Constructing California: A Review of Project Labor Agreements

By Kimberly Johnston-Dodds

Prepared at the Request of
Senator John L. Burton, President pro Tempore

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Executive Summary

Project labor agreements (PLAs) are arguably the most important change in labor-management relations in the construction industry in recent years. They have become a fairly common part of the organization of major construction projects in California. A PLA is a contractual agreement between a construction firm, sometimes the project's owner, and a consortium of labor unions. Each usually applies to only one construction project, usually a large one. Although PLAs have many complex and subtle features, the basic exchange is that the union agrees not to strike while the project is being built, and to use high-speed arbitration to resolve any workplace disputes that arise. The construction firm agrees to hire workers through a union hiring hall, with some qualifications, to pay union wages, and not to engage in "lock-outs" in the event of a dispute.

Unlike other sectors of California's economy that have been created or transformed by information technologies and the Internet within the last decade, the construction industry continues to use largely traditional processes to produce physical structures. Supervisors, foremen and workers with multiple skills still show up on a site, interact with each other, and build complex structures that occupy a real physical space. To be sure, the technology used from the design phase through project completion has changed dramatically and requires increasing levels of specialized skills of the labor force. But construction workers do not telecommute to get their jobs done, and do not build virtual dams or cogeneration plants. PLAs are one technique for organizing the labor force to create construction realities.

Construction of Shasta Dam, which ran from 1938 to 1944, was the first project involving a project labor agreement in California. It was a remarkable success, at least in the sense that the project was completed without a labor strike, at a time when other projects in the western states were plagued with strikes and other labor disturbances. Other notable PLA projects in California include the Bay Area Rapid Transit (BART), San Francisco's Yerba Buena Project, Los Angeles' Blue Line, the Los Angeles Convention Center, the San Joaquin Hills Corridor toll road, the Eastside Reservoir Project (the reservoir now known as Diamond Valley), the National Ignition Facility at Lawrence Livermore Labs, San Francisco International Airport's newest terminals, construction for several large school districts, and others.

Perhaps surprisingly, private construction projects in California are much more likely to use PLAs than are public projects. Of the 82 project labor agreements reviewed for the content analysis in this report, nearly three-quarters (72 percent) were private sector agreements. In addition, 22 out of 23 private cogeneration electricity plants recently built or under construction in California used PLAs.

The legality of PLAs has been extensively tested in both federal and state courts, and with respect to both private and public construction projects. Their validity has been upheld in both federal and state cases (including the U.S. Supreme Court and California Supreme Court), although legal skirmishing continues. Legal complexity recently increased, after President Bush issued two executive orders, which prohibit PLAs on

construction projects with federal funding. Ambiguities involve accounting questions about how closely federal funds have to be connected to the project before the prohibition applies, and a question about whether the executive order itself is a valid exercise of the President's executive authority. The City of Richmond (located in the Bay Area), national and local building trades councils have challenged the executive orders in federal court. The judge recently issued a preliminary injunction to preserve the status quo pending the outcome of the litigation.

PLAs involve some controversy, which fits within a 200 year-old tradition of dispute about the role of trade unions in America. In this case, the dispute comes especially from non-union contractors, who object to PLA requirements that they get their labor force from a union hiring hall and who argue that PLAs increase construction costs. Construction firms and owners who use PLAs judge that the cost savings from avoidance of labor disputes and strikes during a construction project outweigh any costs of complying with the PLA. They also value a PLA's role in resolving disputes between the many kinds of unions involved in a complex project over which union members should be doing particular tasks. Dispute also occurs between construction firms that use and value PLAs and those that do not.

This report recounts the history of PLAs in California, surveys the features found in California PLAs for both public and private projects, includes case studies of recent PLAs that are breaking new ground, and reviews the state of the President's PLA executive orders.

This report was prepared at the request of Senator John L. Burton, President pro Tempore of the California State Senate.

Introduction

Any complex construction project is likely to require the services of workers with quite different skills, from earthmoving to masonry to carpentry to glazing, plumbing, electrical wiring, and installing heating and cooling systems. Each of these categories of workers is typically represented by its own union. A labor management system of some sort is always needed to coordinate the large labor force of diverse subcontractor employers and their employees, all of whom must work together side-by-side to construct a project. A project labor agreement (PLA) is one workforce management tool used on such projects.

WHAT ARE PROJECT LABOR AGREEMENTS?

The term "project labor agreement" (PLA)[*] describes a category of agreements between a construction project's managers and its workers. Individual agreements within this class vary a good deal. Generally, PLAs are pre-hire collective bargaining agreements.[†] That means they are signed before the project is actually started, and before workers are hired to build it. They are:

> ad hoc in nature, apply only to a specific project, and exist only for the duration of that project. They are multicraft agreements, generally signed by the local building trades council and/or all local unions involved, and by the prime contractors on the project. Their provisions supercede those in applicable local agreements, but they generally rely on the local agreements for wage and fringe benefit rates, and for any other provisions, which they do not specifically address.[1]

PLAs include an agreement by the union signatories to not conduct any strikes or work stoppages,[‡] while the contractors and their subcontractors agree to no lockouts during the length of the construction project. Other provisions found in a project labor agreement may include:

- A requirement that new employees, within a certain period of time, pay dues to the union for representing their interests before the employer ("financial core members");

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[*] PLAs are also known as project stabilization agreements or labor stabilization agreements. Opponents of PLAs used on public sector construction use the term government-mandated labor agreements.

[†] A pre-hire agreement is a collective bargaining agreement legally allowed in the construction industry that provides for union recognition, compulsory union dues or equivalents, and mandatory use of union hiring halls, prior to the hiring of any employees. The term of the agreement is usually one to three years. Not all construction agreements are pre-hire agreements. A good source to refer to that provides definitions of terms unique to collective bargaining and industrial relations is *Roberts' Dictionary of Industrial Relations*, Fourth Edition. (Washington, D.C.: The Bureau of National Affairs, Inc., 1994).

[‡] A strike is a temporary work stoppage or "a concerted withdrawal from work by a group of employees working on a job site to express a grievance, to enforce demands affecting wages, hours, and/or working conditions, or to bring pressure on the employer to accept a union's or workers' terms." *Roberts' Dictionary of Industrial Relations*, p. 741.

- A requirement that contractors use a local, centralized union job referral system or "hiring hall;"
- Management rights including hiring, promotion, transfer, discipline or discharge of employees, and the right to reject any job applicant referred by a union;[*]
- A uniform workday, workweek, overtime, holiday and payday schedules;
- Standardized work rules and regulations posted on the job site; and
- Standardized and often very quick dispute resolution or "grievance" procedures to resolve employee, contractor and/or inter-union (jurisdictional) disputes.

CONSTRUCTION CRAFTS TO TRADE UNIONS

Unions that are involved now with project labor agreements have historical origins with crafts workers. Crafts workers have a long history of joining labor unions in the United States in order to gain better wages and working conditions. It is thought that the first crafts labor union was organized by carpenters in Philadelphia in 1724.[2] Over time, trade unions attempted to organize to bargain collectively with employers more and more. However, in 1842, state courts ruled that any effort by workers to organize to negotiate with an employer for wages was an illegal criminal conspiracy (see Appendix B). During the period from about 1890 to 1910, most of the building trade unions were local. In addition to their wage bargaining role, these unions began serving as centralized personnel, recruitment and training resources for both their members and employers.[†]

In the late 19th and early 20th century, the building trades in California wielded considerable power and influence, especially in San Francisco. Labor was scarce relative to California's needs for large-scale and residential construction. The state's construction industry created a built environment of dams, levees, and public and private buildings of all kinds. By 1884, the first trades unions in Los Angeles representing carpenters, bricklayers, masons, plasterers, and plumbers were organized.[3] From 1897 to 1905, local San Francisco trade unions organized including the glaziers, carpenters, and mill workers.[4] In the late 19th century, the building trade unions in California began creating broader umbrella organizations, such as the formation of the Building Trades Council of San Francisco in February 1896,[5] to pursue their common interests.

In December 1901, the State Building Trades Council was formed by the building trades councils of San Francisco, Alameda, Santa Clara and San Joaquin counties.[6]

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[*] Provisions in a collective bargaining agreement that include "aspects of an employer's operations that do not require discussion with or agreement by the union, or rights reserved to management that are not subject to collective bargaining." *Roberts' Dictionary of Industrial Relations*, p. 447. The absence of such a provision does not mean that a company has waived any powers or prerogatives other than what is specified in the agreement.

[†] For a helpful and concise explanation of this evolution, see the first chapter in Teresa Ghilarducci and others, *Portable Pensions Plans for Causal Labor Markets: Lessons from the Operating Engineers Central Pension Fund*, (Westport, Connecticut: Quorum Books, 1995) pp. 1-18.

About seven years later, the national Building Trades Department of the American Federation of Labor was created.[7]

The largest national labor organization in the United States is the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO). Most unions related to construction are affiliated with the AFL-CIO's Building and Construction Trades Department. At the national and state level, the building trades councils spend considerable time and financial resources advocating union and member interests.[8] Local and county level joint boards or trade councils are comprised of local unions involved in similar trades with a main objective to ensure that workers are unified in collective bargaining in their areas.[9] Chart 1 illustrates the union structure and relationships between a typical local building trades union and state and national building trades organizations.

MULTI-CRAFT EMPLOYEES

Construction workers participate in one of the few U.S. industries that continue to rely on hand tools and handicraft technologies.[10] Three quarters of construction workers in the U.S. fall into four categories:

- Skilled crafts workers
- Laborers
- Helpers*
- Apprentices

Over half (56 percent) of construction workers are construction crafts workers, generally classified as structural, finishing, or mechanical workers.[11]

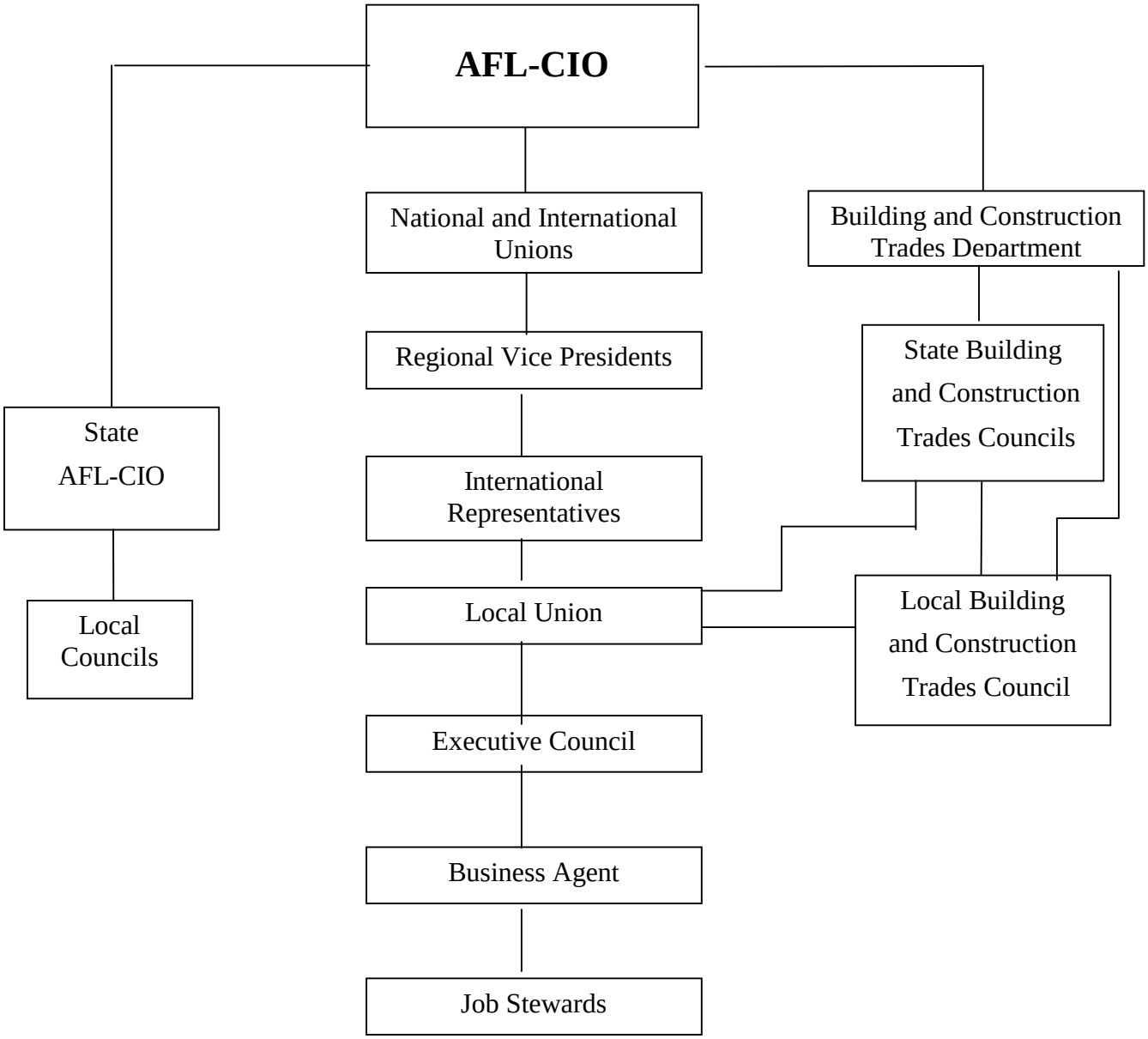
- Structural workers include carpenters, operating engineers, bricklayers, cement masons, stonemasons, and reinforcing metal workers.
- Finishing workers include lathers, plasterers, marble setters, terrazzo workers, carpenters, ceiling installers, drywall workers, painters, glaziers, roofers, floor covering installers, and insulation workers.
- Mechanical workers include plumbers, pipe fitters, construction electricians, sheet metal workers, and heating, air-conditioning and refrigeration technicians.[12]

Helpers, laborers or apprentices perform unskilled or less-skilled jobs on the construction site alongside skilled crafts workers.

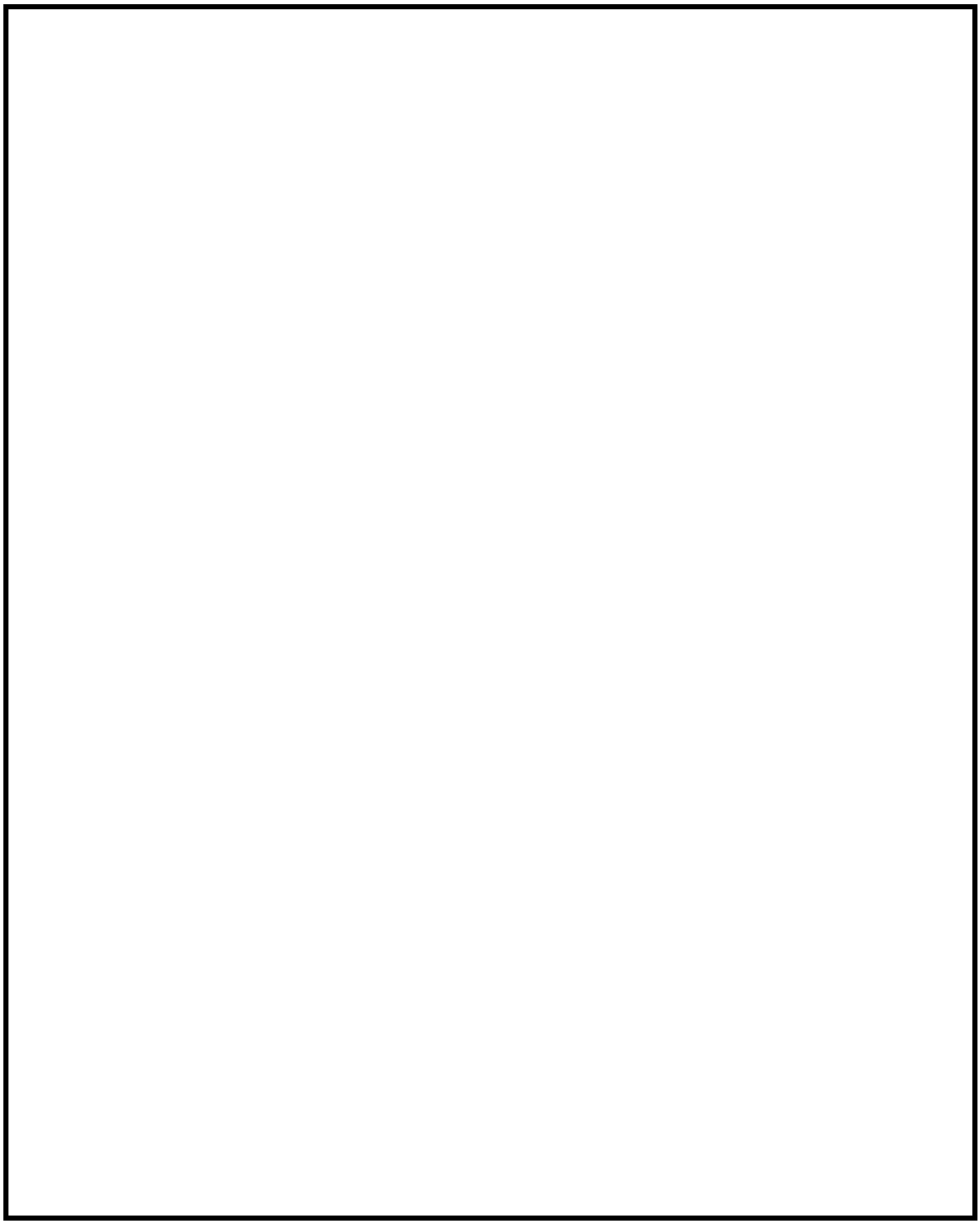
* Helpers by and large are not used in California, unlike other regions of the country.

Chart 1

Structure of Local Union Affiliated with Building Trades & Construction Department, AFL-CIO



Source: Daniel W. Halpin and Ronald W. Woodhead, *Construction Management*, 1998, p. 236.



Mount Shasta, Shasta Reservoir and Shasta Dam. Photograph courtesy of California State Library.

Project Labor Agreements in California

HISTORY

1938 to 1944 - Shasta Dam and Power Plant

The first use of a public project labor agreement in California occurred on the construction of the Shasta Dam, which at the time it was completed was the second largest dam in the world.[13] The construction contract was awarded to Pacific Constructors, Inc. (PCI) on July 2, 1938, and the last bucket of concrete was poured December 22, 1944.[14] A total of 6,535,000 cubic yards of concrete were poured during construction, continuously for six years. Over 19,000,000 man hours of heavy construction were required to build the dam and related structures.[15]

PCI was a consortium of contractors, including contractors from Southern California (an area at the time dominated by the open shop view of labor relations).[16] Since the U.S. Government provided all of the construction materials, the component of the bid with the most risk and uncertainty was labor.[17] PCI's principals from Southern California were initially reluctant to sign any labor agreement with the unions.[18]

Shasta Dam, May 8, 1940. The head tower and riggers at the top of the 460 foot cable way. The cable was 3" in diameter and weighed 22 pounds per linear foot. Photograph by R.A. Midthun, courtesy of U.S. Bureau of Reclamation.

However, given the scope and duration of the project, coupled with labor uncertainty, PCI did sign a labor contract for the life of the project. The national Building Trades Department of the American Federation of Labor, 16 international unions and union locals were the signatories.[19] PCI agreed to recognize the unions, pay union scale wages, and with certain exceptions, employ only signatory union members on the project.[20] While it is unclear from available documents whether or not the labor agreement specifically included a clause that the unions would not strike during the construction of Shasta Dam, they in fact did not. This was extraordinary at the time because almost every large construction project in the area had numerous strikes and labor disturbances.[21] Upon completion of the project, the president of Pacific Constructors judged that the agreement was largely responsible for the peaceful labor relations, and that the unions "lived up to the terms of [the] agreement throughout the job."[22]

1940s to 1965

During World War II, the Building Trades Unions of the American Federation of Labor agreed to stabilize wages for the duration of the war, signing memoranda of agreement with the War Department, Navy Department, Federal Works Administration, National Housing Administration, Reconstruction Finance Corporation and the Maritime Commission.[23] However, the wage stabilization agreement was not project-specific, and there was no language in the agreement regarding union abstinence from strikes or work stoppages.[24] During this time, strikes did occur on large public works construction projects in California.[25]

In the late 1940s, the literature and experts suggest that project labor agreements were used in constructing atomic energy facilities around the nation, including the Nevada Test Site, located approximately 4 hours from Los Angeles.[26] In the 1950s, it appears that project labor agreements were hardly used on construction in California, or around the nation. At least one national PLA was negotiated in the 1950s by the Missile Sites Commission to build missile silos around the country.[27] However, no original documentation was found to verify these suggestions. Why a lull in their use occurred during this time is not clear in the literature or from canvassing legal and academic experts in this area.

