moreover, in certain cities and regions, a decline in the available tax base has occurred and/or the need for additional services has dramatically increased. This may be caused by the closure of certain types of industries (especially manufacturing) and the accompanying exodus of young people from those regions to different parts of the country to find new jobs. At the same time, because these areas are depressed, their housing costs plummet, making them attractive in some ways for new foreign migrants looking for a place to settle [Foster, 2017: 481–482[1]; Boudreaux, 2016: 8[2]]. The cost of maintaining the remaining older residents, and the unemployed new residents such as migrants with special needs, is challenging for the public authorities, to say the least.

Different paths exist to deal with these challenges. The traditional, state-centered model is for the public authorities to solve these problems and create solutions. This would also necessitate additional investment from the communities themselves, or, where local resources are insufficient, to request to the state or federal government for help. Obvious limitations exist to this approach, however. Communities in economic decline caught in such a "death spiral" (reduced tax revenues, increasing demand for services due to higher crime and unemployment rates), simply lack the resources to do anything meaningful [Spiotto, 2014: 525–526].[3] Moreover, although criticisms of public bureaucracy are often overstated, among government officials there may also be a scarcity of ideas and creativity needed to enable these areas to rebound economically [Gordon, 2010: 748, No. 73[4]; Raam, 2016: 7[5]].

Consequently, it is reasonable that governments should look to the private or non-governmental sector for assistance. Here, there are two distinct paths to follow. One, recommended in this article, is to utilize the resources of labor unions and the related employee retirement funds to address local unemployment and

[1] Noting that low-income migrants are deterred and even blocked from moving to larger metro areas with hot job markets, due to the high cost of housing in those areas.
[2] Emphasizing thar migrants are deterred from seeking expensive suburban housing.
[3] Explaining death spiral effect.
[4] Noting that bureaucracies may dampen creative enthusiasm in various ways.
[5] Bureaucracies with "centralized policies and regulations [can] lack… [necessary] organizational flexibility and creativity."

the related social problems. While labor unions have relatively declined in the past decades [Shiffman, 2022: 156[6]; Reddy, 2023: 1394, 1441[7]; Smoger, 2023: 1013], the employees they represent (and have represented) have substantial assets placed in different kinds of retirement funds. In the private sector, these are "Taft-Hartley" funds jointly controlled by union and employer trustees. For public employees, their retirement benefits are placed in state controlled funds, in which unions have indirect influence [Jacoby, 2022: 32, No. 22[8]; Jackson, 2011: 391, No. 555[9]; Bruner, 2018: 333, No. 285[10]]. Although there are legal and policy obstacles present, these funds may be used in part as investments for community development and, especially, for the investments which will increase employment and add well-paying local jobs. Unions in the construction industry also have a long tradition of maintaining hiring halls. These hiring halls are connected with related union job apprenticeship programs, and provide skilled workers to builders and related employers, on demand basis [Freeman and Gonos, 2009: 323–325[11]]. It is argued here that such union hiring halls should be expanded for use beyond the construction industry, and should be transformed into a tool for job training and employment placement in economically depressed areas [Fisk, 2020: 25–29].

The second, alternative path follows a neoliberal economic model. Private individuals or funds would invest in government issued social impact bonds (SIBs) [Leventhal, 2013: 511[12]]. These SIBs would repay them for their investment, plus an agreed-upon dividend or interest payment, if certain socially beneficial benchmarks are met. For example, the terms of the bond could call for local unemployment to be reduced from 12% to 6% over 5 years. Investors would hire contractors to develop a plan to accomplish this goal, through the establishment of job training centers, educational programs, and other methods. If the goals

[6] Recognizing long term union decline.

[7] Noting the decades-long decline of labor unions, but seeing hope in recent public opinion polls supporting unions.

[8] Recognizing these two types of union influenced pension funds in the U.S., and adding that the California public employees retirement fund (Calpers) alone maintains approximately $500 billion in assets.

[9] Taft Hartley funds control "over 6% of all pension fund assets and comprising over 420 billion dollars' worth of investment capital."

[10] "102 of the largest US Taft-Hartley pension funds, representing $150 billion in assets under management…"

[11] Providing an overview of the union hiring hall system.

[12] Giving an introduction to social impact bonds.

are fully met, then the investors receive the maximum rate of return. If there is a complete failure – unemployment remains the same or actually increases – the investors risk losing their investment. This gives them the necessary incentive to make the program work [Leventhal, 2013: 511[13]; Jones, 2017: 357–359; Toussaint, 2018: 164–181]. In theory, such a plan appears attractive, but in practice SIBs raise considerable concerns. There is a risk that SIBs simply replace (through privatization) already successful, existing government programs [Toussaint, 2018: 177–181]; incentivize the manipulation of data so that benchmarks are easily achieved [Mazur, 2017: 152]; waste precious time in the event the SIB fails; and takes important policy decision making out of the hands of stakeholders and into those of aloof investors [Toussaint, 2018: 179–181]; among other issues.

Given this choice, government policy makers should choose to enlist the help of labor unions to revitalize their blighted communities. Unions possess the resources to accomplish these goals, through employee retirement funds and through the expanded use of hiring halls. Even more importantly, unions, consisting of workers and retirees, have a more genuine interest in rebuilding local communities, training residents for new jobs and restoring their overall economic health, than any outside investor could in the context of a SIB.

