PROJECT LABOR AGREEMENTS:

UNION MONOPOLY IN PUBLIC WORKS CONSTRUCTION

A study by Carl F. Horowitz
for:

NATIONAL INSTITUTE FOR LABOR RELATIONS RESEARCH
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INTRODUCTION

Boston's Central Artery/Tunnel Project quickly acquired the nickname, "the Big Dig." But even the most cynical observers did not immediately assume this project would become best known for digging holes in the pockets of taxpayers rather than tunnels under the floor of Boston Harbor. When construction began about a decade and a half ago, public officials estimated the 7.5 mile-long highway network would cost about $2.5 billion. One only could have hoped. The projected tab would balloon to $7.5 billion, then to $10 billion, and then again to $14.6 billion. That "final" figure, at nearly $2 billion a mile, is set to go even higher. Local newspaper investigations last year revealed that the nearly completed tunnel system had sprung hundreds of leaks requiring years, maybe even a decade or more, to fix.

What went wrong? How could it cost taxpayers six times the originally projected amount to build a network with potentially lethal structural deficiencies? The "Big Dig" fiasco has several causes, but one in particular crops up with regularity in troubled taxpayer-funded construction: a *project labor agreement*. Project labor agreements, or PLAs, have been around since the 1930s. But they have become an increasingly common means for unions to exercise, directly or indirectly, monopoly power over labor markets since the U.S. Supreme Court gave them the green light in 1993 – in a ruling involving another massive Boston project. Less than 15% of America's private-sector hardhat

labor force currently belongs to a union, but PLAs ensure that many of the most lucrative projects are effectively union-only.

A project labor agreement is a negotiated settlement between: 1) a construction owner, and/or its designated general contractor(s); and 2) a group of labor unions, usually a state or local building-trades council. The pact is drawn up before onsite work begins. Unlike other types of prehire agreements, PLAs last only for the duration of the project. Moreover, they are typically applied to public works projects such as schools, stadiums, pollution control plants, and bridges – projects, in other words, either owned or funded by government.

Proponents portray PLAs as even-handed attempts to adjudicate conflicts between a general contractor and union officials before they degenerate into a strike or a lockout, that is, as a sensible way of smoothing out differences. But such rhetoric is at odds with reality. In both intent and practice, a PLA binds a contractor and all subcontractors to Organized Labor-dictated terms and conditions of employment. While nonunion contractors are eligible to submit bids, they must sign the PLA if they win a contract – no PLA, no work. In some cases, if a contractor is deemed (by a government agency) to have a "poor" labor record, it may be ineligible to bid in the first place. Though agreements inevitably differ, virtually all require a construction owner/contractor to hire mainly or entirely union-affiliated workers; go through a union hiring hall to obtain additional workers; obey union work rules, job classifications, and arbitration procedures; and contribute to union benefit plans.

In return for these concessions, union officials agree not to call a strike or otherwise delay project completion. A PLA effectively forces open-shop (or "merit-

shop") contractors to mimic a union shop, and thus lose their competitive edge, as the price of obtaining labor peace. As a result, many open-shop contractors won't bother to submit a bid in the first place. By virtually guaranteeing work for union-shop contractors, a PLA effectively adds to construction union officials' membership and dues revenues. But the union never has to go through the process of winning an election and then being certified as a collective bargaining agent.

Project labor agreements have become a hot issue in large measure because of the amount of money on the line. Though no research has yet come up with a nationwide composite annual figure, there is no doubt that huge sums are spent, and not just in Boston, steering construction and renovation of highways, bridges, airports, stadiums, prisons, and other public facilities toward unions and allied contractors. Safeco Field, the new home of the Seattle Mariners Major League Baseball team, had a PLA and cost $517 million to build, far more than the initial projected figure of $320 million. A PLA established prior to the expansion and renovation of San Francisco International Airport contributed to cost overruns of nearly $260 million well before project completion. Separate recent studies of school projects in Connecticut and Greater Boston by the Beacon Hill Institute at Boston's Suffolk University concluded that PLAs significantly raised costs. In the end, the public pays the price, whether in the form of higher taxes or user fees, while open-shop employees usually get shut out of the project.

Union officials defend PLAs as necessary to protect job security. Construction employment, being generally seasonal and temporary, means that employees come and go, moving to another project – and to another employer. Because turnover is high, construction workers have little ability to obtain union representation through normal

means, PLA advocates claim. A PLA facilitates unionization, they continue, without harming the interests of contractors, whether they are open or closed shop. By entering into an agreement, open-shop contractors avoid strikes resulting from the expiration of union agreements at their subcontracting firms; enjoy the "consistency" provided by uniform work rules; and gain steady access to a skilled labor force through the union hiring hall "referral system." These agreements also purportedly assure the public of "high-quality work," completed on time and at a reasonable cost. PLAs, in short, create a level playing field. That's the American way.

So goes Organized Labor's version of the story. Unfortunately, these noble-sounding assertions camouflage the real effect of PLAs: union monopoly over the local labor supply. The "success" of such an agreement in averting strikes and other work delays, when it occurs, merely reflects the fact that employers who were warned, "Here's an offer you can't refuse," accepted the offer. The substance of a PLA, like the methods used to obtain it, is bullying. The wording explicitly states that employers who don't sign it will have their contract awards rescinded – and their employees made jobless. Union officials recognize the power of PLAs either to steer work toward union-shop contractors or to force open-shop contractors to behave the same as their union-shop counterparts. Both have the same result of restricting labor market entry. When open-shop contractors, and public officials sympathetic to their plight, wind up signing PLAs, they do so only out of concern the cost of not signing on will be even greater.

In reality, resistance to PLAs has been substantial. On many occasions, a state or local chapter of Associated Builders and Contractors, Inc. (ABC), an Arlington, Va.-based trade group of open-shop contractors, has gone to court to prevent an agreement

from being established or taking effect. Three states, Ohio, Montana, and Utah, have explicitly barred PLAs, though Ohio's law was invalidated in late 2002 by the state Supreme Court. Moreover, in February 2001, only weeks after assuming office, President George W. Bush issued Executive Order 13202, virtually banning the use of union-only contracts on federal construction projects, a move that survived a lengthy union lawsuit. The 108th Congress (2003-04) produced two bills, one introduced by Rep. John Sullivan, R-Okla., and the other by Rep. Sam Johnson, R-Texas, to restrict the use of PLAs. Lawmakers did not act upon either measure. Meanwhile, state supreme courts in California, Iowa, Ohio, and elsewhere have upheld the authority of unions and states/localities to draw up PLAs; however, courts in Massachusetts, New Jersey, and New York have limited this authority.

The issue is far from resolved, in the courts or anywhere else. Each side is fully armed with arguments and ready for debate. That is why a full-length critique of PLAs is necessary. Before state and local governments accept union officials' claims that these agreements "work," they should get an idea of what they are getting into. This report explains how the issue arose, how unions go about establishing PLAs, and why these agreements are ultimately harmful to the general public. Project labor agreements are without question of benefit to union officials, union-shop contractors, and government officials allied with them. As a rule, products of political connections and, on occasion, intimidation benefit somebody. But by restricting the pool of bidders to those who play ball the union way, PLAs greatly inflate the cost of public works. Productivity, workmanship, and worker safety are on average not notably better under PLAs, and may be worse. To conclude, this report discusses the range of alternatives through which

public officials may curb PLAs. Enactment of Right to Work legislation barring forced union membership, dues, and agency fees is a necessary, though not foolproof, safeguard against their use.

ORGANIZED LABOR IN CONSTRUCTION: UNIQUE – AND UNIQUELY PROTECTED

Economic and Legal Rationales

Project labor agreements have received much attention in the last dozen years, but they have been in use for many decades. The Grand Coulee Dam (1938) and the Shasta Dam (1940) were early examples of projects built through negotiated agreements. Later prominent examples include the St. Lawrence Seaway, Cobo Hall, O'Hare International Airport, the Kennedy Space Center, the Oak Ridge nuclear research facility, the BART (Bay Area Rapid Transit) rail system, and the Trans-Alaska Pipeline. But a longstanding practice is not necessarily a legally or economically sound one. The reality is that the aura of success surrounding PLAs is attributable to their stifling of labor market competition. The visible manifestation of an agreement – a completed project – may induce people to say that the arrangement has "worked." Look at that beautiful new bridge – and over there, that new hospital – they never would have happened without a PLA! That's how union officials want the public to think about the issue. But what they do not want the public to think about is the possibility that such projects could have been completed without a PLA, and over a shorter period and at a lower cost. PLAs benefit union officials and contractors and politicians who are aligned with them. Everyone else – open-shop employers who seek to remain independent, their employees, and most

broadly, the general public – pays a price. Of course, PLA apologists see things differently. They contend it's only fair that government policy should tilt the playing field in favor of unionizing construction employees because of the special nature of the business.

Construction employment is normally transient. Whatever the trade of a worker (mason, electrician, sheet metal worker, etc.), he typically works on a given project for several months, at most a year or two. Beyond that point, assuming there is work available, he moves on to the next project, which may or may not involve the same contractor. The pay is above average, and the work has been relatively plentiful in recent years. Yet with the possible exceptions of foremen and "core" workers with seniority, turnover tends to be high. Construction workers are in many respects the blue-collar equivalent of free-lance writers. During an economic downturn or unseasonably bad weather, many months may pass before a worker can latch onto another project. And the innate instability of the employee's position appears to dampen his enthusiasm for joining a union.

On the other side of the fence, construction company owners/contractors also must deal with instability. They do not want to worry about disputes over work rules, pay scales, benefit levels, job classifications, and other conditions of employment once the project gets moving. Such disputes raise the likelihood of a strike – and it only takes one disgruntled onsite hardhat union to put an entire project in jeopardy. Contractors also want to avoid having to resolve jurisdictional task disputes (i.e., who gets to do what) between two or more unions. They may not particularly like unions, but if dealing with them is a manageable cost of doing business, they will deal. What matters most is the

availability of a steady supply of workers ready, willing, and able to do a job properly. This is also true among elected public officials. One thing a politician never wants to see happen on his watch is voters turn against him because of construction delays on a promised stadium or school.

Minimization of risk is a common objective. Other things being equal, workers and construction firms prefer jobs that they can count on to keep the money coming in for a long time. It follows from this, as a corollary, that workers and firms will make certain concessions they otherwise might not make in order to participate in larger projects. From the standpoint of both management and labor, it makes sense to forgo certain interests in order to receive assurances against economic calamity.

The National Labor Relations Act (NLRA) of 1935, or the Wagner Act, normally bars employers from recognizing as an "exclusive" collective bargaining agent any labor organization that hasn't in some way demonstrated majority worker support. (Whether the law should under any circumstances authorize a union to act as the "exclusive" spokesmen for a group of workers, including union members and nonmembers alike, is a question to be addressed at the end of this paper.) From the very start, union officials have claimed that furnishing advance evidence of majority support was excessively burdensome in the construction industry, and many union-friendly contractors have agreed. The National Labor Relations Board (NLRB), created by the act, tended to refrain from reviewing complaints about this "burden." The Taft-Hartley amendments of 1947 encouraged the board to address Organized Labor's complaints by enhancing its review powers. Yet NLRB rulings could not be reconciled with the statutory language specifying that exclusive representation could be implemented only *after* the hiring of a

representative number of employees.[1] Common practices were clearly at odds with the law. While the short-term nature of construction work prohibited the development of sustained employer-employee relationships, the construction industry was operating at a peak level of unionization. In 1947, the year of Taft-Hartley, 87.1 percent of all U.S. construction workers belonged to a union.[2] Political pressure steadily was growing to establish uniform standards in deference to Organized Labor's pervasive control over construction sites. There was relatively little resistance to the imposition of union work rules, since the vast majority of contractors and workers were unionized anyway. But during the 50s things began to change. The construction industry grew rapidly, and that growth caused the share of workers belonging to unions to slip in Right to Work states. Industry observers foresaw the possibility that construction industry unionism could begin to decline nationwide. Determined not to let this happen, Organized Labor stepped up its lobbying for statutory recognition of pre-hire agreements in the construction industry.

Congress responded in 1959. Lawmakers inserted several provisions into that year's NLRA amendments, collectively known as the Landrum-Griffin Act, setting up a process by which a union could acquire exclusive representation power over a group of employees without having to demonstrate majority support in any way. Section 8(f) established the "prehire" agreement as a legal route to exclusivity in the construction industry; Section 8(e) authorized project owners to require all contractors to be bound by agreement terms.[3] With regard to the construction industry, Landrum-Griffin thus effectively abandoned the professed NLRA principle that a union can act as an exclusive bargaining agent only if it is supported by the majority of workers. As a fig leaf, the

amendment stated that a union entering into an agreement could not be established or maintained by any action defined by NLRA as an unfair labor practice. Another purported safeguard against sweetheart deals between contractors and union officials and other abuses stated that no agreement could be used to bar a petition for an election to reject union representation or to replace the union with a new one.

Landrum-Griffin's green light for construction-industry prehire agreements did not settle the issue of whether PLAs are in conflict with key NLRA provisions. As governments increasingly were signing on to PLAs, observers on both sides debated whether existing federal labor law barred a state or locality from doing so. It was a long time coming, but the issue eventually was "resolved" by the U.S. Supreme Court nearly three and a half decades after Landrum-Griffin.

Boston Harbor: The Turning Point

The Boston Harbor saga began many decades ago.[4] From colonial times onward, the harbor had been a receptacle for wastewater dumping. It was not until 1952 that the area's first primary wastewater treatment plant was built on Nut Island near Quincy, Mass., in order to handle flows coming from the South Shore. In 1968 another primary treatment plant was built on Deer Island to handle sewage dumped from the rest of Greater Boston. The problem with primary treatment, however, is that it removes only about half of water pollutants; secondary treatment facilities are necessary to clean up most of the remainder. And pollution was getting steadily worse, as local communities continued to dump raw sludge, including human waste, into the harbor.

In 1982 the Town of Quincy filed a lawsuit in Massachusetts Superior Court against the Metropolitan District Commission (MDC) and the Boston Water and Sewer Commission (BWSC), charging these agencies had allowed harbor discharges to exceed state limits. Judge Paul Garrity of the Massachusetts Superior Court attempted to establish a timetable for a cleanup, with the MDC being the sole responsible party. At the behest of then-Gov. Michael Dukakis, the Legislature responded late in 1984 by creating the Massachusetts Water Resources Authority (MWRA). This new agency would manage water and sewer services for 2.5 million people and 5,500 businesses in 43 metropolitan communities. A nonprofit group, the Conservation Law Fund, meanwhile, in 1983 had sued both MDC for massive dumping of untreated sewage into the harbor in violation of the Clean Water Act of 1972, and the U.S. Environmental Protection Agency (EPA) for acquiescing in this pattern of dumping. Because the EPA insisted that the MDC should be the sole defendant, it in turn sued the MDC for failure to comply with the Clean Water Act. The EPA, additionally, persuaded the Justice Department to sue the MDC, the MWRA, the BWSC, and the Commonwealth of Massachusetts. In a relatively short time, an enormous legal knot emerged.

