



**Worcester
Municipal
Research
Bureau**

AN INDEPENDENT VOICE FOR RESPONSIBLE GOVERNMENT

PROJECT LABOR AGREEMENTS ON PUBLIC CONSTRUCTION PROJECTS: THE CASE FOR AND AGAINST

Report No. 01-4
May 21, 2001

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EXECUTIVE SUMMARY

Based on an extensive analysis of the literature, legal opinions, and Congressional testimony on the use of Project Labor Agreements (PLA's) on public construction projects, as well as interviews with proponents and opponents of their use, the Research Bureau makes the following observations:

- Project Labor Agreements, which are prehire collective bargaining agreements setting the terms of employment on an entire construction project, have been increasingly pursued by unions working on public projects since the U.S. Supreme Court upheld their legality under Federal law in the Boston Harbor case (1993).
- PLA's are not needed to secure "fair" wages to workers on public projects, since such wages are already guaranteed under "prevailing wage" statutes in Massachusetts and other states.
- The chief benefit that PLA's on public projects offer to the public is a guarantee of labor harmony, i.e., a pledge to avoid strikes and speedily resolve interunion disputes during the course of the project. (Occasionally, however, such pledges have been violated.)
- The guarantee of labor peace is evidently purchased at the price of reducing the opportunity for nonunion contractors to compete for work on a project, since even if they should be awarded such work, the contractors are then compelled to operate under union rules governing such matters as staffing requirements that undermine the economies that might ordinarily give such contractors an advantage. Thus PLA's tend to constrict the number of bidders on a project compared with those without PLA's, and are likely to reduce the savings to the public that would accrue if nonunion contractors who are employed were allowed to follow their customary methods.
- Additionally, PLA's tend to discriminate against nonunion workers, by requiring them if they are hired on a project either to join the union or else to contribute agency fees to the union as well as pay into its benefit funds, from which they are unlikely to derive benefits themselves.
- Because most smaller contractors are nonunion, PLA's tend to have a detrimental effect in particular on the opportunities available to small businesses.
- Under Massachusetts State court decisions, PLA's are allowable under state competitive bidding projects only for projects of large scope and complexity. It

seems doubtful that the City Manager's recent decision to order PLA's for the North and Vocational High School construction projects will meet this test.

INTRODUCTION

This report examines the pros and cons of employing Project Labor Agreements for public construction projects. In that light it then briefly considers the rationale for the City Manager's recent decision to use PLA's for the construction of Worcester's North High School and the Vocational High School.

I. Project Labor Agreements: Background

A. Definitions

A PLA is a contractually binding agreement negotiated between a construction project owner, developer, and the Building and Trades labor unions. It is a form of pre-hire agreement, negotiated before any employees are hired, and becomes part of the bid specification that all winning contractors must follow. Once negotiated, the PLA remains effective for the duration of the project.

While the language of every PLA is different, PLA's typically guarantee uniform wages, work rules, and benefits across the multiple crafts employed on a project.¹ In addition, PLA's provide grievance procedures for settling disputes, include no-strike and no-lockout provisions, and usually require that workers be hired through local union halls. In a few instances PLA's have allowed contractors to keep all of their regular employees² or a percentage of them (based upon how many are hired from the union hall), without requiring that they join the union.³

B. The Construction Industry at a Glance

Construction is a complex industry comprising building and renovation projects on residential, commercial, industrial and governmental facilities as well as highways, bridges, and airports. General contracting firms commonly depend upon

¹ As will be noted later on, the wage guarantee may be superfluous in states like Massachusetts that have prevailing wage laws for public construction projects.

² For instance, the Los Angeles school department developed a PLA for 6,700 maintenance contracts worth over \$1.8 billion in which non-union contractors were allowed to use their own employees who had already been on the contractor's payroll for at least 50 days. However, no such concessions are reported to have been included in any Massachusetts PLA.

³For example, a PLA used in constructing the new Denver airport (completed in the mid-1990's) did not require nonunion contractors to hire through union halls. The PLA, negotiated with the Colorado Building and Construction Trades Council (the unions) and the Building Chapter of the Associated General Contractors (an association including unionized and non-union contractors), allowed both unionized and nonunion firms to work on the project.

subcontractors to supply workers with specialized skills. A single project may require integrating the activities of workers who labor under diverse wage and benefit structures.

By nature, the construction industry faces the challenge of maintaining a force of disparately skilled workers in a highly variable labor market. Employment is sometimes short-term or project-based, and fluctuates according to season and the larger nationwide economic cycles. Collective bargaining has traditionally been widely pursued by workers in such unstable industries seeking to insure fair and stable wages and benefits. Recent decades, however, have witnessed a sharp decline in the percentage of construction workers belonging to unions. Whereas as late as 1947, 87.1 per cent of construction workers belonged to unions, by 1973 that figure had dropped to 40 per cent of employed workers, and by 1998 only 17.8 per cent were union members.⁴ The construction industry remains particularly vulnerable to labor-management conflict, however, because of rivalries between union and nonunion workers, as well as among various craft unions themselves.

C. History of PLA's

Advocates of PLA's represent them as an organizational tool designed to manage the uncertainties and complexities of large-scale construction projects, to the mutual benefit of all the contracting parties. Project Labor Agreements have been used in the construction industry since the 1930's and 1940's on large public and private projects such as hydroelectric dams and atomic energy facilities.⁵ In the 1960's and 1970's, they were used in the construction of Disney World, the Alaska Pipeline, among other private and public sector projects. The Federal General Accounting Office (GAO) reports that PLA's have been used in all 50 states and the District of Columbia.⁶ However, those PLA's entered into by government agencies during the first half of the twentieth century typically sought only to establish uniform labor standards without imposing requirements that workers on a project belong to a union

⁴ Representative Gary Miller (U.S. Rep. from California, former construction contractor), Testimony to Hearing before the Subcommittee on Employment, Safety, and Training of the Committee on Health, Education, Labor, and Pensions, United States Senate. 106th Congress, June 5, 2000, "Examining if Project Labor Agreements and Their Use of Public Funds are Really in the Best Interest of Taxpayers" (U.S. Government Printing Office), p. 6 (citing the Bureau of Labor Statistics); Baskin, p. 116.

⁵ Henry H. Perritt, Jr., "Keeping the Government Out of the Way: Project Labor Agreements Under the Supreme Court's Boston Harbor Decision," *The Labor Lawyer* 12:1 (1996), p. 69; Government Accounting Office, "Project Labor Agreements: The Extent of Their Use and Related Information." *GAO Report to Congressional Requesters* GAO/GGD-98-82 (1998), p. 4.

⁶ Government Accounting Office, "Project Labor Agreements," p. 6.

