

# Project Labor Agreements in Iowa: An Important Tool for Managing Complex Public Construction Projects

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October 2004

A report for

## **The Iowa Policy Project**

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# PROJECT LABOR AGREEMENTS IN IOWA: AN IMPORTANT TOOL FOR MANAGING COMPLEX PUBLIC CONSTRUCTION PROJECTS

## EXECUTIVE SUMMARY

Ralph Scharnau<sup>1</sup> and Michael F. Sheehan<sup>2</sup>

Public-sector construction projects in Iowa serve three important public functions. They provide direct services through the building of schools, hospitals, police stations, highways and similar projects. Second, spending on these projects stimulates economic development and creates jobs. And third, they improve the ability of the public infrastructure to deliver services that help to generate income for other Iowa producers. This makes those producers more productive and competitive.

To maximize the benefits of these projects, public project management needs to be efficient and cost effective. One way governments have attempted to do this is through project labor agreements.

## OVERVIEW OF PROJECT LABOR AGREEMENTS

**What is a PLA?** A project labor agreement (PLA) is a contract between the project manager, the contractors on the project and unions representing the various crafts. Its purpose is to facilitate the smooth completion of the project by getting all the participants to agree to certain ground rules. Its provisions standardize and stabilize wages and benefits, starting times, overtime rules and holidays, and related matters. It requires that everyone agree not to interrupt work on the project when disputes arise, but instead to submit all disputes to fast and binding arbitration.

PLAs are different from standard collective bargaining agreements between a contractor and a union. A PLA is an agreement between all the parties working on the project, usually including the construction manager, and not just between a single union and contractor. The PLA takes precedence over pre-existing collective agreements between individual contractors and unions. The PLA agreement only binds the parties to the terms of the PLA on this single project, and not on other projects, even if the contractor and the employees are the same.

In sum, a PLA ensures that in a complex project involving multiple contractors and multiple crafts everybody is working together, points of conflict are minimized, and things get done in an orderly fashion so that schedules can be maintained and a good quality project completed on time.

**Are PLAs Fair to Contractors and Workers?** Union and nonunion *contractors* work on PLA projects as do union and nonunion *workers*. In Iowa public-sector PLAs cannot and do not

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discriminate between union and nonunion entities. On a PLA project contractors are entitled to bring their core workforce to the project, while their “project-only” workers are dispatched from union halls which ensure workers sent out have the requisite skills and licenses. Union halls may not discriminate on the basis of union membership.<sup>3</sup> All contractors otherwise eligible to bid under the terms of Iowa’s Responsible Bidder statute<sup>4</sup> are eligible to bid on the project if they agree to sign the PLA if they win the bid.

**Are PLAs new?** PLAs have been widely used to organize and manage innumerable public as well as private sector construction projects for over 70 years.<sup>5</sup> Many of the early PLA projects came out of the New Deal public works programs, including the Grand Coulee Dam in Washington<sup>6</sup> and the Shasta Dam project in California.<sup>7</sup> While not much used in the 1950s, PLAs found a resurgence from the 1960s on, and certainly in the boom of the 1990s up until today.

For example, the multibillion-dollar San Francisco Bay Area Rapid Transit (BART) project beginning in 1964 was governed by a PLA, as were major private projects including the Trans-Alaska Pipeline (1974), the Prudhoe Bay Oil Pool Module Construction PLA (1979), and the Sutter and Sunrise power plants in California (2000), among others.<sup>8</sup>

In Iowa as well PLAs have been popular and productive for many years on private sector construction projects.

Four Iowa locations (Des Moines, Mason City, Dubuque and the Quad-Cities) each provide examples of PLAs. Des Moines offers the landmark legal decision on a public-sector PLA as well as nearly sixty private-sector PLAs. Mason City offers a current private power plant project with a PLA.<sup>9</sup> Dubuque offers examples of several private-sector PLAs, and the effort to secure one on a public-sector project. The Quad Cities offers the premier location for PLA usage.

**The Des Moines Events Center** Des Moines became the center of a furious contest over a PLA-governed public facility. The dispute reveals a mixture of legal and political elements. In 2002, Master Builders of Iowa (MBI), a group of anti-PLA contractors, filed a lawsuit seeking “to block work at the Iowa Events Center before it gets started” claiming the PLA violated

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<sup>3</sup> See Iowa’s Right to Work law at Iowa Code Section 731.1.

<sup>4</sup> Iowa Code Section 384.99.

<sup>5</sup> Kimberly Johnson-Dodds, *Constructing California: A Review of Project Labor Agreements*, California Research Bureau, California State Library, nd, p.1 (“Johnson-Dodds”).

<sup>6</sup> Daniel Rounds, *Project Labor Agreements: An Exploratory Study*, October 2001, UCLA Institute for Labor and Employment, p.2.

<sup>7</sup> Johnson-Dodds, pp.9-10.

<sup>8</sup> Rounds, pp.9-10.

<sup>9</sup> Interview with Tom Gillespie, President, Iowa State Building & Construction Trades Council, January 2004.

Iowa's right-to-work and competitive bidding laws.<sup>10</sup>

Spurred on by this dispute, the Iowa General Assembly began deliberations on two bills to eliminate public-sector PLAs. One bill passed and was vetoed by Governor Tom Vilsack because forbidding PLAs would deny public entities the same access to a "tool private entities use regularly to ensure quality work and timely completion on a project," and restrict local governments' "home rule power."<sup>11</sup>

The anti-PLA contractors' legal challenge was conclusively resolved by a 6-1 Iowa Supreme Court decision approving the PLA. The dramatic decision marked, according to Tom Gillespie, president of the Iowa State Building and Construction Trades Council, "the first time a project labor agreement (PLA) has withstood a legal challenge in a right-to-work and non-prevailing wage state."<sup>12</sup>

### **PLAs in Dubuque and the Quad Cities**

Dubuque and the Quad Cities have had a substantial number of successful PLAs projects. These have included PLAs for nine private sector projects brought to fruition during the 1990s by the Dubuque Building and Construction Trades Council. The contracts covered both new and remodeling work, mostly on Dubuque grocery and credit union facilities, with executives of the latter praising the work and the PLA experience.<sup>13</sup> On the public side Dubuque has also had a public entity deciding against the use of a PLA in the face of public opposition from certain contractors.

PLAs in the Quad Cities area, including the cities of Davenport and Bettendorf in Iowa and Moline and Rock Island in Illinois, number about 151 with an estimated value of \$800 million. Named IMPACT (Increasing Markets, Productivity And Construction Teamwork), the project labor agreements began in 1989. The construction, about evenly divided between Iowa and Illinois, includes work on educational, entertainment, recreational, financial, transportation, and especially medical facilities. Most IMPACTS involve private projects but some, in Illinois, are public. Of the nineteen publicly funded IMPACTs in the Moline/Rock Island area, all but two are for school projects. The recent IMPACT-governed construction of a new \$7.5 million public school near Moline, Illinois, for example, brought a very complimentary review from the district superintendent. The cost of these Quad Cities area projects has ranged from \$50,000 to \$50 million.<sup>14</sup>

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<sup>10</sup> See Des Moines Register reporter Bert Dalmer's articles, January 9, 2002, 1B, 2B, January 23, 2002, 2B.

<sup>11</sup> Des Moines Register articles on December 5, 2001, 1B, 3B, January 4, 2002, 1B, 3B, January 16, 2002, 1B, January 25, 2002, 4B, February 7, 2002, 4B, and March 14, 2002, 1A, 13A. See Governor Thomas J. Vilsack's letter to Senate President Mary Kramer, March 21, 2002.

<sup>12</sup> Frank Santiago, "State Supreme Court Upholds Polk County Labor Agreement," Des Moines Register, November 15, 2002, 5. The Gillespie quote appeared in COCKSHAW's Construction Labor News & Opinion, December 5, 2002, 5.

<sup>13</sup> Charles Isenhart, Executive Director of the Dubuque Area Labor-Management Council, provided copies of the letters from Robert Hoefler, president of Dupaco Community Credit Union, and Tom N. Sarvis, president of Du Trac Community Credit Union.

<sup>14</sup> Phone interview with Alan Anderson, Director of the Illowa Construction Labor and Management Council,

Nationally, PLAs are more widely used in the private sector than they are in the public sector. In fact, of 82 PLAs surveyed by the California study cited above, 72 percent involved private projects.<sup>15</sup> This is significant for two reasons. The first is that there are fewer public-sector PLAs because public entities are more susceptible to political pressure from anti-PLA contractors not to adopt a PLA than are private entities. Moreover, right to work and public bidding laws make public entities more susceptible to lawsuits by the same contractor groups attempting to derail PLAs.

The second lesson to be learned from the large number of private-sector PLAs is that PLAs must be cost effective and productive or they would not be used so widely by the private-sector entities adopting them.

### **THE LEGAL STATUS OF PLAS**

Legal challenges to PLAs often involve claims that PLAs are preempted by related state or federal legislation. These claims generally fall into one of three areas: preemption by federal labor law, preemption by state “right to work” laws, and preemption by state competitive bidding laws. In response to these challenges PLAs have been upheld in almost all jurisdictions, including Iowa.

In terms of legislation, not only are public-sector PLAs allowed in all states bordering Iowa, but nationwide, Utah is the only state with an operational legislative ban on public PLAs.<sup>16</sup>

### **THE DEBATE OVER PLAS**

A great deal of money has been spent challenging the idea of PLAs on public construction projects. Most attacks have come from national or state associations of anti-PLA building contractors and their materials suppliers and academic allies. Much anti-PLA literature targets hypothetical or non-standard forms of PLAs that are unrelated to most PLAs in use today.

We address the following five questions that arise from claims typically raised by anti-PLA contractor groups in their campaigns against the use of public-sector PLAs.

#### **Only Union Contractors Are Allowed to Bid on PLA Projects?**

Not true. Contracts in Iowa are awarded on PLA projects to the lowest responsible bidder regardless of whether the contractor has a collective bargaining agreement with its workers. The contractor does have to agree to sign the PLA as a condition of getting the bid. The provisions of the PLA apply only to work on the PLA, they do not control the contractor’s relations with

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Moline, Il, June 18, 2003. A list of the completed IMPACT projects can be found at [www.illowaimpact.org](http://www.illowaimpact.org) <<http://www.illowaimpact.org>>. See also Mary Rae Bragg, “Project Labor Deals Lauded,” Telegraph Herald, July 21, 2003, 1A, 2A.

<sup>15</sup> Johnson-Dodds, p.1.

<sup>16</sup> Johnson-Dodds, p. 74 (2001 data).

employees on other projects, and they expire with respect to the contractor upon the completion of the contractor's work on the PLA project.

### **Do PLAs Violate Iowa's Open Bidding Law by Limiting the Bidding to Contractors Willing to Sign the PLA?**

Claims against PLAs include that they promote special-interest favoritism and undermine principles of open competition for government work. The Iowa Supreme Court examined this issue on the Iowa Events Center project in Des Moines, finding that the PLA applied to all bidders and did not discriminate based on union or nonunion affiliation. "Therefore, the PLA does not, on its face, promote fraud, favoritism, or corruption in the actual bidding process, and any assertion to the contrary is more anecdotal than factual."<sup>17</sup>

### **Do PLAs Raise Construction Costs by Limiting Bidders?**

All bidders qualified under Iowa's Public Bidding Law (Iowa Code §384.99) are entitled to bid on PLA contracts. In order to be awarded a contract they have to agree to comply with the terms of the PLA. To the extent that anti-PLA contractors boycott PLA projects, costs may be higher on the project than they would have been had they not boycotted the project. However, this is because of the boycott and not because of the PLA. The whole purpose of having a PLA is to increase efficiency and reduce delays on the project so as to hold down costs and get the job done on time. Eliminating the PLA framework would, other things equal, increase project costs due to all the inefficiencies and problems PLAs avoid.

### **Do PLAs Discriminate in Hiring?**

Some critics of PLAs, including critics of the Iowa Events Center PLA, have claimed that PLAs discriminate against nonunion workers. The Iowa Supreme Court found that this was simply not so. Not only are there numerous provisions in the Iowa Events Center PLA explicitly mandating non-discrimination in hiring, this is also guaranteed by Iowa's Right to Work statute, Iowa Code 731.1.

### **Are PLAs Effective in Resolving Disputes?**

PLAs require coordination of the various contractors and their employees on the project, including mandatory fast arbitration of disputes, and "no strike, no lockout" provisions to prevent work stoppages. They have been effective in virtually eliminating disputes resulting in disruption of project schedules.

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<sup>17</sup> *Master Builders of Iowa v. Polk County*, 653 NW 2d 382, 395n6. (Iowa 2002).

## **KEY FINDINGS**

### **PLAs Are a Common-Sense Management Tool for Public-Sector Construction Projects**

Project Labor Agreements help to get the different groups working on the project to work together smoothly and cost effectively. This explains why PLAs are widely used by big firms such as Bechtel on purely private projects. Criticisms leveled against atypical or imaginary PLAs are not well-taken when compared to PLAs like the one used for the Iowa Events Center. This is demonstrated by the detailed review of the provisions of that PLA in this study and by the Iowa Supreme Court's 6-1 decision approving the PLA.

### **PLAs Are Dollar-Savers on Complex Projects**

Other things equal, the better coordinated a complex project is among all groups working on it, the greater the savings in dollars on the cost of the project and the better the on-time performance. PLAs offer a framework for coordinating the activities of all the contractors and craftspeople working on a complex project, managing the supply of skilled labor as the project advances, and resolving disputes.

