

New Jersey's PLA Law – Seven Years Later ***Does it Stand the Test of Time?***

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By his decision to authorize the use of project labor agreements on federal construction projects in excess of \$25 million, President Obama helped ensure a large portion of the economic stimulus money earmarked for New Jersey will be spent on union-built projects.

The executive order issued by the President on February 6th could not come at a better time for the union building trades, many of which are experiencing 25-30% unemployment rates. Of the billions of dollars which New Jersey is expected to receive as its share of the stimulus package over the next several years, some \$1.2 billion will be for highway, bridge and mass transit projects, upwards of \$3 billion for the Hudson River ARC commuter tunnel, and nearly \$420 million to repair and modernize schools.

President Obama's action not only rescinds a Bush Administration order to ban the use of PLAs on federal projects, it also complements New Jersey legislation adopted in 2002 that authorizes the use of the labor agreements on local and state-funded public building projects. The New Jersey law was amended and expanded in 2006 to allow the use of PLAs on *all* construction projects covered by the prevailing wage law, including pumping stations, water and sewer treatment plants, airports and roads, bridges and rail projects.

New Jersey's project labor agreement legislation assures much of the work involved in Governor Corzine's proposed economic recovery program would be subject to PLAs. The governor's short-term solutions for expediting economic growth includes an estimated \$5 billion to be spent on road, school and mass transit projects to drive employment and create over 43,000 jobs. These figures are supplemented by \$3.9 billion that has been authorized for school construction and improvement projects under the direction of the NJ Schools Development Authority, which requires PLAs on projects in excess of \$5 million. Over the long-term, it's estimated that investment in New Jersey's public infrastructure will total almost \$23 billion.

A PLA Primer

By definition, PLAs are pre-hire collective bargaining agreements negotiated between a construction project's owner and appropriate labor organizations in an area for a

specific project. They are typically negotiated between a group of unions, usually represented by a building & construction trades council, and representatives of a construction user, often a construction management firm.

In the public sector, both union and non-union contractors can bid on a PLA project, and union and non-union workers can work side-by-side. All contractors, union and non-union alike, must abide by the terms and conditions of the PLA, which includes the payment of prevailing wages, as well as workers' compensation insurance and contributions to established employee benefit funds in appropriate amounts.

Project Labor Agreements are traditionally designed to:

- Ensure a reliable source of skilled and experienced labor
- Standardize the terms and conditions governing the employment of labor
- Permit flexibility in work scheduling and shift hours and times
- Allow for negotiated adjustments to work rules and staffing requirements
- Provide comprehensive and standardized mechanisms for the settlement of work disputes, including those relating to jurisdiction
- Avoid the costly delays of potential strikes, slowdowns, walkouts, picketing and other disruptions arising from work disputes, and promote labor harmony for the duration of the project
- Expedite the construction process
- Further public policy objectives to expand business and employment opportunities for minorities, women and the economically disadvantaged in the construction industry.

As with President Obama's Executive Order, New Jersey's PLA Act emphasizes the state's "compelling interest" in carrying out public works projects that achieve all of the above.

Tried-and-True Agreements

PLAs are not a new or untested theory. They have been used successfully on federal public works projects since the 1930s and for nearly a century on private-sector construction. Construction of the Grand Coulee Dam, Shasta Dam, Kennedy Space Center, nuclear missile sites, and the nuclear

research facility at Oak Ridge, TN, all utilized PLAs. During the 1980s and 90s, Disney World, Toyota, General Motors, and major airlines and oil companies all used PLAs for major private-sector projects.

In the 1993 US Supreme Court *Boston Harbor* decision, PLAs were, for the first time, legalized for state-funded projects. This landmark case involved the court-ordered cleanup of Boston Harbor. Between 2004 and 2008, it's estimated 103 PLA projects were completed nationwide, representing a significant amount of craftworker hours, as well as extensive coordination among building trade unions to ensure the projects were completed on time and within budget.

