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## Maryland Foundation for Research and Economic Education

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### REVIEW OF THE GUIDANCE FOR A UNION-ONLY PROJECT LABOR AGREEMENT FOR CONSTRUCTION OF WILSON BRIDGE

*Armand J. Thieblot, Ph.D.*

*November, 2000*

### EXECUTIVE SUMMARY

The U.S. Department of Transportation has published five “guidances” for agencies seeking to determine whether to impose a project labor agreement on a particular construction project. This report reviews the proposed imposition of a “union-only” PLA on the Wilson Bridge Project and examines whether the proposal is supported by the guidances established by the federal DOT. Putting legal and political considerations aside, the economic data compel the conclusion that a PLA on the Wilson Bridge would violate each of the DOT guidances and should not be imposed. The reasons can be summarized as follows:

1. No labor problems are documented to exist for which a PLA would be a cure, and the cure offered by a PLA to those problems if they did exist has not been shown to be effective.
2. The probability of labor-related delays on the Wilson Bridge project caused by strike, walkouts, or other unrest is very small, and the further probability that such unrest occurring would cause project completion delays approaches zero. Furthermore, whatever the probability is, it is not much lessened by a union-only PLA, which can’t reach off-site workers, and has also shown itself to be incapable of enforcing its own promises of labor peace.

3. The nature of the labor market in the vicinity of the Wilson Bridge is such that contractors are more likely to have trouble finding suitable personnel for the construction work and more likely to have to import “travelers” from other areas if there is a union-only PLA than if there is not.
4. The economic “benefits” of a PLA are illusory, actually representing substantial extra costs over what open competition of union and open-shop contractors would have, and would increase the Wilson Bridge project cost by somewhere between 4 and 16 percent—something on the order of \$100 million.
5. The economic costs of a PLA, in addition to higher wage rates and labor costs, include the cost of diminished competition, which alone might add as much as \$50 million to the project cost (over and above the extra \$100 million referenced above).

In short, there are no tangible benefits from a PLA in this instance, and there is no question but that the interests of the State are far better served by not having a union-only PLA than having one on the Wilson Bridge.

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# **REVIEW OF THE GUIDANCE FOR A UNION-ONLY PROJECT LABOR AGREEMENT FOR CONSTRUCTION OF WILSON BRIDGE**

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This study will review the guidance being offered the State of Maryland on the issue of whether to require all prospective bidders on the Wilson Bridge project to sign a union-only Project Labor Agreement (PLA) as a condition of participating. Such an agreement would bind all contractors and subcontractors, as a condition of performing work on the project, to recognize a union as their employees' bargaining representative, to require all their employees to pay dues to that union, to follow union practices in job assignments, to seek most or all new employees from union hiring halls, to subject their own "core" employees to rigid scrutiny not required of union members, and to pay into union fringe benefit plans in addition to their own. In exchange, unions would agree to promises of labor peace, elimination of paid coffee breaks, and certain other concessions.

This review is limited to the issues in terms of a set of five Department of Transportation (DOT) "guidances." These are a subset of questions similar in style and substance to those that have often been asked for the same purpose in other places since the expansion of union-only PLA began about ten years ago. They have been instrumental in PLAs having been required or denied for various public works in several states. A relatively large body of knowledge already exists in the public domain containing generic answers and analyses,<sup>1</sup> and continuing legal questions will be taken up elsewhere. So the purpose here is limited to relating the DOT guidance questions to facts pertinent to the labor and construction markets local to the Wilson Bridge project.

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<sup>11</sup> The most comprehensive general analysis is the 160-page study recently prepared (Fall, 2000) by Herbert R. Northrup and Linda Alario, *Government-Mandated Project Labor Agreements in Construction, the Institutional Facts and Issues and the Key Litigation: Moving Toward Union Monopoly on Federal and State Financed Projects*, still in pre-publication, but available from its senior author.

## REVIEW OF THE FIVE GUIDANCE QUESTIONS

The Department of Transportation “Guidance” on the use of public project labor agreements notes that in determining whether to require a PLA on a particular large and significant construction project, the contracting agency should consider five factors.

### **1) Does past experience with construction projects in the location where the project will be performed indicate that a PLA will be effective?**

Because there is no history of construction projects in or near the location of the Wilson Bridge project done under a union-only PLA, a direct answer to this question is, “No.”<sup>2</sup>

But there is a broader, implied question, and it is best answered in two parts:

1.1) Have there been patterns of detectable performance problems associated with ordinary contracting for large-scale heavy/highway projects in the locality of the proposed Wilson Bridge that might have been eliminated or cured by a union-only PLA?

