MICHIGAN STATE CONFERENCE

of the
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

International Brotherhood of Electrical Workers
Michigan State Conference
Testimony before the House Commerce Committee on House Bill 4287
March 1, 2011

Good morning Chairman Schmidt and members of the committee. My name is Greg Stephens, and I am the President of the IBEW Michigan State Conference. I appreciate the opportunity to testify today on House Bill 4287 – a bill which we believe would be detrimental to public construction projects.

While the IBEW agrees that contractors should never be barred from bidding on tax-funded construction projects solely on the basis of whether or not they are participatory to a collective bargaining agreement, HB 4287 goes much farther than that. In addition to prohibiting terms in public construction contracts that restrict bidders to only union or non-union contractors, the bill includes very vague language in Section 5(b) which bans terms which discriminate against bidders based on their status as a union or non-union contractor. There are a great many widely used terms in construction contracts that, while having nothing to do with collective bargaining, could conceivably run afoul of this overly broad language.

For example, terms which lay out jurisdictional boundaries between construction trades, require a certain ratio between apprentices and journeymen on a project, or set uniform safety guidelines could conceivably (depending on how they are written) be seen as discriminatory against either unionized or non-unionized contractors. If this bill were to be enacted as written, it would greatly hamstring public construction managers in the types of tools they can use to ensure that the project is completed in a timely and responsible fashion.

Perhaps the most negative impact of this legislation could be to prohibit public owners from using one of the most valuable tools available to them for ensuring that construction projects are completed on time and on budget: the Project Labor Agreement (PLA). PLA's have been widely used in both the public and private sector for decades, and they have an excellent track record. PLA's are simply a pre-determined set of bid specifications that most often include wage scales, safety specifications, deadlines and dispute resolution procedures. Although some groups have labeled them "Union-only PLA's," this claim is wildly inaccurate.

The truth is that non-union contractors are in no way barred from bidding on PLA construction projects. In fact, non-union contractors often bid and win PLA jobs. According to a study conducted by the University of Maine (which is attached to this testimony), the Boston Harbor Project (a PLA job managed by ICF Kaiser Engineers) had 100 union contractors and 39 non-union contractors on the site. In addition, of the 257 sub-contractors on that job, 155 were union and 102 were non-union. The same study also cites a paper from the University of California which analyzed the East Side Reservoir Project

which was also done via a PLA. It found that "non-union contractors constituted 2/3rds of the contractors working on the project."

More locally, non-union contractors have been present on public and private PLA jobs including the Brody Complex at MSU, and Accident Fund Headquarters in Lansing, Sparrow Hospital and the Ingham County Medical Care Facility.

Project Labor Agreements offer public and private construction managers a solid tool to ensure that projects are done safely and efficiently by ensuring that all bidders agree beforehand to a unified schedule, division of labor and employee policy. For public owners, PLA's also have many of the advantages of Prevailing Wage Policies by discouraging the importation of low-wage, low-skill workers from outside the region. The use of a Project Labor Agreement is also a very effective safeguard against the use of unlicensed or even undocumented workers.

If Project Labor Agreements or Prevailing Wage Policies restricted construction bidding so that it only benefitted unionized or non-unionized contractors, then they would indeed be discriminatory. However, the language in HB 4287 is so broadly worded that even policies that are beneficial to public owners and taxpayers could come under fire. We urge you to make amendments to this legislation so that it will ban truly discriminatory practices, but still clearly allow public project managers to use tools like PLA's that will help them safeguard the public's construction investment.

Project Labor Agreements and Construction in Maine

What are Project Labor Agreements?

A Project Labor Agreement (PLA) is a comprehensive negotiated pre-hire contract for public or private-sector construction projects. A PLA generally includes mutually agreed-to work and wage rules for the duration of the project, including deadlines, wages, costs, production incentives, and hiring. Usually PLAs are between a developer or general contractor, labor unions, subcontractors, workers, and the employer or customer, who may be in the public or private sector.

How do Project Labor Agreements work?

In a Project Labor Agreement, the basic terms and conditions for the parties are clearly established ahead of time, for everyone involved in the project. Labor costs include wages and benefits, such as health insurance, pensions and paid holidays. Workers and unions to the agreement typically agree to eliminate their right to strike, and contractors and employers agree to a no-lockout policy. Jurisdictional labor issues are clearly spelled out so that there are no work assignment disputes arising during the course of the project. Contractors and subcontractors make exact bids which adhere to the terms of the Project Labor Agreement.

What are the advantages of using Project Labor Agreements?