Recent PLAs include the agreement signed between Bechtel Construction Co. and building trade unions in June for the contractor's portion of work on the proposed nuclear energy facility at the Calvert Cliffs Nuclear Station in Lusby, MD. Owned and operated by UniStar (a joint venture between Constellation Energy and EDF), the project is expected to create 4,000 jobs during peak construction and another 360 permanent jobs once the facility is operational.

Another PLA agreement has been negotiated between the NY State Building & Construction Trades Council and GlobalFoundries for construction of a \$4.2 billion chip manufacturing facility in Saratoga County, NY. Approximately five million work hours are projected for this project, which is expected to break ground this summer and take up to five years to complete.

A bare-bones list of major PLA projects either completed or ongoing in New Jersey would include the new Giants Stadium, the massive Xanadu shopping, sports and entertainment facility in the Meadowlands, the Hudson-Bergen Light Rail System, the Continental Airlines Global Gateway Project, the Prudential Arena in Newark, the Goldman Sachs Office/Hotel in Jersey City, the Bristol Myers Squibb Project in New Brunswick, the Red Oak Power Plant in Sayreville, the Essex County Corrections Facility, and Trenton's Waterfront Park.

Stimulating the Economy

"Project Labor Agreements are especially important at this time, considering our state's dire economy and jobs outlook," says William Mullen, President of the NJ State Building & Construction Trades Council, whose membership is suffering unemployment rates between 25% and 30%. "Experience shows that PLAs most often result in local contractors bidding and winning the work. In turn, they are more likely to promote local workforce development and employment.

"This means a large portion of the wages and profits from a PLA project are returned to the community through the purchase of local goods and services, and through payroll, property and state taxes. As a result, PLAs are an excellent,

proven means of stimulating local and state economies."

Recognizing the potential for union construction work in the federal and economic stimulus package and state economic recovery program, the State Building Trades Council recently developed a model PLA agreement, specifically for use by its county councils. The model has been approved by the National Building Trades Department and the State Department of Labor and will help streamline PLA reviews and approvals.

But, if Obama's executive order seems to ensure more federal construction work will be conducted under project labor agreements over the next five to 10 years, it also seems certain to rekindle the firestorm of opposition periodically directed at the PLA concept by the Associated Builders & Contractors (ABC) and other non-union groups.

The Opposing View

Few other issues incense and engage the non-union sector of construction as much as project labor agreements, which can always be depended upon to send open-shop contractors into a frenzy of rage, accompanied by dire warnings of collusion, taxpayer abuse, budget overruns and economic meltdown. Of course, their outrage is carefully calculated, and the negative statistics they use to oppose PLAs are contrived and misleading.

Despite the proven track record of PLAs, their widespread acceptance within both the public and private construction sectors, and numerous court decisions upholding their use, it's safe to say the ABC has challenged nearly every large public-sector PLA that has been proposed over the past decade. Viewing PLAs as a threat to their members' market share, the association and its state affiliates have mounted national and local campaigns designed to discredit their use.

The ABC launched its latest attack in early May by creating a new website to track and disseminate news and information about publicly funded construction PLAs. ABC President and CEO Kirk Pickerel said: "The new website provides an opportunity to keep construction professionals; federal, state and local legislators; the media, and the general public informed on the direct effect that publicly funded PLAs have on their lives and checkbooks."

Critics typically contend PLAs are inherently "anti-competitive, union-only" agreements that discriminate against non-union contractors, limit the pool of bidders and drive up construction costs. One of the main themes of the ABC's campaign is the unfounded charge that prevailing wage and PLA projects cost up to 30% more than other projects. To support its premise, the association commonly relies on self-serving studies that greatly exaggerate labor costs on a project, dismiss various other factors that can significantly influence project costs, and ignore the positive

impact a skilled, well-trained workforce has on productivity and the local economy.