1.2) Have union-only PLAs imposed elsewhere been effective, if “effective” is defined as solving similar problems so as to assure on-time and on-budget performance?

**Evidence of Past Problems:** There is no evidence of past or developing problems with large-scale heavy/highway projects done in this area that having had a PLA might have cured. The Building and Construction Trades Department (BCTD) of the American Federation of Labor (AFL) has estimated that a total of 846 heavy/highway projects have been done in the Washington SMSA and the two surrounding states between 1990 and 1999.<sup>3</sup> Their total cost exceeded \$13.4 billion. Of them, 146 were done by union contractors (17 percent) and 700 were done by open-shop contractors (83 percent). None were done under a union-only PLA. A summary follows:

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<sup>2</sup> The 1980 Ft. McHenry tunnel, the 1992 Orioles baseball stadium in Baltimore, and the 1998 Ravens football stadium in Baltimore were among those constructed under labor-stabilization pacts, but none of those pacts required nonunion contractors to sign any union agreements, to recognize any union as their employees’ bargaining representative, to require any employees to pay dues to any union, to follow union practices in job assignments, to seek most or all new employees from union hiring halls, to subject their own “core” employees to rigid scrutiny not required of union members, or to pay into any union fringe benefit plans, whereas the typical union-based PLA, including the one under consideration for the Wilson Bridge project, has all of these features.

<sup>3</sup> *Cockshaw’s Construction Labor News + Opinion*, V.30, No.5, May 2000.

**NUMBER AND SIZE OF LARGE SCALE REGIONAL HEAVY/HIGHWAY PROJECTS,  
1990-1999**

|          | NO. OF JOBS | TOTAL CONTRACT COST<br>(in \$billion) | AVERAGE JOB SIZE<br>(in \$million) |
|----------|-------------|---------------------------------------|------------------------------------|
| D.C.     | 287         | 4.6                                   | 16.0                               |
| Maryland | 226         | 3.1                                   | 13.7                               |
| Virginia | 333         | 5.7                                   | 17.1                               |
| Region   | 846         | 13.4                                  | 15.8                               |

BCTD data in *Cockshaw's*.

In this large record of past performance in the local area, there is no indication in available government statistics, in industry-related reporting in such as *Engineering News Record* (ENR), or in the popular press of any pattern of contracting difficulties. In particular, although it can well be supposed that some portion of \$13.4 billion of jobs came in over budget and late, there is no evidence to suggest that there were significant amounts of time lost due to labor unrest, strikes, or walkouts, nor to lack of a sufficiency of skilled craftsmen or laborers. Therefore, there is no reason to suppose that a PLA would have provided a cure.

Two indicators support this with local statistics:

- Construction work stoppage data compiled by the Bureau of Labor Statistics fails to note any major strikes or lockouts in any part of the construction trades in this region at any time during the entire period.
- Reports of labor violence, another indication of unrest, compiled for the years 1976–1996 by the National Institute of Labor Relations Research (NILRR) note minimal amounts of violence in any parts of the construction trades in this region:

**REPORTED INCIDENTS OF UNION VIOLENCE IN THE CONSTRUCTION INDUSTRY  
IN THE LOCAL AREA (DC-VA-MD) AND NATIONALLY, 1976–1996**

| UNION INVOLVED           | 1976-1989  |             | 1990-1996  |            |
|--------------------------|------------|-------------|------------|------------|
|                          | LOCAL AREA | ALL US      | LOCAL AREA | ALL US     |
| Building Trades Councils | 3          | 271         | 0          | 28         |
| Boilermakers             | 0          | 32          | 0          | 9          |
| Bricklayers              | 0          | 3           | 0          | 2          |
| Carpenters               | 3          | 118         | 2          | 4          |
| Cement Masons            | 0          | 2           | 0          | 0          |
| Drywall Installers       | 0          | 2           | 0          | 0          |
| Sheet Metal Workers      | 0          | 24          | 0          | 7          |
| Electricians             | 4          | 216         | 1          | 14         |
| Roofers                  | 0          | 47          | 0          | 1          |
| Ironworkers              | 0          | 78          | 0          | 23         |
| Plumbers                 | 0          | 53          | 0          | 3          |
| Laborers                 | 1          | 103         | 0          | 15         |
| Operating Engineers      | 2          | 39          | 0          | 23         |
| Painters                 | 0          | 21          | 0          | 7          |
| <b>TOTAL</b>             | <b>13</b>  | <b>1009</b> | <b>3</b>   | <b>136</b> |

Source: NILRR data, in Thieblot, Haggard, and Northrup, *Union Violence* (1999)

In the entire D.C.-Virginia-Maryland project area between 1976 and 1996, in any form of construction, there were only 16 incidents of violence found in the NILRR database (which recorded almost 10,000 in total for all unions during the period). Their relative scarcity in this area indicates little problem that a PLA could have alleviated.

