



RI 21st Century Labor Management Partnership

The Benefits of Implementing a PLA for Construction of the new Kent County Courthouse

I. Introduction

The 21st Century Labor Management Partnership (“21st Century LMP”) and the Rhode Island building trades (“building trades”) submitted this information with exhibits as a response to the Kent County Courthouse Study Committee’s (the “Committee”) request for information on the benefits of utilizing a project labor agreement (“PLA”) for construction of its new courthouse.

II. Background

A. The 21st Century LMP

While all of you are probably familiar with the building trades, you may not be familiar with the 21st Century LMP. Our organization is an equal partnership among the seventeen unions of the building trades and the contractor organizations that represent the Rhode Island Chapter, Associated General Contractors, the Southeastern MA. and R.I. Chapter of the National Electrical Contractors Association, and the New England Mechanical Contractors Association.¹ This new partnership was forged in order to increase labor/management cooperation and communication, which will make our contractors more efficient and therefore provide more value to construction users like the State of Rhode Island.

B. PLAS

Whether nationally² or locally,³ there is indisputable evidence that PLAs are implemented on billions of dollars worth of construction projects in both the public and private sectors.

¹ Under the National Labor Relations Act, it is usually the employer, not the employee who decided whether or not to be union. 29 U.S.C. 158 (e) & (f). Developing this joint arrangement is a natural extension of contractors deciding for themselves to enter into business relationships with construction unions.

² Attached hereto at Tab 1 is a partial list compiled by the AFL-CIO Building and Construction Trades Department of projects that have implemented PLAs throughout the United States in the year 2000.

³ Attached hereto at Tab 2 is a list of local projects that have or are now completing their project with a PLA.

The question is why? Why would construction users, primarily in the private sector no less, voluntarily decide on their own to implement PLAs on so many local and national projects?⁴

The short answer is simple: the record (locally and nationally) demonstrates that it is in their best business interests to do so. PLAs provide the value their proponents claim and as a consequence are often sought by construction users who are undertaking major capital projects in order to insure that their projects are completed as soon as possible, as safe as possible and within budget.⁵

C. The Legal Standard

As we are sure the Committee is acutely aware, due to the efforts of the of Rhode Island Chapter of the Associated Builders & Constructors, Inc., (“ABC-RI”) the state supreme court adopted a specific standard for analyzing whether or not PLAs are consistent with our State’s procurement laws.⁶

Under this standard any public entity that includes a PLA as a bid specification in a public contract must establish that “(1) the size and complexity of the project are such that a PLA supports the goals and objectives of the state purchases act, and (2) the record demonstrates that the awarding authority has conducted an objective reasoned study using reviewable criteria in determining that the adoption of a PLA helps to achieve the goals of the state purchases act.”⁷

Although the Court did not define what constitutes “an objective reasoned study”, it said:

[A]s the size and complexity of a project increases, so too does the premium on timely completion, and for certain projects, the potential benefits of a PLA, such as the ban on work stoppages, may come to outweigh the anticompetitive impact of such agreements. Moreover, the assurance of predictable costs and the procurement of a steady supply of labor should not depend on whether the owner of the project is a private entity or public entity.⁸

⁴ The State has formed this Subcommittee to decide whether or not a PLA is its best interests. It will voluntarily decide whether or not to include it with its other bid specifications. *See, infra* at note 1.

⁵ *Evaluating PLA Performance*, COCKSHAW’S CONSTRUCTION LABOR NEWS + OPINION, Vol. 31, No. 11, November 2001, attached hereto at Tab 3.

⁶ *Associated Builders & Contractors of RI, et al. v. Department of Administration*, 787 A.2d 1179 (R.I. 2002). We note that each year billions of PLAs are entered into every year in the private sector without any such analysis.

⁷ *Id.* at 1189.

⁸ *Id.*

In its arguments to the state supreme court, the ABC-RI “never claimed that project labor agreements are *per se* illegal.”⁹ Instead, they claimed that the above standard would be a “*reasonable standard against which to measure the appropriateness of a project labor agreement.*”¹⁰ [Emphasis added.]

III. Analysis

Our specific comments address each issue the Committee is analyzing in a format that typed in *italic* the Committee’s issue followed by our response.

