



Heart of America  
Chapter

March 13, 2012

The Honorable Carolyn McGinn, Chair  
Senate Ways and Means Committee  
State Capitol Building  
Topeka, KS

Chairman McGinn,

Associated Builders and Contractors, Heart of America Chapter appreciates the opportunity to express our support for House Bill 2515.

Associated Builders and Contractors (ABC) is a national trade organization that represents nearly 25,000 employers providing approximately 2 million construction related jobs. The Heart of America Chapter represents ABC members in the states of Kansas and Missouri. Our merit shop philosophy insures that taxpayers and consumers alike receive the most for their tax and construction dollars.

A project labor agreement (PLA) is a contract that requires adherence to collective bargaining agreements negotiated by labor unions. Such agreements require all contractors to recognize labor unions as the exclusive representative of their employees. These agreements also require payment into benefit funds operated by the labor unions even if the employees will never qualify for the benefits.

House Bill 2515 will insure fair and equal treatment in the procurement of goods, services and employment using public funds by prohibiting governmental agencies from mandating the use of PLA's. ABC Heart of America Chapter opposes government mandated PLA's in Kansas for the following reasons:

1. **PLA's are unfair to workers.** More than ninety percent (90%) of Kansans have chosen not to belong to a labor union, and these workers are effectively prohibited from working on publicly funded projects unless they pay into local labor unions. Often times, employees of open shop companies who do pay union mandated fees never receive any of the promised benefits. A recent study of a PLA proposal at the Independence Mo. School District found that the PLA tied local workers to multiemployer pension programs that were **underfunded by \$3.2 billion** (see attachment 1). This is especially true in right-to-work states such as Kansas.

Senate Ways and Means

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2. **PLA's prevent transparency in government procurement.** The state of Kansas has established as its public policy a requirement that contracts be awarded through a competitive bid process. When a PLA is placed as a pre-condition of submitting a bid, Kansas taxpayers are denied the opportunity to evaluate bid proposals because non-PLA bids are rejected before they are ever opened. Public transparency in evaluating the cost and quality of government projects is circumvented by using a PLA.
3. **PLA's increase costs and decrease competition.** Competitive bid processes improve the universe of bid proposals and lower overall costs. Conversely, anti-competitive PLA's limit the number of bidders and increase the overall costs. Numerous studies document the increase in costs for public construction using anti-competitive PLA's (see attachment 2). Cost increases often range in the 10 – 20% range, but it's not uncommon to see increases of 25% or more. A recent bid opening conducted by the Independence Mo. School District provided real life evidence supporting the cost increases found in studies. After imposing a pre-bid PLA, the Independence School District accidentally opened a non-PLA bid and found the non-PLA bid was below all PLA bidders, ranging from 10 -28% lower (see attachment 3).
4. **PLA's discriminate against minorities and women.** The NAACP recently challenged the PLA contracting practices of the Hazelwood Mo. School District as discriminatory and in violation of Title VI of the federal code (see attachment 4). The following are statements from other organizations reflecting opposition to PLA's by minority groups:
  - a. **National Black Chamber of Commerce**
    - "PLAs amount to de facto segregation ... African-American workers are significantly underrepresented in all crafts of construction union shops ... this problem has been persistent during past decades and there appears to be no type of improvement coming ... PLAs are anti-free-market, non-competitive, and, most of all, discriminatory."
  - b. **Women Construction Owners & Executives, USA**
    - "WCOE opposed federally mandated project labor agreements ... PLAs will disproportionately impact small business, particularly those owned by women and minorities."
  - c. **Latin Builders Association, Inc.**
    - "We believe PLAs make it more difficult for minority-owned contractors to compete ... they effectively work against the goals of increasing the number of projects awarded to minority-owned businesses by placing roadblocks in our way."

**d. American Asian Contractors Association**

- “The ultimate effect of the San Francisco Airport PLA is clear ... once a PLA was implemented, minority business enterprise prime contract participation dropped 91.9 percent and subcontract participation dropped 34.4 percent. This PLA has been a disaster for minority-owned businesses ... “

National support for competitive bidding laws has been growing. Eleven state legislatures have passed laws or implemented Executive Orders that guarantee open and competitive bid procedures for government contracts (see attachment 5). These new laws have been attacked through the legal system, with multiple courts upholding the right of governments to preserve open competition. Only one court has ruled against open competition and this decision is expected to be overturned on appeal.

Supporters of PLA's have further attempted to blunt the sweeping national momentum to preserve competitive bidding by hiring labor “experts” to expound on the virtues of PLA's. Reports out of Utah and the University of Missouri Kansas City have attempted to quantify the purported benefits associated with PLA's. A closer examination of these reports finds they are wholly or partially funded by labor organizations, they utilize faulty and untested data and they have not been subject to peer review. These flaws render the reports' findings meaningless.

For the foregoing reasons, the ABC Heart of America Chapter respectfully requests your support of House Bill 2515. Good government that is responsive to the people must be promoted and protected.

Thank you for your consideration.