**Open-Shop Contractor Capability.** A different form of problem has sometimes been suggested related to the fact that projects like Wilson Bridge are vast in size, considerably larger than the contracts usually associated with open-shop contractors, and may be beyond their capability or that of their nonunion workers. Matters relating to skills and capabilities of union and nonunion workers will be discussed later, since they are more closely related to the third guidance factor. But what about the matter of contractor size, ability, and sophistication?

Referring again to the 846 heavy/highway projects done in the local area between 1990 and 1999, note that the great majority (83 percent) of these large contracts were performed by open-shop firms. The average size of projects handled by open-shop

firms was the same order of magnitude as the average size of the far fewer projects done by union firms (\$14 million, open-shop; \$23 million, union). The two contractors who are presently performing the extensive repair and maintenance work on the Wilson Bridge (and are therefore intimately familiar with its challenges), Cianbro Corp. and McLean Construction, are both large, capable contractors, specifically experienced in bridge construction—and are both nonunion firms. Therefore few challenges to the general capabilities of open-shop contractors in this area exist that would not also challenge the union firms.

Furthermore, levels of local competence are relatively unimportant with respect to the lead positions (contract management, prime contractor, bridge-specialty subcontractors, underwater demolition, etc.). Major projects such as the Wilson Bridge will draw contractors from anywhere across the country. Weeks Marine, Inc., a large New Jersey firm reported to be interested in bidding on this project, for example, is said to be simultaneously preparing bids for work in New York harbor, a bridge in San Francisco, and a military base in Hawaii, and recently lost a large bridge job in San Mateo, California.<sup>4</sup> This is far from unusual spread.

At least 8 of the country's top 50 domestic heavy contractors, with over \$4 billion of revenue in this specialty in 1999, and all of whom do business throughout the world, are either open-shop contractors or double-breasted contractors with substantial open-shop operations. Three of the five largest contractors of any type, with sales of about \$34 billion in 1999, were similarly organized. Fluor Daniel, Inc., number 2, reportedly does 80 percent of its domestic work through its open-shop arm. It is no longer true, as it may have been some years ago, that only a few open-shop firms could reliably handle large projects. Both locally and nationally, they are now available in more-than-adequate number, and have the track records to prove it.

**Evidence of PLA Non-Effectiveness.** There is considerable evidence that where PLAs have been used in completing large projects in the past, they have been less than fully effective in assuring on-time and on-budget performance.

Although the exact number of union-only PLA projects is not cataloged, they have been spreading to other areas and to smaller and more diverse projects since the expansion of their use was boosted by the Boston Harbor Project PLA, in 1989. Nevertheless, there have been fewer than a hundred large ones for major private or public works in the past decade. Therefore it is surprising to find that out of this small number at least 14 union-only PLA projects have had cost overruns and at least 9 have had project delays significant enough to draw the attention of newspapers or ENR. What is even

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<sup>4</sup> ENR, May 22, 2000, p. 132

more surprising, given the infrequency of labor disputes in the construction industry already mentioned is the fact that in two cases, on the San Francisco International Airport project and on the Bath Iron Works project, the delays were caused by strikes—the very core of what union-only PLAs are intended to guarantee against.

The following is a characterization of the delays.<sup>5</sup>

**DELAYS ASSOCIATED WITH UNION-ONLY PLA CONSTRUCTION PROJECTS**

|   | PROJECT                             | CHARACTERIZATION OF EXTENT OF DELAY                                    |
|---|-------------------------------------|--|
| 1 | Bath Iron Works                     | Significantly late; delayed by 10-day walkout                          |
| 2 | Boston Central Artery               | Four years late, perhaps more.   |
| 3 | Boston Harbor                       | On schedule, but behind until 4 major facilities dropped from project. |
| 4 | Cleveland Federal Courthouse        | Months behind.   |
| 5 | Milwaukee, Miller Park              | Delays caused opening to be delayed for one full baseball season.      |
| 6 | Parma, OH, Justice Center           | Six months late  |
| 7 | San Francisco International Airport | More than 1 month late, made worse by \$1,000,000 strike.              |
| 8 | Seattle, Mariners Stadium           | Months late; delayed opening by about 1/2 season.                      |
| 9 | St. Louis Federal Courthouse        | 361 days behind schedule.  |

The next listing is of cost overruns.

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<sup>5</sup> In the interests of space, specific sources have not been cited. They are almost all from the popular press or ENR, and will be provided on request.