1. *Type of contract: Lump sum award
Approximately 12 to 16 different trades*

PLAs have been successfully implemented on projects with every type of project delivery system; therefore, the type of contract the State implements should not have a bearing on the State’ analysis of whether or not to implement a PLA for this project.

2. *Prevailing wage project pursuant to Rhode Island law.*

Traditionally, local union wage rates are similar to, if not the same as local prevailing wages.¹¹

3. *Compare availability of union and nonunion contractors and subcontractors.*

Currently, there are over four hundred union contractors and subcontractors available to consider this project.¹² We know of no such similar list of available local nonunion contractors that has been compiled.

4. *Compare union and nonunion labor source.*

The federal government estimates union and nonunion market share through a very limited survey.¹³ The survey is national and “hides significant differences in the percentage of union employment by region.”¹⁴ As a consequence, independent national

⁹See, *Brief for Plaintiffs/Appellees*, Briefs, R.I. Supreme Court No. 6 (1), 2001-02 at page 52.

¹⁰ *Id.* at 38.

¹¹ Attached hereto at Tab 4 are current union wage rates.

¹² Attached hereto at Tab 5 is a list of all local signatory contractors. This list does not include contractors signatory to non Rhode Island unions, who, in many instances bid for and complete work in Rhode Island.

¹³ The federal government Bureau of Labor Statistics conducts a national survey of approximately 60,000 households to determine union membership. Attached hereto at Tab 6 is a press release from the bureau on how the information is collected, which acknowledges that the construction industry is “highly unionized.” The information is on page 3 of the exhibit. According the the Bureau, union membership by industry in Rhode Island is not published. Telephone Interview with Walter J. Marshall, Regional Economist, *Bureau of Labor Statistics*.

¹⁴*Union/Nonunion Trends*, CONSTRUCTION LABOR RESEARCH COUNCIL, August 2001, attached hereto at Tab 7.

commentators have vigorously disputed these results and have concluded that there is no reliable source for determining market share.¹⁵

While market share information is heavily disputed, we do know for a fact that there are approximately 9,752 trained union personnel available for work on local commercial projects.¹⁶ If needed, the unions also have at least 37,000 plus members available regionally, and more nationally.

Whereas, according to the most recent survey of construction workers in Rhode Island by the State of Rhode Island Department of Labor and Training there are approximately 15,500 people who work in industry (commercial and residential) in our state.¹⁷

5. *Review labor controversies in Rhode Island over the past five years.*

The unions of the building trades and their union contractors do a significant share of the local commercial building construction work and virtually all of the highway construction work.

The parties have also taken a proactive approach to labor relations and over time the two have forged an excellent working relationship. An example of this excellent working relationship is the formation of the 21st Century LMP in 1999.

That said, the labor controversies on nonunion construction jobs that we know of, include:

- i. Sheetmetal Local No. 17 went on strike after their collective bargaining agreement expired from July 1-7, 2003.¹⁸
- ii. Carpenters Local No. 94 went on strike after their collective bargaining agreement expired from June 1-10, 2001.

¹⁵*Separating Fact from Fiction*, COCKSHAW'S CONSTRUCTION LABOR NEWS + OPINION, Vol. 32, No. 1, January 2002 attached hereto at Tab 8.

¹⁶ Attached hereto at Tab 9 is a one-page compilation of local available trained union personnel. Behind the one page compilation are the individual resumes of the unions that comprise the building trades. The information also includes local apprentice and journeyman personnel capabilities, regional personnel capabilities, and worker training requirements. We know of no similar compilation for the nonunion sector.

¹⁷ A copy of the State of Rhode Island Department of Labor and Training's Occupational Employment Statistics Survey from the Department's latest results, November 2001, is attached hereto at Tab 10. Several occupational categories are omitted from the Department's survey because it could not ascertain a reliable number.

¹⁸ During this time their workers working on the Amgen expansion PLA continued to work. Many other possible work stoppages have been thwarted by implementation of billions of dollars worth of work on local projects, much of which is still on-going. *See infra* note 3. In addition, their Boston based bargaining unit went on strike from August 1-13, 2002. However, during that time the workers continued to work on the Gillette Stadium project because it was being constructed under a PLA. Timely completion of this project was critical to its success; the New England Patriots football team had to have the stadium completed in time for the start of the upcoming football season, which began in September.