The unenviable task of untying the knot was the responsibility of U.S. District Judge A. David Mazzone. In 1985 he consolidated active cases, and named the Massachusetts Water Resources Authority as solely liable for preventing wastewater discharges. In May 1986 Judge Mazzone ordered the MWRA to cease all sludge discharges, and construct primary and secondary treatment facilities. He also issued an ultimatum: The Authority would have to bring the harbor up to EPA water-quality standards by 1999.

An enormous and overdue undertaking was at hand. Local unions, accounting for an ever smaller share of area construction jobs, saw an opportunity that might never again materialize. The MWRA, for its part, was hardly averse to hiring union labor. It selected union-shop ICF Kaiser Engineers as general contractor – it was Kaiser, in fact, who first pitched the idea of a PLA. The two parties worked out an agreement that, among other things, required employees to join or pay dues to a union, assuming they were not yet a member, and forced contractors and subcontractors to use union hiring halls to add workers. The unions, in turn, agreed to a 10-year no-strike pledge.

Nonunion contractors and employees, led by the ABC chapters of Massachusetts and Rhode Island, knew they were being had. In 1990 the two chapters went to federal district court to block the agreement on grounds that state sponsorship of a PLA violated the NLRA, the Employee Retirement Income Security Act, the 14th Amendment, and various federal and state antitrust laws. The lower court ruled in favor of the Water Authority. The contractors in turn took their case to the U.S. Court of Appeals, 1st Circuit – and won. Union lawyers promptly appealed to the U.S. Supreme Court. In 1993 they struck gold.

In *Building & Construction Trades Council of the Metropolitan District v. Associated Builders and Contractors of Massachusetts/Rhode Island*, the Supreme Court, by a unanimous 9-0 margin, reversed the appeals court ruling.[5] The high court held that the National Labor Relations Act "does not preempt a state agency from enforcing a PLA covering a particular public project." Since the MWRA had jurisdiction over the harbor cleanup project, it had not violated federal labor or antitrust law by including a PLA in its bid specifications. Nor had it interfered with the contractors' constitutional rights. The

ruling represented a leap of judicial interpretation; neither Section 8(e) nor 8(f) explicitly authorized *government agencies* to institute PLAs, but merely spelled out the ground rules for establishing prehire agreements between contractors and unions. Yet the Supreme Court found that government agencies, as property owners, were analogous to private-sector businesses, and had the right to cut pro-compulsory unionism deals with Organized Labor as if they were businesses.

Responses from States and Localities

The coast was now clear for unions to rewrite the ground rules for public works, an opportunity from which they did not shrink. Across the U.S., state and local governments soon entered into agreements that effectively relegated open-shop contractors to the margins. Contractors often challenged them, but usually on grounds of failure to comply with state competitive bidding statutes rather than on constitutional grounds. This tactic met with only modest success. State courts tended to uphold the arguments in *Boston Harbor*, and in the process, justified individual PLAs. By 2002, according to one analysis, PLA proponents had prevailed in at least 32 cases.[6]

Much of the judicial reasoning in decisions upholding agreements could have come straight from union fact sheets. In 1999 California Supreme Court Justice Kathryn Mickle Werdergar, writing for the majority upholding a PLA for the San Francisco airport project, claimed such agreements are legitimate so long as participating unions do not go on strike during the project. A PLA ensures "labor harmony" and prevents "the undesirable consequences of work disruption," she asserted, basically taking union lawyers' word for it.[7] The California Supreme Court that year also let stand a decision by

a lower court allowing use of a PLA for the Metropolitan Water District of Southern California so long as the agreement did not flat-out exclude nonunion bidders. The PLA was also not supposed to violate their "freedom of association" or their "equal protection" as the Court defined these terms, but the agreement could dictate to them regarding their hiring procedures and work rules.[8]

In Connecticut in 1999, in two separate, though related, cases involving the construction of a parking garage in Hartford, the Connecticut Supreme Court ruled that contractors and trade associations did not normally have the standing to challenge the award of a PLA-driven contract. The only exception was if there were demonstrable illegalities in the bidding process that "amount to fraud, corruption, favoritism or acts that undermine the objective and integrity of the competitive bidding process."[9] The story was similar elsewhere. In 1998 the Alaska Supreme Court held that PLAs are lawful when the contracting agency has a "reasonable basis" for determining that bid specifications further the interest of public works procurement practices at the lowest responsible bidding rates. The PLA in question, negotiated by a Laborers' local, cleared that rather low hurdle.[10] A year later the Nevada Supreme Court held that the Southern Nevada Water Authority did not violate state Right to Work, competitive bidding, or freedom of association statutes when it entered into a PLA covering capital improvement projects.[11] The PLA, as the court saw it, provided equal access to union and non-union contractors alike, and "maintain[ed] competition among bidders and guard[ed] against favoritism."

Likewise, the Massachusetts Supreme Court in 1999 ruled that a PLA negotiated by the City of Malden was permissible since local officials' motivation was to advance

the aims of state competitive bidding laws.[12] As compensation for open-shop advocates, the court did grant that the burden of proof in demonstrating such advancement lies with the contracting authority. A PLA should be upheld if: 1) the project is of such size, duration, timing, and complexity that the goals of the competitive bidding statute could not otherwise be achieved; and 2) the record demonstrates that the contracting authority undertook a careful and balanced analysis of the issue. Malden's PLA, the court concluded, passed muster on both counts.

Ohio arguably provided the most frustration for independent contractors and employees. The Legislature in May 1999 passed the Open Contracting Act,[13] barring the use of PLAs on state-funded construction projects. To secure passage, sponsors accepted an amendment that allowed localities to enter into an agreement for a given project as long as state money wasn't involved.[14] Agreements during the 90s had grown common in Ohio public works projects. Sports facilities such as Jacobs Field (home of baseball's Cleveland Indians) and the Gund Arena (home of basketball's Cleveland Cavaliers)[15] were built with PLAs. A state and federal court, respectively, already had upheld such agreements. ABC and two open-shop contractors had challenged an approved PLA for a jail construction project in Jefferson County (Steubenville). A lower state court ruling threw out the PLA, but the Ohio Court of Appeals overturned the decision, saying that it was not in conflict with the state's competitive bidding statutes or its Constitution.[16] Likewise, the U.S. Court of Appeals, 6th Circuit, ruled that Mahoning County (Youngstown) had not violated the rights of an open-shop contractor, Enertech Electrical, by requiring bidders on a public works project to sign a PLA.[17]

Unfortunately for construction union officials, PLAs were far less popular with Ohio voters than with Ohio courts. Facing intense public pressure to address the issue, state legislators approved the Open Contracting Act (OCA), which GOP Gov. Bob Taft allowed to become law without his signature. The state's unions recognized a threat to their interests when they saw one. Lawyers for the state chapter of the AFL-CIO's Building Construction and Trades Department, representing unions in Cuyahoga County (Cleveland), sued the County Board of Commissioners when the board, citing the OCA, refused to negotiate a PLA for a juvenile detention center. The Cuyahoga County Court of Common Pleas sided with the unions, invalidating the law. The Ohio 8th District Court of Appeals overturned that ruling, arguing that the Open Contracting Act had not violated the National Labor Relations Act. Union lawyers then appealed to the Ohio Supreme Court, and won in December 2002, effectively invalidating the law.[18] Justice Alice Robie Resnick, referring to the *Boston Harbor* case, wrote that the NLRA does not prevent states from entering into PLAs or mandating them for contractors. Making a peculiar logical leap, she concluded that, since governments *can* negotiate compulsory-unionism agreements like businesses, there is no rationale for restraining them. Resnick's decision relies on her interpretation of the "gist" of *Boston Harbor*. It completely ignores the fact that a federal circuit court, in *Building and Construction Trades v. Allbaugh*, had already ruled that neither *Boston Harbor* nor any other precedent or the NLRA prohibits an executive from restricting or barring PLAs as a matter of policy. (See page 59 for details.) In a flagrantly political decision, Ohio Attorney General Jim Petro chose not to appeal this outlandish decision to the U.S. Supreme Court.

A defeat in Iowa proved especially galling to nonunion contractors, given that Iowa is a Right to Work state. Construction labor unions and Polk County had signed a PLA for the Iowa Events Center, consisting of a new arena, a new exhibition hall, and a renovated auditorium in downtown Des Moines. A group of open-shop contractors, Master Builders of Iowa, Inc., sued the county to overturn the agreement on grounds of violation of due process, equal protection, and freedom of association. A particular point of contention was the PLA's requirement that contractors employ workers referred by union hiring halls. Nonunion contractors would be allowed to retain some regular employees, but would have to take on at least one referred union employee for each nonunion worker. Each contractor would be allowed a maximum of 14 nonunion workers, beyond which all workers would have to be union.

A county district court saw nothing wrong with this arrangement and rejected Master Builders' claims. The group petitioned the Iowa Supreme Court to review the case, but in November 2002 the Court upheld the lower court decision.[19] Since the hiring hall agreement did not completely ban union nonmembers from participating, the Court reasoned, discrimination had not occurred. The Court made a strained argument that a government-imposed quota limiting the number of nonunion workers who could be employed on the project was not in conflict with Iowa's Right to Work law, which prohibits compulsory union membership and "fees."[20]

The Iowa PLA was challenged through legislative means as well. After the Polk County agreement had been reached, the Iowa legislature passed a bill to ban public-sector PLAs. However, Democratic Gov. Tom Vilsack vetoed it. Ignoring a host of studies showing that PLAs raise taxpayer costs and may also reduce the quality and speed

of construction (see pp. 44-54 below), Vilsack claimed banning project labor agreements would deny public entities a valuable tool.

Some Courts Have Recognized Legal Shortcomings in PLAs

Yet in the face of all this, open-shop supporters have some reason to be optimistic about the courts. Somewhat surprisingly, Organized Labor-dominated New York provided a split decision. The New York State Court of Appeals (the state's highest court) ruled in 1996 that state competitive-bidding laws permit PLAs on public works, but only in certain cases. The court upheld a PLA for renovations to the Tappan Zee Bridge (spanning the Hudson River along the New York Thruway),[21] but rejected an agreement covering renovation of the Roswell Park Memorial Cancer Institute in Buffalo.[22] "Because we have never construed New York's competitive bidding statutes to be so absolute, we answer the question differently [in the two cases]," the Court said. To be valid, a PLA must not conflict with statutes that seek to: 1) obtain the best possible work at the lowest possible price; and 2) guard against favoritism, fraud, and other forms of corruption. In negotiating a PLA, a state agency has to prove that the absence of a PLA would be injurious to the public interest. A key principle was becoming established: *The burden of proof is on the contracting agency, not the contractor*.

New Jersey, in two separate decisions, provided even more encouraging news. In 1994's *Harms v. Turnpike Authority*[23] the state Supreme Court held that a union-only PLA for a New Jersey Turnpike widening between Exits 11 and 15E created a sole source of labor and construction services, and thus violated state law. "Bidding statutes,"

noted the Court, "are for the benefit of the taxpayers…. Their objects are to guard against favoritism, improvidence, extravagance, and corruption; their aim is to secure for the public the benefits of unfettered competition." A year later the Court invalidated another PLA in *Tormee*.[24] While PLAs may be a legitimate means of maintaining labor peace, the court said, a government agency may mandate them only with justifiable reasons. The case centered on a bond issue for additions and improvements to Mercer County public libraries with a union-only hiring agreement.

The Rhode Island Supreme Court in January 2002 rejected a PLA on a $73 million University of Rhode Island construction project, though as in *Tormee*, without invalidating such agreements per se.[25] "(B)efore adopting a PLA," the Court said, "an awarding authority must carry out an objective, reasoned evaluation that has incorporated reviewable criteria in order to fulfill the goals and purposes of the State Purchase Act, given a PLA's anti-competitive effect." As some of the bid packages for the project were issued without a PLA, withdrawn, and then reissued with a PLA inserted as an addendum, the process was "arbitrary and capricious," and the Court upheld a lower court decision that had struck down the agreement.

Moreover, Massachusetts, despite the fact it had large-scale PLAs like Boston Harbor already in force, gave open-shop supporters victories. In 1997, a state court sustained a challenge by nonunion contractors to a $40 million school construction project PLA signed by the City of Lynn.[26] The Court ruled that while entering into a PLA was not impermissible, the circumstances in this case did not warrant such action. The plaintiffs had suffered "irreparable harm" because they "would be required to conform to a variety of union practices and would be limited in their autonomy to

negotiate employment with non-union workers." A PLA, the court argued, "must be evaluated in the light of a project's size, complexity, and duration." Since the city had failed to make a proper evaluation, the court enjoined it from requiring bidders to sign a PLA. City officials did not appeal the case to the Massachusetts Supreme Court. Another case, decided by Massachusetts Superior Court in 1998, resulted in a preliminary injunction against the City of Boston's PLA for East Boston High School. The decision to use an agreement, the court said, was arbitrary, offered no cost-savings projections, and placed an undue burden on nonunion contractors.[27]

Within the executive branch, several states have used *Boston Harbor* as a rationale for issuing executive orders advancing Organized Labor's interests. In January 2002, as his first order of business, New Jersey Gov. Jim McGreevey ordered state agencies to consider using PLAs for "appropriate" projects.[28] This measure went beyond then-Gov. Christine Todd Whitman's executive order in 1994 authorizing state public authorities to use PLAs on a case-by-case basis where the agency determines such agreements will ensure "labor peace" and encourage "job efficiency." McGreevey's order required an examination of the PLA alternative. Likewise, in May 2003 Illinois Governor Rod Blagojevich signed an executive order requiring state agencies "on a project-by-project basis," to consider a PLA for a public works project where the agency determines that such an agreement "advances the state's interests of cost, efficiency, quality, safety, timeliness, skilled labor force, labor stability or the state's policy to advance minority- and women-owned businesses and minority and female employment."[29] The order came just two days after he had unveiled a five-year, $7.4 billion highway construction and repair program. With an estimated 178,000

construction jobs on the line, it's no small wonder unions (and affirmative-action supporters) were delighted. Governors in New York, Nevada, and Washington State also have issued executive orders "encouraging" project labor agreements.

At the legislative level, two states besides Ohio – Utah and Montana – have passed legislation barring the use of PLAs on public works. Utah, a Right to Work state, created its law in 1995;[30] Montana, a non-Right to Work state, did so in 1999.[31] Both still stand, although union officials in Montana reportedly have been considering a challenge to that state's law.

To summarize the legal picture, then, a consensus has emerged since *Boston Harbor* that federal law permits, but does not require, state and local governments to negotiate PLAs. So far, only the eccentric Ohio Supreme Court has ruled that the NLRA mandates taxpayer-funded PLAs. Most states neither unconditionally permit nor absolutely prohibit PLAs. The prevailing view is that government agencies have the authority to enter into PLAs provided they comply with competitive bidding statutes. The burden of proof lies with the contracting authority. It is desirable at this point to take a close look at what lies inside these agreements, and how in reality, as opposed to legal theory, they obviously do restrict competition.