2. Union models for supporting community development

2.1. Socially responsible investing

2.1.1. Overview

The concept of making investments that are socially responsible is not new. Originally two different concepts of social investments emerged as early as the 1970s. One was "negative", the other "positive" [McKenzie, 1991: 358–359]. Socially responsible investments could be "negative" in the sense that they did not put money in certain types of businesses that had a potentially bad impact on society. Early targets were gun manufacturers, defense contractors, tobacco companies, and the nuclear industry. Later, more famously, activists targeted companies doing business in apartheid-era South Africa, urging investors to divest from such companies [DeSipio, 2023: 123–124; Gary, 2022: 618–620].

[13] Explaining the mechanics of how SIBs work and their advantages.

More recently, polluters and businesses that abuse worker rights have also been singled out as companies for investors to avoid.

Positive social investments focused on investing money in projects that were not only not harmful, but also actually produced a concrete social benefit. Some of the first examples included efforts which aimed to help employees and communities. Among them there were investments in affordable housing, or more commonly, in taking over failing companies so that they would continue to provide jobs in the communities that depended upon them. In modern times they include green investment funds, which focus on companies that do not pollute, but also those that affirmatively contribute to a cleaner environment [Hess, 2007: 236[14]].

The term ESG (economic, social and governance) investing has more recently emerged to describe these types of socially responsible investing [Wang, 2021: 141]. ESG investments have grown exponentially in the last decade. This is largely due to the changing consumer preferences and corporate (and investment fund) marketing efforts to make themselves more attractive to socially conscious investors. Internal, structural issues within the investment funds have also played a part. Funds with a link to sustainability or social responsibility are able to charge higher service and management fees for the extra work required to identify and vet suitable socially responsible investment opportunities [Wang, 2012: 173–176].

Social responsible or ESG investments do not operate in a legal vacuum, however. There are important legal principles that all investment funds, and especially private employee retirement funds, must follow. In general, trust law places a duty upon all trustees – i.e., those managing money on others' behalf – to act prudently and loyally [Hess, 2007: 247]. They make investments that maximize the potential return to the investors, in relation to the involved risk (prudence), and act in the beneficiaries' best interests (loyalty). If investment A is likely to produce a 6% return, and investment B a 2% return, with both investments involving the same degree of risk, the trustee should choose investment A. If they do not, they are breaching their duty to the investors [DeSipio, 2023: 237[15]].

[14] Discussing shift from negative to positive social investing.

[15] Trustees would not act prudently if they chose one investment over another with a lower rate of return, assuming both had comparable risks.

Federal law governing private employee retirement funds is even more restrictive. The Employee Retirement Income Security Act [ERISA, 29 U.S.C. 1001 *et seq.*] has detailed procedural and substantive requirements, often based on trust law, that require retirement funds to make secure investments that maximize returns but also ensure that the money will be there for the employees to use in their retirement. It was enacted, in part, in response to employers who either squandered or never put aside the money they promised the employees would receive in their retirement. This left the employees destitute in old age, and reliant upon the government for even a basic level of support [Switzer, 2021: 182; Bailey, 2023: 1010–1011[16]; Girdley, 2022: 671–672[17]].

These laws do place limitations on socially responsible investing. In general, there is less of a burden on "negative" types of social investing [Hess, 2007: 248]. If an investment fund elects not to invest in companies that abuse animals, it is still very likely that it may find other, less socially damaging investment opportunities with similar or better rates of return. In other words, by excluding firms that torture animals, the fund is only excluding a small amount of potential investments. A vast pool of companies remain in which the fund's money may be invested; many of them will provide equally good returns.[18] Even though this type of social investing is more likely to be legal, at the same time studies have shown it is not so effective in making an important impact [Hess, 2007: 244]. This is because there is even a greater number of investment funds, without any social restrictions, that will continue to invest in these "bad" actors. Perhaps the South African disinvestment campaign, which had reached a critical mass in the U.S. and in many parts of the world, is one notable exception.

Positive social investments, on the other hand, do operate under tight legal controls. Investing in the construction of a new apartment complex that will sell apartments for below the market costs to the local working families may be the right thing to do ethically and socially, but remains a poor investment in terms of maximizing the financial return. It would be relatively easy to point to other real estate investments, in which the apartments would be sold at market rates, with much better financial results. In that case, the fund manager would have violated the fiduciary duty as a trustee, by choosing a poorer investment

[16] Overriding purpose of ERISA was to protect employees.

[17] The purpose of ERISA is to protect pension plan participants and their beneficiaries.

[18] However, negative social investments may violate ERISA to the extent they exclude large swaths of potential investment opportunities, thereby leading to a lack of diversity of investments, putting the pension fund at risk.

for non-financial reasons. To the extent the fund was a private employee retirement fund, the consequences of that investment choice could be more tangible. Choosing an investment with a low rate of return directly lessens the amount of money that the employee may have available for their retirement [DeSipio, 2023: 137–138].

Investing in a faltering company as a way to preserve jobs in a community is also fraught with risk. Ideally, employees who invest their retirement savings and other resources to buy their shares in an Employee Stock Ownership Plan (ESOP) will work with greater motivation, and will be able to replace the underperforming managers responsible for the company's collapse, and thereby will rescue the business and their jobs. Unfortunately, the opposite is often true. The company continues its slide into bankruptcy and oblivion (often for market reasons that preceded the employee takeover), and the employees lose both their jobs and retirement [Anderson, Stumpff, 2019: 429–431[19]].