Respectfully,



Jim Kistler  
President and CEO

**Attachment 1**





Heart of America  
Chapter

FOR IMMEDIATE RELEASE

Contact: Jim Kistler  
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(573) 268-7504 mobile

## INDEPENDENCE DISTRICT TIES CONSTRUCTION OF NEW SCHOOL TO UNDERFUNDED PENSIONS

### *Local Taxpayers To Help Fund \$3.2 BILLION Deficit*

Multi-employer pensions tied to construction of new schools in Independence are seriously underfunded according to a study of recent financial filings. Data collected by Associated Builders and Contractors reveals the pension programs mandated by the Independence School District have a funding deficit of over 3 BILLION dollars.

"This is bad news for workers in the Independence School District," stated Jim Kistler, President and CEO of the ABC Heart of America Chapter. "Did the school district do their homework on this National Maintenance Agreement? Did the school board understand the dangerous financial situation of these pensions before approving the agreement? District taxpayers and voters deserve some answers."

The study was conducted by reviewing financial disclosures of 14 multi-employer pension plans that appear to be tied to the National Maintenance Agreement being used in school construction in Independence. All of the pension plans - FOURTEEN OUT OF FOURTEEN - reported a current funding deficit (owing more in benefits than than they have in assets) in the most recent public disclosure. The pension deficits ranged from a NEGATIVE \$29 million to a NEGATIVE \$784 million - with an average deficit of over \$228 million per pension plan.

Article IX, Section 1 of the National Maintenance Agreement requires that *'welfare funds, pension funds ... and other monetary funds ... shall be paid'* on Independence School District projects without any apparent regard to the financial stability of the pension plans. The cost of these payments will be paid by Independence taxpayers.

"The current state of most multi-employer pensions amounts to a ponzi scheme," stated Kistler. "The retirement money for these Independence school workers will

be used to plug the existing black hole. Workers building the proposed West Elementary School may never see that money."

This pension crisis and its negative effect on workers is well documented. A September 2009 study by Moody's Investor Service cited locally available pension plans as among the worst funded in the nation - including citing the Carpenters Pension Trust Fund of St. Louis as being endangered. The recent linkage of the St. Louis Carpenters and Kansas City Carpenters may bring these funding woes to the Independence Schools project.

"The ABC Heart of America Chapter is hand delivering this information and supporting data to the Independence Board of Education ahead of next week's meeting," stated Kistler. "We hope the Board of Education will reconsider the ill-advised use of the National Maintenance Agreement."

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*Associated Builders and Contractors (ABC) is a national association of nearly 25,000 employers and 2 million employees dedicated to the promotion of free enterprise, open competition, safety and quality in the construction industry. The Heart of America Chapter represents ABC members in Missouri and Kansas.*

**Attachment 2**



# **The Impact of Government-Mandated Project Labor Agreements: A Review of Key Reports and Studies 2011 Edition**

*“The examination of the construction labor market and the facts concerning the postures of organized labor, unionized construction, and their political supporters, as well as of the cases in various states, demonstrate that the claimed advantages of government-mandated PLAs are not supported by factual evidence”*

- Dr. Herbert R. Northup, Journal of Labor Research, Winter 1998

Government-mandated project labor agreements (PLAs) are special interest kickback schemes that end open, fair and competitive bidding on public work projects. PLAs deny 86.9 percent of the U.S. construction workforce – those who do not belong to a union – a fair opportunity to build public work projects, thereby reducing competition and significantly driving up costs to taxpayers. With government budgets stretched to the breaking point and essential services being cut, it is critical that taxpayers get the best quality work at the best price. Union-favoring PLAs put Big Labor special interests ahead of the public interest by restricting the bidding process to ONLY contractors that agree to participate in these corrupt schemes -- denying qualified contractors and their skilled employees the opportunity to do a better job at a better price.

## **Construction and Employee Costs:**

Anti-competitive PLAs increase costs by forcing contractors to:

1. Hire most or all employees from a union hiring hall
2. Follow inefficient union work rules
3. Exclude apprentices enrolled in nonunion apprenticeship programs
4. Make contributions to union benefit plans on behalf of nonunion employees that are permitted to work on a PLA project. Nonunion employees will never benefit from these contributions unless they join a union and become vested in union benefit plans.

These unfair mandates discourage competition from nonunion contractors, who employ 86.9 percent of the U.S. construction workforce, and needlessly increase costs for the occasional merit shop contractor that participates on government-mandated PLA projects.

Academic research and independent reports available at [www.abc.org/plastudies](http://www.abc.org/plastudies) support the reality that government-mandated PLAs increase the cost of construction.

- A study released Sept. 23 2009 by the Beacon Hill Institute (BHI), “Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem,” found that PLAs significantly increase construction costs on federal projects. Had President Obama's pro-PLA Executive Order 13502 been in effect in 2008, and all 2008 federal construction projects worth \$25 million or more had been performed under PLAs, it would have increased the cost to federal taxpayers by \$1.6 billion to \$2.6 billion. In addition, the BHI review of federal construction projects from 2001-2008, the years under which government-mandated PLAs were prohibited, also revealed that there were no instances in which labor disruptions occurred that resulted in significant project delays or increased costs. The study concludes that “the justifications for PLAs provided by Executive Order 13502 are unproven.”