## COST OVERRUNS ON UNION-ONLY PLA CONSTRUCTION PROJECTS

|    | PROJECT                            | CHARACTERIZATION OF COST OVERRUNS   |
|----|------------------------------------|---|
| 1  | Boston Central Artery              | \$2.5 billion over estimate.  |
| 2  | Boston Harbor                      | Within budget, but only after \$187 million of facilities dropped from project.                 |
| 3  | Buffalo, Northwest Academy         | 20% over budget.  |
| 4  | California, Livermore Lab          | \$300 million (27%) over budget.  |
| 5  | Cleveland Browns Stadium           | \$21 million over.  |
| 6  | Cleveland, Federal Courthouse      | Within budget, but only after one entire floor of building eliminated from project.             |
| 7  | Cleveland, Gund Arena              | 25% over estimate.  |
| 8  | Detroit Tigers Stadium             | \$25 million over.  |
| 9  | Los Angeles, East Side Reservoir   | \$220 million overrun (11 percent).   |
| 10 | Parma, OH, Justice Center          | \$2 million over.   |
| 11 | Rochester, Mayo Civic Center       | Bids 36% over engineering estimate.   |
| 12 | Roswell Park, NY, Cancer Institute | 10% over. (Similar non-PLA project was 13% under.)  |
| 13 | Seattle Mariners Stadium           | \$197 million (60%) over estimate.  |
| 14 | St. Louis Federal Courthouse       | Unknown, but government put contractor into default, claimed damages of \$2 million for delays. |

In summary, based on the record and the tangible evidence, the problems that union-only PLAs are said to be designed to correct do not exist in troublesome or even detectable amounts in the labor area of the Wilson Bridge. And where PLAs have been implemented elsewhere in the past, they have not been effective in bringing projects in on time and under budget. Indeed, they have not even succeeded in preventing strikes and labor disputes, which they had guaranteed to do. This last has obvious significance with respect to the second guidance question, covered next.

## **2) Is there a probability of labor related delays in performance of the construction contract which would have a significant adverse impact on the mission of the contracting agency or operation of the facility?**

The probability of labor-related delays in the performance of heavy/highway construction contracts in this region is very small, and when strikes or work stoppages have occurred anywhere in recent years in this industry, they have tended to be short.

Strikes and lockouts associated with bargaining over wages, benefits, or conditions are the most usual form of labor dispute, and these occur only in union work. In 1999, there were 17 major work stoppages in the entire country, and none of them was in construction. The most recent major stoppage in heavy/highway construction involved the Teamsters Union and took place in Connecticut June 16–18, 1994. Although the average duration of a work stoppage in 1999 was 16 days, a majority lasted two weeks or less. These numbers are skewed by a few long strikes. The bi-modal stoppages (the two that occurred most frequently) were in the 1–2 day range, and the 7–9 day range. Thus, even in the unlikely event that a strike were to occur, it would have a high probability of being too short to impact project completion deadlines.

There are four reasons why invoking a union-only PLA with a no-strike clause would be a poor approach to eliminating even this possibility for the Wilson Bridge:

1. Highway/heavy work in this area is, as we have seen, 83 percent open-shop. With ordinary contracting, it is probable that fewer than one job in five would be affected by a no-strike clause at all.
2. In open competition for contracts and subcontracts in which union firms must compete on bid price with open-shop firms, unions are more likely to offer work-rule, wage, and labor peace concessions in market-recovery tactics to gain jobs than they are to strike for wages and benefits. The evidence for this exists in the many market-recovery programs that have, in fact, been undertaken by the building trades unions.<sup>6</sup>
3. A union-only PLA binds only on-site workmen. It does not affect material manufacturing, warehousing, or delivery to the job site, some or all of which might involve unionized workers who might become involved in labor disputes with their employer, often with the same or more impact on project completion time than strikes by on-site employees, especially if a dual gate is not used.

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<sup>6</sup> See, Herbert R. Northrup and Augustus T. White, "Subsidizing Contractors to Gain Employment: Construction Union 'Job Targeting,'" *Berkeley Journal of Employment and Labor Law*, Vol. 17, No. 1, (1996).

4. Union signatories to a no-strike clause do not necessarily honor it. As seen in the last section, two instances of strikes occurring under union-only PLAs have been noted already.

There is one variety of union-related labor dispute that affects open-shop contractors, and that is union organizing efforts in the modern form, such as “salting.” There have been a number of salting attempts in recent years, some of them in industrial construction work similar to heavy/highway work. There is no evidence of recent, organized salting efforts in the area of the Wilson Bridge project other than a failed attempt mounted by the IBEW (electricians) against VOS Electric, an open-shop contractor, in Franklin, VA in 1991. Elsewhere, however, salting has occurred and has been successful in disrupting open-shop practices.