For decades, a debate has raged whether positive social investments that were projected to have an *equal* rate of return to other comparable investments violated the funds' fiduciary duties. Conceptually, there should not be any problem, since the chosen investment is not making less of a return than the alternatives [Wang, 2021: 150]. In practice, a problem arose in determining whether a given return was exactly equal. The Department of Labor issued burdensome regulations for ERISA funds in 2008, for example, requiring the funds to submit detailed and extensive documentation that a given social investment would yield an equivalent return to alternative investments. This evidence was often difficult and time consuming to obtain, and the funds were dissuaded from making social investment decisions [DeSipio, 2023: 137–138].

Fortunately for socially responsible investing, the more recent trend allows for the social investments with equal returns, along with being more liberal in showing equality [DeSipio, 2023: 142–143]. Even though a given company may have, on paper, a stronger investment return, its socially harmful practices may raise red flags about the prospect of whether these returns will be actually realized. The MeToo# movement helped to illustrate this point. Investors in companies – most infamously the film production company run by Harvey Weinstein – that allowed rampant sexual harassment of their female employees for years and years, eventually paid the price when these discriminatory practices were revealed. The companies' respective market values collapsed, gutting the

[19] Laying out disadvantages and risks to employees in an ESOP.

value of the investments that the funds made. Essentially, by accepting illegal discrimination, the boards of these companies displayed an utter failure in good governance. This failure eventually had a direct effect on the company's value. In other words, companies that are more diverse and prohibit discrimination have better governance, and their value could be expected to increase over time [Mandell, 2022: 25; Miazad, 2021: 1943–1950; Hazen, 2021: 740[20]]. The same principle would also apply to companies which have unsustainable environmental policies or contribute to climate change. It could be said that this behavior reveals a failure in good governance that will lead to significant losses in the future. Finally, a growing body of empirical evidence suggests that over the long term, socially responsible companies offer better investment returns than their non-socially responsible competitors [DeSipio, 2023: 173–174].

Consequently, there is some space in which even employee retirement funds can operate to make socially responsible investments, which can help to boost employment and otherwise aid communities. Unions have a direct role in managing certain private retirement funds, and more of an indirect role in influencing the decisions of the state and local public employee retirement funds. In this way, unions can effectively assist communities and workers in need.

2.1.2. By union pension funds

From the time of their inception in the U.S., labor unions have not only been focused on increasing wages and improving working conditions, but also on obtaining retirement benefits. Unlike much of Europe, the U.S. swings much more towards an unrestrained free market, the capitalistic economic model, with a low level of state sponsored social protection. While certain minimal retirement benefits (known as social security benefits) are provided by the state in old age, most workers in the private sector rely on pensions or other forms of retirement benefits provided by their employers. A major role of unions is to maximize these benefits as much as possible, sometimes even at the cost of sacrificing larger wage increases [Reiss and Watson, 2019: 36[21]; Griffin, 1998: 29 & No. 78[22]].

[20] "Social risk is financially material [see: #MeToo movement].

[21] "When wages were frozen in 1943, unions used collective bargaining sessions to negotiate for health and retirement benefits."

[22] Also crediting the labor movement for redefining pensions as deferred wages.

American labor unions finally achieved mass support during the Great Depression in the 1930s. Workers turned to collective action in order to support each other in the worsening economic crisis. A sympathetic left of center President, Franklin D Roosevelt, and the supportive federal labor law legislation (the Wagner Act), helped to solidify these gains [Andrias, 2016: 14–16]. As unions gained and wielded more power, they negotiated collective bargaining agreements with employers, these required the employer to contribute money to a union pension fund. These funds would eventually pay the workers a pension upon their retirement. They were run entirely by the unions, and this gave the unions an additional source of economic power. The pension fund controlled by the United Mine Workers of America (UMWA) was a notable example of a fund that allowed the union to flex its economic muscle, through investments and otherwise [Fogdall, 2001: 222; Ponte, Gillan, 2006: 48, No. 257[23]].

After the Second World War, the political tide in the U.S. finally turned against labor unions. A wave of post-war strikes may have contributed to this movement, but the main problem was the emerging cold war conflict with the communist Soviet Union. Unions were portrayed as something socialistic, something Red and un-American. As a result, Congress passed the Taft-Hartley Act in 1947, which restricted some of the powers of unions [Fisk, Reddy: 2020, 101[24]]. One of these new restrictions related to the union controlled pension funds. Under the new law, unions and employers had to equally share responsibility for the management of employee retirement funds, and also of other health and welfare benefit funds. These funds were known as Taft-Hartley funds, and had equal numbers of union and employer trustees. In part these changes were made to weaken labor unions, but there was also a legitimate concern about union corruption and mismanagement [Fogdall, 2001: 223–224; Reiss, Watson, 2019: 36–37].

Even under the Taft-Hartley framework, unions maintain considerable, even outsized influence over how the funds were managed. This is especially the case with multi-employer pension funds. These funds arise out of a collective bargaining agreement one union has with many employers. In these funds, the union appoints half of the trustees and various employers together select the other

[23] Established in 1946, the UMWA pension fund was controlled by union, but funded by the employer.

[24] “The Taft-Hartley Act required all union leaders to swear in an affidavit that they were not members of the Communist Party, and it had forbidden any union whose leaders refused to sign the non-Communist oath to invoke the processes of the NLRB.”

half. In this way, the union wields more power on the board of trustees than any single employer. Of course, the employer trustees normally act in unison, but it does provide the union with the potential to exploit any employer differences when they occur [Schwab, Thomas, 1998: 1077[25]].