In 1959, Congress amended the National Labor Relations Act to include an exception known as the *construction industry proviso* related to collective bargaining in the construction industry (29 U.S.C. Section 158(f)). Section 158(f) permits the use of pre-hire agreements in the construction industry, and provides that employees working under such a pre-hire agreement can petition at any time to decertify or de-authorize the union from acting as their exclusive collective bargaining representative.

Shasta Dam, May 6, 1940. Battery of wagon drills and jackhammers making blasts in the right abutment at about 650 feet elevation. Photograph by R. A. Midthun, courtesy of U.S. Bureau of Reclamation.

Generally from the mid-1960s forward, courts have found that pre-hire agreements and private and public project labor agreements are legal, relying on the federal construction industry proviso and state statutes, as well as federal and state court decisions.[28] From the mid-1960s forward, contractors have used project agreements on large private construction and on numerous public construction projects.

1965 to 1971 – San Francisco Bay Area Rapid Transit (BART)

The original construction of BART occurred under a project labor agreement signed by Parsons Brinckerhoff-Tudor-Bechtel and the international unions and locals affiliated with the Building Trades Department of the AFL-CIO.[29]

The agreement provided that:

- Contractors and subcontractors agreed to be bound by the PLA;
- Unions agreed to no strikes, slowdowns, picketing or other work stoppages;
- Contractors agreed to no lockouts;*
- Workers were able to cross union geographical jurisdictions† along the system's multi-county construction sites;[30]
- Grievance and arbitration procedures were in accordance with the standard collective bargaining agreements‡ among the trades, or a two-step procedure if the standard agreement contained no grievance procedures; and
- A BART Project Labor Relations Committee was formed and addressed labor relations problems as they arose.

The official construction on BART commenced on June 19, 1964, in Concord. Construction started in the Oakland section of the subway on January 26, 1966. The last rail was laid, on July 23, 1971, on the Contra Costa line linking all-system mainline track. The opening day of passenger services was September 11, 1972.[31] The total cost of the basic system was $1.44 billion, and the cost of the Transbay Tube construction was $176 million.[32]

1979 –1985 Prudhoe Bay Oil Pool Module Construction Project Agreement

In California, probably the earliest private sector project labor agreement was the Prudhoe Bay Oil Pool Module Construction Project Agreement, signed July 1, 1979, between Sohio Construction Company and the Building and Construction Trades Department, AFL-CIO and its affiliated international unions and locals.[33] The project involved building large industrial modules in Alameda and Stockton that were installed at the Prudhoe Bay Field on Alaska's North Slope. The modules were large, multi-story industrial components weighing over 5,000 tons that were components to the oil field production facilities. Both the complex gas separation plants, as well as housing and other living facilities were comprised of these modules.[34] The term of the contract was for five and a half years, expiring on December 31, 1985. This PLA followed an earlier private project labor agreement used during the construction of the Trans-Alaska Pipeline System, signed August 29, 1974.[35]

The Prudhoe Bay PLA contained the following provisions:

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* A lockout is a temporary withholding of work by an employer by shutting down a facility or denying workers access to the project site in order to bring pressure on the workers to accept an employer's terms. *Roberts' Dictionary of Industrial Relations*, p. 433.

† Jurisdiction is the authority claimed by a certain union representing a group of workers in a specific type of work or in a certain geographic region. An agreement to cross union jurisdictions was extremely important because it allowed workers to move wherever the contractor moved on the BART system. This provision was very innovative at the time.

‡ A standard collective bargaining agreement contains certain terms and working conditions of employment such as wages, hours, grievance procedures, and bargaining units covered, for a specified period of time.

- Requirements that new employees become union members within a certain period of time, and pay union dues;
- Management rights including hiring, promotion, transfer, discipline or discharge of employees, and the right to reject any job applicant referred by union;
- Local union job referral system, but if the union was unable to fill the request within 48 hours, an employer could hire applicants from any source;
- No strikes, work stoppages and no lockouts;
- Arbitration procedures within 24 hours should a work stoppage dispute arise;
- Four-step grievance procedure to address employee grievances;
- Uniform workday, workweek, overtime, holiday and payday schedules; and
- Standardized work rules and regulations posted on the job site.

1985 - Yerba Buena Gardens Project, San Francisco

In San Francisco, the first private project labor agreement was on the $2+ billion Yerba Buena Gardens project, which at the time was the largest construction project in San Francisco since the 1906 earthquake.[36] The agreement contained a no-strike clause and a uniform holiday schedule. Despite the general contractor's bankruptcy and an industry-wide glaziers strike during the life of the project, the glaziers working under the PLA did not strike. In 1988, a one-day work stoppage did occur when 5,000 Bay Area union workers, including workers on the project, attended a city-wide rally to protest the Associated Builders & Contractors national convention at the Moscone Center.[37]

OVERVIEW OF CALIFORNIA PLAS

During March through May 2001, I contacted the California Building and Construction Trades Council, all of the California county and regional building and construction trades councils (23), and experts from around the country to request copies of project labor agreements that have been used in California. I obtained and reviewed a total of 87 project labor agreements - 84 used in California, one used in Washington (Sounder Commuter and Link Light Rail), the Denver International Airport Project Agreement, and the Trans-Alaska Pipeline System PLA. Of the 84 California PLAs, 82 were reviewed for content analysis. The purpose of the analysis was to establish a profile of the key provisions contained in project labor agreements used in California. The BART and Prudhoe Bay PLAs described previously were reviewed for historical purposes only and not included in the content analysis.

Of the 82 project labor agreements, nearly three-quarters (72 percent) are private sector agreements. These were given on a confidential basis, so I provide only aggregate descriptions of their provisions. Twenty-three (28 percent) of the PLAs reviewed are public sector PLAs. The agreements date from 1984 through the beginning of 2001. The earliest private PLA reviewed was signed in 1986, and the earliest public PLA was signed in 1984. While the sample is not random, it does provide insight into the provisions that are commonly contained in California project labor agreements.

In this report, I analyzed the key provisions in the PLAs to attempt to find answers to questions such as:

- Are subcontractors required to sign PLAs?
- What are the strike and work stoppage prohibitions contained in the PLAs?
- What are the employer lockout and work stoppage prohibitions contained in the PLAs?
- To what extent do the PLAs standardize the hours, holidays and work rules?
- What do the unions agree to provide, and employers agree to accept under the hiring hall or referral systems?
- Do construction workers working on PLA projects have to pay union membership dues?
- What types of management rights are contained in the PLAs?
- Are wages and benefits standardized under the PLAs?
- What types of employee benefits are included in the PLAs, and who pays for them?
- Do any of the PLAs contain workers' compensation "carve-outs?"

The results of the review are contained in the remaining sections of this chapter. First described are the characteristics of private PLAs, then those of public PLAs.

PROFILE OF PROVISIONS IN CALIFORNIA'S PRIVATE PLAS

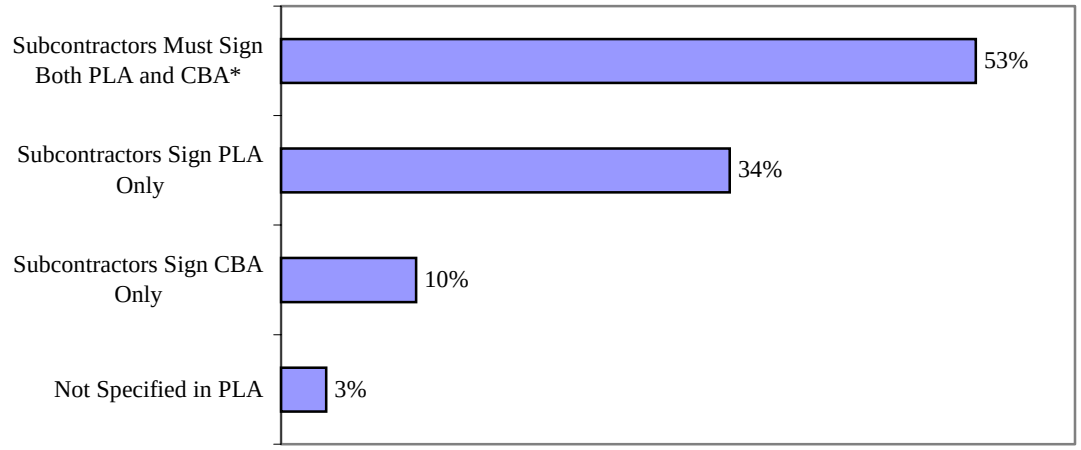
Requirements to Sign PLA and Collective Bargaining Agreements

Most (87 percent) of the private PLAs reviewed required that subcontractors sign or "agree to be bound" by the PLA. Ten percent required that subcontractors sign a collective bargaining agreement only. Two of the agreements (3 percent) were silent on signing the PLA or a collective bargaining agreement.

While 87 percent (51 agreements) of the PLAs that required subcontractors to agree to be bound by the PLA, 53 percent of these PLAs (27 agreements) required that subcontractors also sign a local collective bargaining agreement. This finding raises the question of whether or not subcontractors continue to be bound by the collective bargaining agreement (CBA) beyond the life of the PLA, or when the subcontractor is working on concurrent non-PLA construction. The language in these agreements is unclear on this issue.[*]

[*] Review of the specific collective bargaining agreements under the PLAs, and interviews with the subcontractors and unions would be necessary to determine the contractual obligations and scope of both of the agreements. Such a review and interview process was not done for this report.

Chart 2
Signing Requirements of Subcontractors in Private PLAs, 1986-2001
(N=59)



*Collective Bargaining Agreement

Also, four of these PLAs contained an exception providing that if at least a certain number of subcontractors (typically three) who signed the PLA or a similar document were not available at the time the work was to be done, then the work could be awarded to any contractor who had not signed the PLA or a collective bargaining agreement.

No Strikes, Work Stoppages or Lockouts

No Strike Provisions

So-called "no strike" provisions in PLAs can limit or eliminate work stoppages and delays. However, the mere presence of a no-strike provision does not guarantee that work will not be stopped or delayed. The practical effect of a particular no-strike provision depends upon many factors, including its specific language, the collective bargaining environment in which the PLA originated, and applicable case law.[*] One must carefully examine each of these factors before reaching a conclusion about whether, in a particular dispute between the employer and the union, a work stoppage is contractually permissible and/or likely to occur.

The private PLAs were reviewed with the above context in mind. Twenty-six (44 percent) of the private PLAs contained a comprehensive, prohibitive no-strike clause

[*] There is a long history and tension between competing federal policies related to allowing arbitration in collective bargaining to resolve disputes and the statutory right of both unionized and non-unionized workers to strike. Two U.S. Supreme Court decisions have addressed these tensions and are looked to today when unions, workers, and employers have a dispute related to work stoppages or delays. See *Boys Market, Inc. v. Retail Clerks Union, Local 770,* 398 U.S. 235 (1970) and *Buffalo Forge Co. v. United States Steelworkers of America, AFL-CIO, et al.,* 428 U.S. 397 (1976).

where the unions agreed that they would not stop or delay work under any circumstances. Thirty-three agreements (56 percent) provided that the unions did not violate the no-strike clause if they withheld employees when a contractor refused to pay or became delinquent in paying wages or trust fund contributions. Most (75 percent) of the private PLAs contained specific language that the unions could not strike or stop work due to jurisdictional disputes. Eight agreements provided that if a union did not comply with an arbitrator's award by the next shift after receipt of the award, the union must pay $10,000 to the affected party.

Twenty-seven (46 percent) of the private PLAs contained expedited arbitration specifically to determine if any work stoppage or delay activity constituted a breach of the no-strike clause. Most of these agreements (89 percent) provided expedited arbitration within 24 hours of the dispute, with the arbitrator making a decision within three hours of holding the arbitration proceeding. The grievance procedures provided for in these PLAs then functioned to resolve the actual dispute.

Fourteen agreements (24 percent) contained a comprehensive no-strike clause but no expedited arbitration. Six agreements contained a comprehensive no-strike clause and specific language indicating that work stoppage disputes were to be resolved through the grievance procedures contained in the PLA or the collective bargaining agreements.

Most (64 percent) of the thirty-three agreements containing the exception that the unions did not violate the no-strike clause if they withheld employees under certain circumstances also had an expedited arbitration clause. Table 1 details the private PLAs' no-strike clauses and expedited arbitration.

Table 1
California Private PLAs, 1986-2001
"No Strike" Provisions and Expedited Arbitration

Arbitration	Absolute No Strike	No-Strike Employee Withholding Exception	Total
No Arbitration	14	12	26
Arbitration per PLA Grievance Procedures, Decision Varies	6	0	6
Expedited Arbitration within 48 Hours to 5 days, Decision Varies	0	3	3
Expedited Arbitration within 24 Hours, Decision in 3 Hours after Arbitration Completed	6	18	24
Total	26	33	59

Source: California Research Bureau, 2001

No-Lockout Provisions

The same context described in the previous section applies to the no-lockout provisions. The no-lockout provisions of the private PLAs were reviewed with this context in mind. Seventeen (29 percent) of the agreements contained an absolute "no-lockout" provision

prohibiting contractors or subcontractors from stopping or delaying work under any circumstances. Thirty-five (59 percent) of the private PLAs provided for an exception that contractors could lay off employees or suspend or terminate work without violating the no-lockout provisions in the agreements. Twelve percent (7 agreements) were silent regarding whether or not contractors agreed to no work stoppages or delays through lockouts.

Twenty-four (41 percent) of the agreements contained expedited arbitration specifically to resolve potential work stoppage or delay disputes. All of these agreements provided arbitration within 24 hours of the dispute, with the arbitrator making a decision within three hours of holding the arbitration proceeding.

Five agreements contained a comprehensive no-lockout clause and specific language indicating that work stoppage disputes were to be resolved through the grievance procedures contained in the PLA or the collective bargaining agreements (CBA). Five agreements contained no-lockout exceptions, and specific language indicating that work stoppage disputes were to be resolved through the grievance procedures contained in the PLA or the CBAs. Table 2 details the private PLAs' no-lockout clauses and expedited arbitration.

Table 2
California Private PLAs, 1986-2001
"No Lockout" Provisions and Expedited Arbitration

Arbitration	Lockout Prohibited	No Lockout-May Lay off Employees	No Lockout – May Suspend/Terminate Work	Silent About Lockout	Total
No Arbitration	7	8	3	7	25
Arbitration per PLA Grievance Procedures, Decision Varies	5	3	2	0	10
Expedited Arbitration within 48 Hours to 5 days, Decision Varies	0	0	0	0	0
Expedited Arbitration within 24 Hours, Decision in 3 Hours After Arbitration Completed	5	7	12	0	24
Total	17	18	17	7	59

Source: California Research Bureau, 2001

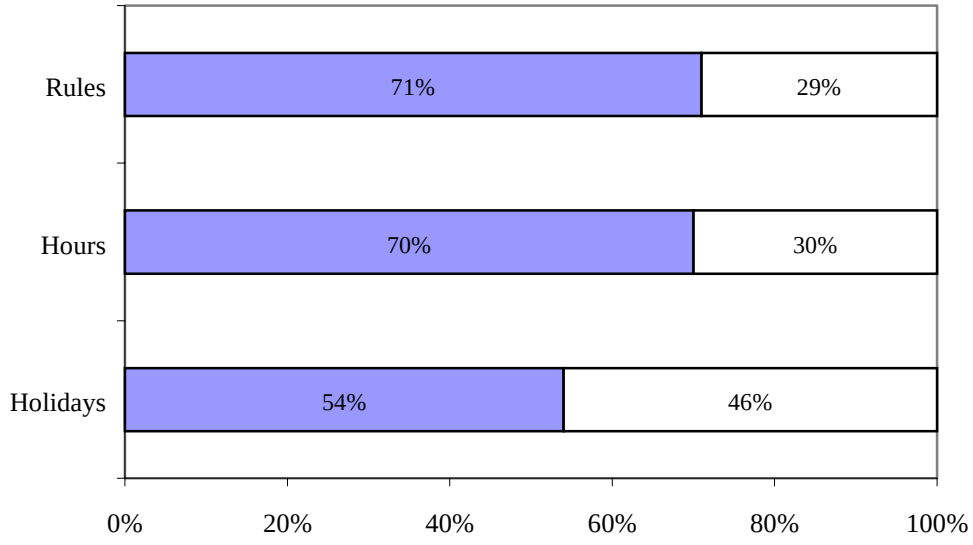
Uniform Work Rules, Hours, and Holidays

Collective bargaining agreements (CBAs) typically include terms and conditions regarding work rules, hours, and holidays. However, CBAs for various crafts often have differing terms and conditions. Of the private PLAs reviewed:

- Seventy-one percent standardized work rules and regulations posted on the job sites.
- Seventy percent standardized hours, overtime and payday schedules.
- Fifty-four percent standardized holidays.

In general, "standardized" means that a uniform schedule of hours, overtime, payday schedules, and holidays was adhered to by all employers and their workforce on the PLA project. Also, one set of standard work rules and regulations governed the job sites across the trades and employers. In the private PLAs reviewed, if the hours, holidays or work rules were not standardized, they were governed by each collective bargaining agreement of the signatory unions.

Chart 3
Work Rules, Hours and Holidays in California Private PLAs, 1986-2001 (N=59)



*Collective Bargaining Agreement
Source: California Research Bureau, 2001

Local Union Job Referral Systems

All of the private project labor agreements provided that contractors or subcontractors had to first use union referral systems or hiring halls to obtain their construction workforce for the project. However, only 37 percent of the agreements required using the union referral system exclusively. Many (63 percent) of the private PLAs provided that in the event a union referral system was unable to obtain the necessary construction workers within a certain time period, the employer could go to any source to hire workers. Most of these PLAs (95 percent) also stated that contractors and subcontractors could look to other sources for construction workers if the unions did not provided referrals within 48 hours. Twenty seven percent (16 agreements) of these PLAs provide

that the construction workers obtained from any non-union sources were considered temporary and had to be replaced by journeymen when they became available for work.

East Bay oil refinery where construction under a PLA occurred during the mid-1990s. Photograph by Joshua Mann, California Research Bureau.

Union Dues and Membership Requirements

All of the private project labor agreements required that construction employees "become or remain members in good standing" during their employment under the PLA.*

Seventy-eight percent (46 agreements) of the PLAs required employees pay dues within seven or eight days of working on a job. The remaining PLAs required payment of dues pursuant to the local collective bargaining agreements of the signatory unions.

Management Rights

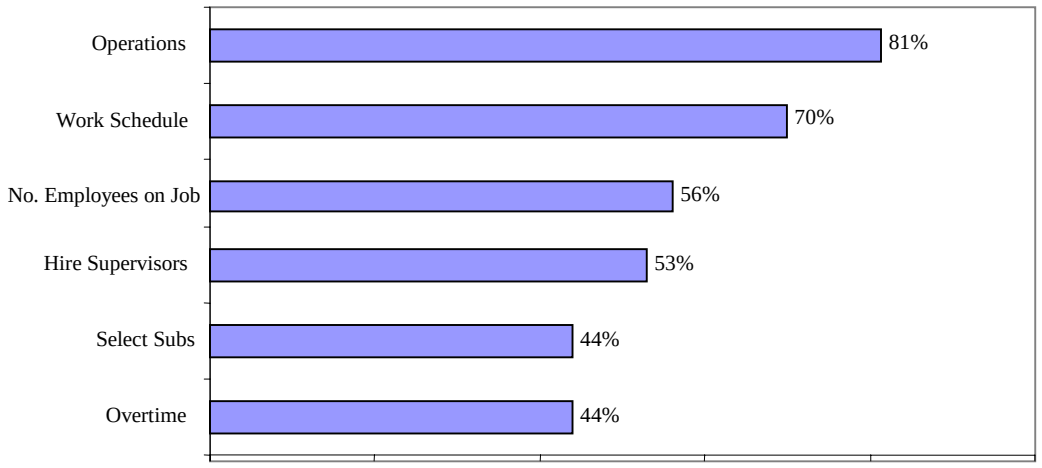
Nine-tenths of the private PLAs included some type of "management rights" clause in the provisions contained in the agreements. Management rights are negotiated between management and unions during the collective bargaining process. Management rights are reserved by management and are related to workplace and workforce management issues. The scope of management rights reviewed were determined by any expressed limitations of other provisions contained within the PLAs. Charts 4 and 5 summarize the types and prevalence of the provisions, which are described in more detail in the following text.

* Without looking at the local collective bargaining agreements involved and interviewing the unions and construction workers, it is impossible to describe further what defines membership or "good standing," and what exact benefits accrue to the workers paying dues under each PLA.