### **PLAs Offer a Level Playing Field for Contracts**

Iowa law prohibits discrimination against nonunion or union workers, and project labor agreements in Iowa must follow that rule. Likewise, banning PLAs on public projects would remove a tool by which public agencies can assure that public dollars will not be used to support discrimination against workers based on their union preference.

### **The Wide Use of PLAs on Private-Sector Projects Demonstrates Their Benefits.**

The existence of PLAs on private-sector construction projects demonstrates confidence in the private sector that PLAs produce significant net benefits and are useful as an engineering management tool. Since the owners of private projects are out to make money, the widespread use of PLAs on these projects over long time spans is a good indication that PLAs, especially on large, and/or complex projects, most often produce noticeable positive net benefits.

## **SUMMARY**

Public-sector PLAs on complex projects or projects where timely project completion is important have been shown to provide the performance desired by contractors and project managers, who repeatedly use them.



## CHRONOLOGY OF PUBLIC PLA-RELATED EVENTS

1931-1936	Hoover Dam (PLA)
1931	Congress passes the Davis-Bacon Act (40 USC 276a-5) requiring local prevailing wages to be paid on federally financed projects. 2171
1933-1942	Grand Coulee Dam (Washington) (PLA)
1940s	Nevada Nuclear Test Site (PLA) 2115
1938-1945	Shasta Dam (California) (PLA)
1954-1959	St. Lawrence Seaway (PLA)
1959	Congress passes section 8(f) of the NLRA approving pre-hire agreements in the construction industry.
1973-1977	Trans-Alaska Pipeline (PLA)
1990	Boston Harbor Clean-up (PLA)
1992	President Bush issues Executive Order 12,818 prohibiting PLAs on federally financed projects.
1993	U.S. Supreme Court rules 9-0 upholding the Boston Harbor PLA.
1997	President Clinton issues Executive Memorandum in favor of PLAs on federal projects.
1990s on	PLAs in both the public and especially the private construction sectors in wide usage.
1999	Seattle Airport (PLA)
2000	Port of Oakland (PLA)
Feb 2001	President Bush issues Executive Order 13,202 prohibiting PLAs on federally financed projects.
Jan 2002	New Jersey Governor James McGreevey issues Executive Order No.1 requiring state agencies to use project labor agreements for appropriate projects.
Nov 2002	Iowa Supreme Court rules 6-1 that properly done public-sector PLA does not violate Iowa's right to work law or its competitive bidding statute.
May 2003	Illinois Governor Blagojevich issues Executive Order 2003-13 requiring PLAs on eligible state public works projects.

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# **PROJECT LABOR AGREEMENTS IN IOWA: AN IMPORTANT TOOL FOR MANAGING COMPLEX PUBLIC CONSTRUCTION PROJECTS**

## **I. INTRODUCTION**

### **A. Purpose of Report and Overview**

A great deal of money has been spent challenging the idea of project labor agreements (PLAs) on public construction projects. Most of the attacks have come from national or state associations of nonunion building contractors and their materials suppliers and academic allies. Much of the anti-PLA literature targets its criticism on hypothetical or idiosyncratic forms of PLAs that are unrelated to the normal run of PLAs in use in the industry today.

The purpose of this report is to describe and illustrate what a normal PLA looks like, how it functions, how it complies with right to work and competitive bidding statutes like Iowa's, and whether, if properly designed and managed, it will allow for more efficient and cost effective management of public sector construction projects, especially larger projects, and especially more complex projects.

This report is organized in eight sections and four appendices. After the introduction, section II provides a detailed explanation of PLAs, their mechanics, and how they work.

Section III presents a discussion of the legislative context of PLAs both in Iowa and nationally. The discussion deals primarily with how PLAs fit into the fabric of federal labor law and state right to work, prevailing wage, and competitive bidding acts. Section IV deals briefly with the impacts of the George Bush, William Clinton, and George W. Bush executive orders and memorandum on state or local construction projects with federal funding.

Section V reviews the lively case law that has arisen out of the various challenges to state and local PLAs mounted by the Associated Builders and Contractors (ABC) and its allies in the 10 years or so since the US Supreme Court ruled in favor of PLAs in the Boston Harbor case. Section VI summarizes the positions taken by the ABC and compares the ABC criticisms with a normal public-sector PLA in Iowa, e.g. the Iowa Events Center project.

Section VII focuses the discussion on Iowa specifically. The Iowa Events Center PLA and the use of other PLAs in Iowa, especially on private projects is discussed, with emphasis on performance issues. Section VIII provides a summary and overall conclusions.

In addition to the nine sections comprising the body of the report, there are also

five other value-added elements. The first is a chronology of PLA-related events provided just after the executive summary. There are then four appendices. The first of these provides succinct answers to eight often asked questions about PLAs. The second provides a glossary of some of the specialized terminology that crops up in PLA discussions which may be useful to the reader. The third is a copy of the Iowa Events Center PLA, with a page-by-page description of the major elements that have arisen in the discussion. Finally, the fourth is a copy of the AFL-CIO Building Trades Model PLA.

## **B. The Role of Public Construction Projects**

Public sector construction projects in Iowa serve three important public functions. The first of these is the provision to the public of the direct services arising out of those schools, hospitals, police stations, highways and similar projects being built.

The second function is the use of the expenditures on these construction projects as an economic development and job creation stimulus for the economy. This occurs not just through the direct effects of the construction expenditures themselves, but also through the secondary “multiplier” effects: Construction workers use their pay to buy other products and services in the local economy whose workers in their turn buy other products. This provides a general economic stimulus to other businesses and jobs to other workers, thereby spreading economic encouragement beyond the circle of the projects themselves.

Third, public-sector construction projects increase and improve the ability of the public infrastructure to deliver services that are part of the income generation process of other producers. In doing this they make those other Iowa producers more productive and competitive.

For all these reasons it is important to ensure that public sector contracting is efficient and cost effective. Efficient and timely construction is especially a challenge when there are many contractors and many different crafts working on the project at the same time. Moreover, many projects also involve factors that make coordination and cooperation even more essential. These include a requirement that the project be complete by a certain date, or the need to ensure that the existing infrastructure being improved continues to provide services without disruption throughout the construction process. This could occur, for example, when a major bridge is being rebuilt but has to carry heavy traffic while the construction is ongoing. In all these situations a strong agreement among the construction manager, the contractors and their workforces setting forth the rules of the project and explicit standards of cooperation is just good business sense.

### C. Historical Development and Use of PLAs

PLAs have been widely used to organize and manage innumerable public as well as private sector construction projects over the course of the last 70 years.<sup>18</sup> Many of the early projects came out of the New Deal public works programs, including the often cited Grand Coulee Dam in Washington<sup>19</sup> and the Shasta Dam project in California.<sup>20</sup>

PLAs were not much used in the 1950s, but found a resurgence in the 1960s and thereafter up until today. For example, the multi-billion dollar San Francisco Bay Area Rapid Transit (BART) project beginning in 1964 was governed by a PLA as were major private projects including the Trans-Alaska Pipeline (1974), the Prudhoe Bay Oil Pool Module Construction PLA (1979), the Sutter and Sunrise power plants in California (2000)<sup>21</sup>, and the Mason City power plant project currently under way in Iowa.<sup>22</sup>

Currently PLAs are even more widely used in the private sector than they are in the public sector. Johnson-Dodds reported that of the 82 PLAs she surveyed in California, 72 percent involved private projects and 28 percent involved public projects.<sup>23</sup> This is significant from a policy perspective because the claim has been made by ABC that public-sector PLAs are uneconomical and only come into being due to the political clout of unions and union contractors. The wide use of PLAs on private-sector projects, however, belies this; there is no reason to suppose that private owners would willingly choose to employ PLAs were they uneconomical and inefficient.

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<sup>18</sup> Kimberly Johnson-Dodds, *Constructing California: A Review of Project Labor Agreements*, California Research Bureau, California State Library, nd. p.1. (henceforth, “Johnston-Dodds.”)

<sup>19</sup> Daniel Rounds, *Project Labor Agreements: An Exploratory Study* October Institute for Labor and Employment (UCLA)(2001), p.2.

<sup>20</sup> Johnson-Dodds, p.9-10.

<sup>21</sup> Rounds, pp.9-10.

<sup>22</sup> Interview with Tom Gillespie, Iowa State Building & Construction Trades Council (January 2004).

<sup>23</sup> Johnson-Dodds, p.1.

## II. PLA ATTRIBUTES AND OPERATION

### A. Overview of PLA Mechanics

Public-sector PLAs are generally straightforward. They are usually researched, negotiated, and adopted along the following lines:

1. The public entity determines that a new construction project is necessary.
2. The public entity then hires a firm of architects and engineers (A&E) or a construction management company to plan the project.
3. The construction management firm suggests, where appropriate, consideration of a PLA as a useful tool to help manage a complex project or one with critical elements, for example, where timing is critical. The construction manager will generally provide a feasibility letter that reviews the pros and cons of a PLA for a project with this set of characteristics.
4. Based on the characteristics of the project the public entity makes the decision to implement a PLA for this project.
5. The terms of the PLA are negotiated between the construction manager and the various building trades unions with hiring halls in the area which would be involved on the project. The negotiation process often includes various concessions by the unions.<sup>24</sup>
6. The PLA as negotiated is then approved by the public entity.
7. Unions sign the PLA.
8. Bid specifications will then include notice that successful contractors will have to agree to the PLA in order to be awarded the contract.

In sum, the PLA process includes a variety of checks and balances. The local governmental entity retains a construction management firm and receives advice from those professionals on whether a PLA would produce net benefits in the context of the current project. If so, an agreement, often involving union concessions, is negotiated with the unions which encompasses all the elements that the local government had determined were necessary to make a success of the construction.

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<sup>24</sup> These concessions generally involve “no strike” provisions along with changes in work rules to ensure that all the craft workers on the project are coordinated as to starting and ending times, holidays, overtime rules, etc.

## B. PLA Elements

At this point it is worthwhile to review the components typically included in a public PLA. For this purpose two PLAs are reviewed in some detail. The first is the Iowa Events Center (IEC) PLA which was the subject of the *Master Builders v. Polk County* Iowa Supreme Court decision in 2002.<sup>25</sup> The second is the model (though somewhat skeletal) PLA developed by the AFL-CIO's Building and Construction Trades Department. The actual Iowa Events Center PLA is Appendix III and the Building Trades Model PLA is Appendix IV for this paper.

### 1. Bidding Open to All Qualified Bidders (Table 1, Item 1)

The major elements of the two PLAs are compared in Table 1. Note that both emphasize that bidding is open to any qualified contractor willing to comply with the bid specifications, including those set forth in the PLA.

### 2. Hiring Halls (Table 1, Item 7)

Contractors are required to recognize the applicable building trades unions as the representatives of the workers working on the PLA project, but not elsewhere and not after the contractor's work on the project is over.<sup>26</sup> Both PLAs contain a provision that the hiring halls maintained by the signatory unions will be the hiring halls for the PLA. These halls are maintained to provide a place where skilled labor can register their qualifications and availability and have those skills matched with jobs as they come in. This skill-matching function benefits both the skilled employee and the contractor. The employee gets the job he or she is qualified for and the contractor gets a worker matched to the job requirements.

Federal and state law in Iowa require that the hiring halls send out workers on a non-discriminatory basis as to race, gender, etc. Moreover, prior union membership is not a requirement for dispatch from a hiring hall under federal law, and union membership cannot be considered at all for employment on a PLA in Iowa under Iowa's right to work law.<sup>27</sup> Notice that Articles IV (section 3a), XIV and XVII (section 3) in the Iowa PLA are all quite clear on this point: **there can be no discrimination based on union membership.**

### 3. Union Recognition (Table 1, Item 3)

Contractors agree to recognize the union signatories of the public-sector PLA as

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<sup>25</sup> *Master Builders of Iowa v. Polk County*, 653 N.W.2d 382 (Iowa 2002).

<sup>26</sup> Note that this is *not* the same as requiring the workers to join the union.

<sup>27</sup> Iowa Code section 731.1.



representatives of the workers on the project for the term of their work on the project only. Contractors are not required to recognize the unions as the representatives of their workers on *other* projects or for any work *after* the contractor's work on the PLA is completed.

#### **4. Management Rights (Table 1, Item 4)**

Under both PLAs contractors are entitled to the use of labor saving technology and the promulgation of reasonable work rules.

#### **5. Non-Discrimination (Table 1, Item 9)**

Discrimination in public contracting and in employment is illegal under both state and federal law. It is also prohibited in the PLAs.

#### **6. No Strikes and No Lockouts (Table 1, Items 12-4)**

One of the principal purposes of a PLA is to ensure that disputes among the participants don't delay or disrupt the project. The "no strikes-no lockouts" provisions make such disruptions actionable and subject to substantial damage payments. Paired with these provisions are mandatory fast arbitration provisions requiring the resolution of any dispute immediately.

#### **7. "Core" Employees (Table 1, Item 16)**

Nonunion contractors often argue that PLAs don't allow them to employ their "core" or key employees on PLAs. The Iowa Events Center PLA clearly allows the employment of core employees up to certain limits. The Building Trades Model PLA leaves it up to negotiation in each individual PLA.

#### **8. Pay, Hours and Holidays Standardized (Table 1, Items 15, 17, 18, 19)**

Standardization and stabilization of wages and benefits, starting times and overtime rules and holidays are all important elements to ensure that in a complicated project involving multiple contractors and multiple crafts everybody is working together, points of conflict are minimized, and things get done in an orderly fashion so that schedules can be maintained.