- iii. There also numerous picket lines that appear on many different jobs including one that is currently in place at a major local university.

6. *Review similar projects in Rhode Island that have used PLAs and those that have not used PLAs. Compare also Eastern Massachusetts and Western Connecticut.*

Rhode Island Projects

Locally, the building trades have entered into twenty-nine PLAs worth billions of dollars worth of projects.¹⁹ Those who have commented on the projects have praised them.²⁰ The following on some of the more recent projects that implemented PLAs:

- i. Amgen expansion
According to a recent article in the Providence Business News, this project is “on schedule.”²¹
- ii. Town of North Providence middle schools
According to town, the PLA “played a major role” in completing the construction project for these schools on time and within budget.²²
- iii. The Ryan Center
According to the university, this project was finished on time and within budget and according to the program manager the agreement assisted in accomplishing the results.²³
- iv. Johnston power plant
“The PLA gave [Florida Power & Light] access to a skilled pool of craft workers and kept the project on schedule and within budget.”—L.O. Terwilliger, Labor Relations Manager, Florida Power & Light.²⁴
- v. T. F. Green Airport expansion
According to the project executive on this project, the “PLA on this project was an extremely effective tool.”²⁵

Eastern Massachusetts and Western Connecticut

¹⁹ *Id.* This does not include the many other projects that have been built with all union workers without PLAs (e.g. Westin Hotel, Convention Center, Jefferson Place Apartments, etc...). A copy of that list is attached hereto at Tab 11.

²⁰ Attached hereto in Tabs 12-26 are comments from construction managers and construction users on the benefits of PLAs from projects they participated in. This information came as the result of legislation we introduced to the General Assembly this past session which would have changed the standard of review for public entities to enter into PLAs.

²¹ Mike Colias, *Amgen plant construction on schedule*, PROVIDENCE BUSINESS NEWS, Feb. 3-9, 2003 at 1.

²² See Tab 12.

²³ See Tab 18.

²⁴ See Tab 13.

²⁵ See Tab 26

We are in the process of getting information from these areas and will forward it to the Committee upon our receipt of the information.

7. *Determine negative effect that a PLA will have on prospective bidders.*

While we understand why the Committee may want to consider this concern, we submit it is not relevant to the issue of whether or not a PLA is appropriate for this project. The issue is whether the PLA is in the best interests of the project, not whether its implementation will have a negative impact on other businesses.

If the Committee is concerned that having fewer bidders will drive up the cost of this project, we only have to look to the Ryan Center and T.F. Green Airport projects to dispel that notion. Both of those projects implemented PLAs and both were completed on time and within budget.²⁶ Those associated with those projects are proud of the fact that the projects were completed timely, safely and within budget; no one is discussing the ancillary affects implementation of the PLA caused to possible bidders who may or may not have elected to bid on the project.

8. *Consider MBE participation with a PLA.*

Locally, PLAs have history of including specific and measurable hiring goals for all minority businesses. Without such an agreement, it would be more difficult to include, administer and attain any reasonable MBE goals²⁷. For example, included in this correspondence are two letters of support from minority contractors that have experienced the benefits of minority participation with PLAs.²⁸

9. *Funding: The Kent County project is funded by bonds, there are no federal funds.*

The State of Rhode Island is analyzing whether or not a PLA is appropriate for the new Kent County Courthouse project under the state purchases act. The analysis is not whether it is appropriate for the State to enter into a PLA under any circumstances, but the standard that the opponents of the PLA at the Ryan Center sought: whether this project's size and complexity support the goals and objectives of the state purchases act.²⁹

In his correspondence of August 14, 2003, State of Rhode Island Supreme Court legal counsel Girard Visconti states that: "A major concern of the project is its timely completion." A point Mr. Visconti underscores. In the letter he also implies that the project is complex and state's its substantial size. From these statements, the State is well on their way to determining that this project is the size, scope and complexity for a PLA

²⁶ There are also many other projects completed within budget (local and national) that utilized PLAs.