Workplace Management

- Eighty-one percent of the private PLAs specified that contractors/employers retained exclusive authority and responsibility for the management of project operations (plan, direct and control).
- Seventy percent of the PLAs provided that contractors/employers assigned and scheduled work at their sole discretion.
- Fifty-six percent of the private PLAs provided that contractors/employers decided the number and types of employees required for the work.
- Fifty-three percent of the private PLAs provided that contractors/employers hired supervisors at their sole discretion.
- Forty-four percent of the private PLAs provided that contractors/employers had sole discretion in selecting their subcontractors.
- Forty-four percent of the private PLAs provided that contractors/employers determined when overtime was worked.

Chart 4
Workplace Management Rights Provisions Contained in California Private PLAs, 1986-2001 (N=59)



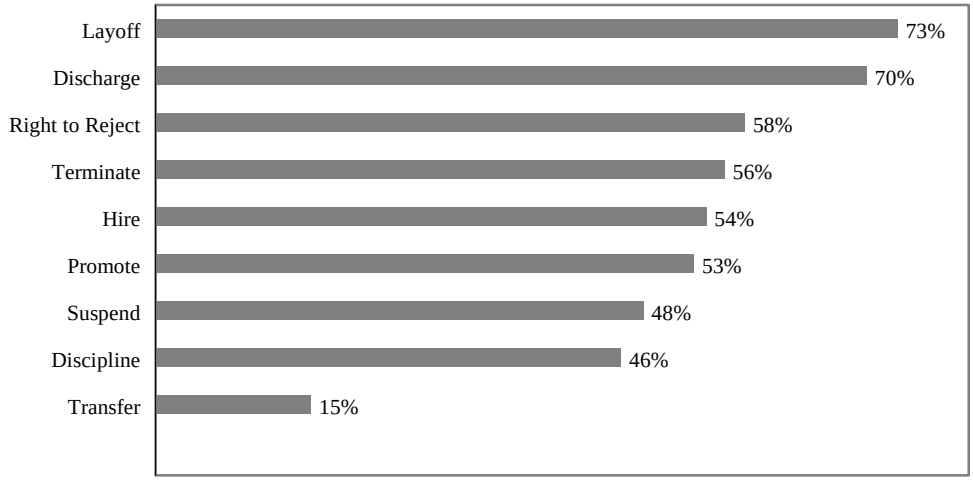
Source: California Research Bureau, 2001

Workforce Management

- Seventy-three percent of the private PLAs allowed contractors/employers to lay off employees as deemed appropriate to meet work requirements and/or the skills required by the project.
- Seventy percent of the private PLAs allowed contractors/employers to discharge employees.
- Fifty-eight percent of the private PLAs provided that contractors had the right to reject any applicant referred by the union.

- Fifty-six percent of the PLAs allowed contractors/employers to terminate employment, as they deemed appropriate.
- Fifty-four percent of the PLAs allowed contractors/employers to hire as they deemed appropriate to meet work requirements and/or the skills required.
- Fifty-three percent of the PLAs allowed contractors/employers to promote employees, as they deemed appropriate.
- Forty-eight percent of the PLAs allowed contractors/employers to suspend employees, as they deemed appropriate.
- Forty-six percent of the PLAs provided that contractors/employers could discipline employees.
- Fifteen percent of the private PLAs specifically included language that allowed contractors to transfer employees within the job site.

Chart 5
Workforce Management Rights Provisions Contained in California Private PLAs, 1986-2001 (N=59)



Source: California Research Bureau, 2001

Favored Nations Provisions

Twenty-nine percent of the private PLAs contained a "favored nations" provision. Generally, these clauses provided that the signatory unions to the PLA would not sign other contracts or enter into collective bargaining agreements with other employers or contractors that would be more favorable to such competing employers than contractors signing the PLA.

Labor Management Committees and Pre-job Conferences

Many (63 percent) of the private PLAs established labor management committees that met on a regular basis (bi-weekly to bi-monthly), depending on the size of the project. Typically, members included signatory union representatives, the project manager or PLA administrator, prime contractors, and the owner. The PLAs described the goals of the committees. The regular meetings were intended to foster communications and create harmonious labor-management relations, and to provide a forum to discuss issues such as project scheduling, work productivity, grievances, work rules, and safety programs.

Eighty-three percent (49 agreements) of the PLAs required that a pre-job conference convene prior to commencing work on a contract. Such conferences often include the project manager, and/or the prime contractor, all subcontractors and union representatives of the workforce who will be working on the job site under the contract. The pre-job conference is held prior to commencing work to establish and clarify the scope of work in each contractor or subcontractor's contract.

Los Medanos power plant located in Pittsburg, California was built under a PLA. Photograph by Joshua Mann, California Research Bureau.

"Core" or Key Employees

Seven private PLAs (12 percent) allowed contractors or subcontractors to assign their "core" or key employees to an approved project. Key employees usually were defined in the private PLAs as craft employees of a contractor or subcontractor who possessed special skills or abilities not readily available in the area. Of these agreements, five

provided that the key employees did not need to use the hiring hall or referral system. One PLA provided that key employees could be used pursuant to master CBA requirements or the PLA, whichever provided the greatest flexibility to the employer. The remaining PLA provided that historically underutilized business enterprises (HUBE) awarded PLA construction contracts could use their key employees without going through the union referral system. The private PLAs reviewed containing "core" or key employee provisions are recent, dating from 1999 forward which might indicate a trend in current and future PLAs.

Wages and Benefits

Wages and Benefits

Only five percent of the private PLAs contained standardized wages and benefits within the agreements. Nearly all (92 percent) attached local collective bargaining agreement wage scales to the PLAs to determine wages and benefits on the projects. Two of the PLAs used collective bargaining wage scales but reduced wages to 85 to 90 percent of the total wages. Some agreements specifically prohibited additional wage premiums (39 percent) and travel pay (36 percent).

Pension Trust Contributions

Since all of the construction workforce that worked under the private PLAs had to become members in good standing and pay union dues, then all of the compensation issues not specifically covered by the PLA presumably were covered by a collective bargaining agreement.

This raises a key question: what happens to the pension contributions of "temporary" union members – those employees who join the union just for the duration of their work on the PLA-covered job? Answering this question would require looking at the union membership rules of each collective bargaining agreement, which is beyond the scope of this study. Still, it is an important question and points to PLA opponents' arguments that after working on a PLA project, open shop or non-union employees may have a difficult time actually using or accessing their benefits that were accrued during the time that they worked under the PLA.

Other important questions raised include:

- What types of fringe and pension benefits are provided under PLAs?
- Do construction workers have better pension benefits under PLAs than other projects?
- Who pays the pension benefits and for how long (during PLA or beyond)?
- Are the pension benefits "portable,"[38] moving with the employee or do the funds stay in union trusts?
- Do employers "double pay" into the fringe and pension benefits provided under the PLA (labor-management trusts) and employer programs?

- Can employers opt out of programs or are deductions from employee wages made automatically?
- Are the contractors and subcontractors signatory to the PLAs obligated beyond the life of the PLA to collective bargaining agreement trust contributions?

Supplemental Trust Contributions

Almost one third (31 percent) of the private PLAs specifically prohibited requiring contractors or subcontractors to contribute to union industry promotional funds. Industry promotional funds are a standard collective bargaining provision that obligates employers to contribute to a separate fund. Proceeds from the fund are typically used to promote union companies within an industry in a similar fashion as industry boards.[39]

Almost one quarter (24 percent) required supplemental contributions into a separate Labor Management Cooperation Trust. The contributions were either supplemental or in lieu of a portion of the fringe benefit contributions and ranged from $.15 to $.25 per hour for each hour paid for or worked by employees for the life of the PLA. The California Building and Construction Trades Council administered the trust. Of the 14 agreements with this provision, nine were supplemental contributions (three of which were voluntary contributions made by employees). Four were in lieu of a portion of employee benefit contributions, and one was a lump sum contribution made by employers to the fund. According to the California Building and Construction Trades Council, these funds are used to promote safety programs, and pay for advertising to gain market share for union contractors.[40]

Substance Abuse Programs and Drug Testing

Forty-one percent of the private PLAs required substance abuse programs and drug testing of employees working on job sites under the project labor agreement.

Workers' Compensation "Carve-outs"

In 1993, the California Legislature enacted Labor Code Section 3205.1 to reform workers' compensation in the construction industry. Section 3205.1 permits collective bargaining between unions and employers to establish an alternative system or "carve-out" that can include:

- An alternative dispute resolution system governing disputes between employees and employers that supplements or replaces the state workers' compensation system;
- An agreed list of exclusive medical treatment providers;
- An agreed, limited list of qualified medical evaluators;
- Joint labor management safety committees;
- A light-duty, modified job or return-to-work program; and
- An agreed list of providers of vocational rehabilitation or retraining programs.

Three (5 percent) of the private project labor agreements provided that an alternative workers' compensation program could be used. Two of the agreements had the related agreement attached, while one only referenced the agreement to use a carve-out under the PLA.

Historically Underutilized Business Enterprises (HUBEs)

Six (10 percent) of the private PLAs contained general language that employers would make "good faith efforts" to use historically underutilized business enterprises (women or minority-owned businesses) and/or local community businesses on PLA projects. One PLA created an HUBE subcommittee within the labor-management committee to promote and support using HUBEs on PLA construction.

PUBLIC PROJECT LABOR AGREEMENTS IN CALIFORNIA

Public owners weigh the same factors as private owners and contractors in determining whether or not to use a project labor agreement on a specific construction project. The U.S. Supreme Court and California Supreme Court have affirmed that public owners have the same options as private owners in deciding how to structure a construction project labor agreement. The U.S. Supreme Court and California Supreme Court cases are summarized below.[*]

The Boston Harbor Case

In 1993, the Associated Builders and Contractors (ABC) challenged using a project labor agreement on a large, multi-billion dollar sewage treatment facilities project to clean up Boston Harbor. ABC thought that the state had violated a federal law pre-emption under the National Labor Relations Act. ABC challenged the state's using bid specifications that said contractors working on the project had to be bound by the PLA. ABC lost the challenge and subsequent appeals. The U.S. Supreme Court held that the public agency, the Massachusetts Water Resources Authority (MWRA), acted as a proprietor or purchaser of the construction project under state law. The Court concluded that MWRA did not act as a regulator enforcing a bid specification.[41] The Supreme Court also held that the MWRA participated freely in the marketplace. The Court noted that "[t]o the extent that a private purchaser may choose a contractor based upon that contractor's willingness to enter into a pre-hire agreement, a public entity *as purchaser*, should be permitted to do the same."[42] In supporting its decision in this case, the Court distinguished the behavior of the state from its usual role as regulator to one as proprietor by looking to its ruling in an earlier case, *Wisconsin Department of Industry v. Gould, Inc*.[43] In *Gould*, the Court held that the state acted as a regulator when it refused to do business with persons who had violated the National Labor Relations Act three times within a five-year period. The Court found that the state agency was a regulator rather than a purchaser or proprietor because it attempted to compel conformity with the federal statute.[44]

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[*] Further discussion of state court decisions related to public PLAs is contained in Appendix C.

In *Boston Harbor*, the Court acknowledged that "when the State acts as regulator, it performs a role that is characteristically a governmental rather than private role… [and] as regulator of private conduct, the State is more powerful than private parties."[45] However, the Court found that "[t]hese distinctions are far less significant when the State acts as a market participant with no interest in setting policy."[46]

ABC v. San Francisco Airport Commission

In 1999, ABC challenged the project stabilization agreement (PSA) (similar to a PLA) used in the expansion and renovation of the San Francisco International Airport, alleging violations of state competitive bidding laws and infringement of constitutional rights of association and equal protection.[47] Based upon the purposes of the California competitive bidding laws as determined in prior California Supreme Court rulings, the same court held that:

- the PSA did not violate California's competitive bidding laws; and
- the Airport Commission's adoption of the PSA bid specification furthered legitimate governmental interests, which included preventing costly delays and assuring contractor's access to skilled workers.

The court concluded that future challenges to project labor agreements would be reviewed on a case-by-case basis, for consistency with California competitive bidding statutes and case law.

Other state courts have made similar rulings, with a few exceptions, and these are detailed in Table C-1 in Appendix C.

California's Public PLAs – Specific Agreements

Currently (2001), on the West Coast over 14 public construction projects exceeding $1 billion exist using public project labor agreements. Many of these projects are in California.[48] Table A-1 in Appendix A details historical and contemporary public construction projects in California using PLAs. For most of the public PLAs, the table provides details about the owner, dates, cost, and whether federal funds were expended on the project. The latter point has become very important since President Bush issued Executive Order 13202 on February 17, 2001 (as amended by Executive Order 13208 on April 6, 2001). The executive orders prohibit the use of federal funds on new public construction projects that use project labor agreements. (See the fourth chapter of this report for a further discussion of this issue).

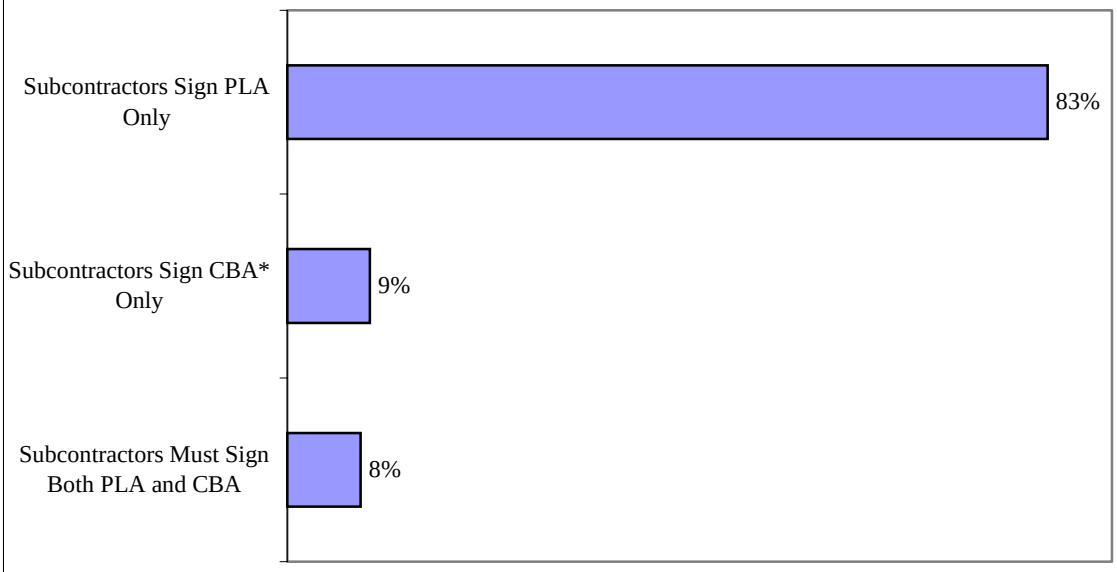
RESULTS OF CALIFORNIA PUBLIC SECTOR PLA ANALYSIS

Twenty-three California public project labor agreements (1984-2001) were reviewed for this study. Many of the agreements were between the contractor and the unions and did not involve the public owner. However, a third of the public owners (eight agreements) also signed the PLA.

Requirements to Sign PLA and Collective Bargaining Agreements

Nearly all (91 percent) of the public PLAs required that contractors and subcontractors sign or "agree to be bound" by the project labor agreement. Only three of the PLAs required contractors and subcontractors to sign local collective bargaining agreements, and two required contractors and subs sign both the PLA and collective bargaining agreement(s).

Chart 6
Signing Requirements of Subcontractors in California Public PLAs, 1984-2001 (N=23)



*Collective Bargaining Agreement
Source: California Research Bureau, 2001

No strikes, Work Stoppages or Lockouts

No Strike Provisions

The no-strike provisions of the public PLAs were also reviewed in the same context as described in the section of this report regarding private PLA no-strike provisions. Thirteen (56 percent) public PLAs contained a prohibitive no-strike clause. The remaining agreements provided for an exception that unions could withhold referring employees without violating the provision in the event that a contractor refused or became delinquent in paying wages or trust fund contributions.

Twenty (87 percent) public PLAs contained expedited arbitration specifically to resolve potential work stoppage or delay disputes. Almost all of these PLAs (19 agreements) provided arbitration within 24 hours of the dispute where the arbitrator made a decision within three hours of hearing the dispute.

All of the public project labor agreements specifically prohibited the unions and contractors from stopping or delaying work due to jurisdictional disputes. Sixteen (70 percent) of the public PLAs prohibited work stoppages or delays by the unions or contractors related to collective bargaining negotiations. Table 3 details the public PLAs' no strike clauses and expedited arbitration.

Table 3
California Public PLAs, 1984-2001
"No Strike" Provisions and Expedited Arbitration

Arbitration	Absolute No Strike	No-Strike Employee Withholding Exception	Total
No Arbitration	1	2	3
Arbitration per PLA Grievance Procedures, Decision Varies	0	0	0
Expedited Arbitration within 48 Hours to 5 days, Decision Varies	0	1	1
Expedited Arbitration within 24 Hours, Decision in 3 Hours After Arbitration Completed	12	7	19
Total	13	10	23

Source: California Research Bureau, 2001

No-Lockout Provisions

The no-lockout provisions of the public PLAs were also reviewed in the same context as described in the section of this report regarding private PLA no-strike provisions. An equal number of the agreements each contained an absolute "no-lockout" provision prohibiting contractors or subcontractors from stopping or delaying work under any circumstances, or provided for an exception that contractors could lay off employees or suspend work without violating the no-lockout provisions. One agreement was silent regarding whether or not contractors agree to no work stoppages or delays.

Twenty (87 percent) of the public PLAs contained expedited arbitration specifically to resolve potential work stoppage or delay disputes. All of these PLAs provided arbitration within 24 hours of the dispute. Table 4 details the public PLAs' no lockout clauses and expedited arbitration.

Table 4
California Public PLAs, 1984-2001
"No Lockout" Provisions and Expedited Arbitration

Arbitration	Lockout Prohibited	No Lockout-May Lay off Employees	No Lockout – May Suspend/Terminate Work	Silent about Lockout	Total
No Arbitration	1	1	0	1	3
Expedited Arbitration within 48 Hours to 5 days, Decision Varies	0	1	0	0	1
Expedited Arbitration within 24 hours, Decision 24 Hours Thereafter	0	1	0	0	1
Expedited Arbitration within 24 Hours, Decision 3 Hours Thereafter	10	8	0	0	18
Total	11	11	0	1	23

Source: California Research Bureau, 2001

Uniform Work Rules, Hours, and Holidays

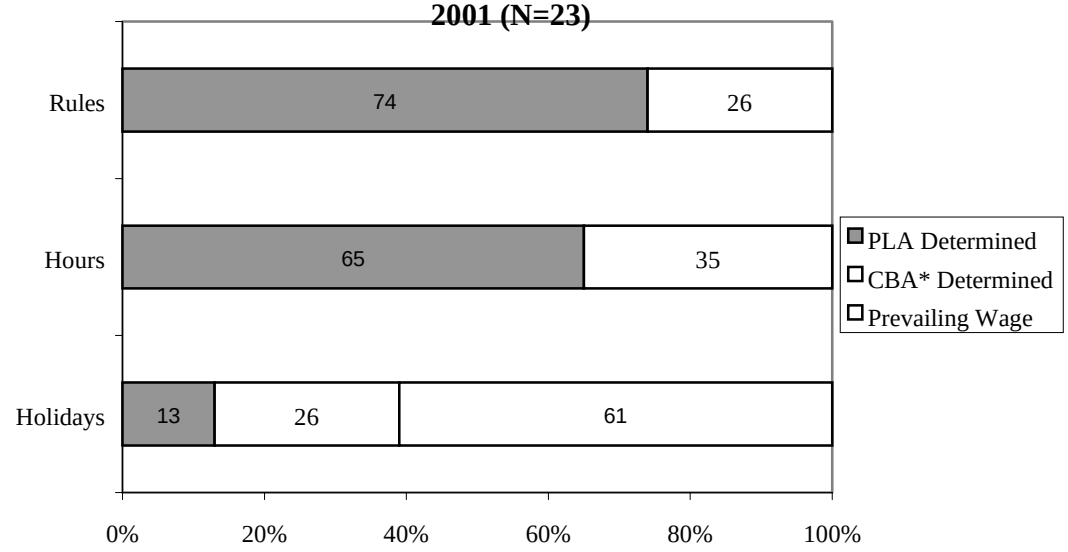
Of the PLAs reviewed:

- Seventy-four percent of the public PLAs standardized work rules and regulations posted on the job sites.
- Sixty-five percent of the public PLAs standardized hours, overtime and payday schedules.
- Sixty-one percent of the public PLAs standardized holidays by California prevailing wage rate determinations.[*]

The collective bargaining agreements of the unions governed if the hours or work rules are not included in the public PLA.