- **For contractors:** Contractors are guaranteed a pool of highly trained, skilled labor, who agree to the terms of the agreement, including no-strike clauses. According to a study of Project Labor Agreements that was requested by the California State Senate, PLAs are preferred by many contractors and owners, as well as by workers, because of the stable labor environment they provide. The study found that "contractors that use PLAs maintain that on complex, long-term projects, a PLA fosters positive communication channels to address workers' concerns, grievances or disputes and resolve them quickly, thereby creating continuity and stability of the work force at the job site."[1]

- **For developers:** There is no lost time due to disputes between workers and contractors over jurisdictional issues, safety matters or other questions arising in the course of the project. Furthermore, studies of productivity and costs in the construction industry (among others) have demonstrated that union workers are more productive than non-union workers, and in many cases union construction projects had lower costs as well.[2]

- **For workers:** Workers are paid decent wages with benefits, hence allowing them to contribute to the state's economy through household spending and taxes. Also they are likely to be working in a safer job situation, with more safety training and oversight.

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[1] Kimberly Johnston-Dodds, "Constructing California: A Review of Project Labor Agreements," California Research Bureau, California State Library; October 2001 ("Prepared at the Request of Senator John L. Burton, President Pro Tempore"); p. 59.

[2] Dale Belman; "Unions, the Quality of Labor Relations, and Firm Performance;" in Lawrence Mishel and Paula B. Voos, Eds.; *Unions and Economic Competitiveness*; Economic Policy Institute; Armonk, N.Y.: M. E. Sharpe, Inc.; 1992; p. 51.

- **For the employer or customer, whether public or private sector:** Project Labor Agreements ensure that lost time due to labor disruptions are non-existent or minimized, that there will be no surprise cost overruns, and that the completed project will be of higher quality, thus leading to lower costs and maintenance over the lifetime of the project.[3]

- **For the state and local economy**: Because workers are ensured decent livable wages and benefits, they have more disposable income, which has a positive multiplier effect on the entire local and state economy.

- **For underrepresented workers and communities:** PLAs also can serve as tools of social justice, with goals for hiring, training and outreach for underrepresented racial/ethnic groups and for women. For example, in a recent PLA for major public works construction projects at Los Angeles area airports, "Local unions ... agreed to actively recruit local residents, women and minorities into their existing apprenticeship programs and thereby establish ongoing careers in the construction industry."[4]

- **For the environment:** The use of PLAs in large-scale projects can provide greater environmental protection. For example, the "Sierra Club maintains that building projects using union labor are conducive to the environment, as they often involve extensive environmentally sensitive training done through top-notch union training programs, which often include specialized training for hazardous waste cleanup."[5]

Can non-union contractors or subcontractors bid on projects with PLAs?

Yes. Non-union contractors also can bid on the projects as long as they agree to abide by the wages, benefits and other conditions specified in the PLA contract. Non-union contractors often have been involved in PLAs in Maine[6], Massachusetts[7], California[8], Iowa[9]

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[3] "What is a Project Labor Agreement?," West Central Illinois Building and Construction Trades Council. (http://www.westcentralbtc.org/project%20labor%20agreements.htm)

[4] Los Angeles World Airports; "Airport commissioners sign Project Labor Agreement; potentially covers all major construction for next 10 years." Los Angeles World Airports News Release, May 1, 2000. (http://www.lawa.org/news/newsDisplay.cfm?newsID=93)

[5] Summary of "Amicus brief of the Sierra Club and the National Economic Development and Law Center, in *Building and Construction Trades v. Allbaugh*;" Lerach Coughlin Stoia Geller Rudman & Robbins LLP, Attorneys at Law. (http://www.lerachlaw.com/lcsr-cgi-bin/mil?templ=news/Sierra_Club.html).

[6] For example, see the Project Labor Agreement for the Maritimes Northeast Pipeline Project (Maine State Building and Construction Trades Council; p. 3.)

[7] The Albany-based *Business Review* reports that "According to the construction manager on the Boston Harbor project, ICF Kaiser Engineers, 149 prime contractors bid for work." Of these, 100 were union and 39 were open-shop (non-union) contractors. Of the 55 prime contracts awarded, 39 went to unions and 16 to non-union contractors. Of 257 subcontractors, 155 were union and 102 non-union. (Robert Gollnick, "Project labor agreements can save time and money when put together properly"; *The Business Review*; April 14, 1997. (http://albany.bizjournals.com/albany/stories/1997/04/14/focus8.html)

[8] Daniel Rounds, "Project Labor Agreements: An Exploratory Study;" ILE Occasional Paper No. 2; Institute for Labor and Employment, University of California, October 2001. The report states that in the East Side Reservoir project, "non-union contractors constituted 2/3rds of the contractors working on the project." (p. 14.)