(requirements that would have been superfluous when most construction firms were unionized).⁷

In recent years PLA's incorporating union requirements have been ardently pursued by construction unions facing increasing competition on public works projects from non-unionized, or "open-shop," contractors, as has been the case in Massachusetts (previously a union bastion) as well as nationwide for the past couple of decades.⁸ The current proliferation of PLA's on public projects originates with the Boston Harbor cleanup project, undertaken in the early 1990's as a result of a U.S. District Court order under the Federal Water Pollution Control Act. The Massachusetts Water Resources Authority (MWRA) had primary responsibility for completing this multi-million dollar, ten-year project. The court order had been issued at a time when the union share of construction projects in Massachusetts had declined considerably. Construction unions saw the harbor project as "a major solution to the declining market for their services, especially as the 1980s boom in high rise office building construction ... was ending." After the unions "exerted considerable political pressure at the state and local governmental levels to ensure" that the cleanup would be an "all-union project," the MWRA "selected ICF Kaiser engineers, then one of largest union contractors," as the project manager. (Previous labor disputes had caused delays in the early phases of construction, and the Boston area at the time was still heavily dominated by construction unions.)⁹ Kaiser in turn suggested that a PLA be established for the project and adherence to it be made part of the bid specifications. The PLA was made between the unions and Kaiser "on behalf of" the MWRA.¹⁰ The Boston Harbor PLA has been described as "path-breaking" in that under its terms and those of subsequent PLA's adopted on public works projects "government bodies have required implementation of the agreement as part of the work specification," so that bidders are required to sign and adhere to an agreement imposing union hiring and work rules which they had no part in negotiating.¹¹

In 1990 the Associated Builders and Contractors of Massachusetts and Rhode Island (ABC) challenged the MWRA's Project Labor Agreement in the U.S. District Court

⁷ Maurice Baskin (partner, Venable, Baetjer, Howard & Civiletti, LLP [Washington, DC]), "The Case Against Union-Only Project Labor Agreements on Government Construction Projects," *Journal of Labor Research*, 19.1 (Winter, 1998), p. 116.

⁸ Herbert R. Northrup and Linda E. Alario, "Government-Mandated Project Labor Agreements in Construction, the Institutional Facts and Issues and Key Litigation," *Government Union Review*. 19.3 (Vienna, VA: Public Service Research Foundation, 2000), pp. 9-11, 57-8. The authors quote one former official of the Plumbing and Pipe Fitting Trades Union explaining the purpose of PLA's as being "to fight the growing non-union element throughout the country" (p. 57).

⁹ Baskin, p. 119.

¹⁰ Northrup and Alario, p. 15; Pettit, p. 77.

¹¹ Northrup and Alario, p. 12. We have not been able to ascertain whether this requirement was unprecedented in previous PLA's on public projects, but the sheer magnitude of the Boston Harbor project certainly made it noteworthy, while its subsequent legitimization by the Supreme Court encouraged its emulation.

for eastern Massachusetts. They argued that state sponsorship (through the MWRA) of a PLA violates the Federal National Labor Relations Act (NLRA) and the Employee Retirement Income Security Act. They also charged that the PLA violated the 14th Amendment and Federal and state antitrust laws.¹² After the District Court ruled in favor of the MWRA, the U.S. Court of Appeals overruled the District Court's decision by holding that such a PLA is not allowed under the National Labor Relations Act.

In 1993 the U.S. Supreme Court unanimously reversed the Appeals Court's decision, holding that the PLA is not preempted by the NLRA because sections 8(e) and 8(f) of that act (as amended in 1959) made special provision for the construction industry. Section 8(e) allows employers to require all contractors to be bound by agreement terms, and 8(f) permits construction employers to enter into pre-hire agreements. These two sections, according to the Supreme Court ruling, were "intended to accommodate" such conditions specific to the construction industry as "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."¹³ The Court also ruled that the MWRA and the State were not acting in a "regulatory" way, because the State had not enacted a regulation requiring that PLA's be used. Instead, the Court treated the MWRA as a private purchaser of products and services in the market, acting in a proprietary manner. Under the ruling, even though the NLRA does not specifically authorize governmental bodies to institute PLA's under sections 8 (e) and (f), they are allowed to do so when acting as purchasers of services in the construction market just as private purchasers do.

Nationwide, this decision was seen as a "watershed" case that cleared the way for other public authorities to consider using PLA's on their construction projects. In Massachusetts, PLA's were subsequently adopted for the \$1.2 billion modernization of Logan Airport, "where open shop contractors had previously performed a considerable share of the work," and the Central Artery Tunnel Project, now known as the "Big Dig."¹⁴

Notwithstanding the Boston Harbor decision, other legal ramifications of PLA's are still unresolved. Opponents note that the Supreme Court ruled only narrowly by deciding that the Boston Harbor PLA did not fall under NLRA preemption clauses, and argue that additional issues such as antitrust and 14th Amendment violations are

¹² Ibid., p. 78.

¹³ Building and Constr. Trades Council v. Associated Builders and Contractors of Mass./ Rhode Island, 113 S. Ct. 1190 (1993).

¹⁴ Northrup and Alario, p. 20.

still relevant. (These issues, which the plaintiffs initially outlined in the lower courts, never made their way to the Supreme Court.) However, most legal challenges to the use of PLA's on public construction projects since the Boston Harbor decision have focused instead on various states' competitive bidding statutes, an issue that will be discussed later in this report.

The use of PLA's on state- and federally-owned construction projects has also generated considerable controversy on policy grounds as distinguished from legal ones. In the last ten years, the governors of four states (New Jersey, Nevada, Washington, and New York) have issued executive orders permitting the use of PLA's, providing that State agencies can show an appropriate need and demonstrate consistency with state competitive bidding statutes.¹⁵ In 1997, President Clinton announced his intention to issue an executive order requiring Federal agencies to consider using PLA's on construction contracts of a certain size. After the announcement garnered criticism, including proposed bills to halt the order if issued, the President shelved the executive order plan. He opted instead to issue an executive memorandum encouraging (rather than requiring) Federal agencies to consider PLA's on projects costing over \$5 million. Despite the more limited character of the memo, it too incurred widespread criticism.

On February 17, 2001, President George W. Bush effectively revoked his predecessor's memorandum by issuing an executive order prohibiting PLA's on Federally funded or assisted construction projects. President Bush described his order as necessary to promote "economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects."¹⁶ Besides rescinding the 1997 memo, this executive order also overturned President Clinton's 1993 executive order that in turn had revoked President George Bush Sr.'s executive order in 1992 limiting the use of PLA's.

Immediately after President Bush's February memo, nonunion contractors expressed interest in bidding for the \$800 million in work left to be done on the Central Artery project. However, in response to pressures not only from unions but from state officials including then-Governor Cellucci, Senator Kennedy, and Boston Mayor Menino, the Bush administration indicated in April that the Big Dig (along with the ten or so other Federally-funded projects already underway nationwide) would be exempted from the ban on PLA's.¹⁷

¹⁵ Associated General Contractors of America, "An Analysis of Public Owner Construction Project Labor Agreements" (1998), pp. 24-25.

¹⁶ President of the United States, Executive Order 13202 of February 17, 2001, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations."