[*] California, like other states and the federal government (through the Davis-Bacon Act), requires a contractor on a public works project to pay its workers the prevailing wage in the area where a job is located (California Labor Code Sections 1720, 1720.2, 1720.3, 1720.4 and 1771). The exception to this requirement is workers participating in a state-approved apprenticeship program. A contractor using such apprentices is permitted to pay less than prevailing wages.

Chart 7
Work Rules, Hours, and Holidays in California Public PLAs, 1984-2001 (N=23)



*Collective Bargaining Agreement
Source: California Research Bureau, 2001

Local Union Job Referral System

All of the public project labor agreements required that contractors or subcontractors use union referral systems or hiring halls to obtain the construction workforce for the project. However, only 13 percent of the agreements required using the union referral systems exclusively. Twenty of the public PLAs reviewed (87 percent) provided that in the event the union referral systems were unable to obtain the necessary construction workers within a certain time period, an employer could go to any or all sources to hire workers. They further stated that contractors and subcontractors could look to other sources for construction workers if the unions did not provide referrals within 48 hours. Thirty-five percent of these PLAs provided that construction workers obtained from any or all sources were considered temporary and were to be replaced by journeymen from the referral systems when they became available for work.

Some of the public PLAs specifically promoted local economic development and workforce training and employment goals. The Port of Oakland PLA is notable in this respect, and is discussed in detail in the next chapter. The Los Angeles Unified School District (LAUSD) PLA required that union referral systems first refer LAUSD graduates and local community residents, for up to 50 percent of the total workforce for any one project under the PLA. If they were unavailable, other workers could be referred through the union referral systems. Contractors and subcontractors could look to any and all sources for construction workers if the unions did not provide referrals within 48 hours. Other public PLAs contained provisions favoring women- and minority-owned businesses, as summarized in Table 5.

Union Dues and Membership Requirements

Ten of the public project labor agreements reviewed required that construction workers "become or remain members in good standing" during their employment under the PLA within seven or eight days of working on a job. An additional 12 of the agreements required membership pursuant to the local collective bargaining agreements. One agreement provided that construction workers could work on the job for up to 30 days before paying membership dues (San Francisco International Airport).

The Golden Gate Seismic Retrofit PLA provided that any employee who demonstrated that he/she was a member of a religion, body, or sect that historically held conscientious objections to joining or financially supporting labor organizations was not required to join the union or pay membership dues. Also, the PLA provided that any employee could elect to contribute to a choice of three charities, the American Cancer Society, American Heart Association or Muscular Dystrophy Foundation, in lieu of paying membership dues.

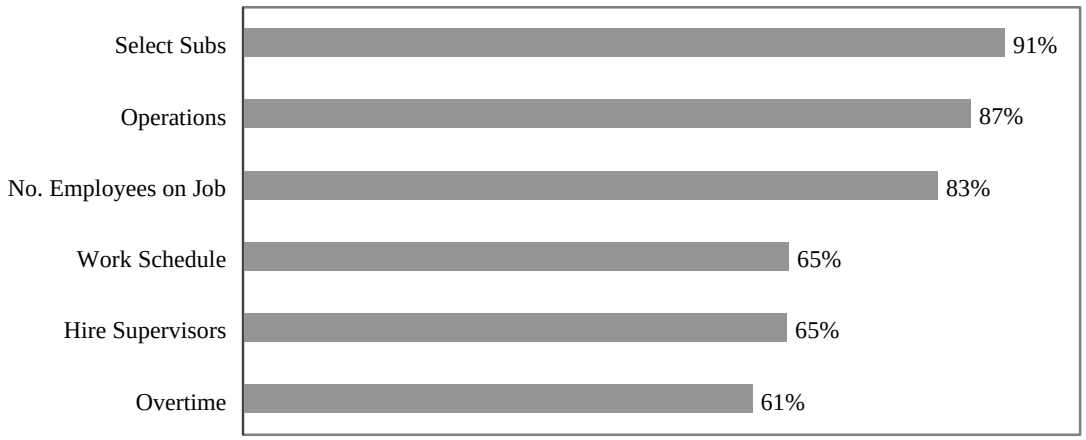
Management Rights

All but one of the public PLAs contained a general "management rights" clause or provision.

Workplace Management

- Nearly all (91 percent) of the public PLAs provide that contractors/employers have discretion in selecting their subcontractors.
- Most (87 percent) of the public PLAs provided that contractors/employers retained exclusive authority for the management of its operations (plan, direct and control), unless expressly limited by other provisions.
- Eighty-three percent of the public PLAs provided that contractors/employers decided the number and types of employees required for the work.
- Sixty-five percent of the public PLAs provided that contractors/employers assigned and scheduled work.
- Sixty-five percent of the public PLAs provided that contractors/employers hired supervisors at their sole discretion.
- Sixty-one percent of the public PLAs provided that contractors/employers determined when overtime will be worked.

Chart 8
Workplace Management Rights in Public PLAs, 1984-2001 (N=23)

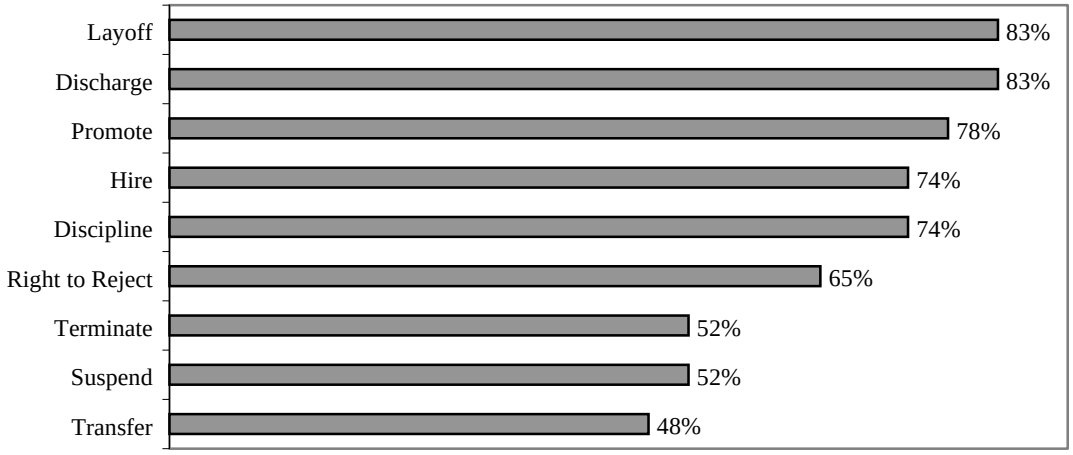


Source: California Research Bureau, 2001

Workforce Management

- Eighty-three percent of the public PLAs allow that contractors/employers may lay off or discharge employees as deemed appropriate to meet work requirements and/or skills required.
- Over three quarters (78 percent) of the agreements allow that contractors/employers may promote employees.
- Seventy-four percent of the public PLAs allowed contractors/employers to hire, as they deemed appropriate to meet work requirements and/or skills required.
- Most (74 percent) of the public PLAs provided that contractors/employers could discipline their employees.
- Many (65 percent) of the public PLAs provided that contractors had the right to reject any applicant referred by the union.
- Over half (52 percent) of the public PLAs provided that contractors could suspend or terminate employees.
- Some (35 percent) of the public PLAs reviewed included language that allowed contractors to transfer their employees within the job site.

Chart 9
Workforce Management Rights in Public PLAs, 1984-2001
(N=23)



Source: California Research Bureau, 2001

Favored Nations Clause

Seven (30 percent) of the public project labor agreements reviewed contained favored nations language that rejects locally negotiated agreements "if such provisions are less favorable" to the contractor than those covered by the local agreements.

Labor Management Committees and Pre-job Conferences

Most (78 percent) of the public PLAs contained labor management cooperative clauses establishing labor management committees. These committees met on a regular basis. They appeared to be involved to a greater extent in solving disputes, monitoring compliance with local area hiring and use of minority or emerging business contractors, and safety programs than the committees created in the private PLAs reviewed.

Most (78 percent) of the public PLAs provided that a pre-job conference convened before starting work on each contract. The provisions describing the functions of pre-job conferences in public PLAs appeared to be similar to how pre-job conferences were used in the private PLAs.

"Core" or Key Employees

Over half (57 percent) of the public PLAs reviewed contained provisions related to contractors' use of core or key employees. All of the public PLAs reviewed dating 1997 forward (11 agreements) provided that contractors and subcontractors could use core or key employees at job sites under the PLA, as further detailed in Table 7.

Table 5 California Public PLAs with Core or Key Employee Provisions, (1997-2001)		
Project	**Date**	**Core or key employee provisions**
Lawrence Livermore	1997	Union to refer one journey person from union hiring hall out-of-work list per craft, then refer one contractor key employee, until contractor's crew needs are met or has hired 10 key employees.
Golden Gate Retrofit	1999	Minority- or women-owned business enterprises may request using their key employees who meet certain criteria such as working for the employee for a consecutive length of time and possessing requisite job skills.
Los Angeles Int'l Airport	1999	Minority or women owned business enterprises may request using key employees who meet certain criteria. One-to-one referral up to 10 key employees.
Los Angeles Unified Sch. Dist.	1999	LAUSD graduates and local community residents first referred for up to 50 percent of total workforce for any one project under PLA (could include core employees). If unavailable, other workers referred per PLA. Core workforce to register with hiring hall.
San Diego Emergency Storage Project	1999	Emerging business enterprises may request using key employees who meet certain criteria. One-to-one referral up to 10 key employees.
City of Los Angeles Public Works	2000	All contractors that request using key employees who meet certain criteria. One-to-one referral up to 10 key employees.
Contra Costa Multi-purpose Pipeline	2000	Contractor may request to use key employees in manner consistent with referral procedures.
Santa Ana Unified School Dist.	2000	15 percent may be journey level key personnel meeting certain criteria for a maximum of 15 employees per contractor.
Orange County Public Works	2000	Same as Santa Ana Unified School District provisions.
Port of Oakland	2000	Same as Lawrence Livermore provisions.
City of Concord Parking Garage	2001	Same as Contra Costa County Multi-purpose pipeline provisions.

Source: California Research Bureau, 2001.

The criteria that core or key employees were required to meet included:

- Possessing any federal or state license required to perform project work;
- Working a certain total of hours (1,000 to 3,000 hours, within the prior three years depending on the PLA) in the construction craft;
- Prior to contract award, working on the contractor's active payroll for at least a certain number of days (50 to 90 days, depending on PLA) out of 100 to 180 calendar days; and
- Possessing the ability to perform the basic functions of the applicable trade safely.

All of the PLAs contained language requiring that the job referral system be operated in a non-discriminatory manner, in full compliance with federal, state and local laws that require equal employment opportunities and non-discrimination.

Wages and Benefits

Wages and Benefits

Eighty-seven percent of the public PLAs specified wages and benefits in line with California prevailing wage determinations. Thirteen percent of the agreements used local collective bargaining agreement wage scales as attachments or schedules to the PLAs to determine wages and benefits.

As noted in the discussion of private PLAs, further research is needed to answer questions related to what health and pension benefits are available to construction workers employed on projects under public PLAs, and who pays for the benefits.

Pension Trusts

Most (74 percent) of the public PLAs reviewed required that contractors and subcontractors sign (or "agree to be bound") union trust agreements and contribute to related pension and benefit trusts.

However, over half (56 percent) of the public PLAs specifically stated that contractors and subcontractors were not required to contribute to union industry promotional trust funds typically used to promote union activities and contractors.

Supplemental Trust Contributions

Four public PLAs (17 percent) required supplemental contributions by employers into trust funds to pay for administering the labor management programs under the PLA. The contributions were either $.04 or $.05 per hour for each hour paid for or worked by employees, for the life of the PLA. The funds collected were split between the county building and trades council where the project was located, and the state California Building and Trades Council. Supplemental contributions under the Port of Oakland PLA go into a trust fund to support its social justice programs and are described in detail in the following chapter.

Substance Abuse Programs and Drug Testing

Almost half (48 percent) of the public PLAs required substance abuse programs, and over one third (35 percent) of the agreements required drug testing of employees working on job sites.

Workers' Compensation Alternative Dispute Resolution Systems

Forty-four percent of the public project labor agreements allowed alternative workers' compensation systems. The public PLAs reviewed having some form of alternative workers' compensation programs included:

- Metropolitan Water District - Eastside Reservoir and Inland Feeder Projects
- San Diego County – Emergency Storage Project

- Lawrence Livermore National Ignition Facility
- Contra Costa Water District Los Vaqueros Dam and Multi-purpose Pipeline
- Los Angeles Unified School District

The Port of Oakland attempted to negotiate an alternative workers' compensation arrangement in its project labor agreement because it would save the Port about $1 million per year on its workers' compensation insurance premium for the construction projects. The parties to the PLA were unwilling to agree to include the provision in the PLA.[49]

Historically Underutilized Employees (HUBE) and Emerging Business Enterprises

Nearly three-quarters (74 percent) of the public PLAs contained historically underutilized or minority employee goals or requirements. Six of the agreements contained general requirements, while 11 of the agreements (48 percent) provided more detailed requirements to varying degrees. 48 percent of the public PLAs also contained emerging business enterprise (EBE) goals and requirements. The most comprehensive provisions for both HUBE and EBE programs are contained in the Port of Oakland PLA, which is described in the following chapter.

Police station in Concord, California constructed under a PLA. Photograph by Joshua Mann, California Research Bureau.

INTERVIEW COMMENTS ON USING PROJECT LABOR AGREEMENTS

Representatives of non-union and union contractors, public agencies and unions were interviewed about workforce issues and project labor agreements for this section of the report. It is beyond the scope of this report to include a comprehensive description of construction workers and their views about being employed under California project

labor agreements. Such information and views however, would be essential to include in future research related to PLAs.

Non-Union Contractors

Workforce Issues

Many contractors have both union and non-union subsidiaries or divisions within their business structure to accommodate different regional labor markets and conditions. Ken Hedman, Principal Vice President, Labor Relations, of Bechtel Construction Company, other contractors, and public owners confirm that under a public sector PLA, non-union contractors cannot use all of their workforce. However, non-union contractors often bid on public PLAs, and do use part of their own workforce on the job. They are only obligated to work "union" for the duration of the public PLA. The PLA does not make a contractor "union" before, or after the term of the project.

Defining a contractor's "workforce" can be difficult since non-union contractors may use temporary agencies and manpower brokers to supply all or a portion of their construction workforce. Under such a workforce management structure, the contracting or subcontracting company may not have the construction workforce on its payroll. When asked what percentage of their members use temporary construction workers and to what degree, the Associated Builders and Contractors (ABC) was unable to provide any specific information on the issue, but did state that most members have permanent employees.[50]

ABC raised a concern that if all employees have to be referred or dispatched through a hiring hall referral system, the employer loses control of his/her employees. ABC maintains that there is no guaranty in a PLA that an employee will be assigned back to their original employer. Theoretically then, employees could be sent to another employer. ABC was asked for this report if it knew of any examples of this occurring to its members. ABC was unable to provide further information because its members do not bid on PLA contracts. Additional research is needed to verify if this does occur, and if so, to what extent and under what circumstances.

"Double Payment" by Contractors into Pension Plans and Health Benefits

Opponents of public PLAs maintain that under a PLA, non-union contractors must make contributions to union pension trust funds, in addition to contributions to their own employer pension plans. However, discussions with contractors and public owners for this report confirm that often subcontractors have no pension plans for their construction workforce. If a contractor or subcontractor is using temporary or manpower agencies for its construction workforce, it is highly unlikely that the contractor is providing pension benefits directly to such construction workers.

In a national survey conducted by the Associated General Contractors, over 75 percent of the AGC 2000 Survey respondents indicated that they have 401(k) plans. Less than half indicated that they have employee incentive compensation programs, in which the employer also contributes to the 401(k) plan. There is a difference between large and

small contractors, however. Four-fifths (80 percent) of the large general and specialty contractors responding to the AGC 2000 Survey currently fund incentive programs: 75 percent have incentive compensation programs for middle and project management; and 86 percent provide incentive programs for senior management.[51] The AGC 2000 Survey does not give further details for construction workers.

The Associated Builders and Contractors (ABC) said that currently on large California public works projects, almost all of its members provide employer benefit plans such as 401(k), profit sharing and health benefits. When asked if this was the norm or due to current worker shortages, ABC stated that it is hard to predict what benefits its members would provide if a major downturn in the economy occurs.[52] Contractors and public agencies do think that employers working under a PLA may make "double payments" in the area of health benefits. Without reviewing the collective bargaining agreements and interviewing all employers under a public PLA, it is impossible to know if this occurs and to what extent. Some of the public agencies are addressing this concern in the bidding process. For example, under the Port of Oakland PLA, if a contractor can demonstrate that its construction employees are covered under a health plan, the contractor receives extra percentage points to offset the total cost of the bid when the package is evaluated and rated by the Port.[53]

Union Contractors

Unionized contractors reported that they have used PLAs over many years. For example, Bechtel has utilized project labor agreements on over 100 large construction jobs nationwide in the last twenty-five years.[*] Currently, most (85 percent) of the project labor agreements used on Bechtel jobs are in the private sector.[54] Bechtel has used PLAs mainly on industrial construction projects such as oil refineries, power plants, aluminum plants, and heavy and highway construction.

While unionized contractors voiced support for long-term labor relationships, others consider that PLAs may be disruptive to the collective bargaining process and local collective bargaining agreements.

Safety Programs

Contractors using private PLAs maintain that the increased cooperation and communication between management and construction workers fostered by a project labor agreement enables using and testing innovative safety programs. For example, during the mid-1990s Bechtel tested and implemented a self-inspection safety program on the Shell Oil Clean Fuels Project. The program focused on workers and co-workers preventing risky behavior instead of management mandating safety through diverse rules and procedures. Employees and management participated on an employee safety committee that set uniform rules, provided a project-wide forum to discuss safety issues and concerns, and implemented safety training.[55]

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[*] Bechtel is one of the largest contractors in the world, maintaining corporate divisions using both union and non-union workforces. Its corporate headquarters are located in San Francisco, California.

After completing over two million man hours on the project, no worker had suffered any serious injury to warrant missing a day's work, compared to the statewide average at the time of 6.46 lost-day injuries per every 200,000 hours of work.[56] Bechtel now uses the safety program on projects all over the world.[57]

Economic Value

Contractors in the private sector indicated that they have found economic value when using PLAs. In regions where the labor force is mainly unionized, a PLA can be an economic improvement over the local collective bargaining agreements because holidays, shifts, overtime premiums, and collective bargaining agreement expiration dates are standardized over a longer period of time.[58]

Public Agencies' Comments

Public agencies expressed a wide range of views about using PLAs. Most agency spokespersons commented positively that PLAs are useful on large, specific projects, especially contributing to decreased work stoppages and delays. Many agency spokespersons also stated that they would not use PLAs on small projects that did not need a large workforce to complete the project.

Union Concerns About PLAs and Local Collective Bargaining

Union representatives voiced their concern that having too many PLAs in a market can dilute labor's economic leverage to strike or conduct work stoppages during labor negotiations. For example, if most of unionized labor is working under PLAs in a certain collective bargaining craft jurisdiction, the remaining union workers have no bargaining leverage.

PLAs can cause tension between unions and unionized contractors. For example, if the unions agree to sign a PLA with historically non-union contractors, for better terms than are available in the local collective bargaining agreements, the unionized contractors feel "penalized" if their agreements do not have a favored nations clause. The unions feel that they are placed in a "Catch 22" situation.

The Port of Oakland Project Labor Agreement: An Innovative Approach to Community Development

For the first time in the Port of Oakland's history, the Port is simultaneously expanding all three of its business lines by developing new berths and shipyards, constructing a joint intermodal (ship-to-rail transfer) terminal (Vision 2000 Project), and expanding its international airport terminal and general aviation facilities (Aviation Development Program).[59] The Vision 2000 Project and Aviation Development Program will take seven to ten years to complete at an estimated cost of $1.3 to $1.5 billion dollars. The Maritime and Aviation Project Labor Agreement (Port of Oakland PLA), dated March 2000, covers this construction.

The Port of Oakland PLA in many of its provisions is similar to other contemporary California public sector PLAs reviewed and described in this report. What is extraordinary about the Port of Oakland PLA are the "social justice" or community capacity building provisions it contains. The City and Port of Oakland, community and faith-based organizations, unions and contractors have attempted to use the PLA to create local opportunities for historically disadvantaged residents and businesses from the port projects. This chapter provides a snapshot of the negotiating process that created the Port of Oakland PLA, describes its key community capacity building and economic development provisions, and reports the mechanisms in the Port of Oakland PLA designed to implement and monitor the programs. As with any path-breaking endeavor, challenges have arisen. This chapter describes how the City of Oakland and the Port, along with the Oakland community, are responding.