The ABC's incessant campaigns have had some, albeit sporadic, impact. Anti-union forces were recently able to halt a project labor agreement being implemented on a San Diego water project. Also, Chris Christie and Steve Lonegan, the main candidates in the recent Republican Gubernatorial primary, have both called for a repeal of New Jersey's PLA law, claiming it has added 30% to the cost of building and renovating for municipal governments since enacted in 2002 and is nothing more than "special interest labor union giveaways."

Evaluating the Research

Many of the ABC's arguments are based on questionable studies undertaken by the Beacon Hill Institute (BHI) at Suffolk University in Massachusetts, a "free market" think tank that has been a particularly vocal critic of PLAs since it was founded in 1991. The institute typically represents anti-union forces that seek a competitive advantage by driving down labor costs and minimizing protective labor standards.

For example, in a series of studies conducted and published between 2003 and 2006, BHI contends PLAs increased the cost of public school construction projects undertaken in Boston, Connecticut and New York State by between 14 and 17.3%, or anywhere from \$18.83 to about \$30 per square foot. BHI likes to call this the "PLA Effect."

However, other researchers charge the BHI studies did an "insufficient job" at controlling for variables that affect construction costs, such as project location and installation of structural amenities. According to the Belman, Bodah and Philips Study of Project Agreements, the main complaint about the BHI studies is that they outright dismiss the possibility PLA projects have more amenities or are more complex than non-PLA projects.

"Such factors, however, determine why projects are built with PLAs in the first place," state Belman, Bodah and Philips, professors at Michigan State University, the University of Rhode Island and the University of Utah. "To hold otherwise is to ignore prevailing public policy. Since BHI researchers do not believe PLA projects are 'systematically more upscale,' they included very few variables in their models that could affect construction costs."

For example, in a study of more than 100 school projects across New England, the researchers found the average square footage for a PLA school was approximately 157,000 compared to about 118,000 for non-PLA schools. Again, PLA schools averaged more than three stories while non-PLA schools averaged fewer than three. And, all of the PLA projects required prior demolition work, while less than half of the non-PLA schools required such work.

Likewise, Fred Kotler, Associate Director of the Cornell University School of Industrial & Labor Relations Construction Industry Program, contends Beacon Hill's conclusions should be dismissed as not credible because they focus on bids and not actual costs and fail to segregate labor costs or account for other factors that influence project costs.

"Bid figures do not provide a reliable basis for comparison," Kotler says in his recently published study, *Project Labor Agreements in New York State: In the Public Interest*. "The Beacon Hill team looked at bid figures that were submitted by unsuccessful bidders. There is no way to know about the accuracy and basis of these (rejected) bids, or the skill, experience and business acumen of the various bidders."

"Also, Beacon Hill focused on the size of a project in square feet but did not account for such important determinants of cost as: whether the work involved new construction or renovation, site preparation, laboratories, classrooms, kitchens, lunchrooms, gymnasiums, auditoriums, or audio/visual facilities."

In Support of PLAs

In fact, there are no creditable studies or compelling evidence that project labor agreements either drive up actual construction costs or limit the pool of bidders. Since all public projects are already subject to prevailing wage regulations in New Jersey - whether constructed under a PLA or not - it seems obvious labor costs will be essentially the same, with or without a PLA.

Industry experts acknowledge most cost overruns have little to do with labor and more to do with design changes, engineering problems, inadequate supervision, poor scheduling, and other faulty operational practices.

In his study of project labor agreements in New York State, Fred Kotler of Cornell University asserts PLA labor cost *savings* are both direct and indirect and can be substantial over the life of a project. He refers to a pair of feasibility studies conducted by Hill International, Inc: one compiled in 1999 for the I-287/Westchester Expressway project, and the other conducted in 2004 and updated in 2008 for the New York City School Construction Authority's \$13.1 billion, five-year capital program.

Hill International projected some \$8.4 million in PLA-related cost savings on the \$265 million Expressway project based on: 1) standardized work week/elimination of premium rates; 2) standardized work day with flexibility in starting/quitting times; 3) adjustments for night work; 4) a standard eight holidays; 5) increasing the ratio of apprentices; 6) using alternative dispute resolution; and 7) managed care program/workers' compensation.