Updated April 2011



- A June 2009 study conducted by property and construction consulting firm Rider Levett Bucknall prepared for the U.S. Department of Veterans Affairs (VA) Office of Construction and Facilities Management found that PLAs would likely increase construction costs by as much as 9 percent on three of the five construction markets (Denver, New Orleans and Orlando) in which the VA is planning to build hospitals.
- An October 2009 report by Dr. John R. McGowan, “The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements,” found that employees of nonunion contractors that are employed under government-mandated PLAs suffer a reduction in their take home pay that is conservatively estimated at 20 percent. For example, the report estimates that as a result of President Obama's pro-PLA Executive Order 13502, hundreds of millions of dollars of nonunion employees' income on federal construction projects will be distributed to union pension funds, from which nonunion employees will likely receive no benefits. In addition, the report found that PLAs on federal projects substantially increase costs, by approximately 25 percent, for nonunion employers. Finally, the study found that had President Obama's pro-PLA Executive Order 13502 applied to federal contracts in 2008, additional costs incurred by employers related to wasteful PLA pension requirements would likely have ranged from \$230 to \$767 million per year. Lost wages for nonunion construction workers would have ranged from \$184 million to more than \$613 million, depending on the assumptions made for companies executing contracts via PLAs. In total, the move to PLAs could cost nonunion workers and their employers \$414 million to more than \$1.38 billion annually.
- A May 2006 study by the Beacon Hill Institute (BHI) at Suffolk University in Boston, Massachusetts, “Project Labor Agreements and Public Construction Costs in New York State” found that PLAs add an estimated \$27 per square foot to the bid cost of construction (in 2004 prices), representing an almost 20 percent increase in costs over the average non-PLA project.
- A September 2004 study by the Beacon Hill Institute (BHI) at Suffolk University in Boston, Massachusetts, completed an extensive statistical analysis of the effects of PLAs on bid and final costs of school construction projects in Connecticut for the period of 1996 through 2004. “Project Labor Agreements and the Cost of Public School Construction Projects in Connecticut” found that PLAs raise the *actual or final base* construction costs by \$30 per square foot (in 2002 prices), representing an almost 18 percent increase in costs over non-PLA projects. BHI concluded that “our key finding is that PLA projects cost more than non-PLA projects, holding the effects of project size and type constant. This is true whether one considers bid costs or final project costs. The effect is statistically significant and robust.”
- A September of 2003 study by the Beacon Hill Institute (BHI) at Suffolk University in Boston analyzed Massachusetts school construction projects and concluded that *bid prices* on projects with a PLA were an estimated \$18.83 per square foot or 14 percent higher than bid prices on non-PLA projects. In addition, the *actual* cost of construction was 12 percent higher (in 2001 prices) for projects executed with a PLA.
- In September of 2001, the firm of Ernst & Young was commissioned by Erie County in New York to analyze a project labor agreement on the Erie County Construction Project. Ernst & Young concluded that “bidder participation was diminished because the county chose to utilize a PLA. Further, the use of PLAs adversely affects competition for publicly bid projects to the likely detriment of cost-



effective construction. Our research revealed that the use of PLAs strongly inhibits participation in public bidding by non-union contractors and may result in those projects having artificially inflated costs.” They went on to say that “there are no apparent valid economic justifications for the continued use of a PLA on Phase II of the Project.”

- The Worcester Municipal Research Bureau released their study “Project Labor Agreements on Public Construction Projects: The Case For and Against” on May 21, 2001. The study concluded that “PLAs tend to constrict the number of bidders on a project compared to those without PLAs, and are likely to reduce the savings to the public that would accrue if nonunion contractors who are employed were allowed to follow their customary methods.”
- A study commissioned by the Jefferson County Board of Legislators concluded that “[t]he additional costs estimated with the use of a PLA could range upwards of \$955,000. With the loss of even on general contractor from the bidding [as a result of the PLA], the cost increase could approach \$200,000.” On this estimated \$14 million project, this would mean a cost increase of upwards of 7 percent (September 2000).
- The Clark County School District (CCSD) retained Resolution Management to perform an objective study of the use of project labor agreements on School District Projects. The independent study found “no compelling reason for CCSD to enter into PLAs for school construction at this time.”
- The Employment Policy Foundation estimates that if all federally-funded government contracts were to include PLAs, the result would be either an increase in the cost of construction by \$4.8 billion annually, or a reduction in the amount of federal construction spending by 30 percent (April 1997).
- A study of public-sector PLAs concludes, “While assuring that projects are performed union, they provide little, if any, savings to the [public] owner. In addition, they provide little, if any, competitiveness to the union contractor and may be disruptive to other owners and contractors involved in the local construction market.” It concluded that, “restraints imposed by government-directed PLAs are political decisions which have little or no economic rationale, nor can they be defended on grounds of labor peace, enhanced safety, or other such reasonable criteria.” (Dr. Herbert R. Northrup, Journal of Labor Research, Winter 1998).
- A comparison of bids for a Middletown, Connecticut, school renovation proposal demonstrated a PLA would have added 20 percent to the cost. The town initially issued 72 sets of bid specifications with a PLA, and received only four responses, with the lowest bid (\$9.1 million) at \$600,000 over the project’s \$8.5 million budget. When the project was re-bid without the PLA, it received more than double the number of bids, with the lowest at \$7.6 million, producing a savings for the town of \$1.5 million.
- A comparison of two stadiums built in Maryland at approximately the same time (Jack Kent Cooke Stadium near Washington, DC and Ravens Stadium in Baltimore), indicates that the cost per seat of Ravens Stadium, built primarily with union labor under prevailing wage laws, was over 13 percent higher than the cost for Jack Kent Cooke Stadium, a merit shop project. Overall, the preliminary results of this study indicate that costs associated with union labor and prevailing wage made the Baltimore stadium costs 4 ½ to 5 percent higher than the Washington stadium.