²⁷ There are approximately twenty MBE registered contractors in the State. See, <http://www.rimbe.org/>. [Utilize construction as a key word in the company directory search. Of the companies that the web site responds to, only twenty would be considered contractors. The others are either architects, engineers or provide services ancillary to contracting.] Of those, at least eight have signatory agreements.

²⁸ Copies of their letters are attached hereto at Tab 27.

²⁹ *Associated Builders & Contractors of RI, et al. v. Department of Administration*, 787 A.2d 1179,1189 (R.I. 2002).

to be implemented that would be consistent with the goals and objectives of the state purchases act.

10. *Our Committee has reviewed articles as the advantages of a PLA, which indicate the following:* [SIC]

There are many articles circulated by opponents of PLAs that are either misleading or plain inaccurate. Points in case, opponents are touting a study by the Beacon Hill Institute that tries to demonstrate the cost increases associated with PLAs. However, according to University of R. I. Professor Matthew Bodah Ph.D. and Michigan State University Professor Dale Belman, Ph. D., the study relies on bid prices rather than final costs and therefore its findings “unreliable.”³⁰ An independent and well known trade newsletter concurred with the professors’ findings.³¹ It also found information that the study relied on for its conclusions was inaccurate; ***at least three of the projects that the study claimed were built with PLAs were not.***³²

11. *The Committee has also reviewed the disadvantages of a PLA, which include the following:*

- *may reduce number of bidders*

Since this will be a lump sum bid, the only contractors that would probably be able to bid on the project are signatory and would probably not be averse to implementing a PLA.

- *increase costs of construction*

This argument is mute because the most high profile local public projects that utilized PLAs (T. F. Green Airport expansion and the Ryan Center) were both completed on time and within budget. Additionally, we have enclosed responses from several other construction users that have successfully implemented these agreements. Their comments praise the cost effectiveness of the agreements. If anything, the evidence demonstrates that PLAs contain costs for those who implement them on local projects.

One argument advanced by the ABC-RI in *Department of Administration* was that implementation of the agreement would increase the cost of the project because it would make contractors pay union wage instead of prevailing wage. This automatically assumes that the union wage is higher; this is not true. For example, in the case above, plaintiff James Rezendes said in deposition testimony that he was averse to PLAs because it would cause him to take a cut in pay from \$28.00 per hour to \$24.00 per hour. This argument is therefore nullified.³³

³⁰ A copy of the professors’ findings is attached hereto at Tab 28.

³¹ *Do PLA Projects Raise Costs?*, COCKSHAW’S CONSTRUCTION LABOR NEWS + OPINION, Vol. 33, No. 5, May 2003. A copy of which is attached hereto at Tab 29.

³² *Id.* at page 3.

³³ *See, Brief for Defendant/Appellant*, Briefs, R.I. Supreme Court No. 6 (1), 2001-02 (referring to deposition testimony of Mr. Rezendes).

Another argument advanced by opponents claims that they will have to pay “double” benefits for their employees—to their existing benefits’ companies and to the union funds. We are unsure how this could be, however, we do know that this would certainly not apply to excluded employees and employees hired through the union hall.

- *discourages many contractors from bidding work*

Simple free market concepts tell us that when a company needs or wants business, it will bid on a project. This is illustrated in several national projects with PLAs: 102 of the 257 subcontractors working on the Boston Harbor PLA were “open shop”;³⁴ and b) 26 of 70 contractors working on the Southern Nevada Water Authority PLA are also “open shop.”³⁵ In Rhode Island, no one has undertaken any such similar statistical survey. However, according to a former president of ABC-RI, implementation of these agreements has not stopped nonunion companies from bidding on and “initiating” them.³⁶

12. *Considerations of a PLA include the following:*

A. *To avoid costly delays of potential strikes, slowdowns, picketing, disruptions, and promoting labor harmony.*

The most uncontroverted evidence that could be submitted (and probably the only evidence that is submitted) which demonstrates that PLAs avoid costly delays is the testimony of previous construction users’ who have implemented these agreements. As the evidence demonstrates, owners and construction managers (owner’s representatives) state that implementing PLAs contributed to their successful project, which would mean that the agreements contributed to avoiding costly delays with construction of their projects.

B. *Standardizing the terms and conditions of labor agreements.*

Virtually every PLA entered into by the building trades contains standardizes the terms and conditions of employment for all signatories.