#### **9. Apprentices (Table 1, Item 20)**

Apprentices are useful on a project, and apprentices receive useful training by being employed on these projects. Most apprentices go through U.S. Department of Labor, Bureau of Apprenticeship Training (BAT) programs and they are certified at

different levels as their training in their craft progresses. The Iowa Events Center PLA requires that all apprentices on the project have been trained in an accredited program.

## **10. Other Items<sup>28</sup>**

In addition to the major items discussed above, the Iowa Events Center PLA also has a number of other agreed upon provisions. These include Item 2 that no contractor has to sign a collective bargaining agreement in addition to the PLA. Moreover, the Iowa Events Center PLA takes precedence over existing collective bargaining agreements (CBAs) for projects other than the PLA. Thus, for example, were the Carpenters' area-wide CBA with employers to expire while the Iowa Events Center PLA was still in force, carpenters on the project would be bound by the PLA to continue working on the PLA project even if Carpenters struck elsewhere.

The Events Center PLA also has two important economic development provisions. The first, Item 10 (on Table 1), encourages the hiring of local Iowa construction workers and the development of training programs to develop and expand the skills of Iowa workers who might not otherwise have such opportunities. In addition, Item 11 encourages the provision of opportunities for women and minority owned construction firms to participate in, and get trained on these projects.

Finally, the Iowa Events Center PLA provides an option for the use of a four-day, 10 hours-per-day workweek, which has proven very productive elsewhere.<sup>29</sup>

This review of the elements of a "model" PLA and the actual PLA currently in use on the Events Center demonstrates that the provisions involved are commonsense and useful, especially for the more complex projects, or projects where timing is critical, or when project scheduling is complicated by the need to maintain services through and around the construction.

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<sup>28</sup> Note that an important component of a PLA are appendices which contain the detail of the wage rates and benefit packages and other items in the agreement between each union and the construction manager. The appendices of the Events Center PLA are 72 pages and are available from the authors.

<sup>29</sup> See, for example, "Analysis of Economic Benefits of the (Tappan Zee) Project Labor Agreement." Available from the authors.

**Table 1**  
**PLA CHARACTERISTICS**

	<b>Item</b>	<b>IEC PLA</b>	<b>BCTD Model</b>
1	Open bidding for all qualified contractors willing to sign the PLA	Art II §5a	Art. II §4
2	PLA takes precedence over CBAs and no contractor has to sign a CBA	Art II §6a & 6b and Art XX	
3	Union Recognition: Contractors recognize unions for this project only	Art IV §1	Art III
4	Management Rights: Technology and Work Rules	Art VI §3	Art IV, Art VIII
5	Contractors' "core employees" provision	Art IV §5	Art V §6 TBN <sup>30</sup>
6	JAC to oversee PLA enforcement <sup>31</sup>	Art III	
7	Hiring Halls: Craft workers to be hired through union hiring halls to ensure skill levels and adequate supply	Art IV §3a	Art I
8	Union Status: Clear statement on non-discrimination. No employee to be forced to join a union or pay union dues.	Arts IV §3a, XIV and XVII §3	Art V §2, Art XII §1 (last sentence)
9	No discrimination against women and minorities as contractors or employees	Art. IV §3b	Art V §2
10	Economic Development: Encourage hiring of local crafts and development of local training, etc.	Art IV §6, Art XVII §§2-3	
11	Economic Development: Encourage development and hiring of women and minority owned businesses	Art XVII §3	
12	No strikes and no lockouts + fast arbitration and stiff penalties for violations	Art VII §1 & 6	Art I, Art IX
13	Fast grievance arbitration	Art VIII	Art X
14	Fast jurisdictional dispute resolution	Art IX	Art XI
15	Pay standardized	Art X	Art VII
16	Core employee benefit plan optional	Art X §4	TBN
17	Standardize overtime shift hours	Art XI	Art XIV TBN
18	4 Ten-hour days option	Art XI §4b	Art XIV TBN
19	Holidays standardized	Art XV	Art XIV TBN
20	Apprentices have to be from BAT (USDOL) programs	Art XVI	Art VI TBN
21	No Union leafletting on site	Art II §6c	
22	Subcontractors covered by PLA	Art II §5b; Art III	Art XV
23	No featherbedding	Art IV §3c	

<sup>30</sup> "TBN" = To be negotiated

<sup>31</sup>"JAC" = Joint Administrative Committee. The JAC is made up of an equal number of contractor and union representatives.

### III. THE STATUTORY CONTEXT

Over the course of the last few years ABC and its allies have barraged the courts with a good deal of litigation in an effort to prevent the use of PLAs both nationally and on a state by state basis. In addition, they have been aggressive lobbyists in and around state legislatures. Given the intensity of their efforts, it is remarkable that the result at the state level has been negligible. (See sections V and VI below). PLAs are allowed, for example, in all states bordering on Iowa (See Table 2), and, as of the most recent survey in July 2001, the only state among the 50 with a legislative ban on PLAs is Utah.<sup>32</sup>

Legal challenges to PLAs often involve claims that PLAs are preempted by related state or federal legislation. These claims generally fall into one of three areas: preemption by federal labor law, preemption by state right to work laws, and preemption by state competitive bidding laws. In response to these challenges PLAs have been upheld in almost all jurisdictions.

#### A. PLAs and Federal Labor Law

PLAs are a form of “pre-hire” agreement. The major construction industry is cyclical and seasonal with wide variations in the level of employment. Much of the labor force travels from project to project and place to place with periods of unemployment interspersed with periods of intense activity. Moreover, there is a large turnover in contracting firms with unsuccessful firms dropping out and new firms coming in regularly. Under these conditions it is uneconomical for many contractors to employ a large permanent, year-round workforce. Instead contractors tend to keep a small “core” of permanent employees and hire the majority of their workforce only when new contracts come in.

Under these circumstances the bulk of the craft workers for this type of construction are generally hired on a project-by-project basis. It is in this respect that the construction worker differs from the typical employee who has a more or less permanent full-time job. Given the itinerant nature of the employment and workforce, and the fact that they may be working for this contractor this month and some other contractor next month, construction workers tend to have as their common focal point their union and the union-sponsored hiring hall. Thus it is natural for contractors looking for a skilled and specialized labor force for this project or that project to take advantage of the union “marketplace” for skilled labor.

Out of this grew the “prehire” agreement. This is an agreement between a contractor and the relevant union<sup>33</sup> entered into at the time the contractor is putting

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<sup>32</sup> Johnston-Dodds, p.74. See also Utah Statutes 34-30-14.

<sup>33</sup> If the contract is a plumbing contract, for example, it may well be with the United Association of Plumbers and Pipefitters.

together its bid and well before the contractor is awarded the contract. This agreement allows the contractor to determine what its labor rates are going to be and so reduces the risk of underbidding a contract and being faced with a loss, or overbidding and losing out to the competition.

These “prehire” agreements were specifically approved by the passage of the federal Labor Management Reporting and Disclosure Act of 1959.<sup>34</sup>

Congress also recognized that construction employers and unions had a long-standing practice of negotiating “pre-hire” agreements to fit the conditions of particular projects and collective bargaining processes. Congress specifically noted that the pre-hire system of collective bargaining “is necessary for the employer to know his labor costs before making the estimate upon which his bid will be based.”<sup>35</sup>

Under these amendments employees may at any time ask the National Labor Relations Board to decertify any union they are dissatisfied with:

Section 8(f) authorizes the use of pre-hire agreements in the construction industry, but provides employees working under a pre-hire agreement may, notwithstanding the agreement, petition the NLRB at any time for an election to decertify the union.<sup>36</sup> In sum, project labor agreements are a form of pre-hire agreement and contractors consent to the PLA when they bid on the project and before they actually hire the bulk of their workforce.

The National Labor Relations Act and its amendments (Landrum-Griffin, Taft-Hartley, etc.) generally preempts the field of labor relations and bargaining between workers and contractors. Challenges to PLAs have often included claims that state and local governments, acting in their capacity as the owners of projects, were preempted by federal labor law from requiring PLAs on their project because that constituted “regulation” of labor relations. This issue was settled in favor of PLAs by the U.S. Supreme Court in its *Boston Harbor* decision (discussed in detail in Section V below).<sup>37</sup>

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<sup>34</sup> Commonly known as the Landrum-Griffin Act. The pre-hire provision is at 29 USC 158(f) and is otherwise known in the industry as an “8(f)” agreement.

<sup>35</sup> Johnston-Dodds, p.69.

<sup>36</sup> Johnston-Dodds, p.69.

<sup>37</sup> *Building and Construction Trades v. ABC*, 113 S.Ct. 1190 (1993).

## **B. Public Contracting Laws**

Public contracting laws were generally enacted to eliminate bribery and corruption in state and local government contracting. However, it is too simplistic to say that the thrust of these laws is to require state and local governments to let contracts to the bidder with the lowest price. In reality, virtually all states recognize that the bidder with the lowest price is not always offering the best deal for the public. So, for example, a contractor with a record of shoddy work, failure to complete assigned tasks, etc. might not be the best choice, even though on the surface his bid is the lowest.

To handle this problem, state and local governments have passed a variety of laws modifying their contracting statutes so as to ensure that the public gets the best value for its dollar. “Responsible bidder” laws are a good example of this. They limit the *award* of contracts to contractors meeting certain qualifications in terms of financing, skills, resources, and track record, and disqualifying contractors with bad records of performance. Another approach involves “pre-qualification” statutes. Instead of requiring the *winner* of the bid to meet certain qualifications in order to be awarded the contract, pre-qualification statutes require all bidders to meet these qualifications in order to be allowed to *bid*.

ABC and its allies have challenged a number of PLAs on the grounds that they violate public contracting laws by limiting the population of contractors allowed to bid on the project and so, their claim goes, raising the cost of the project. Several of these challenges will be discussed in the section below dealing with case law. Suffice it to say that in almost all states courts have rejected these challenges and upheld PLAs when properly prepared and researched.

## **C. Right to Work Laws**

Twenty two states including Iowa have right to work laws. Iowa’s statute reads as follows:

It is declared to be the policy of the state of Iowa that no person within its boundaries shall be deprived of the right to work at the person’s chosen occupation for any employer because of membership in, affiliation with, withdrawal or expulsion from, or refusal to join, any labor union, organization, or association, and any contract which contravenes this policy is illegal and void. Iowa Code §731.1 (2003).

ABC has included claims that PLAs violate state right to work laws in many of its challenges around the country, including the one against the Iowa Events Center. It is instructive that ABC brought their claim notwithstanding the emphatic language in the PLA prohibiting discrimination in employment based on union status.

**Article XIV** No employee covered by this Agreement shall be required to join any Union, or pay any agency fees or dues, as a condition of being employed or remaining employed, on the Project.

And,

**Article IV Section 3(a)** Subject to the provisions of this Agreement, the Contractor agrees to hire employees \* \* \* through the job referral systems offered by each signatory Local \* \* \* . These job referral systems will be operated in a non-discriminatory manner and in full compliance with Federal, State and Local laws \* \* \* which require equal employment opportunities and nondiscrimination, **and referrals shall not be affected in any way by the rules, regulations, by-laws, constitutional provisions or any other aspects or obligations of union membership, policies or requirements.** (Emphasis added).

And finally:

**Article XVII** The Contractor and Union agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, **union membership** or physical or mental disability in any manner. (Emphasis added).

These strong PLA provisions clearly require equal treatment for both union and nonunion employees. These provisions are reinforced by the fast grievance and arbitration processes also in the PLA.

#### **D. Prevailing Wage Laws**

Prevailing wage laws also interact with PLAs. In states with a state prevailing wage law, low wage contractors have less scope to underbid family wage contractors. This is because the prevailing wage act establishes a floor for wages on the project that is generally above the wages which would otherwise be paid by some contractors employing low wage/low skill workers. With a prevailing wage law in effect, even nonunion contractors have an incentive to hire construction workers with higher skill levels. Once prevailing wage levels have been established, the idea is that competition on public construction projects will focus on management skill, efficiency in materials acquisition, and quality, and not primarily on the ability of the contractor to bring in low skill/low wage labor, often from out of state.

Prevailing wage laws are laws that require that community (“prevailing”) wage standards be maintained on public sector construction projects. The federal prevailing

wage law is the Davis-Bacon Act, 40 USC 267a et seq. The Act was passed in 1932. Its purpose was to deal with the problem of out-of-state contractors from low wage states, bringing low wage labor into states with higher standards of living, and winning federally financed construction project contracts based on their ability to pay their labor less than the “prevailing” local wage rates.<sup>38</sup>

Thirty-two states have state “Little Davis-Bacon Acts.” Since the federal act only applies to projects with federal dollars in them, the state acts extend the federal act’s protections to construction financed at the state or local level. Iowa is **not** one of the 32 states with a state prevailing wage law.

## **E. Summary**

Most of the attacks on PLAs have related to the interaction of PLAs and various statutes, both federal and state. PLAs have prevailed in the courts, however, except in a handful of cases where individual PLAs have not been well-designed or justified.

Table 2 provides a summary of legislation of the types discussed above in the states surrounding Iowa.

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<sup>38</sup> “The Federal Davis-Bacon Act,” chapter 2 in Sheehan et al, *Oregon’s Prevailing Wage Law*.



**Table 2  
PLA-RELATED CHARACTERISTICS OF  
NEIGHBORING STATES**

<b>State</b>	<b>Right to Work<sup>39</sup></b>	<b>Prevailing Wage Law<sup>40</sup></b>	<b>Responsible Bidder<sup>41</sup></b>	<b>PLAs Allowed<sup>42</sup></b>
Iowa	Yes	No	Yes	Yes
Illinois	No	Yes	Yes	Yes
Minnesota	No	Yes	Yes	Yes
Missouri	No	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes
South Dakota	Yes	No	?	Yes
Wisconsin	No	Yes	Yes	Yes

<sup>39</sup> Source: *Master Builders of Iowa v. Polk County*, 653 NW 2d 382, 390 note 3 (Iowa 2002).