¹⁷ "Waiver Seen for Big Dig Labor Pact," *Boston Globe*, April 6, 2001, p. A1. According to the *Worcester Telegram and Gazette*, Massachusetts officials had lobbied for the Administration to exempt the Big Dig from the PLA ban on the

Leaving aside unresolved arguments over the legal status of PLA's, the major issues concerning them involve questions of cost, efficiency, and fairness. Regarding cost and efficiency issues, we have found no systematic studies directly comparing **public** construction projects with and without PLA's. Such studies would be difficult to produce, given the diversity of such projects and the consequent variety of factors that can affect their cost.¹⁸ Nonetheless, there is a wealth of information available on PLA's which should facilitate an informed decision on the advisability of adopting them.

II. Economic Arguments: For and Against

A. General labor terms and conditions under a PLA

Arguments For

Proponents of PLA's for public construction projects highlight the economic benefits of systematizing and formalizing the labor terms under which the construction project is completed. Such streamlining is said to promote efficiency and lower costs, especially on very large projects. Wages, benefits, work rules, grievance procedures are spelled out for all contractors and subcontractors. This saves time and money in having to renegotiate terms for each subcontractor,¹⁹ and prevents jurisdictional disputes among the different crafts working on a project, or expeditiously resolves such disputes when they do arise.

ground that the PLA has insured that the project, one of the largest ever undertaken in this country, was free from labor strife ("Contractors Lobby for End of Big Dig's Union Rules," March 11, 2001, p. A3.) Prior to the exemption, the AFL-CIO Building and Trades division was planning to sue in Federal court to prevent the Administration from eliminating the PLA for the remaining construction work yet to be done, since the original contract had mandated the use of a PLA for the entire project. ("Unions to Test Big Dig Labor Pact in Court," *Boston Globe*, March 28, 2001, p. B1).

¹⁸ This difficulty is acknowledged by both PLA proponents and opponents, according to the GAO; see "Project Labor Agreements," p. 3. In 1978 William S. Speed, a cost engineer with experience in both unionized and nonunion firms, produced a systematic study comparing the labor cost of construction projects with and without PLA's. Speed found that PLA's tend to reduce costs in comparison with wholly unionized, or "closed shop," projects (presumably because of concessions that unions made in order to win the agreements), but that PLA projects are more costly than open-shop ones (largely on account of differences in benefit costs and work rules). However, since Speed's study does not single out PLA's on **public** projects (where compensation is partly determined by prevailing wage statutes, and where managers may have less of an incentive to "bargain hard" than in strictly private projects), and because it was produced before much of the expansion of open-shop contracting and the associated increase in the productivity of open-shop workers that have occurred in recent decades, his findings, although pertinent, are not simply determinative of the issue under review here. See William S. Speed, C.C.E., "Construction Labor Cost Comparison of Open and Closed Shop Construction Projects," presented at the 22nd Annual Meeting of the American Association of Cost Engineers (1978), reprinted in Northrup and Alario, pp. 140-159.

¹⁹ Jolie M. Siegel, "Comment: Project Labor Agreements and Competitive Bidding Statutes," *Journal of Labor and Employment Law*, Winter, 2001, pp. 2-3 of Lexis-Nexis printout.

According to the AFL-CIO Building and Construction Trades Department and the National Constructors Association (an association of union contractors), project labor agreements offer a major advantage to contractors by enabling them to know before they submit their bids what their employment costs will be throughout the life of a project.²⁰ Since construction contractors win public work through competitive bidding, it is important to forecast costs accurately, and the “economic inefficiencies of overbidding and underbidding” can be avoided through a PLA.²¹ Villanova law professor Henry H. Perritt, Jr., in a study funded by the AFL-CIO and the National Constructors Association, stresses that inaccurate bidding because of poor “guessing” on the price of labor can result in business failure due to work interruptions if financing runs out.²² (Of course, businesses can also fail for other reasons such as poor guessing on the cost of materials, etc.)

Proponents also point to another area of cost savings achieved as a result of PLA-induced efficiencies. In ten states the law allows the use of “workers’ compensation carve-outs,” which are alternative procedures for handling workers’ compensation claims, providing cost savings to the project owner. These alternative procedures are allowed primarily in the construction industry and only under collective bargaining agreements. Through a PLA they can be put into force throughout a project.²³

Local PLA proponents point to the Lynn and Malden, Mass., school construction projects as evidence of the value of PLA's.²⁴ Both school systems initiated construction projects in the fall of 1997 and signed project labor agreements. The City of Lynn was scheduled to construct a \$40 million school, while Malden was slated to construct five new schools at a cost of over \$100 million. Both PLA's were challenged in court on the basis of the State's competitive bidding statute. Lynn officials did not appeal the judicial ruling that was issued against the PLA, while Malden officials secured a ruling from the Supreme Judicial Court allowing the PLA on account of the large and complex nature of their construction program. In Malden, the first phase of the construction program, which included three schools, came in on time and on budget. Malden Mayor Richard Howard stated that the projects experienced no labor interruptions, the work was of high quality, and the time schedule was met. By contrast the Lynn project was behind schedule and over budget

²⁰ Building and Construction Trades Dept., AFL-CIO, and National Constructor's Association, “Public Sector Project Labor Agreements: An Objective Review” (1995), p. 1.

²¹ Perritt, “Keeping the Government Out of the Way,” p. 73.

²² Ibid.

²³ Michael D'Antuono, Testimony given to hearing before the U.S. House of Representatives of the United States' Committee on Small Business, “How Union-only Labor Agreements are Harming Women and Minority-owned Businesses.” Hearing Transcript 105-63, August 6, 1998 (Washington D.C.: U.S. Government Printing Office), p. 59.

²⁴ These claims about the Malden and Lynn projects are made in a videotape titled “A Tale of Two Cities,” issued by the Worcester/Fitchburg Building and Construction Trades Council.

by \$2 million, and experienced various contractor disputes. (However, the general contractor who worked on the Lynn project reports that the delays resulted from hundreds of change orders, a typical consequence of doing renovations on an 80-year-old building. The disputes among subcontractors concerned issues of contract interpretation that typically arise on such projects, and had no connection to labor issues according to the contractor, who employed a combination of union and nonunion contractors as he does on all his projects. In addition, it should be noted that dozens of other non-PLA school construction projects have been completed in recent years on time and on budget.)²⁵

Arguments Against

Nonunion contractors are discouraged from bidding because PLA's impose union work rules and favor union over nonunion employees.²⁶ Nonunion contractors have different methods from union contractors for organizing their employees and more flexibility in how they deploy them. "In many cases, open shop employers spent years building teamwork, management and work practices that form the basis of project performance and bidding. Radical changes to these practices under project labor agreement hiring hall requirements and work rules can severely disrupt company operations."²⁷ PLA opponents also argue that nonunion workers are more efficient because they aren't as bound by the jurisdictional rules that characterize the different craft unions.

One of the more controversial terms mandated by most Project Labor Agreements is the requirement that all employees be hired through union halls.²⁸ If the nonunion contractor has a steady, permanent group of employees, the contractor will have to send these workers to the hiring halls without a guarantee that they will be assigned back to him for the job. Nonunion contractors are thus not assured of getting the employees they are accustomed to using on a regular basis, creating costly organizational and management problems. This is especially a problem for smaller contractors.²⁹

Finally, regarding the claim that PLA's help prevent the supposed dangers of "overbidding" and "underbidding," it should be noted that the very purpose of

²⁵ Telephone interview with Steve Callahan, Callahan Bros. Construction Co., Bridgewater, MA, April 20, 2001; letter from Lawrence C. Allen, Executive Director, Merit Construction Alliance, April 27, 2001.