Most Taft-Hartley funds are defined benefit (DB) plans [Langbein, 2023: 9–10[26]]. These types of plans guarantee employees a fixed amount of income when they retire, i.e., a percentage of their final salary, or a specific sum each month. The employer and union trustees must manage the fund in such a way, through employer contributions and the funds' investments, that there is a sufficient amount of money in the fund to pay this level of benefits when they become due [Langbein, 2023: 5–10]. From a risk management perspective, DB plans are more beneficial to employees. After they have worked a certain number of years and have reached a certain age, they get a certain level of benefits. It is the job (and worry) of the fund to make sure that its assets are managed properly and that these benefits are there in the future [Langbein, 2023: 17–18].

In the past 20–30 years many employers, including even unionized ones, have switched to defined contribution (DC) plans, where the employer only needs to make a predetermined contribution to a fund, for example, every month. The employee chooses options on how this money (and any money the employee contributes) is invested (conservative to high-risk). How these investments perform in the market will determine the level of retirement benefits the employee will receive, which may be much higher or much lower than they expect. In this way the investment risk falls on the employee, rather than on the employer or on the fund [Langbein, 2023: 20–31; Jefferson, 2000: 610–617]. In the latest strike called by the United Auto Workers (UAW) in the summer of 2023, however, there was a discussion concerning restoring DB plans for new employees [Doonan, 2023]. This may be the first small sign of swinging the pendulum of pension investment risk back to the employer and to the fund.

[25] "Most jointly managed Taft-Hartley plans involve a dominant union with many employers… Despite the balanced board membership, unions have tended to dominate these jointly managed funds. Indeed, it is '[o]ften… very difficult to distinguish between the pension fund and the union'."

[26] Though noting that Taft-Hartley plans also have defined contribution characteristics, in that the employer contributes a specified amount to the fund, and the fund determines and distributes the defined benefit to the retirees.

ERISA placed a number of minimum funding requirements for DB plans and also placed a fiduciary duty on trustees of all ERISA qualified plans (including DB and DC retirement plans), to manage these funds in the best interests of their beneficiaries [Langbein, 2023: 47]. There were special provisions to enable employees to use their retirement funds to purchase stock in their employer's company, and thereby become owners of the company [Anderson and Stumpff, 2019: 428–429]. The new proposed federal legislation, the Worker Ownership, Readiness, and Knowledge Act (WORK Act), would further encourage worker ownership of companies [Secure 2.0 Act of 2022, at Section 346]. As explained earlier, traditionally, retirement fund assets could not be invested in socially responsible projects with inferior returns. The main goal of a retirement fund is to provide pension benefits. However, presently, retirement funds may select socially responsible investments with equal returns to alternative investments, recognizing that sustainable investments may bring greater returns in the long term [DeSipio, 2023: 173–174].

In the light of these rules, unions have the capacity to steer Taft-Hartley DB fund investments towards companies and entities that will produce good jobs in communities that need them. Likewise, DC funds of unionized employer should also have options in which employees may choose socially responsible investments with similar aims. It is critical, however, that the chosen investments are not merely temporary measures that provide short-term employment, and then quickly collapse. This would be a violation of the funds' fiduciary duties under ERISA and would also potentially deprive retirees of their pension benefits, something that is obviously not in the union's interests.

Instead, unions should target green and other sustainable investments based in communities that need economic support. These could be connected to wind, solar or other alternative clean energy sources, or other types of environmentally friendly businesses. Green investments would have several advantages. Firstly, instead of attempting to prop up dying carbon-based industries, funding green companies or start-ups would have much better long-term prospects. Companies with better chances of longevity would provide workers and communities with that much more stability. Moreover, they would much more likely provide a better return on the fund's investment in the future. Secondly, they would much more likely satisfy the trustees' ERISA fiduciary duties, in contrast to an investment primarily designed to reduce unemployment. While increasing hiring in a depressed community would be a benefit of the investment, focusing on green and sustainable opportunities would on the surface be the primary goal.

Green investments are socially beneficial in their own right, and, independently, often bring a higher return on investment [Miniati, 2021: 9–10[27]]. Once again, the funds ERISA fiduciary duties would be met by opting for a sound investment opportunity. Attempting to back an investment that only sought to increase employment in traditional industries, would face much more legal scrutiny. Finally, tax credits and other government support for *both* environmental sustainability and helping depressed communities, could make the investment that much more profitable.

2.1.3. By public employee retirement funds

The development of retirement funds for public employees took a different path than that of private sector employees. While private sector employees made large gains in unionization in the 1930s, and obtained union-controlled and then mixed Taft-Hartley retirement funds by the late 1940s, public employees did not begin to unionize in large numbers until the 1960s [Prokopf, 2013: 1365–1367]. The Wagner Act and later the National Labor Relations Act (NLRA) gave only private employees the right to join a union and collectively bargain, and, what is more, even purposefully excluded public employees [Prokopf, 2013: 1365–1367; Andreas, 2016]. Consequently, the rights of state and local government employees to unionize had to be determined on a state by state basis. As many states lacked even basic collective bargaining laws, it was a much longer path to obtain these rights [Prokopf, 2013: 1366–1367].

Still, in progressive states such as New York and California, public sector unions were formed and eventually reached their own collective bargaining agreements with state and local entities [Forte, 2018: 182[28]]. However, sometimes retirement benefits were set independently by state law, and were excluded from collective bargaining [Burnham, 2015: 562–564[29]]. In any case, retirement funds were set up and controlled by the states themselves, and unions did not

[27] "[C]limate risk is investment risk… [P]urposeful companies, with better environmental, social, and governance (ESG) profiles, have outperformed their peers. During 2020, 81% of a globally-representative selection of sustainable indexes outperformed their parent benchmarks."