SOCIAL JUSTICE COMPONENTS IN THE PORT OF OAKLAND PLA*

> "Who's going to protect the 'black cats' standing on the corner?"
>
> Paul Cobb, Community Activist
> Port of Oakland Town Hall Meeting, March 11, 1999

> "We don't want to try to duplicate labor's training programs, we want to put people into their apprenticeship programs and start a funnel… I know labor has not been open to us [in the past,] but they've opened up to us now, they're trying to work out policies and procedures, and we want to work with them…and we want the agreement to come down where the community gets jobs, jobs, jobs, JOBS!"
>
> Monsa Nitoto
> Coalition for West Oakland Revitalization
> Port of Oakland Town Hall Meeting, March 11, 1999

* This chapter is based upon interviews with Port of Oakland officials and consultants, community based organizations, minority contractors, consultants administering the Port of Oakland PLA, and union representatives.

Oakland residents, in common with residents of other urban areas across the United States, have experienced some frustration and resentment surrounding public works projects in their midst. Within the last four decades, federal and local agencies have initiated economic development and training programs that failed to provide long-term job opportunities for Oakland residents and local businesses.

In the 1960s, economic development and affirmative action programs were developed by the federal Economic Development Administration to provide grants and loans programs on the Oakland airport and maritime construction projects.[60] At the same time, the Bay Area Rapid Transit (BART) Board of Directors created an organization called JOBART (Job Opportunities BART) to foster minority participation in the BART construction projects.[61] In the 1970s, Alameda County developed the "Alameda County Hometown Plan" to increase minority employment in the construction trades working on county public construction projects. Also during the 1970s, labor, management and the minority communities in Alameda County developed Project PREP (Property Rehabilitation Employment Program) to accomplish similar goals.[62]

It is well documented that these programs failed to reach their goals, in part because of less than full cooperation from the building trades unions.[63] In deciding how to respond to the Port of Oakland's maritime and airport expansion, the community residents did not want the past to repeat itself. Community residents and business owners actively voiced their concerns at many town hall meetings.[*]

Keenly aware of this history, the Port of Oakland considered three areas of paramount importance to the Oakland community in crafting the Port of Oakland PLA:[†]

- The Port's commitment to existing community programs such as the Port Non-Discrimination and Local Small Business Utilization Program;
- Local firms' history of exclusion on past large construction project contracts that went to out-of-area contractors; and
- Historically disadvantaged residents' exclusion from both union and non-union jobs on the projects.[64]

The project was very large. The contractor pool having the resources to successfully bid on the high dollar, large contracts would consist only of large, very specialized contractors. The Port wanted to bring "fairness" into the bidding process for the Local Business Area (LBA) construction community, which consists mostly of small contractors. At the same time, local residents needed long-term job training and employment.[65]

What emerged from numerous community discussions, public town hall meetings, input from experts around the country, and the negotiating process were innovative contract

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[*] Over 300 speakers' cards were submitted at the March 11, 1999, Port of Oakland Town Hall Meeting alone.

[†] The Port of Oakland technically is not a signatory to the Port of Oakland PLA. Davillier-Sloan, Inc. and Parsons Constructors, Inc. are the administrators of the Port of Oakland PLA on behalf of the Port.

provisions, local small business contracting opportunities, and workforce training and local hire programs.

Jake Sloan, Principal of the consulting firm Davillier-Sloan, has worked in the construction industry in Oakland for over 30 years, first as a pipe fitter, minority contractor, and currently as a consultant administering the Port of Oakland PLA. He notes that the robust Bay Area economy, current construction worker shortages, and multi-year construction requirements to expand the Oakland port and airport have converged to provide the best possible opportunity for implementing a local hiring program described in the Port of Oakland PLA. In his view (and reflecting the community consensus), there is "no real excuse for not taking in historically disadvantaged workers and training them."[66]

Small Business Utilization Program and Non-Port of Oakland PLA "Set-Aside" Contracts

One of the hardest provisions to successfully negotiate was the exclusion or "set-aside" of a certain percentage of the construction work for small, local area contractors who did not sign the PLA, but would be covered by the PLA's no-strike provisions.[67] These contracts are administered under the Port's Non-Discrimination and Small/Local Business Utilization Program.[68] Under the terms of the agreement, the aggregate value of all bid packages excluded from the Port of Oakland PLA is not to exceed $15 million. Specific provisions include:

- The estimated value of each contract before bid must be at or below $300,000;
- Any qualifying contractor can receive aggregate contract award(s) up to $300,000, or a single contract equal or above $150,000; thereafter that contractor will be required to comply with the Port of Oakland PLA in all future contract awards;
- The unions agree to no strikes or work stoppages against the contractors participating in this program; and
- The Port provides support programs to these contractors in areas of bonding, insurance, financing and technical assistance.

The Port of Oakland PLA also contains a "by-gones" clause. The language provides that irrespective of any other disputes between a contractor and the union on unrelated Port of Oakland PLA work, including work through the small business program, the union will cooperate with the contractor and not withhold labor on Port of Oakland PLA contracts. An example would be a contractor delinquent in its payment of trust fund contributions.

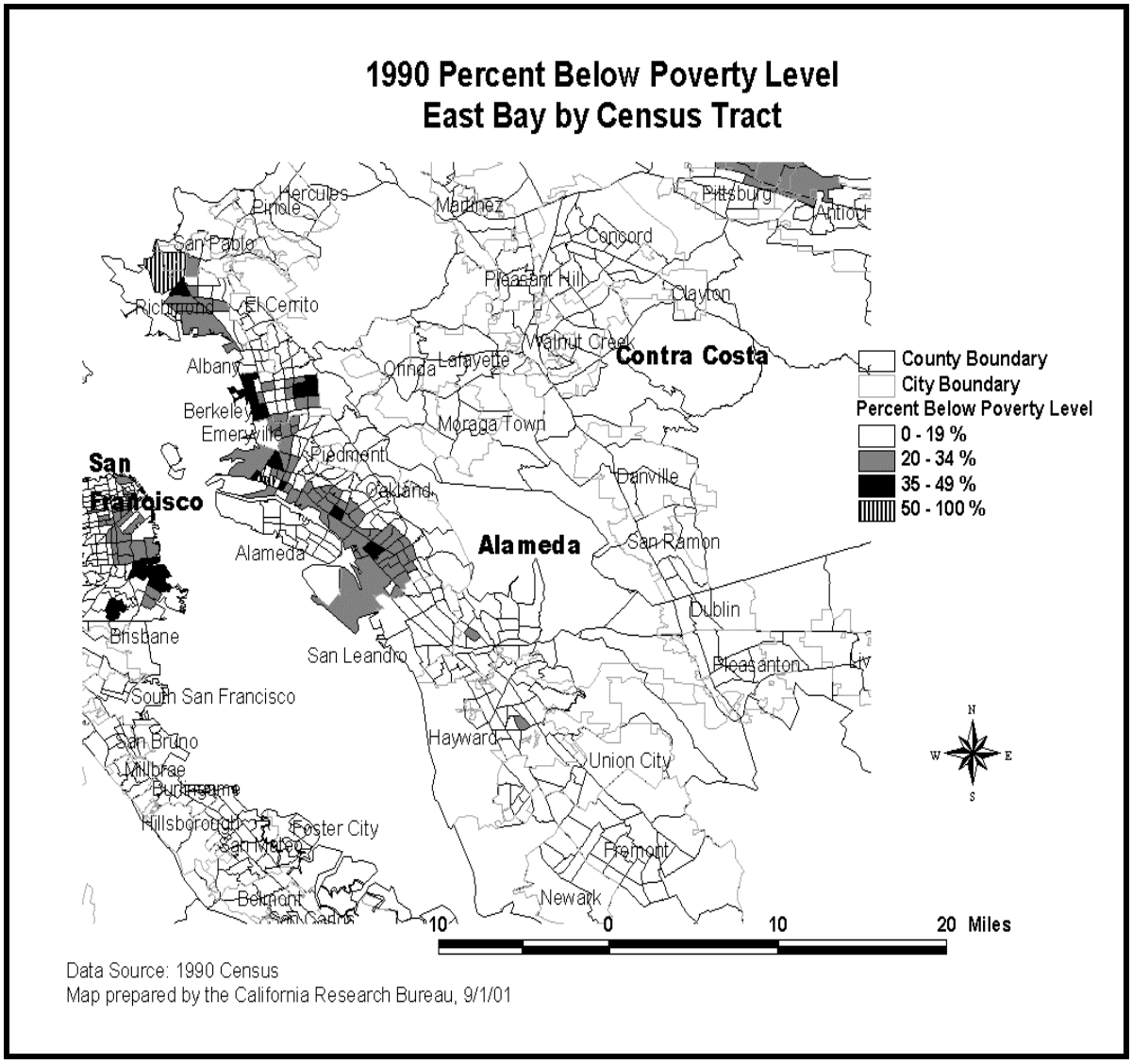
As of April 2001, the Port had identified $2.5 million in contracts suitable to include in the small business carve-out program. Of the $2.5 million, $857,000 worth of work is currently proceeding under the carve-out program.[69]

Local Hiring Program

Article V of the Port of Oakland PLA sets specific hiring goals for workers living in the Port's Local Impact Area (LIA) and the Local Business Area (LBA). The LIA is defined as Alameda, Emeryville, Oakland and San Leandro. The LBA is defined as Alameda and Contra Costa counties, a large percentage of whose population is not disadvantaged.

Map 1 shows the LIA and LBA areas and corresponding poverty levels of LIA residents by census tract. Twenty percent of the residents in census tracts surrounding the Port of Oakland PLA construction live below the poverty level. The national average of people in poverty is 12.6 percent, and in California the average is 15.3 percent.[70] Other tracts in the Oakland Port area experience poverty levels of 35 to 49 percent, and even 50 to 84 percent. These are clearly economically disadvantaged areas.

Map 1



The Port of Oakland PLA requires that LIA residents perform 50 percent of all hours worked on the total construction project, on a craft-by-craft basis. If there are not sufficient local residents available, capable and willing to work on PLA projects, then residents of the larger LBA (Alameda and Contra Costa counties) may be employed to meet the goal. A critical issue becomes one of training so that local residents are able to take advantage of this opportunity.

Article XIII of the Port of Oakland PLA provides that the parties agree to a goal that apprentices will perform up to 20 percent of the total craft work hours unless an applicable local collective bargaining agreement provides for a greater percentage. The parties also agree that only LIA residents (if available, capable and willing to work on PLA projects) will be used as apprentices, and if unavailable then Local Business Area residents will be used. In other words, 100 percent of the 20 percent of the total craft work hours on the Port of Oakland PLA will be performed by Alameda, Emeryville, Oakland and San Leandro apprentices if the goal is met.

As of January 2001, the numbers of local hires and apprentices were considerably below the local hiring and apprentice goals in the PLA. The Port and the PLA administrators are trying to increase the use of LIA residents. A key element of the strategy is to monitor the workforce needs on the construction projects and match those needs with programs providing recruiting and training to local area residents. The apprenticeship provision of the PLA is a critical component of this process, and at the outset is focusing on outreach efforts:

- In 2000, 445 Oakland residents were accepted into apprenticeships.
- In 2000, 97 local area residents attended five "Apprenticeship Orientation" workshops held by the City and Port of Oakland designed to help interested residents understand how apprenticeships work and assist individuals in finding an appropriate program.
- As of early April 2001, 23 interested residents attended the Plumbers and Steamfitters orientation, and 50 attended a general workshop and resource fair; 100 local area residents were on the waiting list for the apprenticeship orientation to be held in early May.
- As of April 25, 2001, the Port's Employment Resources Development Program (ERDP) had received inquiries from 467 local area residents interested in apprenticeships.
- As of March 2001, 93 local area residents had been interviewed by ERDP and attended apprenticeship orientations.
- The Port's ERDP lists all apprenticeship programs in its monthly job listing and sends the listing to over 200 local community and faith based organizations, individuals and agencies serving Oakland residents[71]

MONITORING THE AGREEMENT

Role and Capacity of the Social Justice Committee

Article III of the Port of Oakland PLA created a Social Justice Committee (SJC) to implement and monitor the Port Social Justice Program. The Committee:

- Reviews monthly progress reports prepared by the PLA administrator on all contractors as to local hiring, apprentice and local disadvantaged business utilization, and pre-apprentice recruitment, training and referral.
- Refers complaints of Social Justice Program violations to the Social Justice Subcommittee of the Joint Administrative Committee (JAC Social Justice Subcommittee), which is described below.
- Makes program and funding recommendations to the JAC Social Justice Subcommittee in areas such as pre-employment training, childcare, mentoring, and transportation.
- Monitors contractor compliance through community monitors' on-site visits in conjunction with the City of Oakland Office of Economic Opportunity and the PLA Administrator.
- Collaborates with the City of Oakland Apprenticeship Task Force Committee and other city and port agencies to make work force development program recommendations to the Port.

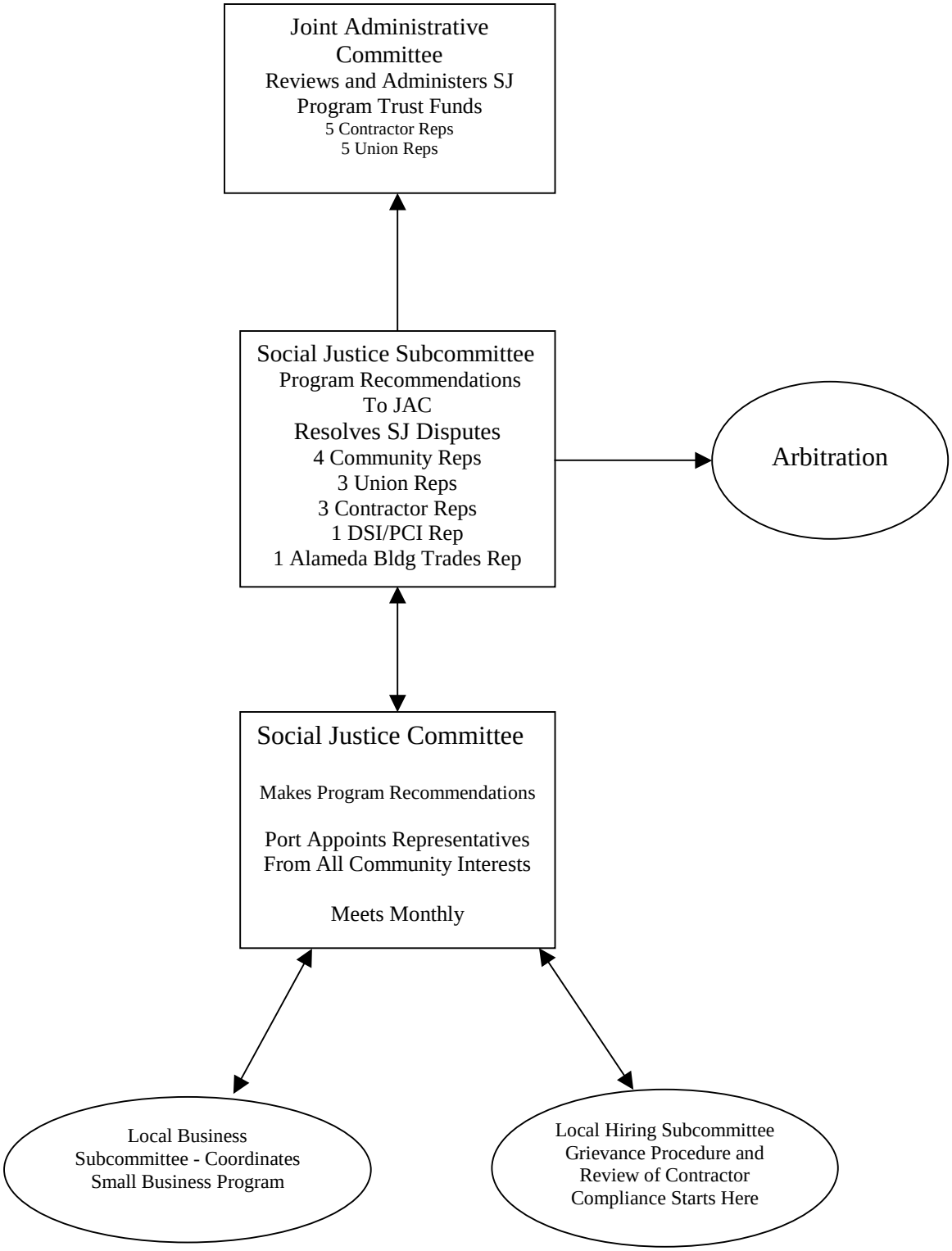
Social Justice Subcommittee of the Joint Administrative Committee

Article IV of the Port of Oakland PLA establishes the agreement's labor-management cooperation provisions, and creates the Joint Administrative Committee's Social Justice Subcommittee. The JAC Social Justice Subcommittee consists of four community members (including one from a pre-apprentice training program), three contractor representatives, the project manager, the PLA administrator, three union representatives and one representative from the Alameda Building Trades Council.

The subcommittee authorizes social justice program expenditures (in concurrence with the JAC) in areas such as the pre-apprenticeship training programs. It also reviews complaints of social justice program violations, resolves disputes or refers disputes to arbitration.

Chart 10 depicts the organizational structure and relationship between the Joint Administrative Committee, its Social Justice Subcommittee and the Social Justice Committee.

Chart 10
Port of Oakland PLA
Social Justice Program



Social Justice Trust Fund

Article XI of the Port of Oakland PLA creates a separate trust fund used to help defray program costs under the Social Justice Program. Contributions to the fund may be up to $.15 per hour of worker wages, up to $1 million, paid by unions, union contractors and non-union contractors (who typically do not contribute to trust funds under collective bargaining agreements). These contributions are in lieu of payments into industry promotion funds specified in local collective bargaining agreements.[72] As of July 2001, the Internal Revenue Service approved the nonprofit status of the trust fund. The fund is in the process of electing trustees, and reviewing program proposals related to training and building local business capacity.[73]

Contractual Incentives to Achieve the Port of Oakland's Social Justice Program Goals

Other new components of the Port of Oakland PLA include contractual performance measures and incentives that are tied to Small Business and Local Program goals. Monetary incentives are to be paid to the PLA administrator, which is a joint venture made up of the two main project contractors, on an annual basis for meeting these performance requirements. The requirements focus on program-based activities, not outcome measurements, including:

- Reviewing contractor LIA/LBA reports, meeting with contractors that report failures to achieve LIA/LBA and apprentice goals, and developing strategies to assist contractors in correcting failures.
- Documenting community outreach efforts and working with the Social Justice Committee to identify LIA residents qualified for employment, and small, local businesses for PLA project work.
- Meeting with trade unions, apprenticeship coordinators, pre-apprenticeship training programs and community-based and social service organizations to acquire a pool of skilled and qualified workers for PLA contractors.
- Meeting with Port engineering staff and designing bid packages suitable for small businesses and subcontractors under the non-PLA carve-out.
- Documenting efforts to prevent contractor-union or union-union disputes.[74]

By including these performance incentives in the contract with the PLA administrator, the Port has sought to ensure that all the parties have a tangible vested interest in the success of the social justice program. The goal is to generate sustained efforts to meet the Small Business and Local Hiring program goals of the Port of Oakland PLA.[75]

Community Resources and the Port of Oakland PLA - Bay Area Construction Sector Intervention Collaborative (BACSIC)

The Bay Area Construction Sector Intervention Collaborative (BACSIC) is a group of community-based organizations in the Bay Area that have been working together for over four years. BACSIC, as an active participant of the Social Justice Committee, works closely with building trades unions, the City and Port of Oakland, and the PLA Social

Justice Committee to provide pre-apprenticeship training and other resources (described in Appendix D) to local impact area residents interested in working on Port of Oakland PLA construction projects.*

Many local residents are interested in working on Port of Oakland construction projects but lack sufficient skills for entry into construction trades jobs. With funds from the Social Justice Trust Fund, BACSIC will provide individualized self-sufficiency plans for each participating local area resident to coordinate services, and will create a database to track each LIA resident in training or working on Port of Oakland PLA job sites is doing.

In mid-June 2001, BACSIC and the Oakland Army Base Workforce Development Collaborative† entered into a "memorandum of understanding" to locate a Workforce Development Project at the Oakland Army Base.[76] Local residents who desire to work on the Port of Oakland PLA will be able to go to a single "work force" campus location for services such as:

- Basic educational and remedial resources;
- "Soft skills" development training in areas such as dependability, attendance, communication and problem solving skills;
- On-site pre-apprenticeship and trade certified apprenticeship training;
- Employer-based job training;
- On and off-site supportive services (life skills training, housing, childcare, transportation assistance, primary health care, mental health and substance abuse services and domestic violence services); and
- Job linkage services.[77]

CHALLENGES AND OPPORTUNITIES UNDER THE SOCIAL JUSTICE PROGRAM

The goals of the Port of Oakland PLA are ambitious and the experience will be an important example if successful. There have been some difficulties so far. However, all of the parties involved have tried to develop an institutional infrastructure under the PLA that will successfully respond to difficulties.