²⁶ Northrup and Alario, p. 19.

²⁷ Associated General Contractors, "An Analysis," p. 3.

²⁸ Some PLA's will use a formula whereby any contractor can acquire a certain percentage of workers from sources beyond the hiring hall.

²⁹ Rose Girard, Phoenix Construction Services (Riverside, CA). U.S. Senate Hearing Testimony, "Examining if Project Labor Agreements and Their Use of Public Funds are Really in the Best Interest of Taxpayers," p. 20.

competitive bidding is to encourage contractors to undertake jobs for the lowest possible cost. The more that competition for contracts is encouraged, the less likely that a winning bidder will have “overbid,” i.e., charged an excessive price. On the other hand, the only way to prevent contractors from “underbidding,” other than weeding out those obviously incompetent to undertake a project (as existing statutes already authorize governments to do), would be to eliminate competitive bidding entirely. So long as America remains committed to the overall principle of free competition, both as a moral principle and for the sake of economic efficiency, it seems most prudent to allow construction firms to make their own educated “guesses” on the cost of labor as on other costs, trusting that their economic interests will normally deter them from “underbidding” so greatly as to cause their failure.

B. PLA's insure Public Agency Control over project

Arguments For

The U.S. Supreme Court decision on the Boston Harbor case held that public agencies may act as private purchasers in the marketplace with the ability to make decisions that they judge to be in their best interests. Establishing a PLA can give the public authority significant control over the project.³⁰ Through a PLA, public agencies can negotiate favorable terms and avoid the challenges of having to negotiate individually with each winning bidder. With a PLA the public agency has considerable leverage over all winning contractors because the terms of the PLA, as part of the bid specifications, are non-negotiable. The Metropolitan Water District of Southern California negotiated a PLA that resulted in, among other things, advanced training through the local building and trades unions, resulting in 80% of the workers being hired from the local area; the hiring of local welfare recipients; training programs for handling hazardous materials; and safety and anti-drug programs, along with apprenticeship training.³¹

Arguments Against

Contractors are not involved in negotiating the terms of PLA's because they are developed prior to any official request for bids. Control is taken away from the contractor, who has no input into the language of the PLA or into the collective bargaining agreement that is its foundation. And it is implausible to claim that by signing away its right to negotiate with individual contractors on a project as a consequence of a PLA, government somehow enhances its “control” over the project.

³⁰ Siegel, “Comment,” p. 15.

³¹ Greg Taylor, General Counsel, Southern California Municipal Water District, Los Angeles, Testimony, U.S. Senate Hearing, “Examining if Project Labor Agreements ...,” pp. 9-10.

Opponents of project labor agreements also argue that public agencies generally lack the resources and expertise to negotiate the terms of the PLA's with the unions. Therefore, the language of PLA's is typically weighted in favor of unions, with few concessions to management and the public agency. This increases project costs.³²

C. PLA's Insure Labor Harmony

Arguments For

The National Labor Relations Act gives workers the right to bargain collectively with employers for better working conditions. PLA's incorporate provisions to insure labor harmony if any of the various craft workers' pre-existing collective bargaining agreements expire during the course of the project covered by a PLA, if there are jurisdictional disputes between craft unions, or if there is a mix of both union and nonunion contractors and subcontractors working side by side. Strikes and work stoppages are avoided because all workers labor under the same terms. The no-strike and no-lockout pledges incorporated in PLA's are backed by severe penalties and quick resolution policies in the event of a violation. (As noted, leaders of both political parties in Massachusetts urged President Bush not to cancel the Big Dig PLA, pointing to the record of labor harmony on the project.) Finally, under a PLA workers are assured of job security, fair wages, and health and retirement benefits.

Some states and localities require preliminary investigations into the benefits of using PLA's before they are included in a project. The Mayor of Boston issued an executive order in 1997 mandating that for certain city-funded construction projects, a project labor agreement should be used after the City determines based on thorough investigation and analysis that the PLA will be advantageous. Similarly, in New York State, reports are required before a PLA can be considered. For example, the State Dormitory Authority commissioned a study to determine whether or not a PLA should be used for the construction of a \$46.5 million Health Technology Building at Suffolk County Community College in Brentwood, LI. The study, completed by Cashin Associates, recommended a PLA for the project. Cashin looked at the union-nonunion mix of contractors in the Long Island region, interviewed many of them about the nature, causes and effects of any labor disputes they had encountered over a five-year period, evaluated two ongoing projects in the county that had PLA's, and assessed the potential for cost savings if a PLA were used for the community college building. They found that over 80% of the construction projects valued at over \$5 million on Long Island during the previous five years had been completed by union-

³² Rep. Gary Miller, Testimony, pp. 6-7.

affiliated contractors. Labor disputes, they observed, were “somewhat” prevalent when both union and nonunion contractors worked side by side. In addition they found that the two current projects with PLA’s had been free from labor disruptions. Cashin Associates estimated that the use of a PLA for the college building would generate cost savings of some 5%. (It should be stressed that the Cashin recommendation was based partly on the finding that the construction trades on Long Island are “highly unionized,” creating a high probability of “jurisdictional disputes” among the unions participating on the project in the absence of a PLA. Additionally, the savings estimate was premised in part on the assumption that the standard work week under the PLA would be fixed at the upper end [40 hrs./ week] and paid holidays at the low end [7 days/ year] of collective bargaining agreements in the Long Island region.)

Arguments Against

Opponents challenge the claim that PLA’s are essential for labor harmony. They note that union and nonunion contractors continue to work successfully together on many projects, while strikes have occurred on projects that had PLA's.³³ And on the now less common occasion of labor strife, other means of curbing its effects, such as “separate entrances for union and nonunion employees,” have “proven to be effective in thousands of open-shop or mixed- site construction projects over the course of decades.”³⁴ They also emphasize that labor harmony issues are already addressed in the Massachusetts competitive bidding laws, which require an eligible contractor to “certify that he is able to furnish labor that can work in harmony with all other elements of labor employed” on the project.³⁵

In the end, the only reason for assuming that PLA’s are essential to labor harmony is the threat that without them, rival unions will obstruct work on a project owing to jurisdictional disputes (the concern expressed in the Cashin report cited above), and/or that union members working on a project will employ force or disruptive tactics to obstruct the use of nonunion contractors. The New York Thruway Authority cited a history of such tactics in justifying its decision to adopt a PLA for work on the Tappan Zee Bridge, for instance. (After it had previously awarded a contract for repair of the bridge to an open-shop contractor, unions created a riot on the bridge,

³³ In April, 2000, despite a PLA containing a no-strike clause, a 15-shift strike by the Operating Engineers on the “Vision 2000” project of the Port of Oakland was supported by the entire work force. Although both the union and the arbitrator agreed that this was an illegal work stoppage, the contractor was compelled to give in to the strikers’ demands for more workers on each shift (statement of Sen. Tim Hutchinson, *ibid.*, p. 3). Other strikes in violation of no-strike PLA agreements occurred in jobs at San Francisco Airport and at the Bath Iron Works (Maine) in 1999 and 2000, respectively (Northrup and Alario, p. 28).