<sup>40</sup> Sheehan, Lee and Nuss, *Oregon's Prevailing Wage Law* (Portland: Fair Contracting Foundation, 2000) p.71.

<sup>41</sup> For Iowa see *Master Builders v. Polk County*, 653 NW2d 382, 394 (Iowa 2002). For Illinois see *Court Street Steak House v. County of Tazewell*, 643 N.E.2d 781, 784 (Ill. 1994). For Minnesota see MSA 16C.28. For Nebraska see, e.g., NS 46.145, NS 73-103 and *Day v. City of Beatrice*, 101 N.W.2d 481 (Neb.1960). For Missouri see, e.g., MS 34.076, MS 50.660, and MS 227.105. For South Dakota see South Dakota Stats. 46A-7A-68 and *Winter Bros. Underground v. City of Beresford*, 652 N.W.2d 99, 105 (SD 2002). For Wisconsin see Wis.Stats.16.855 and *Envirologix v. City of Waukesha*, 531 N.W.2d 357, 364 (Wis.App.1995).

<sup>42</sup> Source: For Iowa see *Master Builders v. Polk County*, 653 NW2d 382, 394 (Iowa 2002). For Illinois see Governor Blagojevich's Executive Order 2003-13 encouraging state agencies to use PLAs. For Minnesota see *Queen City Constr. v. City of Rochester*, 604 N.W.2d 368 (Mn. 1999). For Missouri see Johnson-Dodds, Appendix C, Table C-1. Data from Nebraska and South Dakota were from interviews with Building Trades officials; in both states PLAs are legal but rarely used. Information from Wisconsin is based on an interview with the Milwaukee Building Trades Council.

#### **IV. THE DISPLACEMENT OF STATE AND LOCAL DECISIONMAKING BY PRESIDENT BUSH'S EXECUTIVE ORDER 13202.**

##### **A. The Role of Presidential Executive Orders**

Presidential executive orders have a long, checkered, and largely unknown history in the U.S. Early on they were used to regulate government employees, set national holidays and days of mourning, and trade property between federal agencies.<sup>43</sup> In the last 100 years they have been used to order the transfer of Japanese-Americans to concentration camps in the Second World War, order the seizure of the American steel industry by U.S. troops (1950), wage the war in Vietnam, and order the FBI to spy on Americans opposed to the war.<sup>44</sup> Moreover, by 1999 the nation had been governed continuously under one or more states of emergency declared by executive orders since 1933. Thirteen states of presidentially declared emergencies were simultaneously in effect in 1999.<sup>45</sup>

##### **B. President Bush's Executive Order 13202**

PLAs have not escaped presidential attention and executive orders. The first President Bush issued Executive Order 12818 in 1992 prohibiting recipients of federal construction funds from using PLAs on the state or local projects receiving the federal funding.

When President Clinton was elected he issued Executive Order 12836 revoking Executive Order 12818. In June 1997 he issued a Presidential Memorandum directing federal agencies to put in place procedures to determine when it would be appropriate and productive to have PLAs on federally financed projects.<sup>46</sup>

Finally, when George W. Bush became president, he issued Executive Order 13202. This reinstated his father's Executive Order 12818 prohibiting the use of PLAs on federally assisted construction projects at the state and local levels. It should be noted that this executive order was issued after it became apparent that the effort by ABC and its allies' to get Congress to pass anti-PLA legislation had been rejected by Congress.

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<sup>43</sup> Branum, "President or King? The Use and Abuse of Executive Orders in Modern-Day America," 28 *Journal of Legislation* 1, 21 (2002).

<sup>44</sup> Ibid, p.30.

<sup>45</sup> Ibid, p.31.

<sup>46</sup> Baskin, "The Case Against Union-Only Project Labor Agreements on Government Construction Projects," XIX *Journal of Labor Research* 115, 121 (Winter 1998).

## **C. Summary**

Executive Order 13202 mandates that there will be no PLAs allowed on federally assisted construction projects. This is regardless of state or local preferences on how the project should be organized, and it doesn't matter if the vast majority of the funding for the project is state or local. It means that for all those projects where a PLA would have been a useful and productive tool for organizing and optimizing a project in the public interest, the PLA may not be implemented.

## V. THE CASE LAW

At this point it is useful to provide an overview of the status and results of ABC's and its allies' 10 years of lawsuits against PLAs in courts around the country. The attacks have moved from one issue to another as the courts have rejected challenge after challenge, only rarely throwing out a PLA because of insufficient detail in the justification or some failure to follow proper procedures in adoption. All the cases discussed below deal with public-sector PLAs.

- ABC and its allies have focused on four major issues in the courts:**Federal Labor Law Preemption** The claim that PLAs were a regulation of labor relations by states and local governments and so were preempted by the NLRA.**ERISA Preemption** The claim that the requirement that all contractors on the PLA pay into benefit plans required by the PLA was preempted by ERISA.**State Right to Work Laws** The claim that PLAs violated state right to work laws by supposedly requiring workers to be union members or join unions.
- **State Competitive Bidding Laws** The claim that PLAs violated state competitive bidding laws by restricting the pool of bidders to union contractors.

Most of the litigation came with the intense interest in the use of PLAs during the construction boom of the 1990. Starting at the trial court level challenges were then litigated through to higher level courts where they were for the most part rejected. In the few cases where they were sustained, state and local governments improved their procedures for designing and adopting PLAs to meet the new requirements. Nowhere did major appellate litigation end with a decision against PLAs in principle; what adverse decisions there were, were only on the details of the adoption process in the specific case.

### A. Federal Labor Law Preemption

Federal labor law preempts state and local governments from regulating the use of PLAs, given that PLAs are a form of pre-hire agreement whose use is explicitly allowed by Section 8(f) of the Landrum-Griffin Act.<sup>47</sup> This preemption gives rise to two types of claims. The first is when a local government wants to adopt a PLA for a local government project and the ABC argues it can't, while the second is when a state attempts to pass a statute prohibiting the use of PLAs in the state.

#### 1. Use of PLAs on State and Local Government Projects

The most famous PLA case of the first type is the one involving the multibillion-dollar Boston Harbor clean-up project. In the late 1980s the Massachusetts Water Resources Authority (MWRA), the entity supplying sewer service to the western part of

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<sup>47</sup> See the discussion in Section IIIA above.

the state, was ordered by a federal district court to clean up – without any delays – the heavily polluted Boston Harbor. In order to handle the “no delays” requirement, the MWRA decided to adopt a PLA.

In due course this was challenged by the ABC on the grounds that the PLA was a regulation of labor relations between employers and employees and was therefore preempted by federal labor law. The federal district court ruled in favor of the PLA and the ABC appealed. The federal appeals court ruled first in favor of ABC, then changed its mind, and then changed its mind again to finally rule in favor of ABC.

This ruling was appealed to the U.S. Supreme Court. In March 1993, the Supreme Court handed down its 9-0 ruling holding that the MWRA PLA was *not* preempted by federal labor law.<sup>48</sup> This definitively established that states and local governments could use PLAs on their own public construction projects as a matter of federal labor law.

## 2. Preemption of State Anti-PLA Regulation

The second type of preemption issue arises when states, acting in their *regulatory* capacity, attempt to outlaw the use of PLAs by local governments on local government construction projects when federal labor law explicitly allows their use.

The issue arose most recently in a major case before the Ohio Supreme Court at the end of 2002. In that case, Cuyahoga County was planning the construction of a new juvenile detention center and was considering a PLA when informed that the Legislature had passed a statute forbidding any public authority from adopting a PLA.

This led to a challenge of the state statute on the basis that NLRA Section 8(f) explicitly approves of pre-hire agreements like PLAs and that the Ohio Act prohibiting the use of PLAs therefore conflicts with, and is preempted by, that NLRA provision under the Supremacy Clause of the U.S. Constitution.

The Ohio trial court held that the state act was preempted, but was reversed by a split decision of the Ohio Court of Appeals. The Ohio Supreme Court, however, reversed. In a 7-0 decision the court held that the statute was indeed preempted by the NLRA.<sup>49</sup>

The significance of this decision is that it is now pretty clear that state statutes prohibiting the use of PLAs by public or private entities are preempted, and that state legislatures are no longer at liberty to pass and enforce such legislation.

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<sup>48</sup> *Building and Construction Trades v. ABC*, 113 S.Ct. 1190 (1993).

<sup>49</sup> *Ohio Building Trades v. Cuyahoga Co. Board*, 781 NE2d951, 970 (Ohio 2002).

## **B. ERISA Preemption**

The Metropolitan Water District of Southern California is responsible for developing and maintaining the wholesale water supply for many parts of Southern California. As part of its responsibilities in this area it undertook the construction of a \$2 billion reservoir project and elected to adopt a PLA. This PLA required contributions by contractors working on the project to various pension and benefit funds for employees working on the project and apprentice training programs.

Associated General Contractors (AGC) objected to these requirements and filed suit in federal district court claiming that these PLA requirements were preempted by ERISA. The district court dismissed these claims as baseless and AGC appealed to the 9<sup>th</sup> Circuit. In October 1998 the 9<sup>th</sup> Circuit ruled in favor of the MWD PLA, rejecting the claim that PLAs were preempted by ERISA.<sup>50</sup>

The issue was raised again in the litigation before the Iowa Supreme Court involving the Iowa Events Center PLA. In that case the Court also rejected the ABC's ERISA preemption argument.<sup>51</sup>

## **C. State Right to Work Laws**

Twenty-two states have right to work laws, including Iowa. ABC has challenged PLAs in a number of states, including Alaska, California and Iowa, as violating either the state right to work law or various constitutional provisions involving freedom of association and expression under the 1<sup>st</sup> Amendment. In the Alaska case, rendered about the same time as the MWD case described above, the Alaska Supreme Court held that Fairbanks did not violate the rights of contractors and employees to "free association" and "free expression" by implementing a PLA.<sup>52</sup>

In the San Francisco Airport case, 1<sup>st</sup> Amendment rights of association were again at issue in a challenge to the PLA by the ABC. The project involved a \$2.4 billion expansion of the San Francisco Airport and ABC's objection to the "Project Stabilization Agreement." The case went up through the California state courts and was finally decided by the California Supreme Court in August 1999. The ruling rejected ABC's claims that the PLA infringed on contractor and workers rights to free association and expression.<sup>53</sup>

The last of these cases was brought by ABC and its allies in Iowa challenging the

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<sup>50</sup> *AGC v. MWD*, 159 F.3d 1178 (9<sup>th</sup> Cir, 1998).

<sup>51</sup> *Master Builders of Iowa v. Polk County*, 653 NW 2d 382, 397 (Iowa 2002).

<sup>52</sup> *Laborers Local 942 v. Lampkin*, 956 P.2d 422 (Alaska,1998).

<sup>53</sup> *ABC v. San Francisco Airports Comm.*, 981 P.2d 499, 161 LRRM 3166 (Calif. 1999).

Iowa Events Center PLA on a variety of grounds, including one that it violated Iowa's right to work law<sup>54</sup> by requiring hiring through the union hiring halls. ABC made the claim notwithstanding the emphatic anti-discrimination provisions in several places in the PLA and in a number of places in the appendices to the PLA. Ruling in November 2002 by a vote of 6-1, the Iowa Supreme Court rejected the ABC's claim on this issue, ruling that the PLA did not violate Iowa's Right to Work law.<sup>55</sup> This was the strongest statement yet on this issue by a state supreme court.

#### **D. State Competitive Bidding Laws**

Most of the challenges to public-sector PLAs now arise as claims under state and local competitive bidding laws; yet even here ABC's success has been strictly limited. The issue, in ABC's terms, is whether the limitation of bidders to those willing to sign the PLA is a violation of the requirement that the low bidder gets the bid.

In only four cases, two in New Jersey, one in New York, and one in Rhode Island, have state supreme courts rejected specific PLAs on these grounds. It is important to note, however, that in none of these challenges did the courts reject PLAs in general, only specific PLAs where local governments had not done their homework and had failed to provide explicit justification for the adoption of the PLA under the circumstances in each case.

In *Tormee Construction v. MCA*, the New Jersey Supreme Court held that under its strict interpretation of New Jersey's public bidding statute the PLA at issue hadn't been adequately justified. The Court did go on to say that there are situations "where a PLA can serve useful purposes, noting that [the New York Thruway Authority PLA] exemplified the exceptional circumstances that could justify recourse to a PLA."<sup>56</sup>

In *ABC of Rhode Island v. Dept. of Admin.*, the Rhode Island Supreme Court held that the government entity has to show by means of a pre-adoption study that the characteristics of the project demonstrate the need for a PLA, but that once such a study had been provided, the PLA would enjoy a legal "presumption of correctness."<sup>57</sup> The Court also noted that,

Moreover, the assurance of predictable costs and the procurement of a steady supply of labor should not depend on whether the owner of the

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<sup>54</sup> Iowa Code §731.1.

<sup>55</sup> *Master Builders of Iowa v. Polk County*, 653 NW 2d 382, 389-93 (Iowa 2002).

<sup>56</sup> *Tormee Construction v. MCA*, 669 A.2d 1369 (NJ, 1996).