THE CONTENT OF PLAs:
AGREEMENT, BUT NOT BY CONSENT

A License to Coerce

The term "project labor agreement" is somewhat misleading. Public-works PLAs, as expressions of political will and legal content, are not voluntary. Therefore, they are

not agreements, at least in the moral sense. What is an agreement anyway? An agreement is what occurs when two or more parties, *acting without deception or coercion*, put aside differences and unite toward achieving a goal or set of goals. A political party convention platform is an agreement placating rival factions within the party. A marriage is a binding agreement designed to build trust between a man and a woman who, without mutual trust, may avoid staying together or raising children. Whatever the nature of an agreement, the advantages of cooperation in the eyes of participants/signatories outweigh the drawbacks of going one's own way.

A public-works PLA, by contrast, comes about largely as a result of union-imposed duress. On paper, it may not appear that way. But the agreement is a product of union officials' privileged position. It exists because elected officials who are beholden to Organized Labor told independent contractors they either could adopt union-friendly practices, or forget about bidding on public works. Should the threat of withholding benefits fail, union officials have developed an array of tactics, as we shall see, to undermine company or government operations.

Despite inevitable differences in substance and wording, PLAs as a general rule require contractors to do four things:[32]

- Set aside some or even all of their job slots for workers who either are union members or are willing to join a union within seven days of their start date.

- Lay off some or all employees who refuse to join in the event of a contract award, and hire new workers through a designated union hiring hall. Worker selection must be conducted in accordance with union seniority requirements.

- Strictly observe union-determined work rules and job classifications. Among other things, this means hiring only apprentices who were trained in union-approved programs.

- Contribute to union welfare, benefit and pension funds, regardless of the workers' vesting level at the time of project completion. Since full vesting for pensions typically occurs at the five-year mark, a far longer period than a typical worker's tenure of project employment, in practice virtually all promised pension money is automatically forfeited to union treasuries.

Independent contractors who wish to bid on PLAs may face other restrictions. A union may have the authority to prevent a contractor from dealing with, or handling the products of, a nonunion employer. These "hot cargo" agreements are derived from a clause in NLRA Section 8(e), and are illegal except in the construction industry. Moreover, participation in a PLA implicitly binds an employer to comply with "prevailing-wage" requirements under the federal Davis-Bacon Act and/or parallel state and local laws. All too often, "prevailing wages" and "union wages" have amounted to the same thing.[33]

In return for contractor compliance on these matters, unions agree not to conduct strikes or slowdowns. Of course, the owner/contractor simultaneously agrees to not institute a lockout. The message of union officials is this: Cooperate with us, and construction will move ahead smoothly. Don't cooperate, and, well…there could be problems. *This "no-strike" provision is, in a real sense, the heart of a PLA.* The unions promise to behave themselves over the project period as long as nonunion contractors agree not to yield their competitive edge in work rules, provision of benefits, etc. This quid pro quo, Associated Builders and Contractors maintains, constitutes legalized extortion.

The unions know the drill by heart, and nobody better than the officers of the AFL-CIO Building and Construction Trades Department (BCTD), and its various chapters. Representing 15 different trades with a combined rank-and-file membership in the U.S. and Canada of about 3 million, BCTD is a political as well as an economic force to be reckoned with. Member unions, according to a recent Federal Election Commission analysis, contributed more than 100 times more money to political candidates than the 10 largest employer-association political action committees combined.[34] Politicians, especially Democrats, in union-heavy states know that without the BCTD's endorsement winning an election could be a tough act to pull off.

Current BCTD President Edward C. Sullivan claims PLAs are necessary for effective management of large-scale projects. These agreements, he maintains, "…bring order out of chaos on construction jobs by setting wages and establishing common work rules and methods of settling grievances. They provide safe, fair working environments

for craftspeople and they level the playing field for all competing contractors – union and non-union."[35]

Sullivan bristles at the charge that PLAs discriminate against non-union contractors. In an opinion column a few years ago he sought to exonerate PLAs:[36]

> Over the past 21 years, we've used PLAs in the Washington metro area on 53 federally-funded infrastructure and highway projects…with no work stoppages, no delays and no overruns due to labor costs…. [Twenty-eight] percent of the contractors were non-union.
>
> On the hugely successful Boston Harbor project, more than 30 percent of the contractors were non-union . . . . On a $2 billion PLA dam and water project in Hemet, Calif., 75 percent of prime and subcontractors were non-union. And even closer to home, the general contractor on the Washington Convention Center – a PLA project – is Clark Construction, one of the biggest non-union construction firms in the country….
>
> All a non-union contractor must do to work under a PLA is abide by the same terms as all other contractors on the project.

Sullivan's commentary left out a few details. For example, the Washington Convention Center, cited by Sullivan as a PLA success story, ended up costing about $200 million, or 31% more to build than the public estimate the D.C. auditor made before the PLA deal was cut. And out-of-town contractors did the work on many of the most significant segments of construction.[37]

The fundamental problem with his analysis, however, is encapsulated in the superficially reasonable last sentence. Its opening words – "All a non-union contractor must do…" – come across like an ultimatum. That's the whole point – they *are* an ultimatum. Union bosses can afford to be generous in spirit to those whom they can bring to heel. They have no problem welcoming non-union contractors as project partners *so long as they can be forced into union-like behavior*. Why protest the presence of competition unable to compete?

This is why nonunion contractors often shy away from entering project labor agreements, even though they may be eligible to bid. The required shift in their company culture just isn't worth it. Maurice Baskin, general counsel for Associated Builders and Contractors, elaborates upon this point:[38]

> The true question is whether imposition of a union-only agreement discourages bidders from coming forward to the detriment of taxpayers. Clearly, imposition of a union-only PLA has the inherent effect of deferring a large number of contractors from submitting bids, and not merely of philosophical choice. Rather, in order to bid upon union-only work, non-union contractors must submit to radical restructuring of their operations from hiring to work rules to fringe benefit plans jeopardizing many of the very characteristics which have made them successful and cost-efficient in the first place.

Union leaders such as Sullivan counter that nonunion firms are frequent participants in bidding, and often win contracts. The reality is that merit-shop contractors participate far less than BCTD statistics would suggest.

Several years ago, Professor James Andrews of Fitchburg State University in Massachusetts found that about two-thirds of the purportedly "nonunion" prime contractors for the Boston Harbor cleanup were in fact union shops. Moreover, 54 percent of the "open-shop" contractors either were union or performed no work at all.[39] Another survey, this one taken in the western portion of Washington State, revealed that 86 percent of open-shop contractors would refuse to bid on a job if they had to sign a PLA.[40] A U.S. General Accounting Office report on a Department of Energy project in Idaho (a Right to Work state) revealed that during October 1986-December 1990, only 30 percent of the 286 contract awards went to nonunion bidders, a figure representing only 8 percent of the dollar value of contracts.[41]

Open-shop contractors are in business to make money, not to make ideological statements by forgoing profitable work. The reason they so often decline the invitation to the union dance is they can only come if they consent to wear fetters!

Organized Labor's Advantages:

There's No Such Thing as "Enough"

Pick a PLA, any PLA, and examine the contents. A recent example from Hawaii should do.[42] The Hawaii Building and Construction Trades Council, a BCTD affiliate, last year signed an agreement with the U.S. Army to provide housing for military personnel over the 50-year ground-lease period. The expected combined cost of the construction, renovation, and maintenance is $5.1 billion – serious money by any standard. The agreement requires that all contractors must find new workers through a union hiring hall unless an employee has already worked for the employer for an aggregate of at least six months over the past five years. The agreement also stipulates that workers referred through the unions' Helmets to Hardhats program are to be employed "to the fullest extent possible." All employees, whether or not they are union members, must pay union dues or agency "fees." Moreover, employees of nonunion contractors who are hired directly by the employers (rather than through union referral) must agree to have a portion of their wages deducted for contributions to the union benefit fund. This PLA, it should be noted, has enough leeway to avoid being affected by President Bush's 2001 executive order barring such agreements on federal contracts.

In Seattle, a PLA that union officials won for a light rail project theoretically allows nonunion contractors to submit bids. But the agreement also states that, of the

first 10 workers in each craft, half must be hired from within the union, and after the first 10 come aboard, all new hires must be union. New union hires are forbidden, moreover, to drop their union membership even if they are affiliated with a merit-shop contractor.[43]

With such sweetheart deals in place, unions have relatively little incentive to control costs or meet project deadlines. Even without any nonunion contractors knocked out of the competition, they have created a level playing field by raising the price of admission; they have forced open-shop employers (those willing to participate) to submit higher bids in order to stay in the running for a contract. It's a classic form of what economists call "rent-seeking behavior." Union officials acquire government-granted advantages relative to competitors.

It follows from this that the greater the consequences of failure to complete the project, or stages of the project, on time (especially if there are government-imposed fines attached to being late), the stronger the hand union officials have in bringing about a PLA. In the late 90s in the Syracuse, N.Y., area, for example, Onondaga County officials reluctantly went along with a PLA on the planned $380 million Onondaga Lake cleanup project. The county faced fines from state and federal regulators of up to $100,000 a day if it failed to meet each incremental deadline; additionally, the Atlantic States Legal Foundation, the nonprofit group that took the county to court to force the cleanup, would be monitoring progress. James Albanese, the county's administrator of physical services, defended the PLA this way: "With this project, being a week late and missing a milestone could have us back in court."[44]

Union officials hold to a more-is-better philosophy regarding hiring dues-paying workers. If you don't have to, why settle for anything less than 100 percent-union

employment on a given project? The PLA attached to the construction of the Clinton Presidential Library in Little Rock, Ark., dedicated in November 2004, is a good illustration of Organized Labor's displeasure over having to tolerate any nonunion competition. Just prior to the $150 million project's groundbreaking in June 2002, unions had negotiated an agreement with library officials mandating that 75 percent of the 350 workers be union-affiliated – not bad in a Right to Work state where almost all construction employers are open shop.[45] The BCTD's Sullivan, however, saw red. Viewing as "outrageous" that a monument to Bill Clinton, an ally of Organized Labor (albeit a sometimes fickle one), could be built with *any* nonunion workers, he and other construction trade union chieftains vowed payback. He called on affiliates to continue a two-month-old ban already in place on contributions to the Democratic National Committee.[46] It's a fair bet that the DNC in the future will ensure that the union bosses get the whole pie on such projects (especially now that former presidential candidate and forced-unionism zealot Howard Dean has replaced oily Clintonite Terry McAuliffe as its chairman).

Organized Labor likewise revealed its colors in 1997 during the drafting of a PLA covering construction of the Northeastern Pennsylvania Civic Arena and Convention Center in Wilkes-Barre, Pa.[47] Kevin Blaum, chairman of the convention center authority, reluctantly told local union leaders that the project had to begin a month or two in advance of completion of the PLA in order to secure funding – there was no way out. But he added that the non-PLA portion would only constitute 3 percent of total project cost. Local union officials were deeply disturbed over this announcement and accused the authority of betraying worker trust!

Union officials and union contractors are the primary beneficiaries of a PLA, even when nonunion contractors get around the rigged rules and submit competitive bids. Despite rhetoric about a "level playing field," PLAs consistently require nonunion companies and employees to play by Organized Labor's rules, and never vice versa. Contractors may enjoy the security a PLA brings, but it is union officials who call the shots. It's not surprising, therefore, that union agents often have to resort to underhanded and, on occasion, ugly tactics to get a PLA deal sealed. The next section explores this problem in greater detail.

STRONG-ARM UNION TACTICS USED TO ESTABLISH AGREEMENTS

Overview

Project labor agreements constitute forced unionism. But force in any context is meaningless without the ability to back up words with action. When a government entity declines to stipulate that nonunion contractors have to play by union rules, union officials often turn up the heat to bring about an agreement. Toward this end, Organized Labor may summon one or more methods to "get the attention" of the government and merit-shop contractors. Certain contractors, for example, might be picketed. Should that not work, union officials may call strikes, withdraw (already-promised) financial support, or fund the campaign of an incumbent elected officeholder's chief opponent. Whatever the mode of persuasion, union officials convey the message: "If you want this project to

become a reality, you'll need to stay on our good side." Union officials thus foster "labor peace" by threatening war, though most often in a tactful way at the start.

Absent laws, court decisions, and executive orders restricting PLAs, unions have a natural advantage in persuading public officials to go along with them. That's especially true when a politician's job is on the line; a project's delay, or worse, scuttling, could be a sign of the officeholder's "ineffectiveness" in the eyes of voters. The more vulnerable the official and the more visible a given project's touted benefits to the public, the more likely the union will win a PLA. It helps, of course, if officeholders already are sympathetic to Organized Labor's goals – and govern in a non-Right to Work state.

Go on Strike

Nothing quite succeeds like a strike to delay completion of a project. The mere possibility of a strike is often what leads to a PLA in the first place. The law of averages dictates that the larger the project, the greater the likelihood that a strike will occur. On paper, a PLA ensures that no strike will happen. But unfortunately for public officials who agree to a PLA for that reason, a no-strike clause may be no guarantee against a strike. The PLA covering the expansion/renovation of San Francisco International Airport contained a no-strike clause. Nevertheless, some 250 members of the Carpenters' union, joined by a combined 1,750 members of the Plumbers, Electricians, and Painters unions, went on a brief wildcat strike in May 1999, costing the project an extra $1 million.[48] Construction union officials at the Bath (Maine) Iron Works also called a strike despite having earlier signed a PLA (see later discussion) with a no-strike clause.

Raise Non-Labor-Related Issues

To gain acquiescence to a PLA, a union may try to delay a project over issues having nothing to do with job security or working conditions. Businesses and consumers in California, wracked by an energy crisis for the last several years, know a lot about this, thanks to a group formed by labor officials in 1997 known as California Unions for Reliable Energy (CURE). The City of Roseville, not far from Sacramento, is one example.[49] Last year, CURE put the squeeze on city officials to sign a PLA prior to state approval of a $150 million, 160-megawatt power plant. The summer of 2004 was an especially hot one, with electricity use hitting an all-time high the day before the July 21 City Council meeting. A repeat of the 2001 statewide energy crisis, with rolling blackouts, was a distinct possibility. Organized Labor threatened to delay licensing by the California Energy Commission (CEC) for the gas-fired plant by raising environmental objections unless a PLA was granted.

Council members expressed concerns that such an agreement could inflate construction costs. But they also recognized that going up against CURE meant having to spend millions of dollars in legal and other costs, and pushing project approval back by as many as 18 months. The council approved the PLA by a 4-1 margin. Here's how one reluctant member, Jim Gray, saw the choice in casting an "aye" vote: "Do I stand on principle and refuse to be greenmailed…or do I make the logical business decision that is in the best interests of the people of Roseville?"[50]

CURE has filed environmental objections against California projects sponsored by Sempra Energy, Occidental Petroleum, and PG&E National Energy Group. Under the state's emission-credit system, the CEC has the authority to cancel projects likely to

create high levels of pollution. But California localities do have one ace up their sleeve: their charter. Last July, the City of Riverside unanimously voted to sign a contract with a nonunion contractor that had bid $5 million less than its closest competitor to build a 96-megawatt power facility. About that time, CURE filed papers with the CEC, asking the commission to subject the project to a one-year, rather than a six-month, review, although the latter was standard for smaller plants such as Riverside's. But the City Council had insisted on awarding the contract to an open-shop contractor because the city charter requires contracts go to the lowest bidder.