³⁴ Baskin, p. 119.

³⁵ General Laws of Massachusetts. Chapter 149 section 44A.

and some violence occurred during the work.) But as Wharton School Professor Emeritus Herbert R. Northrup observes, “To make violence or threatened violence a reason for granting unions a monopoly of work by a government-directed PLA rewards the perpetrators of such strife and penalizes the victims and the public.”³⁶

D. PLA's insure a steady supply of trained workers

Arguments For

The AFL-CIO Building Trades Department argues that workers under PLA’s have access to joint labor-management safety programs that provide safer work sites and cost savings.³⁷ Based upon an Occupational Safety and Health Administration report published in 1992, 72% of the construction fatalities occurring between 1985-1989 occurred on nonunion work sites. (However, it should be noted that at that time some 80 per cent of construction workers were estimated to be nonunion, and they were estimated to produce at least 70 per cent of the dollar volume of construction, so the fatality figures are not disproportionate.)³⁸ In addition, the unionized National Constructors’ Association reports that their lost time due to injury is 75% below the national average.³⁹

The Eastside Reservoir construction project in California provides one example of the cost savings that can accrue as a result of labor-management safety programs. A representative of the project owner reported that with a PLA the state agency was able to streamline over 250 safety programs (this project had 250 subcontractors and 20 general contractors) into one program, saving \$30 million in insurance costs on a \$2 billion project.⁴⁰

Another advantage of PLA’s cited by their proponents is that they insure a steady supply of skilled workers through local union referral systems. According to Bradford Coupe, a New York lawyer and PLA advocate:

Large, sophisticated projects require large numbers of qualified craftsmen to perform the work. We are at a time when the numbers of skilled construction

³⁶ Northrup and Alario, p. 30. As an example of more extreme violence practiced against open shop operators in Boston, Northrup cites the vandalization of finished electrical work on the Board of Trades building, where an electrical contract had been won by an open-shop contractor because the lowest unionized contractor’s bid was 38 per cent higher (ibid., p. 29n.).

³⁷ The claim is cited in the GAO report “Project Labor Agreements,” p. 15.

³⁸ Figures on the proportion of nonunion workers and work are based on Northrup and Alario, pp. 3-8.

³⁹ Building and Construction Trades Dept., AFL-CIO, and National Constructors Assn., “Public Sector Project Labor Agreements,” p. 6-7. Assuming the accuracy of this figure, part of the explanation, we surmise, may be the typically (though far from universally) larger size and hence experience of unionized companies.

⁴⁰ Greg Taylor, Testimony, pp. 9-10.

workers are dangerously low. The greatest resource continues to be the union apprenticeship programs and hiring halls. Nonunion contractor groups claim they have well-trained work forces and that they have an increasing number of apprenticeship programs. There simply is no basis to claim that the numbers of participants in nonunion training programs or the extent of their training begins to equal those of the unions.⁴¹

The AFL-CIO Building and Construction Trades Council argues that much of the increased productivity of union workers results from skills acquired through joint labor-management apprenticeship programs. As of 1995 the building trades unions and the construction industry spent over \$300 million in training systems, and operated over 1,000 training facilities. Approximately 170,000 apprentices go through training annually, and almost a half million foremen participate in training upgrade programs.⁴²

According to PLA proponents, one potential area of cost savings is the use of apprentice labor. Coupe points out that nonunion contractors have fewer approved apprenticeship programs and therefore when working on public projects without PLA's must pay their unskilled labor at full journeyman rates. Under a PLA, many nonunion contractors gain access to lower-cost apprentices.⁴³ For example, the project contractor for construction of the National Ignition Facility at Lawrence Livermore National Laboratory estimated in 1997 that the PLA for the project would save \$2.6-4.4 million (somewhere between 0.2% and 0.4% of the total project cost), primarily as a result of wage savings from the use of more apprentices and fewer journeymen on the project.⁴⁴ (It may be that the cost comparison was being made with the use of union contractors without a PLA, as opposed to the use of nonunion contractors. In other words, this may be a case where the incentive of a PLA generated concessions from the unions that they would not otherwise have made.)

⁴¹ Coupe, "Legal Considerations Affecting the Use of Public Sector Project Labor Agreements: A Proponent's View," *Journal of Labor Research* 19:1 (Winter, 1998), p. 107-108. One theoretical study argued that union construction labor may in some major projects cost less than nonunion labor, based largely on the higher availability of trained union workers and the greater experience of union contractors on large projects. However, these findings were based on data from the early and mid-1970's, before the rapid increase in the proportion of nonunion construction firms, and the author observed that any such "union cost advantage would be only temporary." Moreover, he found the advantage to operate only in private, not public, projects, since "government officials have little incentive to produce buildings at lower than budgeted cost." Steven G. Allen, "Can Union Labor Ever Cost Less?," *Quarterly Journal of Economics*, May, 1987, pp. 351-3, 369-71. By the 1990's, two of the three largest construction firms conducted most or all of their operations on an open-shop basis (Northrup and Alario, p. 27).

⁴² Building and Construction Trades Dept., et al., "Public Sector Project Labor Agreements," p. 3.

⁴³ Coupe, "Legal Considerations," p. 109.

⁴⁴ Government Accounting Office, "Project Labor Agreements," p. 14.

Arguments Against

According to the National Center for Construction Education and Research, a study of 5,564 construction fatalities investigated by OSHA showed that nonunion contractors had significantly lower fatality rates than union contractors for each year from 1985-1993.⁴⁵ (This figure appears more significant than the sheer proportion of nonunion fatalities cited above, since it not only covers a longer period but also distinguishes comparative rates of union and nonunion deaths.) In September, 1993, Kaiser Engineers acknowledged that the amount of worker time lost on the PLA-regulated Boston Harbor project was above the national average; though its overall record, despite five fatalities, subsequently improved, the evidence suggests that safety is a function of good management rather than the presence or absence of a PLA.⁴⁶

Nonunionized contractors also counter the claim that their training programs are not as effective as union programs. While unions have had more government-approved apprentice training programs (partly because open-shop contractors were effectively prevented by Federal regulations from gaining authorization for such programs until 1970)⁴⁷, larger nonunionized contractors do have systematic training programs for their employees.⁴⁸ In addition, local chapters of national contracting associations have pooled the resources of nonunion contractors and now operate government-approved apprentice training programs in many states. In Massachusetts, the Associated Builders and Contractors offer standardized, government-approved training programs through the George W. Gould Construction Institute. Additionally, many open-shop contractors offer on-the-job and task or block training which Herbert Northrup maintains is more flexible and efficient than conventional apprenticeships.⁴⁹

With respect to the supposed cost advantages available to union contractors through the ready availability of apprentices, Northrup points out that union deployment rules typically require “that skilled craftsmen perform nearly all the work in an expansive definition of craft jobs, even though much of the work is semi-skilled or unskilled.” Thus an electrical crew on a union job will likely consist of three to five journeymen, who earn full union scale even for such duties as unloading materials or nailing up a conduit, whereas “on an open shop job, the same work will be done by a crew consisting of one journeyman, one or two helpers, and one or two laborers.” Even though the journeyman may receive the equivalent of the union wage rate or more,

⁴⁵Northrup and Alario, p. 31.