Perhaps the most famous example is that organized by several unions against the large open-shop contractor, BE&K in International Falls Minnesota on a large project for International Paper Company. It involved a series of economic strikes, mass marches and demonstrations, property destruction and violence against individuals, gamesmanship with state-required licenses, and filing of dozens of unfair labor practice claims. But despite all the harassment, BE&K finished the work in time and within budget.<sup>7</sup>

Although salting continues and cannot be excluded as a possible occurrence on the Wilson Bridge project, the larger open-shop firms have learned to cope with it, transforming it from a problem for open-shop construction buyers to an expense for open-shop contractors.

In summary, there is no evidence pointing to the possibility, much less the probability, of construction delay resulting from labor friction on the part of either union or open-shop contractors on the Wilson Bridge project, and even if some delay did occur from this cause, it would be extremely unlikely to impact the mission of the contracting agency or the operation of the facility.

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<sup>7</sup> The details of both these examples can be found in Herbert R. Northrup, “Salting’ the Contractors’ Labor Force: Construction Unions Organizing with NLRB Assistance,” *Journal of Labor Research*, Vol. XIV, No. 4, (Fall, 1993).

### **3) Can labor organizations in the area provide a reliable source of skilled, experienced workers in all crafts needed on the job site for the duration of the project (taking into consideration other major construction work in the area)?**

Based on the volume of heavy and highway construction work done during the past ten years in the District of Columbia and its two surrounding states, it is highly doubtful that labor organizations in the area can provide a reliable source of skilled, experienced workers in all crafts needed on the job site for the duration of the project.

Wilson Bridge is expected to cost \$2.1 billion over six years, thereby adding \$350 million per year of new demand for heavy/highway labor. This will occur in a market that, unlike the Boston Harbor Project's Massachusetts market, is heavily to overwhelmingly nonunion.

Let us compare the Massachusetts labor situation to that in the Wilson Bridge area:

- According to the data compiled by the AFL's Building and Construction Trades Department, roughly 91 percent of the volume of heavy/highway work done in Massachusetts between 1990 and 1999 was union, and the total volume of that work was \$11.5 billion, indicating that unions in that state were able to staff about \$1.15 billion per year with union workers (including the new instant-unionists created by the Boston "Big Dig" PLA). To this base, the addition of \$350 million per year of new demand for heavy/highway work (the amount for the new Wilson Bridge project) would increase demand by about one-third, creating a large but not insurmountable task for union hiring halls to staff.
- By contrast, the data show that the D.C./Maryland/Virginia area has had little union activity in the heavy/highway sector, and the union/open-shop proportion of work done is almost the reverse of Massachusetts. Over the same 10-year span, only 42 percent of projects totaling \$1.3 billion were union in Maryland, 30 percent of projects totaling \$1.4 billion were union in D.C., and only 13 percent of projects totaling \$700 million were union in Virginia. Thus all union heavy and highway work in the three polities averaged \$340 million a year. To staff the addition demands of the Wilson Bridge project would require the unions to give up all of their existing work, or to approximately double their size.

These contrasts are tabled on the next page.

**MARKET SHARE COMPARISONS FOR HEAVY/HIGHWAY PROJECTS, 1990-1999  
AND COVERAGE POTENTIAL FOR A WILSON-BRIDGE SIZED PROJECT**

|   | REGIONAL TOTAL<br>MD-VA-DC |                 | MASSACHUSETTS  |                 |
|---|----------------------------|-----------------|----------------|-----------------|
|   | Open-Shop                  | Union           | Open-Shop      | Union           |
| No. of Projects   | 700                        | 146             | 88             | 202             |
| Pct. of Projects  | 83%                        | 17%             | 30%            | 70%             |
| Volume of Projects (in \$billions)                      | \$10.0                     | \$3.4           | \$1.1          | \$11.5          |
| Pct. of Volume  | 75%                        | 25%             | 9%             | 91%             |
| Annual Avg. Volume (in \$millions)                      | \$1,000                    | \$340           | \$110          | \$1,150         |
| New Demand, Wilson-Bridge Sized Project (in \$millions) | \$350                      | \$350           | \$350          | \$350           |
| Labor Force Expansion Indicated                         | 35%                        | double          | times 4        | 30%             |
| Times Coverage, and Ability to Cover New Demand         | 2.8<br>adequate            | < 1.0<br>unable | <1.0<br>unable | 3.0<br>adequate |

BCTD data in *Cockshaw's*.

The table shows that union firms in the labor-market area of the Wilson Bridge project could be anticipated to have as much trouble finding an adequate supply of skilled craftsmen and laborers as open-shop firms would have in Massachusetts. At the very least, they would have to bring in large numbers of union "travelers" from more highly union areas of the Northeast or Midwest, such as from New Jersey, or Ohio, or even farther, and do it for even routine skills.