<sup>57</sup> *ABC of Rhode Island v. Dept. of Admin.*, 787 A.2d 1179, 1189 (R.I. 2002).

project is a public or private entity. ‘To the extent that a private purchaser may choose a contractor based upon that contractor’s willingness to enter into a prehire agreement, a public entity *as purchaser* should be permitted to do the same.’ (Emphasis in the original) (citing the Boston Harbor decision).<sup>58</sup>

In the 1996 New York case, *New York State Chapter v. NYS Thruway Authority*, the court of appeals decided two cases. The first involved the refurbishment of the Tappan Zee bridge, while the second involved an ongoing project to modernize a cancer research center. The court approved the PLA on the bridge project because the need and cost effectiveness of the PLA had been adequately demonstrated, while the research facility PLA was rejected on the basis that the need for the PLA had not been adequately demonstrated.<sup>59</sup>

Juxtaposed to these cases are at least 32 cases (as of 2001) where PLAs have been upheld by various courts. In all cases where there has been a challenge based on the state’s competitive bidding law, the PLA has been upheld where an adequate record had been made showing that the PLA was justified under the circumstances. The Iowa Supreme Court decision in the Iowa Events Center case in November 2002 was the 33<sup>rd</sup> decision to uphold a PLA in the face of an ABC challenge based on a state competitive bidding statute.

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<sup>58</sup> Id at 1189.

<sup>59</sup> *NYS Chapter ABC v. NYS Thruway Authority*, 666 NE2d 185 (NY,1996).



## VI. THE DEBATE OVER PLAS

There are five other issues that have been raised by the ABC and its allies in the debate over public-sector PLAs. This section will review those issues and compare their assertions with how public-sector PLAs are used in Iowa.

### A. The Award of Contracts

The **first** of these issues is that:

PLAs restrict the award of government contracts only to the minority of contractors who are willing and able to enter into collective bargaining agreements with unions.<sup>60</sup>

At the outset it's useful to make sure that the terms being used mean the same to everyone. PLAs are different from a standard collective bargaining agreement between a contractor and a union. A PLA is an agreement signed by both unions and contractors working on a single public project whose purpose is to facilitate the smooth completion of the project for the benefit of the public. That agreement does not bind either the unions or the contractors anywhere else except on the PLA project, and it does not bind the unions and the contractors once the project is over. In Iowa, it is legal neither for a PLA to require hiring of union labor, nor for a contractor to discriminate against union labor.

A standard collective bargaining agreement, on the other hand, is an agreement where the employees of the contractor have voted to form a union and then bargain with a contractor to reach an agreement binding on *all* work done by the contractor. In some *non-right-to-work* states, for example California and Massachusetts, there have been cases where as a condition of getting the PLA work the contractor had to agree *also* to sign onto the collective bargaining agreement for each craft employed. But that is **not** the case in Iowa.

The thrust of the criticism appears to be, however, that it is unfair to make a contractor agree to the terms of the Project Labor Agreement as a condition of getting a contract to work on the public construction project in question. Yet it's not quite clear why this is "unfair." The PLA's terms are part of the contract for work on the project. The terms of the agreement might also require the contractor to work on his birthday, or when it's cold out, or work together with another contractor he doesn't like, or work four 10-hour shifts when he doesn't want to. If he wants the job and it requires him to work on his birthday, then he works on his birthday.

Finally, experience with PLAs elsewhere (Nevada, California, Boston, etc.) all

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<sup>60</sup> Baskin, "The Case Against Union-Only Project Labor Agreements on Government Construction Projects," XIX Journal of Labor Research 115 (Winter 1998).

show that public-sector PLAs often have large numbers of nonunion contractors working on them without a problem.<sup>61</sup> Yet in a few places there appear to be boycotts based on a determination on the part of *some* nonunion contractors not to sign any agreement involving cooperation with unions also working on a project under any circumstances.<sup>62</sup> Such decisions may well have economic consequences for those contractors. But in those situations the impacts arise out of the boycott and not from the PLA.<sup>63</sup>

## B. Open Competition

The **second** issue raised is that “PLAs promote special interest favoritism and undermine fundamental principles of open competition for government work.”<sup>64</sup>

PLAs are a way to organize and coordinate public construction projects in the public interest. The object of the PLA is to further the public interest. As the Iowa Supreme Court has said,

The Events Center PLA applies to all bidders and does not discriminate between those of union or nonunion affiliation. Therefore, the PLA does not, on its face, promote fraud, favoritism, or corruption in the actual bidding process, and any assertion to the contrary is more anecdotal than factual.<sup>65</sup>

It is also clear from the discussion in section II above that the Iowa Events Center PLA is emphatic in its reiteration of non-discrimination between union and nonunion contractors and craftspeople. It is difficult to see where the abuse is in a PLA like the Events Center PLA.

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<sup>61</sup> See, e.g., *ABC v. S. Nevada Water Auth.*, 979 P.2d 224, 229 n.1 (Nev. 1999), also *ABC v. MWD*, 69 Cal.Rptr.2d 885, 888 (Cal.Ct.App.1997), and the sworn statement of John T. Dunlop in *ABC v. S. Nevada Water Auth.*, pp.14-5.

<sup>62</sup> Just as at one time there were many construction contractors who refused to enter into employment contracts with blacks, Hispanics or women for construction jobs.

<sup>63</sup> It is a “but for” logical fallacy to suggest that the boycott is the “fault” of the PLA. Similar logic would say that when banks get robbed it’s their own fault because if they weren’t there they wouldn’t have been robbed.

<sup>64</sup> Baskin, p.115.

<sup>65</sup> *Master Builders of Iowa v. Polk County*, 653 NW 2d 382, 395n6. (Iowa 2002).

### C. PLAs and the Cost of Construction

The **third** issue raised is that,

Imposition of union-only PLAs inherently reduces the number of bidders and increases the costs of government construction, with no concomitant public benefits.<sup>66</sup>

The answer to this is that Iowa public-sector PLAs are open to all bidders without discrimination and so there is no such thing as a “union-only PLA” involving public projects in Iowa. Moreover, it is bad logic to argue that just because some requirement – otherwise in the public interest – is imposed, and some contractors drop out because they can’t or won’t meet the requirement, that the reduction in the number of bidders automatically means that the public is worse off.

If this were so, responsible bidder laws that sift out incompetent or unqualified contractors would also – by the same logic – reduce the number of bidders and “therefore” “increase the costs of construction, with no concomitant public benefit.” The whole argument misses the point. If the sifting out of the irresponsible or unwilling bidders provides the public with contractors which are responsible and cooperative, then the public may well have a substantial net benefit. The presence of these net benefits on a number of PLAs have been documented. Consider the following examples:

- The Boston Harbor PLA had more than 20 million craft hours worked over the course of seven years with *zero* lost time due to strikes or lockouts.

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<sup>66</sup> Baskin, p.115.

- After completing over 2 million man hours on Bechtel’s Shell Clean Fuels Project PLA, no worker had suffered any injury serious enough to warrant missing a single day’s work, compared with the statewide average at the time of 6.46 lost-day injuries per every 200,000 hours of work.<sup>67</sup>
- MWD’s East Side Reservoir project was able to document savings in Workers Compensation premiums alone of \$20 to \$35 million over the life of the project.<sup>68</sup>
- On the Boston Harbor project the lost-time accident rate was one third lower than the BLS national data for heavy construction.<sup>69</sup>
- On New York’s Suffolk Community College due diligence study the estimated benefits of assuring that work stoppages would not occur, particularly with ten trade union agreements expiring within the construction period, translated into cost savings of \$71,790 per month. The Authority was mindful that in the construction of facilities for the Goodwill Games in neighboring Nassau County without a PLA, there was significant labor turmoil that translated into significant cost overruns.<sup>70</sup>
- New York’s Tappan Zee Bridge savings from the various provisions of the PLA were substantial, and included the following:
  - Standardized 40-hour work week for all crafts: \$168,438 or 0.38 percent.
  - Management flexibility for day shift starting time: \$550,410 or 1.23 percent.

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<sup>67</sup> Johnston-Dodds, p.39.

<sup>68</sup> Coupe, “Legal Consideration Affecting the Use of Public Sector Project Labor Agreements: A Proponent’s View,” XIX Journal of Labor Research 99, 106 (Winter 1998).

<sup>69</sup> Sworn Statement of John T. Dunlop in *ABC v. S.NevadaWater Auth.*p.11.

<sup>70</sup> Archer and Ciaffa, *Nuts and Bolts of Project Labor Agreements on Public-Funded Construction Projects* (1998) p.14-5. (Available from the authors).

- Four 10-hour day shifts per week: \$1,580,837 or 3.54 percent.
  - Four 10-hour night shifts: \$651,728 or 1.46 percent.
  - Standardization of holidays: \$608,412 or 1.36 percent.
  - Apprentices: \$2,440,366 or 5.46 percent (since Iowa is not a prevailing wage (PW) state this would probably not apply).<sup>71</sup>
- San Francisco Airport PLA: A sudden wildcat strike by upset workers was mediated and resolved in one day and work was restored to normal within 24 hours.
  - Finally, consider the good performance of the “ACE” and other PLA projects in the Dubuque and Quad Cities areas described in section VII.

#### **D. Employment Discrimination**

The **fourth** issue raised is that:

PLAs discriminate against the 80 percent of the construction industry’s employees who are not members of any labor union and who do not desire union representation.<sup>72</sup>

This is pure fallacy on two counts. First, PLAs in Iowa do not discriminate against nonunion workers at all. Again, a review of the provisions of the Iowa Events Center PLA is conclusive on this point.<sup>73</sup> And secondly, whereas 80 percent of construction workers of all sorts, including home builders and the workers who might build the slat fence across the back of residential back yards might be nonunion, it is not true that the population of skilled construction craft workers qualified to be employed on the type of major public construction projects at issue here are 80 percent nonunion. Rather the opposite is the case.

A contrasting perspective is illustrated by the feasibility review submitted by Weitz-Turner, Polk County’s construction management firm, with respect to the

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<sup>71</sup> See, for example, “Analysis of Economic Benefits of the (Tappan Zee) Project Labor Agreement.” Available from the authors.

<sup>72</sup> Baskin, p.115.

<sup>73</sup> See the item by item discussion in section II above and the PLA itself provided in Appendix III below.

percentage of union workers who would be employed on the Iowa Events Center project even *without* a PLA.

We estimate that even *without* a PLA, this project will likely be built using approximately 90-95% union contractors, with the remaining 5-10% coming from merit shop contractors.<sup>74</sup> (Emphasis added).

## E. Dispute Resolution

Finally, the **fifth** issue raised (by Baskin) is that:

Adoption of PLAs as a means of insuring “labor peace” ignores other legitimate methods of achieving the same objective and, in effect, rewards extortionate threats of labor violence.<sup>75</sup>

Once again this is a misleading view of the situation. PLAs are a tool for managing complex or critical projects in a number of ways. One of these ways is to get all the workers and all the contractors to agree to play by the same rules, such that the owner’s (in this case the public’s) project gets built with a minimum of difficulty and conflict. One aspect of the PLA has to do with dispute resolution and work discipline on the job. So, even if this particular issue could be managed in some other way, there would still be a need for the PLA to provide a coordinating mechanism for all the other issues involved in a complex worksite.

And it is worth asking just what are Baskin’s alternatives to the PLA’s answer to maintaining a cooperative spirit among the many different crafts and workers and contractors and subcontractors all constantly getting in each others way all the time? His suggestion is *court injunctions and police* as the superior alternative to the PLA!<sup>76</sup>

## F. Conclusions

The purpose of a PLA on a complex public sector construction project is to provide a mechanism for organizing all the different people on the work site into an efficient and coordinated work force. The public gets more value for its dollar when all the work is done with teamwork and coordination. PLAs are good for all these things.

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<sup>74</sup> Weitz-Turner to Polk County Board of Supervisors, November 20, 2001, p.2.

<sup>75</sup> Baskin, p.115.

<sup>76</sup> Baskin, p.119.

## VII. PROJECT LABOR AGREEMENTS IN IOWA

Construction ranks as one of the nation's largest industries. Construction projects mark the most highly visible modifications of America's natural landscape. Construction falls under the general headings of commercial, industrial, and residential and includes new, renovation, and maintenance work. The industry often draws supplies and materials from across the country. General contracting firms commonly rely on subcontractors to supply workers with specialized skills. A single project may require coordinating the activities of workers who labor under diverse wage and benefit structures.

According to year 2000 statistics, construction accounts for almost 6.6 million paid employees nationwide and just over 65,000 in Iowa.<sup>77</sup> Wage earners are classified as skilled trades workers, laborers, helpers, or apprentices. Compared to many other industries, construction also offers more opportunities for self-employment. On the national level, about 80 percent of construction establishments are small, operating with fewer than 10 workers. This means that on complex projects there are often large numbers of contractors and subcontractors working side by side. Most construction employees work full-time and often overtime hours.<sup>78</sup>

Yet employment fluctuates widely according to project duration, seasonal factors, and economic cycles. Labor tasks demand physical stamina. National statistics on construction injuries, illnesses, and fatalities reveal an industry with dangerous conditions at many work sites. Construction accounted for 22 percent of all private industry fatalities in 2000. In 2001, the construction industry in the private sector recorded a 40 percent higher than average injury and illness incidence.<sup>79</sup> Ongoing technological development means construction work today requires a decreasing pool of lesser skilled people. However, shortages and high demand exist for the skilled trades jobs.<sup>80</sup> Employment distribution parallels population patterns with concentrations in highly urbanized and industrialized areas.<sup>81</sup>

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<sup>77</sup> U.S. Census Bureau, Statistics of U.S. Businesses: 2000: Construction.

<sup>78</sup> U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 2541, The 2002-2003 Career Guide to Industries: Construction, 1-2.

<sup>79</sup> U.S. Department of Labor, Bureau of Labor Statistics, 2000, 2001.