C. *Providing wide flexibility in work scheduling and shift hours and times.*

Current and past history illustrates the success of utilizing PLAs for this concern. For example, the Amgen PLA has provisions that allow the company to meeting its demanding schedule. Also, the T.F. Green Airport expansion PLA had specific language

³⁴ A copy of letters form Industrial Relations Manager of Kaiser Engineering is attached hereto at Tab 30.

³⁵ A copy of the affidavit of the director or engineering for the Southern Nevada Water Authority is attached here to at Tab 31. No one in Rhode Island has compiled any evidence demonstrating that nonunion companies did or did not bid and/or work on PLA projects.

³⁶ According to Defendant’s brief to the State supreme court, the current ABC Chapter President acknowledged these facts. *See, Brief for Defendant/Appellant*, Briefs, R.I. Supreme Court No. 6 (1), 2001-02.

that stated “the agreement [PLA] provided for work to be completed at the owner’s convenience.”³⁷

D. *Receiving negotiated and adjustments to the work rules and staffing requirements.*

As you know, wage rates are set by law. Staffing requirements for union workers are sometimes included in their collective bargaining agreements. The only mechanism which could possibly alter any adjustments would be a new collective bargaining agreement (e.g. a PLA).

E. *Standardizing settlement of disputes, including jurisdictional disputes.*

PLAs are the only mechanism that also includes provisions that call for a set and specific timetable for resolving any other job site dispute and/or grievance, including jurisdictional disputes, during which time mandates that there shall be no work stoppages.

Every local PLA implemented of record has: 1) a specific timetable for resolving jurisdictional disputes to be resolved, and 2) a provision that states that pending the resolution of any jurisdictional dispute, the work on the project shall continue uninterrupted as originally assigned by the employer.

Without PLAs, everyday jurisdictional disputes that cannot be resolved in the field are referred to the *Plan for the Settlement of Jurisdictional Disputes*, which is sponsored and administered by the Building and Construction Trades Department, AFL-CIO in Washington D.C. This process usually takes approximately twenty-five days, if not more to complete, during which time work could stop. Moreover, for some time now several local unions have refused to submit to or be bound by the Plan’s jurisdiction.

F. *Reliable source of skilled and experienced labor.*

i. *Reliable source*

As noted in ¶ 4 above, there are substantial skilled personnel available for work. The NLRA allows contractors to enter into pre-hire agreements with construction unions; this gives contractors access to a mobile workforce. Union workers move seamlessly from contractor to contractor, job to job, and region to region with any loss of employment, benefits or skills. Therefore, our workforce is a reliable source of labor for construction users.

ii. *Skilled (and experienced labor)*

The unions of the building trades and their contractors make an unmatched investment in training. For every hour the craftsmen and women of the building trades work, their unions and contractors invest into funds designated exclusively for training. This amounts to an up to \$2.0 million investment in training every year.

³⁷ See, comments by project executive at Tab 26.

In addition, they train all their workers through registered training programs for every trade, and in many instances have training requirements that exceed state law requirements.³⁸ As a consequence, the evidence in ¶ J and ¶ Y. of this correspondence demonstrates that union workers work safe and therefore have superior skills.

G. *To improve the employment opportunities for minorities, women, and economically disadvantaged.*

i. For economic opportunities for minority contractors see ¶ 8 above.

ii. Under federal law, all the union apprenticeship-training programs have affirmative action programs in place.³⁹ As a consequence, their minority hiring of apprentices is significantly higher than the nonunion sector.⁴⁰ Therefore, utilizing union contractors, who utilize union apprentices, will improve the employment opportunity for minorities and women.

H. *Expedite the construction progress.*

We are unsure what the Committee is asking for here; however, as the testimony of construction users who have utilized PLAs demonstrates, projects that implement these agreements are completely in a timely manner. Therefore, the evidence suggests that these agreements “expedite the construction progress.”

