With the rise of institutional investment there was early excitement for some, and consternation for others, about “pension fund socialism” (Drucker 1976) brought about by the ability of organized labor to exert a new form of power by taking control of their workers’ capital. The argument is that pensions are deferred wages because they have often been collectively bargained as a trade-off for increased wages or other benefits in the current moment.

As deferred wages, pension monies belong to workers and could or should be leveraged toward investments that help working people and their communities. This is in contrast to leaving pension fund dollars in the hands of the financial industry, which, as recent research has shown, often acts against the real economy and the economic interests of working people (Appelbaum and Batt 2014; Webber 2014).

Pension Plan Governance Structure

To access this control, unions must be in a governance position vis-à-vis the pension plan. There are two levels of governance. The first level is that of the sponsor. The plan sponsor is responsible for establishing, designing, and terminating the plan, as well as for setting the benefit structure and contribution levels. In plans that are tied to employment, a number of sponsorship arrangements exist. The employer as sole sponsor is arguably the most common arrangement. In multi-employer pension plans (MEPPs), the employer is a composite of all the companies participating in the plan.

In another model, common in the building trades, the union is the sole sponsor. A third model is the jointly sponsored pension plan (JSPP), which has become increasingly common in the public sector. In this model, the plan sponsors are made up of employers and unions or of a consolidated employer sponsor and a consolidated labor sponsor. In another variant of the joint model many stakeholders are individually represented at the sponsor table in a multi-sponsor arrangement.

However, being a plan sponsor does not give unions control over how pension money is invested once it has been contributed to the fund. Pension fund investments are directed by a second governance body. This is called the plan’s administrative or fiduciary body: the board of trustees. This board carries the legal fiduciary duty to ensure the long-term health of the plan to fulfill the “pension promise” for its beneficiaries.

It has become common even
within sole sponsorship arrangements, and virtually universal in dual and multi-sponsor arrangements, to have broad stakeholder representation at the administrative table. These pension plans are said to be jointly trusteed: the seats at the board could be occupied by those designated to the employer, plan members (active or retired, either as represented by organized labor or not), and/or government appointees and/or independent trustees, as applicable.

**Labor Seats**

Over the past few decades, labor has been successful in English-speaking countries such as the United Kingdom, the United States, Canada, Australia, and New Zealand in gaining seats on boards of trustees. Though specific policies vary by country, region, sector, type of plan, and union, member representatives of the plan have come to the board through a variety of routes. For instance, in the United Kingdom, it is legislated that one-third of members of the pension board be nominated by the plan beneficiaries.

In the province of Quebec, Canada, legislation requires a minimum of one representative of active members, one of inactive (i.e., retired) members, and one independent of either the members or the employer. In the United States, MEPPs in unionized environments (Taft-Hartley funds) are jointly sponsored, and labor trustees make up half the seats on the board. Similarly, MEPPs in Canada are often jointly sponsored by labor and management, but they can also be 100 percent union-trusted plans. Most public sector plans in Canada and the United States have moved or are moving to a joint trusteeship model.

**Labor’s Voice**

Despite the increased number of labor trustees on pension boards, the ability of unions to reorient the investment landscape toward socially democratic goals is limited. Our research has shown that labor trustees face a number of specific challenges that reduce the impact of a unique labor voice (Weststar and Verma 2007; 2008).

First, labor trustees face a steep learning curve to become proficient in the legal, actuarial, and financial technicalities of pension plans. This perceived lack of competence and labeling labor trustees as “outsiders” can marginalize and delegitimize them (Sayce and Ozbilgin 2014), which in turn can decrease their participation. For instance, we found that labor trustees participated more in administrative tasks such as the interpretation and application of plan rules than in tasks relating to investment decisions and monitoring (Verma and Weststar 2011).