<sup>80</sup> Phone interview with Peter A. Cockshaw, July 16, 2003. Hereafter cited as Cockshaw interview. See also his monthly advisory, COCKSHAW'S Construction Labor News + Opinion, September 2001, March 2002, and January 2003, 5. Hereafter cited as COCKSHAW's. Many, in both labor and management, regard Cockshaw as the construction industry's premier national labor analyst.

<sup>81</sup> U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 2541, The 2002-03 Career Guide to Industries: Construction, 1-2.

## **A. Overview of PLAs in Iowa**

The Iowa portion of this study examines project labor agreements in three Iowa locations, Des Moines, Dubuque and the Quad-Cities. Each locale provides a somewhat different dimension for PLA analysis. Des Moines offers the landmark legal decision on PLAs. Dubuque offers examples of several private sector PLAs, and the effort to secure one on a public sector project. The Quad-Cities offers many examples of PLA usage. Performance issues emerge as the major emphasis in this part of the study.

## **B. The Iowa Events Center in Downtown Des Moines**

Des Moines became the center of a furious contest over a PLA-governed facility. The dispute reveals a mixture of legal and political elements. The Des Moines-based Iowa Events Center would not only be the state's first public project to use a PLA but also the state's largest public project. The Center's public financing sources include a state grant and taxpayer financed bonds.

The idea for an Iowa Events Center in downtown Des Moines first surfaced in 2000. It soon faced two challenges. The first came from Des Moines resident Frank Bowers in the summer of 2001. After his petition drive to force a referendum on the bonding of the Center failed, he filed a lawsuit in the fall of 2001 that eventually reached the Iowa Supreme Court. Meanwhile, the Polk County Board of Supervisors voted 4-1 to begin negotiations with the Central Iowa Building and Construction Trades Council on a PLA for the Center. Opponents of the Board's action threatened to sue. In a 6-1 decision, reached on January 7, 2002, the high court upheld a Polk County judge's dismissal of the Bowers suit, ruling that the public had "no fundamental right" to vote on the project because local governments do not operate by a direct vote of the people. The petition drive and lawsuit delayed construction on the project for several months.<sup>82</sup>

The day after the Bowers suit ruling, the Polk County Board of Supervisors gave final approval to a project labor agreement for the building of the Iowa Events Center. The Supervisors' endorsement came, once again, on a 4-1 vote. Master Builders of Iowa (MBI), a group of construction contractors, quickly responded with a lawsuit on January 22nd, seeking "to block work at the Iowa Events Center before it gets started," because they alleged the Events Center PLA violated Iowa's right-to-work and competitive bidding laws.<sup>83</sup>

In the midst of the judicial proceedings to determine the legality of the Events Center PLA, the Iowa General Assembly began deliberations on two bills that would essentially outlaw public-sector PLAs in Iowa. One withheld state Vision Iowa Fund

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<sup>82</sup> See Des Moines Register articles, November 27, 2001, 1A, 10A, November 28, 2001, 3B, December 15, 2001, 1B, 4B, January 3, 2002, 1B, 4B, January 8, 2002, 1A, 8A, February 12, 2002, 2B, June 29, 2002, 1A.

<sup>83</sup> See Des Moines Register reporter Bert Dalmer's articles, January 9, 2002, 1B, 2B, January 23, 2002, 2B.



grants from cities or counties that use PLAs, and the other, subsequently dropped, barred public entities from entering into PLAs. The sharply divided debate on the issue led Governor Tom Vilsack to offer a compromise plan. He would replace the PLA structure on public-funded projects with provisions creating prevailing wages and minimum qualifications for workers. Despite Governor Vilsack's entreaties, the Assembly passed, on a 54-40 vote, the bill prohibiting Vision Iowa money for public-entity PLAs. Vilsack promptly vetoed the measure. In his March 21, 2002, veto message, the Governor reiterated his plan as preferable to an outright ban. He also mentioned that forbidding PLAs would deny public entities the same access to a "tool private entities use regularly to ensure quality work and timely completion on a project," and restrict local governments' "home rule power."<sup>84</sup>

Vilsack's veto set the stage for the final legal battle over the Events Center PLA. On June 28, 2002, a Polk County judge tossed out the lawsuit by Master Builders of Iowa challenging the legality of the county's PLA-governed plan for building the Iowa Events Center. MBI President Scott Norvell stated his group would appeal the decision.<sup>85</sup>

In mid-November 2002, the Iowa Supreme Court, by a 6-1 vote, upheld the Polk County Board of Supervisors' decision to sign a project labor agreement with the Central Iowa Building and Construction Trades Council to build the Iowa Events Center in Des Moines. The MBI lawsuit caused a 10-month delay in construction at the Center site. "We can find no infirmity with the agreement," wrote Justice Mark Cady for the court's majority.<sup>86</sup>

MBI's lawsuit challenged the legality of the Iowa Events Center PLA on several grounds. Their central claim was that it violated the state's right-to-work and competitive bidding laws. Other claims for invalidation of the PLA included preemption under the National Labor Relations Act (NLRA) and the Employee Retirement Income Security Act (ERISA), as well as infringement of three constitutional rights, due process, equal protection, and free association. The Iowa Supreme Court rejected each of these arguments.<sup>87</sup>

### The Iowa right-to-work law prohibits employment discrimination on the basis of

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<sup>84</sup> Des Moines Register articles on December 5, 2001, 1B, 3B, January 4, 2002, 1B, 3B, January 16, 2002, 1B, January 25, 2002, 4B, February 7, 2002, 4B, and March 14, 2002, 1A, 13A. See Governor Thomas J. Vilsack's letter to Senate President Mary Kramer, March 21, 2002.

<sup>85</sup> Jeff Eckhoff and Bert Dalmer, "Polk Judge Upholds Labor Pact for Center," Des Moines Register, June 29, 2002, 1A.

<sup>86</sup> Frank Santiago, "State Supreme Court Upholds Polk County's Labor Agreement," Des Moines Register, November 15, 2002, 4A. A summary of the court's ruling appeared in COCKSHAW's, December 2002, 5-8. The decision was also recapped on November 20, 2002 by Mark Wolski for the Bureau of National Affairs at their website, <http://emlawcenter.bna.com>.

<sup>87</sup> See *Master Builders of Iowa v. Polk County*, 653 NW 2d 382 (Iowa 2002). Hereafter cited MBI.

union affiliation. The Master Builders argued that the PLA actually creates a form of “compulsory unionism” especially since employees are hired through local hiring halls operated by the signatory locals. The court ruled that the agreement did not violate Iowa’s right-to-work law, finding “no evidence” to substantiate the MBI claims.<sup>88</sup> In the agreement, the contractor and the union agree not to discriminate against “any employee or applicant for employment because of . . . union membership.” “No employee covered by this Agreement,” the PLA reads, “shall be required to join any Union, or pay any agency fees or dues, as a condition of being employed, or remaining employed, on the Project.” The PLA states that the hiring hall operates in “a nondiscriminatory manner” and the out-of-work lists “are open to any individual, regardless of Union membership.” Nonunion or union contractors not signatory to an area collective bargaining agreement with unions that are signatory parties to the PLA may refer their “core employees” for project employment according to a formula. Workers from non-signatory unions, or nonunion workers, can choose to participate in the union-sponsored benefit plan or that offered by the contractor.<sup>89</sup>

As far as the actual bidding process is concerned, the Iowa Events Center PLA contains language referring to “open access to bidding opportunities for all contractors.”<sup>90</sup> The Iowa competitive bidding statute requires that contracts for public improvements “must be awarded to the lowest responsible bidder.” The Iowa high court interprets this language as a mechanism for protecting the taxpaying public. The court also sees the statute as a way to “forestall fraud, favoritism and corruption in the making of contracts.” This competitive bidding process, both sides agree, provides discretion to the political entity making the decision. MBI holds that the discretionary power only arises after completion of the bidding process. The court ruled that Board discretion can occur at any stage of the bidding process, including the adoption of a PLA.<sup>91</sup>

MBI views the Events Center PLA as violating the state’s lowest responsible bidder standard and favoring union labor. The Court rejected both of these arguments. By accepting the PLA, the court ruled that the County Board merely exercised its judgment that the PLA’s terms will produce the “best results.” The Board, the court held, has the authority to prioritize both cost and quality considerations of the project. Furthermore, since the Events Center PLA applies to all bidders, without regard to union or nonunion affiliation, it “does not, on its face, promote fraud, favoritism, or corruption in the actual bidding process.”<sup>92</sup>

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<sup>88</sup> MBI, IV, 8-16.

<sup>89</sup> Iowa Events Center Project Labor Agreement with Central Iowa Building and Construction Trades Council, January 8, 2002, Article IV, Section 3 (a), Section 5, Article X, Section 4, Article XIV, Article XVII Section I. Hereafter cited as Iowa Events Center PLA.

<sup>90</sup> Iowa Events Center PLA, Article 1.

<sup>91</sup> MBI, V, 16-20.

<sup>92</sup> MBI, V, 16-20.

The PLA should be disallowed, MBI asserts, because the NLRA prohibits states from acting in a regulatory mode and ERISA bans state laws that contravene employee benefit plans. The Court ruled, however, that the Board operated in a proprietary, not a regulatory, capacity. Under these circumstances, where the public entity owns and manages property and enacts no employee benefit law, neither the NLRA or the ERISA preemptions apply.<sup>93</sup>

Moreover, the Court found no evidence to substantiate MBI's claims that the PLA violates the constitutional rights of due process, equal protection, and free association. First, on the question of due process, "extensive opportunities" existed for commentary, on the PLA "before and after" its adoption. On the question of equal protection, the PLA prohibits discrimination on the basis of union status and "no disparate impact" exists for either union or nonunion contractors. Besides, the nonunion contractors "are not a protected class under equal protection principles nor is a fundamental right involved." Finally, the PLA does not prevent advocacy of a nonunion philosophy nor does it "coerce 'pro-union' expressions or association."<sup>94</sup> Within a week of the Court's ruling, MBI decided to abandon any further litigation on the project.<sup>95</sup>

The Iowa Supreme Court's ruling did more than uphold the legality of the first public-sector PLA. The decision also marked, according to Tom Gillespie, President of the Iowa State Building and Construction Trades Council, "the first time a project labor agreement (PLA) has withstood a legal challenge in a right-to-work and non-prevailing wage state."<sup>96</sup> The Iowa Supreme Court's ruling is another in a long series of cases from around the country rejecting the anti-PLA positions of contractor groups like ABC and MBI.

Projected overall costs for the Center stand at \$218 million, about 2.4 million over budget.<sup>97</sup> The planned opening for the summer of 2005 puts the Events Center over a year behind schedule. Master Builders of Iowa and the Associated Builders and Contractors of Iowa blame the Center's PLA for the construction delays and cost overruns. A number of factors account for the increased costs and delays. First, work on the project stopped for 10 months while anti-PLA contractors mounted their court challenge to the PLA. Adding the time involved in the Bowers' lawsuit brings the total delay to over a year. Redesign and inflation also played a role. Finally, the larger costs can be partly attributed to reduced competition when anti-PLA contractors refused to bid on the project. Greg

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<sup>93</sup> MBI, VI and VII, 20-23.

<sup>94</sup> MBI, VIII, 23-26.

<sup>95</sup> Bert Dalmer, "Group Ends Events Center Fight," Des Moines Register, November 19, 2003, 1B, 2B.

<sup>96</sup> Quoted in COCKSHAW's, December 2002, 5.

<sup>97</sup> The \$218 million figure represents total costs beyond those for construction only.

Spenner, president of the Associated Builders and Contractors of Iowa, referred to the dearth of bidders as a “business decision” by contractors. Representing organized labor’s state building and construction trades, Tom Gillespie called it a “boycott” intended to undermine the PLA. In the end, the price increases for the project reflect the lawsuit-occasioned delays, inflation and design changes. Another contributing factor, the low bidding pool, reflects certain contractors’ hostility to PLAs. Yet even with the Events Center \$2.4 million over budget, the cost overrun only represents about 1 percent of the project’s total cost, well within the reasonable range for a large project of this sort.<sup>98</sup>

### **C. PLAs in Dubuque**

Moving from Des Moines to Dubuque, we find a series of successfully completed, PLA-governed, private sector projects. Yet, we also find a public entity deciding not to use a PLA.

During the 1990s, the Dubuque Building and Construction Trades Council negotiated private sector PLAs for nine sites. The agreements bore the emblem of the Alliance for Construction Excellence (ACE), a committee composed of union and contractor representatives. ACE operates as an affiliate of the Dubuque Area Labor Management Council, a coalition of trade unions and union public and private sector employers. Completed with chiefly union labor, the ACE pacts covered new and remodeling work, mostly on Dubuque grocery and credit union facilities. Eagle Country Market grocery store officials signed ACE agreements for a new store and a remodeled one. Other agreements included four with Dupaco Community Credit Union and two with DuTrac Community Credit Union. The Dubuque Area Lifetime Center, a senior citizens’ services facility, also signed an ACE compact.<sup>99</sup>

A few years after completion of these projects, two of the bank heads reflected on their ACE-built structures. Robert W. Hoefler, President/CEO of Dupaco Community Credit Union, stated that the ACE agreement he signed for a new branch produced a quality building that “exceeded our expectations.” He also indicated that project completion occurred 30 days ahead of schedule and 10 percent under budget. The ACE agreement, he concluded, achieved “a safe, quality construction.” Tom N. Sarvis, President/C.E.O. of DuTrac Community Credit Union, also expressed satisfaction with his new and remodeled facilities. Employing mostly local labor, both sites were built “within projected completion dates [and] at a cost slightly less than budget.” He credited

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<sup>98</sup> Jason Clayworth, “Higher and Higher,” Des Moines Register, January 10, 2003, 1A, 6A; Frank Vinluan, “Troubled Center Moves Ahead,” Des Moines Register, July 12, 2003, 1B, 2B. Some of the \$2.4 million of cost overrun is not construction related.