I. *Insuring utilization of non-union workers retained by successful trades.*

It is not unlawful for an employer and a union to enter into an agreement whereby the employer agrees to hire new employees exclusively through the union hiring hall so long as there is neither a provision in the agreement nor a practice in effect that discriminates against nonunion members in favor of union members.⁴¹

J. *Maximizing project safety conditions for both workers and monitoring public.*

In a recent survey of Occupational Safety and Health Administration violations in the SIC category of “non-residential” general contractor completed by the 21st Century LMP, we found that union contractors accounted for 18% of all violations whereas nonunion contractors accounted for an astonishing 82% of all violations; this despite the

³⁸ Attached hereto at Tab 32 is a list of all the registered union apprenticeship-training programs.

³⁹ See 29 C.F.R. § 30.3 (f). Any apprenticeship-training program with not fewer than five apprentices shall no be required to adopt an affirmative action plan. *Id.* All our apprenticeship-training programs have more than five apprentices; therefore, all of our training programs are required by law to adopt an extensive affirmative action program.

⁴⁰ According to a study completed for I.B.E.W. Local No. 99, in the year 2001, 18% of those participating in union apprenticeship programs were minority, as opposed to 10% participating in nonunion programs. Attached hereto at Tab 33 is a graph of the survey’s results.

⁴¹ 29 U.S.C. § 158 (b) (2).

fact that it is the union contractors that complete most of the local major (and most perilous) construction projects.⁴²

This information clearly demonstrates that if the State is going to maximize project safety conditions, it should consider the means and methods implemented by our contractors.

K. *Extension of all trade contracts to end of project schedules.*

As the Committee probably knows, a PLA is a collective bargaining agreement for a particular project. The agreement ends when the project is completed. Regardless of when an individual collective bargaining agreement ends, that trade is bound by the terms and conditions of the PLA.

L. *Hours of Work-40 hours of work at straight time with time and one-half as to overtime.*

Most, if not all trade collective bargaining agreements provide for forty hour work week at straight time with time and one-half for overtime.

M. *Shifts-review number of shifts to be employed.*

The most efficient mechanism available to review and alter worker shifts would be a PLA. The two most notable examples of this are the current Amgen and the T. F. Green Airport expansion PLAs. In both of those instances, a change in shift scheduling was negotiated to adapt to the needs of the owner.

N. *Holidays.*

The union trades holiday schedule is attached.⁴³

O. *Flextime-example: four ten-hour days in a work week.*

The most efficient mechanism available to implement “flextime” is a PLA. The two most notable examples of this are on PLA projects. For example, the T.F. Green Airport PLA stated that in order to “maintain the efficient operation of” the airport that the parties would agree to all for the implementation of a “Flextime Work Schedule.”⁴⁴

This concept was successful because there was a provision written into the agreement that required all parties (labor and management) to meet and review when and how this should occur prior to its commencement.

P. *Starting and quitting time.*

⁴² A copy of the results from the OSHA study are attached hereto at Tab 34.

⁴³ Attached hereto at Tab 35 is a list of all the trade’s respected holidays.

⁴⁴ Attached hereto at Tab 36 are pages 28 and 29 of the T.F. Green Airport PLA.

All of the union crafts have specific starting times in their collective bargaining agreements in place. A PLA is only mechanism to insure that there is a uniform starting for all workers.

Q. *Consideration of miscellaneous matters such as bereavement pay, non-working stewards, personal days, jury duty, travel time and others.*

Such miscellaneous matters may be an alteration of existing collective bargaining agreements. Traditionally, union representatives and signatory contractors are very hesitant to modify existing terms and conditions of their current collective bargaining agreements. The only mechanism that has been successful in altering any term or condition of the unions' collective bargaining agreements has been PLAs.

R. *Disputes/grievances, arbitration.*

See ¶ E. above.

S. *Management rights clauses.*

Every PLA that allows union and nonunion contractors to bid includes a management rights clause. It allows the owner to retain full and exclusive authority for the management of the operations. This usually includes right to direct work forces, hiring of all personnel, selection of all supervisory employees, promotions, transfers, layoffs and discharge of employees.

T. *Use of apprentices.*

The unions of the Rhode Island building trades have 940 apprentices in their locals. This includes an apprenticeship-training program for every apprenticeable craft. Therefore, utilizing union contractors (who utilize union apprentices) will improve the employment opportunity for apprentices.

U. *Equal employment opportunity.*

See ¶ G. above.