⁴⁶ Ibid., pp. 33-4.

⁴⁷ Ibid., p. 46.

⁴⁸ Herbert R. Northrup, *Open Shop Construction Revisited* Philadelphia: University of Pennsylvania, Industrial Research Unit, 1986.

⁴⁹ Northrup and Alario, pp. 45-47.

the helpers and laborers are paid much less. Additionally, an open-shop crew can do incidental work considered to “belong” to another craft, while a union job will require that the work be done by a journeyman in the other craft who may be guaranteed a full day’s wage for a few hours’ additional work.⁵⁰

Finally, regarding the supply issue, we have already noted the precipitous decline over the last three decades in the number of skilled craftsmen who are choosing to join unions. Since the large majority of construction firms and workers are nonunion, it hardly seems likely that leaving a construction project fully open to competition from nonunion contractors will constrict the supply of qualified labor; quite the opposite.

E. Wages and Benefits

The Federal Davis-Bacon Act covers all federal construction contracts of \$2,000 or higher and mandates a “prevailing wage” that must be paid to all laborers and craft workers. The prevailing wage rate is set by the Secretary of Labor for each geographic area and each type of labor classification. Many states, including Massachusetts, also have so-called “little Davis-Bacon” laws specifying the prevailing wages to be paid on construction projects undertaken by state and local agencies. In addition, many cities and towns (including Worcester) have Responsible Employer ordinances which mandate wage levels and a set proportion of local workers who must be hired, and address women and minority hiring.

Many state and Federal jurisdictions, including Massachusetts, use union wage rates as the prevailing wage. Under these rules, wages and benefits paid on public construction projects are the same, whether the work is done by a union or nonunion contractor.⁵¹

Arguments For

PLA's are typically said to insure that workers on private construction projects are paid “fair” and “livable” wages and receive health, welfare and retirement benefits. However, since the prevailing wage for *public* construction projects is set by law, a PLA does not inflate the wages paid on those projects.

⁵⁰ Ibid., p. 44.

⁵¹ One minor difference under Massachusetts law is that if a nonunion contractor does not have a government-approved health, welfare and pension plan, it must pay the full prevailing rate to the worker in the form of wages. Since union collective bargaining agreements include benefit and retirement packages, union contractors always pay some of their employees’ wages as benefits and can include the amount paid as health, benefits and welfare as part of the “prevailing rate” that they pay.

Arguments Against

Precisely because wages on public construction projects are fixed by the Massachusetts prevailing wage laws, nonunion contractors deny that PLA's are needed to guarantee fair wages to their workers. They note, however, that under a PLA wages may be set *higher* than the prevailing wage even if it is based upon union wages, and higher than what individual contractors might have negotiated.

Nonunion contractors also are hampered economically by some PLA's that require them to contribute to union fringe benefit funds, even though they may already be contributing to their own companies' benefit funds, and are unlikely to be working on a project long enough for their employees to become covered by the union plans. This double payment contributes to higher overall project costs. Even when nonunion employees hired under a PLA are not required to join the union, they may still have to have an agency fee (for "collective bargaining") or other union dues deducted from their paychecks.⁵² In this way, nonunion workers are penalized to benefit union workers.

F. Adherence to other major PLA specifications

Arguments For

All contractors, union and nonunion alike, can bid for PLA projects, and nonunion contractors and subcontractors have successfully bid and subsequently worked under PLA's around the country, including the Boston Harbor cleanup and the Big Dig. (It is illegal for public entities to restrict project bidding to union-only contractors.) Michael D'Antuono, president of Parsons Constructors, Inc., a large construction management firm in California, reports that he has seen no reduction in the number of bidders on PLA projects his company has managed, and that bidders have "consistently produced bids at or below the engineer's estimate."⁵³ PLA proponents thus deny that nonunion contractors are "shut out" of the bidding process.

It is also against Federal law for union hiring halls to discriminate against nonunion workers. According to Robert A. Georgine, President of the Building and Construction Trades Department of the AFL-CIO, [O]nce an employee is hired, the union continues to owe him or her the same duty of fair representation, regardless whether the employee chooses to join the union. In short, the fact that a construction

⁵² Northrup and Alario, pp. 23, 41.

⁵³ Michael D'Antuono, testimony before U.S. House of Representatives Committee on Small Business, "How Union-only Labor Agreements Are Harming Women and Minority-owned Businesses," p. 57.

project is being performed under a PLA has no bearing on the legal right of nonunion employees to work on the project.⁵⁴

Arguments Against

Project Labor agreements limit the number of bidders to those willing to abide by the terms of PLA's. Therefore, opponents suggest that any project with a PLA will attract fewer bidders, restrict competition, and hence raise the final price of the project. Despite having the legal right to bid on any public construction projects, many nonunion contractors (especially smaller firms) argue that various PLA requirements, such as having to hire all or most of their employees through union hiring halls, effectively shut them out of the bidding process. The exclusionary effect of PLA's thus particularly dampens the prospects of female- and minority-owned businesses, which tend to be smaller firms.⁵⁵

Opponents of PLA's cite various projects where the number of bidders is lower than in comparable non-PLA projects, and also identify PLA's as a contributing cause of cost overruns and delays on public projects such as the Big Dig. Managers of that project professed in 1997 to be "surprised at the relatively small number of bidders to date," and sought bidders from as far away as California and internationally to overcome the problem.⁵⁶ Herbert Northrup attributes the paucity of bidders to the unwillingness or inability of nonunion contractors to meet the terms of the PLA, and suggests that such restrictions in the number of bidders necessarily raise the final cost of the project.⁵⁷ Northrup also looked at the number of bidders for the Boston Hyde Park High School construction project in the mid-1990's before and after a court disallowed the use of a PLA on the project. Whereas under the initial PLA, only 39 bids had been submitted, 63 bids came in when the contract went out for re-bidding without a PLA. On average, the cost of the lowest bids among the different crafts without the PLA was seven percent less than the average lowest bids when the PLA was in effect.⁵⁸

⁵⁴ Robert A. Georgine, *ibid.*, pp. 154-155. Of course, the issue of discrimination against nonunion members becomes moot under PLA's like the one adopted for Worcester's Convention Center in 1995, which mandated that all workers who were not members of a union when hired become members within eight days from the date of their employment.

⁵⁵ Hearing before the U.S. House of Representatives Committee on Small Business, "How Union-only Labor Agreements are Harming Women and Minority-owned Businesses." See, for instance, the statements of Barbara Hoberock, Owner, HTH (Union, Missouri) and Mike La Pointe, Vice President, JL Steel (Roanoke, Texas), pp. 31-35.