CURE officials insist that they have an interest in curtailing pollution, and that the state should not issue environmental permits without examining key areas of concern. But their actions belie their words. The environmental impact of a proposed project, though surely a legitimate issue, is entirely separate from that of the eligibility of firms for construction contracts. The reality is that CURE's professed concern for the environment is a stalking-horse for union officials' real demand, a project labor agreement.

By its own actions, CURE has underscored this point. Not long ago, the union consortium tried to block a project to build 10 nonpolluting geothermal-energy plants in Imperial County (in the southeast corner of the state). Jonathan Weisgall, vice president of MidAmerican Energy Holdings Co., whose CalEnergy unit recently completed the project, noted what really was at stake. "CURE aggressively opposed this project, which was surprising because as renewable energy, it faced few environmental hurdles," he said. "But once we executed the project labor agreement and were confirmed as working with the unions, CURE's intervention at the energy commission no longer was an

issue."[51] The case of Riverside appears equally flagrant. When Riverside had built a small power plant prior to the one it recently approved, a unionized company got the award. "We didn't get any objections from anybody," recalled Councilman Art Gage. "But this time around the nonunion company got it, and all these people came out of the woodwork."[52]

Conduct Supplier Boycotts

The hot-cargo boycott has been an effective way of getting a contractor to sign a PLA. Contractors who insist on acquiring supplies their own way may pay a heavy price, and union officials rarely get seriously punished for breaking the law against secondary boycotts. Long Island, N.Y., contractor Dave Allan found out in the mid-90s just how stacked the deck was against him.[53] Allan, an open-shop builder with 30 years of experience, had won a $6.7 million contract from the State of New York to rebuild a bridge on the Wantagh State Parkway leading to Jones Beach. That sum was about $1 million below bids submitted by union-shop contractors. Long Island construction union officials were not happy about this turn of events. In retaliation, they convinced militant members of other unions to refuse to load his trucks with concrete and asphalt.

The boycott impeded the work to the point where state officials considered forcing his company, Chesterfield Associates, to default on the project, an action that likely would have led to bankruptcy. Acknowledging that Allan was not at fault, the New York State Department of Transportation waived the $10,000-a-day penalty it could have assessed him for missing intermediate deadlines, but were unwilling to ensure his access to building materials. Local nonunion suppliers who had agreed to sell him

materials reneged in the face of union pressure. In order to get concrete to the bridge, Chesterfield had to rent cement mixers from an upstate Troy, N.Y., company. That quadrupled the cost of the delivery, to $350 per yard of concrete! By mid-1996, most of the project had been completed. But thanks to delay, legal, and other costs, Allan, instead of reaping a $600,000 profit (as he had anticipated), lost about $1 million. In addition, one of his trucks was stolen, and one of his onsite cranes was hit by gunfire. Allan filed an unfair labor practice charge against union officials with the NLRB, but the board contended that there was too little evidence to pursue the case.

Accuse Nonunion Contractors of Labor-Law Violations

While "greenmail" is increasingly popular with union lawyers, most litigation aimed at securing a PLA accuses nonunion bidders of violating federal or state labor statutes. Many state agencies and courts habitually lend a sympathetic ear to such accusations, even if they have little or no factual basis. In New Jersey, East Coast Mechanical Contractors, a nonunion company, won a $225,000 contract in 2001 to fix air-conditioning units at an elementary school in Jackson Township, N.J.[54] The firm paid a high price for this successful bid, spending up to $100,000 to defend itself from charges by unions and the New Jersey Labor Department. Mechanical Contractors was sued for alleged failure to comply with the state's prevailing-wage laws, even though it paid employees an average of $30 an hour in combined wages and benefits.

The contract was more significant than it looked, as it was part of an $8.6 billion, 10-year school-construction program attracting as many as 6,000 builders to register for eligibility.

The biggest PLA lawsuit yet focused largely on plans to rebuild the Woodrow Wilson Bridge linking Maryland and Virginia across the Potomac River along the Interstate 95/495 Washington Capital Beltway. Organized Labor intended this suit to put President George W. Bush's Executive Order 13202, which banned the use of PLAs on federally-funded construction, into an early grave. Originally built in 1961, the Wilson Bridge was designed to handle a daily traffic load of 75,000 vehicles. By 2000 it was handling nearly 200,000 a day, with planners' projections for 2020 putting the figure at 300,000. The eventual quadrupling of traffic is the product of explosive growth in the Washington, D.C. area and, more broadly, along the Maine-to-Miami I-95 corridor. With the eight-lane Capital Beltway narrowing to six lanes on the bridge, it had become one of the nation's worst traffic bottlenecks. The issue was not whether to expand bridge capacity, but how – and who should pay.

The Federal Highway Administration initiated an expansion feasibility study in 1988. The eventual winning proposal would rebuild the present bridge in phases, doubling the number of lanes to 12. It also would construct four new interchanges beyond the bridge and improve connector routes. All told, the project would involve 7.5 linear miles of road construction.

Congress originally capped its appropriation for the project at $900 million, but in October 2000, the month initial dredging work began, voted to add another $600 million. Maryland and Virginia already had committed $200 million each. That added up to $1.9

billion. The problem was that the original estimated cost of $1.6 billion now had risen to around $2.2 billion (by December 2002 the figure would rise further to $2.56 billion). Union officials were not about to walk away without getting a cut of the action. And in Maryland Democratic Gov. Parris Glendening and his administration, they had a friend. The state advocated a union-only PLA, supposedly as a way of preventing work stoppages. Maryland would cover 10 percent of any cost overruns, and wanted Virginia to do likewise. But Virginia Republican Gov. Jim Gilmore found this unacceptable. "Virginia has a Right to Work law that protects the rights of nonunion workers to earn a living," he stated. "Thus, as a matter of principle, Virginia will not pay one dime toward any contract that requires a project labor agreement."[55] Gilmore's tough talk was in fact a call for fairness – let Maryland pay for its own cost overruns, but don't foist them on Virginia.[56]

The State of Maryland went ahead and began negotiations with the unions anyway. Not long after that, in February 2001, President Bush issued his order. Two months later, the AFL-CIO Building & Construction Trades Department sued to overturn the order. The BCTD won at the district court level, but lost in appeals court, and the Supreme Court let the latter decision stand in January 2003. Union lawyers could not obtain a waiver for the project either. Construction at this writing (March 2005) is about one-third complete; the entire project is slated for completion in 2011. In the spring of 2003, the joint venture Potomac Constructors submitted a winning bid of $191 million, 25% under the budgeted amount, for the final and largest contract in the project.[57] If the Wilson Bridge reconstruction does not turn out to be the Washington, D.C. area's version

of the Big Dig, this will arguably be due in large part to the fact that the unions could not defeat President Bush's order in court.

Disguise the Agreement

Yet another way that union officials can win a PLA is to strike a deal with public officials while nobody else is noticing. One such "stealth PLA" was recently negotiated in Indianapolis.[58] In February 2004, the City-County Council approved the issuance of roughly $30 million in bonds to help finance a proposed $100 million downtown luxury hotel. Contained in the fine print was language that created a PLA. J.R. Gaylor, president of Associated Builders and Contractors of Indiana, was blocked from speaking out against the PLA at the meeting. The agreement "authorizes the City of Indianapolis to issue one or more series of its economic development revenue bonds for this Circle Block project in an aggregate principal amount not to exceed $30,250,000 and approves and authorizes other actions in respect thereto." Gaylor believes the phrase "approves and authorizes other actions in respect thereto" was union agents' way of sneaking in a PLA. "It was very well disguised when it went through the committee process," he said. "This union-only agreement was not mentioned in the committee for discussion."[59]

Los Angeles provided another good example of a stealth PLA eight years ago. In April 1997, local voters approved Proposition BB, a $2.4 billion school bond intended to finance health and safety improvements to about 800 school buildings and thousands of classrooms in the Los Angeles Unified School District (LAUSD).[60] They might have voted differently had they been apprised of the full bill of goods. Prior to passage, construction union leaders, lobbying behind the scenes, had persuaded LAUSD officials

to steer work toward union-approved contractors. Non-union contractors, at one point threatening to sue, argued that the PLA, by eliminating about 80 percent of all potential bidders for contracts, would raise construction costs, and hence result in fewer schools repaired. But California law apparently does not prohibit telling bond proposition voters that the money raised will be spent to make schools safer when it actually will be used, in large part, to enrich union officials.

Put Up Money, Attach Strings

Another method of union persuasion is to finance a project, whether fully or in part. A PLA functions here as the big "string" attached – if a government declines to enact a PLA, the union will withdraw its funding. In downtown Washington, D.C., for example, the developers of a mixed-use entertainment complex in the Gallery Place area received a $40 million loan from Union Labor Life Insurance Co. (ULLICO) in order to close on the land purchase in July 2001. ULLICO's current chairman, Terence O'Sullivan, is also general president of the Laborers' International Union of North America (LIUNA). At the time the loan was made, O'Sullivan sat on the ULLICO board of directors.[61] D.C. developers John Akridge III and Herb Miller accepted the terms of the PLA loan in order to close on the land purchase.[62]

More recently, and unsuccessfully, ULLICO tried to flex its muscle in a proposal to build a new stadium for the Florida Marlins major league baseball team. In November 2003, not more than a couple weeks after the Marlins had won the World Series, O'Sullivan announced his company was willing to loan, at a low interest rate, about $115 million for the project. (ULLICO's offer had come as a result of months of persuasion by

state Rep. Gus Barreiro, Miami Beach Republican). This represented a little over a third of the estimated $325 million price tag.[63] The catch was simple: the construction site would consist of union-only labor. The deal, however, eventually fell through.[64]

Take to the Streets

When all else fails, there's public disruption, an activity to which labor union officials are no strangers. Sometimes demonstrations are peaceful; sometimes, as in the case of midtown Manhattan on the morning of June 30, 1998, they are not. Local unions had been upset for some time at the Metropolitan Transportation Authority (MTA) for awarding a $32.6 million contract to Roy Kay Inc., a Freehold, N.J.-based nonunion firm, to build a new subway command center at 54th Street and Ninth Avenue.[65] At a planned rally in front of MTA headquarters, anywhere from 20,000 to 40,000 union demonstrators paralyzed rush-hour traffic. Immediately following the demonstration, thousands of workers broke off separately in a purportedly "spontaneous" march toward the construction site. As they headed across the town, dozens of marchers clashed with the police; 38 workers were arrested, while 18 police officers and three demonstrators were injured.

The MTA had awarded the contract to Kay because it was the lowest bidder. In New York, as in many other states, contractors making the lowest bid generally win the job, so long as they pay prevailing wages. The second- and third-lowest bidders on the project also were open-shop companies. The fourth-lowest bid, at $34.9 million, came from a union-shop contractor, E.W. Howell Company of Melville, N.Y. But Kay was already the subject of controversy. The New York State Department of Labor, acting on

information fed by union researchers, had suspended Kay from an apprenticeship contract. The charge was that the company had misled state officials on its application about its track record on compliance with safety and prevailing-wage requirements.

Such tactics haven't been needed with the company in recent years. In October 1999, after well over a year of aggressive organizing and salting by various construction unions, Roy Kay Inc. signed collective-bargaining agreements with key New York-area locals. As a newly-minted union-shop contractor, the company from now on would participate in PLA negotiations. As Tom Tighe, an organizer from Plumbers Local 9 in Englishtown, N.J., boasted, "His (Kay's) work force was decimated, he couldn't hire, and every time he turned around he was in court."[66] That's one way of getting results.

On a smaller scale, construction unions instigated a 10-day picketing campaign at Ralph Wilson Stadium (formerly Rich Stadium) in Orchard Park, N.Y., home of the NFL's Buffalo Bills, in 1999.[67] The presence of a nonunion contractor, Tom Greenauer Development, Inc., triggered the demonstration. Bills management asserted unionized contractors would perform 95 percent of the work, but union officials claimed that most of the site-preparation work was being done by nonunion firms. Between 50 to 200 picketers showed up outside the stadium's entrance each day, delaying the entry of construction trucks. Police arrested two demonstrators, one for breaking a truck window and the other for blocking passage by a vehicle.

Unions in New York seem to have a predilection for this sort of behavior. In 1992, the New York Thruway Authority awarded a contract to an out-of-town open-shop bidder for repair work on the Tappan Zee Bridge. Not long after, area unions gathered on the bridge to block traffic, creating riot conditions. Then-Governor Mario Cuomo,

though pro-union, reportedly told union officials that neither he nor the Authority could have steered the project locally because the contractor who got the work had submitted the lowest bid. Two years later, in 1994, the Thruway and the unions had completed a PLA (later upheld in court). Nominally, the agreement allowed participation by merit-shop contractors. But all nonunion contractors had to use a union hiring hall for referrals, contribute to union benefit plans, and deduct union dues from their nonunion employees' paychecks and remit the money to the union.[68]

Even without committing overt violence or vandalism, union officials know how to create menace. In Stewart, N.Y. (near Newburgh) back in 1998, about 1,000 construction workers held a rally to demand a PLA for the construction of a 125,000 square-foot Federal Express office building.[69] FedEx already was set to lease the premises from Cargex, a Rochester, N.Y.-based firm specializing in airport cargo facilities. Cargex had worked on the project with the Richmond, Va.-based Engineering Design and a nonunion Syracuse builder. The rally featured a common union prop, a giant inflatable rat depicting "rat contractors" who hire nonunion workers.

Rallies on occasion come at the encouragement of sympathetic local officials. Los Angeles offered a good example early in 1996. Workers affiliated with International Longshoremen's and Warehousemen's Union (ILWU) Local 13 delayed the unloading of more than 30 ships, and kept others from docking at scheduled times. Union militants were protesting the decision of the Los Angeles Export Terminal Corp. (LAXT), a joint Japanese-American consortium, to contract with Pacific Carbon Services, a division of the Salt Lake City-based Savage Industries. Pacific Carbon had planned to hire as many as 50 nonunion workers to operate a nearby $120 million coal-and coke-handling facility,

at the time under construction. "The ILWU periodically flexes its muscles," Local 13 President Ramon Ponce de Leon told hundreds of workers at one of several rallies. "We've been working out, and we're taking off our shirts."[70] Perhaps it was no coincidence that only a month earlier, the Los Angeles City Council had voted 14-0 in favor of a resolution urging LAXT to reconsider its contract with Pacific Carbon.[71] The Port of Los Angeles, a 15-percent shareholder in the future facility (and future landlord), was also urging LAXT to negotiate with the union.