On the other hand, open-shop contractors have a much larger, experienced employee base in this area. Of the heavy/highway projects done in Maryland in the 1990s, 58 percent were open-shop, valued at \$1.8 billion; in D.C., 70 percent were open-shop, valued at \$3.2 billion; and in Virginia, 87 percent were open-shop, valued at \$5.0 billion. Thus, the open-shop history with projects of this type shows experience with staffing an average of \$1.0 billion of projects a year, close to the \$1.15 billion that has been staffed by the union side in Massachusetts.

This clearly shows that the open-shop side would have relatively little difficulty in staffing up for the anticipated 35 percent increase in demand, just using the traditional nonunion labor force accustomed to doing heavy/highway work. This disguises two additional advantages to open versus union-only PLA contracting for the project

- Under open contracting, competition for work is equally available to both open-shop and union firms, expanding the labor pool by that amount. Of the work on the 1996 Jack Kent Cook stadium for the Washington Redskins, for example, built without any sort of project agreement and at market labor rates, approximately half was won and done by union firms in open competition, and half by open-shop firms.
- When extra demand occurs, open-shop heavy/highway firms can draw from the much-larger regional construction workforce available in other types of construction (building, commercial, industrial, possibly even some homebuilding) for unskilled and semi-skilled labor, whereas union contractors or contractors working under a PLA have to follow job assignment rules that generally require skilled specialty workers (electricians, for example) to do not only their own skilled work, but also much of the unskilled and even menial work associated with their trade. Skilled workers are always in shorter supply.

In summary, there is nothing in the structure of the local labor market that would prohibit adequate staffing for the Wilson Bridge project if built without a union-only PLA. Conversely, there is much in the structure that indicates a union-only PLA would inhibit adequate staffing and make the project more difficult and expensive to complete.

The final two guidance questions will be treated together, since they cover essentially the same point.

**4) Does the contracting agency benefit from uniform work rules and working conditions and established procedures for resolving labor disputes with no strike/no lockout protections? 5) Does the contracting agency benefit from the increased stability and labor peace that derives from greater labor-management cooperation?**

These questions both speak to a more fundamental issue than their included specifics imply, and should be broadened to include fuller coverage. A fair restatement of them, given that the State of Maryland (in its role as buyer of construction services) has no overriding interest in tidiness or uniformity for its own sake, is this: what are the tangible and economic benefits to the State of a PLA for the Wilson Bridge project, and what are their costs?

**Benefits claimed.** The details of what would be in a Wilson Bridge union-only PLA are unknown, but in general, the majority of the economic benefits offered by PLAs are concessions with respect to labor peace, uniform work rules, and working conditions falling into one or more of seven categories:

1. no strike/no lockout protection
2. regular work hours or work days and elimination of paid coffee breaks or other selected down-time mandated by union contracts
3. elimination of overtime premiums greater than those required by state or national law, or of special bonuses for four 10-hour days v. five 8-hour days
4. minimization of show-up time minimums and premium pay for weather make-up days
5. predetermination of, and consistency in, the number of holidays, and whether they are paid
6. loosening of allowable apprenticeship-use levels
7. reduction of workers compensation costs through collectively bargained cost controls such as alternative dispute resolution (ADR) programs

Variations on these concessions, and similar ones, are commonly offered by unions in exchange for union-only PLAs. They are valuable, and have positive economic benefits to contracting agencies, but only when the alternative to PLA contracting is 100-percent union contracting. The economic benefits they offer transform themselves to additional costs when the alternative to PLA contracting is open-shop or mixed union and open-shop contracting. In the area of the Wilson Bridge project, the likelihood of the contracting alternative to PLA contracting being 100-percent union contracting, is zero.

Although a detailed review of engineering specifications and estimates for the Wilson Bridge project and of the particulars of concessions offered by its proposed union-only PLA would be necessary to evaluate the exact economic impact of concessionary differences, a rough idea of what might be expected is provided by estimates and analyses for construction of a heavy/highway project in southwestern Alaska.

In 1996, the Chugach Electric Association commissioned the author to perform a cost review for contracting alternatives for the Northern Intertie Project, a 500kv line 100 miles long, with various supporting transmission facilities—about a \$50 million project.<sup>8</sup> Engineering estimates were available showing that a 46-man crew would be required for building foundations, pouring anchors, clearing right-of-way, erecting structures, stringing wire, and crossing rivers regardless of the labor conditions under which the project was to be built, although the crews might be staffed, assigned, and paid differently under different contract terms. Also available were details of a concessionary labor agreement (called the “Bradley Lake Agreement,” a typical union-only PLA) being offered the company in exchange for union-only bid restrictions.