The training and networking opportunities available specifically for labor trustees are piecemeal, and general pension-trustee training is offered by financial service providers through a traditional financial lens. We found that most labor trustees fulfill their role independently from their union sponsor and that many see a direct contradiction in bringing a “labor hat” to the table. This is true even for union staffers and officials. There is a strongly reinforced sense among pension trustees that representing a constituency poses an unacceptable conflict of interest with fiduciary duty. As such, there is often limited or nonexistent accountability, feedback, or support systems to connect trustees with their plan sponsor.

Last, many trustees are in a minority position at the table of largely employer representatives. For instance, the legislation that mandates member representation in the United Kingdom and in the Canadian province of Quebec does not stipulate equal member-employer representation. As well, even in cases where the union and employer seats are equal, the individual union seats may be allocated to different unions that have different priorities and constraints.

Though it may be expected that labor trustees bring a fundamentally different worldview to the pension board table, in fact the voice of labor is depoliticized. Many feel that this is entirely appropriate. Indeed, one labor trustee told us very clearly that pension funds are conservative investors and must be so to protect retirement savings over the long term. Numerous others were also clear on this point: that it would be unacceptable for pension plans to engage in undue risk or be innovators. One labor trustee used an analogy, saying that he could make the choice to take his own money to Las Vegas but that this option was not and should never be on the table for a pension trustee.

However, ample evidence exists that pension funds do innovate and do take risks. They are on the vanguard of infrastructure investment and, as numerous trustees recounted to us, deeply involved as investors in public-private partnerships and in privatized utilities all over the world. In some cases, the strong interest in infrastructure and utilities investment by public pension funds provides behind-the-scenes incentives for the privatization of these services.

One Canadian labor trustee told us about how, to assess interest, the provincial government once quietly proffered the sale of a highway in what he called the “jungle network.” The highway was never ultimately privatized, but the story suggests that government was looking at all of its options and took the time to determine the interest of large public pension funds as private investors.

There is also evidence that pension funds regularly invest in hedge funds and through private equity. In their recent book, *Private Equity at Work*, Appelbaum and Batt (2014) reported that 35 percent to 70 percent of the investment capital in private equity firms is from institutional pension plans. Moreover, this investment takes place even though there is much evidence of the predatory nature of private equity firms that often practice aggressive and lean managerial techniques, employment
losses, and closures of acquired firms.

So it seems that there is a double standard: innovation and risk are acceptable in certain quarters—those advocated by the financial community—but not in others. Despite the popularization of socially responsible investing or environmental, social, and governance movement, labor trustees tell us that they struggle to make the case for investments that may be targeted at some social benefit to workers and/or their communities. If the case for an ethical investment cannot be clearly made on financial grounds, it is dead in the water, with only a few exceptions, such as a product deemed illegal by international accords (like landmines or cluster bombs) or investment in a country that has been sanctioned by international organizations.

Contradictions for Labor

Through labor’s participation in institutional investment, then, the role of labor has become quite contradictory, and the ability of the labor movement to respond is compromised due to their embeddedness in the framework of financialized capitalism. The contradictions arise because labor trustees, in their role as fiduciaries to the pension fund, are complicit in investment decisions that seem to work against workers, sometimes the very workers they are serving.

For example, in “The Use and Abuse of Labor’s Capital,” Webber (2014) wrote about how in 2007 the Middlesex County Retirement System invested in food service giant Aramark, which subsequently underbids the union contract of the plan beneficiaries at a local school and caused reduced wages and job losses.

More recently, in 2013, the Teachers’ Plan of Ontario purchased Busy Bees nursery, the largest for-profit child care chain in Britain. According to media reports, the deal would allow the nursery chain to expand into new global markets. There is more than a little irony in this situation, in which a pension plan composed of money from workers who fight rigorously to maintain a public education system in their home country becomes a primary owner of a profit-driven nursery chain in the United Kingdom, which has its sights on global expansion.