Summary – PLA's Aren't True Agreements

Public-sector PLAs, despite what the term implies, are not voluntary. They are negotiated under duress, even if the pressure usually is not as overt as under salting, in which union provocateurs goad open-shop contractors into committing "unfair" labor practices.[72] It is the unions who wield the power in negotiating a PLA. Governments at all levels facilitate the institution of such agreements, though governments may become the targets of union pressure if they are insufficiently zealous in promoting PLAs. As strikes or slowdowns can jeopardize completion of a project, politically astute public officials can be brought to the table quickly. In the legal environment of the last dozen years, there may not be too many other options.

THE PUBLIC PAYS MORE:
EVIDENCE FROM CASE STUDIES

The main purpose of project labor agreements is to raise the cost of winning work for nonunion contractors. Common sense and experience ought to lead one to the view that the costs have to be borne by someone else. That "someone else" is the general public. There is a large body of evidence indicating that PLAs indeed add to the cost of a project, and in more than negligible amounts. What's more, they do not seem to foster on-time completion, quality workmanship, or worker safety. At times they actually inhibit them. But union officials who have been granted monopoly or near-monopoly control over a project's labor force are not likely to complain too much about hazards on the job. Eliminating competition, not promoting worker welfare, is the real purpose of PLAs.

Project labor agreements limit competition. When unions shepherd a PLA into existence, they either knock open-shop (generally lower-cost) competitors out of the bidding process or, more commonly, force them to accede to terms and conditions that temporarily transform them into quasi-union-shop contractors. If, for example, only 20 as opposed to 60 eligible contractors choose to bid, it is fair to assume that at least a few of the 40 shying away from bidding could have done professional-quality work less expensively than the eventual winner. Whether in the form of higher taxes or facility user fees, either way the public pays more.

Consider Boston's Central Artery/Tunnel (CA/T) project, the most expensive (per-mile) highway project in U.S. history.[73] The PLA governing the "Big Dig" was established in 1990 between the same construction unions that had signed the Boston

Harbor agreement and two joint-venture prime contractors, Bechtel and Parsons Brinckerhoff, "on behalf of the Massachusetts Department of Public Works." (The Massachusetts Highway Department [MHD] a few years later would supersede the Public Works Department as the state's contracting authority.) Very similar in its stipulations to the Boston Harbor PLA, this PLA invited token participation by nonunion contractors. The project was slated to last about nine years and cost about $2.5 billion. Achieving labor peace has hidden costs.

When the MHD took over as the contracting authority in the mid-90s, CA/T Project Director Peter Zuk stated optimistically that "previous history indicates intense competition for the jobs, with all bids generally coming in below engineers' estimates." But not long after, the state awarded a contract worth half the project's then-estimated cost of roughly $4 billion to a union contractor that was $22 million over the engineer's estimate. The second-lowest bid came in at $41 million over that estimate. In February 1996, Zuk said, "Given the size of the project we are surprised at the relatively small number of bidders to date." One wonders about the surprise – the purpose of the PLA from the start was to restrict the number of bidders! Eventually he had to pursue bidders for the remaining $2 billion worth of project work. The bids for the remaining work continued to exceed engineers' estimates.

The PLA remains in effect. Following President Bush's executive order of February 2001 barring the use of PLAs on federally-funded construction, the Massachusetts Turnpike Authority placed ads in local newspapers, asking for bids on a $400 million tunnel construction and demolition contract, or half of the remaining $800 million in unfinished work. But the amended executive order that was issued by the

President two months later effectively grandfathered in union control over remaining project funds.[74]

Union officers, such as the BCTD's Sullivan, point to the Boston Harbor project rather than the Big Dig as representative of PLA experience. This is more than understandable. By the start of 2005, the nearly completed Boston Harbor project had cost only $3.8 billion, well short of the original estimate of $6.1 billion, with water/sewer bill ratepayers (at one point, highly reluctantly)[75] defraying about three-quarters of the cost. And by any reasonable comparison, conditions at Boston Harbor today are far better than two decades ago. MWRA ceased all discharges of sewage sludge in 1991. Subsequently, the completion of new primary and secondary treatment facilities at Deer Island, and, finally, a 9.5-mile-long outfall pipe to carry Deer Island's treated wastewater out to Massachusetts Bay, further improved water quality.

But is the success attributable to the PLA? It's a dubious proposition. First of all, the project was scaled down somewhat; in the mid-90s, the construction of four facilities, budgeted at $178.1 million, was dropped.[76] Second, the original projected cleanup period had been for 11 years, but as of this writing, nearly two decades later, the cleanup is still ongoing. Finally, the project was not without its share of waste and financial irregularities. By 2000 the Office of the State Auditor had uncovered, in 15 separate audits, a combined $157 million spent unnecessarily or questionably.[77]

The PLA for the Iowa Events Center in Des Moines appears more typical. When initially proposed in 2000, the center's estimated price tag was $160 million. The figure had grown to $208 million by the time the Polk County Board of Supervisors signed the PLA in December 2001. By 2004 it had risen further to $217 million. The general

contractor in some instances had to use cheaper materials to keep the project cost from rising even higher.[78] Evidence suggests that the agreement, by constricting the field of eligible bidders, drove up costs. On another occasion, the county held three separate bids for sidewalk construction, but failed to receive any bid within its budget. On the last try, the county did receive a bid of $2 million over budget, which later was reduced by $500,000.[79] Several weeks before the state Supreme Court heard a challenge to the project, the county took bids for foundation pouring. Only two bids came in, with the lower one at $21 million, or about 25 percent higher than the $17 million forecast by the county.[80]

The PLA for the expansion and renovation of San Francisco International Airport, established in 1996, also created a shortfall of bidders. The $2.4 billion project received just four bids, all higher than the pre-construction estimate. Only a few years later, it had incurred a cost overrun of $259 million and was six months overdue.[81] Also in California, PLA projects in Orange County that are opened for bidding often have come back with two, one, or even zero bidders, with prices ranging anywhere from 25 percent to 40 percent above engineers' estimates.[82]

Safeco Field, the new home of the Seattle Mariners baseball team, proved to be a boondoggle, thanks in large measure to a project labor agreement. Originally estimated at about $320 million, the final tab was $517 million, a roughly 60 percent cost overrun. That made the stadium, at least up until that time, the most expensive in U.S. history. The relative absence of open-shop contractors, despite official statistics, may have had something to do with this; only five of 25 listed subcontractors were both open shop and actually supplying labor.[83]

Associated Builders and Contractors found a similar result in an analysis of construction bids submitted for the Roswell Park Cancer Institute in Buffalo, N.Y.[84] A project labor agreement for that facility's construction, ABC estimated, raised overall construction costs by 26 percent. Bid packages that required a PLA on average were 10 percent over budget, whereas bid packages that did not require a PLA were 13 percent *under* budget. Given the estimated project cost of $170 million, the PLA created nearly $40 million of waste. The number of bidders influenced bid size. Those bid packages that were submitted under budget had 45 percent more bidders than those that were bid over budget, regardless of labor agreement requirements. Packages without PLAs had 21 percent more bidders than those which required agreements.

Ernst & Young did its own study of a PLA in Erie County, N.Y., which encompasses Buffalo. It analyzed the impact of Phase I of the agreement, a new $28.8 million seven-story family court facility on a site adjacent to the existing building. Its September 2001 report concluded the following:[85]

> Phase I bidder participation was diminished because the County chose to utilize a PLA. Further, the use of PLAs adversely affects competition for publicly bid projects to the likely detriment of cost-effective construction…. (T)he use of PLAs strongly inhibits participation in public bidding by non-union contractors and may result in those projects having artificially inflated costs.

A case in Connecticut with a happier ending further illustrates this point. Back in the late 90s, the City of Middletown had entered into a PLA with local trade unions to use mainly, though not exclusively, union subcontractors for the rebuilding of an elementary school. The lowest of the first-round bids exceeded the architect's budget. Local officials decided to reopen bidding without a PLA. The three lowest bids all came in

under the projected $9.8 million budget. A nonunion firm was chosen, and the renovations were completed on time and without complications.[86]

There can be little doubt, then, that an inverse relationship exists between the number of bidders and the cost of the project. The fewer the number of contractors submitting bids, the higher the bid price and eventual total project cost will be. Unions and allied contractors support PLAs because indirectly they achieve the goal of exclusive union representation. No other currently available approach is quite as successful in reducing the pool of eligible contractors.

It should be noted that, when it comes to federal, state, and local taxpayer-funded construction, above-market wages for union workers are not a great impediment to unionized firms' competitiveness. True, average hourly compensation for unionized construction workers is substantially higher. (Incidentally, this doesn't necessarily mean that *annual* earnings are higher for union construction workers, since, the best evidence indicates, they are unemployed more frequently.)[87] But for decades the federal government and most states have virtually prohibited wage competition on public works. The federal Davis-Bacon Act of 1931 and parallel laws in 30 states dictate that employees doing taxpayer-funded construction work be paid "prevailing wages," which in practice are usually tantamount to union wages.[88]

In reality, the higher costs associated with union-shop contractors in publicly-funded construction are largely due to the lack of leeway in union hiring and job classification practices. Union officials often insist on a heavy representation of higher-paid journeymen (i.e., skilled) workers in a given task, even if it requires only semiskilled or even unskilled workers. Open-shop contractors usually shun such quotas, and seek

instead to permit trainees to become competent in as many aspects of construction as possible, and at a chosen pace. Thus, they do not experience the turf battles or labor shortages common to unionized firms. Consequently, they don't experience the related project delays and necessity of deploying out-of-town journeymen. Management professor Herbert Northrup and labor attorney Linda Alario elaborate:[89]

> It is often difficult for unionized contractors to employ local labor unions because first, they must utilize a higher percentage of skilled employees since they employ few, if any, subjourneymen (helpers) to handle the semiskilled work…. Second, because their training is largely restricted to the traditional apprentice programs, unions typically import "travelers" from local unions in other areas in order to supply journeymen rather than offer opportunities to local semiskilled labor.

The Burlington, Mass.-based Merit Construction Alliance, the authors note, has marshaled substantial evidence that open-shop contractors use local workers more often than do union-shop contractors.[90]

Another reason for the higher cost of union labor is that unions heavily influence rules on worker training. Open-shop contractors are more apt to bring recruits onto the worksite as quickly as possible. They do not have any incentive either to stretch out training periods or to limit training to a particular task, as unions so often do. Union contractors and unions, by contrast, offer a combination of on-the-job training and classroom instruction usually stretched out over four years, an approach abated by the U.S. Department of Labor's Bureau of Apprenticeship and Training and equivalent state agencies.[91]

Trainees, regardless of whether they belong to a union, tend to climb a steep learning curve, developing most of the knowledge needed for doing a job early on. A late-90s study by University of Florida researchers focused on how open-shop contractors

train workers to outfit buildings with electrical wiring and sprinkler systems. The authors determined that the return on investment (ROI) was the greatest by far for the first year of craft training, both for electricians and sprinkler fitters. "(A)pplying the learning curve theory to the current ROI research," they observed, "would suggest that the productivity impacts of the training may be reduced as a person learns more and more about how to perform their craft, thereby reducing the availability of areas in which to improve."[92]

Turf wars and excessive training costs fuel higher overall costs on projects with PLAs. Two recent studies by Suffolk University's Beacon Hill Institute (BHI) in Boston highlight this point. In one study, BHI researchers analyzed 54 school projects, 17 of them with PLAs, undertaken in Greater Boston since 1995. After controlling for inflation (2001 dollars), project size, and type of construction, the authors found that the presence of an agreement increased the bid post of construction by $18.83 per square foot, a 14 percent mark-up. An agreement added on average more than $5 million to the cost of a 300,000 square-foot structure.[93] In the second study, BHI researchers, using the same methodology, looked at the impact of project labor agreements on school construction in Connecticut since 1996. The presence of a PLA, the authors found, raised actual project costs by $30 per square foot, or 18 percent, relative to non-PLA projects.[94]

If water bills in the Las Vegas area seem on the high side for some customers, that's largely due to a PLA. The Southern Nevada Water Authority (SNWA) since 1996 has had an agreement in place for its projects. Its competitor, the Las Vegas Valley Water District (LVVWD), does not have a PLA. A team of researchers examined bidder information on 57 construction projects during the period 1995-2000. The authors concluded, "We cannot find any compelling reason for construction owners to implement

Project Labor Agreements on their projects…. A reduction in competition by contractors that have been previously successful means higher prices for taxpayers under the Project Labor Agreement method of contracting."[95]

Had the Clinton administration gotten its way, there would now be far more taxpayer-hostile PLA deals underway. The Employment Policy Foundation, a Washington, D.C.-based research group, estimated the cost of a June 5, 1997 executive memorandum issued by President Clinton encouraging federal departments and agencies to use PLAs on construction projects costing at least $5 million.[96] Higher costs due to the promotion of union work rules by such agreements, the EPF calculated, would raise the annual cost of federal construction by anywhere from 1.7 percent to 7.0 percent.[97] Over the three-plus-years life of the proposal,[98] estimated the authors, total construction costs on federally-owned facilities would have increased by between $844 million and $3.44 billion. If the memorandum had been interpreted to apply to state and local construction projects receiving federal aid, the increase would have been anywhere between $3.2 billion and $13.0 billion. Fortunately, the Clinton memorandum was never fully implemented, and its pro-PLA policy was quickly reversed by the George W. Bush administration.

WORKMANSHIP

Supporters of PLAs often claim they are needed to ensure quality workmanship. Because PLAs provide a steady stream of skilled union-trained and certified craftsmen, union spokesmen allege, they minimize the likelihood of construction defects that could

end up costing taxpayers more money down the road. The extra cost of labor union work rules serves as the proverbial ounce of prevention, according to this pitch.

Unfortunately, the claim misses the larger context. As the Big Dig illustrates in a big way, defects can and do turn up in union-built projects. Moreover, defects in any case may result from poor engineering design and management – workmanship, union or nonunion, often has nothing to do with structural problems. And a number of PLAs may have impeded quality. "We've had a number of contracts carried out by local contractors that we've had nothing but problems with," noted Juneau, Alaska School Board Member Bob Van Slyke about his city's experience with PLAs.[99]

"Problems" might be an understatement to describe our old Boston friend, the Big Dig. In September 2004 engineers were hired to investigate the cause of a massive tunnel leak that had snarled traffic for miles on Interstate 93. They were dumbfounded to discover that the tunnel was riddled with hundreds of leaks. Roughly 26 million gallons of water had coursed through the project's drainage system in less than a year, over 5,000 percent more than the 500,000 gallons engineers had expected the system to handle annually. Finding and fixing all the leaks will take years, probably at least a decade, according to Jack Lemley, an investigative consultant hired by the Massachusetts Turnpike Authority. And this wasn't the first time structural problems had been detected. A 1995 report indicated that "inadequate controls resulted in a serious leak in the sunken tube tunnel . . . and that inadequate welding and inaccurate measurements generated unnecessary costs." When the tunnel opened, toll takers had to wear respirators to ward off further headaches, nausea, sore throats, and itchy eyes.[100]

Workmanship problems also occurred in Manhattan's Times Square facelift, which was covered by a PLA. In 1998, a consultant to the U.S. Department of Commerce concluded that counterfeit fasteners had been the cause of the collapse of a scaffold that had killed an elderly woman and injured 12 others. There was "very clear" evidence, noted the investigator, that the fasteners in the scaffold and hoist were improperly marked.[101]

Montreal also has discovered that a PLA is no guarantee against construction defects. Back in 1998, the city allocated $25 million to replace torn roofing panels at Olympic Stadium. The work was soon initiated under a union-only PLA. In January 1999, as workers were setting up for a car show, a 180-foot cascade of snow and water poured through a tear in one of the 63 new fabric panels, causing workers to run for cover.