<sup>99</sup> Phone interview with Dan Hammel, President, Dubuque Building and Construction Trades Council, November 18, 2003. Hereafter cited as Hammel interview. See also the February 14, 2002, memo from Chuck Isenhardt, Executive Director of the Dubuque Area Labor-Management Council, to the Council’s Board of Directors available at <http://www.dalmc.com>. A copy of the ACE Project Memorandum of Understanding can be found at the same website.

the excellent construction to “both design and quality labor.” Both Hoefler and Sarvis also noted the absence of delays caused by “work stoppages.”<sup>100</sup>

The offer to negotiate a PLA does not always meet with success. Public entities certainly exercise their power to make decisions on building projects. Such was the case in Dubuque.

Members of the Dubuque Building and Construction Trades Council had approached the school board about adopting PLAs for new school buildings in the spring of 2003.<sup>101</sup> Construction of a new middle school became the focus of the board’s PLA discussion. After gathering information on project labor agreements, the board scheduled a public “fact-finding” session on July 14, 2003, to hear from representatives on both sides of the issue. The board reached its decision on the middle school PLA at a November 3 meeting. A public hearing preceded the board vote. During both the July 14 and November 3 public commentary sessions, trade unionists and anti-PLA contractors dominated with alternating arguments for and against the PLA. Following a short period of remarks by board members, the Dubuque Community School Board voted 4-2 against a motion authorizing district officials to begin negotiations on a PLA for the new school. School board members voting no on the PLA cited the newness of the agreement and uncertainty about its impact. The two proponents of the PLA saw it as an opportunity for labor and management to jointly approve the construction contract. Had the board approved the motion, Dubuque would have become the first Iowa public school district to use a PLA.<sup>102</sup>

#### **D. PLAs in the Quad Cities**

The Quad Cities area, including the cities of Davenport and Bettendorf in Iowa and Moline and Rock Island in Illinois, provides a good locale to examine PLAs. PLAs in the Quad Cities metropolitan area number about 151 with an estimated value of \$800 million. Named IMPACT (Increasing Markets, Productivity And Construction Teamwork), the project labor agreements began in 1989.<sup>103</sup> The construction includes work on private-sector educational, entertainment, recreational, financial, transportation and, especially, medical facilities. The cost of these projects has ranged from \$50,000 to \$50 million.<sup>104</sup>

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<sup>100</sup> Charles Isenhardt, Dubuque Area Labor-Management Council Executive Director, provided copies of the “To Whom It May Concern” letters from Robert W. Hoefler, January 31, 2002 and Tom N. Sarvis, February 1, 2002.

<sup>101</sup> Diane Heldt, “District: Project Pacts Possible,” *Telegraph Herald*, June 22, 2003, 13A.

<sup>102</sup> See reporter Diane Heldt’s front-page stories in the *Telegraph Herald* on July 15, October 4, November 2, 4, 2003.

<sup>103</sup> Phone interview with Alan Anderson, Director, Illowa Construction Labor and Management Council, Moline, Illinois, June 18, 2003. Hereafter cited as Anderson interview. A copy of the IMPACT Memorandum of Understanding and completed projects can be found at <http://www.Illiwaimpact.org>.

<sup>104</sup> Anderson interview. See also Mary Rae Bragg, “Project Labor Deals Lauded,” *Telegraph Herald*, July 21,

A Davenport establishment, Genesis Medical Center, has both IMPACT (PLA) and non-IMPACT (non-PLA) construction experience, according to Mike Sharp, Manager of Planning and Construction and a 20-year employee of the private sector medical facility. Employing about 4,000 people, Genesis has used 25 to 30 IMPACT agreements over the past 12 years, for new, renovation, and maintenance work ranging up to \$32 million. Genesis usually considers IMPACTs for projects costing \$2 million or more with a duration of at least a year. The non-IMPACTs are ordinarily reserved for smaller projects of a few months duration and with contractors that Genesis knows. The labor forces on its construction sites include union and nonunion workers.<sup>105</sup>

Sharp indicated his high satisfaction with IMPACT agreements because they give owners labor peace and stability. He sees continuity, a steady stream of labor, timeliness, and cost effectiveness as the chief strengths of the agreements. Sharp views the IMPACT agreements as a way to give back to the local area. Local workers perform the work, spend their wages in the Quad Cities, and turn to Genesis for their health-care services and insurance.<sup>106</sup>

Davenport's Estes Company, a 33-year-old commercial and industrial construction firm, builds vertical structures. The company covers a region from Des Moines to Chicago with construction contracts ranging from \$10,000 up to \$23 million. Kent Pilcher, president and one of the owners of Estes, indicated that his company has experience with IMPACT and non-IMPACT projects. The company's nearly 40 IMPACT projects cover such areas as publishing, health care, banking, educational, industrial, and offices. Whether IMPACT or non-IMPACT projects, Estes employs union and nonunion workers.<sup>107</sup>

Like Mike Sharp, Pilcher stated that the provisions of IMPACT agreements promote labor peace and stability. Pilcher appreciates the IMPACT agreements because the unions handle jurisdictional disputes, accept flexible hours, maintain a project schedule, and participate in union-management discussions. IMPACTs, he notes, provide a single set of project specific terms and conditions of labor rather than having several union business agents, foremen or superintendents trying to coordinate operations and resolve disputes.<sup>108</sup>

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2003, 1A, 2A.

<sup>105</sup> Phone interview with Mike Sharp, Manager of Planning and Construction, Genesis Medical Center, Davenport, Iowa, June 23, 2003. Hereafter cited as Sharp interview.

<sup>106</sup> Sharp Interview.

<sup>107</sup> Phone interview with Kent Pilcher, President and one of the Owners, Estes Company, Davenport, June 24 and 27, 2003. Hereafter cited as Pilcher Interview.

<sup>108</sup> Pilcher Interview.

Sharp and Pilcher prefer IMPACTs, or PLAs, for their large construction projects. The agreements give them the work force flexibility they need to meet project demands. They find, then, the management-union agreement on the scope of work a critical component for successful project completion.<sup>109</sup>

## **E. Key Issues**

The Iowa landscape is dotted with major construction projects, many PLA, some not. The trade unions and the anti-PLA contractors each marshal their forces in the controversy surrounding public-sector PLAs. An analysis of the Iowa PLA experience in Des Moines, Dubuque and the Quad Cities leads to certain observations.

First, any contractor, with a union or nonunion labor force, can bid on a construction project. All union and nonunion contractors, then, are free to compete for construction contracts, including those with PLAs.

Complex construction projects bring together a variety of employers and workers. Union workers work on nonunion contractors' construction sites.<sup>110</sup> Similarly, nonunion contractors can and do successfully bid on PLAs.<sup>111</sup> Yet, there are nonunion contractors who refuse to bid on projects covered by PLAs.<sup>112</sup> The fact that these nonunion contractors choose not to bid on a PLA does not mean the agreement excluded them from the bidding process or even from performing project work. Rather it means only that the nonunion contractor decided against submitting a bid or seeking site jobs.

Although opponents refer to the PLA as a "union only" agreement, the Des Moines, Dubuque and Quad-Cities PLA-constructed facilities reviewed here utilized significant amounts of nonunion labor. The number of nonunion contractors on these PLAs varied with estimates running from 5 percent to 16 percent of the project's contractors.<sup>113</sup>

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<sup>109</sup> Pilcher and Sharp Interviews.

<sup>110</sup> The National Mississippi River Museum and Aquarium in Dubuque, a recently opened riverfront project with an estimated construction price tag of \$35 million, was completed with a local open shop construction manager, Conlon Construction. According to a fall 2002 list of project contractors, including those performing considerable custom work, approximately 35% of the work went to union firms and the rest to nonunion contractors. Phone interview with Mark Wahlert, Facilities Manager, Dubuque County Historical Society, November 20, 2003.

<sup>111</sup> A quick survey of the contractors list for the Iowa Events Center reveals about 16 percent as nonunion. Phone interview with Tom Gillespie, President of the Iowa State Building and Construction Trades Council, November 25, 2003. Hereafter cited as Gillespie interview.

<sup>112</sup> See statement of Greg Spenner, President of the Associated Builders and Contractors of Iowa, reported in the Des Moines Register, July 12, 2003, 2B.

<sup>113</sup> Gillespie, Hammel, Sharp and Pilcher interviews.

Under the terms of the public-sector Iowa Events Center PLA, the contractor and the unions agree to follow local, state, and federal laws and regulations for equal employment opportunities and nondiscrimination. Union membership, dues payment or agency fees as a condition for hiring or retention is expressly prohibited.<sup>114</sup> The signatory unions and all the contractors agree to project-specific coordination procedures designed to serve the public interest. The presence of nonunion workers on PLA sites in Des Moines, Dubuque and the Quad Cities illustrates the non-discriminatory nature of the agreements.<sup>115</sup>

Still, union contractors have a substantial share of most large construction projects. In the Quad Cities, commercial and industrial construction sites operate primarily with unionized work forces.<sup>116</sup> Before signing a PLA for the Iowa Events Center, the Polk County Supervisors hired an independent construction firm to review the impact of a PLA on the project. The reviewers estimated that “even without a PLA” the project would be built with “90-95 percent union contractors.” They concluded that a PLA “would have a net positive impact on the overall project.”<sup>117</sup>

Assessing the crucial cost and timeliness dimensions of PLAs requires consideration of several factors. Real construction costs can be determined, not at the bid stage, but only upon completion of the project.<sup>118</sup>

The interwoven factors of cost and duration often exceed estimates because of industry characteristics and other problems unrelated to the union or nonunion status of the labor force. Some of these factors include design change orders, unavailability of materials, delays in issuing construction permits, unavailability of skilled workers, lawsuits, environmental/historical considerations, inflation, site remediation, engineering errors, and, of course, bad weather.

What role do worker pay and benefits play in cost analysis? First, nonunion workers are in the same labor pool as union workers. Variations in pay between workers arise primarily out of differences in skill levels. Highly skilled workers, regardless of their union affiliation, receive fairly comparable wage rates. But unionized workers earn significantly better wages than unorganized workers because on average they are more skilled. Unionized workers are also more likely to receive full benefit packages.<sup>119</sup>

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<sup>114</sup> Iowa Events Center PLA, Article IV, Section 3 and Article XIV.

<sup>115</sup> Hammel, Sharp, and Pilcher Interviews.

<sup>116</sup> Phone interview with Rory Washburn, Executive Director, Tri-City Building and Construction Trades Council, January 16, 2004. Sharp and Pilcher interviews.

<sup>117</sup> Letter from Jim Delaney and Jim Simmons, managers of operations for the construction management firm of Weitz/Turner, to the Polk County Board of Supervisors, November 20, 2001.

<sup>118</sup> Cockshaw interview; COCKSHAW's, May 2002, 8.

<sup>119</sup> Cockshaw and Pilcher interviews.



In terms of performance, one of the most important issues on any construction site is the employees' skill level. Quality construction depends on a skilled work force. Union programs provide most of the training in the trades.<sup>120</sup> A 1998 study that examined apprenticeship training in the construction industry found that those in "programs that are jointly sponsored by unions and contractors signatory to collective bargaining" outperformed those in programs sponsored "unilaterally by contractors." Joint programs not only train a "majority of apprentices," they also account for an "overwhelming number of the apprentices who reach journey-level status." Compared to the joint programs, the non-joint programs have far fewer participants and are much shorter. The training enrollment and completion rates for women and minorities in joint programs exceed that of non-joint programs. While describing the union-management joint apprenticeship programs as more effective than those in the nonunion sector, the study concludes with a call for improving the performance of joint programs.<sup>121</sup> A very recent union-sponsored study arrives at essentially the same conclusions.<sup>122</sup> Even among open shop contractors, moreover, their top people tend to be union trained.<sup>123</sup>

Profit margins on construction projects differ by market and job requirements. For Peter Cockshaw, the noted authority on construction labor, and Kent Pilcher, president of the Davenport-based Estes construction company, the key factor is management.<sup>124</sup> Kent Pilcher finds PLAs more cost effective than non-PLAs for three reasons. First, PLAs establish work schedules and labor continuity for project completion. Second, PLAs provide a trained, skilled and productive labor force. Third, PLAs incorporate common dispute resolution mechanisms across all trades.<sup>125</sup>

## **F. Summary of Iowa Experience**

In Dubuque and the Quad-Cities, private sector PLAs have provided owners with a management tool that assured efficient, economical, and quality construction. The ongoing construction on the Iowa Events Center, the state's first public PLA, seems destined for a similar outcome. Yet those allied with ABC and MBI continue a vigorous

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<sup>120</sup> Cockshaw interview.

<sup>121</sup> See Cihan Bilginsoy, Department of Economics, University of Utah, "Apprenticeship Training in the U.S. Construction Industry," September 1998, 22-24.

<sup>122</sup> See "A Preliminary Report on Associated Builders and Contractors Apprenticeship Training: Flawed and Failing Initiatives," A Study by the Building and Construction Trades Department, AFL-CIO, October 2003, 1-14.

<sup>123</sup> Cockshaw Interview.

<sup>124</sup> Cockshaw and Pilcher interviews.

<sup>125</sup> Pilcher interview.

anti-PLA campaign.<sup>126</sup> They seek to stop even the consideration of PLAs by government entities for public works projects.<sup>127</sup> Unions, on the other hand, want what they have always wanted, negotiated contracts to protect the wages, hours and working conditions of their members while allowing their contractors to make a normal profit.