[28] Public sector union density reached 53% in California and 70% in New York.

[29] Citing Rhode Island law that "[a]ny and all matters relating to the employees' retirement system of the state of Rhode Island are excluded as negotiable items in the collective bargaining process."

obtain even partial direct control over their management [Francus, 2023: 1613, No. 156[30]]. In other respects, though, these state controlled public employee pension funds and eventually became more powerful than their private sector, Taft-Hartley counterparts.

Traditionally, public employment offered lower salaries than those given in the private sector. This was offset by more generous fringe benefits, such as better health care, more vacation time and, most significantly, higher retirement benefits. As a result, generous amounts of money were flowing into these state retirement funds [Webber, 2022: 223[31]]. In the larger states, like California, there were millions of public employees, and retirement contributions were made on their behalf to one enormous state fund [Jacoby, 2022: 32[32]]. This exceeded the size of individual or even multi-employer pension funds in the private sector.

Public employee pension funds are excluded from the fiduciary and other related requirements of ERISA, which only covered private retirement plans [Rose, 2018: 899[33]]. While prior to the enactment of ERISA, private companies or even Taft-Hartley funds might mismanage their assets, leaving nothing for retirees, the states could always raise taxes in the future to ensure that their pension funds would pay off any promised benefits. Consequently, there was less risk to retirees and no need to strictly regulate these funds under ERISA. This is not to say that state retirement funds are unregulated. Instead, they are subject to state law, which imposes a general fiduciary standard on their trustees akin to that found in general trust law. As some states began to face financial crises in the 1990s because of underfunded generous pension benefits that were coming due as employees reached retirement age, they chose to add stricter funding regulations and sometimes even tried to roll back the promised benefit levels.

Such pension funds therefore may, in the case of those maintained by larger states like California, at once, have larger assets and are less regulated than their private sector counterparts. Not only are they somewhat less regulated, but at times there are specific legislative acts that permit or require them to make divestments that are in the "public interest" [Rose, 2018: 901] or those that benefit women and minorities [Ohio Public Employees Retirement System,

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[30] "States also have significant control of pension funds (through board selection and legislation…)".

[31] Public pension funds have approximately $4.5 trillion in assets.

[32] Calpers has $500 billion in assets.

[33] "State and local public funds are primarily governed by state constitutions, statutes, regulations, and case law-not ERISA."

2023]. These facts open up special opportunities for socially responsible investing, particularly in restoring employment to declining communities. While unions do not exercise any direct control over these public pension funds, as they would in a Taft-Hartley fund, they can influence these funds' decision making in other ways. Often, there are union trustees appointed to the board of the fund. More importantly, public sector unions are not only collective bargaining agents, but they are also political actors and lobbyists. Their members constitute large voting blocks at the local and state levels, and as a result unions have influence over many political decisions, including pension regulation and even investment decisions [Richardson, 2011: 629–630; Kahan, Rock, 2007: 1060–1061; Webber, 2022: 221–223].

In these circumstances, public pension funds at a minimum should pursue the same socially beneficial investment goals outlined above for Taft-Hartley funds, i.e., green investments that would boost job growth in communities that need it. Because of the extra flexibility provided by some state laws, extra emphasis could be placed on investments that benefit minorities and women. In Ohio, for example, these could be in female and minority owned businesses that plan to develop and operate in underserved communities. Investments could also be made in employee owned businesses. Worker ownership has proven to be more sustainable in cases where the business has managed to remain economically viable. The employees have a greater stake in seeing the company succeed, and as local residents, want it to remain in and benefit the local community, rather than damage it [Chacartegui, 2018: 89]. On the other hand, employees often lack effective managerial experience to effectively run a company, and employee ownership often arises during the death throws of a failing company, in a desperate effort to save jobs. Therefore careful attention must be paid to determine the exact type of worker-owned company which is worthy of investment.

2.2. Union hiring halls

Construction industry unions have always been distinct from mass membership industrial and service unions. They arise out of a tradition dating back to the medieval craft guilds, where skilled workers banded together, honed their skills and operated elaborate apprenticeship programs to train future members of their respective trades. Today, these skills may include plumbing, pipefitting, carpentry, metal work, electrical work, and painting, among others. They are skills that cannot be learned in a short period of time, and instead, require a longer

term training program to acquire. Often, the builder requires not only the basic proficiency in these tasks, but a higher level of talent in order to maintain high quality standards. Because of the nature of their work, construction workers often have radically different work patterns than other types of employees. Their work may be sporadic, depending upon what construction projects are ongoing in the areas in which they live; regular periods of unemployment may be the norm. It is also rather typical for them to work for a number of different employers over the course of even one year. As one construction project finishes, they are hired by a different employer for the next project, and so on [Hayes, 2021: 120–123].

Due to these peculiarities, they were not even covered by the original NLRA, which focused on protecting traditional employment relationships through collective bargaining agreements. By 1947, however, the NLRA was amended to include workers in the construction industry, and this new regulation took a creative form [Foltiny, 2023: 248]. In 1959, Section 8(f) of the NLRA was enacted, which enabled employers and unions to reach special pre-hire collective bargaining agreements [Hayes, 2021: 110]. These agreements set the wages, benefits and other terms and conditions of employment of construction workers that would be hired in any future or current construction project. Moreover, these workers would be often exclusively supplied through a union hiring hall. The hiring hall was typically integrated with union managed apprenticeship programs. These programs trained workers in various skilled building trades, starting from a young age. Qualified workers would register with the hiring hall, indicating they were ready and available for a given type of work, i.e., for carpenters, electricians, plumbers. When a new construction project started, a contractor could contact the hiring hall, inform it of their immediate needs, and the hiring hall would send a worker to that contractor for employment [Hayes, 2021: 120–123].