There is no evidence that flaws in workmanship turn up in non-PLA construction more than they do in PLA construction. Absent such evidence, government officials ought to be very skeptical of union claims that the higher costs associated with PLAs somehow serve taxpayer interests.

WORKER SAFETY

The Montreal case cited above relates not just to quality but also to another area of concern: worker safety. PLA advocates assert that agreements protect hardhat employees against potentially lethal accidents and exposure to hazardous substances. Because workers belong to a union or at least adhere to union work rules, they

purportedly are better trained. And better training means fewer accidents, especially fatal ones. So the argument goes.[102]

Such a view does not correspond well with reality. A decade ago, former Occupational Safety and Health Administration official Charles Culver analyzed nearly 6,000 construction fatalities occurring during 1985-93 in a nationwide study. He found that for each year in that period, worker deaths were significantly less frequent in open-shop than in union-shop construction projects.[103] Union spokesmen often cite a separate OSHA data base showing that 72 percent of all construction fatalities during 1985-89 occurred on nonunion worksites.[104] But this statistic, examined in isolation, doesn't reveal very much. By this time, roughly 80 percent of construction workers did not belong to a union, and 70 percent of the total dollar volume of construction was being done by open-shop contractors. In other words, the 72 percent figure was not disproportionate.

Those who insist that agreements raise the safety bar for workers might want to consider the following calamities that have befallen projects with a PLA in force:[105]

- In August 1999, during construction of Miller Park, future home of the Milwaukee Brewers baseball team, a crane used to install a retractable roof collapsed onto the stadium, killing three workers and injuring three others. There had been a gusting wind of 26 mph. This fatal accident apparently occurred because warning signs weren't properly heeded. That March, contractors had cancelled a lift to install the second part of the roof because of a 10 mph wind.

- Fire destroyed a wooden scaffold and tarps in September 1998 while cable repairs were being made to the Ben Franklin Bridge connecting Philadelphia and Camden, N.J. Union workers had been smoking on the job.

- The Department of Energy (DOE) in 1999 fined general contractors of the Hanford nuclear reactor in Washington State $330,000 for safety violations. DOE alleged they failed to conduct basic oversight over work process controls, subcontractor qualifications, subcontractor oversight, and project design.

- In Las Vegas, during construction of the Aladdin Hotel and Casino, a 25-ton load of concrete slabs fell seven stories, crushing a worker to death.

It is true that workplace accidents, fatal or otherwise, also sometimes occur with a nonunion work force. But the reality is that worker safety in union construction generally leaves much to be desired. There is no credible evidence backing up union claims that PLAs protect worker safety.

REFORMING THE SYSTEM:
POLICY ALTERNATIVES

Project labor agreements are products of Organized Labor's drive for control over how contractors hire and manage labor. Abuses associated with PLAs have caused open-

shop contractors to demand government action to ban them or restrict the circumstances under which they can be negotiated. It is a necessarily slow process. The National Labor Relations Act has, at least in theory, made it federal policy for 70 years that no employer may enter into a Collective Bargaining Agreement (CBA) with a union other than one that employees choose to represent them. If and when an employer signs a CBA, it formally commits itself to recognition of that union as the workers' "sole and exclusive representative." Government-authorized monopoly bargaining gives unions an enormous degree of leverage to establish PLAs. Union officials can negotiate from a position of strength, applying pressure in the form of strikes, salting, and other tactics to acquire the most favorable terms in shaping bid requirements. One would believe that public officials, including pro-union ones, do not want to operate from a position of weakness – that is, they want as much freedom to say "no" as "yes" to union demands. There are a number of realizable alternatives by which public officials can exert more leverage.

Alternative #1 – Issue executive orders barring government from entering into, or authorizing, publicly-funded project labor agreements.

The President and the nation's governors, mayors, and county executives have the authority to order agencies to procure contracts in a manner that ensures open competition, regardless of union affiliation by contractors. Responsibility begins at the top. Though at times tentatively, President Bush has acted forcefully and properly. On February 17, 2001, just four weeks after taking office, he signed Executive Order 13202, banning the use of project labor agreements on all projects receiving federal funding.

The move rescinded an order issued eight years earlier by Bush's predecessor, Bill Clinton; President Clinton's order, in turn, had reversed a 1992 order by President George H.W. Bush. Current President George W. Bush emphasized in issuing his order that nonunion labor should not be held hostage to union demands. Among the key goals of the order were to "promote and ensure open competition on federal and federally-funded or assisted construction projects…reduce construction costs to the federal government and taxpayers…expand job opportunities."[106]

President Bush in March 2001 also suspended the 1997 Clinton White House Memorandum of Understanding "encouraging" federal agencies to attach PLAs to construction contracts.[107] That measure was a political gift to organized labor, originating in a pledge made by Vice President Al Gore earlier that year at a meeting of AFL-CIO leaders.[108] The memo went further than Clinton's 1993 repeal of George H. W. Bush's executive order by seemingly imposing an affirmative obligation on contractors to negotiate PLAs with unions. In practice, it lacked the force of an executive order. Perhaps less remembered, Clinton had first indicated he would issue a full-fledged executive order promoting PLAs, but relented when key Senate Republicans threatened in retaliation to reject President Clinton's then-nominee for Secretary of Labor, Alexis Herman.

While Bush Executive Order 13202 was welcome, so far its impact has been modest. First, the order was not retroactive to any project already approved. Second, it did not (and could not) prevent states or localities from imposing PLAs on their own, as long as no federal tax dollars were involved. Furthermore, on April 6, 2001, less than two months later, President Bush issued Executive Order 13208, amending the original

order. This move exempted from coverage projects that had been awarded a PLA as of the date Executive Order 13202 was scheduled to go into effect. This move returned to union control about $2.7 billion in federal contract work.

Somehow the unions were not appeased. In April 2001, led by the AFL-CIO's Building and Construction Trades Department, labor officials filed suit in federal court to block enforcement of Executive Order 13202. In accordance with Bush's order, the Department of Transportation refused to approve the PLA for the Woodrow Wilson Bridge project, thus triggering the lawsuit. Months later, in August, U.S. District Judge Emmet Sullivan[109] ruled in favor of union lawyers, issuing a preliminary injunction against the ban taking effect; he made the ban permanent that November. The U.S. Justice Department, joined by various organizations supportive of the open shop, including the National Right to Work Legal Defense Foundation, appealed. The U.S. Court of Appeals for the D.C. Circuit agreed with the appellants, and in July 2002 overturned the lower court's decision.[110] BCTD in turn appealed to the Supreme Court, but the Court announced in January 2003 that it would let the ruling stand.[111]

There is no reason why governors, county executives, and mayors cannot also use executive orders to ban rather than to mandate or "encourage" PLAs. They, too, have the authority as well as the obligation to ensure that all contracting practices safeguard the interests of taxpayers. Indeed, since at the national level it is almost a given that the next Democratic President will undo the current Bush order, action at the state and local levels is a necessity.

Alternative #2 – Pass federal neutrality-in-contracting legislation.

In the late spring of 2003, Rep. John Sullivan, R-Okla., sponsored the Government Neutrality in Contracting Act (H.R. 2269), and Rep. Sam Johnson, R-Texas, introduced the Government Labor Neutrality Act (H.R. 2293). Sullivan's bill would have codified President Bush's Executive Order 13202. Johnson's bill would have amended the National Labor Relations Act to prevent any federal agency, or any party acting on the agency's behalf, from either requiring employers in the construction industry to enter into a PLA with a labor organization, or prohibiting employers from doing so. Lawmakers took no action on either measure.

Each bill, it is true, would have been limited in scope. Employers still would have retained the authority to enter into a PLA, as they do under Executive Order 13202. The bills merely stated that the federal government could not *require* such an agreement. As such, they would clearly prevent a future Democratic White House from imposing PLAs by executive order. However, the measures would have left state- and locally-funded construction unaffected. Still, as both bills would serve as a measure of insurance against union control over federal contracting, Congress should pass them. As of this writing, Sullivan and Johnson reportedly are planning to reintroduce their bills in the current Congress.

Alternative #3 – Legislate state bans on PLAs.

Thus far, as noted earlier, only Ohio, Montana, and Utah have barred the use of PLAs on public-sector construction projects – and in the case of Ohio, the activist state Supreme Court invalidated the law. Sources at Associated Builders and Contractors say that Utah's law is airtight, but that the unions in Montana are gearing up for a fight to overturn that law. Mindful of legal pitfalls, more states need to follow their lead. And several are, most notably Missouri. Last spring that state's House passed the Open Contracting Act, which would have barred state or local agencies from imposing union-only agreements on public works projects. But Senate Democrats worked to defeat the proposal, passing a far narrower bill that dealt only with surety bonding. Sen. Robert Mayer, who as a House member led the effort for enactment the last time around, has reintroduced the measure in the state Senate.

Alternative #4 – Retain state procurement laws requiring contracts go to the lowest responsible bidder.

The whole point of competitive bidding on public works is to guard taxpayers against extravagance, waste, fraud, and incompetence. It is thus standard practice for government agencies to award contracts to the "lowest responsible bidder." But how does one define "responsible?" Union lawyers argue that, by virtue of their training and certification programs, contractors who operate according to union specifications are responsible, but their nonunion competitors are not. Open-shop contractors may be

cheaper, the argument goes, but they deliver less. The extra cost of playing by union shop rules is therefore worth it. The general public is in good hands with unions; putting nonunion workers on the job without any union rules is playing Russian roulette. But experience, as explained earlier in this report, has revealed this claim to lack substance.

It is easy to be misled by union claims of greater expertise. Construction, by its nature, is often hazardous work. At various points, workers can be expected to scale heights and work around moving equipment, inside tunnels, and atop bridges. But the equation "unionism equals professionalism" doesn't add up. Associated Builders and Contractors and the Merit Construction Alliance have argued, persuasively, that wherever open-shop contractors submit winning bids, their subsequent work routinely meets the highest professional standards and at a reasonable cost.

That may be why unions have recently been promoting "best-value" contracting requirements at the state level. Though innocently labeled, such legislation is far from benign. By reducing the weight of cost in the evaluation process, a "best-value" law shifts the review process toward an array of subjective factors favoring larger – and typically unionized – bidders. A "best value" law would also necessitate hiring more state procurement officers. An analysis of a proposed (and never-acted upon) best-value law in Maryland covering contracts of at least $2.5 million estimated that taxpayers could expect to pay anywhere from 10 percent to 15 percent more on average than under the traditional "lowest responsible bidder method."[112] As state surety bonding requirements already protect the public against political favoritism and contractor incompetence, such proposals are superfluous anyway.

Alternative #5 – Repeal Sections 8(e) and 8(f) of the National Labor Relations Act.

The main source of union monopolies in the construction industry lies in the very National Labor Relations Act that granted unions such power in all industries. However, two NLRA amendments that authorize prehire agreements give construction union officials an especially privileged status. Organized Labor can be expected to put up a ferocious fight in response to even a *mention* of repeal of Sections 8(e) and 8(f) of the NLRA's 1959 Landrum-Griffin amendments. They would see this as a preview of the NLRA's complete repeal, or, at the very least, repeal of its twin union privileges of exclusive representation and forced-dues collection. It was ambiguity in the 1935 law regarding the legality of prehire agreements that led lawmakers nearly a quarter century later to enact special allowances for the construction industry.

The Boston Harbor decision was based on the conclusion that PLAs did not violate NLRA Sections 8(e) and 8(f). Thus, if these sections of the law ceased to exist, PLAs would lack any statutory underpinning. From the very start, 8(e) and 8(f) have helped unions and union-affiliated contractors circumvent "lowest responsible bidder" requirements in public-works construction. These sections of the law practically assure unions a monopoly over many public projects, whether or not public contracting authorities mandate or merely allow PLAs. Congress needs to put open-shop contractors on par with those aligned with the union shop by repealing Section 8(e) and 8(f).

Alternative #6 – Enact federal and/or state Right to Work legislation.

In Congress hope springs eternal, even if results usually are slow in forthcoming. On February 1, 2005, Rep. Joe Wilson, R-S.C., reintroduced legislation, the National Right to Work Act (H.R. 500), to repeal longstanding federal labor law provisions that authorize an employer to fire employees who refuse to pay dues or agency fees to a union. Rep. Wilson's bill originally had 20 co-sponsors, and as of this writing has 58. Companion legislation (S. 370) introduced later in February by Sen. Trent Lott, R-Miss., as of this writing has 15 cosponsors. Rep. Wilson and Sen. Lott are going to need a lot more help to ensure that forced-dues collection becomes a thing of the past in all 50 states. Currently, 22 states ban the practice. But that means that 28 other states (plus the District of Columbia) do not.

It is little coincidence PLAs have been most prevalent in the latter group of states. While it is true that PLAs have been established, and upheld in court, in Right to Work Iowa and Nevada, these are exceptions, not the rule. Virtually all major agreements have been worked out in states without Right to Work laws. There is little mystery to this. For one thing, a state that permits unions to condition employment upon payment of dues, regardless of the individual worker's wishes, is the kind of state likely to permit unions to violate the rights of independent-minded workers (and their employers) in other ways. Second, it takes money to successfully broker a PLA into existence, whatever the tactics of persuasion. When a state declines to enact a Right to Work law, it is enabling unions to use compulsory dues to build their coffers for future PLA negotiations.

Giving employees the even more fundamental right to decide whether to be represented by a certain union – or any union at all – would go a long way in mitigating the use of project labor agreements. Over the long run, Right to Work legislation and, ultimately, legislation removing the federal authorization for monopoly bargaining may be the most effective approach of all. Progress has been slow at the state level. When Oklahoma voters passed a referendum in 2001 making that state the 22nd with a Right to Work law, it represented the first such success in a decade and a half (Idaho in that instance). Oklahoma officials, moreover, had to spend two years in the state courts warding off a challenge by union bosses and allied contractors.[113]

But even successful state action does not lift Congress's obligation to pass a national Right to Work law. Clearly, such action would enjoy widespread public support. A nationwide survey last year by the polling firm Media Research 2000 revealed nearly 80 percent of all respondents view favorably the right of a worker to choose whether to belong to a union. Moreover, supporting the Right to Work is sound economics. Bureau of Labor Statistics data show that non-farm employment grew by 23 percent during 1993-2003 in the 21 states with a Right to Work law; by contrast, the rise for states without such a law was only 14 percent. The respective figures for real personal income growth were nearly 39 percent and 28 percent. And national Right to Work legislation is needed to end forced union dues in the railroad and airline industries and in so-called "exclusive" federal enclaves, including military bases, the Centers for Disease Control and Prevention, and national parks. Current federal law preempts states from banning forced unionism in these industries and areas.

