

# **Executive Summary**

## **Project Labor Agreements in Iowa An Important Tool for Managing Complex Public Construction Projects**

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## Project Labor Agreements in Iowa

### An Important Tool for Managing Complex Public Construction Projects

By Ralph Scharnau and Michael F. Sheehan

Public-sector construction projects in Iowa serve three important public functions. They provide direct services through the building of schools, hospitals, police stations, highways and similar projects. Second, spending on these projects stimulates economic development and creates jobs. And third, they improve the ability of the public infrastructure to deliver services that help to generate income for other Iowa producers. This makes those producers more productive and competitive.

To maximize the benefits of these projects, public project management needs to be efficient and cost-effective. One way governments have tried to do this is through project labor agreements.

### Overview of Project Labor Agreements

**What is a PLA?** A project labor agreement (PLA) is a contract among the project manager, the contractors on the project and unions representing the various crafts. Its purpose is to facilitate the smooth completion of the project by getting all the participants to agree to certain ground rules. Its provisions standardize and stabilize wages and benefits, starting times, overtime rules and holidays, and related matters. It requires that everyone agree not to interrupt work on the project when disputes arise, but instead to submit all disputes to fast and binding arbitration.

PLAs are different from standard collective bargaining agreements between a contractor and a union. A PLA is an agreement among all the parties working on the project, usually including the construction manager, and not just between a single union and contractor. The PLA takes precedence over pre-existing collective agreements between individual contractors and unions. The PLA agreement only binds the parties to the terms of the PLA on this single project, and not on other projects, even if the contractor and the employees are the same.

In sum, a PLA ensures that in a complex project involving multiple contractors and multiple crafts everybody is working together, points of conflict are minimized, and things get done in an orderly fashion so that schedules can be maintained and a good quality project completed on time.

**Are PLAs Fair to Contractors and Workers?** Union and nonunion *contractors* work on PLA projects as do union and nonunion *workers*. In Iowa, public-sector PLAs cannot and do not discriminate between union and nonunion entities. On a PLA project contractors are entitled to bring their core workforce to the project, while their “project-only” workers are dispatched from union halls which ensure workers sent out have the requisite skills and licenses. Union halls may not discriminate on the basis of union membership.<sup>1</sup> All contractors otherwise eligible to

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bid under the terms of Iowa's Responsible Bidder statute<sup>2</sup> are eligible to bid on the project if they agree to sign the PLA if they win the bid.

**Are PLAs new?** PLAs have been widely used to organize and manage innumerable public as well as private-sector construction projects for over 70 years.<sup>3</sup> Many of the early PLA projects came out of the New Deal public works programs, including the Grand Coulee Dam in Washington<sup>4</sup> and the Shasta Dam project in California.<sup>5</sup> While not much used in the 1950s, PLAs found a resurgence from the 1960s on, and certainly in the boom of the 1990s up until today.

For example, the multibillion-dollar San Francisco Bay Area Rapid Transit (BART) project beginning in 1964 was governed by a PLA, as were major private projects including the Trans-Alaska Pipeline (1974), the Prudhoe Bay Oil Pool Module Construction PLA (1979), and the Sutter and Sunrise power plants in California (2000), among others.<sup>6</sup>

In Iowa as well, PLAs have been popular and productive for many years on private-sector construction projects.

Four Iowa locations (Des Moines, Mason City, Dubuque and the Quad Cities) each provide examples of PLAs. Des Moines offers the landmark legal decision on a public-sector PLA as well as nearly 60 private-sector PLAs. Mason City offers a current private power plant project with a PLA.<sup>7</sup> Dubuque offers examples of several private-sector PLAs, and the effort to secure one on a public-sector project. The Quad Cities area offers many examples of PLA usage.

**The Des Moines Events Center.** Des Moines became the center of a furious contest over a PLA-governed public facility. The dispute reveals a mixture of legal and political elements. In 2002, Master Builders of Iowa (MBI), a group of anti-PLA contractors, filed a lawsuit seeking "to block work at the Iowa Events Center before it gets started," claiming the PLA violated Iowa's right-to-work and competitive bidding laws.<sup>8</sup>

Spurred on by this dispute, the Iowa General Assembly began deliberations on two bills to eliminate public-sector PLAs. One bill passed and was vetoed by Governor Tom Vilsack because forbidding PLAs would deny public entities the same access to a "tool private entities use regularly to ensure quality work and timely completion on a project," and restrict local governments' "home rule power."<sup>9</sup>

The anti-PLA contractors' legal challenge was conclusively resolved by a 6-1 Iowa Supreme Court decision approving the PLA. The dramatic decision marked, according to Tom Gillespie, president of the Iowa State Building and Construction Trades Council, "the first time a project labor agreement (PLA) has withstood a legal challenge in a right-to-work and non-prevailing wage state."<sup>10</sup>

<sup>1</sup> See Iowa's Right to Work law at Iowa Code Section 731.1.