⁵⁶ Northrup and Alario, p. 21. See also the opinion column by Gregory F. Beeman (executive director, Associated Builders and Contractors, Mass. Chapter), "PLA Pushes Up Big Dig Costs with No Corresponding Benefit," *Boston Herald*, February 19, 2000, p. 15.

⁵⁷ *Ibid.*, pp. 20-22. Even a PLA advocate, Jolie M. Siegel, acknowledges that "it is clear that PLA's lessen competition to a certain degree by making bidding on a project somewhat less desirable for non-union contractors" ("Comment," p. 18).

⁵⁸ Northrup and Alario, p. 53.

The Empire State Chapter of the Associated Builders and Contractors, Inc., an open-shop contracting association, analyzed construction prices for 56 projects bid between May 12, 1993, and January 26, 1995, on the Roswell Park construction program in New York State. They found that the projects that did not require PLA's were bid, on average, 13% under budget. The project bids that included PLA's came in, on average, 10% over budget.⁵⁹

III. Legal Arguments: For and Against

As previously noted, although questions about the legality of PLA's based on issues of Federal law other than the NLRA remain unresolved, the primary legal challenges are likely to arise on the basis of state competitive bidding statutes. Although many PLA's have been found to be consistent with those statutes, others have been struck down by various state courts.

Most states require that public works contracts be awarded in accordance with competitive bidding laws. These laws are designed to insure that all potential bidders have access to the same information about a project and therefore have an equal chance of winning the contract. The Massachusetts competitive bidding statute mandates that every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost more than twenty-five thousand dollars...shall be awarded to the lowest responsible and eligible general bidder on the basis of competitive bids...⁶⁰

Under the law a responsible bidder is one who possesses the "skill, ability and integrity necessary to faithfully perform the work called for by a particular contract, based upon a determination of competent workmanship and financial soundness." Eligibility refers to the ability to meet various conditions listed in the General Laws, including the "labor harmony" guarantee cited earlier.⁶¹ In addition, the public agency has the power to reject any or all bids if "it is in the public interest to do so."⁶²

The fact that Massachusetts law, like that of other states, provides government bodies with some discretion in the selection of a bidder, given the need to certify that the bidder is "responsible" and "eligible," has helped generate a variety of court rulings on the legality of PLA's. The following four descriptions of legal cases will illustrate the issues that various courts have addressed in either upholding or rejecting PLA's.

⁵⁹ Associated Builders and Contractors, Inc., Empire State Chapter, "Analysis of Bids and Costs to the Taxpayer for the Roswell Park, Buffalo, New York Dormitory Authority Construction Project: A Summary of the Effects of Project Labor Agreements," March 7, 1995.

⁶⁰ General Laws of Massachusetts. Chapter 149 section 44A.

⁶¹ Ibid.

⁶² General Laws of Massachusetts. Chapter 30 section 39M.

These cases indicate that any public agency choosing to use a PLA must have engaged in a careful and reasoned process in arriving at that choice and must show that the project is of sufficient size, scope, complexity, and duration to warrant a PLA.⁶³

A. Legal Judgments Upholding PLA's

In 1996 the Massachusetts Superior Court in Suffolk County found that the PLA negotiated by the project manager of the Big Dig project was consistent with state competitive bidding statutes. In response to a suit by the Utility Contractors Association of New England challenging the PLA, the court ruled that the Massachusetts Highway Department has the authority under state as well as Federal law to require bidders on public construction projects to sign a PLA. In addition, the court judged that labor harmony and the public interest, both issues addressed in the state competitive bidding laws, are appropriate factors in determining a “responsible” bidder, and alluded to the complexity and size of the project as factors that might justify the adoption of a PLA in this instance.⁶⁴

In another case discussed earlier, the City of Malden’s use of a PLA for its \$100 million school construction projects in the late 1990’s was challenged as a violation of the state’s competitive bidding statutes. The plaintiffs argued that the PLA restricted the number of bidders, resulting in a bidding process that is not open, does not treat bidders equally, and will not result in the lowest bids. The State Supreme Court upheld the PLA, ruling that state law allows municipalities to require a PLA where a public construction project is of sufficient “size, duration, timing, and complexity that the goals of the competitive bidding statute cannot otherwise be achieved.”⁶⁵

Besides these two Massachusetts rulings, judicial decisions in various other states have held that PLA’s were consistent with the states’ respective competitive bidding statutes. The key question that most courts focus on is whether the project in question is of sufficient size and scope to warrant a PLA.⁶⁶ Additionally, courts have examined

⁶³ Jolie M. Siegel, “Comment,” p. 14.

⁶⁴ Commonwealth of Massachusetts Superior Court, Civil Action, Suffolk, March, 1996 (fn1) by st. 1991, c.552. Utility Contractors Association of New England, Inc., v. Commissioners of the Massachusetts Dept. of Public Works. As Herbert Northrup notes, however, “[t]he Court seemed resigned to the fact that the vast majority of contracts would be awarded to union contractors whether or not there was a PLA requirement,” since it noted that only 13 of the 296 bids received by September, 1995, came from open shop contractors. The Court thus disregarded the question of how many more nonunion contractors might have submitted bids in the absence of a PLA, as well as the fact that no labor disruptions had occurred during the years when the PLA requirement was voluntary (“Government-Mandated Project Labor Agreements,” p. 90).

⁶⁵ *Callahan v. Malden*, 430 Mass. 124 (1999) at 133.

⁶⁶ Coupe, p. 102; Siegel, p. 14.

whether the details of a PLA are consistent with these statutes, and whether public agencies have engaged in a “careful” and “reasoned” process to determine the need for a PLA.

B. Legal Judgments Against PLA’s

In the first major government-mandated PLA case argued under state procurement laws, the New Jersey State Supreme Court ruled in 1994 that the PLA used for a New Jersey Turnpike Authority project violated the state’s competitive bidding statute. The Court found that the PLA, by requiring that workers be hired through union hiring halls, created a “sole” source of construction services and limited the number of contractors who bid to union contractors. The PLA thus failed to encourage free and open competitive bidding.⁶⁷

In March, 1998, the Massachusetts Superior Court ruled through a preliminary injunction that a PLA that the City of Boston had required as part of the bid specifications for renovations and additions to East Boston High School be eliminated. The Methuen Construction Company and four other construction companies had charged that the PLA requirement penalized them for their non-union status, effectively preventing them from bidding on the project, and that the City of Boston had failed to comply with the Mayor’s executive order requiring thorough analysis by a project labor committee to determine the need for a PLA. The Court agreed with plaintiffs’ contention that the City’s decision to use a PLA was arbitrary, since the City had not assessed the need for a PLA through a project labor committee. In addition the court noted that no specific cost savings projections had been offered, and judged that the public interest did not warrant a PLA for reasons of timeliness. The court further observed that the PLA imposed a “greater burden on nonunionized contractors” than on unionized ones, and judged that the labor harmony guarantees included in the PLA did not suffice to justify it on cost-saving grounds, since the bidding statutes already contain a labor harmony clause.⁶⁸

IV. The Local Scene

The City of Worcester first employed a project labor agreement when it put the Convention Center project out to bid in 1995. The newly completed Union Station and Municipal Parking Garage were also built under PLA’s undertaken by the Worcester Redevelopment Authority.