PROTECTING WORKERS, TAXPAYERS

AND FREE ENTERPRISE

If project labor agreements were, as the term indicates, true agreements – that is to say, compromises entered into by uncoerced parties – there would be nothing intrinsically wrong with them. Operating under common law, labor and management regularly do compromise as a matter of necessity to maintain a harmonious workplace, with or without unions in the picture. Going further, one could say that marriages, communities, and nations simply would not be possible without some degree of negotiated consent. Unfortunately, labor law in this country has been written and interpreted for 70 years in such a way as to render the word "agreement" fairly hollow. The NLRA, as amended, has given unions a license to intimidate, with brute force or relatively subtly, agencies and contractors not wishing to sign a PLA.

In practice, PLAs are an expensive way to build highways, arenas, schools, and other public works. Whether by effectively excluding non-union contractors or by forcing them into union-like behavior, these agreements restrict the range within which contractors may operate. Construction union demands drive up project costs, among other ways, by mandating gold-plated benefits, abusing training programs to limit artificially the supply of labor, and establishing rigid divisions between tasks to protect craft union turf. Project labor agreements establish what amounts to monopoly conditions in the labor market. As Northrup and Alario conclude:[114]

> If unionized contractors have the capability of winning bids without government-mandated PLAs, then they do not need such agreements to stifle competition. We thus must conclude that restraints imposed by government-directed PLAs are political decisions which have little or no economic rationale, nor can they be defended on grounds of labor peace, enhanced safety, or other such reasonable criteria. To exclude or to limit

> the right of open-shop contractors, who have won 75-80 percent of the national construction dollar spent, from the opportunity to bid on public-financed construction, and thus to limit or to eliminate their participation in construction paid for by taxpayers unless they are willing to work as if they were unionized contractors is palpably both unfair and contrary to sound public policy.

Public works projects are justifiable when undertaken in the best interest of the general public. It is, after all, the public who pays taxes, tolls, and other costs of maintaining a facility once it opens for use. Yet the record of PLAs indicates that they primarily benefit a small segment of the public: labor unions and union-shop contractors. While the public has every right to expect protection from the imposition of noncompetitive bidding practices, such expectations will be dashed where unions are authorized to obtain PLAs in addition to their monopoly bargaining and forced-dues collection privileges.

By virtue of granting monopoly powers to unions in the form of exclusive representation and mandatory dues collection, the NLRA has ensured that prehire agreements (even if not mandated or encouraged by government) cannot be truly voluntary. The ultimate challenge therefore is not to restrict government's arbitrary powers under the present law; *it is to change the law itself*. Federal labor law, at the very least its blatantly monopolistic aspects, should be repealed.

Unions have a right to cut deals to further their institutional interests, but not at the expense of nonunion contractors, their employees, and (in many cases) rank-and-file unionists. PLAs "level the playing field" between union and non-union participants, all right – by raising the ticket price of getting onto that field. Removing the basis for building anti-competitive privileges into PLAs would improve, not undermine, the lot of American working men and women. Allowing all construction contractors to compete on

a truly equal footing for contract work is likely to result overall in lower project costs, shorter project durations, better workmanship, and improved worker safety. One would be hard-pressed to oppose outcomes such as these.

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* * *

Nothing here is to be construed as an attempt to aid or hinder the passage of any bill before Congress.

ENDNOTES

[1] *Daniel Hamm Drayage Co*., Inc. 84 NLRB 458 (1949); *Guy F. Atkinson Co*., 90 NLRB 143 (1950).

[2] Cited in Herbert R. Northrup and Linda E. Alario, "*Boston Harbor*-Type Project Labor Agreements in Construction: Nature, Rationales, and Legal Challenges," *Journal of Labor Research*, Vol. XIX, No. 1, Winter 1998, p. 2.

[3] Herbert R. Northrup, Robert E. Williams, and Douglas S. McDowell, *Doublebreasted Operations and Pre-Hire Agreements in Construction: The Facts and the Law*, Philadelphia: University of Pennsylvania, The Wharton School, Industrial Research Unit, Major Industrial Research Unit Series, No. 62a, 1987, pp. 73-91.

[4] See Northrup & Alario, pp. 6-8; Worcester Municipal Research Bureau, *Project Labor Agreements on Public Construction Projects: The Case for and Against*, Report No. 01-4, Worcester, Mass.: Worcester Municipal Research Bureau, May 21, 2001, pp. 5-6; U.S. Environmental Protection Agency, "Boston Harbor – State of the Harbor," http://www.epa.gov/boston/ra/bharbor/state.html. For the most thorough discussion, see "Judge A. David Mazzone's Chamber Papers on the Boston Harbor Cleanup Case, 1985-2003," Boston: Healey Library at UMass Boston, http://www.lib.umb.edu/archives/mazzone.html.

[5] 507 U.S. 218 (1993).

[6] Cited in Gerard M. Waites and Gregory A. Mancini, *Project Labor Agreements: Reliable Staffing Plans for Capital Construction Projects*, October 2002, www.ri21.com/stuff/contentmgr/files. Waites is an attorney for the Washington, D.C. law firm of O'Donoghue & O'Donoghue; Mancini is executive director and general counsel for the Providence, R.I.-based 21st Century LM Partnership. The authors clearly express their support for PLAs throughout the piece.

[7] *Associated Builders and Contractors Inc. v. San Francisco Airports Commission*, 21 Cal. 4th 352 (1999). That raises the issue: If a union genuinely is interested in timely completion of a project, why not allow, even encourage, the hiring of nonunion labor, whose propensity to go on strike almost by definition is lower than that of union labor? What was ironic about the ruling, as this report shall indicate later, is that workers from not less than four local unions at the airport project went on a brief wildcat strike, costing the project an extra $1 million.

[8] *Associated Builders and Contractors, Inc. v. Metropolitan Water District of Southern California*, No. S067485 (direct history omitted).

[9] *Connecticut Associated Builders and Contractors et al. v. City of Hartford*, 251 Conn. Supreme Court 169 (1999) and *Connecticut Associated Builders and Contractors, et al. v. Theodore Anson, Commissioner of Public Works*, 251 Conn. Supreme Court 202 (1999).

[10] *Laborers Local 942 v. Lampkin*, 956 P. 2d 422 (Alaska 1998).

[11] *Associated Builders and Contractors, Inc. v. Southern Nevada Water Authority*, 979 P. 2d 224 (Nev. 1999).

[12] *John T. Callahan & Sons, Inc. v. City of Malden*, 430 Mass. 134, 713 N.E. 2d 955 (1999).

[13] Ohio Rev. Code Sec. 4116 (1999).

[14] To further underscore just how much of a political hot potato the new law was, Ohio Gov. Bob Taft, a Republican, allowed the bill to become law without his signature, concerned that the law would not withstand a constitutional challenge.

[15] Construction of the Gund Arena generated a total cost overrun of about 25 percent above the original project estimate of $118 million. Negative publicity surrounding the arena's PLA proved to be a catalyst for enactment of the state open contracting law. See George B. Donnelly, "The Big Dig's Costly Political Addiction to Unions," *Boston Business Journal*, April 6, 2001.

[16] *Associated Builders and Contractors, Central Ohio Chapter v. Jefferson County Board of Commissioners*, 665 N.E. 2d 723 (Ohio Ct. App. 1995); app. dismissed, 659 N.E.2d 314 (1996).

[17] *Enertech Electrical, Inc. v. Board of Mahoning County Commissioners*, No. 4:93 CV 1746, N.D. Ohio (April 28, 1994); 1994 WL 902403 (N.D. Ohio); affirmed, 85 F.3d 257 (6th Cir. 1996).

[18] *Ohio State Building & Construction Trades Council v. Cuyahoga County Board of Commissioners*, 98 Ohio St.3d 214, (2002-Ohio-7213).

[19] *Master Builders of Iowa v. Polk County*, 653 N.W.2d 382 (Iowa 2002). A good summary of the issues surrounding the Iowa controversy (though from a view more sympathetic to the unions than to the contractors) can be found in Ralph Scharnau and Michael F. Sheehan, *Project Labor Agreements in Iowa: An Important Tool for Managing Public Construction Projects*, Mount Vernon, Iowa: The Iowa Policy Project, October 2004, www.iowapolicyproject.org.

[20] The Iowa Supreme Court failed to grasp that the basic purpose of a PLA is to compel merit-shop contractors to adopt union rules in order to remain eligible for bidding. As the hiring hall provision is intended to ensure new workers (beyond a certain minimum) are union members, it effectively forces a sizable contractor to shed most nonunion workers. Indirectly, these workers at that point must go through the union hiring hall to work on the project. The Court had relied on the U.S. Supreme Court's ruling in *Oil, Chemical & Atomic Workers International Union, AFL-CIO v. Mobil Oil Corp*., 426 U.S. 407 (1976).

[21] *New York State Chapter, Associated Builders and Contractors of America, v. New York Thruway Authority*, 207 A.D.2d 26 (3rd Dept. 1994); affirmed 88 N.Y.2d 56 (1996).

[22] *General Building Contractors of New York, Inc. v. Dormitory Authority of State of New York*, 210 A.D.2d 788 (3rd Dept. 1994); reversed 88 N.Y.2d 56 (1996).

[23] *George Harms Construction Inc. v. New Jersey Turnpike Authority*, 137 N.J. 8 (1994).

[24] *Tormee Constructions Inc. v. Mercer County Improvement Authority*, 142 N.J. 511 (1995). Actually, the Court affirmed the lower court ruling in September 1995, but delayed until February 1996 issuing a detailed explanation.

[25] *Associated Builders and Contractors of Rhode Island, Inc. v. Department of Administration, State of Rhode Island*, No. 2001-40 & 2000-514 (January 4, 2002).

[26] *Amanti & Sons, Inc., and Others v. City of Lynn*, Supr. Ct., Memorandum of Decision and Order on Plaintiffs for Preliminary Injunction , Civil Action No. 907-2780-C, June 9, 1997.

[27] *Methuen Construction Company and Others v. City of Boston*, Commonwealth of Massachusetts, Suffolk County Superior Court, Civil Action No. 98-1267.

[28] Office of the Governor, State of New Jersey, Executive Order 2002-1.

[29] Office of the Governor, State of Illinois, Executive Order 2003-13.

[30] Utah Code Ann. Sec. 34-30-14(2) (1995).

[31] Montana Code Ann. Sec. 18-2-425 (1999).

[32] See Charles W. Baird, "Labor Relations Law," *Government Union Review and Public Policy Digest*, Vol. 21, No. 3, January 2004, p. 21 (originally published as Chapter 34 in *Cato Handbook for Congress: Policy Recommendations for the 108th Congress*, Washington, D.C.: Cato Institute, 2003); Steven Greenhut, "Project Labor Agreements: Economic Illiteracy 101," *Ideas on Liberty*, June 2003.

[33] The Michigan Prevailing Wage Act, for example, mandates that wages and benefits paid on state construction projects match local collective bargaining rates. In August 2003, the state Court of Appeals upheld the act, ruling it was neither vague nor an unconstitutional delegation of legislative authority. (*Associated Builders and Contractors-Saginaw Valley Area Chapter v. Wilbur*, Mich. Ct. App., No. 234037, 8/5/03). For evidence that Davis-Bacon historically has enabled unions to define "prevailing wages," see Morgan O. Reynolds, *Power and Privilege: Labor Unions in America*, New York: Universe, 1984, pp. 134-39.

[34] Cited in Mark R. Thierman, "Blame Unions for Blackouts," *Engineering News-Record*, January 29, 2001.

[35] Quoted in "Bipartisan House Bill Would Allow PLAs on Federally Assisted Construction Projects," *Daily Labor Report*, April 4, 2001.

[36] Edward C. Sullivan, "Major Projects Need Non-Union Labor," *Baltimore Sun*, October 11, 2000.

[37] Associated Builders and Contractors -- Metro Washington Chapter, "Union-Only Project Labor Agreement Case Study: The Washington DC Convention Center," flyer.

[38] Quoted in Peter Neurath, "Only Thing PLAs Really Stop Is Fair Competition," *Puget Sound Business Journal*, August 27, 1999.

[39] Cited in Maurice Baskin, "Union-Only Project Labor Agreements: The Public Record of Poor Performance," Arlington, Va.: Associated Builders and Contractors, Inc., 2000, p. 9. Andrews obtained a list of contractors that had been reported as "open shop" in a letter from the manager of the Boston Harbor project. Officially, there were 16 designated open-shop contractors and 102 open-shop subcontractors.

[40] Ian Lange, "Perceptions and Influence of Project Labor Agreements on Merit Shop Contractors," independent project, 1997, cited in *AWB* (Association of Washington Builders), www.awb.org/policy/spotlights.

[41] U.S. General Accounting Office, *Construction Agreement at DOE's Idaho Laboratory Needs Reassessing*, GGD-91-80BR, Washington, D.C.: U.S. General Accounting Office, May 1991.

[42] See "Actus Land Lease, Hawaii Trades Sign 50-Year Agreement for Military Housing," *Daily Labor Report Online*, Washington, D.C.: Bureau of National Affairs, Inc., July 13, 2004.

[43] See "Open Bidding on Public Works," Editorial, *Seattle Times Online*, August 6, 2003.

[44] Quoted in James T. Mulder, "Lake Cleanup Plan Creates Labor Mess," *Syracuse Post-Standard*, August 6, 1998.

[45] The project was not entirely a private venture. The City of Little Rock issued $16.5 million in bonds to pay for condemnation of the parcels of land on which the library would be built. To ensure the bonds would be repaid, the city raised golf course greens fees by more than half. See David M. Halbfinger, "With Latest Battle Resolved, Clinton Library Work Begins," *New York Times*, June 7, 2002.

[46] Sherie Winston, "Building Trades Are Furious Over Clinton Library Agreement," *Engineering News-Record*, June 17, 2002. "It's ironic that the presidential library dedicated to Ronald Reagan, an ardent foe of our unions, was built 100% union," said Sullivan.

[47] Frank Andruscavage, "Unions Lose Guarantee with Arena," *Hazleton Standard-Speaker*, August 29, 1997.

[48] Aside from representing a clear act of lawbreaking, the Carpenters' union workers' demands were out of line by any reasonable stretch. Strikers sought a $10 an hour increase over the nearly $27 an hour they already were getting. In addition, they wanted coffee breaks and every other Friday off. See Lisa Fernandez, "Carpenters at Airport Protest Against Union Leadership," *San Francisco Chronicle*, May 21, 1999.

[49] See Dale Kasler, "Pressure by Labor Group Alleged," *Sacramento Bee*, September 19, 2004.