- A study of the taxpayer costs for Roswell Park Cancer Institute in Buffalo, New York, assessed bids for the same project both before and after a PLA was temporarily imposed in 1995. It revealed that there were 30 percent fewer bidders to perform the work and that costs increased by more than 26 percent.
- A GAO report, issued May 5, 1998, demonstrated that it is nearly impossible to show any savings or increased quality derived from the use of project labor agreements, largely because of the difficulty in finding two identical projects with or without a PLA to study.
- A U.S. GAO report on Department of Energy Idaho Laboratory Project found that the labor costs under the union-only PLA were 17 percent to 21 percent above the federally mandated Davis-Bacon rates.

### **Work Opportunities:**

- The U.S. Department of Labor's Bureau of Labor Statistics (BLS) Jan. 2011 report states that 13.1 percent of the nation's construction workforce was unionized in 2010. Therefore, since union-favoring PLAs discourage merit shop companies from working on a PLA project, PLAs discriminate against the majority of companies and more than eight out of 10 workers who choose not to join a union. These workers' hard-earned tax dollars fund these projects and they should not be summarily subject to such discrimination.
- The District Economic Empowerment Coalition (DEEC) October 2007 Study, "The DC Baseball Stadium Project: Broke Promises, Big Losses for DC Residents" concluded that a PLA signed to ensure local residents the majority of work on the District of Columbia's new \$611-million baseball stadium failed to meet hiring goals outlined in the PLA. The study found that the PLA "was intended to produce numerous jobs and opportunities for local residents. Instead, most of the work has gone to residents from outside the city."
- A December 2008 editorial by The National Black Chamber of Commerce described PLAs as "a license to discriminate against black workers." Likewise, minority and women's construction, business and employee associations have vocally opposed government mandated union-only PLAs. Testimony from an Aug. 6, 1998 U.S. House Small Business Committee hearing called "The Administration's Policy of Discrimination: Project Labor Agreement's Negative Impact on Women and Minority Owned Small Businesses" highlights the negative impact of PLAs on women and minority owned businesses and their employees. The National Black Chamber of Commerce, Women Construction Owners and Executives and the National Association of Small and Disadvantaged Businesses are among a diverse coalition of groups that have actively opposed PLAs. These groups represent workers that are significantly underrepresented in all crafts of building trades unions. Encouraging PLAs on construction projects will make it even more difficult for minority-owned contractors and their workforce to compete.
- Ernst & Young's September 2001 study stated that their "research revealed that the use of PLAs strongly inhibits participation in public bidding by non-union contractors and may result in those projects having artificially inflated costs."
- In his analysis of government-mandated PLAs, Dr. Herbert Northrup concludes, "To exclude or to limit the right of open-shop contractors, who have won 75-80 percent of the national construction



dollar spent, from the opportunity to bid on public financed construction, and thus to limit or to eliminate their participation in construction paid for by taxpayers unless they are willing to work as if they were unionized contractors is palpably both unfair and contrary to sound public policy” (Journal of Labor Research, Winter 1998).

### **Productivity and Quality:**

Government-mandated PLAs do nothing to guarantee better quality, skills, or productivity. Merely having a union status does not guarantee better performance as there is no evidence that union labor is more skilled than merit shop labor. Some of the largest and most successful projects completed every year are built on time and within budget by merit shop companies and without government-mandated PLAs. The union label is not needed for construction to be of top quality. Project quality is determined by sound business practices such as quality project management and is governed by voluminous procurement laws and regulations, project specifications and bonding requirements. Safeguards against shoddy work practices and stiff market competition also prevent unqualified companies from competing and winning public contracts. Moreover, quality lies with the worker’s individual motivation and performance. There is no evidence that a PLA regularly produces quality construction and is the only method to achieve quality, safe and cost-effective construction.