[9] Ralph Scharnau and Michael F. Sheehan; "Project Labor Agreements in Iowa: An Important Tool for Managing Complex Public Construction Projects." The Iowa Policy Project, October 2004, p. 1.

and elsewhere. A number of recent Maine Project Labor Agreements also specify clearly that employee referrals cannot discriminate on the basis of union membership.[10]

And in one study of PLAs in California, a contractor in a public project stated that "the presence of non-union contractors demonstrates that some non-union contractors evidently felt that the business opportunity of participating in the project was more important than any ideological opposition to PLA requirements."[11]

Are Project Labor Agreements legal in public sector projects?

Yes. In 1993, the U.S. Supreme Court ruled in its *Boston Harbor* decision that both private and public owners can decide when a construction project should use a PLA. In its ruling, the Court noted that: "To the extent that a private purchaser may choose a contractor based upon that contractor's willingness to enter into a pre-hire agreement, a public entity as *purchaser*, should be allowed to do the same."[12]

What about federal projects?

There have been many federal projects involving Project Labor Agreements in the past. In 1997, President Bill Clinton issued a Presidential Memorandum specifically encouraging federal agencies to utilize PLAs in federal projects larger than $5 million.[13]

However, this policy was overturned by the Bush Administration, and federally-funded construction projects no longer can use Project Labor Agreements. In 2001, President George W. Bush issued Executive Order 13202, prohibiting the use of PLAs in federally-funded projects. Although the executive order was challenged in the courts, in 2002 the D.C. Circuit Court of Appeals upheld the administration's Executive Order, and in 2003, the U.S. Department of Housing and Urban Development (HUD) issued a final rule implementing Executive Order 13202.[14]

Do Project Labor Agreements increase labor or project costs?

Although the workers in construction projects with PLAs may be paid higher wages than workers in non-union projects without PLAs, much evidence suggests that in the long run, using highly skilled workers with clear-cut rules in Project Labor Agreements will save money. In one study of three utility construction projects with Project Labor Agreements, the researcher found that all the managers interviewed:

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[10] See the Maine Project Labor Agreements for the BIW Land Level Transfer Facility (p. 9), Rumford Power Associates 260 MW Combined Cycle Power Plant (p. 3), and the Androscoggin Cogeneration Center in Jay, Maine (p. 6.) (Maine State Building and Construction Trades Council).
[11] Daniel Rounds, *ibid.*
[12] Boston Harbor, 507 U.S. 218, 231 (quoted in: Johnston-Dodds, "Constructing California," *ibid.*; p. 70.
[13] "Project Labor Agreements: The Extent of Their Use and Related Information", U.S. General Accounting Office, GAO/GGD-98-82, May 1998; p. 1 (http://www.gao.gov/archive/1998/gg98082.pdf)
[14] "Issues: Executive Order 13202," Associated Builders and Contractors. (http://www.abc.org/wmspage.cfm?parm1=2815)

". . . felt that PLAs do not increase project costs. For example, Jack Richey of ARB stated that even though non-union workers are paid less, project costs are not affected because union workers are more productive. Reggie Phelps of Bechtel Construction stated that some union work rules are more restrictive than non-union work rules, but that overall labor costs are not more expensive." Another manager said that non-union contractors "need to hire more workers to make up for the skill differences between union and non-union workers." In the end, he said, "labor costs are about the same."[15]

Similarly, the California State Senate study of PLAs quoted Ken Hedman, Principal Vice President for Labor Relations at Bechtel Construction Company, saying that in his experience, he has "never seen anything to indicate that a PLA was the cause of increased costs or delays. Projects are delayed due to changes in the scope of work, increased number of change orders, engineering or design changes. Such changes cause an increase in labor costs, not the other way around."[16]

Have Project Labor Agreements been used in Maine?

Yes, in many successful projects, such as the Land Level Transfer Facility at Bath Iron Works (1998), maintenance and renovation of the Maine Yankee nuclear power plant (1998), the 260 MW Combined Cycle Power Plant in Rumford (1998), the Androscoggin Cogeneration Center in Jay (1998), the Portland Pipeline and Maritimes/Northeast Pipeline (1999), and others. In the Bath Iron Works PLA, Maine workers were given higher priority for jobs.[17]

Conclusion

Project Labor Agreements are a useful mechanism in any construction project involving a contractor and a range of skilled workers in different trades, by providing a collective bargaining structure and arrangement that will maximize efficiency, stability, predictability, and productivity. Their purpose "is to facilitate the completion of the project by getting all the participants to agree to certain ground rules."[18] They benefit everyone involved: the employer (whether public or private sector), developers, contractors, workers, unions, local and state economies, and the public.

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A member of the University of Maine System

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[15] Daniel Rounds, *ibid.*; p. 15.
[16] Johnston-Dodds, "Constructing California," *ibid.*; p. 59.
[17] Maine State Building and Construction Trades Council; Project Labor Agreements for several projects.
[18] Scharnau and Sheehan, *ibid.*