**COST COMPARISONS AND SAVINGS AVAILABLE FROM DIFFERENT CONTRACT CONDITIONS, CONSTRUCTION OF 500 KV POWER LINE, ALASKA, 1996**

|  | COST (\$)    | PERCENT SAVINGS | PERCENT INCREASE |
|--|--------------|-----------------|------------------|
| Standard union (IBEW) contract   | \$50,496,028 | 0               | 23.2%            |
| Concessionary union contract (“Bradley Lake Agreement”)  | \$47,703,885 | 5.5%            | 16.3%            |
| Open-shop, with all-union prevailing rates and state-required job assignment practices                                   | \$46,178,450 | 8.6%            | 12.6%            |
| Open-shop, with union rates for skilled workers and foremen and high-range national averages for operatives and laborers | \$40,990,081 | 18.8%           | 0%               |

Data in author’s possession

As the table shows, concessionary agreements can lead to savings, in this example, a total of about 5.5 percent of project cost, but they are savings compared with what the union costs would have been without the concessions. Much greater savings are possible, up to three times more, when open-shop practices are followed and at least

some open-shop rates are used. Viewed from the other direction, if open-shop costs were taken as the base, depending on whether open-shop firms were required to pay all-union wage rates by Davis-Bacon or other prevailing wage laws, or a mixture of union and open-shop wages, the increases attributable to a union-only PLA with substantial concessions would have raised total project cost by somewhere between 4 and 16 percent—in the ballpark of \$100 million for a project the size of Wilson Bridge.

These figures are a rough estimate at best, but it should be clear that concessionary “savings” associated with a Wilson Bridge (or any other) union-only PLA are illusory, since there is no possibility that without them the project would be bid and done by 100-percent union contracting, free from open-shop competition. Indeed, the “savings” are more properly viewed as substantial added costs when the (realistic) alternative to a union-only PLA is ordinary competitive bidding.

**Costs expected.** In addition to the costs seen above, disguised as benefits, there are others deriving from decreased competition. It should be no secret that open-shop contractors feel that a union-only PLA is a great imposition on them, and a curtailment of their right to manage their own businesses as they see fit within the boundaries provided by law. Despite the fact that open-shop firms can still generally under-price union ones through more efficient labor utilization even when required to use union rates and work rules, despite the fact that a union hiring hall may actually give them (especially if they are from outside the local area) an easy answer to the difficult task of finding their own personnel, and despite the fact that a higher job-cost base will yield them more profit at the same margin for the same effort, many feel, rightly or wrongly, that they would rather pass work by, than sign a project labor agreement.

In the Spring of 2000, the Weber Merritt Company, an Alexandria communications consulting firm, conducted a telephone survey of “a substantial proportion” of all contractors, union and open-shop, who had performed a combined total in excess of \$1 billion worth of public infrastructure projects in the Washington D.C. metropolitan area during the preceding three years. Two responses are of interest: 1) 13 percent of firms surveyed said they were signatories to labor union agreements; 2) 70 percent of firms surveyed said they would be less likely to bid for public construction work if the bid specifications required them to sign a project labor agreement with a labor union in order to perform the work. In combination, this means that four out of five D.C.-based public-works contractors who were not already signatories to a union labor agreement would be less inclined to bid because of a PLA requirement.

It might also be noted that the two large, open-shop contracting firms currently doing the maintenance and repair work on the Wilson Bridge, mentioned earlier, have said in

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<sup>8</sup> “Cost Review for Contracting Alternatives for Transmission Facilities in Alaska,” (Chugach Electric Association Contract No:95233), January 1966. Copy available from the author.

separate interviews that they would be interested in bidding on the new bridge construction, but would decline to do so if the project were subject to a union-only PLA.

There is, of course, no hard information here, as the matter has not been put to the test, local open-shop contractors not yet having actually had to fall on their swords. In other areas, however, there is a substantial literature on two related factors: 1) the number of bidders on PLA projects is typically substantially lower than the number of bidders on open-competition projects;<sup>9</sup> 2) the costs of a diminished number of bidders is calculable and substantial. A representative example is found in the analysis done by Professor Paul G. Carr, an engineering and management consultant in New York State, who performed a PLA analysis for the Jefferson County Courthouse Complex project, submitted to Jefferson County Board of Legislators on September 14, 2000.<sup>10</sup>

Professor Carr first reviewed the data for an older PLA project in Roswell Park, in Buffalo, and did a study to determine if there was a correlation between the number of bidders and the bidders' impact on bid prices:

It was found that there existed a significant correlation between the number of project bidders and the bid price variance. This study suggested the rate of cost increase for each bidder lost is approximately 3.45%.