V. *Labor management forum.*

The PLA now in place for the Amgen expansion in West Greenwich established a Labor Management Cooperation Committee and a Joint Administrative Committee (which included three representatives from labor and management) to administer the agreement.

This committee meets on a monthly basis to promote harmonious labor-management relations and address any and all issues that could arise. To date, it has successfully resolved every issue it faced, enabling the project to be “on schedule.”⁴⁵

Its successes included resolving safety issues, which included developing a safety task assignment form, defusing potential jurisdictional issues before they arose, project personnel needs, shift changes, transportation challenges, disciplinary issues, new hire orientation and a drug testing program.

W. *Work rules.*

Success on other agreements demonstrates that a PLA would be the most efficient vehicle to insure that the work rules were tailored to construction of this courthouse.

X. *Subcontracting provisions.*

Subcontracting provisions traditionally do not have any bearing on the implementation or the administration of a PLA.

Y. *Safety and health.*

The same commitment that the unions have for training discussed in ¶ F. applies here. The unions, and their contractors, make contributions based on hours worked to funds dedicated exclusively to health and safety. We know of no other entity or mechanism that is able to make such a substantial investment in training. As a result all of our unions have state of the art training facilities and at least one union has an organization dedicated exclusively to researching how to make the construction work place safer.⁴⁶

As a consequence to this unmatched investment in safety, the facts demonstrate that union workers work safer. For example, in ¶ J we demonstrated that union contractors have few OSHA violations.

More impressive however is our record when it comes to workplace fatalities. According to OSHA, from 1998 through 2001 there have been sixteen deaths in the workplace in Rhode Island, eight of which were in construction. ***None of those eight fatalities were union workers.***⁴⁷

Among the guidelines to be utilized by our Committee includes the following:

⁴⁵ See *infra* at note 21.

⁴⁶ In 1994 the New England Laborers and their contractors formed a joint labor management nonprofit entity devoted to making the workplace a safer environment. The entity identifies, studies and collects information about the health and safety risks to which its members are exposed. It also coordinates site-specific plans that effectively eliminate workplace hazards and minimize work-related injuries and illnesses. See, www.nelhs.com

⁴⁷ A copy of the OSHA Fatality Report is attached hereto at Tab 37.

1. *Value of the project.*

Locally, PLAs have been successfully implemented on projects larger and smaller in size and value. In previous correspondence with the Committee there was no mention of the projected value of the project. However, we were informed that the building would be approximately 200,000 sq. ft. Although a different type of building, one only has to look to the Ryan Center to find a project of similar size. According to the University of Rhode Island this project is approximately 200,000 sq. ft. As previously stated in this correspondence, that project was completed on time and within budget.

2. *Timely completion*

There is too much at stake for decision makers at companies like Amgen or Florida Power & Light for them not to complete their projects on time. In the case of Amgen, speed to market will enable them to their breakthrough drug ENBREL® as soon as possible.⁴⁸ In the case of Florida Power & Light, significant revenues are lost each day their new power plant in Johnston is idle.

That is why in two of these more recent local private entity construction projects, these owners decided to implement PLAs. However, as the information we are submitting demonstrates, many other entities, private and public, local and national, utilize PLAs because the evidence demonstrates that these projects have a track history of being completed timely.

Although we are not experts in construction management, from the revised schedule for completion forwarded to us, it is clear that the State will need a significant number of skilled workers over a pre-defined and set time frame in order for this project to be completed as scheduled. The unions have local, regional and national referral networks in place to insure that this project is staffed with the finest craftspeople available.⁴⁹ Therefore, if timely completion is a concern of the State, a PLA would be the best solution to insuring that it is appropriately staffed.

3. *Current labor environment and sources of supply.*

Nationally, shortage of skilled workers is still the number one concern of contractors.⁵⁰ However, as the information in ¶ 4 on page 4 and ¶ F. demonstrates, unions have a substantial number of skilled personnel in the local area. Additionally,

⁴⁸ ENBREL® reduces the signs and symptoms, and inhibits the progression of structural damage in patients with moderately to several active rheumatoid arthritis. Timely completion will allow the company to treat those afflicted with R.A. Additionally, the company has a patent on the drug that is effective for only ten years.