Labor trustees are mired directly in these contradictions. Many of them understand that and acknowledge it, but they can do little to stop it. A few quotes from our interviews are illustrative:

- “This is sort of a doctrinaire position—people have a belief that to earn money off a social service is a sin. But if a for-profit operation could offer good service and good value, and they showed us an adequate income string, we wouldn’t rule it out.”
- “So we do engage in a private operation of public business. We recently bought [utility companies in the United States, the United Kingdom, and South America]. So all of these things occur and they represent long-term income streams, because our horizon is 70 years. . . . Utilities are a deal for a pension. We’re buying larger companies in the eastern seaboard of the United States. A lot of them are already private, so when they’re on the block they’re done. . . . I mean, once they’re on the block, the cake’s pretty much cooked. It’s just who’s going to eat it.”
- “But there’s not just ethics. There’s also the philosophical differences. . . . We also through . . . an infrastructure fund, own some [international solar power and water distribution utilities]. . . . Philosophically, I’m opposed to [privately owned infrastructure]. They would have sold us the [local highway] probably about 10 years ago for a billion dollars. Now, ultimately, they didn’t privatize [it], which I happen to agree with as a taxpayer. But you can bet if they were going to sell it, I’d be lining right up front to buy it on behalf of our participants. Because it was a hell of a good return.”
- “I don’t like it but I hold my nose because I recognize if I just stick to bonds, I’m at 2.2 percent [annual return], and we’re not paying the kind of pensions our members want at 2.2 percent.”

The issues that we do run into, very few investments would be disqualified on those grounds [United Nations Principles of Responsible Investing], and our policies are probably not as watertight as we would like them to be. And it is also difficult if you run into an organization that is anti-union. So for example, I was asked by our [union], does the plan have an investment in [company name] and yes we did at the time. However, it met all of the criteria that we have in place. There was nothing other than that they were complete a-holes to the union workforce, sorry for that. But there were no criteria that excluded them from something that we could invest in.

We don’t invest in a company that way. We invest through private equity. I couldn’t tell you, necessarily, if some of the private equity is having bad labor practices. I mean, I don’t know. . . . We have screens, but could it happen? Yeah, it could happen.

Our research challenges the assumption that there is a “labor worldview” that can be brought to bear on pension board decision making. Our findings suggest that labor trustees are somewhat isolated and depoliticized individuals within a conservative legal and financial framework that is very resistant to change. Our research also shows evidence of differential actions by labor trustees at the representational level and at the investment level, but these actions are not universal and are often contradictory.

At the representational level, some labor trustees take on what we call a protectionist role. In this role, protecting...
the pensions of plan beneficiaries and working within the mechanics of the plan to provide the best benefit for members trumps all other considerations. It is highly consistent with the role of unions to provide mutual assurance for their members, but it is, nonetheless, an extrapolation of the business unionism philosophy.

When it comes to investment decisions, some labor trustees take on what we call an activist role. In this role, labor trustees act as supporters of the contemporary norms of socially responsible investing. Both roles are ultimately subservient to the financial role of fiduciary duty. The activist role cannot exist and will not be tolerated if it violates the protectionist role. The supremacy of the financial role, therefore, leads to conflicts between the protectionist and activist roles.

Labor trustees, as fiduciaries, are complicit in investment decisions that seem to work against the very workers they are serving. What is the option for unions in this contradictory space? Unions must first bring the implications of their involvement in a system of financialized capital to the forefront of their discussions about pension plan involvement. Only in so doing will unions and labor trustees be able to develop a shared worldview reflecting their goals in pension fund governance. They also need to create a tighter link between internal union governance and pension fund governance so that their actions within the pension fund are consistent with union governance priorities.

Our research suggests that when these conditions are met, some unions on certain issues have been able to project their power and influence onto the pension board to sway decisions. Unions must engage in critical dialogue to find a way to fight for and extend both the protectionist role and the activist role in mutually inclusive ways, rather than accepting the impossibility of one in the face of the other.

References