Small Business Program

Port engineers have had difficulty in carving out smaller pieces of the larger construction projects that could meet the maximum contract limit of $300,000 for local contractors and businesses. Part of the problem is that up until recently most of the project work has

* BACSIC's primary goal is to ensure that local residents benefit from increased opportunities in the public and private construction sector by providing pre-apprenticeship training, job retention and support services. In addition, the Collaborative seeks to minimize duplication of efforts and prevent competition for funding between job training and job development programs. (See "Proposal to the Social Justice Committee of the Port of Oakland Project Labor Agreement," dated June 2001).

† The mission of the Oakland Army Base Workforce Development Collaborative is "the development of a Workforce Development Campus at the Oakland Army Base… in order to ensure the capture of employment opportunities… for the East Bay's 'hardest to serve'" populations.

been on large, complex maritime construction. Portions of the airport projects (many of which are federally funded) will be more conducive to smaller firm work. The Port anticipates that as airport construction projects start, more work will become available for the smaller bid packages required in the small business program.[78]

Other issues identified and being addressed by the Social Justice Committee are:

- Analyzing the capacity of interested firms' to perform the work.
- Identifying successful local firms and contractor associations to partner with smaller local firms in subcontracting opportunities.
- Marketing and communicating information about Port support services available such as bonding and insurance, financing, and technical assistance.[79]

Contractor Compliance with Local Impact Area/Local Business Area Goals

Contractors not in compliance with the LIA/LBA criteria have begun to surface, especially in the area of apprentices. Rather than finding contractors in non-compliance and immediately proceeding through the dispute resolution processes, the Port and the Social Justice Committee are working with contractors to find workers, and to inform contractors of the LIA/LBA requirements and how to fill out reports properly.[80] The Port of Oakland PLA provides that cases of non-compliance are referred by the Social Justice Committee to the Joint Administrative Committee for resolution. If the parties are unable to resolve the situation, the matter is then referred to an arbitrator who resolves the dispute.

Local Hiring Program

The general consensus is that local area residents are very interested in job opportunities in the construction industry. However, an inherent tension exists between getting people "into the system" as fast as possible versus addressing the barriers experienced by local residents and providing the support services needed for them to secure long-term construction careers.

On an individual level, many local area residents face lifestyle barriers and obstacles to securing long-term employment. These can include:

- Missing "soft skills" needed in the workplace (dependability, attendance, communication and problem-solving skills);
- Substance abuse history;
- Lack of a valid driver's license;
- No high school diploma or G.E.D.;
- No reliable transportation;
- Lack of income for tools and fees; and
- No affordable childcare available starting at 5:30 –7:00 a.m. when shifts start.

As described in earlier sections, a number of community-based organizations have joined together to build a workforce development system focused on construction industry employment and disadvantaged local residents. Their services are described in Appendix D.

Federal Executive Orders and Proposed Federal Legislation Related to Public PLAs

This chapter focuses on recent federal executive orders, and pending federal legislation that impact California's public sector project labor agreements.[81]

BUSH EXECUTIVE ORDERS

Executive Order 13202

On February 17, 2001, President Bush signed Executive Order 13202 (E.O. 13202) that revoked President Clinton's Executive Order 12836 as it related to project labor agreements. Section 1 of E.O.13202 states:

> [A]ny executive agency awarding any construction contract… or obligating funds pursuant to such contract, shall ensure that neither the awarding Government authority nor any construction manager acting on behalf of the Government shall, in its bid specifications, project agreements, or other controlling documents:
>
> (a) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or
>
> (b) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other related construction project(s).[82]

E.O. 13202 requirements also apply to any "executive agency issuing grants, providing financial assistance, or entering into cooperative agreements for construction projects."[83] Executive agencies may exempt a project if the "agency head finds that special circumstances require an exemption in order to avert an imminent threat to public health or safety or to serve the nation security."[84] E.O. 13202 includes specific language that "special circumstances" do not include "the possibility or presence of a labor dispute."[85]

Executive Order 13208

President Bush amended E.O. 13202 on April 6, 2001, by signing Executive Order 13208 (E.O.13208) which grandfathers existing projects by excluding pre-existing bid specifications or contracts containing project labor agreements from the E.O. 13202 requirements as of February 17, 2001.[86] Regarding amending the original executive order, White House spokesman Ari Fleischer stated

> "The president listened to legitimate concerns raised by parties involved in the pre-existing projects and determined that the executive order should be amended to ensure that projects with pre-existing project labor agreements and contracts awarded under those agreements proceed on schedule and on budget."[87]

IMPACT OF BUSH EXECUTIVE ORDERS ON PUBLIC PLAS IN CALIFORNIA

I have received mixed responses from public agencies with PLAs regarding how the Bush executive orders impact construction projects using PLAs. The projects well underway that had received federal funding are not impacted. Agencies that have projects underway, and intend to use federal or financial assistance in the future on a small percentage of the construction (5 to 10 percent), are taking a "wait and see" approach due to the challenges to the executive orders filed in federal court, as discussed in the next section below.

It is perhaps too soon to evaluate the impact of the executive orders on public agencies and contractors considering using PLAs for future projects. There are many ways that federal funding can be involved with a public construction project, many less clear than the case where the federal funds pay all or part of the actual construction costs. For example, construction under PLAs may have adjunct programs using federal assistance such as grants and low interest loans to augment emerging business enterprises programs, or grants to support the alternative dispute resolution mechanisms. It is not clear whether these less direct federal funding situations trigger the Bush executive orders.

In some instances agencies have chosen to postpone further discussions about a PLA (Housing Authority of the City of Oxnard[88] and City of Richmond), while in another project the parties have moved forward to approve a project labor agreement (Vallejo City Unified School District).[89] The PLA that had been proposed for the Oxnard Housing Authority had included economic opportunity and training programs for disadvantaged housing residents.

CITY OF RICHMOND CHALLENGE OF EXECUTIVE ORDERS

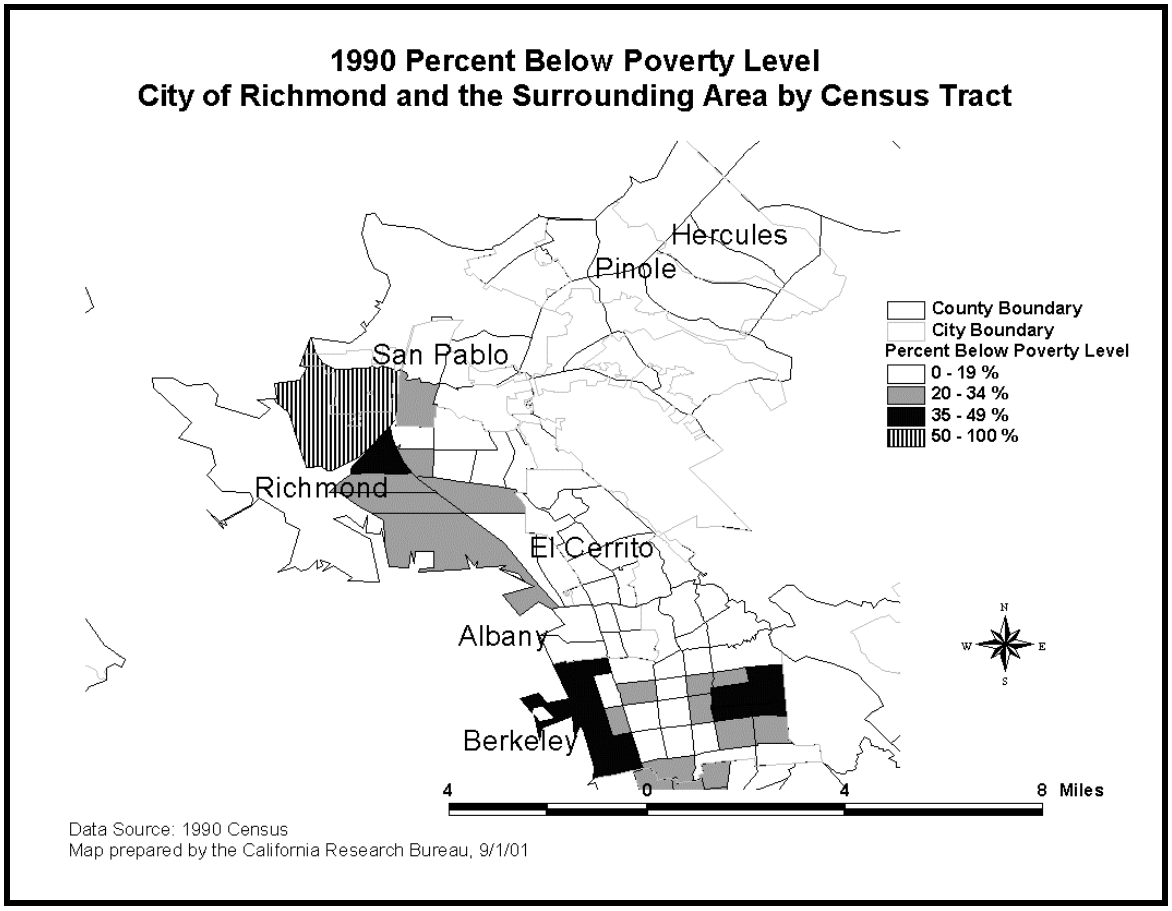
In late April 2001, the City of Richmond, along with the AFL-CIO Building Trades Department and the Contra Costa County Building Trades, brought a lawsuit against the Federal Emergency Management Agency (FEMA), U.S. Department of Housing and Urban Development (HUD), and a number of other federal agencies, challenging the Bush Executive Orders in federal district court in Washington, D.C.[90] The lawsuit alleges that E.O. 13202 impermissibly conflicts with the National Labor Relations Act (NLRA), and seeks a preliminary and permanent injunction barring the enforcement of the executive orders. In mid-August 2001, the federal judge assigned to the litigation, did issue a preliminary injunction to preserve the status quo pending the outcome of the litigation. As the basis for issuing the preliminary injunction, the court ruled that E.O. 13202 conflicts with the NLRA. The court also stated that the plaintiffs have shown that they will likely succeed on the legal merits of their arguments.[91]

Prior to E.O. 13202, the City of Richmond had been planning two projects to revitalize economically distressed areas of Richmond. The city had secured approximately $25 million from FEMA and HUD for both projects.[92] One project involves revitalizing the area surrounding the BART station in downtown Richmond and includes building a renovated transit station, residential housing units, retail space, a parking garage and a cultural arts facility. The second project will convert an historic manufacturing plant into

a mixed-use building (housing and commercial) and house a new National Park Service Visitor Center, the "Rosie the Riveter National Historic Park."

On April 3, 2001, the Richmond City Council unanimously passed a resolution stating that the sole reason it is not proceeding with a project labor agreement for these projects is because the city cannot afford to lose the federal funding.[93] The City wants to pursue economic development, workforce training and apprenticeship program goals for its disadvantaged local residents with a PLA. It intended to use similar programs being developed under the Port of Oakland PLA. The two projects are located in census tracts where residents' incomes are over 50 percent below federal poverty levels (see below).

Map 2



PENDING FEDERAL LEGISLATION AND REGULATIONS

Several bills relating to the executive order have been introduced into Congress. Some would write the executive order ban into federal law (which would appear to eliminate the main argument of the Richmond lawsuit). Some would reverse the executive order and allow PLAs on federally funded projects, at least under some circumstances. These bills are reviewed in Appendix E.

Debate Surrounds Using PLAs in Public Sector Construction

Controversy exists around using PLAs in public sector construction projects. The main arguments made by opponents to using PLAs in public sector construction are that PLAs increase construction costs to taxpayers, are anti-competitive by excluding or discouraging non-union contractors from bidding on public construction projects, and are an organizing tool to coerce construction workers into union membership.

The main argument made by advocates to use project labor agreements in public sector construction is that PLAs reduce the risk of construction delays (and increased costs) from worker shortages or labor disputes through the no-strike provisions and centralized referral systems or hiring halls. Proponents also maintain that PLAs foster cooperation between the construction workforce and management.

It is extremely difficult to perform independent quantitative analyses or comparisons after a project has been completed to verify these arguments. Studies that have been done were usually performed at the request of, or with funding from, interests on either side of the debate.[94] Prior to deciding to use a PLA, government agencies have prepared feasibility studies and cost analyses but the data are estimated or projected and not overly reliable.[95]

In addition, inherently imbedded in the viewpoints fueling the debate are opposite ideological perspectives of construction workforce management: union versus non-union, or "merit shop."[96] For example, in making its arguments before the California Supreme Court that public PLAs inhibit competition,[97] the Associated Building Contractors stated:

> The PLA requirement is not simply a requirement that a subcontractor might not like because it is onerous or unpleasant, such as furnishing certain materials or performing up to a certain standard. It is not even a requirement that relates to quality or ensures that the most qualified contractor be awarded the bid. This added requirement is a serious one that contractors and subcontractors object to on economic, political, philosophical and moral bases. It is also a drastic disruption to their method of doing business.[98]

In a recent legal challenge to a public project labor agreement for construction at the San Francisco International Airport, ABC summed up its merit shop philosophy in a "Statement of Facts" filed in its appeal before the California Supreme Court (the court ruled in favor of PLAs):

> ABC promotes the business opportunities of its general construction contractor and specialty subcontractor members through the philosophy that contracts for construction should be awarded solely on the basis of merit (timely performance, quality of finished product, and lowest cost) rather than the union affiliation of any contractor or the representational status of any group of employees. This is generally known as a "merit shop philosophy." ABC's members have chosen not

to become signatory to any union collective bargaining agreement. Pursuant to this philosophy, ABC's members feel they should be free to choose whom to hire, and generally, to operate in the way that management sees fit, within the bounds of the law.[99]

NON-UNIONIZED OR "OPEN SHOP" WORKFORCE MANAGEMENT

Distinguishing between non-union (or open shop) and unionized construction sites "illustrates a central argument over the issue of flexibility" on the job site.[100] Construction firms that adhere to a non-unionized view of workforce management contend rigid divisions of labor and work rules slow down productivity rather than improve it. Non-unionized workforce management strategies:

- Assign work across trade lines.
- Use laborers to move materials for skilled trades.
- Employ generalized helpers to float among different types of skilled journeypersons.
- Set hourly wages based on specific market requirements and their own determination of a worker's output potential ("merit" pay).[101]
- Determine supervision costs based upon competitive market pressures.[102]

Advocates of non-unionized workforce management contend that they have greater flexibility in deploying their workforce among work sites, an important advantage.[103]

COLLECTIVE BARGAINING LABOR RELATIONS

Collective bargaining labor relations are governed by collective bargaining agreements negotiated with local unions and/or regional building trades councils. Collective bargaining in the construction industry includes:

- Unions organized by crafts;
- Subcontracting restrictions;
- Pre-hire agreements; and
- Formalized employee referral systems (hiring halls).[104]

Proponents of construction industry collective bargaining contend that the established divisions of labor provide benefits that exceed any costs caused from craft jurisdictions through:

- Formal apprenticeship training programs;
- Network of referral systems (hiring halls);
- Labor discipline; and
- Higher skill levels developed by specialization.[105]

Construction industry collective bargaining proponents maintain that defined lines of responsibility are created, "produc[ing] a more harmonious work site in terms of

subcontractor relations and employee attitudes" at the construction site.[106] Some of the state's largest construction firms agree with this view. For example, Bechtel views the centralized union referral systems, training and apprenticeship programs as "positive not negative, well-proven systems," especially on large, complex projects.[107] A project labor agreement, as a tool of workforce management, falls into the collective bargaining category.

Owners Prefer PLAs

Owner preference is another driving force in determining whether to use a PLA. Private project owners specifically request that contractors use PLAs for economic reasons, labor stability and cost and scheduling considerations.[108] Owners increasingly want PLAs in order to meet their speed-to-market demands and to ensure against delays that can be caused by worker shortages, work stoppages or collective bargaining negotiations.

The Associated General Contractor 2000 Survey reports that customer satisfaction is the main indicator of business success of both its general contractor and specialty contractor survey respondents. In previous surveys, the number one and two indicators of contractor business success were net income and gross profits, respectively. Customer relations management efforts to increase customer satisfaction have been important in the last decade within the industry.[109] Given that customer satisfaction is very important to both general and specialty contractors, when an owner indicates a preference to use a PLA on a project, contractors are willing to factor in this preference.

Stable Labor Environment

Construction workers prefer to work at harmonious work sites where they can do their job without interruption or confusion interjected into the process. PLAs may standardize work schedules, holidays, work rules and guidelines, and grievance procedures. From a contractor's point of view, a PLA can provide the stable, uniform labor management foundation on which to build methodical planning and scheduling on a project.[110] Contractors that use PLAs maintain that on complex, long-term projects, a PLA fosters positive communication channels to address worker concerns, grievances or disputes and resolve them quickly, thereby creating continuity and stability of the work force at the job site.[111]

Ken Hedman, Principal Vice President, Labor Relations, Bechtel Construction Company, confirms that in his experience, he has "never seen anything to indicate that a PLA was the cause of increased costs or delays. Projects are delayed due to changes in the scope of work, increased number of change orders, engineering or design changes. Such changes cause an increase in labor costs, not the other way around."[112]

Workers' Compensation Alternative Dispute Resolution "Carve-outs"

Contractors, owners and unions utilizing this option in private and public project labor agreements claim that workers' compensation carve-outs:

- Provide cost savings on workers' compensation premiums from 5 to 25 percent.
- Lower injury and claims rates.
- Provide more effective medical delivery.
- Diminish friction in dispute resolution.[113]

However, critics, union and non-union, are concerned that workers' compensation carve-outs:

- Do not provide adequate due process.
- Reduce benefits.
- Do not provide cost savings or continued coverage for long-term disabilities.
- Create legal liability and risk to unions and employers in the areas of fair representation, due process or limiting benefits.[114]

Conclusion

In California the construction workforce has a long history of participating in building trades unions and labor organizations at the local and state level. In the construction industry, project labor agreements have become important as a type of collective bargaining or "pre-hire agreement." In California, PLAs are used mainly in the private sector but also in the public sector as a workforce management tool on large, complex, long-term construction projects. However, public sector use of PLAs remains contentious between unions and management, or non-union interests. This tension may be attributed to differing views of workforce "flexibility" on the job site. The Port of Oakland PLA discussed in Chapter 4 is one illustration of the debate about using PLAs in the public sector.

This report presented a content analysis of California private and public PLAs based upon a review of 82 agreements dated from 1984 to 2001. Some of the key findings include:

- Nearly three-quarters (72 percent) are private sector agreements.
- Most of the private (87 percent) and nine-tenths (91 percent) of the public PLAs require that subcontractors sign or "agree to be bound" by the PLA.
- All of the private and public PLAs provide that employers use union referral systems to obtain their workforce, but almost two-thirds (63 percent) of the private PLAs and most (87 percent) of the public PLAs state that employers under the PLA can look to other sources for construction workers if the unions have not provided referrals within 48 hours.
- Almost two-thirds of the private (63 percent) and over three-quarters of the public (78 percent) PLAs establish labor management committees.
- Over half (57 percent) of the public PLAs contain provisions allowing contractors' use of core or key employees.
- Public PLAs appear to contain stronger management rights clauses than the private PLAs.

One important area emerged as a topic for future research on the use of PLAs -- quantitative research related to pension benefits and project labor agreements to answer key questions such as:

- What types of fringe and pension benefits are provided under PLAs?
- Do construction workers have better pension benefits under PLAs than other projects?
- Who pays the pension benefits and for how long (during PLA or beyond)?
- Are the pension benefits "portable," moving with the employee or do the funds stay in union trusts?
- Do employers "double pay" into the fringe and pension benefits provided under the PLA (labor-management trusts) and employer programs?

- Can employers opt out of programs or are deductions from employee wages made automatically?
- Are the contractors and subcontractors signatory to the PLAs obligated beyond the life of the PLA to collective bargaining agreement trust contributions?

On a final note, while the validity of PLAs has been upheld in both federal and state cases, recent Presidential executive orders related to public project labor agreements make the legality of public PLAs more complex. Perhaps the challenge to the executive orders filed in federal court or enacting pending federal legislation will clarify the legal status of public PLAs in the future.