<sup>2</sup> Iowa Code Section 384.99.

<sup>3</sup> Kimberly Johnson-Dodds, *Constructing California: A Review of Project Labor Agreements*, California Research Bureau, California State Library, nd, p.1 ("Johnson-Dodds").

<sup>4</sup> Daniel Rounds, *Project Labor Agreements: An Exploratory Study*, October 2001, UCLA Institute for Labor and Employment, p.2.

<sup>5</sup> Johnson-Dodds, pp.9-10.

<sup>6</sup> Rounds, pp.9-10.

<sup>7</sup> Interview with Tom Gillespie, President, Iowa State Building & Construction Trades Council, January 2004.

<sup>8</sup> See *Des Moines Register* reporter Bert Dalmer's articles, January 9, 2002, 1B, 2B, January 23, 2002, 2B.

<sup>9</sup> *Des Moines Register* articles on December 5, 2001, 1B, 3B, January 4, 2002, 1B, 3B, January 16, 2002, 1B, January 25, 2002, 4B, February 7, 2002, 4B, and March 14, 2002, 1A, 13A. See Governor Thomas J. Vilsack's letter to Senate President Mary Kramer, March 21, 2002.

**PLAs in Dubuque and the Quad Cities.** Dubuque and the Quad Cities have had a substantial number of successful PLA projects. These have included PLAs for nine private sector projects brought to fruition during the 1990s by the Dubuque Building and Construction Trades Council. The contracts covered both new and remodeling work, mostly on Dubuque grocery and credit union facilities, with executives of the latter praising the work and the PLA experience.<sup>11</sup> On the public side, Dubuque has also had a public entity deciding against the use of a PLA in the face of public opposition from certain contractors.

PLAs in the Quad Cities area, including the cities of Davenport and Bettendorf in Iowa and Moline and Rock Island in Illinois, number about 151 with an estimated value of \$800 million. Named IMPACT (Increasing Markets, Productivity And Construction Teamwork), the project labor agreements began in 1989. The construction, about evenly divided between Iowa and Illinois, includes work on educational, entertainment, recreational, financial, transportation, and especially medical facilities. Most IMPACTS involve private projects but some, in Illinois, are public. Of the 19 publicly funded IMPACTs in the Moline/Rock Island area, all but two are for school projects. The recent IMPACT-governed construction of a new \$7.5 million public school near Moline, Illinois, for example, brought a very complimentary review from the district superintendent. The cost of these Quad Cities area projects has ranged from \$50,000 to \$50 million.<sup>12</sup>

Nationally, PLAs are more widely used in the private sector than they are in the public sector. In fact, of 82 PLAs surveyed by the California study cited above, 72 percent involved private projects.<sup>13</sup> This is significant for two reasons. The first is that there are fewer public-sector PLAs because public entities are more susceptible to political pressure from anti-PLA contractors not to adopt a PLA than are private entities. Moreover, right-to-work and public bidding laws make public entities more susceptible to law suits by the same contractor groups attempting to derail PLAs.

The second lesson to be learned from the large number of private-sector PLAs is that PLAs must be cost-effective and productive or they would not be used so widely by the private-sector entities adopting them.

## The Legal Status of PLAs

Legal challenges to PLAs often involve claims that PLAs are preempted by related state or federal legislation. These claims generally fall into one of three areas: preemption by federal labor law, preemption by state "right-to-work" laws, and preemption by state competitive bidding laws. In response to these challenges, PLAs have been upheld in almost all jurisdictions, including Iowa.

In terms of legislation, not only are public-sector PLAs allowed in all states bordering Iowa, but nationwide, Utah is the only state with an operational legislative ban on public PLAs.<sup>14</sup>

<sup>10</sup> Frank Santiago, "State Supreme Court Upholds Polk County Labor Agreement," *The Des Moines Register*, November 15, 2002, 4A. The Gillespie quote appeared in COCKSHAW's *Construction Labor News & Opinion*, December 5, 2002, 5.

<sup>11</sup> Charles Isenhardt, Executive Director of the Dubuque Area Labor-Management Council, provided copies of the letters from Robert Hoefer, president of Dupaco Community Credit Union, and Tom N. Sarvis, president of Du Trac Community Credit Union.

<sup>12</sup> Phone interview with Alan Anderson, Director of the Illowa Construction Labor and Management Council, Moline, Ill., June 18, 2003. A list of the completed IMPACT projects can be found at [www.illowaimpact.org](http://www.illowaimpact.org) <<http://www.illowaimpact.org>>. See also Mary Rae Bragg, "Project Labor Deals Lauded," *Telegraph Herald*, July 21, 2003, 1A, 2A.

<sup>13</sup> Johnson-Dodds, p. 1.

<sup>14</sup> Johnson-Dodds, p. 74 (2001 data).