Next, Professor Carr performed a correlation analysis on 53 projects recently done in the market area of contractors that would likely bid on the Jefferson County Courthouse complex to see if there was a statistically significant relationship between the number of bidders and the cost of the project relative to the project budget:

The correlation indicates that of the 53 project bids investigated there is a 98.9% chance (1.000–0.011) that the relationship between these two factors did not occur by chance alone. It also indicates that the relationship is a negative correlation (–0.347). This negative correlation indicates the higher the number of bidders participating, the lower the bid price.

The next question became, what is the relationship and what is the prediction of the impact on the cost, if any, on the county project. For this, the data were subjected to a linear regression analysis to determine the predictive impact of the relationship:

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<sup>9</sup> Of the various reviews of contractor bidding patterns on PLA work, one frequently cited by PLA proponents is that of the Southern Nevada Water District PLA, which is praised for having avoided cost overruns and having attracted open-shop bidders. Other more recent studies of this project, however, have indicated that even there, the number of bidders was lower than would have been expected in comparison with the number who had bid on other non-PLA projects constructed during the same time period.

<sup>10</sup> Copy in the author's possession.

The regression model tells us that the impact for each bidder that is lost from the competition will result in a 3.228% increase in project cost. This evaluation sample represents 53 separate contracts, with bids representing the results of 241 bidders.

Finally, Professor Carr analyzed the potential cost impact on Courthouse project based on a survey of local contractors to see how many might decline to bid because of the PLA requirement. His study suggested that with a PLA requirement, based on the diminished number of bidders alone, the project would face a 12.92 percent increase in general construction project cost and a 3.23 percent increase in the plumbing and HVAC contracts, a possible cost increase of \$955,000 on a \$17 million job—5.6 percent, overall.

Professor Carr also observed that many of the similar projects in the area of the courthouse complex had been bid and won by union contractors without a PLA:

The actual conditions that will exist at bid time are impossible to predict; however, there is substantial logic to the argument that certain, highly competitive local contractors will exclude themselves from the bidding with the enactment of a PLA [with the cost consequences seen]. The absence of a PLA, however, will neither discourage nor effectively exclude any bidder.

To relate these matters to the Wilson Bridge project, toward which a substantial number of local contractors have indicated at least the possibility of excluding themselves from the bidding with the enactment of a union-based PLA, it might be noted that the loss of only one or two on each part of the contract might result in extra costs hidden in the resulting lowest bids of 2 or 3 percent of project cost—an amount which is on the order of \$50,000,000 (over and above the previously referenced \$100,000,000).

## **CONCLUSIONS AND RECOMMENDATIONS**

The imposition of a union-only PLA by the State of Maryland on the Wilson Bridge Project has many serious problems of a legal and political nature associated with it. But even if it did not have such external problems, the composition and state of the labor market in the vicinity where the project will be completed are such that to require a union-only PLA is contra-indicated by all five of the guidances provided by the Department of Transportation.

1. No labor problems are documented to exist for which a PLA would be a cure, and the cure offered by a PLA to those problems if they did exist has not been shown to be effective.

2. The probability of labor-related delays on the Wilson Bridge project caused by strike, walkouts, or other unrest is very small, and the further probability that such unrest occurring would cause project completion delays approaches zero. Furthermore, whatever the probability is, it is not much lessened by a union-only PLA, which can't reach off-site workers, and has also shown itself to be incapable of enforcing its own promises of labor peace.
3. The nature of the labor market in the vicinity of the Wilson Bridge is such that contractors are more likely to have trouble finding suitable personnel for the construction work and more likely to have to import "travelers" from other areas if there is a union-only PLA than if there is not.
4. The economic "benefits" of a PLA are only benefits with respect to what costs would have been under 100-percent union contracting, where they might cut the total by something like 5–6 percent. But since the 100-percent union contracting alternative is not a possibility, those "benefits" are illusory, actually representing substantial extra costs over what open competition of union and open-shop contractors would have, and would increase the Wilson Bridge project cost by somewhere between 4 and 16 percent—something on the order of \$100 million.
5. The economic costs of a PLA, in addition to higher wage rates and labor costs, include the cost of diminished competition, which alone might add as much as \$50 million to the project cost (over and above the previously referenced \$100 million).

This is not an exhaustive list, nor an engineering exercise. But it is a fair response to the Department of Transportation Guidances, and a ball-park estimate of the increased cost of requiring a union-only PLA for the Wilson Bridge. Since there are no tangible benefits, there is no question but that the interests of the State are far better served by not having a union-only PLA than having one.