Appendix A

CALIFORNIA PUBLIC SECTOR PLAS, (1984-2001)*

Table A-1
California Public Sector Project Labor Agreements, (1984-2001)

Project	Owner	Date	Completion	Cost (Unadjusted To Current Real Dollars)	Federal Funds
Metro Rail	Los Angeles MTA	1984	1990 Blue Line	$877 million	Complete
Los Angeles Convention Center	City of Los Angeles	1990	1993	$390 million	Complete
San Joaquin Hills Corridor	CalTrans and San Joaquin Hills Transportation Corridor	1993	1996	$795 million	Complete
Eastside Reservoir Project (Domenigoni)	Metropolitan Water District of Southern California	1994	1999	$2.0 billion	Complete
S.F. Housing Authority Modernization	S.F. Housing Authority	1994	1998		Yes
Merrithew Memorial Hospital	Contra Costa County	1995	1998	$82 million	Complete
Concord Police Facility	City of Concord	1995	1996	$12 million	No
Los Vaqueros Dam	Contra Costa Water District	1995	1997	$450 million*	No
Conveyance Facilities (LV)	Contra Costa Water District	1995	1997	*	No
Vasco Road (LV)	Contra Costa Water District	1994	1997	*	No
Bollman Water Treatment	Contra Costa Water District	1995	1999	$35 million	No
San Francisco International Airport	City/County of San Francisco	1996	2006	$2.4 billion	Yes, on projects related to runways
Inland Feeder	MWD	1996	2004	$1.2 billion	No
National Ignition Facility	Lawrence Livermore Labs, Dept. of Defense	1997		$1.2 billion	Yes
Emergency Storage Project	San Diego Water Authority	1999	2008	$700 million	No
Golden Gate Bridge Seismic Retrofit	GG Bridge, Highway & Transportation District	1999	2004	$120 million	Yes

* Table A-1 contained in this Appendix A relies on interviews with California public agency officials, information contained in official agency websites, and the project labor agreements governing the construction projects.

Table A-1 California Public Sector Project Labor Agreements, (1984-2001)					
Project	**Owner**	**Date**	**Completion**	**Cost (Unadjusted To Current Real Dollars)**	**Federal Funds**
L.A. Unified School District New School & Rehabilitation	Los Angeles Unified School District	1999		$2.4 billion (85 schools)	No
Los Angeles International Airport	Los Angeles World Airports, City of L.A.	1999	2010	$120 million	Currently, no on 2 projects
Orange County Construction Stabilization Project	Orange County	2000	2005	General contracts of $225,000; $15,000 specialty contracts	
Santa Ana Unified School District Construction Projects	Santa Ana U.S.D.	2000	2005	General contracts of $225,000; $15,000 specialty contracts; $5,000 single craft contracts	
Multi-purpose Pipeline Project	Contra Costa Water District	2000	2003	$115 million	No
Maritime and Aviation Project	Port of Oakland	2000	2004	$1.4 billion	Yes, approx. 5%
East-Central Interceptor Sewer Project	City of Los Angeles	2000		$425 million	No, but unclear re: $75M from state revolving funds
Concord Ave. Parking Garage	City of Concord	2001		$7.5 million	No

Appendix B

BRIEF HISTORY OF FEDERAL LEGISLATION, LABOR-MANAGEMENT RELATIONS AND THE CONSTRUCTION INDUSTRY*

During the 19th century the Federal government did not regulate labor-management relations. Prior to 1842, state courts ruled that any effort by workers to organize to negotiate with an employer for wages was an illegal criminal conspiracy. In 1842, however, the Massachusetts Supreme Court held that organizing a union was not an illegal activity per se. The court held that "[t]he manifest intent of the association is to induce all those engaged in the same occupation to become members of it. Such a purpose is not unlawful. It would give them a power, which might be exerted for useful and honorable purposes, or for dangerous and pernicious ones… But in order to charge all those, who become members of an association, with the guilt of a criminal conspiracy, it must be [asserted] and proved that the actual… object of the association was criminal." *Commonwealth v. Hunt*, 45 Mass. (4 Met.) 111, 129 (1842). The decision did not legalize the means of organizing, nor using strikes and picketing to pressure employers to negotiate wages.

The courts tangentially relied on federal antitrust legislation, the Sherman Antitrust Act of 1890 and the Clayton Act of 1914, as the legal bases for ruling against union organizations.† The Sherman Antitrust Act states that "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among several States… is… declared to be illegal." 15 USCS §§1 et seq.

The language in the Sherman Antitrust Act is general and does not mention or include a definition of unions. However, the courts interpreted the absence of the term "unions" in the statute to mean that the Act applied to all classes of people in all combinations, including unions. The courts generally used the Act as the legal basis to control union organizing, finding that labor unions were unlawful conspiracies that restrained trade, and as such were illegal. The courts also ruled that a work stoppage that was legal for one person became illegal when carried out by a combination of workers, such as a union. *Vegelahn v. Guntner*, 167 Mass. 92 (1896).

The *Danbury Hatters* case is the most well known example in which the court used the Sherman Antitrust Act to ban union organizing. The United Hatters of North America, while attempting to organize a Connecticut hat manufacturer for better wages, struck the factory and urged the public to boycott both the hats and proprietors who sold the hats in other states (a secondary boycott). The court found that the secondary boycott was illegal

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* This section is not an exhaustive review of federal labor law, but is intended to highlight significant statutes and cases which laid the foundation for current labor law related to project labor agreements. Sources relied on include:
Bruce Feldacker, *Labor Guide to Labor Law*. Upper Saddle River, New Jersey: Prentice Hall, Inc., 2000.
Mollie H. Bowers and David A. De Cenzo, *Essentials of Labor Relations*. Englewood Cliffs: Prentice Hall, 1992.

† Michael Evan Gold, *An Introduction to Labor Law*, p. 3.

because it interrupted the free flow of commerce between the states and awarded treble damages payable by the individual workers. The American Federation of Labor raised funds to settle the case. *Loewe v. Lawlor* 208 U.S. 274 (1908). Other courts reached similar decisions and issued injunctions against union strike activity and boycotts against employers involved in labor disputes.

The Clayton Act recognized labor unions as legal entities, and prohibited a federal court from issuing an injunction in a dispute between employees and employers involving the terms or conditions of employment (15 USCS §§12 et seq.). The Act appeared to exempt labor unions, collective bargaining and peaceful, concerted activities from antitrust laws.

In *Duplex Press Co. v Deering*, the U.S. Supreme Court interpreted the Clayton Act as recognizing labor unions as legal entities but the Act did not grant them the right to restrain trade through organized activities. 254 U.S. 443 (1921). The case involved a secondary boycott by machinists working for newspaper publishers in New York in support of machinists attempting to unionize at a printing press manufacturer in Michigan. The court held that the boycott did not fall under the purview of the Clayton Act labor exemption, and was therefore an illegal restraint of trade under *Loewe v. Lawlor*. The Court relied on its decision in *Duplex* to continue to use the Sherman Antitrust Act to curtail union organizing efforts. The *Duplex* decision also provided procedural avenues that allowed employers to obtain private injunctions against union activities.

The Railway Labor Act of 1926

The federal Railway Labor Act spurred the first widespread collective bargaining in the United States, limited to the railroad industry initially, and later in the airline industry (45 USCS §§151 et seq.). The Act created the National Mediation Board, and authorized it to rule on union recognition, dispute resolution and unfair labor practices. The Act also created the National Railroad Adjustment Board to arbitrate disputes between railroads and unions. For the first time, railroad and airline workers were guaranteed the right to:

- organize into unions;
- bargain collectively with employers; and
- establish dispute resolution procedures if an agreement was not reached at the bargaining table.

Davis-Bacon Act of 1931

While not related to labor management relations, the Davis-Bacon Act impacts construction industry workers in the area of wages (40 USCS §§276a-5). The Act requires federal government contractors that are awarded contracts above certain amount to pay the prevailing wage rate. The prevailing wage rate is the current wage rate established by the Department of Labor in a given geographical area. California has its own prevailing wage rates set by the Department of Industrial Relations.

Norris-La Guardia Act of 1932

After the Great Depression, Congress enacted the Norris-La Guardia Act (29 USCS §§101 et seq.) which:

- withdrew the power of federal courts to issue injunctions in nonviolent labor disputes.
- immunized activities such as picketing and refusals to work from injunctions.
- required strict procedures of notice, fair hearing, and proof in instances where court injunctions are permitted.
- made certain employment agreements, called "yellow-dog contracts,"[*] unenforceable.

The National Labor Relations (Wagner) Act of 1935

Congress passed the National Labor Relations Act (NLRA) in 1935, the precursor to contemporary federal law governing labor management relations (29USCS §§151 et seq.). The NLRA:

- established employee rights to organize, join unions, and engage in collective bargaining.
- established procedures used by employees to elect their bargaining agent.
- defined employer unfair labor practices.
- required employers to bargain in good faith.
- created the National Labor Relations Board (NLRB) to enforce the law's provisions

Employers continued to seek private actions against unions in state courts under the antitrust laws since; the Norris-La Guardia Act protected the unions against injunctions only in federal court. The Supreme Court addressed this issue in 1940 in *Apex Hosiery Co. v. Leader,* in which it conferred upon unions a wide range of immunity from antitrust liability. 108 F.2d 71 (3rd Cir.) *aff'd,* 310 U.S. 469 (1940). The Court supported its conclusions by citing to the Norris-La Guardia Act, the Railway Labor Act and the National Labor Relations Act.

Labor Management Relations (Taft-Hartley) Act of 1947, as amended

In 1947, Congress revised the National Labor Relations Act extensively and renamed it the Labor Management Relations Act (LMRA) (29 USCS §151 et seq.). The LMRA is the statute that governs modern collective bargaining and labor management relations. The Act attempts to balance labor and management interests, and reaffirms a worker's right to collective bargaining.

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[*] A yellow dog contract was signed by a worker before becoming an employee. It stated that the worker was not a union member and would not become a union member at any time in the future.

In creating the Act, Congress declared

> The inequality of bargaining power between employees who do not posses full freedom of association or actual liberty of contract, and employers who are organized in the corporate… association substantially burdens and affects the flow of commerce…
>
> Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce… Experience has further demonstrated that certain practices by some labor organizations… have the intent… of burdening or obstructing commerce… the elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.
>
> It is… the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce… by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." 29 USCS §151

The Taft-Hartley Act:

- specifies union unfair labor practices.
- requires unions to bargain in good faith.
- permits employees to decertify unions.
- created an independent agency, the Federal Mediation and Conciliation Service, to resolve disputes through conciliation and mediation.
- determined that closed-shop* union security arrangements are illegal.

The Labor Management Relations (Taft-Hartley) Act was amended in 1959. The amendments related to the construction industry, as discussed in the next section, underpin current federal and state court decisions affirming project labor agreements.

Labor Management Reporting and Disclosure (Landrum-Griffin) Act of 1959

In enacting the Landrum-Griffin Act in 1959, Congress acknowledged that unique conditions in the construction industry influence collective bargaining processes (29 U.S.C. § 159). These conditions include:

- seasonal work;
- brief or interrupted job duration; and
- frequent changes by employees who typically work for many different employers at different job sites over time.

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* A closed shop is a situation where the union and employer agree that workers cannot be employed by the employer unless they are already union members before being offered employment.

In other industrial sectors, the National Labor Relations Act (NLRA) typically requires workers interested in union representation to follow a series of steps, ending in an election overseen by the National Labor Relations Board. If it obtains a majority of the votes, the union is then certified as the collective bargaining agent. Because this process may take months or years, Congress concluded that it did not fit the construction industry, finding that "representation elections in a large segment of the [construction] industry are not [a] feasible [means for] demonstrat[ing] majority status." S.Rep. No. 187, 86th Cong., 1st Sess. 55-56 (1959), 1 Leg. Hist. at 451-52.

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." S.Rep. No. 187, 86th Cong., 1st Sess., 27 (1959), 1 Leg. Hist. 424. As a result, Congress inserted an exception, or proviso, into a new Section 8(e), and added Section 8(f) to the (NLRA).

Section 8(f) authorizes the use of pre-hire agreements in the construction industry, but provides that employees working under a pre-hire agreement may, notwithstanding the agreement, petition the NLRB at any time for an election to decertify the union or de-authorize the union from negotiating or enforcing any requirement that employees maintain union membership. 29 U.S.C. § 158(f), citing to § 159(c) and (e) provisions; *NLRB v. Iron Workers*, 434 U.S. 335 (1978).

Section 8(e) provides that it is an unfair labor practice for an employer and union to enter into an agreement "whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person." The agreement prohibited is referred to as a secondary boycott, and the products are known as "hot cargo." However, Section 8(e) statutorily exempts a secondary boycott from being an unfair labor practice when it is related to job-site subcontracting in the construction industry. Section 8(e) is commonly known as the "construction industry proviso."

The proviso states: "nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work." 29 U.S.C. § 158(e).

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* Congress specifically noted "[In the construction industry], it is customary for employers to enter into collective bargaining agreements for periods of time running into the future, perhaps 1 year or in many instances as much as 3 years. Since the vast majority of building projects are of relatively short duration, such labor agreements necessarily apply to jobs which have not been started and may not even be contemplated." S.Rep. No. 187, 86th Cong., 1st Sess., 27 (1959), 1 Leg. Hist. 423.

In the late 1970s and early 1980s, pre-hire labor and subcontracting agreements were unsuccessfully challenged in federal courts. The Supreme Court has held that the Section 8(e) proviso "permits a general contractor's pre-hire agreement to require a employer not to hire other contractors performing work on a particular project site unless they agree to become bound by the terms of that labor agreement."[115] Quoting the legislative history of the 1959 amendments, the Supreme Court held that Congress enacted Section 8(e) "to preserve the present state of the law with respect to… the validity of agreements relating to the contracting of work to be done at the site of the construction project."[116] The Court also held that section 8(f) pre-hire agreements are valid agreements, and entering into such an agreement is not an unfair labor practice.[117] Similarly, challenges before the National Labor Relations Board, using a variety of legal theories, affirmed this finding.[118]

The Boston Harbor *Decision and Public Project Labor Agreements*

In 1993, the Supreme Court squarely addressed the legality of using PLAs in the public sector. An employer association, Associated Builders and Contractors of Massachusetts/Rhode Island, Inc., challenged the Massachusetts Water Resources Authority's (MWRA) use of a PLA on a large, complex, multi-billion dollar sewage treatment facilities project. MWRA was constructing the sewer facilities to comply with a federal court order to clean up the Boston Harbor. Pursuant to the court's order, the facilities were to be constructed without interruption or any delays.[119] The Supreme Court held that:

- the National Labor Relations Act (NLRA) does not pre-empt enforcement by a state agency, acting as the owner of a construction project, of mandating an otherwise lawful pre-hire collective bargaining agreement negotiated by private parties.
- MWRA, in this instance, acted as a proprietor of the construction project under state law, and as a purchaser of construction services, not as a regulator enforcing a bid specification.[120]
- MWRA participated freely in the marketplace in this instance, which promoted the legislative goals of NLRA sections 8(e) and 8(f).[121]

The Court directly associated project labor agreements, construction industry conditions, and the section 8(e) proviso:

> "It is evident from the face of the statute that in enacting exemptions authorizing certain kinds of project labor agreements in the construction industry, Congress intended to accommodate conditions specific to that industry. Such conditions include… the short-term nature of employment which makes post-hire collective bargaining difficult, the contractor's need for predictable costs and a steady supply of skilled labor, and a longstanding custom of pre-hire bargaining in the industry."[122]

Finally, the Court noted that "[t]o the extent that a private purchaser may choose a contractor based upon that contractor's willingness to enter into a pre-hire agreement, a public entity *as purchaser*, should be permitted to do the same."[123]

Appendix C

STATE COURT DECISIONS AND PUBLIC PROJECT LABOR AGREEMENTS

After the U.S. Supreme Court's *Boston Harbor* decision, the use of project labor agreements on public agency construction projects was challenged in various state courts, mainly by contractor trade associations alleging that PLAs violate state competitive bidding laws. With the exception of rulings against a few specific PLAs under certain circumstances as described below, state courts have generally held that state competitive bidding or procurement statutes do not ban the use of PLAs in the public sector. Table C-1 sets forth each state court decision and describes the PLA at issue in each instance.

Table C-1

State	CASE	Court	Decision	Held
AK	*Laborers Local No. 942 v. Lampkin*, 956 p.2D 422 (Alaska 1998)	Supreme Court of Alaska	03/20/98	PLA on $20 million high school renovation did not violate the borough's procurement code, or the equal protection, takings, and freedom of association clauses of the state constitution.
CT	*Connecticut Associated Builders & Contractors, Inc. v. Anson*, 251 Conn. 202 (Conn. 1999)	Supreme Court of Connecticut	11/16/99	PLA on state university construction project did not violate state competitive bidding statute, and plaintiffs did not have standing to bring suit under protected constitution rights since no rights were violated "simply because a public agency adopt[ed] a legitimate public policy that runs counter to the philosophical views or business practices espoused by the membership of the association." 251 Conn. 202, 214
CT	*Connecticut Associated Builders & Contractors v. Hartford*, 251 Conn. 169 (Conn. 1999)	Supreme Court of Connecticut	11/16/99	Non-bidding contractors and subcontractors do not have standing under principles governing competitive bidding to challenge the validity of a project labor agreement.
IL	*Colfax Corp. v. Illinois State Toll Highway Authority*, 79 F.3d 631 (7th Cir. 1996)	7th Circuit Court of Appeal	03/26/96	PLA on tri-state highway project was not preempted by National Labor Relations Act.
MA	*Building & Construction Trades Council of the Metropolitan District v. Associated Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218 (1993) ("*Boston Harbor*" case)	U.S. Supreme Court	03/08/96	PLA on court ordered construction of sewage treatment facilities for cleaning Boston Harbor was not preempted by the National Labor Relations Act.
MA	*John T. Callahan & Sons, Inc. v. City of Malden*, 430 Mass. 124, 713 N.E.2d 955 (Mass. 1999)	Supreme Judicial Court of Mass.	07/22/99	PLA on $100 million construction of five schools and demolition of three others did not violate state competitive bidding statute; project was "of sufficient size, duration, timing and complexity to justify the use of a PLA, and the city engaged in a careful process to conclude that the PLAs adoption would further the purpose of the competitive bidding statute." 430 Mass. 124, 133

Table C-1				
State	**CASE**	**Court**	**Decision**	**Held**
MA	*Utility Contractors Ass'n of New England, Inc. v. Comm. of Mass Dept. of Public Works*, 153 LRRM 2297 (Mass. Super. Ct. 1996)	Superior Court of Mass., at Suffolk	03/05/96	PLA bid specification on multi-billion dollar highway interchange and tunnel construction project did not violate state competitive bidding statute, state prevailing wage law, state public employees collective bargaining law, state civil rights law, or state Administrative Procedures Act where found to be reasonably related to labor harmony and public interest. PLA did not constitute an unlawful usurpation and delegation of power in violation of the state constitution; and PLA did not violate the due process clause of the state constitution.
MN	*Minnesota Chapter of Associated Builders and Contractors Inc. v. County of St. Louis*, 825 F.Supp. 238 (D.Minn. 1993)	U.S.D.C. for District of Minn., 4th District	06/29/93	PLA on construction of county jail was not preempted by ERISA and did not violate the due process clause of the U.S. Constitution or the state competitive bidding statute.
MO	*Hanten v. School District of Riverview Gardens*, 183 F.3d 799 (8th Cir. 1999)	8th Circuit Court of Appeal	06/21/99	PLA on expansion of four grade schools and one new school construction did not violate freedom of association and due process clauses of the U.S. Constitution and state competitive bidding and sunshine laws.
NV	*Associated Builders and Contractors, Inc. v. Southern Nevada Water Authority*, 979 P.2d 224 (Nev. 1999)	Supreme Court of Nevada	06/07/99	PLA on multi-year, capital improvement plan for municipal water system project did not violate state freedom of association, competitive bidding and right-to-work statutes; however, PLAs "must be adopted in conformity with [Nevada] statutes and the policies behind them." 979 P.2d 224, 230
NJ	*Tormee Const. v. Mercer County Improvements Authority*, 143 N.J. 143 (N.J. 1995)	Supreme Court of New Jersey	09/20/95	PLAs not per se illegal under the laws of New Jersey, but the PLA at issue (county library construction project) was declared invalid because it "impermissibly restricts contractors to a union-only workforce;" such agreements may be required only in exceptional circumstances.
NJ	*George Harms Const. v. Turnpike Auth.*, 137 N.J. 8, (N.J.1994)	Supreme Court of New Jersey	07/07/94	Court recognized that project labor agreements serve important purposes in assuring efficient and economical administration of large construction projects but concluded the PLA at issue was inconsistent with New Jersey's competitive bidding statutes that emphasize "unfettered competition." (The PLA requirement was a material specification added after bids were submitted).