The hiring hall system was a win-win proposition for the employer, union and worker. The building contractor immediately received a skilled, trained worker to employ on their new project. It was not necessary to negotiate new employment terms with each worker on each new project, since the existing pre-hire agreement with the union covered these terms. This gave the contractor cost certainty, at least with respect to wages and benefits. Unions benefited by finding gainful work for their members. Finally, individual workers received valuable job training from the union's apprenticeship program in a skilled field, and the union found high-wage work for them on their behalf [Fisk, 2020: 25].

While hiring halls exist in somewhat of a large but at the same time niche field – the construction industry – there have been proposals to expand the concept to help redevelop communities in need. For-profit employment and temporary agencies already exist for low wage, unskilled workers, and they assist in placing them relatively quickly in basic types of employment (at supermarkets, etc.). However, they are often predatory, potentially limiting the ability of the workers to become permanent employees at the businesses to which they are assigned to work. Furthermore, the work involved is not well paid and would not in any case offer much hope for future improvement or advancement [Fisk, 2020: 25].

Union-style hiring halls, in contrast, would emphasize training local people in jobs that required some level of skill and were in demand. In the recent past these were coding jobs and work in health care fields, but today they could include other high tech work and environmentally sustainable green jobs. These hiring halls could operate in conjunction with community job centers and other related local non-profit organizations. This is because Section 8(f) of the NLRA – which permits pre-hire agreements between unions and employers – is limited to the construction industry, and not all new jobs in these communities will belong to that field. Therefore, in order to provide broader job placement and support services, a new kind of hybrid entity must be created; it should be led by unions and community organizations, and operate outside the confines of the NLRA. In exchange for enjoying the benefits of such a job referral service, employers could agree to maintain certain prearranged, higher wage and benefit levels, and pledge to be open to unionization [Fisk, 2020: 25–35].

2.3. Relative merits of a union-centered approach

To the extent that governments no longer have the resources to reduce unemployment and provide job training in underserved communities, they should turn to labor unions for help as their first alternative option. Unions, through related private and public pension funds, have financial resources that may in certain circumstances be directed to socially responsible and sustainable goals, such as community redevelopment and the expansion of employment opportunities. Moreover, union structures such as hiring halls may be adopted as a more efficient means to provide employment in these communities.

Equally important, unions possess the requisite expertise, motivation and even empathy to best serve the goal of increasing the amount of good jobs in

communities that need them. They are not dispassionate investors. Rather, they serve the interest of working people and can assist them and the towns in which they live in a way that is focused on their long-term interests, rather than any short-term gain. In this way a union-centered approach truly serves the goal of *sustainable* development.

3. Neoliberal models – social impact bonds

3.1. Privatizing government services, such as job training and reducing unemployment

Neoliberal economic theory in general holds that private businesses are more efficient in providing services than government bureaucracy [Titolo, 2012: 493–494[34]]. Private entities, operating under a profit model, have more incentive to provide better value at a lower cost. In contrast, the government, while ultimately answerable to the public through periodic elections, is slow, costly, and not very innovative. Consequently, government services should be privatized whenever possible. This results in a win-win scenario for the private contractor (more profit), for the government (less expenditure with better results) and for the public (which receives higher quality services at a lower tax cost) [Titolo, 2012: 494].

Traditionally, privatization efforts began in non-essential government services, while core functions (like safety and defense) remained public. Over time, even core public services, such as prisons and elements of defense, were opened for private contractors to run and maintain [Feldman, 2023: 695[35]]. In this context, it is unsurprising that traditional government functions such as reducing unemployment, job training and community redevelopment have also been subjected to privatization. This has primarily been accomplished through a social impact bond model.

[34] "The symbolic centerpiece of neoliberal, market-based governance is privatization, which refers to "the use of the private sector in the provision of a good or service, the components of which include financing, operations (supplying, production, delivery), and quality control." In the context of U.S. domestic policy, privatization refers to contracting out traditional government functions to the private sector…"

[35] "Neoliberals pushed for the privatization of numerous government institutions, such as prisons, schools, policing, and even the military."

3.2. The social impact bond model

3.2.1. Structure

Social impact bonds (SIBs), also known as pay for success contracts [Burand, 2019: 4), bring in private investors to solve often intractable problems, such as reducing unemployment and reducing crime, as well as job placement and education. The government may lack money and expertise to provide for these types of social services and solve these problems, yet if these services are not provided, the government loses more money because of higher social costs (increased incarceration, temporary housing for the homeless, etc.). With SIBs, investors provide capital to cure social problems, and make money while doing so. The risk of investment lies with the investor, and not with the financially strapped government [Leventhal, 2013: 525–530; Toussaint, 2019: 343–344].