- Although building trades unions promote PLAs by claiming open shop contractors do not have the capability of managing very large construction jobs, a study by Dr. Herbert R. Northup concludes that, “the facts demonstrate that open-shop contractors can and do successfully both perform and manage large projects.” (Journal of Labor Research, Winter 1998).
- After performing a thorough study of PLAs in the New York area, Ernst & Young concluded that “[t]here is no quantitative evidence that suggests a difference in the quality of work performed by union or open shop contractors.” (September 2001)
- A 2006 study by The Public Interest Institute concludes that a PLA on the Iowa Events Center project in Des Moines placed an “unnecessary burden” on local workers, business and taxpayers. Iowa public officials required a PLA and stated that it was necessary to “keep the project on time, keep it on budget, and complete it in a safe manner.” According to the study, the union-only PLA “failed on all three counts.”

### **Safety:**

Unions claim projects built with a merit shop workforce are unsafe and/or union workers are safer than nonunion workers. There is no statistical evidence to support this claim. Today’s construction worksites are governed by numerous laws, Occupational Safety and Health Administration (OSHA) regulations and safety procedures designed to protect the safety and health of craftspeople. Jobsite safety is not determined by the labor affiliation of a project’s workforce as the majority of reputable and competitive construction companies employ craftspeople that have completed safety training. Contractor qualification and selection, workforce management and safety programs are more appropriate indicators of a project’s quality and safety performance. In addition, there are a number of government-mandated PLA projects that have experienced unfortunate safety problems and OSHA violations cited in Maury Baskin’s *Public Record of Poor Performance*.

## **List of Studies:**

Electronic versions of studies referenced below are available at [www.abc.org/plastudies](http://www.abc.org/plastudies).

**Government-Mandated Project Labor Agreements: The Public Record of Poor Performance** – Maurice N. Baskin (2011 edition)

**The Problem with PLAs in the District of Columbia** – Anirban Basu, Sage Policy Group (April 2010)

**Why Project Labor Agreements Are Not in the Public Interest** – David G. Tuerck, CATO Journal, Volume 30 Number 1, *Are Unions Good for America?* (Winter 2010)

**The True Cost of the Washington Nationals Ballpark Project Labor Agreement** – DC Progress (Nov. 2009)

**The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements** – Dr. John R. McGowan, St. Louis University (Oct. 2009)

**Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem** – Paul Bachman and David G. Tuerck, Beacon Hill Institute at Suffolk University (Aug. 2009)

**Project Labor Agreements – Impact Study for the Department of Veterans Affairs** – Rider, Levett, Bucknall (June 2009)

**The DC Baseball Stadium Project: Broke Promises, Big Losses for DC Residents** – The District Economic Empowerment Coalition (DEEC) (Oct. 2007)

**Project Labor Agreements and Financing Public School Construction in Massachusetts** – David G. Tuerck and Paul Bachman, Beacon Hill Institute at Suffolk University (Dec. 2006)

**Washington National's Ballpark: Cost and Timeliness Implications of Using a Project Labor Agreement** – David G. Tuerck and Alex Taylor, Beacon Hill Institute at Suffolk University (Sept. 2006)

**Project Labor Agreements and the Cost of Public School Construction Projects in New York State** – Paul Bachman and David G. Tuerck, Beacon Hill Institute at Suffolk University (April 2006)

**The PLA for the Iowa Events Center: An Unnecessary Burden on the Workers, Businesses and Taxpayers of Iowa** – Public Industry Institute Staff, Mt. Pleasant, IA (March 2006)

**Union-Only Project Labor Agreements: The Public Record of Poor Performance** – Maurice N. Baskin (2005 edition)

**Project Labor Agreements: Union Monopoly in Public Works Construction** – Carl F. Horowitz, the National Institute for Labor Relations Research (April 2005)

Updated April 2011



**Project Labor Agreements and the Cost of Public School Construction Projects in Connecticut** – Paul Bachman, Jonathan Haughton and David G. Tuerck, Beacon Hill Institute at Suffolk University (Sept. 2004)

**Project Labor Agreements and the Cost of Public School Construction Projects in Massachusetts** – Paul Bachman, Jonathan Haughton and David G. Tuerck, Beacon Hill Institute at Suffolk University (Sept. 2003)

**Erie County Courthouse Construction Projects: Project Labor Agreement Study** – Ernst & Young (Sept. 2001)

**Project Labor Agreements on Public Construction Projects: The Case For and Against** – Worcester Municipal Research Bureau (May 2001)

**Government-Mandated Project Labor Agreements in Construction: The Institutional Facts and Issues and Key Litigation: Moving Toward Union Monopoly on Federal and State Financed Projects. Government Union Review, Volume 19, Number 3.** – Herbert R. Northrup and Linda E. Alario. (Oct. 2000)

**Analysis of the Impacts on the Jefferson County Courthouse Complex through Project Labor Considerations** – Prepared for the Jefferson County (NY) Board of Legislators – Professor Paul G. Carr, P.E., Engineering and Management Consultant (September 2000)

**Project Labor Agreement Study: Prepared for Clark County (NV) School District** – Resolution Management (June 2000)

**Government-Mandated Project Labor Agreements in Construction: A Force to Obtain Union Monopoly on Government-Financed Projects** – Herbert R. Northrup, The Wharton School. (Jan. 2000)

**“Boston Harbor”-Type Project Labor Agreements in Construction: Nature, Rationales and Legal Challenges** – Herbert R. Northrup and Linda E. Alario, Journal of Labor Research (Winter 1998)