PLAs provide defined workplace conditions, including specific references to uninterrupted work routines, grievance and dispute resolution mechanisms, compliance with all applicable safety regulations, and non-discrimination in all aspects of employment. Public officials making a decision on whether or not to utilize a PLA for a public facility evaluate needs, costs, and other considerations. If properly drafted and negotiated, project labor agreements offer a flexible, project specific management framework to serve the public interest through sound planning, prudent spending, and effective performance.

This nation has well over half a century of experience with project labor agreements. During the past decade alone, hundreds of PLAs account for a variety of construction projects, most private, but many public as well. This record of extensive, voluntary and successful PLA construction projects validates their appropriate use by public entities as a valuable management tool.<sup>128</sup>

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<sup>126</sup> Associated Builders & Contractors, Inc., Government Affairs Department, “ABC’s Chapter Strategic Guide to Defeating Union-Only Project Labor Agreements,” 2002 Edition.

<sup>127</sup> Bradford W. Coupe, “Legal Considerations Affecting the Use of Public Sector Project Labor Agreements: A Proponent’s View,” *Journal of Labor Research* 19 (Winter 1998): 100.

<sup>128</sup> John T. Dunlop, “Project Labor Agreements,” *Joint Center for Housing Studies, Harvard University*, September 2002, 23.

## VIII. SUMMARY AND CONCLUSIONS

### A. Summary

The purpose of this report has been to provide the reader a good working knowledge of public-sector PLAs with an emphasis on Iowa. Section I presented an overview of the development and use of PLAs over the last 10 years. Section II explained how PLAs work, and the individual things PLAs do that make them useful in getting everybody to work together on a complex project. Section II also provided a detailed presentation of the components of the Iowa Events Center PLA to familiarize the reader with the best known Iowa PLA.

Section III provided a review of the role of federal labor laws and state contracting, right to work, and prevailing wage laws in the design and use of PLAs. Section IV dealt with the impact of the presidential Executive Orders on PLAs and state decision making powers.

Section V presented a survey of the numerous, though largely unsuccessful, legal challenges to PLAs brought by the Associated Builders and Contractors (ABC) and their members and allies in many jurisdictions over the last ten years in their attempt to prevent the use of PLAs.

Section VI discussed the issues raised by the ABC against public-sector PLAs and used the Iowa Events Center PLA to show how those complaints were not applicable in Iowa. Finally, Section VII reviewed the use and performance of PLAs in Iowa more generally.

### B. Conclusions

Six conclusions are apparent from this investigation and review of PLAs as a tool for improving performance on public sector construction projects in Iowa.

**First**, PLAs for appropriate public-sector construction projects are a commonsense engineering management tool for helping to get all the different groups working on the project to work together smoothly. This explains why PLAs are widely used by big firms like Bechtel on purely private projects.

**Second**, the better coordinated a complex project is among all the groups working on the project, the better the chance the work will be quality work and the project will be finished on time and at or under budget

**Third**, the criticisms leveled against public PLAs in general are not well-taken when compared to PLAs like the one used for the Iowa Events Center. This is demonstrated by the detailed review of the provisions of the PLA in section II and by the

analysis in the Iowa Supreme Court's 6-1 decision in that case approving the PLA.

**Fourth**, the wide use of PLAs on private-sector construction projects is clear evidence that PLAs are useful as an engineering management tool and produce significant net benefits. Recall the California study. Fifty-nine of the 82 projects studied were *private* construction projects. Bechtel, a major nationwide construction contractor, was also surveyed for that study. It reported that it had done 100 PLA projects over the last 25 years with 85 percent in the private sector. Since the owners of private projects are out to make money, the widespread use of PLAs on these projects over long time spans is a good indication that PLAs, as an arrangement for organizing the project, especially on large, and/or complex projects, most often produce positive net benefits.

**Fifth**, it should be emphasized that a lot of things unrelated to PLAs can affect project outcomes and it is certainly possible to find PLA projects that were late or over-budget and non-PLA projects that were on time and within their budgets. The proper conclusion to reach is that while there is no guarantee, *in general* PLAs provide government-funded projects with a management structure that has earned the confidence of private firms for their own complex or critical projects.

**Sixth**, the purpose of a PLA on a complex public-sector construction project is to provide a mechanism for organizing all the different people on the work site into an efficient and coordinated work force. The public gets more value for its dollar when all the work is coordinated. PLAs are good for these things.

In sum, PLAs are a valuable engineering management tool for both public and private construction projects. The use of PLAs in large, complex, or time-critical public construction projects increases the likelihood that such projects will be completed on time and at a cost less than would be the case without the PLA.

## **APPENDIX I RESPONSES TO FREQUENTLY ASKED QUESTIONS**

### **Q1: Are nonunion contractors locked out of public PLA projects in Iowa?**

Certainly not. Consider the Iowa Events Center PLA. Have a look at Articles II sections 5(a), 6(a) and 6(b) and Article XX. Bidding must be open to all qualified bidders regardless of whether they are union or nonunion contractors.

By way of examples: Consider the major public-sector PLAs from around the country. On the Boston Harbor project 102 of 257 subcontractors were nonunion. On the Southern Nevada Water Authority PLA, 6 of the 16 contracts were awarded to nonunion firms on the PLA part of the project, while on the earlier non-PLA portion of the project only three of the 15 contracts were awarded to nonunion contractors. On California's East Side reservoir project PLA, 32 percent of the bids were submitted by nonunion contractors and (counting subcontractors) more than half the contractors working on the project have been nonunion.

### **Q2: Are workers on public PLA projects required to join unions or pay union dues?**

Again, certainly not. Look at the provisions of the Iowa Events Center PLA, specifically the non-discrimination provisions of Articles IV Sec. 3(a), Article XIV, and Article XVII Sec.3. No worker on the project has to join a union or pay union dues.

### **Q3: How does contract performance compare in similar-scale projects negotiated with and without PLAs in terms of timeliness and cost expectations?**

The most dramatic evidence on the timeliness issue is from the multi-billion dollar Boston Harbor project where there were over 20,000,000 craft hours worked over the course of seven years with zero lost time due to strikes or lockouts.

Consider the good performance of the Iowa "ACE" examples described in Section VII above. New York's Tappan Zee Bridge PLA savings presented in section VI are substantial. Data comparing New York's Suffolk College PLA with the neighboring non-PLA Goodwill Games show significantly less lost time due to strikes and lockouts on the PLA project.

The extensive study done by the Bureau of Research of the California State Library reports that private sector contractors had found "economic value when using PLAs." On the public side the same study found that: "Most agency

spokespersons commented positively that PLAs are useful on large, specific projects, especially contributing to decreased work stoppages and delays.”

Perhaps even more significant were the large number of *private* project PLAs found in the California study. Fifty-nine of the 82 projects studied were *private* construction projects. Bechtel, a major nationwide construction contractor, was also surveyed for the study. It reported that it had done 100 PLA projects over the last 25 years with 85 percent in the private sector. Since the owners of private projects are out to make money, the widespread use of PLAs on these projects over long time spans is a good indication that PLAs, as an arrangement for organizing the project, especially on large, and/or complex projects, most often produce noticeable positive net benefits.

However, it should be emphasized that a lot of things unrelated to PLAs can affect project outcomes and it is certainly possible to find PLA projects that were late or over budget and non-PLA projects that were on time and within their budgets. The proper conclusion to reach is that while there is no guarantee either way, *in general* PLAs provide a management structure which is more likely to produce better results on complex or critical projects than projects without the PLA management tools.

**Q4: How do wages and benefits compare on PLA and non-PLA public projects?**

Taking the Iowa Events Center PLA as a case in point, the County’s construction manager estimated that **both with and without the PLA**, the percentage of union workers on the project would be about 90 to 95 percent of the workforce. However, *with* the PLA, the 5 percent to 10 percent of the workforce that would be nonunion in either case would probably be somewhat better paid.<sup>129</sup> Its overall conclusion, however, was that the gross dollar savings from using the PLA was going to be greater than that wage differential, and the PLA would produce a worthwhile positive net benefit.

**Q5: Are comparisons available for both public and private projects?**

There are a relatively small number of studies out there, and they tend to be partisan. Data from private project PLAs tend to be proprietary and more difficult to obtain. And while it is possible to obtain some data on what the bottom line results were for PLA and non-PLA projects, it is difficult to separate out the causal connections. So, for example, the Events Center is now somewhat over schedule and a little over bid, but much, if not all of this is due to delays and legal costs engendered by the challenges by ABC and its allies.

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<sup>129</sup> Though the more skilled the worker, the narrower the union vs. nonunion differential.

More reliable, in our view, is the continued and ongoing usage of PLAs on complex private projects where profits are at issue and owners wouldn't employ PLAs on an appropriate project unless they were convinced that the net benefits were going to be positive. If PLAs are not cost-effective in straight dollars-and-cents terms why have private owners allowed Bechtel, for example, to use 85 PLAs in the last 25 years?

**Q6: Use of Local Firms and Workers: How do PLA-governed projects compare with non-PLA projects of similar size in similar locations in use of firms and workers from the same general area of the project?**

The experience with PLAs in Dubuque and the Quad Cities seems to demonstrate in practice a good level of local contractor and workforce utilization. This was also found in the Southern Nevada Water Authority PLA and in the Boston Harbor PLA as well. This makes sense since union hiring halls are local institutions and so tend to draw on local craftspeople first and only then to reach outside the local area when a craft shortage has been identified. Moreover, the setting of the craft wage rates in the PLA tends to give states like Iowa, with a generally educated workforce, an advantage over low wage/low skill/low performance contractors from elsewhere.

**Q7: Do mandatory grievance procedures, uniform conditions of employment and no strike/no lockout provisions guarantee in practice labor peace and stability?**

While there is no "guarantee," available data appear to show almost complete elimination of lost time project disruptions from labor disputes. In any complex project involving lots of contractors, doing lots of different jobs overlapping in time and place, with lots of workers from a large number of different crafts also overlapping in time and place, there are bound to be arguments. The benefit of the PLA is that it provides firm standards for organizing the work, along with a mechanism for rapid dispute resolution, with substantial penalties for non-compliance. And as noted in the response to Question 4, there is good specific evidence that PLAs are effective in controlling strikes and lockouts.

The ABC has noted in this connection that there was a strike on the San Francisco airport PLA. However, the lesson of that event is not that there was a walkout, but that due to the fast arbitration provisions of the PLA it lasted only one day.

## APPENDIX II: GLOSSARY

ABC	Associated Builders and Contractors. An aggressively anti-union organization of construction contractors and materials suppliers with many state chapters.
ACE	Alliance for Construction Excellence
AGC	Associated General Contractors. An organization of general contractors with both union and nonunion members.
BAT	Bureau of Apprenticeship Training of the U.S. Department of Labor.
Brassing Systems	Systems used to check employees in and out of the job site.
Building Trades	General term for the construction trades unions.
CIBCTC	Central Iowa Building and Construction Trades Council
Davis-Bacon	The Davis-Bacon Act (40 USC 276a-5) requires locally prevailing wages to be paid on federally financed projects.
ERISA	The Employee Retirement Income Security Act of 1974, 29 USC 1001-1461.
FAR	Federal Acquisition Regulations
IEC	Independent Electrical Contractors, an organization of nonunion electrical contractors.
JAC	Joint Administrative Committee (Contractor/Unions/Construction Manager Committee to coordinate construction on the PLA)
LMRDA	Labor Management Reporting and Disclosure Act of 1959 “Landrum-Griffin” Act. In this act Congress adopted special rules for the construction industry, including ‘pre-hire agreements.’ NLRA §8(f), 29 USC 158(f).
LRRM	Labor Relations Reference Manual
MBI	Master Builders of Iowa. An organization of construction contractors in Iowa which has been the lead plaintiff in at



least two major cases opposing both the adoption of prevailing wage laws and PLAs in Iowa.

Merit Shop Contractor	Nonunion contractor
NLRA	National Labor Relations Act of 1935. Established employees rights to organize, join unions, and engage in collective bargaining and required employers to bargain in good faith.
Pre-Hire Agreements	Agreements between contractors and unions before contractors hire employees on particular projects for the purpose of allowing contractors to determine what wage rates to use for the purpose of bidding on the project construction contracts.
Pre-qualification	Pre-qualification statutes require a bidder to meet minimum standards of performance to be allowed to <b>bid</b> on public sector construction contracts.
Prevailing Wage Law	Prevailing wage laws require that the “prevailing” local wages be paid on public construction projects. The Davis-Bacon Act of 1931 (40 USC 3142(a)) is the federal prevailing wage act. Thirty-eight states have state prevailing wage acts.
PSA	Project Stabilization Agreement. The name for the PLA used in the San Francisco Airport project.
Right-to-Work Law	Iowa Code §731.1 prohibits any employer from discriminating against an employee on the basis of whether that employee is or is not a member of a union.
Responsible Contractor Statutes	Responsible contractor statutes require that bidders have to meet minimum standards of performance in order to be <b>awarded</b> public construction contracts.
Taft-Hartley Act	Otherwise known as the Labor Management Relations Act. Creates our current system of rules about collective bargaining.
ULP	Unfair Labor Practice as defined under the NLRA and various state statutes.

### **APPENDIX III**

**THE IOWA EVENTS CENTER PLA  
(Lengthy Appendices to the PLA Are Not  
Included But Are Available on Request)**

### **APPENDIX IV**

**BUILDING TRADES MODEL PLA  
(Lengthy Appendices to the PLA Are Not  
Included But Are Available on Request)**