In a SIB, investors promise to achieve a certain benchmark over a certain period of time [Jones, 2017: 358]. In the area of unemployment, for example, they might agree to take measures that would reduce unemployment in a certain community or among a certain group (migrants) from 8% to 5% over a three-year period. If the goal was completely realized, the investor would receive an agreed upon rate of return on their investment. Other variations, whereby the investor receives a partial return on investment if the benchmarks are partially achieved, are also possible. In either case, the objective is to provide a strong financial incentive for the investor to achieve the previously agreed upon goals. Theoretically, the profits realized by the investor are financed by government savings. For example, in an SIB where the investor promises to ensure that a certain high percentage of people released from prison will become gainfully employed, the attainment of these goals saves the public authorities large amounts of money by dispensing them with the obligation to incarcerate these prisoners. It also saves money by reducing the costs of increased community crime rates. In this example, whatever sums are paid to the investor, they are outweighed by the savings realized by not sending these people back to prison [Jones, 2017: 362–368].

While the form of SIBs may vary to some degree, they mostly have the same participants and structure. The actors in an SIB include: 1) an underserved population, 2) a government entity, 3) investors, 4) social service providers (NGOs), 5) intermediary organization (which structures the deal, and brings parties together; this may be a law firm or a financial services firm) and 6) program evalu-

ator(s) [Toussaint, 2018: 169]. In the example given above, involving reducing unemployment, these actors would be a local community (perhaps with a high concentration of minorities or migrants) facing high unemployment; a state or local government entity (a state, town, or department of labor/unemployment agency); investors; NGOs with expertise in reducing unemployment and helping a specific minority community, charged with achieving the specific benchmarks; a consulting or other firm that would link the investor with the government body and prepare the deal; and an independent evaluator, to determine whether the benchmarks were met.

Before an SIB is implemented, certain preliminary steps must be taken first. These include a feasibility study, where the investors and public bodies can determine if a positive outcome could reasonably be achieved [Toussaint, 2018: 170]. Next, a realistic timeframe is set – while the parties may agree that unemployment can be reduced by a certain percentage, they then must determine over what amount of time this may be accomplished. Qualified NGOs then should be found that are capable of achieving the agreed upon outcomes. In this regard the previous track records of the NGOs in helping to solve similar problems will be carefully examined. Finally, favorable political conditions must exist so that the investor and the public body can actually agree upon and consummate the deal. In some communities, labor unions and other local organizations may be opposed to the privatization of government services, and may exert pressure on politicians to reject any SIB. These considerations must be taken into account in advance to determine if the political will exists to enter into an SIB [Toussaint, 2018: 170–174].

If all these preliminary considerations are satisfied, then the structure of the deal must be ironed out. While SIBs are nominally labeled as bonds, as noted earlier, more accurately they are a type of pay for performance the contract, and therefore take the form of a contract. The length of contract and specific performance indicators are agreed upon. The conditions for and amount of payments to the investor are likewise set forth in the contract. Oversight and reporting requirements are also specified, as well as the identity of the performance evaluator [Burand, 2019: 14–15]. The process of program evaluation may be split in two parts: a) independent review of benchmarks and b) ongoing evaluation and monitoring [Humphries, 2013: 438]. This is a form of risk management, so that any early problems can be identified and resolved, as opposed to waiting until the end of the contact and only then realizing that the goals have no hope of being attained. A termination provision is also usually included, enabling

either the public entity or the investor to pullout early if the SIB's goals clearly will not be met, and specifying any financial penalties for early withdrawal [Burand, 2019: 14–15].

3.3. Investment and legal framework

Since SIBs are actually contracts, no special rules or regulations governing the issuance of bonds are necessary. Still, normal investment considerations are present, such as the need to balance risk versus reward. The higher the risk involved, the higher the return will be on the investment, and vice versa. Innovative and untested programs, designed to solve unresolved long term problems (continuously high unemployment, for example), would be risky but should offer the highest return. In contrast, if the SIB is merely privatizing a preexisting government program that has already achieved repeated success, the investor's anticipated profits would be considerably lower [Toussaint, 2018: 177–180].

Investors will also usually seek to avoid the total loss of their investment through various risk management mechanisms [Burand, 2019: 29–34]. These include provisions guaranteeing the disbursement of the investment in installments, rather than everything up front; early termination clauses; and a government or foundation guarantee for part of the investment. With respect to the latter point, in one high profile SIB involving avoiding the recidivism of released prisoners at the notorious Riker's Island prison in New York City, the then-Mayor's personal foundation (the Bloomberg Foundation) guaranteed a large portion of the private investment in the SIB [Toussaint, 2018: 196]. Such guarantees stimulate otherwise reluctant investors into taking a chance on this type of novel investment opportunity.

Certain taxation [Mazur, 2017] and regulatory questions exist, but since SIBs are treated as contracts rather than bonds, normal contract law principles apply. Specific SIB related legislation primarily deals with feasibility studies, providing startup funding that would enable such contracts, and ensuring some level of security for the investor. The federal Social Impact Partnerships to Pay for Results Act of February 2018, for example, dispersed almost $100 million in grants for SIBs [Burand, 2019: 5–6). A number of states have also passed similar kinds of laws to fund SIBs in the fields of education and employment [Burand, 2019: 5–6).

3.3.1. Examples

The first major SIB in the U.S. was at Riker's Island prison, as noted above. Goldman Sachs provided a $9.6 million investment, and retained an NGO to achieve a 10–20% reduction in recidivism for 3000 under-18 male prisoners. If this benchmark was achieved, Goldman Sachs stood to receive up to $2.12 million in profit. In order to make the conditions of the SIB more attractive, the Bloomberg Foundation guaranteed $7.2 million of Goldman Sachs' investment. However, the SIB failed after 3 years [Jones, 2017: 359–362].