**Project Labor Agreements: The Extent of Their Use and Related Information** – GAO Report (May 1998)

**Comparison of Nonunion and Union Contractors Construction Fatalities** – National Center for Construction Education and Research (May 1995)

**Analysis of Bids and Costs to the Taxpayer for the Roswell Park Cancer Institute, New York State Dormitory Authority Construction Project** – Associated Builders & Contractors – Empire State Chapter (March 1995)



**Attachment 3**



Heart of America  
Chapter

December 9, 2010

The Honorable Ken Johnston  
c/o Independence Board of Education  
3225 S. Noland Rd.  
Independence, MO 64055-5329

Mr. Johnston,

**ON TUESDAY**, you can save the taxpayers of the Independence School District more than \$25,000 !!

In the last few days, bids for glass / glazing work on the East Elementary School project were opened. The results of the bids are:

1.) Byers Glass	\$ 268,555.00
2.) A2MG	\$ 294,800.00
3.) Carter Glass	\$ 304,602.00
4.) Lawrence Glass	\$ 344,630.00

Byers Glass is an open shop contractor not signatory to any collectively bargained agreements. All other bidders are union.

Byers Glass has successfully performed work for the Independence School District in the recent past, and bid this project on the same basis as prior work - excluding participation in a National Maintenance Agreement. As you can see, the open shop bid is \$26,245 lower than the lowest union bid – **a savings of 9.8%**.

When compared to all union bids, the savings to the school district realized by using the open shop bid ranged from the low of 9.8% (or \$26,245) to a high of 28.3% (or \$76,075).

***Assuming a similar range of savings if the entire \$28 million bond issue were to be openly and competitively bid, the district could have saved between \$2.75 million to \$7.9 million. What a benefit to the district and the taxpayers that would have been. If only....***

**WITH THIS SAVINGS, THE DISTRICT COULD HAVE BUILT MUCH OF THE  
EAST ELEMENTARY SCHOOL FOR FREE !!!**

A mission of the ABC is to promote open competition and transparent procurement among public governmental bodies. Numerous authoritative studies - and your own recent bid process - document the benefits to owners,

taxpayers and workers when publicly financed construction projects are competitively bid and openly awarded on the basis of merit.

ABC would like to pose two important questions to members of the Independence Board of Education:

1. How does the use of the National Maintenance Agreement benefit the taxpayers of the Independence School District?
2. How does the use of the National Maintenance Agreement benefit local workers with respect to district projects?

According to minutes of meetings where this issue was discussed, the Board of Education approved the use of this agreement because it would allow "union and non-union" contractors to meet to decide specific responsibilities, it "could create labor harmony and save time", and it would eliminate walkouts or strikes. I would like to address each of these presumptions with fact and authoritative research, to wit:

1. Union and non-union contractors can be signatory? The draft national maintenance agreement does not allow any contractor signatory to the agreement to be "non-union". Specifically, Article I, sections 1 and 14 bind the contractor to the union and specifically recognize the union "for the purpose of bargaining collectively". Under federal law, this is the explicit definition of being a "union contractor" and therefore it is legally and practically impossible to be signatory to this agreement and remain "non-union". Since more than 85 per cent of the Missouri construction workforce (including that workforce within the Independence School District) has chosen to be non-union, the decision of the Board of Education effectively eliminates 85% of construction workers from working on a district project.
2. Decisions of specific responsibilities can be determined in a local meeting. Article I provides that all work performed under the agreement shall be "within the recognized and traditional jurisdiction of the Union." Article I also provides a resolution process for a "jurisdictional dispute" that is binding on all contractors. By the very terms of the agreement, work responsibilities are decided according to recognized union jurisdiction and disputes are decided either by the international union or its designated umpire. This totally eliminates local control. *It should be noted that "jurisdictional disputes" are unique to unions, and do not occur between non-union workers – thus there is no need for a "jurisdictional dispute settlement process" with non-union workers.*
3. Using the agreement could save time. As noted above, jurisdictional disputes are specific to union workers. Issues related to time delays are often the result of jurisdictional disputes. Since there are no jurisdictional disputes using non-union workers, and thus no settlement process, the premise that this agreement could save time is fundamentally flawed.
4. Using the agreement could create labor harmony. Again, labor harmony is a catch phrase used by unions to justify the settlement process resulting from jurisdictional disputes. *I would challenge the district to demonstrate a single instance where a jurisdictional dispute occurred between non-union craft persons.*
5. Using the agreement would eliminate walkouts or strikes. As in the case of jurisdictional disputes, "walkouts or strikes" are unique to union representation. There has never been a documented case of a walkout or strike conducted by non-union workers. It is also false to assume that the national agreement



would eliminate a walkout or strike on district projects. Please refer to the attached article by Joseph Hunt, General President of the Ironworkers International Union. Mr. Hunt clearly acknowledges that strikes do occur under maintenance agreements and Mr. Hunt also concedes that strikes do not occur when using non-union workers. Also note, the Ironworkers International Union is part of the National Maintenance Agreement Policy Committee.