[50] CURE officials deny their motive is to hold up the approval process. Yet of the 41 power plants proposed in California since 1997, CURE had intervened 30 times. See *ibid*., also "Power Grab," Editorial, *Wall Street Journal Interactive Edition*, February 15, 2001.

[51] Mark Lifsher, "Struggle Over Power Plants," *Los Angeles Times Online*, September 6, 2004.

[52] Quoted in *ibid*.

[53] See Peter Marks, "The Bridge Stops Right Here, a Nonunion Builder Is Told," *New York Times*, March 17, 1995; "Contractor Counts His Losses," *Engineering News-Record*, July 15, 1996.

[54] Michael L. Diamond, Gannett News Service, "Contracts Worth It?," *The Daily Record Online*, July 18, 2004.

[55] Quoted in Amy L. Bernstein, "Maryland, Virginia Set Aside Labor Feud to Cheer Bridge Money," *Maryland Daily Record*, October 4, 2000.

[56] Gov. Glendening's request for 50-50 state-sharing on cost overruns (since both states presumably would share in the benefits equally) was even more of an imposition on Virginia than one might suspect. The Potomac is Maryland's river all the way to the Virginia banks, and Maryland controls the bridge construction contracts. See Francis X. Clines, "Virginia and Maryland Square Off Over Potomac Bridge," *New York Times*, March 3, 2001.

[57] Maryland Department of Transportation, "Bid on Largest Bridge Contract Comes in Under," May 1, 2003 press release.

[58] A discussion of this episode can be found in James Patterson, "Non-Union Workers Cry Foul Over Contract for Conrad," *Indianapolis Star*, n.d., (before April 23, 2004).

[59] This wasn't the only example of stealth in winning approval. Additionally, the union, or at least someone allied with it, employed harassment tactics against a dissenting public official, City-County Councilman Isaac Randolph. Randolph, who is black, had the temerity to question whether unions should have controlled the hiring process, since black-owned contractors tend to be non-union. He subsequently was the target of harassing, often threatening phone calls. One night in February 2004, sheriff's deputies found a doll on Randolph's driveway with a noose around its neck, its face painted black, and with a nail in its chest. The Ku Klux Klan couldn't have planned it any better. See *ibid*.

[60] See Lance T. Izumi, "Union Powerplay for L.A. School Construction Contracts," San Francisco: Pacific Research Institute for Public Policy, *Capital Ideas*, Vol. 2, No. 42, October 22, 1997.

[61] ULLICO for the last several years has been the target of a full-scale probe by Congress into financial improprieties regarding its stock investments and trades during the late 90s, and its immediate aftermath. In October 2003, the House Committee on Education and the Workforce released a final report that was sharply critical of the company's board of directors for reaping windfall profits on what appeared to be insider trading. The main target was ULLICO's then-chairman, Robert Georgine, who'd headed the BCTD during 1974-2000.

[62] See Jackie Spinner, "Gallery Place Loan Mandates Union Labor," *Washington Post*, July 16, 2001. Construction financing for the project came from a $110 million loan from GMAC. The developers will receive some of the proceeds from a $75 million bond issued by the District of Columbia's tax increment financing program.

[63] Miami-Dade County at the time had pledged $73 million, while the team management had promised $137 million. That left a $115 million shortfall. See Marc Caputo, Oscar Corral, and Barry Jackson, "Union-Owned Investor Offers Loan to Marlins," *Miami Herald Online*, November 10, 2003.

[64] Early this year Marlins management asked the Florida legislature for a $60 million subsidy to help build a 38,000-seat, retractable roof, air-conditioned stadium that would cost (including land) $420 million, quite a jump from the earlier figure of $325 million. The team has pledged to put up $192 million. The team is currently locked into a money-losing deal at an NFL facility, Dolphins Stadium (a legacy of former Marlins' owner Wayne Huizenga), and must vacate the premises by 2010. Senate President Tom Lee recently accused Marlins management of secretly trying to engineer a deal to leave Miami for Las Vegas. See Marc Caputo, "Marlins Deal Running Out of Time," *Miami Herald Online*, January 24, 2005.

[65] Steven Greenhouse, "Turbulent Labor Rally Snarls Midtown Manhattan," *New York Times*, July 1, 1998; Greenhouse, "Contractor Under Attack on Second Front," *New York Times*, July 2, 1998.

[66] Quoted in Richard Korman, "Long Campaign Against Roy Kay Finally Puts Firm in Union Camp," *Engineering News-Record*, January 24, 2000.

[67] Fred O. Williams, "Picketing Halted by Building Trades at Wilson Stadium," *Buffalo News*, January 22, 1999.

[68] See Northrup & Alario, "*Boston Harbor*-Type Project Labor Agreements," pp. 12, 53.

[69] Dave L'Heureux, "Hundreds Rally in Support of Unionized Fed Ex Work," *Middletown Record*, April 7, 1998.

[70] Caroline Brady, "ILWU Protests Nonunion Hire Plan," *Daily Breeze*, February 6, 1996.

[71] Caroline Brady, "Council to Urge Port to Shun Nonunion Workers," *Daily Breeze*, January 19, 1996.

[72] Carl F. Horowitz, *Toxic Grains: Inside Organized Labor's Salting Campaign*, Springfield, Va.: National Institute for Labor Relations Research, October 2004.

[73] This discussion is drawn from Associated Builders and Contractors, "Union-Only Project Labor Agreements: The Public Record of Poor Performance," Arlington, Va.: Associated Builders and Contractors, 2000, pp. 6-7. The paper's analysis of the CA/T project itself drew heavily from various issues of *Engineering News-Record*.

[74] Even without the PLA in force, noted Kyle Meleski, a spokesman for Associated Builders and Contractors, "It's a little naïve to think there wouldn't be problems" if any of the remaining contracts were awarded to nonunion bidders. Quoted in Rick Valliere, "State Officials Remove PLA Requirement from Bid Request on Boston Big Dig Project," *Daily Labor Report*, April 4, 2001.

[75] During the early 90s rising rates led to public pressure that at one point threatened to derail the project. Irate customers conducted their own version of the Boston Tea Party, throwing sewer bills into Boston Harbor. MWRA, in response, studied the possibility of downsizing the project. EPA, however, convinced Judge Mazzone to permit the work to continue as planned.

[76] Northrup and Alario, "*Boston Harbor*-Type Project Labor Agreements," p. 7.

[77] Massachusetts State Auditor's Office, A. Joseph DeNucci, Auditor of the Commonwealth of Massachusetts, "Additional OSA Audit Information." For details, see the Auditor's web site, http://www.mass.gov/sao/additionalinfo.htm.

[78] "Union-Only Construction Scheme Rankles Iowans," *National Right to Work Newsletter*, February 2004, p. 8.

[79] *Ibid*.

[80] David Elbert, "Building on Hold Pending Ruling," *Des Moines Register*, August 23, 2002.

[81] See "Bid Rigging," Editorial, *Investor's Business Daily*, August 18, 1999. The airport project's centerpiece, the International Terminal, was opened in December 2000.

[82] Interview with Scott Marshutz, editor, *Reeves Journal*, August 21, 2001, www.reevesjournal.com.

[83] Cited in Kathleen Garrity, "Why Project Labor Agreements Are Bad Public Policy," *Myths & Facts About PLAs*, www.awb.org. Garrity is executive director of Associated Builders and Contractors of Western Washington.

[84] Associated Builders and Contractors, *Analysis of Bids and Costs to the Taxpayer for the Roswell Cancer Institute*, New York State Dormitory Authority Construction Project, Arlington, Va.: Associated Builders and Contractors, 1995.

[85] *Erie County Courthouse Construction Projects: Project Labor Agreement Study*, Philadelphia: Ernst & Young, LLP, September 2001, p. 2. In Phase II three existing county buildings would be renovated.

[86] Stan Simpson, "Unions Should Step Up for Work," *Hartford Courant Online*, April 10, 2004.

[87] According to the Bureau of Labor Statistics, the share of private-sector construction workers who are union members fell from 18.5% to 14.7% just between 1996 and 2004. Since almost none of the union jobs could be "outsourced" abroad, the most plausible explanation for the shift is that building tradesmen as a group have gravitated toward nonunion firms in order to obtain more steady work. Unfortunately, little research has apparently been done on relative unemployment rates among union and nonunion construction workers.

[88] See, e.g., Jeffrey S. Petersen, "Health Care Benefits and Prevailing Wage Laws," *Industrial Relations*, Volume 39, No. 2 (April 2000), pp. 246-264.

[89] Northrup and Alario, "*Boston Harbor*-Type Project Labor Agreements," p. 19. The unions argue that PLAs promote rather than inhibit local hiring. But the evidence is an illusion; union "local" jurisdictions often cover an area far wider than the immediate local area.

[90] Northrup & Alario, p. 48.

[91] This is the view of many open-shop contractors and trade group officials, such as Jay Meleski, a spokesman for Associated Builders and Contractors of Massachusetts. See "Massachusetts Court Strikes Down PLA Covering Renovation Work at Single School," *Daily Labor Report*, August 7, 2002.

Additionally, the studies of school renovation costs by the Boston-based Beacon Hill Institute (see endnotes 93 and 94.) also support this view.

[92] Robert F. Cox, R. Raymond Issa, Heidi Collins and M.E. Rinker, Executive Summary, "Determining the Quantitative Return on Investment (ROI) of Craft Training," *Craft Training ROI Report*, July 1, 1998.

[93] Paul Bachman, Darlene C. Chisholm, Jonathan Haughton, and David Tuerck, *Project Labor Agreements and the Cost of School Construction in Massachusetts*, Boston: Beacon Hill Institute at Suffolk University, September 2003 (revised edition).

[94] Paul Bachman, Jonathan Haughton and David Tuerck, *Project Labor Agreements and the Cost of Public School Construction in Connecticut*, Boston: Beacon Hill Institute at Suffolk University, September 2004.

[95] Neil Opfer, Jaeho Son and John Gambatese, "Project Labor Agreements Research Study: Focus on Southern Nevada Water Authority," paper prepared for Associated Builders & Contractors – Southern Nevada and Associated Builders and Contractors – National, November 2000. Opfer and Son teach in the civil and environmental engineering program at UNLV, while Gambatese is a professor of civil engineering at Oregon State University.

[96] Max R. Lyons, *Davis-Bacon and Project Labor Agreements: Inflating the Cost of Federal Construction*, Washington, D.C.: Employment Policy Foundation, 1997.

[97] It is noteworthy that the union/PLA wage was 23.9 percent ($3.61/hr.) higher than the average Davis-Bacon wage.

[98] The memorandum was set to expire at the end of the Clinton term, January 20, 2001. Allowing for an initial 120-day agency evaluation period, the effective life of the memo was thus about 3.25 years.

[99] Eric Fry, "Planners Advise Union Labor on New High School," *Juneau Empire* (online version), January 7, 2004.

[100] "Project Under Renewed Fire," *Engineering News-Record*, September 25, 1995, cited in Baskin, "Union-Only Project Labor Agreements," pp. 11-12. Many of the problems, it is true, were attributable to faulty design. Massachusetts GOP Gov. Mitt Romney, in the wake of the 2004 revelations, had asked for the resignation of top Turnpike Authority officials. Still, at the very least this saga suggests that whether or not union workers are directly responsible for defects, the existence of a PLA is insufficient protection against their occurrence.

[101] Cited in Baskin, "Union-Only Project Labor Agreements," p. 12.

[102] See comments by Bradford Coupe, "Legal Considerations Affecting the Use of Public Sector Project Labor Agreements: A Proponent's View," *Journal of Labor Research*, Vol. XIX, No. 1, Winter 1998, pp. 107-08.

[103] Charles A. Culver, *Comparison of Nonunion and Union Contractors' Construction Fatalities*, Gainesville, Fla.: National Center for Construction Education and Research, 1995.

[104] Cited in Worcester Municipal Research Bureau, "Project Labor Agreements on Public Construction Projects," p. 14.

[105] Associated Builders and Contractors, *ibid*., pp. 14-15.

[106] There were other executive orders signed by President Bush that also loosened the unions' grip. One required all federal contractors to post an on-premises notice notifying workers of their right under the *Beck* ruling to withhold the portion of union dues going for non-collective bargaining purposes. Another

dissolved the National Partnership Council, a Clinton-created mediator between government agencies and federal employees' unions. Yet another revoked a guarantee of job protection for contractors' employees at federal buildings in the event another contractor gets the work. See Lawrence L. Knutson, Associated Press, in "Unions Assail Bush Labor Policy Decisions," *Detroit News*, February 17, 2001.

[107] More pressure may have been applied than met the eye. A General Accounting Office (GAO) review of the responses of 13 federal agencies to the Clinton memo revealed that none had expected any increase in usage of PLAs. Yet after the GAO's fieldwork had been completed, Secretary of Transportation Rodney Slater on April 22, 1998 issued a memo to agency heads strongly encouraging the use of PLAs on all Department of Transportation projects. Even more telling, compliance with the memo was mandatory in cases of "agency-initiated" PLAs; "contractor-initiated" PLAs would be exempt. See *Project Labor Agreements: The Extent of Their Use and Related Information*, Washington, D.C.: U.S. General Accounting Office, GAO/GGD-98-82, p. 12; "AFL-CIO Approves Project Labor Agreement for Decontamination Project: OCAW Unhappy," *Daily Labor Report*, October 20, 1997.

[108] See Sherie Winston, "Unions to Pump Up Project Pacts," *Engineering News-Record*, April 26, 1999, p. 12; John Berlau, "Does Rule 'Blacklist' Business?," *Investor's Business Daily*, June 18, 1999.

[109] Judge Sullivan is not related to BCTD chieftain Edward Sullivan.

[110] *Building & Construction Trades v. Allbaugh* (295 F.3d 28, 170 LRRM 2449, 2001). The respondent here was Joe Allbaugh, director of the Federal Emergency Management Agency.

[111] *Ibid*., U.S., No. 02-527, cert. denied 1/27/03.

[112] Ronald J. Sutherland, *Best-Value Contracting: Reducing Competition and Increasing Costs*, Arlington, Va.: Associated Builders and Contractors, Inc., February 2002. Sutherland is a professor at George Mason University School of Law. The proposal in question was the Maryland Construction Quality Assurance Act, HB-480, 2002, 13-501(B)(2). That bill died in committee. At the time of the report's release, nine other states – Alaska, Colorado, Delaware, Georgia, Kentucky, New Jersey, Pennsylvania, Texas and Utah – had such laws on the books. The Maryland House of Delegates passed a similar bill in 2004, but it went nowhere in the state Senate.

[113] And the unions still weren't done even after losing at the Oklahoma Supreme Court in December 2003. In 2004 they tried, unsuccessfully, to secure passage of legislation putting repeal of the Right to Work law on the ballot. See "Big Labor Targets Oklahoma Right to Work Law," *National Right to Work Newsletter*, February 2004, p. 5.

[114] Northrup & Alario, p. 46.