⁴⁹ Congress “intended” to accommodate conditions specific to construction when it amended the act in 1959. This included the short-term nature of employment, the need to predict costs, and a securing a steady supply of skilled labor. *Building & Construction Trades Council v. Associated Builders & Contractors of MA/RI et al*, 507 U.S. 218 (1993). These “conditions” debated by Congress appear to be the set of circumstances now facing the State.

⁵⁰ *Concern Eases Over Labor Shortages But Remains Contractors’ Chief Worry*, BNA Construction Labor Report, Vol. 47, No. 2361, January 30, 2002 at page 1315. A copy of which is attached hereto at Tab 38.

they have regional and national networks, which they can draw from that will enable this project to be completed as soon as possible.

4. *Analyzation of collective bargaining agreements.*

In this paragraph we only note that all of the individual unions' collective bargaining agreements vary in some respect and upon request would submit copies of them for your review.

5. *Consideration to avoid costly delays of strike, slow downs, picketing, etc.*

The facts in ¶ A. of this correspondence and the comments from project owners and construction managers at Tabs 12-26 demonstrate that PLAs avoid costly delays.

6. *Standardizing the terms and conditions of work hours, etc.*

The facts revealed in this correspondence and the comments from project owners and construction managers at Tabs 12-26 demonstrate that a PLA is the only mechanism that could standardize the terms and conditions of work hours, etc.

7. *Provide flexibility in work schedules.*

The facts revealed in this correspondence and the comments from project owners and construction managers at Tabs 12-26 demonstrate that a PLA is the only mechanism that could provide flexibility in work schedules for the workers on the project.

8. *Review of work rules and staffing requirements.*

The facts revealed in this correspondence demonstrate that a PLA is the only mechanism that could be employed to modify or change existing work rules and staffing requirements.

9. *Source of skilled labor and experienced labor.*

The facts revealed in ¶ 4 on page 4, ¶ F, and associated exhibits of this correspondence demonstrate that union contractors will be able to supply this project with the skilled personnel needed to complete it as soon as possible.

10. *To improve the employment opportunities for minorities, women and economically disadvantaged.*

The facts revealed in ¶ G. of this correspondence demonstrate that a PLA is the only mechanism that improves the employment opportunities for minorities, women and economically disadvantaged.

11. *Usage of apprentices and qualified programs.*

The facts revealed throughout this correspondence demonstrate that the unions are the unquestioned leaders when it comes to providing the marketplace with apprentices from qualified programs. They train every trade, pay for the tuition of all apprentices and in many instances their training requirements exceed state law requirements.

12. *Expedite the construction process.*

The facts revealed throughout this correspondence demonstrate that PLAs expedite the construction process.

13. *Insure the utilization of non-union workers.*

By law, a PLA cannot exclude the use of non-union workers; therefore, they should be utilized.

14. *Maximizing project safety conditions.*

The facts revealed in ¶ J. of this correspondence demonstrate that union workers worker have minimal OSHA violations and therefore provide safe working conditions.

15. *Hours of work, i.e. 40 hours of work at straight time with time and one-half.*

The facts revealed in this correspondence demonstrate that a PLA is the only mechanism that could alter existing collective bargaining conditions.

16. *Shifts.*

The facts revealed in this correspondence demonstrate that PLAs have successfully altered shift schedules to the satisfaction of owners.

17. *Holidays.*

The facts revealed in this correspondence demonstrate that a PLA is the only mechanism that could alter existing collective bargaining conditions.

18. *Flextime.*

The facts revealed in this correspondence demonstrate that a PLA is the only mechanism that could alter existing collective bargaining conditions.

19. *Equal employment opportunity.*

The facts in ¶8 on page 6 and in ¶ G. of this correspondence demonstrates that the unions provide equal employment opportunity for all minorities.

IV. Conclusion

From the Committee's legal counsel's comments in his correspondence of August 14, 2003, it appears that a PLA on this project would support the goals and objectives of the state purchases act. This coupled with the fact that the only concrete evidence presented, that is evidence that is uncontroverted, endorses the view that PLAs on local projects are cost effective mechanisms that owners endorse. Therefore, it is in the best interests of this project to include a PLA as part of any possible bid package to any prospective bidders and we urge the Committee to do so.