In answering the questions posed earlier, I am also attaching documents which clearly demonstrate that:

- Reducing the number of bidders generally increases the costs of publicly financed construction to taxpayers by 18 – 25%; and
- Use of mandatory project labor agreements (such as the National Maintenance Agreement) hurts workers that may only become union for a limited time.

Finally, I am concerned about the use of the National Maintenance Agreement on new construction projects.

The National Maintenance Agreement, by and through Article IV, Section 2, states that it “does not cover work performed by the Employer of a new construction nature.” This section goes on to bind the signatory contractor to other, unspecified “existing building construction agreements.” The “existing agreements” clause has been interpreted to bind contractors to local collective bargaining agreements.

**At best, imposing a National Maintenance Agreement on new construction is ill advised and inappropriate given the specific language excluding its application to new construction. Its use in this manner creates a significant potential for confusion and possible litigation.**

As the local voice for members of a national construction trade association providing nearly 2 million construction industry jobs, the Heart of America Chapter of Associated Builders and Contractors sincerely hopes the Independence Board of Education will reconsider its position requiring contractors to be signatory to a National Maintenance Agreement in order to bid and / or work on district projects.

**Such a requirement is not in the best interests of district taxpayers or local workers.** Please feel free to contact me if you have any questions.

Respectfully,



Jim Kistler  
President and CEO





JOSEPH HUNT  
General President

*“We are a proud craft filled with tradition and honor. Never forget that part of that tradition is working hard and looking out for each other, but perhaps the most important part is delivering when we give our word.”*



## Ironworkers Have Tradition and Honor in Project Labor Agreements

Once again, it is my duty to inform you there has been an increase in work stoppages on jobs governed by project labor agreements.

Project labor agreements are being used more and more frequently to help gain market share on new Greenfield sites, as well as maintaining and expanding our position in the plant maintenance industry. These agreements include the ones developed by local building trades, as well as national agreements such as the Heavy and Highway Agreement, the General Presidents Agreement, the National Maintenance Agreement, the National Construction Agreement, and many other local and national building trades negotiated agreements.

Before a project labor agreement is sanctioned by the National Building and Construction Trades, it must contain some specific language addressing issues that can make us more competitive such as, uniform overtime and holidays, a subcontracting clause, a remedy for grievances and jurisdictional disputes. It must require a pre-job, and most important it must contain a No Work Stoppage-No Lock Out clause.

A No Work Stoppage-No Lock Out clause is the most important because it is the foremost reason owners and contractors are willing to use the agreement and commit to an all-union job. We agree to use the methods built into these agreements to resolve any and all problems on the job while we continue to work.

In other words, we give our word we will keep working even when we feel someone is doing our work or when we believe a contractor is violating the agreement.

If for some reason we break our word and strike, slow down or in any way disrupt the job, there are monetary consequences for the local union that are quite substantial. For instance, under the National Construction Agreement (NCA), if an arbitrator determines a violation has occurred and the local union is responsible, liquidated damages will be awarded either to the owner or the affected employer as follows; \$10,000 for the first shift, \$15,000 for the second shift, \$20,000 for the third shift, and \$25,000 for every shift thereafter on which the craft has not returned to work.

The National Maintenance Agreement (NMA) is also very stringent. If an NMA job is considered a Yellow Card Site, the owner has committed to perform all of the work at the site under the NMA agreement (all union). Under these circumstances, the fine for the first shift is \$10,000 and \$40,000 for every shift thereafter on which the employees have not returned to work. The fines are collected from the local union and paid directly to the owner because any delay in the schedule impacts their production and can be extremely expensive. If an arbitrator finds the employer in violation of an illegal lock out the agreement requires the employer to pay the exact same amount in penalties.

Although the monetary damages are substantial, there is collateral damage of much greater importance. If these illegal work stoppages continue, the agreements will lose credibility with the owners and contractors. We know, and the contractors and owners generally agree, we are the best at what we do, but they are willing to use less qualified non-union workers if they have to put up with work stoppages no matter what the reason. They have a choice, and they know that the non-union do not have jurisdictional disputes nor do they have strikes. I want it clearly understood; our International will take whatever action necessary to prevent illegal work stoppages. We have good representation on the NMAPC committee and all the other agreement committees. Your officers have access to that representation and have agreed to abide by the committees decisions.

I am proud to say that our members are proving we are the best skilled, safest, and most productive craft in the industry, and everyday we are making new inroads with owners because they recognize we can deliver on our promise to get the job done on time without interruptions. We are a proud craft filled with tradition and honor. Never forget that part of that tradition is working hard and looking out for each other, but perhaps the most important part is delivering when we give our word.

Fraternally,

*Joseph J. Hunt*



**Attachment 4**



# NAACP

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December 13, 2011

(Hand delivered)  
Cheryl D. Latham  
President  
Hazelwood School District Board of Education

Subject: Title VI violations and Construction Fraud

The St. Louis NAACP initiated a review of the Hazelwood School District's procurement policies, programs, and procedures; more specifically, we placed an emphasis on making a determination of whether your policies, programs, and procedures have an disparate impact for members of the 'Protected Class' (the term as used in United States anti-discrimination law).