Hill International's study of NYC's school construction

program – conducted in the fourth year of the five-year project – found \$221.4 million in quantifiable direct labor cost savings due to the PLA – or a savings of \$44 million for each year of the project.

Likewise, it's doubtful PLAs in and of themselves limit the number of bidders on a project. They are *not* union only. Most PLA laws, including New Jersey's, specifically mandate both union and non-union contractors be allowed to bid on a specific project without discrimination, as long as they are willing to abide by the provisions of the agreement. In fact, it's estimated non-union contractors have won some 30% of the work done on PLA contracts nationwide.

The 2007 Belman, Bodah and Philips study, which the authors call "...possibly the broadest ranging and most detailed study of PLAs conducted to date...found no substantial evidence that PLAs decrease the number of bidders or change the costs of construction projects.

"While prior studies have focused on a particular PLA project and address one or two narrowly defined issues, this study examines a large number of projects using a variety of techniques, including archival research, interviews, case studies and statistical analysis of original data," Belman, Bodah and Philips contend. "We believe that most previous studies failed to account for important influences on construction costs, and effects have been falsely attributed to PLAs that actually belong to unobserved variables.

"The problem with the argument that PLAs restrict bidders and therefore reduce competition and raise prices is that you need only about half a dozen bidders to get the full effect of bidding competition on prices. A decrease in bids is better predicted by an increasingly busy construction market than by the existence of a PLA."

Kotler reinforces this argument, stating, "There is a reason why some non-union contractors will choose not to bid on PLAs, a reason that gets to the core of the issue and that PLA opponents might prefer not to publicize: they do not want to operate within or adjacent to the unionized sector.

"Non-union contractors may see PLA work as a threat to their workforce control so they choose to avoid having their employees work side-by-side with unionized craft workers and under prevailing wage and collectively bargained terms and conditions."

Boosting Women and Minority Hiring

In addition to the quality and cost controls engendered by project labor agreements, the pacts provide the opportunity for various parties – public owners, contractors, unions and community groups – to formulate innovative pre-apprenticeship programs, apprenticeship training and hiring goals that emphasize the inclusion of minorities and women

into the workforce and contractor base.

For instance, the 2006 report on PLAs submitted to the Governor and Legislature by the NJ State Department of Labor found PLA projects "exceeded their goals for minority employment, and these goals entailed higher percentages of minority employment than those for non-PLA projects." The actual employment work hours (participation rate) attained by minorities on PLA projects was 26%, compared to a 15.6% rate achieved on non-PLA projects.

Mandated by the PLA Act of 2002, the annual report is designed to evaluate the effectiveness of public projects utilizing PLAs compared to non-PLA projects, measuring: cost, employment for minorities, females and apprentices, and construction duration and timeliness. The comparative analysis focuses on completed school projects because they are the only public projects that have been undertaken to date under the provisions of the 2002 PLA Law.

The Final Analysis

The DOL's 2006 report found no measurable or statistically significant increase in construction costs associated with PLA projects. "When taking into account differences that may influence costs, such as type and location of school construction projects, there was no statistical evidence of cost differentials due to the existence of a PLA," according to the report. "After considering other factors, the difference in construction costs, on average, appears to be associated with location in the higher cost areas of the state, rather than the existence of a PLA."

In summarizing the argument in support of PLAs, Jack Kocsis, Chief Executive Officer of the Building Contractors Association of New Jersey, says, "The majority of quality contractors welcome the rational application of project labor agreements as a proven method for stabilizing costs, standardizing the terms and conditions of employment, enhancing productivity and quality workmanship, and ensuring a reliable source of skilled and experienced labor.

"PLAs result in a strict monitoring and enforcement of prevailing wage, taxation and insurance regulations. While some contractors may want to resist these requirements, the vast majority of New Jersey taxpayers and residents find them perfectly appropriate and acceptable. PLAs are a management tool, not a labor gimmick."