## **The Debate Over PLAs**

A great deal of money has been spent challenging the idea of PLAs on public construction projects. Most attacks have come from national or state associations of anti-PLA building contractors and their materials suppliers and academic allies. Much anti-PLA literature targets hypothetical or non-standard forms of PLAs that are unrelated to most PLAs in use today.

We address the following five questions that arise from claims typically raised by anti-PLA contractor groups in their campaigns against the use of public-sector PLAs.

### ***Are Only Union Contractors Allowed to Bid on PLA Projects?***

No. Contracts in Iowa are awarded on PLA projects to the lowest responsible bidder regardless of whether the contractor has a collective bargaining agreement with its workers. The contractor does have to agree to sign the PLA as a condition of getting the bid. The provisions of the PLA apply only to work on the PLA, they do not control the contractor's relations with employees on other projects, and they expire with respect to the contractor upon the completion of the contractor's work on the PLA project.

### ***Do PLAs Violate Iowa's Open Bidding Law by Limiting the Bidding to Contractors Willing to Sign the PLA?***

Claims against PLAs include that they promote special-interest favoritism and undermine principles of open competition for government work. The Iowa Supreme Court examined this issue on the Iowa Events Center project in Des Moines, finding that the PLA applied to all bidders and did not discriminate based on union or nonunion affiliation. "Therefore, the PLA does not, on its face, promote fraud, favoritism, or corruption in the actual bidding process, and any assertion to the contrary is more anecdotal than factual."<sup>15</sup>

### ***Do PLAs Raise Construction Costs by Limiting Bidders?***

All bidders qualified under Iowa's Public Bidding Law (Iowa Code §384.99) are entitled to bid on PLA contracts. In order to be awarded a contract they have to agree to comply with the terms of the PLA. To the extent that anti-PLA contractors boycott PLA projects, costs may be higher on the project than they would have been had they not boycotted the project. However, this is because of the boycott and not because of the PLA. The whole purpose of having a PLA is to increase efficiency and reduce delays on the project so as to hold down costs and get the job done on time. Eliminating the PLA framework would, other things equal, increase project costs due to all the inefficiencies and problems PLAs avoid.

### ***Do PLAs Discriminate in Hiring?***

Some critics of PLAs, including critics of the Iowa Events Center PLA, have claimed that PLAs discriminate against nonunion workers. The Iowa Supreme Court found that this was simply not so. Not only do numerous provisions in the Iowa Events Center PLA explicitly mandate non-discrimination in hiring, this is guaranteed by Iowa's Right to Work statute, Iowa Code 731.1.

### ***Are PLAs Effective in Resolving Disputes?***

PLAs require coordination of the various contractors and their employees on the project, including mandatory fast arbitration of disputes, and "no strike, no lockout" provisions to prevent

<sup>15</sup> Master Builders of Iowa v. Polk County, 653 NW 2d 382, 395n6. (Iowa 2002).

work stoppages. They have been effective in virtually eliminating disputes resulting in disruption of project schedules.

## Key Findings

### **PLAs Are a Common-Sense Management Tool for Public-Sector Construction Projects**

Project Labor Agreements help to get the different groups working on the project to work together smoothly and cost effectively. This explains why PLAs are widely used by big firms such as Bechtel on purely private projects. Criticisms leveled against atypical or imaginary PLAs are not well-taken when compared to PLAs like the one used for the Iowa Events Center. This is demonstrated by the detailed review of the provisions of that PLA in this study and by the Iowa Supreme Court's 6-1 decision approving the PLA.

### **PLAs Are Dollar-Savers on Complex Projects**

Other things equal, the better coordinated a complex project is among all groups working on it, the greater the savings in dollars on the cost of the project and the better the on-time performance. PLAs offer a framework for coordinating the activities of all the contractors and craftspeople working on a complex project, managing the supply of skilled labor as the project advances, and resolving disputes.

### **PLAs Offer a Level Playing Field for Contracts**

Iowa law prohibits discrimination against nonunion or union workers, and project labor agreements in Iowa must follow that rule. Likewise, banning PLAs on public projects would remove a tool by which public agencies can assure that public dollars will not be used to support discrimination against workers based on their union preference.

### **The Wide Use of PLAs on Private-Sector Projects Demonstrates Their Benefits**

The existence of PLAs on private-sector construction projects demonstrates confidence in the private sector that PLAs produce significant net benefits and are useful as an engineering management tool. Since the owners of private projects are out to make money, the widespread use of PLAs on these projects over long time spans is a good indication that PLAs, especially on large, and/or complex projects, most often produce noticeable positive net benefits.

## Summary

Public-sector PLAs on complex projects or projects where timely project completion is important have been shown to provide the performance desired by contractors and project managers, who repeatedly use them.

## The Iowa Policy Project

For the full report, see  
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