The Board has as a policy the following: ***The Board seeks to ensure that the highest quality workmanship will be performed on its projects and to do so encourages bidders to use workmen on the projects, whenever possible, who have satisfactory completed apprenticeship programs developed and operated in accordance with the policy recommendation, dated January 28, 1992, of the Federal Committee on Apprenticeship, U.S. Department of Labor, Employment and Training ("policy recommendation"). All bidders are required to certify in their bids the percentage of their workmen for the project, which have satisfactory completed such a program for the type of work they will be performing. Bidders who do not indicate a percentage will be reported as zero percent.*** While such a policy on its face appears to be harmless, in the St. Louis region that is not the case.

1. The NAACP alleges that the Hazelwood School District is a recipient of federal funds and has engaged in race discrimination in violation of Title VI by, among other things:
  - (a) The District via the policy discriminates against the minority and women workforce in the St. Louis region...on average 16,000 persons are in the region's apprenticeship programs of which an average 500 are minorities and less than 100 are women. Thus your policy dictates that the workforce on Board funded projects most come from a pool that predominately and overwhelmingly consists of 'White Males'.

- (b) The District via the policy discriminates against its own student population whom consists primarily of African Americans & Women, and would be excluded from working on a District construction project due to the discriminatory nature of the trade unions apprenticeship programs.
- (c) The District via the policy established an environment that operates as an informal Project Labor Agreement (PLA) with construction trades unions whom Hazelwood School District was aware engaged in race discrimination in excluding blacks, women and other minorities from journeymen and apprentice construction jobs, and excluded them from their union apprenticeship programs; in an interview with your Superintendent and your Executive staff the District admitted that the policy has been "so effective that non-union construction companies know "not" to bid on District projects".
- (d) The District's Executive Staff knowing the consequences of the policy in the marketplace have failed to establish measures to remedy the discrimination in its construction workforce and procurement programs.

The purpose of Title VI is simple: to ensure that public funds are not spent in a way which encourages, subsidizes, or results in racial discrimination. The NAACP further alleges that the District has discriminated under the two primary theories of Title VI:

**Intentional discrimination/disparate treatment** - in an interview with your Superintendent and your Executive staff with administration of your procurement programs the District admitted that the policy has been "so effective that non-union construction companies know "not" to bid on District projects." This clearly demonstrates that the decision-maker was not only aware of the consequences of the policy but also acted to enforce the policy knowing of its historical outcomes creating a disparate treatment under the Equal Protection Clause of the Fourteenth Amendment.

And

**Disparate impact/effects** - in the St. Louis region on average 16,000 persons are in the region's apprenticeship programs of which an average 500 are minorities and less than 100 are women. The District's policy dictates that the workforce on Board funded projects most come from a pool that predominately consists of 'White Males'. The District's restrictions of the workforce pool prevents a class of individuals to be afforded an opportunity to participate in any such program, directly and through contractual and other arrangements; the utilization of this criteria and method of the District "has the effect" of subjecting individuals to discrimination because of their race, color, or national origin, and has the effect of defeating or substantially impairing accomplishment of the objectives of Title VI with respect to individuals of a particular race, color, or national origin.

2. The NAACP alleges that the Hazelwood School District is a recipient of federal funds and has engaged in potential construction fraud by, among other things:



(a) The District via the policy established an environment that operates as an informal Project Labor Agreement (PLA) with construction trades unions; in an interview with your Superintendent and your Executive staff the District admitted that the policy has been "so effective that non-union construction companies know "not" to bid on District projects. The District's Executive Staff knowing the consequences of the policy in the marketplace potentially violates the statues of fraud creating an environment in which construction costs are artificially inflated due to the restricting non-union contractors from bidding on projects. PLAs Statistical Study Results Comparison have demonstrated that Project Labor Agreements inflate School Construction costs i.e.

**"The Effect of Project Labor Agreements on the Cost of School Construction"**

Belman et al. (2005) Percentage Increase Cost 17%-20%

**"Do Project Labor Agreements Raise Construction Costs?"**

Bachman et al. (2003) Percentage Increase Cost 9%-15%

**"Project Labor Agreements and Public Construction Costs in Connecticut"**

Bachman et al. (2004) Percentage Increase Cost 18%

**"Measuring the Cost of Project Labor Agreements on School Construction in California"**

Vasquez et al. (2011) Percentage Increase Cost 13%-15%

**Relief Requested**

The NAACP's request is simple: that the District stops all construction activity until it brings its contracting practices in line with federal civil rights laws. Just as Title VI's coverage is broad, so too are the remedies available; (i) we respectfully request that you eliminate your discriminatory policy in construction and secure outside professionals to conduct a formal investigation into your construction contracting and workforce practices, (ii) we additionally request that you establish a policy encouraging local workforce utilization of North St. Louis County residents, and (iii) establish a pre-apprenticeship recruitment program for your District's minority & female student populations.

Sincerely,



Adolphus M. Pruitt, II  
President

## **Attachment 5**