⁶⁷ Associated General Contractors, “An Analysis,” p. 16; Northrup and Alario, pp. 63-5.

⁶⁸ Commonwealth of Massachusetts Suffolk Superior Court, Civil Action no. 98-1267, Methuen Construction Company and others v. City of Boston.

Recently the City Manager affirmed his commitment to use PLA's as part of the bid specifications for the Vocational and North High School construction projects. These two projects together total over \$100 million.⁶⁹ Having met with individuals representing both sides of the issue, the Manager judges that using a PLA will help insure that the projects are completed on time and on budget. Although these PLA's have not yet been negotiated, the Manager forecasts that they will be similar to the agreement negotiated for the Convention Center project. That PLA included goals for minority participation, prohibited strikes, work slowdowns, and picketing, and required that employees who were not union members when hired join the union within eight days of starting their employment. Any PLA must also meet the conditions of the City's "responsible employer" ordinance, which mandates the payment of prevailing wage rates, the maintenance of apprentice programs, and the provision of appropriate industrial accident coverage.

In a memorandum dated December 28, 1999, City Solicitor David Moore advised the Manager that the state supreme court's decision in *Callahan v. Malden* (discussed above) "will make it more difficult" for the city to require PLA's, given the court's requirement of a demonstration that the project's "size, duration, timing, and complexity" are such "that the goals of the competitive bidding statute cannot otherwise be achieved." In a previous memo (October 26, 1999) the Solicitor observed that even though the Court had upheld the PLA in Malden, the project in that case involved closing nine elementary schools, demolishing three of them, and building five new ones. As the Solicitor noted, "the circumstances in Malden are not present in the typical single-building construction project," such as those for North and Vocational High Schools. Thus we must observe that even though the Manager is currently preparing a report justifying the use of a PLA on the Worcester school projects, such a PLA may not survive a court challenge. In that eventuality, the initial adoption of a PLA could engender delays that would not otherwise occur, owing to the need to repeat the bid process without a PLA.

V. Conclusions

As we have observed, PLA proponents claim that the wages, benefits and training requirements, and other administrative efficiencies imposed by PLA's lead to higher quality output, a more productive labor force, and a safer work environment at a reasonable cost. Their no-strike provisions are also said to guarantee labor harmony.

⁶⁹ For purposes of comparison, a state court ruled in 1997 that a total project cost of \$40 million was insufficient to justify the use of a PLA for school construction projects in Lynn. If the North and Vocational High School projects need to be separated on account of delays in starting the latter, the North project cost alone would presumably fall into the same range as the Lynn projects on which the PLA was invalidated. (The Lynn decision came after the Worcester Convention Center PLA had been adopted and hence did not come into play on that occasion.)

PLA opponents argue that PLA's increase overall costs and limit managerial control of the work process, and challenge the claims that union contractors necessarily have better trained and more productive workforces. They also observe that PLA's unfairly discriminate against open-shop contractors and their workers, making it harder for the contractors to win bids and banning the more efficient methods that otherwise give them a cost advantage over union contractors, while subjecting their employees, even if they are not required to join the union as a condition of employment (as they were on the Worcester Convention Center project), to "double taxation" in the form of mandatory payments for union "agency fees" and benefit funds.

As noted, it is difficult to provide a systematic cost and efficiency comparison of PLA and non-PLA projects, given the heterogeneity of construction projects as such. Nonetheless, the available information, along with elementary economic principles, indicates that leaving aside the threat of labor strife, project labor agreements cannot avoid increasing construction costs, since they tend to foreclose competition by most nonunion contractors and inevitably impose union constraints on the use of labor that would not otherwise exist.⁷⁰ In this regard most of the evidence cited by PLA proponents concerning the supposed advantages of union workers in terms of productivity, training, etc., is **beside the point**: if union workers really are more productive or better trained than their nonunion counterparts, and if union workplace regulations do not really impede efficiency, then union contractors should be able to win their fair share of public as well as private contracts, without the need to exclude nonunion contractors through onerous contract stipulations.

Aside from their apparent economic costs to the public, PLA's seem to conflict with widely held American principles of equal opportunity and freedom, since they either exclude nonunion workers from publicly funded employment or else allow them to work only on condition of contributing to the union as if they were members. Since the large majority of small and minority-owned construction firms are non-union, PLA's tend as well to dampen the prospects of advancement for minority members and small businessmen generally.⁷¹

⁷⁰ Even though 90 per cent of Worcester's school construction costs are to be underwritten by the state, City taxpayers will still feel some effect from the likely cost increases engendered by a PLA: both directly, as a consequence of the City's ten per cent share, and indirectly, as the cost of these and other PLA's is reflected in the State budget.

⁷¹ See "How Union-Only Labor Agreements Are Harming Women- and Minority-Owned Businesses," *passim*. The differential effect of PLA's on small and large construction firms may help explain why some representatives of the large unionized contractors (such as the president of Parsons Constructors, quoted earlier) favor them: by discouraging smaller businesses from bidding on parts of large public projects, they reduce the degree of competition faced by the big firms and raise the prices that the latter can therefore charge. Even where special provisions are included in PLA's to guarantee that a percentage of the business goes to minority-owned firms, small contractors as such are not benefited. This does not mean that smaller contractors will have no opportunity to participate in PLA projects, as many reportedly do on the Big Dig (*ibid.*, p. 5, Statement of Nancy McFadden, General Counsel, Department of Transportation). It simply means that their opportunities will be reduced. (Doubts about the accuracy of official claims regarding the extent

While it may seem understandable that public officials should judge the gains from a “guarantee” of labor peace worth these sacrifices, it is doubtful that the public itself is a net gainer from what amounts to a policy of acceding to the demands of organized interest groups or implied threats of possible disruptive tactics to impede the opportunity of nonunion employers to bid on publicly funded projects, and of their workers to participate fairly in such work. And since the large majority of public construction projects in Massachusetts and elsewhere continue to be successfully completed without the use of PLA’s, we find no evidence that they are needed to insure harmony or efficiency in the Worcester school construction projects.

Since it now appears that (owing to external factors) some time will elapse before the City can solicit bids for the new Voke School, the Research Bureau urges the City Manager to reconsider his decision to adopt a PLA for that project in the light of these broader considerations. At the least, if a PLA is adopted, the City should seek concessions from the unions regarding such issues as overtime pay and the use of apprentices in place of skilled laborers wherever feasible, as was done in the Lawrence Livermore project. Additionally, every effort should be made (as was partly done in the Los Angeles and Denver projects cited in notes 1 and 2 *supra*) to facilitate participation by nonunion contractors. And the PLA should avoid the requirement included in the 1995 Convention Center agreement that all nonunion workers hired immediately join the union. It would be ironic if most graduates of Worcester’s own Vocational High School were excluded from the opportunity to work on its replacement building, simply because they are not union members and do not wish to join a union.

of smaller, typically non-unionized, contractors’ participation in the Big Dig are raised by a study conducted in 1999 by the Industrial Technology Department of Fitchburg State College, cited in Northrup and Alario, pp. 18-20.)