However, following this failure, Goldman Sachs moved forward and backed another SIB in Salt Lake City, Utah. The aim of the SIB was to avoid the placement of pre-kindergarten (Pre-K) kids in expensive special education programs. Goldman Sachs and other investors backed the SIB with $6.8 million in funds. This time the SIB was a success. Out of 104 children in the program, only one needed to be placed in special educational centers afterwards. The investors received a 5% return pursuant to the terms of the SIB. In addition, because of the positive publicity received from the success of the SIB, Goldman later raised $150 million for future investments in SIBs [Jones, 2017: 372–374].

In Philadelphia, Pennsylvania, an SIB was reached whereby 75 local employees would be trained by an NGO (Philadelphia Works) for various jobs at Comcast over a period of 3 years, starting in 2020. Comcast is a large Internet and telecommunications service provider based in Philadelphia. If the training program was successful, and the workers were hired and retained by Comcast (i.e., benchmarks were met), Comcast agreed to pay for a part of the costs of training. These funds could then be reinvested by the NGO and used for future training programs. The initial costs of the training by Philadelphia Works were covered by a $420,000 grant issued by two other NGOs [Gross, 2023]. Towards the end of the three year term, Philadelphia Works referred 18 candidates to Comcast, of which 5 were provided with full time employment [*Exploring Pay…*, 2023].

3.3.2. Success and criticism

Seen in their best light, SIBs provide funds for serious social problems, where no funds otherwise exist. There is no or little risk for the tax payer, since the investor is not paid in full unless the agreed-upon benchmarks are met. Arguably the cost of any payments made by the public body is offset by the savings

created by the success of the SIB. Each person who is working in a permanent, reasonably paid job, creates savings in unemployment benefits paid out by the state, increased revenue in the form of employment taxes, and a reduction in social ills associated with long term unemployment (crime, drug and alcohol addiction) that would also be otherwise costly for the state to resolve. SIBs may also offer better quality control systems than that found in local or state government bureaucracy. If the NGOs utilized by the investors are clearly not working towards meeting the benchmarks, their behavior may be either corrected, or the SIB may end through the invocation of an early termination provision.

On the other hand, SIBs are a part of the model of privatization, with most of the negative connotation that term brings. In many cases, well-functioning government programs are replaced, as these offer the least amount of risks for investors. Moreover, with SIBs, there are few incentives for NGOs to perform; it is the investor that bears the risk of the benchmarks not being met, and not the NGO hired to achieve these results. There have also been serious accusations of corruption and the manipulation of the results by investors. In education-related SIBs, the NGO may be pushed to certify that the educational benchmarks have been met, even though, in fact, the students have not improved their performance. Finally, to the extent the SIB fails, critical time has been lost and the government must move in to provide core services to the public [Toussaint, 2018: 212].

Unions are almost universally opposed to SIBs, seeing them as an expansion of privatization. Privatization, in turn, accelerates the decline of unions in the U.S., since the public sector is one area of stability with respect to American unionization rates. In this way, whatever the case by case success rates of SIBs, overall their use will reduce the power of unions to help working people.[36]

4. Conclusions

Clearly government resources are strained, and the problem of unemployment in and among certain communities may seem intractable. The tendencies may be exacerbated in the Green Transition, as fossil fuel-based industries are replaced by ones more reliant on clean energy. In those communities in which the old industries were based, effective job training and reinvestment programs will be

[36] Consequently, using union controlled or influenced investment funds to support SIBs would not be a feasible option.

essential to avoid localized mass unemployment. Likewise, if migration trends to the U.S. persist, there will be geographic areas that need help in training and employing these new arrivals (many of which have a variety of serious needs, not the least of which is obtaining language skills).

On the surface, SIBs seem to provide a solution to this dilemma. They are a low-cost, low-risk way to provide solutions to social problems that the government is not capable of offering. The reality is somewhat different. They accelerate the process of privatization, which weakens state institutions and unions, which otherwise would support workers over the long term. SIBs also tend to replace and duplicate successful government programs, and so in those cases they do not add any innovative solutions to difficult social problems such as unemployment. While SIBs may have early termination clauses, time still may be wasted while a determination is made as to whether the program is a failure or not. There may also be a tendency to err on the side of letting the SIB go forward, despite its initial problems, to give the investor an opportunity to correct these problems. This could result in the additional loss of time. More fundamentally, investors in SIBs do not share the interest of the underserved population that the SIBs are designed to help. The interest of the investor is to maximize profit, and this may result in certain manipulations of the SIB evaluation process to ensure that benchmarks have been met.

Consequently, to the extent the government needs to enlist outside help to solve unemployment and related social problems, and labor unions would therefore be a more natural – and sustainable partner. Through their control and influence over private and public sector employee pension funds, they can direct the funds' substantial investments towards reducing unemployment, job training and community redevelopment. While legal restrictions exist that limit pension funds' ability to invest in risky projects or those with lower returns, new rules have added additional flexibility in the case of sustainable and social responsible investments. These rules recognize the trend that socially responsible investing actually produces a higher rate of return over the long term. Unions can also assist with job training and placement by adapting the hiring hall concept to economically depressed communities. Hiring halls traditionally send qualified job applicants (trained by the union) to employers with immediate hiring needs, particularly in the construction industry. These jobs tend to be unionized and highly paid. This hiring hall model could be expanded to include non-construction (but still in-demand) jobs, as well as a role for local and community groups to manage the hiring hall itself.

Unions, rather than traditional financial investors, are the key to helping governments solve difficult, employed-related social issues. Indeed, this is a core purpose of the labor movement itself, to do as much as possible to help working people. Harnessing this desire will be the key to governments effectively addressing these problems going forward.

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