Table C-1				
State	**CASE**	**Court**	**Decision**	**Held**
NY	*New York State Chapter Inc., Associated Gen. Contractors of Am. v. New York State Thruway Authority*, 88 N.Y.2d 56, 666 N.E.2d 185 (N.Y. Ct.App. 1996)	New York Court of Appeals	03/28/96	PLAs are "neither absolutely prohibited nor absolutely permitted in public construction contracts. A PLA will be sustained for a particular project where the record supporting the determination to enter into such an agreement establishes that the PLA was justified by the interests underlying the competitive bidding laws." 88 N.Y.2d 56, 65. Upheld PLA on Zappen Zee Bridge construction, but not on Roswell Park Cancer Institute modernization project.
Ohio	*State, ex rel. Associated Builders and Contractors, Cent. Ohio Chapter v. Jefferson County Board of Commissioners*, 106 Ohio App.3d 176 (Jefferson App. 1995), *appeal denied*, 74 Ohio St.3d 1499 (Ohio 1996)	Court of Appeals of Ohio, 7th Appellate Dist., Jefferson County	08/31/95	PLA on Jefferson County/City of Steubenville Joint Jail Facility construction project did not violate state competitive bidding statute.
Ohio	*Enertech Elec., Inc. v. Mahoning County Comm'rs*, 85 F.3d 257 (6th Cir. 1996)	6th Circuit Court of Appeals	06/07/96	PLA on Youngstown Justice Center construction project did not violate due process clause of the U.S. Constitution or state competitive bidding statute.
OR	*Associated Builders and Contractors, Inc. v. Tri-County Metropolitan Transportation District of Oregon*, 170 Ore. App. 271(Or. Ct. App. 2000)	Court of Appeals of Oregon	10/04/00	Substantial evidence in the record supported Transportation District Board's findings that the agreement for the extension of light rail to the Portland International Airport was a "unique circumstance," and was exempted from the competitive bidding requirements. The contract did not diminish competition for public contracts.
PA	*A. Pickett Construction Inc. v. Luzerne County Convention Center Authority*, 738 A.2d 20 (Pa. Commw. Ct. 1999)	Commonwealth Court of Pennsylvania	08/11/99	PLA on civic arena-convention center construction did not violate state competitive bidding statute.
RI	*Associated Builders and Contractors of Rhode Island, Inc. v. City of Providence*, 108 F.Supp. 2d 73 (D. R.I. 2000)	U.S.D.C. for District of Rhode Island	08/16/00	City was not acting as a market participant in requiring PLA on a private construction project in exchange for favorable tax treatment to the developer; NLRA pre-emption applies.
RI	*Associated Builders and Contractors of Rhode Island v. Department of Administration, State of Rhode Island*, R.I. Supr. Ct. No. PC00-6179, 2001	Superior Court	01/16/01	PLA on $54 million university convocation center construction project violated state purchasing law.

As of the July 2001, Utah is the only state that has enacted a provision in its public works statute banning the state or any political subdivision from requiring the use of project labor agreements on public works projects.[124]

City of Fresno Ordinance Ban on Public Project Labor Agreements

The City of Fresno has enacted an ordinance that mandates that the City shall not require a contractor to execute or otherwise become a party to any project labor agreement as a condition of bidding or performing work on a public works contract.[125]

ABC v. San Francisco International Airport Commission

The definitive California case addressing PLAs in public works projects focused on the San Francisco International Airport expansion. In May 1996, the San Francisco Airport Commission entered into a project stabilization agreement (PSA) with the local building trades unions to provide the construction work force on the $2.4 billion expansion of the San Francisco International Airport (SFIA) for a ten-year period. At the time the agreement was signed, SFIA served 67 percent of the domestic passenger market and 98 percent of the international passenger market in the Bay Area. The Commission estimated that SFIA would experience an increase in passenger traffic from 31 million in 1991 to 51 million by 2006.[126]

Under the PSA the unions agreed to:

- No strikes, sympathy strikes, work stoppages, picketing or hand billing;
- Three-step grievance dispute resolution procedure, the last step referred to binding arbitration;
- Three-step jurisdictional dispute resolution, the last step referred to AFL-CIO Building Trades Department.; and
- Continued work despite expiration of any applicable collective bargaining agreements.

Under the PSA, the Commission agreed to require all contractors to:

- Become signatory to the PSA;
- Not engage in any lockouts;
- Use the union referral systems for any new hires needed beyond the employer's core workforce; and
- Pay contributions to vacation, pension, apprenticeship and health benefit funds of the appropriate local unions.

The PSA was challenged for violating state competitive bidding laws, and infringing on the employer association's (Associated Builders and Contractors) constitutional rights of association and equal protection.[127]

Section 20128 of the California Public Contracts Code states that a public works contract shall be awarded to the "lowest responsible bidder." The California Supreme Court has held that the purposes of competitive bidding are to:

- guard against favoritism, improvidence, extravagance, fraud and corruption.
- prevent waste of public funds.
- obtain the best economic result for the public.
- stimulate advantageous marketplace competition.
- secure the best work… at the lowest price practicable… for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders.[128]

Based upon the purposes of the competitive bidding laws, the California Supreme Court held in the San Francisco Airport case that:

- project stabilization agreement does not violate California's competitive bidding laws.
- the Commission's adoption of the PSA bid specification furthered legitimate governmental interests which included preventing costly delays and assuring contractor's access to skilled workers.
- the PSA requirement did not infringe on ABC's constitutional rights of association and equal protection.

The court concluded that future challenges to project labor agreements would be reviewed on a case-by-case basis, for consistency with California competitive bidding laws and case law.[129]

Appendix D

BACSIC PRE-APPRENTICE PROGRAMS

Bay Area Construction Sector Intervention Collaborative (BACSIC) Pre-Apprentice Programs Available in Alameda County								
Program	**Applicant Requirements**	**Eligibility**	**Length of Program**	**Times Offered per Year**	**Trainees/ Cycle**	**Training Stipend**	**Support Services Provided**	**Types of Training Available**
Asian Neighborhood Design	None	M/W Age 17-55	8-16 Weeks Full-time	Open Enrollment	18	None	Free bus passes; Childcare vouchers; Job placement; Driver's license support; GED support; Basic Reading/ Writing/Math Skills program	Basic skills enhancement (math, reading, writing); Construction (cement, drywall, concrete, painting, tool operation and safety); Carpentry (framing, door, window install, concrete forms, siding); Cabinet Making
Building Opportunities for Self-Sufficiency (BOSS)	Low income Ala. County Resident At risk-homeless	M/W Over 18	90 Days	3 – Open Enrollment	6-12	$5.75-$8 per hr or $69/wk	Free bus passes; Childcare referral; Substance Abuse Counseling on-site & referral; Domestic violence counseling referral; Money management workshops	Clerical; Intro to carpentry; Janitorial/building maintenance; Landscaping/ground maintenance; Culinary arts
Citizens for West Oakland Revitalization	None	M/W Age 18-55	2 weeks	2 – Open Enrollment	75	None	Free or discounted shuttle; Substance abuse counseling referral; Case management; Life Skills; Job readiness; Job Retention	Orientation and life skills training.
Cypress Mandela/ Trades Training Cntr.	CA Drivers License; HS GED, Soc. Sec. Card; DMV rec.	M/W Over 18	13 weeks	3 - No open entry	50	None	Life Skills; Job Readiness; Resume Help; Placement	Basic construction training; Environmental training
Federation of African	None	M/W Age 18-55	6 months	2 – Open Enrollment	50	None	Free or discounted shuttle; Substance	General construction; Basic home repair; Carpentry; Work place

Bay Area Construction Sector Intervention Collaborative (BACSIC)
Pre-Apprentice Programs Available in Alameda County

Program	Applicant Requirements	Eligibility	Length of Program	Times Offered per Year	Trainees/ Cycle	Training Stipend	Support Services Provided	Types of Training Available
African American Contractors							abuse counseling referral; Case management; Life Skills; Job readiness; Job Retention	literacy; Mentoring
Jobs Consortium	None	Anyone	10-14 weeks	5 - No open entry	10-14	None	Free bus passes; Childcare Referral; Substance abuse Domestic violence on-site counseling/referral; English; Tutoring/mentoring; Resume help; Job search, placement assistance; Provide work equipment	Deconstruction/soft demolition skills; Lead abatement; Basic or general construction; Basic home repair; Carpentry; Construction (Cement, drywall, etc.); Cabinet making
Laney College Workforce Development Program	None	Anyone	9 weeks (may repeat)	5 - No open entry	5	None	Childcare on-site; Substance abuse counseling referral; Domestic violence counseling referral; Housing referral; ESL; Test prep for apprenticeship exams.	Introduction to skilled trades; Math; PE/Body building; English; Job readiness class. This basic 9 week program can be followed by training at Laney in carpentry, welding, cabinetmaking, machinery, etc.
Youth Employment Partnership* *Not a BACSIC member	Oakland residents; Low-Income	M/W Age 14-25	6-10 months (18 month follow-up)	4	25	Approx. $400 every 2 weeks	Case Management; Job Search and placement assistance; Substance Abuse/Anger Management Counseling.	General construction skills; Heavy machine operation; Lead abatement; Lumber mill operations; Basic employability; Leadership development; GED prep; Intro to computers; Environmental awareness and blight abatement; Driver's license training; After school tutoring; Commercial baking.

Source: BACSIC, June 2001

Appendix E

PENDING FEDERAL LEGISLATION

H.R. 99 - Open Competition and Fairness Act of 2001

On January 3, 2001, Arizona Congressman J.D. Hayworth introduced H.R. 99. The bill amends Section 8(e) of the National Labor Relations Act to prohibit discrimination against any bidder on a contract for a federally funded project where a requirement of entering into a collective bargaining agreement exists as a condition of performing work under such contract. As of July 2001, the bill has 24 cosponsors and has been referred to the Subcommittee on Employer-Employee Relations of the House Committee on Education and the Workforce.

H.R. 1360

On April 3, 2001, California Congressman George Miller introduced a bill in the House of Representatives to ensure that project labor agreements are permitted in certain circumstances. As of July 2001, the proposed legislation has 32 cosponsors, and has been referred to the House Committee on Education and the Workforce.

S. 740 - Government Neutrality in Contracting Act

On April 6, 2001, Arkansas Senator Tim Hutchinson introduced a bill in the Senate that codifies the E.O.13202 (without the subsequent amendments in E.O. 13208). As of July 2001, the bill has been referred to the Senate Committee on Governmental Affairs, and there are no cosponsors.

H.R. 1564 - Rebuilding America's Infrastructure Act

On April 24, 2001, Ohio Representative Dennis Kucinich introduced a bill that would establish a Federal Bank for Infrastructure Modernization authorized to make loans to any state, local government, Indian tribe, and regional or multi-state organization to develop transportation. Section 10 of the proposed legislation sets forth labor standards and criteria related to the voluntary use of project labor agreements on such transportation development. As of July 2001, the bill has been referred to the House Transportation and Infrastructure, Financial Services and Budget Committees and their respective subcommittees.

S. 962

On May 24, 2001, Arkansas Senator Tim Hutchinson introduced a bill that contains the same language as S. 740, and includes the E.O. 13208 amendments. As of July 2001, the bill had been read twice and referred to the Senate Committee on Governmental Affairs. There were no cosponsors of the bill.

H.R. 2055 - Government Neutrality in Contracting Act

On June 5, 2001, Texas Representative Sam Johnson introduced a bill in the House that contains identical language as S. 962 in the Senate.

Federal Acquisition Regulation Interim Rule – Executive Order 13202

On May 16, 2001, the Department of Defense, General Services Administration and NASA issued an interim rule with requests for comments that implement E.O. 13202, and applies to contracts awarded after February 17, 2001.[130]

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[60] See generally, Jeffrey L. Pressman and Aaron Wildavsky, *Implementation: How Great Expectations in Washington Are Dashed in Oakland...* (Berkeley: University of California Press, 1984).
[61] Jesse Lee Sloan, "Blacks in Construction: A Case Study of Oakland, California and the Oakland Public Schools Construction Program, 1960-1978," Master's thesis, San Francisco State University, 1979, pp. 49-50.
[62] Sloan, pp. 52-67.
[63] See generally, William G. Gould, *Black Workers in White Unions: Job Discrimination in the United States*, (Ithaca, New York: Cornell University Press, 1977).
[64] David Alexander, Legal Counsel, Port of Oakland, personal communication, May 15, 2001.
[65] Ibid.
[66] Jake Sloan, personal communication, April 27, 2001.
[67] David Alexander, personal communication, May 15, 2001.
[68] Port of Oakland Maritime and Aviation Project Labor Agreement dated February 2000, p. 4; Letter of Understanding re: Small Business Utilization Program dated February 28, 2000.
[69] Port of Oakland Project Labor Agreement Social Justice Program Progress Report, April 2001, p. 6.
[70] Joseph Dalaker and Bernadette D. Proctor, *Poverty in the United States, 1999*, Washington, DC: U.S. Census Bureau, September 2000, Table C, Percent of People in Poverty by State: 1997, 1998, 1999, p. xiii.
[71] Social Justice Program Progress Report, pp. 3-4.
[72] Jake Sloan, Principal, Devallier-Sloan, personal communication, April 27, 2001; David Alexander, personal communication, May 15, 2001.
[73] Jake Sloan, personal communication, July 2001.

[74] David Alexander, personal communication, May 15, 2001; Appendix A-5 of Agreement between the Port of Oakland and Parsons Constructors, Inc. dated April 17, 2001.
[75] David Alexander, personal communication, May 15, 2001.
[76] Memorandum of Understanding between the Oakland Army Base Workforce Development Collaborative, the Bay Area Construction Sector Intervention Collaborative for the Implementation of Construction Trade Related Employment and Training Activities, dated June 12, 2001, p. 1.
[77] Ibid.
[78] Ibid.
[79] Social Justice Program Progress Report, p. 7.
[80] Port of Oakland Social Justice Committee Meeting Minutes, April 25, 2001, pp.1-2.
[81] Appendix B outlines the evolution of federal legislation and case law related to labor-management relations, and Appendix C discusses state case law related to project labor agreements.
[82] E.O. 13202, 66 Fed. Reg. 11225 (Feb. 22, 2001).
[83] Ibid.
[84] Ibid.
[85] Ibid.
[86] Executive Order 13208, 66 Fed. Reg. 18717 (April 11, 2001).
[87] The White House, Statement by the Press Secretary, April 6, 2001.
[88] City of Oxnard letter dated March 6, 2001, from S. D. Gonzalez, Housing Director to Ventura County Building and Trades Council.
[89] Andrew Pridgen, "Unions win project labor agreement with school district," *The Vallejo News*, May 3, 1001, www.vallejonews.com, accessed July 5, 2001.
[90] Complaint for Declaratory, Injunctive and Other Relief, and Memorandum in Support of Application for Preliminary Injunction, filed April 26, 2001.
[91] Case No. 01-00902 (EGS), United States District Court, District of Columbia, Finding of Facts and Conclusions of Law and Preliminary Injunction, August 14, 2001, pp. 16, 21.
[92] Declaration of Isiah Turner, City Manager of the City of Richmond, April 25, 2001, pp. 1-2.
[93] Ibid.
[94] See generally, Neil Opfer and others, "Project Labor Agreements Research Study," Las Vegas, Nevada: University of Nevada Las Vegas, undated; Armand J. Thieblot, "Review of the Guidance for a Union-Only Project Labor Agreement for Construction of Wilson Bridge," Baltimore, Maryland: Maryland Foundation for Research and Economic Education, November 2000; Rea & Parker Research, "A Critical Analysis of the Fiscal Impacts of the San Diego County Water Authority-Emergency Storage Project Labor Agreement, http://agcsd.org accessed on July 5, 2001.
[95] See generally, Contra Costa Water District. "Labor Stability Study." Contra Costa County: the District, April 14, 2000; Parsons Constructors, Inc., "Los Angeles International Airport Construction Project Labor Agreement Cost Analysis;" undated;

Parsons Transportation Group, Inc., "Evaluation & Analysis of the Labor Relations Strategy for the Woodrow Wilson Bridge Project," November 10, 2000.

[96] "Labor Agreement Ban Won't End Fights," *East Bay Business Times*, March 2, 2001, p. 4, Frederick Kunkle, "Rancor Over Labor Deals Intensifies," *The Washington Post*, March 6, 2001, p. B-7.

[97] This argument was rejected by the California Supreme Court in *Associated Builders and Contractors, Inc. v. San Francisco Airport Commission*, 981 P.2d 499 (Cal. 1999). See Appendix C for further discussion of the case and the court's decision.

[98] Petitioner's Opening Brief, *Associated Builders and Contractors v. Metropolitan Water District*, Supreme Court Case No. S067485, filed March 19, 1998, p. 18.

[99] Ibid., pp. 6-7.

[100] Gerald Finkel, *The Economics of the Construction Industry* (New York: M.E.Sharp, 1997), p. 105.

[101] Ibid., pp.105-106.

[102] Ibid., p. 108.

[103] Herbert R. Northrup, and David O. Northrup, *Open Shop Construction Revisited* (Philadelphia:Industrial Research Unit, The Wharton School, University of Pennsylvania, 1984), p. 33.

[104] Henry H. Perrit, Jr., "Keeping the Government Out of the Way: Project Labor Agreements Under the Supreme Court's Boston Harbor Decision," *Labor Lawyer* 12, no.1 (Spring 1996), p. 72.

[105] Finkel, p. 105.

[106] Finkel, p. 105; Jeff Teather, personal communication, May 14, 2001.

[107] Ken Hedman, Principal Vice President, Labor Relations, Bechtel Construction Company, personal communication, May 11, 2001.

[108] Ibid.

[109] AGC 2000 Survey, p. 21.

[110] Jeff Teather, personal communication, May 14, 2001.

[111] Ibid.

[112] Ibid.

[113] David I. Levine, and others, "Carve-outs in Workers' Compensation: An Analysis of Experience in the California Construction Industry," (San Francisco: California Department of Industrial Relations, Commission on Health and Safety and Workers' Compensation, September 1999), pp. 12-14.

[114] Ibid. See generally, Ellyn Moscowitz, and Victor J. Van Bourg, "Carve-outs and the Privatization of Workers' Compensation in Collective Bargaining Agreements," *Syracuse Law Review* 46, no. 1 (1995), 1-60.

[115] *Building & Construction Trades Council of the Metropolitan District v. Associated Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218, 230 (1993).

[116] *Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645 (1982), at 656, citing 105 Cong. Rec. 17900 (1959), 2 Leg. Hist. 1433. See generally, *Jim McNeff, Inc. v. Todd*, 461 U.S. 260 (1983); *Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645 (1982).

[117] *Jim McNeff, Inc. v. Todd*, 461 U.S. 260 (1983).

[118] See *Morrison-Knudsen*, 13 NLRB Adv. Mem. Rep. ¶23,061 (NLRB-GS 1986) (agreement governing automobile assembly plant for Saturn Corporation); *International Union of Operating Engineers, Local 3* NLRB Case Nos. 27-CE27 & 28 (NLRB Reg. Dir. April 16, 1982) (project agreement covering construction of large fossil fuel power plant); *Associated Gen. Contractors v. Otter Tail Power*, 611 F.2d 684 (8th Cir. 1979) (agreement covering construction complex fossil fuel power plant).
[119] 507 U.S.218, 221 (1993).
[120] 507 U.S.218, 221, 227 (1993).
[121] 507 U.S.218, 221, 231 (1993).
[122] *Boston Harbor*, 507 U.S. 218, 231, citing S. Rep. 187, 86th Cong., 1st Sess., 28, 55-56 (1959); H.R. Rep. No. 741, 86th Cong. 1st Sess. 19-20 (1959).
[123] *Boston Harbor*, 507 U.S. 218, 231 (emphasis in original).
[124] Utah Code Section 34-30-14.
[125] Fresno Municipal Code Chapter 3, Article 1, Section 3-109.2.
[126] *Project Stabilization Agreement* dated May 16, 1996, at 1.
[127] *Associated Builders and Contractors, Inc. v. San Francisco Airport Commission*, 981 P.2d 499 (Cal. 1999).
[128] *Domar Electric, Inc. v. City of Los Angeles*, 885 P.2d 934, 940 (Cal. 1994) citing 10 McQuillin, Municipal Corporations (3d rev. ed. 1990).
[129] *Associated Builders and Contractors, Inc. v. San Francisco Airport Commission*, 981 P.2d 499, 514 (Cal. 1999).
[130] Federal Acquisition Regulation; Executive Order 13202; Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, 66 Fed. Reg. 27414 (proposed May 16, 2001) (to be codified at 48 CFR Parts 17,22 and 36).